

PLANT DISEASES AMENDMENT AND REPEAL.

No. 55 of 1981.

**AN ACT to amend the Plant Diseases Act 1914-1979
and repeal the Plant Diseases (Registration
Fees) Act 1941-1973 and for related purposes.**

[Assented to 13 October 1981.]

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 and Repeal Act 1981*.

Short title
and citation.

(2) In this Act the Plant Diseases Act 1914-1979 is referred to as the principal Act.

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

(3) The principal Act as amended by this Act may be cited as the Plant Diseases Act 1914-1981.

Section 8
repealed.

2. Section 8 of the principal Act is repealed.

Section 9
amended.

3. Section 9 of the principal Act is amended—

(a) by repealing subsection (2) and substituting the following subsection—

“ (2) The said fund shall consist of moneys appropriated by Parliament to the purposes of the fund and any other moneys lawfully paid into the fund. ” ; and

(b) by inserting after subsection (4) the following subsection—

“ (5) In addition to being used and applied for the purposes mentioned in subsection (4) of this section the moneys in the said fund may be used and applied for the carrying out of surveys under section 12B of this Act and the taking of polls under sections 12B and 12C of this Act. ” .

Section 12A
amended.

4. Section 12A of the principal Act is amended—

(a) by deleting “registered under section eight of this Act and”;

(b) by deleting “the owners or occupiers of orchards registered as aforesaid” and substituting the following—

“ occupiers of orchards situated ” ;

(c) by deleting “and the three next following sections”, in both places where it occurs, and substituting the following in each case—

“ section and sections 12B to 12E, both inclusive, of this Act ” ; and

(d) by inserting after “apply” the following—

“ and the term “orchard” means an orchard containing one or more fruit trees or one or more fruit vines ” .

5. Section 12B of the principal Act is repealed and the following section is substituted—

Section 12B
repealed
and
substituted.

“ 12B. (1) When a request has been made under section 12A of this Act, the Minister may, if he thinks fit—

Vote of
occupiers of
orchards,
how taken.

(a) direct the Director of Agriculture to cause a survey to be carried out for the purpose of locating and recording the orchards in such district and identifying and recording the occupiers thereof and to report to the Minister when the survey has been completed; and

(b) on receipt of the Director’s report under paragraph (a) of this subsection, publish notice in a newspaper circulating in such district directing that on a day specified in the notice, being a day not less than 28 days nor more than 56 days after the receipt of that report, a poll shall be taken of occupiers of orchards situated in such district for or against the introduction within such district of a compulsory fruit fly foliage baiting scheme under and for the purposes of this Act.

(2) For the taking of a poll under subsection (1) of this section the Minister shall cause a special roll of occupiers of orchards situated in such district to be prepared in accordance with the regulations from the information recorded in the survey carried out pursuant to paragraph (a) of subsection (1) of this section. ” .

Section 12C
amended and
transitional
provisions.

6. (1) Section 12C of the principal Act is amended in subsection (1)—

(a) in subparagraph (i) of paragraph (a) by deleting “would, if a poll were held, be entitled to vote” and substituting the following—

“ are, according to the records maintained by the Committee pursuant to paragraph (db) of this subsection, occupiers of orchards situated in such district ” ;

(b) by deleting paragraph (aa) and substituting the following paragraphs—

“ (aa) Where a poll is directed or requested under paragraph (a) of this subsection the Minister shall publish notice in a newspaper circulating in such district directing that on a day specified in the notice, being a day during the period commencing on 1 June in any year and ending on 31 July in the same year, a poll shall be taken of occupiers of orchards situated in such district for or against the continuance of the scheme.

(aaa) For the taking of a poll directed or requested under paragraph (a) of this subsection the Minister shall cause a special roll of occupiers of orchards situated in such district to be prepared in accordance with the regulations from the information in the records maintained by the Committee pursuant to paragraph (db) of this subsection. ” ;

(c) in paragraph (ab)—

(i) by deleting “under the provisions of paragraph (a) of this section” and substituting the following—

“ directed or requested under paragraph (a) of this subsection ” ;

(ii) by deleting “owners and” ; and

(iii) by deleting “by paragraph (a) of this section” and substituting the following—

“ by that paragraph ” ; and

(d) by inserting after paragraph (da) the following paragraph—

“ (db) The Committee shall maintain records of orchards situated in such district and the occupiers thereof. ” .

(2) Any fruit fly foliage baiting scheme which was introduced before the date of the coming into operation of this Act and which has not been wound up before that date shall be continued for the period commencing on that date and ending when the scheme is either wound up or continued pursuant to section 12C (1) of the principal Act as amended by this section.

(3) A scheme to which subsection (2) of this section applies shall be administered, during the period mentioned in that subsection, by the Committee that was administering it immediately before the coming into operation of this Act, and any casual vacancy in the office of a member of the Committee, other than the Chairman, shall be filled by the appointment in accordance with the regulations of a person who is, at the time of his appointment, the occupier of an orchard situated in the district according to the records maintained by the Committee pursuant to section 12C (1) (db) of the principal Act as amended by this Act.

Sections
12CA and
12CB
inserted.

7. After section 12C of the principal Act the following sections are inserted—

Regulations
as to polls
and notifica-
tion of
result.

“ 12CA. (1) Regulations under this Act may prescribe the manner in which and conditions under which, polls may be taken under sections 12B and 12C of this Act and, in particular, may—

- (a) prescribe matters relating to the preparation of the roll for such a poll including the eligibility and procedure for enrolment in the event of—
 - (i) there being two or more occupiers of an orchard; or
 - (ii) a person being the occupier of more than one orchard;
- (b) prescribe forms for voting papers and other matters relating to the taking of such a poll; and
- (c) provide for the appointment and payment of a returning officer and other officers for the taking and scrutiny of such a poll.

(2) The Minister shall cause to be published in the *Government Gazette* notification of the result of a poll taken under section 12B or 12C of this Act and that notification shall be conclusive evidence of the result of the poll and of the regularity of all antecedent proceedings and of due compliance with all necessary conditions.

Powers of
Minister to
settle
disputes etc.

12CB. The Minister may determine any dispute or question as to or arising out of—

- (a) the information recorded, or to be recorded, in a survey carried out pursuant to paragraph (a) of subsection (1) of section 12B of this Act or in records maintained by a Committee pursuant to paragraph (db) of subsection (1) of section 12C of this Act; or

- (b) the taking of a poll under section 12B or 12C of this Act,

and the decision of the Minister shall be final and conclusive. ” .

8. Section 21 of the principal Act is repealed and the following section is substituted—

Section 21 repealed and substituted.

“ 21. An inspector may require any person having in his possession or charge or under his control—

Power to require information.

- (a) fruit or plants;
- (b) any coverings or goods in or with which fruit or plants are or have been contained, packed or in contact;
- (c) any conveyance or vessel in or on which fruit or plants are being or have been carried; or
- (d) any other thing that is or may be infected,

to state his name and address and to answer any question that the inspector considers relevant in relation to the fruit, plants, coverings, goods, conveyance, vessel or other thing. ” .

9. Section 23 of the principal Act is repealed and the following section is substituted—

Section 23 repealed and substituted.

“ 23. (1) In this section—

Powers to prevent introduction and spread of disease.

“consignment” means a consignment of goods or things of any kind that is being or has been carried in or on a conveyance or vessel;

“prescribed material” means any plant, fruit, coverings, goods or other thing to which a proclamation under this Act applies.

(2) In order to prevent any prescribed material from being introduced into the State or into any portion of the State, or being moved within the State, in contravention of a proclamation under this Act an inspector may—

- (a) inspect any conveyance, vessel or consignment for the purpose of ascertaining whether there is any prescribed material therein or thereon;
- (b) seize any prohibited material 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 a proclamation under 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 prescribed material therein or thereon or pending the disinfection or other treatment of prescribed material therein or thereon;
- (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 prescribed material therein or thereon or for prescribed material therein or thereon to be disinfected or otherwise treated.

(3) Any expenses incurred by an inspector in disinfecting, destroying or otherwise disposing of or treating any prescribed material pursuant to subsection (2) of this section shall be met by the owner or person in charge thereof, as the Minister shall direct.

(4) An inspector may after inspecting any conveyance, vessel or consignment, whether or not that conveyance, vessel or consignment is infected,—

- (a) treat it in order to eradicate disease or to lessen the risk of the spread of disease;
- (b) detain it pending the treatment of it for the purposes mentioned in paragraph (a) of this subsection; or
- (c) issue to the owner or person in charge of it 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 treated for the purposes mentioned in paragraph (a) of this subsection.

(5) A person who contravenes or fails to comply with a notice issued under paragraph (d) of subsection (2) or paragraph (c) of subsection (4) of this section commits an offence against this Act.

Penalty: \$2 000.

(6) Paragraphs (3) and (4) of section 33 of this Act do not apply in relation to the movement of any plant, fruit, goods, coverings or thing pursuant to and in accordance with a notice issued under paragraph (d) of subsection (2) or paragraph (c) of subsection (4) of this section.

(7) The provisions of this section are in addition to and not in derogation of any other provisions of this Act conferring powers upon inspectors. ” .

Section 29
amended.

10. Section 29 of the principal Act is amended—

(a) by inserting after the section designation “29.” the following subsection designation—

“ (1) ” ; and

(b) by inserting after the proviso the following subsection—

“ (2) A person who, without reasonable excuse, fails to give to any inspector acting in the execution of this Act any information which the inspector is expressly authorized by this Act to require or may reasonably require, or who, when required to give any such information, makes any statement that is false or misleading in a material particular, shall be treated as having obstructed the inspector. ” .

Section 39
amended.

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

(a) by deleting “and coverings in which plants and fruit have been contained or packed” in paragraph (a) and substituting the following—

“ coverings, goods, conveyances, vessels or other things ” ;

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

“ (ab) regulate the detention of conveyances, vessels and other things pending inspection or disinfection or other treatment under this Act;

(ac) regulate the issue of notices under paragraph (d) of subsection (2) and paragraph (c) of subsection (4) of section 23 of this Act; ” ;

and

(c) by deleting paragraph (b) and the proviso to paragraph (c).

12. The principal Act is amended as set out in the Schedule to this Act. Penalties amended.

13. The Plant Diseases (Registration Fees) Act 1941-1973 is repealed. Repeal.

14. (1) In this section—

Refund of certain fees.

“Director” means the Director of Agriculture;

“registration fees” means fees paid pursuant to the Orchard Registration Regulations 1959 as in force at any time before the coming into operation of this Act.

(2) The owner or occupier of an orchard may apply to the Director for the refund of registration fees paid in respect of that orchard to the extent to which those fees relate to—

- (a) the period from the coming into operation of this Act to 30 June next following; or
- (b) the year commencing on 1 July next following the coming into operation of this Act or any succeeding year.

(3) Where an application for a refund of registration fees is made pursuant to subsection (1) of this section and it appears to the Director—

- (a) that the applicant is a person to whom the refund may properly be made; and
- (b) that the fees the subject of the application amount to not less than \$5,

the Director shall refund the fees to the applicant.

(4) Notwithstanding section 9 of the principal Act as amended by this Act The Fruit Fly Eradication Fund may be used and applied for the making of refunds under this section.

SCHEDULE. (Section 12)

AMENDMENT OF PENALTIES IN PRINCIPAL ACT.

<i>Provision amended</i>	<i>Amendment</i>
Section 11 (1) ...	Delete "Fifty dollars", substitute "\$1 000".
Section 12 (3) ...	Delete "one hundred dollars", substitute "\$1 000".
Section 13 (2) ...	Delete "One hundred dollars", substitute "\$2 000".
Section 14 (3) ...	Delete "Two hundred dollars", substitute "\$2 000".
Section 19 (1) ...	Delete "Twenty dollars", substitute "\$400".
Section 20	Delete "Twenty dollars", substitute "\$400".
Section 26	Delete "ten dollars", substitute "\$400".
Section 34	Delete "if no", substitute "unless another".
Section 34	Delete "two hundred dollars", substitute "\$2 000".
Section 39 (2) (g)	Delete "fifty dollars", substitute "\$1 000".
