

**PLANT DISEASES AMENDMENT  
ACT 1993**

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**No. 40 of 1993**

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**AN ACT to amend the *Plant Diseases Act 1914* and for related purposes.**

*[Assented to 20 December 1993.]*

The Parliament of Western Australia enacts as follows:

**Short title**

**1.** This Act may be cited as the *Plant Diseases Amendment Act 1993*.

**Commencement**

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

**Principal Act**

3. In this Act the *Plant Diseases Act 1914\** is referred to as the principal Act.

[\* *Reprinted as at 25 September 1991.*]

**Section 4 amended**

4. Section 4 of the principal Act is amended —

(a) by inserting before the definition of “covering” the following definition —

“ **“authorized inspector”** means an inspector appointed under section 7A; ”;

(b) by inserting after the definition of “covering” the following definition —

“ **“Director General”** means Director General of Agriculture or a person authorized by him; ”;

(c) in the definition of “potential carrier” —

(i) in paragraph (d) by deleting “plants.” and substituting the following —

“ plants; and ”; and

- (ii) after paragraph (d) by inserting the following paragraph —

“  
    (e) any other thing declared by the  
        Director General to be a  
        potential carrier;  
”;

and

- (d) by inserting after the definition of “potential carrier” the following definition —

“  
    “**private inspection and treatment premises**” means private inspection and treatment premises registered under this Act.  
”.

### Sections 7A, 7B and 7C inserted

5. After section 7 of the principal Act the following sections are inserted —

“

#### **Authorized inspector**

**7A.** (1) The Minister may, in writing appoint a person to be an authorized inspector for the purposes of this Act.

(2) Every authorized inspector appointed under subsection (1) must perform the functions specified in his or her notice of appointment.

(3) The Director General must issue to each authorized inspector a certificate, in a form approved by the Director General, which —

- (a) certifies that the person is an authorized inspector for the purposes of this Act; and

- (b) contains a brief statement summarizing the functions of the inspector under this Act specified in the notice of appointment referred to in subsection (2).

(4) An authorized inspector must produce the certificate referred to in subsection (3) whenever required to do so by any person in respect of whom an authorized inspector has, or is about to, exercise any function conferred on the authorized inspector under this section.

(5) A certificate purporting to have been furnished under subsection (3) is evidence in any court of the appointment to which the certificate purports to relate.

### **Relationship to Public Service**

**7B.** The fact that an authorized inspector is appointed under section 7A does not —

- (a) render the provisions of the *Public Service Act 1978*, or any Act applying to persons as officers of the Public Service of the State, applicable to that authorized inspector; or
- (b) affect or prejudice the application to the authorized inspector of those provisions if they applied to the authorized inspector at the time of his or her appointment.

### **Arrangements for services**

**7C.** The Minister may enter into arrangements with any body or person with respect to the carrying out of any work that may be necessary or desirable for the purposes of this Act.

**Section 9 repealed**

6. Section 9 of the principal Act is repealed.

**Section 10 amended**

7. Section 10 of the principal Act is amended by deleting “any disease” and substituting the following —

“

a prescribed disease or prescribed class of disease or group of diseases

”.

**Section 12 amended**

8. Section 12 of the principal Act is amended by inserting after subsection (2) the following subsections —

“

(2a) Where an owner or occupier contravenes subsection (2), an inspector may at any time, with or without assistants, enter an orchard referred to in subsection (2) and take any of the steps and measures prescribed under subsection (2) in order to control and eradicate disease and prevent the spread of disease.

(2b) The expenses of or incidental to any action taken by an inspector under subsection (2a) are recoverable from the person guilty of the breach in any court of competent jurisdiction.

”.

**Sections 12A, 12B, 12C, 12CA, 12CB, 12D, 12E and 12F repealed**

9. Sections 12A, 12B, 12C, 12CA, 12CB, 12D, 12E and 12F of the principal Act are repealed.

**Section 13 amended**

10. Section 13 of the principal Act is amended —

- (a) in subsection (1) by deleting paragraph (a) and substituting the following paragraph —

“

- (a) with or without assistants, enter any orchard, land, premises or house, or any structure used for the storage of fruit;

”;

and

- (b) by inserting after subsection (1) the following subsection —

“

(1a) An inspector may, in carrying out his functions under subsection (1), use any means of detection which the inspector considers appropriate including the use of —

- (a) animals trained to detect specific substances; and

- (b) mechanical apparatus.

”.

**Section 17 repealed and sections 17 and 17A inserted**

11. Section 17 of the principal Act is repealed and the following sections are inserted —

“

**Power to destroy infected plants, coverings etc.**

17. For the purpose of carrying out the objects of this Act an inspector may destroy or otherwise dispose of any —

- (a) trees (bearing fruit or otherwise), plants or fruit which are infected or which he believes to be infected; or
- (b) coverings in or with which the trees, plants or fruit have been contained or packed or come in contact.

**Powers under the *Horticultural Produce Commission Act 1988***

17A. (1) Any officers, employees and other persons engaged by a growers' committee under section 12 (2) of the *Horticultural Produce Commission Act 1988* may, when authorized by a growers' committee elected to administer a fruit fly foliage baiting scheme, enter any orchard within the specified area to bait or spray all or any of the fruit trees and fruit vines in the manner and with the materials determined by the growers' committee.

(2) In subsection (1) “**specified area**” means the portion of the State specified in a notice under section 11 (1) (a) (ii) of the *Horticultural Produce Commission Act 1988* in relation to which the growers' committee is appointed.

”

**Sections 19 and 20 repealed**

12. Sections 19 and 20 of the principal Act are repealed.

**Section 22 repealed and sections 22, 22A and 22B substituted**

13. Section 22 of the principal Act is repealed and the following sections are substituted —

“

**Power to destroy plants in neglected orchards**

22. (1) Where the Director General considers that an orchard or any part of an orchard is neglected the Director General may report to the Minister who may —

- (a) serve notice on the owner or occupier of the orchard ordering the removal of the neglected plants; or
- (b) order the immediate removal of the neglected plants by the Director General.

(2) Where an owner or occupier fails to comply with a notice served under subsection (1) (a), within the time prescribed in the notice, the Minister may order the destruction of the neglected plants forthwith.

(3) The Director General may direct that the owner or occupier of the orchard in which plants are destroyed under the authority of and in accordance with this section is liable for the payment of the whole or any part of any expenses incurred in connection with the destruction of the plants.

(4) The whole or part of any expenses referred to in a direction under subsection (3) are recoverable from the owner or occupier, as the case may be, in any court of competent jurisdiction.

(5) The owner or occupier who receives a notice under subsection (1) (a) may, within the time specified in the notice, appeal to the Minister in the prescribed manner to review the order.

(6) On appeal under subsection (5) the Minister may confirm, vary or set aside the order.

(7) Without limiting subsection (6) the lodging of an appeal with the Minister under subsection (5) operates to stay any action by the Minister under subsection (2).

(8) For the purposes of this section an orchard is deemed to be a neglected orchard where the Director General certifies in writing that the plants growing in the orchard or part of the orchard are likely to spread disease.

**Private inspection and treatment premises may be used**

**22A.** Subject to section 22B an inspector may in private inspection and treatment premises —

- (a) inspect a consignment; and
- (b) take or cause to be taken any action he considers necessary to disinfect, destroy or otherwise treat or dispose of a consignment.

**Prescribed standards, conduct and registration of private inspection and treatment premises**

**22B.** (1) Private inspection and treatment premises must —

- (a) comply with the prescribed standards;
- (b) be conducted in the prescribed manner; and
- (c) be registered under this Act.

(2) An application for registration of private inspection and treatment premises must be —

- (a) made by the owner or occupier to the Director General in the prescribed manner; and
- (b) accompanied by the prescribed fee.

(3) The Director General may —

- (a) grant, with or without conditions; or
- (b) refuse,

an application referred to in subsection (2).

”.

**Section 23 amended**

**14.** Section 23 (1) of the principal Act is amended by inserting after “section” the following —

“ and section 22A ”.

**Sections 23A, 23B, 23C and 23D inserted**

15. After section 23 of the principal Act the following sections are inserted —

“

**Minister may give directions for urgent measures to control disease**

**23A.** (1) Where, in the opinion of the Minister, a procedure must be carried out immediately to —

- (a) prevent the introduction into the State or into any part of the State of a disease affecting plants;
- (b) eradicate and control disease; or
- (c) prevent the spread of disease,

the Minister may, in writing, direct an inspector, with or without assistants, to enter any property in order to carry out that procedure forthwith.

(2) A direction referred to in subsection (1) must specify —

- (a) the proposed procedure;
- (b) where there is a procedure prescribed in the regulations, the manner in which the proposed procedure is different from or varies the prescribed procedure; and
- (c) the period, being not more than 8 weeks, during which the direction remains in force.

(3) In subsection (2) “**proposed procedure**” means a procedure approved by the Director General.

**The Minister may approve an alternative procedure**

**23B.** (1) The Director General may seek approval from the Minister to implement an alternative procedure from that prescribed in the regulations for the movement of a potential carrier into the State or into or out of any part of the State.

(2) The Minister may grant temporary approval for an alternative procedure to be implemented where the Director General is satisfied that the procedure is appropriate.

(3) An approval granted under subsection (2) must specify —

- (a) the alternative procedure;
- (b) any chemical to be used in the alternative procedure; and
- (c) the period, being not more than 8 weeks, during which the approval remains in force.

**Procedures specified under section 23A or 23B may be prescribed in regulations**

**23C.** (1) The Director General may seek the approval of the Minister to cause the procedure specified in —

- (a) a direction under section 23A; or
- (b) an approval under section 23B,

to be prescribed in the regulations.

(2) Regulations made under subsection (1) (a) may prescribe the manner in which an inspector, with or without assistants, may enter a property and carry out the procedure.

(3) A direction under section 23A or an approval under section 23B ceases to have effect on the day on which regulations made under this section in relation to that direction or approval, as the case may be, come into operation.

**Person to declare any plants or potential carriers**

**23D.** (1) In order to prevent any disease from being introduced into the State or into any part of the State every person entering the State in a prescribed manner must lodge a declaration in the prescribed form with an inspector at the nearest point of entry.

(2) A declaration referred to in subsection (1) must —

- (a) specify any potential carrier which the person is bringing into the State;
- (b) contain the information required by the form; and
- (c) be signed in the manner specified in the form.

(3) An inspector may destroy any potential carrier brought into the State and the expenses incurred in disinfecting, destroying or otherwise disposing of or treating any potential carrier or in disinfecting or treating any container, vessel or conveyance in which the potential carrier was carried must be met by the

owner or person in charge of the potential carrier, as the Director General directs.

(4) Where the owner or person in charge of the potential carrier, as the case may be, fails to meet the expenses of or incidental to any action taken by an inspector under subsection (3), the whole or any part of those expenses are recoverable from the owner or person in charge of the potential carrier in any court of competent jurisdiction.

(5) For the purposes of this section —

**“nearest point of entry”** in relation to a person entering the State —

- (a) on a vessel, means the first port of entry for the vessel or where the vessel is an aircraft, the first airport at which the aircraft lands; and
- (b) in any conveyance or on foot, means the nearest prescribed inspection point;

**“vessel”** means any ship, boat, aircraft or other description of vessel used in navigation by sea or air.

(6) A person who fails to lodge a declaration as required by subsection (1) commits an offence.

### **Section 24 amended**

**16.** Section 24 of the principal Act is amended by deleting “jurisdiction, or may be recovered summarily on the complaint of

any inspector before any 2 justices of the peace.” and substituting the following —

“ jurisdiction. ”.

### **Sections 35, 35AA, 35AB and 35AC inserted**

17. After section 34 of the principal Act the following sections are inserted —

#### **“ Infringement notices**

**35.** (1) A reference in subsection (2), (3), (5) or (7) to an **“authorized person”** is a reference to a person appointed under subsection (11) to be an authorized person for the purposes of the subsection in which the term is used.

(2) An authorized person who has reason to believe that a person has committed a prescribed offence against this Act may, within 21 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.

(3) An infringement notice must be in the prescribed form and must in every case —

- (a) contain a description of the alleged offence;
- (b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorized person within a period of 28 days after the giving of the notice; and

- (c) inform the alleged offender as to who are authorized persons for the purposes of receiving payment of modified penalties.

(4) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice must be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

(5) An authorized person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

(6) Where the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn, the bringing of proceedings and the imposition of penalties are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(7) An authorized person may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.

(8) Where an infringement notice has been withdrawn after the modified penalty has been paid, the amount must be refunded.

(9) An amount paid as a modified penalty must, subject to subsection (8), be paid into the Plant Diseases Modified Penalties Revenue Fund established under section 35AA.

(10) Payment of a modified penalty must not be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

(11) The Director General may, in writing, appoint persons or classes of persons to be authorized persons for the purposes of subsection (2), (3), (5) or (7) or for the purposes of 2 or more of those subsections, but a person who is authorized to give infringement notices under subsection (2) is not eligible to be an authorized person for the purposes of any of the other subsections.

(12) The Director General must issue to each person who is authorized to give infringement notices under this section a certificate stating that the person is so authorized, and the authorized person must produce the certificate whenever required to do so by a person to whom he has given or is about to give an infringement notice.

### **Modified penalties revenue fund**

**35AA.** (1) There is to be established and kept at the Treasury an account called the "Plant Diseases Modified Penalties Revenue Fund" (referred to in this section and section 35AB as the "**Fund**").

(2) The Director General must ensure that all money received in the Department of Agriculture as payment of —

- (a) modified penalties under section 35; or
- (b) amounts collected under Part VIBA of the *Justices Act 1902*,

is credited to the Fund.

**Use of money in the Fund**

**35AB.** (1) Money in the Fund may be applied towards —

- (a) the enforcement of this Act including the operation of the infringement notice system under section 35;
- (b) the cost of measures to prevent or eradicate pests and diseases affecting plants and plant products;
- (c) the cost of programmes to promote public awareness of the requirements of this Act; and
- (d) purposes that the Minister considers will promote and encourage plant production.

(2) The amount that is to be charged to and paid out of the Fund for the purposes specified in subsection (1) (a) is to be determined annually by the Director General and no money is to be paid out for those purposes except as so determined.

(3) No amount is to be charged to and paid out of the Fund for any purpose specified in subsection (1) (b) to (d) except as determined by the Minister.

**Limitation period**

**35AC.** Notwithstanding anything in any Act, proceedings for an offence against this Act may be brought within 3 years after the commission of the offence or, with the consent of the Attorney General, at a later time not exceeding 6 years from the commission of the offence.

**Section 39 amended**

18. Section 39 of the principal Act is amended in subsection (2) —

(a) by inserting after paragraph (be) the following paragraphs —

“

(bf) for the purposes of section 22B —

(i) provide for —

(I) the standards required in private inspection and treatment premises;

(II) the conduct of private inspection and treatment premises;

(III) the registration, or classes of registration, of private inspection and treatment premises;

(IV) the annual renewal of any registration referred to in subparagraph (III);

(V) the imposition of conditions (if any) on the registration of private inspection and treatment premises; or

(VI) the suspension or cancellation by the Director General of the registration of any private

inspection and treatment premises at any time if they are not operated in accordance with the regulations;

(ii) prescribe facilities and the standards of design and construction required under subsection (1) of that section; and

(iii) prescribe the fees payable under subsection (2) (b) of that section;

(bg) prescribe the procedures that may be specified in —

(i) a direction under section 23A; and

(ii) an approval under section 23B;

(bh) prescribe the form of declaration required under section 23D (1);

”;

and

(b) after paragraph (f) by inserting the following paragraphs —

“

(fa) prescribe the offences for which an infringement notice may be given under section 35;

(fb) prescribe a modified penalty for an offence prescribed under paragraph (fa);

”.

### **Transitional and savings provisions — Schedule 1**

**19.** (1) Schedule 1 clause 2 has effect in relation to the repeal effected under section 6.

(2) Schedule 1 clause 3 has effect in relation to the repeals effected under section 9.

### **Consequential amendments to other Acts**

**20.** The Acts referred to in Schedule 2 are amended as set out in that Schedule.

### **Condonation**

**21.** The failure of any Committee, appointed under section 12C of the principal Act and in existence at any time during the period commencing on 1 July 1986 and ending on the commencement of this Act, to comply with *Division 14* of Part II of the *Financial Administration and Audit Act 1985* during that period is condoned.

**SCHEDULE 1**

[section 19]

**TRANSITIONAL AND SAVINGS PROVISIONS**

**Definitions**

1. In this Schedule "**Committee**" means a Committee appointed under section 12C of the principal Act and in existence immediately before 30 June 1994.

**Repeal effected under section 6**

2. (1) In this clause "**Commencement**" means the commencement of section 6 of this Act.

(2) Any moneys which were immediately before the Commencement standing to the credit of The Fruit Fly Eradication Fund established under section 9 of the principal Act must on the Commencement be credited to the Consolidated Fund.

**Repeal effected under section 9**

3. On 30 June 1994 —

- (a) any Committee is abolished;
- (b) any fruit fly foliage baiting scheme in existence immediately before that date is deemed to have been wound up;
- (c) any vehicles, plant, equipment or materials vested in a Committee vest in the Minister; and
- (d) the Minister must —
  - (i) cause any moneys held by, or due to, a Committee to be appropriated from that Committee;

- (ii) if there are any debts due and owing by a Committee cause any moneys appropriated from that Committee under subparagraph (i) to be applied to the payment of those debts and any balance remaining after that application to be credited to the Consolidated Fund or as directed by the Minister; and
- (iii) if there are no debts due and owing by a Committee cause any moneys appropriated from that Committee under subparagraph (i) to be credited to the Consolidated Fund or as directed by the Minister.

**SCHEDULE 2**

[section 20]

**CONSEQUENTIAL AMENDMENTS TO OTHER ACTS**

<i>Short title of Act</i>	<i>Amendment</i>
<i>Constitution Acts Amendment Act 1899</i>	In Schedule V Part 3, delete "Any committee appointed under section 12C of the <i>Plant Diseases Act 1914</i> ".
<i>Financial Administration and Audit Act 1985</i>	In Schedule 1, delete "Fruit Fly Foliage Baiting Committees".
<i>Local Government Act 1960</i>	In section 277 (1), delete "or with Committees appointed under subsection (1) of section twelve C of the <i>Plant Diseases Act 1914</i> " and substituting the following —  " or with a growers' committee established under the <i>Horticultural Produce Commission Act 1988</i> "