

Act No. 17

PLANT DISEASES (AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Plant Diseases Act 1924 so as—

- (a) to provide for the delegation of the Minister's functions under that Act;
 - (b) to provide for more flexible methods of payment of fees for the exercise by inspectors of certain powers under that Act;
 - (c) to abolish the requirements for registration of orchards and nurseries;
 - (d) to increase the maximum penalties for offences against that Act from \$500 and \$1,000 respectively to \$2,000 and for offences against regulations under that Act from \$500 to \$1,000;
 - (e) to enable regulations to be made with respect to the identification of varieties of fruit or vegetables that are exposed or displayed for sale;
 - (f) to enable certain regulations to apply, adopt or incorporate by reference specified provisions of certain enactments or specified standards, rules, codes or specifications prescribed by organisations such as the Standards Association of Australia;
 - (g) to enable regulations to be made providing for the exemption of specified persons, places, matters or things from the operation of regulations made under that Act; and
 - (h) to provide for other matters of a consequential, ancillary or minor nature.
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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 provides for the Plant Diseases Act 1924 to be referred to in the proposed Act as the Principal Act.

Clause 4 is a formal provision which gives effect to the Schedule of amendments to the Principal Act.

Clause 5 is a formal provision which gives effect to the Schedule of savings.

Schedule 1 (1) amends the long title to the Principal Act to make it clear that that Act will no longer deal with the registration of orchards and nurseries.

Schedule 1 (2) makes some minor amendments to the definitions of "Disease", "Fruit", "Pest" and "Vegetables" in section 3 of the Principal Act and clarifies the powers of the Governor with respect to the making of proclamations for the purposes of those definitions. Schedule 1 (2) also replaces the definition of "Chief of the Division of Horticulture" and introduces a definition of "functions" for the purposes of the Principal Act.

Schedule 1 (3) inserts a new section into the Principal Act, proposed section 3A, which will empower the Minister concerned to delegate the Minister's functions under the Principal Act.

Schedule 1 (4) makes a minor consequential amendment to section 11A of the Principal Act, which provides for certain authorised persons to have the functions of inspectors.

Schedule 1 (5) replaces section 18 of the Principal Act, which empowers an inspector to question vendors of fruit and plants. Under the substituted section, an offender will be liable to a maximum penalty of \$2,000 instead of \$500 as at present.

Schedule 1 (6) amends section 18A of the Principal Act, which empowers an inspector to issue detention notices in respect of fruit and vegetables and fruit and vegetable coverings that do not comply with certain requirements of the Principal Act or regulations under that Act. As a result of the amendment, a person will not be required to pay the prescribed fee as a condition precedent to the exercise by an inspector of powers conferred on inspectors by that section. Instead, regulations will make it possible to pay the fee at some later date, either in the form of a lump sum or in instalments. Schedule 1 (6) also makes other amendments of a minor or consequential nature.

Schedule 1 (7) and (8) provide for the repeal of sections 19 and 20 of the Principal Act, which deal with the registration of orchards and nurseries and the giving of certain certificates.

Schedule 1 (9) amends section 21 of the Principal Act, which empowers an inspector to destroy plants in a neglected orchard or nursery in certain circumstances. The amendments are in the nature of statute law revision.

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Schedule 1 (10) replaces section 23 of the Principal Act, which confers on the owner of land or premises in the occupation of another person a right of entry in order to perform any duty or obligation imposed on that person under the Principal Act or regulations under that Act. Under the substituted section, the maximum penalty for hindering or obstructing a person in the exercise of such a right will be increased from \$500 to \$2,000.

Schedule 1 (11) makes a minor amendment by way of statute law revision to section 24 (2) of the Principal Act (which requires certain notices to be in writing).

Schedule 1 (12) amends section 25A of the Principal Act, which empowers an inspector to demand a person's name and place of abode. Under the amendment, the maximum penalty for an offence under the section will be increased from \$500 to \$2,000.

Schedule 1 (13) amends section 25B of the Principal Act, which makes it an offence to forge or counterfeit an inspector's written evidence of authority or to personate an inspector. As a result of the amendment, the maximum penalty for the offence will be increased from \$500 to \$2,000.

Schedule 1 (14) replaces sections 25C and 25D of the Principal Act. Section 25C makes it an offence to assault, threaten, resist, obstruct or hinder an inspector who is exercising a function under the Principal Act. As a result of the amendment, the maximum penalty for the offence will be increased from \$1,000 to \$2,000. Section 25D makes it an offence to engage in certain corrupt activities in relation to an inspector. Under the substituted section, the maximum penalty for the offence is to be increased from \$1,000 to \$2,000.

Schedule 1 (15) amends section 26 of the Principal Act, which prescribes certain offences against that Act. As a result of the amendment, a person found guilty of any of those offences will be liable to a penalty not exceeding \$2,000. The maximum penalty for such an offence is at present \$1,000. Section 26 (3), which provides for the reversal of the onus of proof in proceedings for certain offences against the Principal Act and the regulations under that Act, is being amended so as to make it clear that it applies only to the offences arising by virtue of section 26 (1) (a) and (f). (Those offences respectively relate to selling, and bringing onto and removing from premises, infected plants, fruit and other things and having possession of plants, fruit and certain other things imported in contravention of the Principal Act or an instrument made under that Act.) The opportunity has also been taken to effect certain other amendments to section 26 of a consequential nature and by way of statute law revision.

Schedule 1 (16) consequentially amends section 27 of the Principal Act, which relates to the recoverable expenses of an authorised inspector. (See Schedule 1 (9)).

Schedule 1 (17) amends section 28 of the Principal Act, which confers power on the Governor-in-Council to make regulations for the purposes of that Act. As a result of the amendments to the section, it will be possible to make regulations requiring the variety as well as the grade of unpacked fruit or vegetables to be identified when the fruit or vegetables are exposed or displayed for sale. It will also be possible, by regulation, to confer appeal rights against the withdrawal of or refusal to grant credit facilities in relation to a payment that a person may become liable to make under section 18A of the Principal Act.

The maximum penalty that may be imposed for an offence against the regulations is to be increased from \$500 to \$1,000.

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Further amendments to section 28 of the Principal Act will enable regulations to make provision for a matter relating to the grading or packing of fruit or vegetables or the branding or labelling of coverings containing fruit, vegetables or other plants by applying, adopting or incorporating by reference certain enactments or other documents, including standards prescribed in documents published by the Standards Association of Australia and other organisations concerned with prescribing standards.

It will also be possible to make regulations limiting the application of the regulations, in particular cases, providing for the exemption of specified persons, places, matters or things from the regulations and authorising matters or things to be determined, applied or regulated by specified persons or bodies.

The section is further amended in consequence of the repeal of sections 19 and 20 of the Principal Act.

Schedule 1 (18) amends section 29 of the Principal Act, which prohibits the sale of fruit and vegetables that are not up to fair average quality or do not comply with certain other requirements. At present, an offence against the section is punishable by a penalty not exceeding \$500. This amount is to be increased to \$2,000.

Schedule 1 (19) removes all short headings from the Principal Act.
