

**HORTICULTURAL STOCK AND NURSERIES  
(AMENDMENT) ACT, 1979, No. 121**

**New South Wales**



ANNO VICESIMO OCTAVO

**ELIZABETHÆ II REGINÆ**

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**Act No. 121, 1979.**

An Act to amend the Horticultural Stock and Nurseries Act, 1969, to enable the implementation of certification schemes, to make further provision relating to the registration of nurserymen and resellers of horticultural stock, and for certain other purposes. [Assented to, 19th October, 1979.]

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*Horticultural Stock and Nurseries (Amendment).*

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**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 :—

1. This Act may be cited as the "Horticultural Stock and Nurseries (Amendment) Act, 1979".

Short  
title.

2. (1) Except as provided in subsections (2), (3) and (4), this Act shall commence on the date of assent to this Act.

Commence-  
ment.

(2) Section 5 shall, in its application to a provision of Schedules 1–4, commence on the day on which that provision commences.

(3) The several provisions of Schedules 1 and 3 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Section 6 and Schedule 2 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. The Horticultural Stock and Nurseries Act, 1969, is referred to in this Act as the Principal Act.

Principa<sup>l</sup>  
Act.

4. This Act contains the following Schedules :—

Schedules.

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT  
RELATING TO CERTIFICATION SCHEMES.

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*Horticultural Stock and Nurseries (Amendment).*

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SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT  
RELATING TO THE REGISTRATION OF NURSERYMEN AND  
RESELLERS OF HORTICULTURAL STOCK.

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT  
RELATING TO PENALTIES.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT BY  
WAY OF STATUTE LAW REVISION.

Amendment  
of Act No.  
3, 1969.

5. The Principal Act is amended in the manner set forth in Schedules 1–4.

Transi-  
tional pro-  
vision—  
certificates  
of regis-  
tration.

6. Sections 8 and 9 of the Principal Act, as amended by this Act, apply to a certificate of registration of a person as a nurseryman or reseller, being a certificate in force as at the day appointed and notified under section 2 (4).

Sec. 5.

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SCHEDULE 1.

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
CERTIFICATION SCHEMES.

(1) Section 2—

After the matter relating to Part III, insert :—

**PART IIIA.—CERTIFICATION SCHEMES—ss. 13A–13K.**

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*Horticultural Stock and Nurseries (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
CERTIFICATION SCHEMES—*continued.*

(2) Part IIIA—

After Part III, insert :—

PART IIIA.

CERTIFICATION SCHEMES.

13A. In this Part—

“approved certification scheme” means a certification scheme approved by the Minister pursuant to section 13B;

“certification scheme” means a scheme to control and regulate the growing of a class of proclaimed horticultural stock specified in the scheme.

Interpre-  
tation:  
Pt. IIIA.

13B. (1) The Minister may, by notification published in the Gazette, approve a certification scheme set out or referred to in the notification.

Approval  
of certi-  
fication  
scheme.

(2) A certification scheme referred to in subsection (1) may include provisions relating to any one or more of the following matters :—

- (a) the conditions of eligibility of registered nurserymen for participation in the scheme;
- (b) the standards for nurseries involved in the scheme;
- (c) the rules of management of the scheme;
- (d) the functions of inspectors;
- (e) the determination and payment of fees relating to the conduct and administration of the scheme.

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*Horticultural Stock and Nurseries (Amendment).*


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 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
 CERTIFICATION SCHEMES—*continued.*

(3) The powers of the Minister under subsection (1) extend so as to enable him to approve a certification scheme which operates outside New South Wales but only if the certification scheme operates wholly in another State or a Territory of the Commonwealth.

(4) The Minister may, by notification published in the Gazette—

- (a) vary or revoke a notification referred to in subsection (1); or
- (b) vary the provisions of a certification scheme set out or referred to in a notification referred to in subsection (1).

Application to participate in an approved certification scheme.

13c. (1) A registered nurseryman may make an application to the Chief of the Division of Horticulture for approval to participate in an approved certification scheme.

(2) An application under subsection (1) shall—

- (a) be in or to the effect of the prescribed form; and
- (b) be accompanied by the prescribed fee.

Determination of application.

13D. (1) The Chief of the Division of Horticulture shall consider each application made under section 13c and, after taking into consideration such matters as he considers relevant, may—

- (a) accept the applicant as a participant in the approved certification scheme to which the application relates; or

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*Horticultural Stock and Nurseries (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
CERTIFICATION SCHEMES—*continued.*

(b) refuse to accept the applicant as such a participant.

(2) The Chief of the Division of Horticulture shall notify an applicant of his decision under subsection (1) as soon as practicable after the decision is made.

13E. A registered nurseryman accepted under section 13D as a participant in an approved certification scheme shall not grow proclaimed horticultural stock of the class specified in the scheme except from horticultural propagating material of the same class approved under section 11.

Sources of propagating material.

13F. Where the Chief of the Division of Horticulture is of the opinion that a registered nurseryman accepted under section 13D as a participant in an approved certification scheme has not complied with a provision of this Act or the scheme, he may, by notice in writing to the nurseryman given at any time, exclude the nurseryman, from the date of the notice, from participation in the scheme.

Exclusion of participants.

13G. (1) A participant in an approved certification scheme who has not been excluded from participation in the scheme under section 13F may make an application to the Chief of the Division of Horticulture for the issue to him of labels for attachment to, or to a package in which is contained, stock grown by him in accordance with the scheme.

Application for labels.

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*Horticultural Stock and Nurseries (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
CERTIFICATION SCHEMES—*continued.*

- (2) An application under subsection (1) shall—
- (a) be in or to the effect of the prescribed form; and
  - (b) be accompanied by the prescribed fee.

Issue of  
labels.

13H. (1) On receipt of an application under section 13G, the Chief of the Division of Horticulture shall, unless he thereupon excludes the applicant from participation in the approved certification scheme under section 13F, forward to the applicant the labels the subject of the application.

(2) Labels referred to in subsection (1) 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 referred to in subsection (1) 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 particular way.

Unlawful  
attachment  
of labels.

13I. A person who attaches a label forwarded pursuant to section 13H in respect of an application under section 13G to—

- (a) any proclaimed horticultural stock, other than proclaimed horticultural stock the subject of the application; or

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*Horticultural Stock and Nurseries (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
CERTIFICATION SCHEMES—*continued.*

(b) a package in which is contained any proclaimed horticultural stock, other than proclaimed horticultural stock the subject of the application, shall be guilty of an offence against this Act.

13J. (1) A person—

- (a) who, whether for the purpose of sale or otherwise, represents or describes horticultural stock of a class of proclaimed horticultural stock specified in an approved certification scheme as having been grown in accordance with the scheme; or
- (b) who sells horticultural stock of a class of proclaimed horticultural stock specified in an approved certification scheme which is represented or described as having been grown in accordance with the scheme,

Restricted  
representa-  
tions and  
descriptions.

shall, unless the horticultural stock so represented or described is—

- (c) where the horticultural stock is grown in accordance with an approved certification scheme other than an approved certification scheme referred to in paragraph (d)—horticultural stock in respect of which labels have been forwarded under section 13H and to which, or to a package in which the horticultural stock is contained, is attached a label forwarded under that section; or
- (d) where the horticultural stock is grown in accordance with an approved certification scheme which operates wholly in another State or a Territory of the Commonwealth—horticultural stock which



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*Horticultural Stock and Nurseries (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
CERTIFICATION SCHEMES—*continued.*

is labelled, or is contained in a package which is labelled, in accordance with the provisions of that certification scheme or any law relating to the operation of that certification scheme,

be guilty of an offence against this Act.

(2) For the purposes of subsection (1), horticultural stock referred to in that subsection shall be deemed to be represented or described as having been grown in accordance with an approved certification scheme if it is represented or described—

- (a) as being “approved” or “certified” or by means of any word or words of like import; or
- (b) by means of any prescribed word or words or any prescribed matter.

(3) In proceedings in respect of an offence against this Act arising under subsection (1), it is a defence for the person charged to prove—

- (a) that the commission of the offence was due to a cause or to causes beyond his control;
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the horticultural stock to which the proceedings relate; and
- (c) that he obtained that horticultural stock from another person in the same state as it was when the representation or description relating to that horticultural stock and the subject of the proceedings was made.

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*Horticultural Stock and Nurseries (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
CERTIFICATION SCHEMES—*continued.*

13K. Nothing in this Part affects the operation of  
Part IV.

Pt. IV not  
affected.

(3) Section 20 (2)—

After “regulations”, insert “, other than Part IIIA, an  
approved certification scheme within the meaning of section  
13A or the regulations made for the purposes of that Part”.

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SCHEDULE 2.

**Sec. 5.**

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
REGISTRATION OF NURSERYMEN AND RESELLERS OF  
HORTICULTURAL STOCK.

(1) (a) Section 8 (2) (b)—

Omit “twenty dollars”, insert instead “\$50”.

(b) Section 8 (6)—

Omit the subsection.

(2) Section 9 (2A)–(2D)—

After section 9 (2), insert :—

(2A) A certificate of registration, not being a certificate  
granted pursuant to an application for renewal of registra-  
tion shall, subject to this Act, be in force for the period  
commencing on the day of its issue and ending—

(a) in respect of a certificate of registration as a  
nurseryman—on 16th August next following the  
day of its issue; and

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*Horticultural Stock and Nurseries (Amendment).*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
REGISTRATION OF NURSERYMEN AND RESELLERS OF  
HORTICULTURAL STOCK—*continued.*

(b) in respect of a certificate of registration as a reseller—on 16th November next following the day of its issue.

(2B) A certificate of registration granted pursuant to an application for renewal of registration shall, subject to this Act, be in force for the period—

(a) in respect of a certificate of registration as a nurseryman—

(i) commencing on 17th August in the year in respect of which it is issued or on the day of its issue, whichever day is the later; and

(ii) ending on 16th August next following the day of its issue; and

(b) in respect of a certificate of registration as a reseller—

(i) commencing on 17th November in the year in respect of which it is issued or on the day of its issue, whichever day is the later; and

(ii) ending on 16th November next following the day of its issue.

(2C) Except as provided by subsection (2D), where—

(a) an application for renewal of registration has been duly made;

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*Horticultural Stock and Nurseries (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
REGISTRATION OF NURSERYMEN AND RESELLERS OF  
HORTICULTURAL STOCK—*continued.*

- (b) a certificate of registration is not issued to the applicant before the day on which the certificate of registration held by the applicant at the time of making his application would, but for this subsection, expire; and
- (c) the application is not withdrawn by the applicant before the day referred to in paragraph (b),

the certificate of registration held by the applicant at the time of making his application shall continue in force until—

- (d) the certificate of registration in respect of which the application is made is issued; or
- (e) the application is withdrawn.

(2D) Where—

- (a) an application for renewal of registration has been duly made;
- (b) the Director-General has, in relation to the application, done any thing referred to in section 10 (1) (a), (b), (c) or (d);
- (c) the applicant has appealed under section 10; and
- (d) the appeal has not been determined by the District Court of New South Wales before the day on which the certificate of registration held

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*Horticultural Stock and Nurseries (Amendment).*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
REGISTRATION OF NURSERYMEN AND RESELLERS OF  
HORTICULTURAL STOCK—*continued.*

by the applicant at the time of making his application would, but for this subsection, expire, the certificate of registration held by the applicant at the time of making his application shall continue in force until the day on which the appeal is determined by the District Court of New South Wales.

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Sec. 5.

## SCHEDULE 3.

## AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PENALTIES.

(1) Section 21 (2)—

Omit "two hundred dollars", insert instead "\$1,000".

(2) Section 23 (2)—

Omit "two hundred dollars", insert instead "\$500".

Sec. 5.

## SCHEDULE 4.

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW  
REVISION.

(1) Long title—

Omit ", as subsequently amended".

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*Horticultural Stock and Nurseries (Amendment).*

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SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW  
REVISION—*continued.*

- (2) (a) Section 3, definition of “prescribed”—  
Omit the definition.
- (b) Section 3, definition of “propagate”—  
Omit “and “propagation” and derivatives from  
“propagate” have a corresponding meaning;”.
- (c) Section 3, definition of “sale”—  
Omit “, and “sell” and derivatives from “sell” have a  
corresponding meaning”.
- (3) Section 6 (3)—  
Omit “paragraph (d) of subsection (1) of section 23”,  
insert instead “section 23 (1) (d)”.
- (4) Section 9 (4) (a)—  
Omit “subsection (7) of section 8”, insert instead “section  
8 (7)”.
- (5) (a) Section 10 (1) (a)—  
Omit “subsection (4) of section 8”, insert instead  
“section 8 (4)”.
- (b) Section 10 (1) (b)—  
Omit “that subsection”, insert instead “section 8 (4)”.
- (c) Section 10 (1) (c)—  
Omit “subsection (5) of that section”, insert instead  
“section 8 (5)”.

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*Horticultural Stock and Nurseries (Amendment).*

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SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW  
REVISION—*continued.*

## (d) Section 10 (1) (d)—

Omit “subsection (7) of that section”, insert instead “section 8 (7)”.

## (e) Section 10 (1)—

Omit “a District Court judge having jurisdiction in the district”, insert instead “the District Court of New South Wales sitting at the nearest place for the time being specified in a proclamation under section 31 of the District Court Act, 1973, to the place”.

## (f) Section 10 (4)—

Omit “the judge”, insert instead “the District Court of New South Wales”.

## (6) Section 16—

Omit “as subsequently amended,”.

## (7) (a) Section 17 (1)—

Omit “subsection (1B) of section 13 of the Plant Diseases Act, 1924, as subsequently amended, ”, insert instead “section 13 (1B) of the Plant Diseases Act, 1924,”.

## (b) Section 17 (4) (c)—

Omit “paragraph (e) of subsection (1)”, insert instead “subsection (1) (e)”.

## (c) Section 17 (4) (d)—

Omit “paragraph (f) of subsection (1)”, insert instead “subsection (1) (f)”.

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*Horticultural Stock and Nurseries (Amendment).*

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SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW  
REVISION—*continued.*

(8) Section 20 (5)—

Omit “paragraph (a) of subsection (3)”, insert instead  
“subsection (3) (a)”.

(9) Section 22 (a)—

Omit “as subsequently amended,”.

(10) Section 23 (4), (5)—

Omit the subsections, insert instead :—

(4) Section 41 of the Interpretation Act, 1897, applies  
in respect of a regulation as if this Act had been passed  
after the commencement of the Interpretation (Amend-  
ment) Act, 1969.

(11) Section 24 (2)—

Omit the subsection.

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