

HORTICULTURAL STOCK AND NURSERIES ACT.

New South Wales



ANNO OCTAVO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 3, 1969.

An Act to provide for the registration of certain nurserymen and resellers of horticultural stock; to regulate the sale or propagation of certain horticultural stock; to amend the Plant Diseases Act, 1924, as subsequently amended; and for purposes connected therewith. [Assented to, 14th March, 1969.]

BE

No. 3, 1969

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:—

PART I.

PRELIMINARY.

Short title and commencement.

1. (1) This Act may be cited as the "Horticultural Stock and Nurseries Act, 1969".

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division of Act.

2. This Act is divided as follows:—

PART I.—PRELIMINARY—*ss.* 1–6.

PART II.—REGISTRATION—*ss.* 7–10.

PART III.—HORTICULTURAL PROPAGATING MATERIAL—*ss.* 11–13.

PART IV.—LABELLING—*ss.* 14, 15.

PART V.—INSPECTION AND RECORDS—*ss.* 16–19.

PART VI.—HORTICULTURAL STOCK AND NURSERIES ACCOUNT—*s.* 20.

PART VII.—MISCELLANEOUS—*ss.* 21–24.

Interpretation.

3. In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Chief of the Division of Horticulture" means the person for the time being holding office or acting as the Chief of the Division of Horticulture of the Department of Agriculture;

"Deputy

Horticultural Stock and Nurseries.

- “Deputy Director-General” means a person for the time being holding office or acting as a Deputy Director-General of the Department of Agriculture; No. 3, 1969
- “Director-General” means the person for the time being holding office or acting as the Director-General of the Department of Agriculture;
- “disease” means a disease that is for the time being declared to be a disease by proclamation under the Plant Diseases Act, 1924, as subsequently amended;
- “horticultural propagating material”, in relation to any horticultural stock, means material from which that stock is or may be propagated;
- “horticultural stock” means any tree, vine, plant, shrub or other vegetation;
- “inspector” means an inspector referred to in section sixteen of this Act;
- “nursery” means any place at which any horticultural stock is propagated for the purpose of sale;
- “nurseryman” means any person who is the owner of, or in charge of, or in control of, or manages, any nursery;
- “package” includes any covering, pot, case, tin, box, bag, wrapper or packing;
- “person” includes any partnership or firm and any body of persons, corporate or unincorporate;
- “pest” means a pest that is for the time being declared to be a pest by proclamation under the Plant Diseases Act, 1924, as subsequently amended;
- “prescribed” means prescribed by the regulations;
- “proclaimed horticultural stock” means any class of horticultural stock that is for the time being declared to be proclaimed horticultural stock pursuant to section five of this Act;
- “propagate”

Horticultural Stock and Nurseries.

No. 3, 1969

“propagate”, in relation to any horticultural stock, means generate or multiply, by sexual or asexual means; and “propagation” and derivatives from “propagate” have a corresponding meaning;

“registered” means registered under this Act;

“registration” means registration under this Act;

“regulations” means regulations made under this Act;

“reseller” means any person who sells, or carries on the business of selling, horticultural stock, but does not include a nurseryman in so far as he sells, or carries on the business of selling, horticultural stock at the nursery of which he is the owner or in charge or in control or which he manages;

“sale”—

(a) includes barter or exchange and also includes agreeing to sell or offering or exposing for sale or having in possession for sale or sending, forwarding or delivering for or on sale or causing, suffering or attempting any of those acts or things; and

(b) in relation to any proclaimed horticultural stock, includes dealing, for fee, gain or reward, in that stock,

and “sell” and derivatives from “sell” have a corresponding meaning.

Construc-
tion.

4. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State to the intent that where any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of that provision to other persons or circumstances, shall not be affected.

5.

Horticultural Stock and Nurseries.

5. (1) The Governor may by proclamation declare such class of horticultural stock as may be specified therein to be proclaimed horticultural stock.

No. 3, 1969
Declaration
of pro-
claimed
horticultural
stock.

(2) A proclamation referred to in subsection one of this section—

- (a) shall be published in the Gazette;
- (b) shall take effect upon the expiration of three months after the date of publication or from a later date specified in the proclamation; and
- (c) may be revoked or varied by the Governor by a like proclamation.

6. (1) The Minister may, by instrument in writing under his hand, exempt, to the extent specified therein and subject to any conditions imposed thereby, any persons, matters or things or any class of persons, matters or things from any or all of the provisions of this Act and the regulations.

Exemption.

(2) The Minister may, by a like instrument, revoke or vary any exemption under this section.

(3) The power of exemption conferred by this section shall be in addition to and not in derogation of the power to make regulations in pursuance of paragraph (d) of subsection one of section twenty-three of this Act.

PART II.

REGISTRATION.

7. As from the date from which a proclamation under section five of this Act declaring any horticultural stock to be proclaimed horticultural stock takes effect, a person shall not at any place—

Certain
nurserymen
and
resellers
to be
registered.

- (a) propagate any of that stock for the purpose of sale, unless he is registered as a nurseryman in respect of that place; or

(b)

Horticultural Stock and Nurseries.

No. 3, 1969

- (b) sell or carry on the business of selling any of that stock, unless he is registered as a nurseryman, or as a reseller, in respect of that place.

Registration. 8. (1) An application for registration as a nurseryman or reseller in respect of any place may be made to the Director-General by the person who carries on or proposes to carry on business as a nurseryman or reseller, as the case may be, at that place.

(2) An application for registration or for renewal of registration shall—

- (a) be in or to the effect of the prescribed form; and
(b) be accompanied by the prescribed fee (which shall not exceed twenty dollars).

(3) Different fees may be prescribed for the purposes of subsection two of this section according to the class of application being made.

(4) Subject to subsection five of this section, the Director-General may—

- (a) grant, either unconditionally or subject to such conditions as he may impose, an application for registration or for renewal of registration; or
(b) refuse to grant it on any of the grounds set out in subsection eight of this section.

(5) Where a person applies for registration or for renewal of registration—

- (a) as a nurseryman in respect of a place, the Director-General may, if he thinks it appropriate in the circumstances, treat the application as if the person had applied for registration as a reseller in respect of that place; or

(b)

Horticultural Stock and Nurseries.

- (b) as a reseller in respect of a place, the Director-General may, if he thinks it appropriate in the circumstances, treat the application as if the person had applied for registration as a nurseryman in respect of that place, No. 3, 1969

and the Director-General may grant the application accordingly.

(6) Registration—

- (a) shall, subject to this Act, continue in force for a period of twelve months from the date of registration; and
 (b) may be renewed, and on each renewal thereof shall, subject to this Act, be in force for a further period of twelve months.

(7) The Director-General may suspend or cancel any registration on any of the grounds set out in subsection eight of this section.

(8) The grounds referred to in subsections four and seven of this section are as follows :—

- (a) that the applicant or registered person has been convicted of an offence against this Act or the regulations;
 (b) that the servant or agent of the applicant or registered person has (while in his service or employment) been convicted of an offence against this Act or the regulations;
 (c) that there are reasonable grounds for suspecting the presence of a disease or a pest at any place in respect of which the applicant or registered person is applying for registration or for renewal of registration or is registered, as the case may require.

(9) A person who in any application for registration or for renewal of registration knowingly makes any claim or statement which is false in any material particular shall be guilty of an offence against this Act.

(10)

Horticultural Stock and Nurseries.

No. 3, 1969

- (10) A person—
- (a) whose application for registration or for renewal of registration is, under subsection four of this section, granted subject to a condition; and
 - (b) who fails to comply with that condition,
- shall be guilty of an offence against this Act.

Certificate
of
registration.

9. (1) Where the Director-General grants an application for registration or for renewal of registration, he shall issue a certificate of registration to the applicant.

(2) A certificate of registration shall be in or to the effect of the prescribed form.

(3) During any period for which a person is registered, he shall affix and keep affixed his certificate of registration in some conspicuous place in or upon the place to which the certificate relates.

(4) A person registered as a nurseryman or a reseller in respect of any place shall, in the prescribed manner and within the prescribed time, return his certificate of registration in respect of that place to the Director-General if—

- (a) the Director-General, under subsection seven of section eight of this Act, suspends or cancels his registration in respect of that place; and
- (b) it is unexpired.

(5) Where a person—

- (a) registered as a nurseryman in respect of a place does not, within such period after his application for registration or renewal of registration was granted as may be prescribed for the purposes of this paragraph, carry on the business of a nurseryman at that place, or ceases to carry on that business at that place; or
- (b) registered as a reseller in respect of a place does not, within such period after his application for registration or renewal of registration was granted

as

Horticultural Stock and Nurseries.

as may be prescribed for the purposes of this paragraph, carry on the business of a reseller at that place, or ceases to carry on that business at that place, No. 3, 1969

he shall—

- (i) within the prescribed time and in or to the effect of the prescribed form (if any) notify the Director-General of that fact; and
 - (ii) within the prescribed time and in the prescribed manner (if any) return the certificate of registration in respect of that place to the Director-General if it is unexpired.
- (6) A person registered under this Act shall not—
- (a) cause or permit his certificate of registration to be used by any other person; or
 - (b) permit any other person to hold himself out as the holder of that certificate.

10. (1) Where the Director-General—

Appeal.

- (a) imposes, under subsection four of section eight of this Act, any condition upon the grant of an application for registration or for renewal of registration made by a person;
- (b) refuses, under that subsection, to grant an application for registration or for renewal of registration made by a person;
- (c) grants, in accordance with subsection five of that section, an application for registration or renewal of registration made by a person; or
- (d) suspends or cancels, under subsection seven of that section, the registration of a person,

that person may, in the manner prescribed by rules of court and within the time so prescribed, appeal to a District Court judge having jurisdiction in the district where that person resides or carries on business or proposes to carry on business.

(2)

Horticultural Stock and Nurseries.

No. 3, 1969 (2) An appeal under this section shall be in the nature of a rehearing.

(3) An appeal under this section shall not be entertained unless at least ten days' notice, in writing, of the appeal has been given to the Director-General.

(4) The decision of the judge upon the appeal shall be final, and shall be binding upon the Director-General and the appellant, and shall be carried into effect accordingly.

PART III.

HORTICULTURAL PROPAGATING MATERIAL.

Approval of sources. **11.** (1) The Chief of the Division of Horticulture may, by notification published in the Gazette, approve sources of supply of horticultural propagating material for use in the propagation of proclaimed horticultural stock.

(2) An approval under this section shall operate in respect of—

(a) such class of horticultural propagating material;
and

(b) such class of proclaimed horticultural stock,
as may be specified in the approval.

(3) The Chief of the Division of Horticulture may, by a like notification, revoke or vary any approval under this section.

Minister may prohibit certain propagation and sale. **12.** (1) If the Minister is of the opinion that any horticultural propagating material, that is of a class of horticultural propagating material, is likely to transmit a disease

Horticultural Stock and Nurseries.

disease if used for the propagation of any proclaimed horticultural stock, he may, by notification published in the Gazette, prohibit either or both of the following :—

No. 3, 1969

- (a) the propagation (whether or not that propagation has been commenced at the time the notification is published) by any registered nurseryman of any of that stock, or such class of that stock as may be specified in the notification, from horticultural propagating material of that class of horticultural propagating material unless it has been obtained from a source approved for the time being under section eleven of this Act;
- (b) the sale by any person of any of that stock, or such class of that stock as may be specified in the notification, unless it has been propagated from horticultural propagating material that has been obtained from a source so approved.

(2) A registered nurseryman shall not propagate any proclaimed horticultural stock in contravention of any notification under this section.

(3) A person shall not sell any proclaimed horticultural stock in contravention of any notification under this section.

(4) A notification may be made under this section in relation to any horticultural propagating material before or after or at the same time as any approval is notified under section eleven of this Act.

(5) A notification under this section shall take effect from the date of its publication.

(6) The Minister may, by a like notification, revoke any such notification.

Horticultural Stock and Nurseries.

No. 3, 1969
Destruction
of certain
stock.

13. (1) If an inspector reports to the Minister that any proclaimed horticultural stock has been propagated, or is offered for sale, in contravention of any notification under section twelve of this Act, the Minister may, by writing under his hand, order that stock to be destroyed.

(2) The order referred to in subsection one of this section may be addressed to the owner of the proclaimed horticultural stock or the person in whose possession the stock was found.

(3) Any person aggrieved by an order referred to in subsection one of this section may appeal, in the prescribed manner and within the prescribed time, to a court of petty sessions constituted by a stipendiary magistrate.

(4) The court may confirm, vary or quash the order.

(5) If—

(a) an appeal has not been lodged within the time prescribed under subsection three of this section;
or

(b) an appeal has been so lodged and the court has confirmed or varied the order,

the Director-General may cause any or all of the proclaimed horticultural stock to which the order relates to be destroyed, and any cost thereby incurred may be recovered in any court of competent jurisdiction from the person to whom the order was addressed.

PART IV.

LABELLING.

Labelling.

14. (1) During any period for which a proclamation under section five of this Act declaring any horticultural stock to be proclaimed horticultural stock is in force, a person shall

Horticultural Stock and Nurseries.

shall not sell any of that stock unless a label is securely attached to the stock or to the package containing the stock and that label complies with the regulations. No. 3, 1969

(2) A label referred to in subsection one of this section shall be of the prescribed size and have set out thereon the prescribed particulars in the prescribed manner.

(3) The regulations may provide, either generally or in such cases or classes of cases as may be prescribed, that—

- (a) all or any of the particulars on a label required by this section shall relate to all of the stock—
 - (i) to which the label is attached; or
 - (ii) which is contained in the package to which the label is attached; and
- (b) a label shall be attached in a particular way.

(4) Without affecting the generality of subsection two of this section, the regulations may provide that the particulars to be set out on a label referred to in that subsection shall include a statement—

- (a) declaring whether or not the stock to which the label relates was propagated from a source of supply approved for the time being under section eleven of this Act; and
- (b) if that stock was propagated from such a source—specifying that source.

(5) A person who on any label referred to in this section knowingly makes any statement (required by or under this section) which is false or misleading in any material particular shall be guilty of an offence against this Act.

15. (1) The requirements imposed by section fourteen of this Act (and any regulations made in pursuance of that section) shall be in addition to and not in derogation of the requirements imposed by or under any other Act. Other Acts not affected.

(2)

Horticultural Stock and Nurseries.

No. 3, 1969

(2) Where there is an inconsistency between the requirements first mentioned in subsection one of this section and those last mentioned therein, the last mentioned requirements shall prevail.

PART V.

INSPECTION AND RECORDS.

Inspectors. 16. An inspector appointed for the purposes of the Plant Diseases Act, 1924, as subsequently amended, shall, while he is such an inspector, be an inspector for the purposes of this Act.

Power to enter, inspect and search.

17. (1) An inspector, upon production of the written evidence of his appointment referred to in subsection (1B) of section thirteen of the Plant Diseases Act, 1924, as subsequently amended, may, for the purpose of ascertaining whether any of the provisions of this Act or the regulations are being or have been contravened—

- (a) enter and inspect any land, premises, place, vehicle or vessel in or upon which he has reasonable grounds for believing there is—
 - (i) any proclaimed horticultural stock that is for sale or intended for sale or being prepared for sale;
 - (ii) any proclaimed horticultural stock that is being propagated for the purpose of sale; or
 - (iii) any horticultural propagating material that may be used for the propagation of any proclaimed horticultural stock for the purpose of sale;
- (b) open any part of any such vehicle or vessel;
- (c) require the driver or person in charge of any such vehicle or vessel to open any part thereof;
- (d)

Horticultural Stock and Nurseries.

-
- (d) inspect such horticultural stock and horticultural propagating material and open such packages as may be reasonably necessary; No. 3, 1969
- (e) where any proclaimed horticultural stock, or horticultural propagating material that may be used in the propagation of any such stock, is in the course of being conveyed from one place to another place, require the person in whose possession or under whose control it is for the time being to give particulars as to—
- (i) from whom and from what place it is being conveyed; and
 - (ii) to whom and to what place it is being conveyed;
- (f) require any person who has in his possession or under his control any proclaimed horticultural stock, or horticultural propagating material that may be used in the propagation of any such stock, to retain it in his possession or under his control for the prescribed period; and
- (g) do such other things as he may deem necessary or expedient.

(2) Nothing in this section shall authorise an inspector to enter in or upon or to search or inspect that portion of any premises that is used for residential purposes except under a written authority given by the Minister.

(3) Any authority under subsection two of this section shall be restricted to a particular case.

- (4) A person who—
- (a) wilfully obstructs, hinders, impedes or avoids entry, search or inspection or fails to afford reasonable assistance to an inspector to enter, search or inspect;
 - (b) refuses or wilfully neglects to submit any vehicle or vessel or any horticultural stock or horticultural propagating material referred to in subsection one of

Horticultural Stock and Nurseries.

No. 3, 1969

of this section in or upon the vehicle or vessel or in his possession to search or inspection, or being the driver or person in charge of the vehicle or vessel, to open any part thereof in accordance with the directions of an inspector;

- (c) being required to give particulars under paragraph (e) of subsection one of this section, knowingly—
- (i) gives any particulars which are not correct; or
 - (ii) omits to give any particulars; or
- (d) fails to comply with any requirement under paragraph (f) of subsection one of this section,

shall be guilty of an offence against this Act.

Demanding
name and
place of
abode.

18. (1) An inspector who finds a person committing an offence against this Act or the regulations or who finds a person whom, on reasonable grounds, he suspects of having committed or attempted to commit any such offence may demand from the person his name and place of abode.

(2) Any person who upon demand made under subsection one of this section—

- (a) fails or refuses to state his name or place of abode; or
- (b) gives a false name or place of abode,

shall be guilty of an offence against this Act.

Records.

19. (1) Every registered nurseryman and every registered reseller shall keep such records as may be prescribed, and shall retain them for such period as may be prescribed.

(2)

Horticultural Stock and Nurseries.

(2) Any inspector, or any person authorised by the Director-General in writing under his hand either generally or in respect of any particular matter, may at all reasonable times—

No. 3, 1969

- (a) enter any premises in which he has reasonable cause to believe records referred to in subsection one of this section are kept;
- (b) demand the production of any such records; and
- (c) inspect any such records and take copies thereof or of any entries therein.

(3) Any person who obstructs, hinders, prevents, interferes with, threatens or assaults an inspector, or any person so authorised, or who, when requested to do so, refuses or neglects to produce any such records shall be guilty of an offence against this Act.

PART VI.

HORTICULTURAL STOCK AND NURSERIES ACCOUNT.

20. (1) There shall be established and kept in the Treasury an account in Special Deposits Account to be called the "Horticultural Stock and Nurseries Account" (in this section referred to as "the Account").

(2) There shall be paid to the credit of the Account the fees payable under and all penalties recovered for offences against this Act or the regulations.

(3) The Account shall be applied to the payment of—

- (a) grants approved by the Minister to any persons, associations or institutions to be used in any manner which, in his opinion, will assist in the development or protection of the horticultural stock industry; or
- (b) compensation, in whole or in part, in such circumstances as may be prescribed.

(4)

Horticultural Stock and Nurseries.

No. 3, 1969

(4) To meet the cost of administration of this Act there shall be paid out of the Account to the credit of the Consolidated Revenue Fund—

- (a) in the year commencing on the first day of July next following the commencement of this Act—an amount equal to the prescribed proportion of the total sum paid to the credit of the Account during the period between the commencement of this Act and that first day of July; and
- (b) in each succeeding period of twelve months commencing on the first day of July—an amount equal to the prescribed proportion of the total sum paid to the credit of the Account during the preceding period of twelve months.

(5) The expenditure of any money paid in accordance with paragraph (a) of subsection three of this section shall be accounted for in such manner as may be prescribed.

PART VII.

MISCELLANEOUS.

Offences.

21. (1) A person who contravenes or fails to comply with any of the provisions of this Act shall be guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act shall be liable to a penalty not exceeding two hundred dollars.

(3) All proceedings for offences against this Act or the regulations shall be disposed of summarily before a stipendiary magistrate or any two justices of the peace in petty sessions.

(4)

Horticultural Stock and Nurseries.

(4) No prosecution for an offence against this Act No. 3, 1969 or the regulations shall be commenced without the written consent of the Minister.

22. In any proceedings against any person for an offence Evidence. against this Act or the regulations—

- (a) a certificate purporting to be signed by the Director-General or a Deputy Director-General certifying that a person has been appointed an inspector under the Plant Diseases Act, 1924, as subsequently amended, and during any period specified in the certificate held office as such an inspector shall be prima facie evidence of the facts stated therein;
- (b) the averment of the prosecutor that the defendant was not at the time of the commission of the alleged offence a registered person or a person registered in respect of any particular place shall be deemed to be proved in the absence of proof to the contrary; and
- (c) any printed paper purporting to be a proclamation or notification published under this Act and to be printed by the Government Printer shall be evidence that a proclamation or notification, in the words printed in that paper, were duly published under this Act.

23. (1) The Governor may make regulations, not Regulations. inconsistent with this Act, for or with respect to—

- (a) the manner in which applications for registration or for renewal of registration shall be made under this Act;
- (b) forms to be used for the purposes of this Act;
- (c)

Horticultural Stock and Nurseries.

No. 3, 1969

- (c) fees to be paid under this Act and the circumstances in which they may be wholly or partly refunded;
 - (d) the exemption of any person, matter or thing or any class of persons, matters or things from any or all of the provisions of this Act and the regulations; and
 - (e) all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may prescribe penalties not exceeding two hundred dollars for any breach thereof.
- (3) A regulation may be of general or specially limited application according to time, place or circumstances, and may be general or restricted to any specified class of subject-matter.
- (4) The regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of publication or from a later date to be specified in the regulations; and
 - (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is in session, and, if not, then within fourteen sitting days after the commencement of the next session.
- (5) If either House of Parliament passes a resolution, of which notice has been given at any time within fifteen sitting days after the regulations have been laid before that House, disallowing any regulation or part thereof, the regulation or part shall thereupon cease to have effect.

Horticultural Stock and Nurseries.

24. (1) The Plant Diseases Act, 1924, as subsequently amended, is amended— No. 3, 1969

Amendment
of Act No.
38, 1924.

(a) by inserting at the end of section nineteen the following new subsection :— Sec. 19.
(Orchards
and nurseries
to be
registered.)

(6) Nothing in the foregoing provisions of this section applies to or in respect of an orchard or nursery in respect of which a person is registered under the Horticultural Stock and Nurseries Act, 1969.

(b) by inserting in paragraph (b) of subsection one of section twenty-eight after the word “nurseries” the words “, other than any orchards or nurseries in respect of which persons are registered under the Horticultural Stock and Nurseries Act, 1969”. Sec. 28.
(Regula-
tions.)

(2) The Plant Diseases Act, 1924, as subsequently amended and as amended by this Act, may be cited as the Plant Diseases Act, 1924–1969.