

PLANT DISEASES.

No. 51 of 1984.

AN ACT to amend the Plant Diseases Act 1914.

[Assented to 5 September 1984.]

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

1. (1) This Act may be cited as the *Plant Diseases Amendment Act 1984*.

Short title
and
principal
Act.

(2) In this Act the Plant Diseases Act 1914 is referred to as the principal Act.

Reprinted as
approved 8
July 1971
and
amended by
Acts Nos. 94
of 1972
(as amended
by No. 19
of 1973),
3 of 1974,
52 of 1978,
64 of 1979
and 55 and
63 of 1981.

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Section 3
repealed.

3. Section 3 of the principal Act is repealed.

Section 4
amended.

4. Section 4 of the principal Act is amended—

(a) in the definition of “covering” by inserting after “description” the following—

“ used to cover any thing or ”;

(b) by repealing the definition of “disease” and substituting the following definition—

“ “disease” means any disease that commonly attacks plants and includes any plant, animal, fungus, bacteria, virus or nematode commonly found in or on plants; ”;

(c) by deleting the definition of “infected” and substituting the following definition—

“ “infected” means actually infected with disease or liable, by reason of contact or proximity, to be infected; ”;

(d) by deleting the definition of “inspector” and substituting the following definition—

“ “inspector” means a person appointed as an inspector under or for the purposes of this Act; ”;

(e) by deleting the definition of “Minister”;

(f) by deleting the definitions of “pest”, “prescribed”, “regulation”, and “the State”;

and

(g) by inserting the following definition—

“ “potential carrier” means anything capable of carrying and transmitting disease and includes—

- (a) animals;
- (b) plants;
- (c) coverings and any movable thing used for or in connection with plants; and
- (d) the clothing and personal effects of persons handling plants. ”.

5. Section 5 of the principal Act is repealed and the following section is substituted—

Section 5 repealed and substituted.

“ 5. The purposes of this Act are to prevent the introduction into the State of diseases affecting plants, to eradicate and control diseases in or on plants and to prevent the spread thereof. ”.

Purposes of this Act.

6. Section 6 of the principal Act is repealed.

Section 6 repealed.

7. Section 6A of the principal Act is amended—

Section 6A amended.

(a) by inserting after “plant” wherever occurring the following “or potential carrier”;

(b) by deleting “sections five and six of”;
and

(c) by deleting “a period of one month from the time when the payment became due” and substituting the following—

“ the time specified in a notice given by the inspector to the person who appears to him to be the owner of the plant or potential carrier ”.

Section 7
amended.

8. Section 7 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

“ (1) There shall be appointed under and subject to the Public Service Act 1978 such inspectors and other officers as are necessary for carrying out the provisions of this Act. ”.

Section 9
amended.

9. Section 9 of the principal Act is amended in subsection (4) by deleting “pest”.

Section 11
amended.

10. Section 11 of the principal Act is amended in subsection (1) by deleting “\$1 000” and substituting the following—

“ \$5 000 ”.

Section 12
amended.

11. Section 12 of the principal Act is amended in subsection (3) by deleting “\$1 000” and substituting the following—

“ \$5 000 ”.

Section 12C
amended.

12. Section 12C of the principal Act is amended in subsection (1) by deleting “the fruit fly pest” wherever occurring in paragraph (a) and substituting “fruit fly”.

Section 13
amended.

13. Section 13 of the principal Act is amended in subsection (2) by deleting “Penalty: \$2 000.”.

Section 14
amended.

14. Section 14 of the principal Act is amended in subsection (3) by deleting “\$2 000” and substituting the following—

“ \$5 000 ”.

Section 20
amended.

15. Section 20 of the principal Act is amended by deleting “\$400” and substituting the following—

“ \$1 000 ”.

16. Section 23 of the principal Act is amended—

Section 23
amended.

- (a) in subsection (1) by deleting the definition “prescribed material”;
- (b) by repealing subsections (2) and (3) and substituting the following subsections—

“ (2) In order to prevent any disease from being introduced into the State or into any portion of the State, or being spread within the State an inspector may—

- (a) inspect any conveyance, vessel or consignment for the purpose of ascertaining whether there is any potential carrier therein or thereon;
- (b) seize any potential carrier that is being introduced or attempted to be introduced into the State or into any portion of the State, or being moved or attempted to be moved within the State, in contravention of this Act and disinfect, destroy or otherwise treat or dispose of it as he thinks fit;
- (c) subject to the regulations, detain a conveyance, vessel or consignment pending the inspection thereof to ascertain whether there is any potential carrier therein or thereon or pending the disinfection or other treatment of the potential carrier;
- (d) issue to the owner or person in charge of a conveyance, vessel or consignment a

notice directing that he take it or cause it to be taken, under quarantine, to a place specified in the notice in order for it to be inspected to ascertain whether there is any disease therein or thereon or for any potential carrier to be disinfected or otherwise treated.

(3) Any expenses incurred by an inspector in disinfecting, destroying or otherwise disposing of or treating any plant or covering or in disinfecting or treating any conveyance or vessel pursuant to subsection (2) shall be met by the owner or person in charge thereof, as the Minister shall direct. ”;

(c) in subsection (5), by deleting “Penalty: \$2 000. ”; and

(d) in subsection (6), by deleting “Paragraphs (3) and (4) of section 33” and substituting the following—

“ Subsections (2) and (3) of section 34 ”.

Section 32A
inserted.

17. The principal Act is amended by inserting after section 32 the following section—

Removal of
plants from
quarantine
prohibited.

“ 32A. (1) An inspector may direct that any potential carrier whether brought into the State or not be placed in quarantine.

(2) No potential carrier that is required to be placed in quarantine pursuant to this Act or under this Act or regulations made under this Act shall, until released from quarantine, be moved, dealt with or interfered with except by authority and in accordance with this Act and the regulations.

(3) A person who contravenes subsection (2) commits an offence against this Act.

18. Section 33 of the principal Act is amended— Section 33 amended.

(a) in paragraph (1)—

(i) by inserting after “sale” the following—

“ or supplies or otherwise disposes of ”; and

(ii) by inserting after “thing” where secondly occurring the following—

“ contrary to this Act or a regulation made under this Act ”;

(b) in paragraph (2)—

(i) by inserting after “sale” the following—

“ or supplies or otherwise disposes of ”; and

(ii) by inserting after “Act” the following—

“ or a regulation made under this Act ”;

(c) by deleting “; or” after paragraph (2) and substituting a full-stop; and

(d) by deleting paragraphs (3) and (4) and the conjunction “or” after paragraph (3).

19. Section 34 of the principal Act is amended— Section 34 amended.

(a) by inserting after the section designation “34.” the subsection designation “(1)”;

(b) by deleting "not exceeding \$2 000." and substituting the following—

“ as follows—

(a) in the case of a natural person—

(i) for a first offence, to a minimum penalty of \$1 000 and to a maximum penalty of \$5 000;

(ii) for a second offence, to a minimum penalty of \$2 000 and a maximum penalty of \$5 000 or imprisonment for a period of 6 months or both;

(iii) for a third or subsequent offence to a minimum penalty of \$5 000 and a maximum penalty of \$10 000 or imprisonment for a period of 12 months or both;

(b) in the case of a body corporate—

(i) for a first offence to a minimum penalty of \$5 000 and to a maximum penalty of \$7 000;

(ii) for a second offence, to a minimum penalty of \$7 000 and to a maximum penalty of \$10 000;

- (iii) for a third or subsequent offence, to a minimum penalty of \$10 000 and to a maximum penalty of \$25 000. ”; and

(c) by inserting the following subsections—

“ (2) A person who attempts to commit an offence against this Act is guilty of an offence against this Act.

(3) A person who omits or neglects to perform any duty or obligation imposed on him by this Act is guilty of an offence against this Act. ”.

20. Section 35 of the principal Act is amended by deleting “The” and substituting the following—

Section 35 amended.

“ Except where otherwise provided under this Act, the ”.

21. The principal Act is amended by inserting after section 35 the following sections—

Sections 35A, 35B and 35C inserted.

“ 35A. (1) Where a corporation is convicted of an offence against this Act, every person who at the time of the commission of the offence was—

Liability of directors.

(a) a director or member of the governing authority of the corporation;

(b) a person, other than a person giving advice to the directors in his professional capacity, in accordance with whose directions the corporation is accustomed to act; or

(c) an officer concerned in the management of the corporation,

and who authorized or permitted the commission of the offence, is guilty of the like offence.

(2) A person referred to in subsection (1) may, on the request of the complainant, be convicted on the proceedings on which the corporation is convicted if the court is satisfied that the person had reasonable notice that the complainant intended to make that request.

Liability of
principal for
acts of agent.

35B. (1) Notwithstanding any other law or rule of law, where any person (in this section referred to as "the agent") acting, otherwise than as an employee, for or on behalf of another person (in this section referred to as "the principal") commits an offence against this Act the principal is guilty of an offence against this Act in like manner as the agent and may be proceeded against and convicted accordingly unless he proves that he had no knowledge of the commission of the offence and that he took all reasonable precautions and used all due diligence to avoid the commission of the offence.

(2) The principal may be proceeded against and convicted pursuant to subsection (1) notwithstanding that the agent has not been proceeded against or has not been convicted under this Act.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed.

Liability of
employer for
offence of
employee.

35C. (1) Notwithstanding any other law or rule of law, where any person, as the employee of another person (in this section referred to as "the employer") commits an offence against this Act, the employer is guilty of an offence against this Act in like manner as the employee (whether or

not the offence was committed without his authority or contrary to his orders or instructions) and may be proceeded against and convicted accordingly unless he proves that he had no knowledge of the commission of the offence and could not, by the exercise of diligence, have prevented the commission of the offence.

(2) The employer may be proceeded against and convicted pursuant to subsection (1) notwithstanding that the employee has not been proceeded against or has not been convicted under this Act.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by or under this Act on any person by whom an offence against this Act is actually committed. ”.

22. Section 39 of the principal Act is amended— Section 39 amended.

(a) in subsection (2)—

(i) by inserting after paragraph (ac) the following paragraphs—

“ (b) prescribe conditions under which any potential carrier may be brought into the State and provide that the breach of any such condition constitutes an offence;

(ba) provide for the quarantine, examination and certification of any potential carrier whether brought into the State or not, and provide for the seizure and destruction of any potential carrier found to be infected;

(bb) prescribe places to be the places at which plants or fruit are permitted to enter the State;

- (bc) prohibit, restrict or regulate the movement of any plant or fruit, conveyance, vessel, coverings or other things whether infected or not, into the State or into or out of any specified part of the State;
 - (bd) provide for the management of quarantine areas and for the treatment and period of treatment, of plants or fruit in quarantine areas and prohibit the removal therefrom of, and interference with, any such plants or fruit;
 - (be) prescribe all necessary forms and the manner of, and time for, their completion and require any information or certificate supplied pursuant to the regulations to be verified by statutory declaration; ”; and
- (ii) in paragraph (f), by deleting “pest” and substituting the following—
- “ disease ”; and
- (b) by inserting after subsection (2) the following subsection—
- “ (3) Section 43 (8) (c) of the Interpretation Act 1984 shall be deemed to be amended for the purposes of this section by deleting “a specified person or body or a specified class of person or body” and substituting the following—
- “ the Director of Agriculture or a person authorized by him ”. ”.