

309

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1919.

A BILL

To make further provision to prevent the introduction into New South Wales of diseases and pests affecting plants and fruit; to provide for the eradication of such diseases and pests, and to prevent the spread thereof; to make certain provisions with regard to the sale of fruit and vegetables, and the grading of fruit; to amend the Vine and Vegetation Diseases and Fruit Pests Act, 1912; and for purposes consequent thereon or incidental thereto.

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 "Vine and Vegetation Diseases and Fruit Pests (Amendment) Act, 1919," and shall come into force on a day to be proclaimed in the Gazette by the Governor. Short title.

2. (1) Part III of the Vine and Vegetation Diseases and Fruit Pests Act, 1912, is hereby repealed, and the following Part substituted in lieu thereof. Repeal and saving.

(2) All persons appointed under the enactments hereby repealed and holding office at the time of the passing of this Act, shall remain in office as if this Act had been in force at the time they were appointed, and they had been appointed hereunder, and this Act shall apply to them accordingly.

(3) All proclamations published, and all regulations made under the authority of the enactments hereby repealed, and in force at the time of the passing of this Act, shall be deemed to have been published and made under the authority of this Act; and references in any such proclamations and regulations to the provisions of any enactments hereby repealed shall be construed as references to the corresponding provisions of this Act.

PART III.

VEGETATION DISEASES AND FRUIT PESTS.

67. In this Part of this Act, unless inconsistent with the context or subject matter— Interpretation.

"Covering" or "package" includes any case, box, bag, wrapper, packing, or material of whatsoever description designed to contain or to be used in the packing of anything.

"Disease" means any disease to plants however caused, which the Governor may declare by proclamation to be a disease, and includes any such disease in whatever stage of existence it may be. "Fruit"

- 511
-
- “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, whether such fruit is or is not attached to the plant.
- “Infected” means infected with disease or pest.
- “Inspector” means an inspector appointed under this Part of this Act, and includes an inspector of vineyards appointed under Part II of this Act.
- “Minister” means the Minister of Agriculture.
- “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.
- “Occupier” as applied to any orchard or other land or premises includes any person having the charge, management, or control thereof.
- “Orchard” means any place where one or more fruit-producing plants are grown.
- “Owner” includes any person holding land under any lease or license from the Crown and any person deriving title from, under, or through him.
- “Pest” means any organism belonging either to the animal kingdom or to the vegetable kingdom, causing injury or disease to plants, which the Governor may declare by proclamation to be a pest.
- “Plant” means any tree, vine, flower, shrub, vegetable, or other vegetation of economic value, or such other plant as the Governor may declare by proclamation to be a plant for the purposes of this Act.
- “Regulations” means regulations made under this Act.
- “The State” means the State of New South Wales.
- “Vegetables” means potatoes, onions, green peas, green beans, and any other vegetable declared by the Minister by notice in the Gazette to be a vegetable for the purposes of this Act.
- Governor's*

312

Governor's proclamation.

68. (1) The Governor may by proclamation prohibit the importation, introduction, or bringing into the State (or into any portion thereof specified in such proclamation) either generally or from any country or place specified in such proclamation, or the bringing into one portion of the State from any other portion specified in such proclamation :—

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 or pest into the State or into any specified portion thereof, as the case may be.
- (b) Any coverings or goods in, or with which, any such plant, fruit, or thing has been contained, or packed, or come in contact.
- (c) Anything which is infected.

(2) Every such prohibition may be absolute, or subject to any condition which may be imposed in such proclamation, or prescribed.

(3) The Governor may at any time revoke or alter any such proclamation.

69. (1) The Governor may by proclamation—

- (a) appoint any specified ports or places to be the only ports or places of entry into the State 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) declare any parcel of land or any building a quarantine ;
- (d) isolate in the prescribed manner any quarantine, and any building, land, or place wherein or whereon there are or have recently been any infected plants or fruit ;

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

(e)

- (e) 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;
- (f) prohibit the removal of any tree or plant from any nursery, orchard, or other place, except in the prescribed manner and subject to the prescribed conditions.

(2) The Governor may revoke or vary any such proclamation.

70. Any plant, fruit, covering, goods or other thing which, contrary to any such proclamation, is or are in any way introduced into the State or imported or introduced or brought into any portion of this State from any other portion thereof 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 of either the owner or person in charge thereof as the Minister shall direct.

Seizure of prohibited plants.

71. 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 of the Department of Agriculture.

Notice to be given of appearance of disease.

Inspectors and their powers and duties.

72. The Minister may appoint such persons as he thinks fit to be inspectors under this Part of 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.

73. (1) An inspector may employ such assistants as he deems necessary in carrying out the provisions of this Act.

Employment of assistants.

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

Use of force in case of resistance.

(3)

(3) Every person 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 Part of this Act shall be liable to a penalty not exceeding *twenty* pounds :

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.

(4) An inspector or assistant shall not be deemed to be a trespasser by reason of any entry or removal in pursuance of his duties under this Act or be liable for any damage occasioned in carrying out the provisions of this Part of this Act.

Officers not to be trespassers.

74. (1) 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 any 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.

(2) 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 the inspector shall declare to be necessary or are prescribed, 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.

(3) If such owner or person fails or neglects to take any such measure or do any such acts as aforesaid,

aforesaid, any inspector may do the same at the expense of either the owner or the person in charge thereof as the Minister shall direct.

75. (1) An inspector may serve on the owner or occupier of any orchard a notice requiring him to take any measures or do any acts which the inspector may deem necessary, and which are set forth in such notice, or are prescribed, to prevent the spread of any disease or pest, and in such case even although the orchard is not demonstrably 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) 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 in any court of competent jurisdiction from the person or persons guilty of the default.

76. (1) Whenever an inspector is satisfied that disease exists on any orchard, land, or premises, he may serve on the owner or occupier a notice requiring 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 notice 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 notice 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 notice, and shall do everything thereby required to be done.

(4)

(4) 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 requirements of the notice completely into effect, and the expenses incurred in and about so doing shall be recoverable in any court of competent jurisdiction from the person or persons guilty of the default.

(5) Any person failing to comply with the requisitions of any notice served on him under the authority of this section shall be liable to a penalty not exceeding *one hundred* pounds.

77. For the purpose of carrying out the purposes of this Part of this Act any inspector may destroy or otherwise dispose of any plants or fruit which are infected or which he, on reasonable grounds, believes 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.

78. An inspector may 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.

Any person refusing to answer any such question, or not answering such question truthfully to the best of his knowledge, shall be liable to a penalty not exceeding *ten* pounds.

Registration.

79. (1) Every owner or occupier of any orchard shall, on or before a date to be fixed by the Minister by notice in the Gazette, unless exempted by the Minister, register such orchard in the manner prescribed.

Orchard to be registered.

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

Nursery to be registered.

(3)

(3) The owner and occupier of any orchard or nursery not registered in compliance with the provisions of this section shall be liable to a penalty not exceeding *twenty-five* pounds.

Certificated nurseries.

80. (1) The Minister may, whenever he thinks fit, and shall, on request made to him by the owner or occupier of any nursery, 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 thereof a certificate in the form prescribed. Such certificate shall have effect for the time mentioned therein.

Inspection
and certi-
fication.

(2) 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.

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

Abandoned orchards.

81. (1) If any inspector reports 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 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 harbour or spread or capable of aiding in the harbouring 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

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.

Miscellaneous.

82. 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 any thing he is required to do under or pursuant to this Part of this Act.

Penalty if owner or occupier hinders the other.

If in the performance of any duty or obligation imposed on him by or under this Part of 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.

83. Any notice to be given to any person under or pursuant to this Part of this Act or any regulation, must be given in writing, and either delivered to such person, or left or posted to the same by registered letter addressed to him at his usual or last known place of abode in the State, 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 affixed in a conspicuous place on the land to which such notice relates.

Notices to be given in writing.

83A. No person shall be entitled to any compensation whatsoever in respect of anything done by any inspector or other officer or assistant or any other person in the discharge of any duty or obligation under this Part of this Act or any regulation, or in respect of any measure taken in pursuance of this Act or any regulation in order to eradicate or prevent the spread of disease or to carry out the provisions of this Part 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.

83B.

83B. (1) Every person commits an offence against this Act who, directly or indirectly by himself, his servant or agent—

- (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) or brings 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
- (b) sells, or offers or exposes for sale, any plant, fruit, goods, covering, or thing which has or have been introduced into the State in breach of any proclamation or regulations under this Part of this Act, or (except under the direction of any inspector) brings 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) who, being the owner or occupier of any orchard or nursery, sells, or offers or exposes for sale, any plant or fruit from such orchard or nursery, while such orchard or nursery is not registered in accordance with the provisions of this Part of this Act ; or
- (d) does or attempts to do any other act in breach of this Part of this Act, or any proclamation or regulation thereunder ; or
- (e) fails or neglects to faithfully observe and perform any duty or obligation imposed on him by this Part of this Act, or by any proclamation or regulation thereunder.

(2) Every person who commits any offence against this Part of this Act shall (if no penalty is hereinbefore or by regulation specified for the offence) be liable to a penalty not exceeding *fifty* pounds.

(3) In all proceedings taken against any person for any offence against this Part of this Act the

the averments of the prosecutor contained in a sworn complaint shall be deemed to be proved in the absence of proof to the contrary.

(4) 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.

83c. (1) The Governor may make regulations generally to carry out the provisions of this Part of this Act, and in particular to— 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 orchards and nurseries and any exemption therefrom ;
- (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) require the occupiers of 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) provide for the detention and examination of trees and plants which are suspected to be diseased, and of boxes, baskets, packages, and cases which are suspected to contain diseased trees and plants, or to harbour or to be infected with disease or pest ;
- (g) provide for the grading and packing of fruit and vegetables ;
- (h)

(h) impose a penalty not exceeding *twenty-five* pounds for the breach of any regulation.

(2) Such regulations shall—

- (i) be published in the Gazette;
- (ii) take effect from the date of publication or from a later date to be specified therein; and
- (iii) 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. If either House of Parliament passes a resolution at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation, such regulation shall thereupon cease to have effect.

Fair average quality of fruit and vegetables offered for sale.

83D. (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.

Sale of fruit, &c., not up to fair average quality.

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