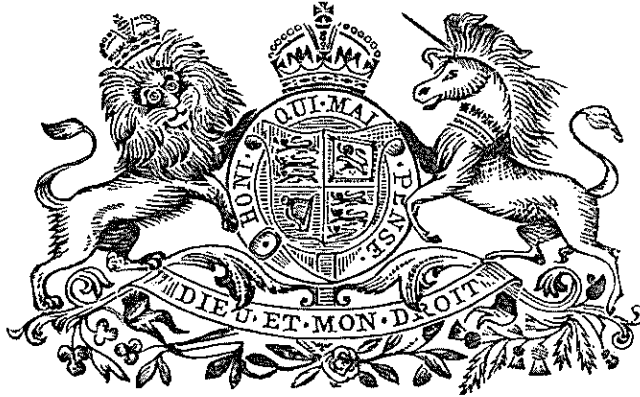


WESTERN AUSTRALIA



ANNO QUINTO

GEORGII QUINTI REGIS,

XXIII.

No. 23 of 1914.

AN ACT to prevent the Introduction into Western Australia of Diseases affecting Plants, to provide for the Eradication of such Diseases and to prevent the Spread thereof, and to amend and consolidate the Law relating to such matters.

[Assented to 22nd September, 1914.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Plant Diseases Act, 1914*, and shall come into operation on a day to be fixed by proclamation. Short title and commencement.
2. The Insect Pests Amendment Act, 1898, and the Act 63 Victoriae, No. XIV., are hereby repealed. Repeal.
3. All offices, appointments, regulations, rules, proclamations, certificates, orders, permits, instruments, and generally all acts of authority which originated under any enactment repealed by this Act and hereby re-enacted with or without modification, and which Acts of authority done under repealed enactments to continue in force.

are subsisting or in force on or immediately prior to the commencement of this Act shall, subject to this Act, continue in force and enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, when necessary, be deemed to have so originated.

Interpretation.

4. In this Act, subject to the context,—

“Covering” includes any case, box, bag, wrapper, packing, or material of whatsoever description designed to contain or be used in the packing of anything;

“Disease” means any parasite, of whatsoever kind, and whether of vegetable or animal nature, which commonly attacks or is found on plants;

“Fruit” means the product of any plant, and includes the peel, skin, or shell of any such product, and also the seeds of any plant;

“Infected” means infected with disease;

“Inspector” means an inspector appointed under this Act or an Act hereby repealed;

“Minister” means the Minister for Agriculture or such other member of the Executive Council as may for the time being be authorised by the Governor to act in place of the Minister for Agriculture in the administration of this Act;

“Occupier” as applied to any orchard or other land or premises includes any person having the charge, management, or control thereof;

“Orchard” means any land used for the purpose of growing or cultivating plants, and includes any garden, farm, vinery, vineyard, and hothouse, and any place where any plant is cultivated or where any plant which has been cultivated is growing;

“Owner,” as applied to land, means any person who is in possession or entitled to possession of the land, or in receipt or entitled to the receipt of rents and profits of the land, as—(a) the holder of a legal or equitable estate of freehold in possession therein; or (b) the holder of an estate less than freehold under a lease or agreement granted or made by or with the Crown; or (c) a mortgagee of the land; or (d) the trustee, attorney, or authorised agent of any such holder or mortgagee;

“Plant” includes any part of a plant, and extends to fruit;

“Prescribed” means fixed or authorised by regulation;

“Regulation” means a regulation made under this Act;

“The State” means the State of Western Australia;

“Under Secretary” means the Under Secretary of the Department of Agriculture and Industries.

5. The Governor may by proclamation prohibit either absolutely or except in accordance with regulations—

Power to prohibit the introduction into the State or specified portions thereof of things likely to introduce diseases.

- (i.) The bringing into the State either generally or from any specified State, country, or place; or
- (ii.) The bringing into any specified portion of the State from the rest of the State generally or from any specified portion thereof,

of all or any of the things following, that is to say—

- (a.) any specified kind of plant, fruit, or other thing which would in his opinion be likely to introduce any disease into the State or into the specified portion thereof, as the case may be;
- (b.) all or any coverings or goods in or with which any plant, fruit, or thing of the kind specified has been contained or packed or come in contact;
- (c.) anything which is infected or anything which is infected with any specified disease.

6. The Governor may by proclamation—

Power to appoint ports of entry, quarantine stations to prohibit export in certain cases, and to revoke or vary proclamations.

- (i.) Appoint any specified ports to be the only ports of entry for plants or fruit or for any specified kind of plants or fruit;
- (ii.) Appoint quarantine grounds where plants, fruit, and coverings, and goods which have come in contact with plants or fruit may be detained for the purpose of being inspected, disinfected, destroyed, or otherwise disposed of;
- (iii.) Prohibit the use, storage, or carriage within the State or within any specified portion of the State of coverings in or with which any specified plant or fruit has been contained or packed or come in contact; or
- (iv.) Revoke or vary any proclamation made under this Act or any Act hereby repealed.

7. (1.) The Governor may, subject to the Public Service Act, 1904, appoint such inspectors and other officers, and confer on them such powers and functions as he may deem necessary in order to carry out the provisions of this Act.

Appointment of officers.

(2.) The Minister may appoint temporary inspectors to hold office for any period not exceeding twelve months, and every person so appointed shall be deemed to be an inspector for the purposes of this Act.

Notice to be given of appearance of disease.

8. Every occupier of any orchard in which any disease appears shall, within twenty-four hours after first discovering or becoming aware of its presence, give written notice thereof to an inspector or to the Under Secretary.

Power of entry and search.

9. Any inspector may at any time enter upon any orchard, land, or premises or into any house or structure used for the storage of fruit, or conveyance, or may board any vessel and may thoroughly search and inspect the same and every part thereof, and anything thereon or therein, for the purpose of ascertaining whether the same is infected, and may for the purpose aforesaid examine plants, fruit, coverings, and goods and other things, and dig up plants, open packages, and do all such other things (whether of the same nature as anything hereinbefore mentioned or not) as he may deem necessary or expedient.

Steps to be taken by inspector when orchard infected.

10. (1.) Whenever an inspector is satisfied that disease exists on any orchard, land, or premises he may by requisition to the owner and occupier or either of them require them or him to do whatever is necessary in order to eradicate such disease from such orchard, land, or premises, and to prevent the spread thereof, and the requisition may specify any particular steps which the inspector requires to be taken.

(2.) Such requisition may name a time by which the doing of anything thereby required shall be commenced and a time within which it shall be completed.

(3.) The owner and occupier, jointly or severally, or the owner or occupier, as the case may be, shall be responsible for due compliance with the requisition, and shall do everything thereby required to be done.

Penalty: One hundred pounds.

(4.) In case of any default in compliance with the terms of the requisition, any inspector may do or cause to be done all such things as may be necessary in order to carry the terms of the requisition completely into effect, and the expenses incurred in and about so doing shall be recoverable from the person or persons guilty of the default.

Declaration of infected pieces.

11. (1.) Whenever it shall appear to the Minister on the report of an inspector or the Under Secretary that any disease exists or has within the preceding three months existed in any orchard, he

may by notice published in the *Gazette*, declare that such orchard, together with such area of land contiguous to or surrounding the same, as he thinks expedient, is infected.

(2.) Such notice shall describe with reasonable particularity the situation and area of the orchard and other land to which such notice relates.

(3.) From the date of the publication of such notice in the *Gazette*, and until the Minister shall by notice published in the *Gazette* otherwise direct, such orchard and other land shall be deemed to be infected, and no plants or fruit shall be removed therefrom except with the permission of an inspector.

12. (1.) If, as the result of any investigation conducted by him, any inspector shall declare any plant, fruit, covering, goods, conveyance, or vessel to be infected, he shall give notice thereof to the owner or person in charge thereof, and on receipt of such notice such owner or person shall forthwith take such measures and do such acts as are necessary, or as the inspector shall declare to be necessary, in order to eradicate or prevent the spread of the disease.

Power to order infected things to be dealt with so as to eradicate disease.

(2.) If such owner or person fails or neglects to take any such measures or do any such acts as aforesaid, any inspector may do the same at the expense in all things of either such owner or such person in charge thereof, as the Minister shall direct.

13. For the purpose of carrying out the objects of this Act any inspector may destroy or otherwise dispose of any plants or fruit which are infected or which he shall on reasonable grounds believe to be infected, or any coverings in or with which any such plants or fruit have been contained or packed or come in contact.

Power to destroy infected plants, coverings, etc.

14. (1.) An inspector may, with the approval of and subject to an appeal to the Minister, serve on the occupier and owner of any orchard or place where any plant is growing, or on either of them, a notice requiring them or him to take any measures or do any acts which the inspector may deem necessary to prevent the spread of any disease, and in such case, even although the orchard or place is not infected, any person on whom any such notice is served shall, as soon as practicable after the receipt thereof, comply with the requisitions thereof.

Power to require owner or occupier of orchard to take steps to prevent spread of disease.

(2.) In the event of notice being served on both the owner and occupier, they shall be jointly and severally liable to perform the requisitions thereof.

(3.) In case of any default in compliance with the terms of the notice any inspector may do or cause to be done all such things as may be necessary in order to carry the terms of the notice completely into effect, and the expenses incurred in or about so doing shall be recoverable from the person or persons guilty of the default.

Prunings to be destroyed.

15. (1.) When any plants are pruned on any orchard the occupier shall, within fourteen days after notice so to do has been served on him by an inspector, destroy all the prunings, even although the same be not infected.

Penalty: Ten pounds.

(2.) Provided that the Minister or officer authorised to act on his behalf may grant a certificate of exemption from the operation of this section with respect to any specified prunings which may be required for propagation purposes.

Young plants for sale not to be grown near trees in bearing.

16. No young plants intended for sale shall be grown or remain growing by or with the permission of any person within the prescribed distance of any fruit trees in bearing.

Penalty: Ten pounds.

Power to question vendors of fruit, etc.

17. It shall be lawful for an inspector to require any person having in his possession or under his control any fruit or plants for sale, to answer any questions relating to such fruit or plants, and such person shall forthwith answer any such questions truthfully to the best of his knowledge, information, and belief.

Penalty: Ten pounds.

Power to destroy plants in abandoned orchards.

18. (1.) If any inspector shall report to the Minister that any orchard has been abandoned, the Minister may publish in the *Gazette* and in a newspaper circulating in the locality wherein such orchard is situated, a notice of the receipt of such report, and may therein state that unless within three months good cause is shown to him why he should not exercise the powers conferred by this section, he will order all plants in such orchard which are deemed by an inspector to be likely to spread or capable of aiding in the spread of disease to be destroyed.

(2.) Unless within the said period of three months good cause as aforesaid is shown to the satisfaction of the Minister, then the orchard shall be conclusively deemed to be abandoned, and the Minister may cause such plants as aforesaid to be destroyed as stated in the said notice, and this Act shall be sufficient warrant for any act done or step taken for that purpose.

(3.) For the purposes of this section an orchard shall be deemed to be abandoned which is habitually or has been for a long period left uncultivated or neglected.

Seizure of prohibited plants, etc.

19. Any plant, fruit, covering, goods, or other thing which, contrary to this Act, is or are in any way introduced or attempted to be introduced into the State or into any portion of the State, in contravention of any proclamation, or which, contrary to this Act, is or are attempted to be exported in contravention of any proclamation, may be seized by any inspector, and may be disinfected, destroyed, or otherwise disposed of as such inspector thinks fit at the expense in all things of either the owner or the person in charge thereof, as the Minister shall direct.

20. When any person is liable for any expenses incurred under this Act, such expenses shall be a charge on any orchard, land, or premises in respect of which they have been incurred, and any such expenses, whether so charged or not, may be recovered by action brought by the Crown in any court of competent jurisdiction, or may be recovered summarily on the complaint of any inspector before any two justices of the peace.

Recovery of expenses.

21. (1.) Any owner who does or pays for the doing of any work pursuant to this Act in respect of any orchard, land, or premises which are occupied by another person shall, subject to any agreement between him and that person, be entitled to recover from such person as a debt the cost of the work so done or the amount so paid, if he proves that the work was rendered necessary through no fault of his own or of any person for whose acts or default he was responsible, but solely or mainly through the fault of the occupier or some person for whose acts or default the occupier was responsible.

Payment for work done as between owner and occupier.

(2.) Any occupier who does or pays for the doing of any work pursuant to this Act in respect of any orchard, land, or premises of which he is not the owner, shall, subject to any agreement between him and the owner, be entitled to recover from the owner as a debt the cost of the work so done or the amount so paid, if he proves that the work was rendered necessary through no fault of his own or of any person for whose act or default he was responsible, but solely or mainly through the fault of the owner or some person for whose acts or default the owner was responsible.

(3.) The amount of the debt recoverable as aforesaid by the occupier may be set off against rent due or to accrue due by him to the owner.

22. Any owner of any orchard, land, or premises which is in the occupation of another person shall have full right of entry on and into the same, and of remaining thereon and therein for the purpose of doing anything which he is required to do under or pursuant to this Act, and if in the performance of any duty or obligation imposed on him by or under this Act the owner of any orchard, land, or premises is in any way obstructed or hindered by the occupier, or the occupier by the owner, the one who obstructs or hinders the other shall be liable to a daily penalty not exceeding five pounds.

Penalty if owner or occupier hinders the other.

23. Any inspector may employ such assistants as he deems necessary in carrying out the provisions of this Act.

Employment of assistants.

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

Use of force in case of resistance.

Persons obstructing officers.

25. Every person commits an offence against this Act who directly or indirectly obstructs, hinders, or interrupts, or threatens, or assaults, or uses improper or abusive language to any inspector or assistant whilst in the performance of his duty under this Act:

Provided that no proceedings for the recovery of any penalty for such offence, nor the payment thereof, shall be a bar to any action at law by any such inspector or assistant.

Officers not to be trespassers.

26. No inspector or assistant shall be deemed to be a trespasser by reason of any entry or removal under this Act, or be liable for any damage occasioned in carrying out the provisions of this Act.

Notices to be given in writing.

27. Any notice to be given to any person under or pursuant to this Act or any regulation must be given in writing either by delivering the same to such person, or by leaving the same at or posting the same addressed to him at his usual or last known place of abode or business in Western Australia, or, if he is unknown or has no place of abode and no place of business in the State, or cannot be found in Western Australia, then by affixing such notice in a conspicuous place on the land to which such notice relates.

Persons not entitled to compensation.

28. No person shall be entitled to any compensation whatsoever in respect of anything done by any inspector or other officer or assistant or any other person in the discharge of any duty or obligation under this Act or any regulation, or in respect of any measure taken in order to eradicate or prevent the spread of disease or carry out the provisions of this Act or any regulation, or in respect of any loss or injury that may directly or indirectly result therefrom.

Offences.

29. Every person commits an offence against this Act who, directly or indirectly, by himself, his servant or agent,—

(1.) Sells or offers or exposes for sale any plant, fruit, goods, covering or thing which is or are diseased or infected, or (except under the direction of an inspector) brings or suffers to be brought upon, or removes or suffers to be removed from his premises any such plant, fruit, goods, covering, or thing; or

(2.) Sells or offers or exposes for sale any plant, fruit, goods, covering, or thing which has or have been introduced into Western Australia in breach of any proclamation under this Act, or (except under the direction of any inspector) brings or suffers to be brought upon, or removes or suffers to be removed from his premises any such plant, fruit, goods, covering, or thing; or

- (3.) Does or attempts to do any other act in breach of this Act or of any proclamation or regulation under this Act;
or
(4.) Fails or neglects to faithfully observe and perform any duty or obligation imposed on him by this Act or by any proclamation or regulation under this Act.

30. Every person who commits any offence against this Act shall (if no penalty is hereinbefore specified for the offence) be liable on summary conviction to a penalty not exceeding one hundred pounds. Penalties.

31. The minimum penalty for any offence against this Act shall be one-twentieth of the maximum, and no court or magistrate shall have any power to reduce such minimum. Minimum penalty.

32. In all proceedings taken against any person for any offence against this Act, the averments of the prosecutor contained in a sworn complaint shall be deemed to be proved in the absence of proof to the contrary. Onus of proof.

33. Whenever in any such prosecution knowledge must be shown, such knowledge shall be presumed, unless and until the contrary is proved and the defendant satisfies the Court that the want of knowledge was reasonable, and was in no way imputable to negligence on the part of himself, his servant or agent. Proof of knowledge.

34. (1.) In any legal proceedings under this Act, in addition to any other method of proof available,— Proof of ownership or occupancy.

(a.) Evidence that the person proceeded against is rated as owner or occupier by any road board or municipal council in respect of any land to any rate for the municipal or road district within which such land is situated;
or

(b.) Evidence by the certificate of—

- (i.) The Registrar of Deeds and Transfers or his substitute or any assistant registrar of deeds and transfers that any person appears from any memorial of registration of any deed, conveyance, or other instrument to be the owner of any land; or
(ii.) The Registrar of Titles, or any assistant or deputy registrar, and that any person's name appears in any registry book kept under the Transfer of Land Act, 1893, as owner of any land; or
(iii.) The Under Secretary for Lands or the Secretary for Mines, that any person is registered in the Department of Lands and Surveys, or the Department of Mines, as the lessee or occupier of any land,

shall, until the contrary is proved, be evidence that such person is the owner, or occupier, as the case may be, of such land.

(2.) All courts and all persons having by law, or by consent of parties, authority to hear, receive, and examine evidence shall, for the purposes of this Act, take judicial notice of the signature attached to such certificate, and on the written application of the Under Secretary, a certificate giving the name and address of such owner, or occupier, the situation and description of such land, and date of registration of title, shall be furnished by the proper officer.

Regulations

35. (1.) The Governor may make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which it may be necessary or convenient to prescribe for giving effect to this Act.

(2.) Without limiting the generality of any of the above provisions, it is hereby declared that the Governor may by regulations—

- (a.) Prescribe the manner in which plants, fruit, and coverings in which plants and fruit have been contained or packed shall (whether infected or not) be treated in order to eradicate disease or to lessen the risk of the spread of disease;
- (b.) Provide for the registration of all or any orchards, containing one or more fruit trees or grape vines, vineyards, nurseries, auction rooms, shops, markets, or other premises used in connection with the sale or storage of plants or fruit;
- (c.) Prescribe the matters in respect of which fees shall be payable under this Act, and fix the amounts of such fees and the mode of payment and recovery thereof: Provided that registration fees shall be graded from two shillings and sixpence upwards, according to area;
- (d.) Require the occupiers of plant nurseries to fumigate and disinfect all plants before the same are sent out from the nurseries, and prescribe the manner of such fumigation and disinfection;
- (e.) Require coverings containing fruit or plants to be branded or labelled, and prescribe the manner of such branding or labelling;
- (f.) Regulate the sale of insecticides and fungicides and preparations for the destruction of animal or vegetable parasites which commonly attack or are found on plants, and compel vendors of the same to supply to purchasers particulars of the ingredients thereof and to guarantee the truth of the particulars supplied;
- (g.) Impose a penalty not exceeding twenty-five pounds for the breach of any regulation.

Judicial notice to be taken of regulations and proclamations.

36. All courts and magistrates shall take judicial notice of all regulations and proclamations under this Act.

37. (1.) Any regulation or by-law made or purporting to be made under or by virtue of this Act shall—

- (a.) be published in the *Gazette*;
- (b.) take effect from the date of publication or from a later date to be specified therein; and
- (c.) be judicially noticed, and unless and until disallowed as hereinafter provided, or except in so far as in conflict with any express provision of this or any other Act, be conclusively deemed to be valid.

(2.) Such regulations and by-laws shall be laid before both Houses of Parliament within fourteen days after publication if Parliament is in session, and if not, then within fourteen days after the commencement of the next session.

(3.) If either House of Parliament pass a resolution at any time within one month after any such regulation or by-law has been laid before it disallowing such regulation or by-law, then the same shall thereupon cease to have effect, subject, however, to such and the like savings as apply in the case of the repeal of a statute.

Publication and
effect of regula-
tions.
Power of disallow-
ance.