



## Western Australia.

ANNO SEXAGESIMO SECUNDO

# VICTORIÆ REGINÆ.

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No. XXVII.

AN ACT to prevent the introduction into Western Australia of Diseases affecting Orchards and Gardens, and to provide for the eradication of such Diseases, and to prevent the spread thereof.

[Assented to, 28th October, 1898.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. THIS Act may be cited for all purposes as the Insect Pests Amendment Act, 1898.

Short title.

2. IN this Act, if not inconsistent with the context,—

“Disease” means any insect, fungus, or parasite found on or attacking fruit or plants;

Interpretation.

“Fruit” means the product of any plant, and includes the peel, skin, or shell of such product, and also the seeds of such plant, whether such fruit is or is not attached to such plant;

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- “ Infected ” means infected with disease ;
- “ Infected package ” includes every case or other package in which any diseased plant or fruit is or has been contained, or with which any such plant or fruit has come in contact ;
- “ Minister ” means the Minister presiding over the Department of Agriculture, or any member of the Executive Council, being a responsible Minister of the Crown, who for the time is acting for him ;
- “ Occupier,” in the case of any orchard or land which is unoccupied, or whose actual occupier is unknown or cannot be found, includes the owner ;
- “ Orchard ” means any land used for the purpose of growing or cultivating plants, and extends to and includes garden, nursery, vinery, vineyard, and hothouse ;
- “ Plant ” means any tree, flower, shrub, vegetable, or other vegetation.

Power of Governor to do certain things.

3. THE Governor may, from time to time, by Proclamation, do any of the following acts :—

- (1.) Revoke, either wholly or partially, any Proclamation which is in force at the time of the coming into operation of this Act, and which was issued for any purpose for which a Proclamation or Order in Council may be issued under this Act ;
- (2.) Prohibit, either absolutely or except in accordance with regulations under this Act, the introduction into Western Australia, either generally or from any specified colony, country, port, or place, of any plant, fruit, fungus, parasite, insect, or anything which, in his opinion, is likely to introduce any disease into Western Australia ;
- (3.) Prohibit, either absolutely or except in accordance with regulations under this Act, the bringing into any specified portion of Western Australia, from any other portion or specified portion of Western Australia, of any specified plant, fruit, fungus, parasite, insect, or other thing, which, in his opinion, is diseased or likely to spread disease ;
- (4.) Appoint any specified ports to be the only ports of entry for plants or fruit, or for any specified plant or fruit ;
- (5.) Appoint quarantine grounds, where plants or fruit, and the packages containing the same or with which the same may have come in contact, may be detained for the purpose of being inspected, disinfected, destroyed, or otherwise disposed of ;

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(6.) Revoke any Proclamation made under this Act.

4. (1.) THE Governor may from time to time appoint such inspectors and other officers, with such powers and functions, as he deems necessary in order to carry out the provisions of this Act.

Appointment of officers.

(2.) All inspectors and other officers appointed under the Acts hereinafter repealed shall be deemed to have been appointed under this Act.

5. EVERY occupier of any orchard shall at all times do whatever is necessary in order to eradicate such disease from such orchard, and prevent the spread thereof.

Eradication of diseases in orchards.

6. 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 the Secretary for Agriculture, at Perth.

Notice of disease appearing to be given.

7. IF at any time it appears to an inspector or other authorised officer that any disease exists, or has within the preceding three months existed, in any orchard or amongst the plants there growing, and that in order to eradicate or prevent the spread of such disease such orchard should be declared to be infected, he shall notify the fact to the occupier of such orchard, and also to the Secretary for Agriculture, who shall notify the same to the Minister. whereupon the following provisions shall apply:—

Declaration of "infected places."

- (1.) The Minister 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 an infected place within the meaning of this Act.
- (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 gazetting of such notice and until the revocation thereof, such orchard and other land shall be deemed to be an infected place from which no plants or fruit shall be removed, except under the direction of an inspector or other authorised officer, and within which the occupier shall do all such things as are deemed necessary, in order to eradicate or prevent the spread of the disease.
- (4.) Any such notice may be revoked by the Minister by notice in the *Gazette*.

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Power to inspect  
orchards, trees, etc.

8. (1.) ANY inspector or authorised officer may at any time enter into any conveyance or upon any orchard, land, or premises, or on board any vessel, for the purpose of inspecting any plants or fruit, or the packages containing the same, or with which the same may have come in contact, and shall have all such powers and authorities (including power to dig up plants, open packages, and otherwise) as he deems necessary for enabling him to enforce the provisions of this Act.

(2.) If such inspector or other officer declares any such plants, fruit, or packages to be diseased or infected with disease he shall give notice thereof to the owner or person in charge thereof, who shall forthwith take such measures and do such acts as are necessary, or as the inspector or other officer deems necessary, in order to eradicate or prevent the spread of the disease.

(3.) If such owner or person fails or neglects so to do to the satisfaction of the inspector or other officer, such inspector or other officer may do the same at the expense in all things of such owner or person, who, nevertheless, shall not thereby be released from his other liabilities under this Act.

(4.) In the exercise of the powers conferred upon him by this section the inspector or other officer may remove, treat, disinfect, destroy, or otherwise dispose of any such plants, fruit, or packages in such manner as he thinks fit.

Seizure of prohibited  
plants, etc.

9. (1.) ANY plant, fruit, fungus, parasite, insect, or other thing which is in any way introduced or attempted to be introduced into Western Australia in contravention of any Proclamation under this Act may, together with any package containing the same or with which the same may have come in contact, be seized by any inspector or other authorised officer, or any officer of Customs, and be disinfected, destroyed, or otherwise disposed of as such inspector or officer deems fit, at the expense of the owner or person in charge thereof.

(2.) It shall be the duty of all officers of Customs to assist in carrying out the provisions of this section and preventing the introduction into Western Australia of anything in contravention of any such Proclamation, and for that purpose they may, in respect of anything so introduced or attempted to be introduced, exercise all the powers conferred by "The Customs Laws Consolidation Act, 1892," in respect to uncustomed or prohibited goods.

Employment of  
assistants.

10. ANY inspector or other authorised officer may employ such assistants as he deems necessary in carrying out the provisions of this Act, and may pay them such remuneration as the Minister deems reasonable.

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**11.** THE owner, occupier, or other person through whose neglect, omission, or other default, or by reason of the infection of whose orchard, plants, fruits, or packages, the expenses of such employment have been incurred shall repay the same to the inspector on demand; and, in default of payment, such expenses may be recovered as a debt due to the Crown.

Payment of expenses incurred.

**12.** FOR the purpose of making an entry or removal, or otherwise performing his duties under this Act, any inspector or other authorised officer or assistant may, in case of resistance, use all necessary force.

Use of force in case of resistance.

**13.** 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 other authorised officer or assistant whilst in the performance of his duty under this Act;

Persons obstructing officers.

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 other authorised officer or assistant; but every such action may be commenced and proceeded with as if this Act had not been passed, any rule of law to the contrary notwithstanding.

**14.** NO inspector or other authorised officer 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.

Officers not to be trespassers.

**15.** ANY notice to be given to any person by any inspector or other authorised officer or assistant in the performance of his duties under this Act 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 cannot be found in Western Australia, then by affixing such notice in a conspicuous place on the land to which such notice relates.

Notices to be given in writing.

**16.** NO person shall be entitled to any compensation whatsoever in respect of anything done by any inspector or other authorised officer or assistant in the discharge of his duties under this Act, 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 in respect of any loss or injury that may directly or indirectly result therefrom.

Persons not entitled to compensation.

**17.** EVERY person commits an offence against this Act who, directly or indirectly, by himself, his servant or agent,—

Offences.

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- (1.) Sells or offers or exposes for sale any plant, fruit, or package which is diseased or infected, or (except under the direction of an inspector or other authorised officer) brings or suffers the same to be brought upon, or removes or suffers the same to be removed from his premises; or
- (2.) Sells or offers or exposes for sale any plant, fruit, or thing which has been introduced into Western Australia in breach of any Proclamation under this Act, or (except under the direction of any inspector or other authorised officer) brings or suffers the same to be brought upon, or removes or suffers the same to be removed from his premises; or
- (3.) Does or attempts to do any other act in breach of this Act or of any Proclamation, Order in Council, 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, Order in Council, or Regulation under this Act.

Penalty. **18.** EVERY person who commits an offence against this Act is liable to a penalty not exceeding One hundred pounds.

Recovery of penalties. **19.** ALL penalties under this Act shall be recovered in a summary way before a Stipendiary Magistrate alone, and upon prosecution by an inspector, or some person authorised by him, or by the Minister in that behalf.

Proof of knowledge. **20.** 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.

Penalties, etc., to form part of Consolidated Revenue Fund. **21.** ALL penalties and other moneys recovered or received under this Act shall be paid into the Public Account, and form part of the Consolidated Fund.

Payment of expenses incurred. **22.** ALL expenses incurred in the administration of this Act shall be paid out of moneys to be appropriated by Parliament for that purpose.

Actions against officers to be commenced within two months of cause. **23.** (1.) NO action shall be brought against any inspector, or other authorised officer or assistant acting in execution of this Act, for anything done in pursuance hereof or under the authority hereof,

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unless such action is commenced within two months after the cause of action arose, nor unless, at least one month before the action is commenced, notice in writing of intention to commence the same, and of the cause thereof, and of the damage claimed, is given to the defendant.

(2.) The defendant in any such action may give this Act and any special matter in evidence.

**24.** THE Governor by Order in Council gazetted may from time to time make such regulations as he deems necessary for any part of the purposes following, that is to say:— Regulations.

- (1.) Prescribing the manner in which diseased plants or fruit and infected packages shall be treated, cleansed, destroyed, or otherwise disposed of.
- (2.) Providing for the registration of all orchards, vineyards, and nurseries.
- (3.) Prescribing the matter in respect whereof fees shall be payable under this Act, fixing the amount of such fees, and the mode of the payment and the recovery thereof.
- (4.) And generally for any other purpose for which regulations are contemplated by this Act, or which he deems necessary in order to give full effect to this Act.

**25.** THE Destructive Insects and Substances Act, 1880, and the Insect Pests Act, 1894 are hereby repealed: Repeal of 44 Vict.,  
No. 5, and 58 Vict.,  
No. 32.

Provided that all Proclamations and Orders in Council made thereunder and in force at the time of the coming into operation of this Act shall be deemed to have been made under this Act, and shall continue in force until revoked under this Act.

**26.** ANY person feeling aggrieved by any order or conviction under this Act shall be entitled to appeal therefrom to the Court of General or Quarter Sessions or to the Supreme Court in the manner and form and in the terms respectively which are prescribed by the law in force for the time being with reference to appeals. Appeals.

In the name and on behalf of the Queen I hereby assent to this Act.

ALEX. C. ONSLOW, Governor's Deputy.