

# Plant Diseases Act 1924 No 38

[1924-38]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced — to commence on 6.7.2009)
  - [Statute Law \(Miscellaneous Provisions\) Act 2009 No 56](#) (not commenced — to commence on 17.7.2009)

### Authorisation

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New South Wales

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# Plant Diseases Act 1924 No 38



New South Wales

An Act to make further provision to prevent the introduction into New South Wales of diseases and pests affecting plants or 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 and grading of fruit and vegetables; to make certain provisions as to cotton plants; to repeal the *Vine and Vegetation Diseases and Fruit Pests Act 1912*; to amend the *Fruit Cases Act 1912* and certain other Acts; and for purposes connected therewith.

## 1 Name of Act

This Act may be cited as the *Plant Diseases Act 1924*.

## 2 Savings and transitional provisions

Schedule 3 has effect.

## 3 Definitions

(1) In this Act, unless the context or subject-matter otherwise requires:

**Approved** means approved for the time being by the Director-General.

**Covering** or **package** includes any case, box, bag, wrapper, packing, or material of whatsoever description used or intended to be used for packing.

**Department** means the Department of Primary Industries.

**Director-General** means the Director-General of the Department.

**Disease** means any organism of the vegetable kingdom, virus or mycoplasma organism which causes an abnormal or unhealthy condition in plants, and includes anything declared by proclamation under section 28B to be a disease for the purposes of this definition.

**Fruit** means any of the types of fruit listed in Schedule 1 or any other edible product of a plant declared by proclamation under section 28B to be a fruit for the purposes of this definition, and includes the peel, skin or shell of any such type of fruit or plant.

**Infected** means infected with disease or pest.

**Inspector** means inspector appointed under this Act.

**Nursery** means any land or premises whereon or wherein plants are grown for the purpose of sale or disposal in their living state.

**Occupier** includes any person having the charge, control, or management of any orchard, nursery, land, or premises.

**Orchard** means any place where fruit-producing plants are grown.

**Owner** includes the holder of any lease or licence from the Crown and any person deriving title thereunder.

**Pest** means any organism of the animal kingdom, other than the vertebrata, which feeds upon or is injurious to plants and includes anything declared by proclamation under section 28B to be a pest for the purposes of this definition.

**Plant** means any member of the vegetable kingdom and includes the seed or any part of a plant whether living or dead and whether attached to a plant or separate therefrom.

**Regulations** means regulations made under this Act.

**Sell** includes offering or attempting to sell, exposing for sale, and sending, forwarding, or delivering for sale.

**Vegetable** means any of the types of vegetable listed in Schedule 2 or any other edible product of a plant declared by proclamation under section 28B to be a vegetable for the purposes of this definition, and includes the peel, skin or shell of any such type of vegetable or plant.

- (2) For the purposes of this Act, a power to issue a proclamation, to make an order or to give a notification, a notice or an authority shall include and shall be deemed always to have included a power:
- (a) to revoke or amend that instrument, or
  - (b) to extend or suspend for any period the effect of that instrument.
- (3) (Repealed)

### **3A Power of Minister to delegate functions**

- (1) The Minister may delegate to a person the exercise of any of the Minister's functions under this Act, other than this power of delegation.
- (2) A delegation under this section:
- (a) shall be in writing,

(b) may be general or limited, and

(c) may be revoked, wholly or partly, by the Minister.

- (3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.
- (4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Minister.
- (5) A delegation under this section does not prevent the exercise of a function by the Minister nor does it prevent an officer of the Department from exercising such a function in accordance with an authority conferred by the Minister.
- (6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.
- (7) This section does not apply to functions of the Minister under section 13A.

#### **4 Power to regulate or prohibit the introduction of things likely to introduce disease**

- (1) The Governor may by proclamation published in the Gazette regulate or prohibit the importation, introduction, or bringing into the State (or into any specified portion thereof) either generally or from any country or place, or the bringing into one portion of the State from any other portion of:
- (a) any plant, fruit, or other thing of any nature or kind whatsoever which in the Governor's opinion is likely to introduce any disease or pest into the State or into any specified portion thereof, as the case may be, or
- (b) any covering or goods in, or with which, any such plant, fruit, or thing has been contained, or packed, or with which it has come in contact, or
- (c) anything which is infected.
- (2) Unless it sooner ceases to be in force, a proclamation made under subsection (1) is revoked on the tenth anniversary of the date on which it was published in the Gazette.
- (3) (Repealed)

#### **Editorial note—**

For proclamations under this section see the Historical notes at the end of this Act.

#### **5 Power to appoint places of entry and quarantine**

- (1) The Minister may by order published in the Gazette:
- (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 stations where plants may be grown, or where plants, fruit, coverings, or any thing of any nature or kind whatsoever which has come in contact with plants or fruit may be inspected, treated, destroyed, or otherwise disposed of,
- (c) prohibit the use, storage, or carriage within the State or within any specified portion thereof of coverings in or with which any plant or fruit has been contained or packed or of any thing which is likely to convey any disease or pest,
- (d) prohibit the removal from any place of any plant or fruit or of any thing which is likely to convey any disease or pest either absolutely or subject to conditions specified in the order.
- (e) (Repealed)

(2) (Repealed)

#### **5A Treatment and eradication of diseases and pests**

- (1) For the purpose of treating a disease or pest or preventing the spread of disease or a pest, or for the purpose of eradicating or lessening the risk of disease or pest or to prevent any disease or pest attacking or being harboured, the Minister may, by order, require an appropriate person:
  - (a) to do or permit such acts, or to take such measures (including the uprooting and destruction of plants or fruit and the destruction of packages), as are specified in the order, or
  - (b) to prohibit such acts or the taking of such measures as are specified in the order.

#### **Editorial note—**

For orders under this section see the Historical notes at the end of this Act.

- (2) An order made under subsection (1):
  - (a) may be limited in its application to a specified part of the State,
  - (b) may require the measures referred to in subsection (1) to be taken and the acts so referred to to be done or permitted at a time or times specified in the order,
  - (c) may require the measures referred to in subsection (1) to be taken and the acts so referred to to be done or permitted in relation to any thing including plants, fruit and coverings, and
  - (d) unless it sooner ceases to be in force, is revoked on the fifth anniversary of the date on which it was published in the Gazette.

(3) Sections 39, 40 and 41 of the *Interpretation Act 1987* apply to an order made under subsection (1) in the same way as they apply to a statutory rule within the meaning of that Act.

(4) In this section:

**appropriate person** means:

(a) an owner or occupier of land or premises, or

(b) a person in possession of plants, fruit, coverings or any other things, whether of the same or of a different kind or nature.

## **6 Declaration of quarantine area**

The Minister may by notification published in the Gazette declare any land therein described to be a quarantine area on account of the presence or suspected presence of any disease or pest.

## **7 Undertaking in prescribed cases**

- (1) The Minister may, if the Minister thinks fit, instead of declaring land to be a quarantine area, accept an undertaking, in a form approved by the Director-General, given by the owner or occupier of the land to comply with the requirements mentioned therein.
- (2) Upon any such undertaking being given, the land mentioned therein shall for the period therein specified be deemed to be a quarantine area, and the person giving the undertaking shall comply with all the terms and conditions thereof.
- (3) The Minister may release an owner or occupier of land from an undertaking given by the owner or occupier and, upon that release, subsection (2) shall cease to have effect with respect to that undertaking and the period referred to in that subsection shall be deemed to have ended.

## **8 Quarantine**

- (1) Where land is by the provisions of this Act quarantined, the quarantine may be general or in respect of a particular disease or pest.
- (2) The nature of the quarantine shall be stated in the notice or notification imposing the quarantine or in the undertaking given with respect to any land or plants or fruit under the provisions of section 7.
- (3) A quarantine may be imposed or declared for a disease or pest although the land is already in quarantine for another disease or pest.
- (4) The course of action to be taken by the owner or occupier of land when the land is directed to be quarantined shall be as prescribed by regulation, or if there is no



regulation applicable thereto, then as directed by the Minister.

- (5) The Minister may by notification in the Gazette apply to any specified part of a quarantine area special and more drastic regulations than those which may be operating in the rest of the quarantine area.
- (6) The Minister may by a like notification direct that all plants of a particular class and the fruit thereof within a quarantine area or within some specified part of a quarantine area shall be treated for the disease or pest in respect of which the quarantine is imposed whether the plants or fruit are diseased or infected or not.

## **9 Seizure of plants**

- (1) Any plant, fruit, covering, or other thing which is dealt with or disposed of in any way contrary to any direction or prohibition contained in any proclamation or any direction given by an inspector or in any way contrary to an order or the regulations may be seized by an inspector and when so seized:
  - (a) is to be destroyed, or
  - (b) is to be dealt with in such other manner as the Director-General directs.
- (2) Any expense thereby incurred shall be recoverable by an inspector in any court of competent jurisdiction from either the owner or the person in charge of such plant, fruit, covering, or thing.

## **10 Notice to be given of appearance of disease**

- (1) The occupier of any land or premises in which any disease or pest appears shall, within twenty-four hours after first discovering or becoming aware of its appearance, give written notice thereof to an inspector or to the Director-General.
- (2) This section applies only in respect of the diseases and pests to which it is made applicable by the Governor by proclamation published in the Gazette.

## **11 Inspectors**

- (1) The Director-General may, by notification in the Gazette, appoint inspectors for the purposes of this Act.
- (2) An inspector has, and may exercise, the functions conferred or imposed on the inspector by this Act or the regulations.
- (3) The Director-General may authorise in writing any person to perform any or all of the functions of an inspector.
- (4) An authority under subsection (3) may be limited in its operation to a specified part of the State.

**11A (Repealed)**

**12 Employment of assistants**

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

**13 Powers of inspection**

- (1) At any place on or near the boundary of the State, any portion of the State, quarantine area or land to or in respect of which a proclamation, notification, order or undertaking given under or pursuant to this Act or regulations applies, an inspector may display a traffic sign of a type approved in such a manner as to be clearly visible to the driver or person in charge of a vehicle approaching such place.

In this subsection **place** includes road whether public or otherwise.

(1A)

- (a) The driver or person in charge of a vehicle approaching towards such sign shall stop or cause such vehicle to be stopped within a reasonable distance of such sign and keep such vehicle stationary for the purposes of enabling an inspector to exercise the powers conferred on the inspector by or under this Act or any such proclamation, notification, order, undertaking or regulation.
- (b) An inspector may in respect of any such vehicle exercise the like powers as are conferred upon the inspector in respect of a vehicle under subsection (1A).

(1B) An inspector may enter any land, premises, vehicle or vessel for the purpose of:

- (a) searching for or inspecting any plants, fruit, coverings or other things (whether of the same or a different kind) that the inspector believes on reasonable grounds:
  - (i) are infected or are likely to convey infection, or
  - (ii) have been introduced into the State or any portion of the State, or are being conveyed or dealt with, in contravention of any proclamation, notification, order or undertaking given under this Act or the regulations, or
- (b) installing a device to monitor any pest or disease, or inspecting such a device already installed, or
- (c) determining whether any duty or obligation imposed by or under this Act has been discharged.

(1BA) An inspector exercising a power conferred by this section may:

- (a) for the purpose of searching for or inspecting any plants, fruit, coverings or other

things referred to in subsection (1B) (a):

(i) open any part of a vehicle or vessel (or require the driver or person in charge of the vehicle or vessel to do so), and

(ii) open any coverings, or

(b) take samples of any such plants, fruit, coverings or other things, or

(c) install, or inspect any device installed, for monitoring a pest or disease.

(1C) Nothing in this section shall authorise an inspector to enter in or upon or to search or inspect that portion of any premises which is used for residential purposes except under a written authority given by the Minister. Any such authority shall be limited to a particular case.

(1D) (Repealed)

(2) An inspector may serve a notice on the owner or person in charge of any plant, fruit, covering, vehicle, vessel or other thing, whether of the same or of a different kind or nature, which the inspector is satisfied is infected requiring the owner or person in charge to take such measures or do such acts as are specified in the notice, or as are prescribed, to treat the infection.

(3) A power conferred by this section to enter any land, premises, vehicle or vessel is not to be exercised unless the inspector:

(a) has been issued by the Director-General with a certificate of authority, and

(b) in the case of entry of any land or premises—gives reasonable notice to the occupier of the land or premises, unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and

(c) exercises the power at a reasonable hour of the day, unless it is being exercised in an emergency, and

(d) produces the certificate of authority if required to do so by a person apparently in occupation of the premises or in charge of the vehicle or vessel, and

(e) uses no more force than is reasonably necessary to effect the entry.

(4) A certificate of authority must:

(a) state that it is issued under this Act, and

(b) give the name of the inspector to whom it is issued, and

(c) describe the nature of the powers conferred and the source of the powers, and

(d) state the date (if any) on which it expires, and

- (e) state that the powers do not authorise entry, without the consent of the occupier, into any part of premises used for residential purposes, except as authorised under subsection (1C), and
- (f) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.

### **13A Control orders**

- (1) The Minister may, by order in writing, authorise an inspector to enter any land or premises specified or described in the order and there to carry out such work, for the prevention or control of any pest or disease, as the order may authorise.
- (2) An order under this section may be made only if the Minister believes on reasonable grounds that the work authorised by the order is necessary in order to avoid:
  - (a) a danger to the health of the public or to consumers of food or produce derived from plants or to persons working with plants, or
  - (b) an undue hazard to the environment, or
  - (c) an adverse effect on trade in any plant or a product derived from the plant.
- (3) A right of entry conferred by an order under this section includes, in so far as the work authorised by the order reasonably requires it, a right to enter any place forming the curtilage of, or used in connection with, any premises used for residential purposes, but not a right to enter a portion of any premises actually used as a dwelling.
- (4) Before an inspector, in pursuance of an order under this section, enters any land or premises for the first time:
  - (a) a copy of the order is to be served on the occupier of the land or premises, if the land or premises are particularly identified in the order as land or premises to which the order applies, or
  - (b) if the order applies to the land or premises because it is expressed to apply within a specified area that includes the land or premises, the terms of the order are to be published in at least one newspaper circulating in the area or notified in such other manner as the Minister may specify in the order.
- (5) An order under this section, unless it sooner ceases to be in force, ceases to be in force 6 months after the date on which it was made and, while in force, is subject to any conditions specified in it.
- (6) An order under this section must inform occupiers of any land or premises of their rights under section 13B.
- (7) The provisions of section 40 (notice of statutory rules to be tabled) and section 41

(disallowance of statutory rules) of the *Interpretation Act 1987* apply to an order under this section in the same way as they apply to a statutory rule.

### **13B Objection to works authorised by control order**

- (1) An occupier of land or premises on which works are authorised, by an order under section 13A, to be carried out may object to the carrying out of those works on the land or premises, and Schedule 4 applies in respect of any such objection.
- (2) Each objection duly made and lodged is to be considered by the Director-General, who, taking into account both the merits of the objection and the significance of the works authorised by the order to be carried out on the land or premises:
  - (a) may confirm that the works authorised by the order are to be carried out on the land or premises (and, in so doing, may or may not specify conditions or restrictions to be observed by the inspector when carrying out the works), or
  - (b) may direct that the works authorised by the order are not to be carried out on the land or premises (and, in so doing, may or may not direct the carrying out of alternative works).
- (3) Any confirmation or direction under subsection (2) is to be reduced to writing and, on being notified to the objector in accordance with Schedule 4, has effect as if it were an order of the Minister under section 13A (except that no objection may be made to it under this section).
- (4) (Repealed)

### **14 Power to require owner or occupier of land or premises to prevent spread of disease**

An inspector may serve on the owner or occupier of any land or premises a notice requiring the owner or occupier to take such measures or do such acts as are specified in such notice, or are prescribed, to control or prevent the spread of any disease or pest (including, if reasonably necessary in the circumstances, the destruction of any place or thing on the land or premises that is inhabited by any disease or pest).

### **15 Steps to be taken when land or premises are infected**

- (1) If an inspector has reasonable grounds to suspect the presence of a disease or pest on any land or premises, the inspector may serve on the owner or occupier a notice requiring the owner or occupier to quarantine the land and premises and the plants thereon for a period of not exceeding twenty-one days, and to take such measures or do such acts as are specified in such notice or are prescribed.
- (2) Such notice may name a time at which the doing of anything thereby required shall be commenced and a time within which it shall be completed.

## **16 Recovery of expenses**

In case of any default in compliance with the terms of:

- (a) any notice given by an inspector under sections 13, 14, or 15,
- (b) any direction given or order published by the Minister in accordance with this Act,
- (c) any proclamation issued under this Act,

the Minister may authorise an inspector to do or cause to be done all such things as are necessary in order to comply with the terms of any such notice, direction, order or proclamation, and the expenses thereby incurred shall be recoverable by an inspector in any court of competent jurisdiction from the person guilty of the default.

## **17 Power to destroy etc infected plants, coverings etc**

An inspector may destroy or otherwise dispose of, or treat, any plants or fruit which are infected, or any coverings with which such plants or fruit have been contained or packed or any other plants, fruit or coverings with which they have come in contact.

## **18 Power to question vendors of fruit and plants**

- (1) An inspector may require any person having possession or control of fruit or plants, which the inspector suspects on reasonable grounds are intended for sale, to answer any questions relating to the fruit or plants.
- (2) A person who:
  - (a) refuses to answer, to the best of the person's knowledge, a question put in accordance with a requirement made under subsection (1), or
  - (b) gives, to such a question, an answer which to the person's knowledge is false or misleading,is guilty of an offence and liable to a penalty not exceeding 100 penalty units.
- (3) A person is not guilty of an offence under this section unless it is established that the inspector:
  - (a) warned the person that a failure or refusal to comply with the requirement is an offence, and
  - (b) identified himself or herself as an inspector to the person.

## **18A Detention notices**

- (1) In this section, a reference to a covering includes a reference to any fruit or plant contained in the covering.

- (2) This section applies to:
- (a) a covering that is required by an order made under section 28A to be branded or labelled in a specified manner and is not so branded or labelled,
  - (b) a fruit that is required by the Act or such an order to be graded or packed in a specified manner and is not so graded or packed, and
  - (c) a vegetable that is required by the Act or such an order to be graded or packed in a specified manner and is not so graded or packed.
- (3) Where a person is in possession or control of coverings or fruit or vegetables to which this section applies, an inspector may give to that person a notice that is in the approved form and requires that person, except in so far as the notice is cancelled as provided by subsection (9):
- (a) to keep at a specified place,
  - (b) to refrain from selling, or otherwise dealing with or disposing of, and
  - (c) to refrain from permitting or suffering any other person to sell or otherwise deal with or dispose of,
- those coverings, that fruit or those vegetables.
- (4) An inspector may identify in the approved manner the coverings or fruit or vegetables to which a notice given under subsection (3) relates.
- (5) If a person has been given a notice under subsection (3), an inspector may, at the request of that person, change the brands or labels on a covering to which the notice relates to the extent necessary to ensure that the covering is branded or labelled as required by the order made under section 28A.
- (5A) A person who requests an inspector to exercise the power conferred by subsection (5) is liable, as a condition of that power being exercised, to pay the prescribed fee in the prescribed manner.
- (5B) If the prescribed fee is not paid within the prescribed period, it is recoverable in a court of competent jurisdiction as a debt due to the Crown.
- (6) Where a person has been given a notice under subsection (3) and an inspector has not exercised the powers conferred on the inspector by subsection (5), that person shall:
- (a) regrade or repack the fruit or vegetables to which the notice relates to the extent necessary to ensure that that fruit is or those vegetables are, graded or packed as required by the order made under section 28A and to ensure that the covering containing that fruit or those vegetables is branded or labelled as so ordered, or

(b) deal with, or dispose of, the fruit or vegetables to which the notice relates in a manner for the time being approved or directed in writing by an inspector.

(7) A person shall be deemed to have complied with subsection (6) if that which the person would be required to do in order to comply therewith is done on the person's behalf or at the person's direction.

(8) For the purposes of section 9, a person who is required to comply with subsection (6) in respect of a covering or fruit or vegetables and fails to do so shall be deemed to have dealt with, or disposed of, that covering or fruit or those vegetables contrary to the direction of an inspector.

(9) Where a notice has been given under subsection (3) and an inspector:

(a) has exercised the powers conferred on the inspector by subsection (5) in respect of a covering to which the notice relates, or

(b) is satisfied that subsection (6) has been complied with in respect of a covering, or of fruit or vegetables, to which the notice relates,

an inspector shall give to the person to whom the notice was given a cancellation of the notice in the approved form in so far as the notice relates to that covering or fruit or those vegetables.

(10) An inspector may identify in the approved manner the coverings or fruit or vegetables to which a cancellation given under subsection (9) relates.

(11) In any prosecution for an offence against this Act in respect of coverings, fruit or vegetables, proof that a notice was given under subsection (3) in relation to the coverings, fruit or vegetables shall be prima facie evidence that the notice had not, at the time of the alleged offence, been cancelled in so far as it related to the coverings, fruit or vegetables.

(12) Where a prescribed fee for the purposes of this section is paid by a person who is not the owner of the coverings or fruit or vegetables in respect of which the payment is made, an amount equal to the amount of that fee:

(a) may be recovered from the owner by that person in any court of competent jurisdiction as a debt due and owing by the owner, and

(b) shall, if that person is a licensed farm produce agent under the *Farm Produce Act 1983*, be deemed to be an out-of-pocket expense properly payable by the principal for the purposes of the *Farm Produce Act 1983*,

to the extent to which it has not been waived or remitted in accordance with subsection (13).

(13) The Minister may waive or remit the whole or any part of a prescribed fee for the



purposes of this section.

## **19 Penalty notices**

- (1) In this section, **prescribed offence** means an offence against this Act or the regulations that is prescribed by the regulations for the purposes of this section.
- (2) An inspector authorised under subsection (3) may serve a penalty notice on a person if it appears to the inspector that the person has committed a prescribed offence.
- (3) The Director-General may authorise in writing an inspector to exercise the power conferred by subsection (2) and may, at any time, revoke such an authorisation by notice in writing given to the inspector.
- (4) A penalty notice is a notice to the effect that, if the person served does not want the matter to be determined by a court, the person may pay, within the period and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (5) A penalty notice may be served personally or by post.
- (6) If the amount of penalty prescribed for an alleged offence is paid in accordance with a penalty notice, no person is liable to further proceedings for the alleged offence.
- (7) Payment under this section is not to be regarded as an admission of liability for the purpose of, and is not in any way to affect or prejudice, any civil proceeding arising out of the same occurrence.
- (8) The regulations may do all or any of the following:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or referring to the provision creating the offence,
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section,
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (9) The amount of a penalty prescribed under this section must not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (10) This section does not limit the operation of any other provision of, or any other provision made under, this or any other Act relating to proceedings that may be taken in respect of offences.

## **20 (Repealed)**

## **21 Power to destroy plants in an abandoned orchard or nursery**

- (1) An inspector who has reasonable cause to believe that any disease or pest is likely to be present in, or spread from, an orchard or nursery because it is neglected or abandoned may report the matter to the Minister. The Minister is required to give notice to the owner or occupier of the orchard or nursery if the Minister decides to exercise the powers conferred on the Minister by this section.
- (2) Any person aggrieved by a decision of the Minister under subsection (1) may apply to the Administrative Decisions Tribunal for a review of the decision.
- (3) A decision of the Tribunal made in proceedings determining an application made under subsection (2) is not an appealable decision for the purposes of Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997*.
- (4) After the end of the period prescribed by or under the *Administrative Decisions Tribunal Act 1997* within which an application may be made under subsection (2) for a review of a decision in relation to an orchard or nursery, the Minister may cause an inspector to destroy all plants within the orchard or nursery that in the inspector's opinion are likely to harbour or spread diseases or pests, but only if:
  - (a) such an application has not been made within that period, or
  - (b) if such an application has been made within that period—the application has been dismissed or withdrawn or the decision otherwise affirmed.
- (5) Costs incurred in exercising the power conferred by subsection (4) are recoverable in a court of competent jurisdiction as a debt due to the Crown from the owner of the orchard or nursery concerned, or, if the orchard or nursery is not occupied by its owner, from the occupier of the orchard or nursery.

## **22 (Repealed)**

## **23 Owner to have right of entry**

- (1) The owner of land or premises occupied by another person, whether as lessee or in any other capacity, has the right to enter and remain on the land or premises for the purpose of performing a duty or obligation imposed on owners of land or premises by this Act or the regulations.
- (2) A person who obstructs or hinders the performance by another person of a duty or obligation imposed on that other person by this Act or the regulations is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

## **24 Notices to be given in writing**

- (1) Any notice to be given to any person under this Act or the regulations shall be in writing, and may be served on such person personally, or left at or posted by registered letter to the person's usual or last known place of abode in this State, or if such person or the person's address is unknown or if the person has no place of

business or place of abode in this State, then service may be effected by affixing the notice in a conspicuous place on the land to which the notice relates.

- (2) Where a notice is served or given under this Act or the regulations by an inspector, the notice may, by notice served in accordance with subsection (1), be revoked or amended, or its effect extended or suspended for any period, by the Director-General or by an inspector authorised by the Director-General in writing.
- (3) Subsection (2) does not affect the power of an inspector to revoke or amend a notice which the inspector personally has served or given or to extend or suspend the effect of such a notice.

## **25 Persons not entitled to compensation**

No person shall be entitled to compensation by reason of anything done by any inspector or other person in the exercise of any power or the discharge of any duty or obligation conferred or imposed by this Act or the regulations, or in respect of any loss or injury that may directly or indirectly result therefrom unless the same was occasioned wilfully, negligently, or maliciously.

### **25A Demanding name and place of abode**

- (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, the inspector suspects of having committed or attempted to commit any such offence may demand from the person the person's name and place of abode.
- (2) Any person who on demand made in accordance with subsection (1):
  - (a) fails or refuses to state the person's name or place of abode, or
  - (b) gives a false name or place of abode,is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

### **25B Personation of inspector**

Any person who forges or counterfeits any written evidence of authority of an inspector or makes use of any forged, counterfeited or false written evidence of such an authority or personates an inspector named in any written evidence of authority of an inspector or falsely pretends to be such an inspector is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

### **25C Assaulting, threatening, obstructing etc an inspector**

A person who assaults, threatens, resists, obstructs or hinders an inspector in the exercise of a function conferred or imposed on an inspector by or under this Act is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

## **25D Corruption**

A person who, without lawful authority, offers, makes or gives to an inspector a payment, gratuity or present in consideration of the inspector's doing or omitting to do any act or thing relating to the exercise of a function conferred or imposed on an inspector by or under this Act is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

## **26 Offences**

- (1) Every person commits an offence against this Act who, personally or by the person's servant or agent:
  - (a) without reasonable excuse, sells, or brings onto or removes from the person's premises, any plant, fruit, covering or thing of any nature whatever with the knowledge that the plant, fruit, covering or thing:
    - (i) is infected or is likely to convey infection, or
    - (ii) was imported, introduced or brought into New South Wales or any part of New South Wales in contravention of a provision of a proclamation, notification or undertaking made or given under this Act or the regulations, or
  - (b) alters, falsifies or misuses any notice or document issued by an inspector, or makes a false statement to an inspector, or
  - (c) does or attempts to do any act in breach of the provisions of this Act, or of any proclamation, notification, order, or undertaking given under this Act or any regulation, which act is not by any other provision of this Act specifically constituted an offence against this Act, or
  - (d) without reasonable excuse fails or neglects to perform any duty or obligation imposed on the person by this Act, or by any proclamation, notification, order, or undertaking given under this Act or any regulation which failure or neglect is not by any other provision of this Act specifically constituted an offence against this Act, or
  - (e) without reasonable excuse fails or neglects to comply with any direction given under this Act by the Minister or an inspector or the requirements of any notice served upon the person or given to the person by an inspector under this Act or the regulations, or
  - (f) in the State or any portion thereof has in the person's possession any plant, fruit, covering, package, goods or thing of any nature or kind whatsoever which, to the person's knowledge, was imported, introduced or brought into the State or portion thereof contrary to this Act or any regulation, proclamation or notification made under this Act, or

- (g) without reasonable excuse, introduces into New South Wales any plant, fruit, vegetable, package or covering with the knowledge that it is infected with a pest or disease, or
  - (h) destroys, damages or interferes with a device installed under section 13.
- (1A) A person who, but for this subsection, would be liable to be convicted for an offence under both section 25A (2) (b) and subsection (1) (b) of this section in respect of the same matter is liable to be convicted in respect of only one of those offences.
- (2) A person who is found guilty of an offence against subsection (1) is liable to a penalty not exceeding 100 penalty units.
- (2A) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2B) Any such proceedings must be commenced not later than 2 years from when the offence was alleged to have been committed.
- (3) Where in any proceeding against any person for an offence arising under subsection (1) (a), (f) or (g) knowledge of the accused must be shown, such knowledge shall be presumed unless and until the contrary is proved, and the accused satisfies the court that the want of knowledge was reasonable, and was in no way imputable to negligence on the part of the accused personally, the accused's servant or agent.
- (4) In any such proceeding, in addition to any other method of proof available, evidence that the person proceeded against appears by the record kept by the council of the area (within the meaning of the [Local Government Act 1993](#)) under section 602 of that Act to be the owner or occupier of the land in respect of which the proceeding is taken shall be evidence until the contrary is proved that such person is the owner or occupier, as the case may be, of the land.
- (5) In any proceeding against any person for any offence against this Act or a contravention of any provision of any regulation, proclamation, order or notification made under this Act proof that any plant, fruit, covering, package, goods or other thing of any nature or kind whatever specified therein was found in any portion of the State in the possession of any person shall be prima facie evidence that the same was imported, introduced or brought into that portion of the State by such person.
- (6) In any proceeding against any person for an offence against this Act or the regulations a certificate purporting to be signed by the Director-General stating that a person has been appointed or authorised to act as an inspector under this Act and during any period specified in the certificate held office or was authorised to act as such an inspector shall be prima facie evidence of the facts stated therein.
- (7) In any proceeding against any person for an offence against this Act any printed paper purporting to be an order by the Minister published under this Act and to be

printed by the Government Printer shall be evidence that an order by the Minister, in the words printed in that paper, was duly published under this Act.

(8) In this section, **notification** includes a notice.

## **27 Recoverable expenses of authorised inspector**

Where an inspector or person authorised by the Minister carries out any work under the provisions of section 9 or section 16 or section 21 (4), the expenses recoverable by an inspector shall include a proportionate part of the salary or wages of the person carrying out the work, having regard to the time occupied by the person in carrying out the work and in travelling for such purpose, and the necessary expenses incurred in connection with such travelling.

## **28 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act; and in particular and without limiting the generality of the foregoing power, the Governor may make regulations with respect to the following matters:
- (a) (Repealed)
  - (ai) the traffic sign to be displayed pursuant to section 13 (1), and any fixed warning signs of the presence of inspectors,
  - (aia) the written evidence of authority to be produced by an inspector under section 13 (1B),
  - (b) (Repealed)
  - (c) the branding or labelling of coverings containing fruit or plants,
  - (d) the grading and packing of fruit or vegetables,
  - (di) the restriction or prohibition of the packing for sale or sale of coverings that are not branded or labelled as prescribed or fruit or vegetables that are not graded or packed as prescribed,
  - (dii) the identification of the variety or grade, or both the variety and grade, of unpacked fruit or vegetables that are exposed or displayed for sale,
  - (diii) the restriction or prohibition of the exposure or display for sale of fruit or vegetables to which regulations made for the purpose of paragraph (dii) relate unless the variety or grade of the fruit or vegetables is, or, if the case requires, both their variety and grade are, identified as prescribed,
  - (e) the inspection of and the granting of certificates as to the quality and condition of

fruit, plants, or vegetables intended for sale or export,

- (f) prescribing the payment and recovery of fees generally under this Act, including fees:
  - (i) (Repealed)
  - (ii) in respect of any inspection, treatment or destruction by an inspector,
  - (iii) for the granting of any certificate as to quantity or condition,
  - (iv) for the purposes of section 18A, and
  - (v) for any other service (including the granting of any other type of certificate) provided under this Act or the regulations,
- (g) the conferring on a person liable to pay fees under this Act of a right to apply to the Administrative Decisions Tribunal for a review of a decision in respect of the withdrawal of credit facilities from, or the refusal to extend such facilities to, that person in relation to the payment of those fees.

(1A) Regulations made pursuant to subsection (1) (ai) may make provision for the use of fixed, movable or portable traffic signs, either in conjunction or as alternatives.

(2) The regulations may create an offence punishable by a penalty not exceeding 50 penalty units.

(2A), (2B) (Repealed)

(2C) A provision of a regulation may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind,
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or
- (d) provide for specified persons, places, matters or things, or specified classes of persons, places, matters or things, to be exempted, either absolutely or subject to conditions, from that or any other provision of a regulation,

or may do any combination of those things.

(3) (Repealed)

## **28A Orders**

(1) The Minister may make orders for or with respect to any matter relating to:

- (a) the grading or packing of fruit or vegetables, or
  - (b) the branding or labelling of coverings containing fruit, vegetables or other plants.
- (2) An order may make provision for or with respect to a matter by applying, adopting or incorporating by reference, with or without modification:
- (a) any of the provisions of an Act of New South Wales or the Commonwealth, or of any regulations or other instruments made under such an Act, as in force at a particular time or as in force from time to time, or
  - (b) any matter contained in any other instrument or writing as in force or existing at the time when the order takes effect.
- (3) An order may provide for specified persons, places, matters or things, or specified classes of persons, places, matters or things, to be exempted, either absolutely or subject to conditions, from that or any other order.
- (3A) Before an order relating to a matter referred to in subsection (1) (b) is made, the proposed order must be published in at least one newspaper circulating in the area to which the order will apply or in such other publication as the Minister considers appropriate.
- (3B) To the extent that an order relates to a matter referred to in subsection (1) (b), it is revoked on the fifth anniversary of the date on which it was published in the Gazette unless it sooner ceases to be in force.
- (4) The following provisions of the *Interpretation Act 1987* apply to an order made under this section in the same way as they apply to a statutory rule within the meaning of that Act:
- section 31 (which relates to the effect of amendment or repeal of statutory rules)
  - section 39 (the making of statutory rules)
  - section 40 (notice of statutory rules to be tabled)
  - section 41 (disallowance of statutory rules)
  - section 42 (2) (which relates to matters for which statutory rules may make provision).

## **28B Proclamations**

The Governor may, by proclamation, declare:

- (a) any organism of the vegetable kingdom, virus or mycoplasma organism which causes an abnormal or unhealthy condition in plants to be a disease for the purposes of this Act, and



- (b) an edible product of a species of plant to be fruit for the purposes of this Act, and
- (c) any thing to be a pest for the purposes of this Act, and
- (d) plants of any kind to be vegetables for the purposes of this Act, and
- (e) that any specified provision of this Act or the regulations:
  - (i) applies only to a specified disease or pest, or
  - (ii) does not apply to a specified disease or pest.

**Editorial note—**

For proclamations made under section 3 (3) and deemed to be made under this section, and proclamations made under this section, see the Historical notes at the end of this Act.

**28C Delegation**

The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) to any member of staff of the Department.

**29 Sale of fruit etc not up to fair average quality**

- (1) No person shall sell any fruit or vegetables unless such fruit or vegetables are so packed or arranged that the outer layer or shown surface thereof is a true indication of the fair average quality of the whole of such fruit or vegetables.
- (1AA) The fact that more than ten per centum of such fruit or vegetables is substantially smaller than or inferior to the outer layer or shown surface of such fruit or vegetables shall be prima facie evidence that the fair average quality of such fruit or vegetables is not truly indicated.
- (1A) Where fruit or vegetables are arranged in such a manner that there is more than one outer layer or shown surface, subsection (1) applies to each such outer layer or shown surface.
- (1B) Nothing in subsection (1) affects the requirements of any regulation relating to the packing of fruit or vegetables or the arrangement of fruit or vegetables that are exposed or displayed for sale.
- (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 prescribed.
- (3) A person who contravenes a provision of this section is guilty of an offence and liable to a penalty not exceeding 100 penalty units.
- (4) In any proceedings for a breach of any of the provisions of this section, it shall be a sufficient defence if the person proceeded against satisfies the court that the fruit or

vegetables in respect of the sale of which the proceedings are taken were sold by the person in the package in which they were received without repacking or the admixture of any foreign substance.

### **30 (Repealed)**

## **Schedule 1 Types of fruit**

(Section 3 (1))

berry fruit

cacti

citrus fruit

melons

plantation fruits

pome fruit

stone fruit

tropical fruits

the following fruit—carambola, feijoa, fig, guava, jackfruit, jujube, longan, loquat, mammey sapote, medlar, olive, pepino, persimmon, pomegranate, sapodilla, tomato, cherry tomato, tamarillo, quandong, date and abiu.

## **Schedule 2 Types of vegetable**

(Section 3 (1))

chinese vegetables

cruciferae

curcubit group

herbs

leaf vegetables

legumes

onion group

root vegetables

vine vegetables

the following vegetables—rhubarb, alfalfa, aniseed, choko, artichoke, asparagus, capsicum, celeriac, celery, chilli, corella, corn, courgette, eggplant, horseradish, mushroom, okra, paprika, pepper and rosella.

## **Schedule 3 Savings and transitional provisions**

(Section 2)

### **Part 1 General**

#### **1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of the following Acts:

*Plant Diseases Amendment Act 1995*

*Horticultural Legislation Amendment Act 2000*, but only to the extent that it amends this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to that Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

## **Part 2 Provisions consequent on enactment of *Plant Diseases Amendment Act 1995***

### **2 Definition**

In this Part, **amending Act** means the *Plant Diseases Amendment Act 1995*.

### **3 Continuation of certain instruments**

- (1) Any proclamation made under section 3 (3), and in force immediately before the commencement of Schedule 1 (4) to the amending Act, is taken to be a proclamation in force under section 28B as inserted by Schedule 1 (25) to the amending Act.
- (2) Any proclamation made under section 5, and in force immediately before the commencement of Schedule 1 (7) to the amending Act, is taken to be an order made under that section as amended by that item and may be amended or repealed accordingly.
- (3) Any proclamation or order so taken to be made under this Act is, unless it sooner ceases to be in force, revoked on the tenth anniversary of the commencement of Schedule 1 (4) and (7), respectively, to the amending Act.

## **Part 3 Provisions consequent on enactment of *Horticultural Legislation Amendment Act 2000***

### **4 Definition**

In this Part, **amending Act** means the *Horticultural Legislation Amendment Act 2000*.

## 5 Continuation of certain orders made under section 5A

- (1) An order made under section 5A of this Act that is in force immediately before the amendment of that section by the amending Act is taken to be an order in force under section 5A of this Act (as amended by the amending Act).
- (2) Any such order is, unless it sooner ceases to be in force, revoked on the date on which it would have been revoked by the operation of section 5A as in force immediately before its amendment by the amending Act.

## 6 Revocation of existing orders under section 28A

- (1) To the extent that an existing order relates to a matter referred to in section 28A (1) (b) of this Act, the order is revoked on the fifth anniversary of the date on which Schedule 1.2 [3] to the amending Act commenced unless the order sooner ceases to be in force.
- (2) In this clause, **existing order** means an order in force under section 28A of this Act immediately before the commencement of Schedule 1.2 [3] to the amending Act.

## Part 4 Provisions consequent on enactment of **Statute Law (Miscellaneous Provisions) Act (No 2) 2004**

### 7 Continuity of things done by Chief, Division of Plant Industries

Anything done by the Chief, Division of Plant Industries under or for the purposes of a provision of this Act is, to the extent that the thing done had effect immediately before the amendment of this Act by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2004*, taken to have been done by the Director-General.

## Schedule 4 Objections to works authorised by control order

(Section 13B)

### 1 Manner of making objection

An objection must:

- (a) be made in writing addressed to the Director-General, and
- (b) identify the property concerned, the objector and the objector's contact details.

### 2 Lodgment of objection

An objection is duly lodged only if it is:

- (a) received at the place specified, and within the time specified, by the relevant order, or
- (b) delivered to an inspector who has entered the land or premises of the objector to carry out works authorised by the order.

### **3 Outcome of objection to be notified**

Notice of any confirmation or direction under section 13B (2) in relation to the objection is to be promptly given to the objector.