

## PLANT DISEASES.

### No. 23 of 1914.<sup>1</sup>

(Affected by No. 26 of 1932 and No. 33 of 1941.)

[As amended by Acts:

No. 4 of 1925 assented to 24/9/25;  
No. 6 of 1926 assented to 7/10/26;  
No. 21 of 1933 assented to 13/11/33;  
No. 10 of 1935 assented to 24/10/35;  
No. 5 of 1939 assented to 5/10/39;  
No. 25 of 1946 assented to 14/1/47;  
No. 35 of 1947 assented to 1/12/47;  
No. 3 of 1949 assented to 24/8/49;  
No. 11 of 1949 assented to 14/9/49;  
No. 3 of 1950 assented to 15/11/50;  
No. 45 of 1952 assented to 18/12/52;  
No. 57 of 1954 assented to 23/12/54;  
No. 4 of 1956 assented to 3/10/56;  
No. 7 of 1958<sup>2</sup> assented to 29/9/58;  
No. 60 of 1958<sup>3</sup> assented to 24/12/58;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

**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, 1914-1958*, and shall come into operation on a day to be fixed by proclamation.<sup>1</sup>

Short title  
and com-  
mencement.  
Amended by  
No. 60 of  
1958, s. 1.

<sup>1</sup> Came into operation 29th December, 1914, see *Gazette* 24/12/14, p. 4655.

<sup>2</sup> To come into operation 1st July, 1959, see *Gazette* 26/3/59, p. 820.

<sup>3</sup> To come into operation 1st July, 1959, see *Gazette* 26/3/59, p. 820.

Repeal.

2. The Insect Pests Amendment Act, 1898, and the Act 63 *Victoriæ*, No. XIV., are hereby repealed.

Acts of authority done under repealed enactments to continue in force.

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certificates, orders, permits, instruments, and generally all acts of authority which originated under any enactment repealed by this Act and hereby re-enacted with or without modification, and which are subsisting or in force on or immediately prior to the commencement of this Act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.  
S. 4 amended by No. 3 of 1949, s. 3.

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 pest, 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;

“pest” means any fungus, virus, insect, mite, mollusc or nematode and such animal or plant groups of a parasitic nature as are declared by proclamation to be pests;

Added by  
No. 3 of  
1949, s. 3.

“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.

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

6. The Governor may by proclamation—

- (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.

Inspector's powers of detention.  
S. 6A  
inserted by  
No. 35 of  
1947, s. 3.

6A. An inspector may detain any plant in respect of which fees have become payable for any inspection pursuant to the provisions of sections five and six of this Act until payment of those fees, and failing

payment thereof within a period of one month from the time when the payment became due may dispose of the plant by sale or otherwise: Provided that in the case of sale the proceeds shall be appropriated in payment or part payment of the amount due for fees and any balance remaining after payment in full of the fees shall be transmitted to the person entitled thereto.

7. (1) The Governor may, subject to the Public Service Act, 1904,<sup>1</sup> 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.

8. (1) Subject to this Act and the regulations every owner or occupier of an orchard in which one or more fruit trees or one or more fruit vines are growing shall cause such orchard to be registered at the Department of Agriculture.

Orchards to be registered. Inserted by No. 10 of 1935, s. 2, as 7A, renumbered s. 8 in 1943 reprint and amended by No. 4 of 1956, s. 2; No. 7 of 1958, s. 3.

(2) Application for registration of an orchard shall be made in writing to the Director of Agriculture, on the prescribed form, signed by the applicant and accompanied by the prescribed registration fee and the prescribed particulars.

(3) Application for registration of an orchard shall be made at the times and for the periods prescribed.

(4) Any person who fails or neglects for one month to register an orchard as required by this section shall be guilty of an offence.

Penalty: Twenty pounds, and, in addition, a daily penalty of one pound for each day or part of a day during which such default continues.

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<sup>1</sup> Now Public Service Act, 1904-1956.

(5) Every orchard growing at the commencement of this section, and liable to be registered under this section, shall be so registered within one month after the commencement of this section, and the registration then effected shall continue in force until the thirtieth day of June next ensuing, and no longer.

(6) The Governor may by Order in Council from time to time declare that orchards situate within any part of the State as defined in the Order in Council shall be exempt from the provisions of this section, and thereafter every such orchard shall be so exempt until such Order in Council is revoked.

Repealed by  
No. 4 of  
1956, s. 2.

(7) [*Subsection (7) repealed by No. 4 of 1956, s. 2.*]

Repealed by  
No. 4 of  
1956, s. 2.

(8) [*Subsection (8) repealed by No. 4 of 1956, s. 2.*]

[No. 4 of  
1956, s. 2.]

(9) When any orchard is registered, the Director of Agriculture shall make such records thereof and issue such certificates as may be prescribed.

Fruit Fly  
Eradication  
Fund.  
Inserted by  
No. 10 of  
1935, s. 2,  
as s. 7B,  
renumbered  
s. 9 in 1943  
reprint.

9. (1) For the purposes of this Act there shall be established a special fund, to be administered by the Director of Agriculture through a separate trust account, and to be known as The Fruit Fly Eradication Fund:

(2) The said fund shall consist of all fees received by the Director of Agriculture from the registration and the transfer of the registration of orchards under this Act, and of any other moneys appropriated by Parliament to the purposes of such fund. All such fees and moneys on the receipt thereof by the Director of Agriculture shall be placed to the credit of the said fund.

(3) The moneys in the said fund shall be deposited in the name of the fund at the Treasury, and, subject to this Act, shall be operated on by the Director of Agriculture.

(4) Subject in every case to the approval in writing of the Minister, the moneys in the said fund may be used and applied for the control, prevention, and eradication of fruit fly pest, in such amounts from time to time, in such manner, and by such methods, as shall be authorised by the Minister.

10. 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.

Notice to be given of appearance of disease. No. 23 of 1914, s. 8, renumbered 10 in 1943 reprint.

11. (1) Whenever any disease to which this section applies exists or appears in any orchard, the occupier of the orchard shall take or cause to be taken such steps, and adopt such measures, as are prescribed as appropriate steps to be taken, and measures to be adopted, in order to eradicate such disease and prevent the spread thereof.

Obligation to carry out treatment for plant diseases. Inserted by No. 4 of 1925, s. 2, as s. 8A, amended by No. 6 of 1926, s. 2 and renumbered s. 11 in 1943 reprint.

Penalty: Twenty-five pounds.

(2) The diseases to which this section applies are such diseases as are for the time declared by any regulation to be subject to the provisions of this section.

(3) Whenever an inspector shall discover that a breach of this section has been committed he may take or cause to be taken all or any of the steps and adopt all or any of the measures aforesaid, and may also take and adopt any other step or measure which is authorised by the regulations, and the expenses of or incidental to any action taken by an inspector hereunder shall be recoverable from the person guilty of the breach.

Subsec. (3) added by No. 6 of 1926, s. 2.

12. (1) The Minister may by notice published in the *Government Gazette* and in a newspaper circulating in the area specified in such notice, declare that any portion of the State defined in such notice is infested with disease of the kind mentioned

Minister may declare certain areas to be infested. Inserted by No. 10 of 1935, s. 3, as s. 8B, renumbered s. 12 in 1943 reprint.

in such notice, and may at any time thereafter by notice published similarly to the first-mentioned notice cancel such first-mentioned notice.

(2) Upon the publication of such notice, and while the same continues in operation, the owner or occupier of every orchard situate within the area defined in the notice shall take, or cause to be taken such steps, and adopt or cause to be adopted, such measures as are prescribed as appropriate steps to be taken and measures to be adopted in order to control and eradicate the disease mentioned in the notice and to prevent the spread thereof, notwithstanding that such disease may not then exist or appear to exist in the orchard of such owner or occupier.

(3) Any person who fails or neglects to comply in every respect with the provisions of subsection (2) of this section shall be guilty of an offence.

Penalty: Fifty pounds.

Power to demand vote for a compulsory fruit fly foliage baiting scheme.  
S. 12A inserted by No. 25 of 1946, s. 2.

12A. Any incorporated Fruit Growers' Association, or any road board constituted under the Road Districts Act, 1919-1943,<sup>1</sup> or any municipality constituted under the Municipal Corporations Act, 1906-1943,<sup>2</sup> may, by writing under its common seal, delivered to the Minister, request in respect of orchards registered under section eight of this Act and situated within any district, that the question whether or not a compulsory fruit fly foliage baiting scheme should be introduced within such district be submitted to the vote of the owners or occupiers of orchards registered as aforesaid within such district.

For the purposes of this and the three next following sections, the term "district" means a road board district constituted under the Road Districts Act, 1919-1943,<sup>1</sup> or a municipality constituted under the Municipal Corporations Act, 1906-1943,<sup>2</sup> or such

<sup>1</sup> Now Road Districts Act, 1919-1956.

<sup>2</sup> Now Municipal Corporations Act, 1906-1956.



portion of such road board district or municipality as shall be specified and defined in the request aforesaid, and approved by the Minister as an area to which the provisions of this and the three next following sections should apply.

12B. (1) When any such request has been made as aforesaid, the Minister may, if he thinks fit, direct that the votes of the owners or occupiers of orchards registered as aforesaid within such district shall be taken on a day to be fixed by the Minister, not less than twenty-one days nor more than six weeks after the delivery of such request, and such day shall be notified in a newspaper circulating in the district; and on such day a poll shall be taken of all such owners or occupiers aforesaid for or against the proposed introduction within such district of a compulsory fruit fly foliage baiting scheme under and for the purposes of this Act.

Vote of owners and occupiers of registered orchards, how taken. (Cf. No. 38 of 1919, s. 286.) S. 12B inserted by No. 25 of 1946, s. 2.

(2) For the taking of such poll, the Minister shall cause a special roll of such owners and occupiers to be prepared and only owners and occupiers of orchards registered as aforesaid within such district shall be qualified to vote at such poll.

(3) For the taking of such poll, voting papers in the prescribed form shall be used, and regulations under this Act may prescribe the manner in which and the conditions under which such poll may be taken.

12C. If, on a poll being taken, at least sixty per centum of those owners and occupiers who vote on the question, vote in favour of the introduction within such district of the said scheme, then the following provisions shall operate and have effect:—

Power, under certain circumstances to appoint a committee. S. 12C inserted by No. 25 of 1946, s. 2, amended by No. 11 of 1949, s. 3; No. 3 of 1950, s. 3; No. 57 of 1954, s. 2; No. 60 of 1958, s. 3.

- (a) The Minister shall, by notice in the *Gazette*, appoint and name a Committee to administer, subject to this Act, the fruit fly foliage baiting scheme within such district, and to control and prevent the fruit fly pest

[60 of 1958,  
s. 3.]

therein, for a minimum period of three years from such date as the Minister shall specify in the notice, and a Committee so named shall continue after the expiration of that period so to administer the scheme and so to control and prevent the fruit fly pest in the district until the holding of a poll requested by not less than ten per centum of the number of persons who would, if a poll were held, be entitled to vote.

- (b) Such Committee shall consist of five members, four of whom shall be persons who were entitled to vote at the poll aforesaid and who shall be nominated by the Association, board or municipality making the request for the poll; and the fifth member shall be an inspector nominated by the Minister, and who shall be Chairman of the Committee. All members of the Committee shall hold office during the pleasure of the Governor.
- (c) The Governor may make regulations prescribing the holding of and procedure for meetings of the Committee, the filling of casual vacancies and the payment of fees and allowances to members of the Committee for their services as such, and for such purposes may delegate powers to the Minister.
- (d) The Committee shall have the following powers, namely—
- (i) for the purposes of this Act, to establish and administer a Fund, which shall consist of—
- firstly—such advances, if any, as the Fruit Growing Industry Trust Fund Committee, constituted under the Fruit Growing Industry (Trust Fund)

Powers of  
Committee.

Act, 1941,<sup>1</sup> may, in its discretion but with the approval of the Minister, make to the Committee under this Act;

secondly—moneys received from charges for services rendered in respect of the baiting of orchards under the scheme;

thirdly—contributions made to the fund under this Act; and

fourthly—penalties imposed upon persons convicted of any offences under this section, which penalties notwithstanding the Fines and Penalties Appropriation Act, 1909, are hereby declared to be payable into the Fund;

- (ii) to purchase, hire or acquire plant, equipment and materials for the purposes of the scheme;
- (iii) to appoint and engage such officers and employees as the Committee shall think fit and to remunerate them with moneys from the Fund established under this section;
- (iv) by any person or persons authorised in writing by the Committee under the hand of its Chairman, to enter upon any orchard or orchards within such district as the Committee shall decide, and to bait all or any fruit trees and fruit vines or kinds or varieties of fruit trees and fruit vines in such orchard as the Committee shall from time to time determine, with such materials as may be prescribed;

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<sup>1</sup> Now Fruit Growing Industry (Trust Fund) Act, 1941-1956.

Subpara. (v)  
substituted  
by No. 11 of  
1949, s. 3,  
amended by  
No. 3 of  
1950, s. 3;  
No. 57 of  
1954, s. 2;  
No. 60 of  
1958, s. 3.

(v) to—

(I) fix a scale of charges for the baiting carried out by or on behalf of the Committee, which charges shall, in the case of an orchard—

(A) of at least one hundred plants, not exceed a charge of eight shillings per one hundred plants for each and every baiting, any number in excess of each one hundred to be regarded as one hundred plants;

(B) of less than seven plants, not exceed a charge of two shillings for each attendance at the orchard by any person by or on behalf of the Committee for the purposes of baiting the plants; or

(C) of more than seven but less than one hundred plants, not exceed, either a charge of six pence per plant, or three shillings for each attendance at the orchard, by any person by or on behalf of the Committee for the purpose of baiting the plants, whichever of those charges shall be greater;

(II) demand and recover payment of the charges from the owner or occupier of the orchard for the baiting carried out by or on behalf of the Committee;

Sub-item  
(C) added  
by No. 57  
of 1954, s. 2,  
amended by  
No. 60 of  
1958, s. 3.

- (III) fix any accounting period in relation to the liability for and payment of those charges;
  - (IV) estimate the charges payable in respect of an accounting period so fixed, by any such owner or occupier and demand and recover from him one half of those charges at the commencement of that period and the balance of those charges not earlier than four months thereafter;
  - (V) refund to, or demand and recover from, such owner or occupier so soon as it can be ascertained the amount by which the estimate of the charges is greater or less than the assessment of the charges, as the case may be;
- (vi) to commence and maintain proceedings against, and to recover from, any owner or occupier who, after demand, fails to pay such charges, by summary process in the Court of Petty Sessions nearest to the orchard in respect of which such charge shall have been made, provided that the Committee may, in its discretion, waive or settle any such charges. Any complaint and proceedings under this paragraph may be made and maintained on behalf of the Committee by and in the name of its Chairman and an averment in a complaint so made that an orchard is situated in the district in respect of which the Committee is appointed under paragraph (a) of this section, is *prima facie* proof to that effect; and
- (vii) such other powers not inconsistent with this Act, as may be prescribed.

[No. 57 of  
1954, s. 2.]

- (e) The Committee shall not, except in relation to any matter in which it is especially authorised by the Minister to act on behalf of the Crown, be the agent or servant or the representative of the Crown; and
- (f) a member of the Committee shall not be personally liable for any act done in good faith by the Committee or by the member acting as such.

Frequency of polls.  
S. 12D inserted by No. 25 of 1946, s. 2.

12D. No poll under section twelve B of this Act shall, in respect of any district, be taken more frequently than once in every two years and nine months.

Power of entry and search.  
No. 23 of 1914, s. 9, renumbered s. 13 in 1943 reprint.

13. 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.  
No. 23 of 1914, s. 10, renumbered s. 14 in 1943 reprint.

14. (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.

15. (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.

Declaration of infected places. No. 23 of 1914, s. 11, renumbered s. 15 in 1943 reprint.

(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.

16. (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

Power to order infected things to be dealt with so as to eradicate disease. No. 23 of 1914, s. 12, renumbered s. 16 in 1943 reprint.

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.

(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.

Power to destroy infected plants, coverings, etc.  
No. 23 of 1914, s. 13, renumbered s. 17 in 1943 reprint.

17. 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 require owner or occupier of orchard to take steps to prevent spread of disease.  
No. 23 of 1914, s. 14, renumbered s. 18 in 1943 reprint.

18. (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.

(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.



19. (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.

Prunings to be destroyed. No. 23 of 1914, s. 15, renumbered s. 19 in 1943 reprint.

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.

20. 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.

Young plants for sale not to be grown near trees in bearing. No. 23 of 1914, s. 16, renumbered s. 20 in 1943 reprint.

Penalty: Ten pounds.

21. 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.

Power to question vendors of fruit, etc. No. 23 of 1914, s. 17, renumbered s. 21 in 1943 reprint.

Penalty: Ten pounds.

22. (1) If any inspector shall report to the Minister that any orchard or part of an orchard has been abandoned, the Minister may publish in the *Gazette* and in a newspaper circulating in the locality wherein such orchard or part of an 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 or part of an orchard which are deemed by an inspector to be likely to spread or capable of aiding in the spread of disease to be destroyed.

Power to destroy plants in abandoned orchards. No. 23 of 1914, s. 18, amended by No. 21 of 1933, s. 2; No. 5 of 1939, s. 2, and renumbered s. 22 in 1943 reprint.

(2) Unless within the said period of three months good cause as aforesaid is shown to the satisfaction of the Minister, then the orchard or part of an 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.

Subsec. (3) added by No. 5 of 1939, s. 2 as subsec. (2a), but renumbered (3) in 1943 reprint.

(3) The owner of the orchard in which plants are destroyed under the authority of and in accordance with the provisions of this section shall be liable for the payment of any expenses incurred in connection with the destruction of such plants.

Subsec. (4) substituted as subsec. (3) by No. 21 of 1933, s. 2, renumbered subsec. (4) in 1943 reprint.

(4) For the purposes of this section an orchard or part of an orchard shall be deemed to be abandoned if the Superintendent of Horticulture in the Department of Agriculture certifies by writing under his hand that in his opinion the plants growing in such orchard or part of an orchard have not been cultivated or cared for in a *bona fide* and husband-like manner for a period of twelve months next preceding the date of his certificate:

Provided that the owner or occupier of such orchard or part of an orchard may, within the time prescribed for showing good cause as provided for in subsection (1) hereof, appeal to the Minister in accordance with the regulations, against the decision of the said Superintendent of Horticulture, and the Minister may on the hearing of such appeal affirm or set aside such decision.

Seizure of prohibited plants, etc. No. 23 of 1914, s. 19, renumbered s. 23 in 1943 reprint.

23. 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.

24. 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.  
No. 23 of 1914, s. 20, renumbered s. 24 in 1943 reprint.

25. (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.  
No. 23 of 1914, s. 21, renumbered s. 25 in 1943 reprint.

(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.

Penalty if owner or occupier hinders the other.  
No. 23 of 1914, s. 26, renumbered s. 26 in 1943 reprint.

26. 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.

Employment of assistants.  
No. 23 of 1914, s. 23, renumbered s. 27 in 1943 reprint.

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

Use of force in case of resistance.  
No. 23 of 1914, s. 24, renumbered s. 28 in 1943 reprint.

28. 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.

Persons obstructing officers.  
No. 23 of 1914, s. 25, renumbered s. 29 in 1943 reprint.

29. 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.  
No. 23 of 1914, s. 26, renumbered s. 30 in 1943 reprint.

30. 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.  
No. 23 of 1914, s. 27, renumbered s. 31 in 1943 reprint.

31. 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.

32. 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.

Persons not entitled to compensation. No. 23 of 1914, s. 28, renumbered s. 32 in 1943 reprint.

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

Offences. No. 23 of 1914, s. 29, renumbered s. 33 in 1943 reprint.

- (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.

Penalties.  
No. 23 of  
1914, s. 30,  
renumbered  
s. 34 in 1943  
reprint.

34. 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.

Minimum  
penalty.  
No. 23 of  
1914, s. 31,  
renumbered  
s. 35 in 1943  
reprint.

35. 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.

Onus of  
proof.  
No. 23 of  
1914, s. 32,  
renumbered  
s. 36 in 1943  
reprint.

36. 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.

Proof of  
knowledge.  
No. 23 of  
1914, s. 33,  
renumbered  
s. 37 in 1943  
reprint.

37. 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  
ownership or  
occupancy.  
No. 23 of  
1914, s. 34,  
renumbered  
s. 38 in 1943  
reprint,  
amended by  
No. 3 of  
1949, s. 4,

38. (1) In any legal proceedings under this Act, in addition to any other method of proof available—

(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, that any person's name appears in any registry book kept under the Transfer of Land Act, 1893,<sup>1</sup> 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.

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<sup>1</sup> Now Transfer of Land Act, 1893-1950.

Regulations.  
No. 23 of  
1914, s. 35,  
amended by  
No. 10 of  
1935, s. 4,  
renumbered  
s. 39 in 1943  
reprint;  
amended by  
No. 3 of  
1949, s. 5;  
No. 45 of  
1952, s. 2;  
No. 60 of  
1958, s. 4.

39. (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 fruit 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 the fees for the registration of an orchard and for the transfer of the registration of an orchard shall be fixed

- (i) for an orchard in which less than twenty-five fruit trees or fruit vines are planted—at two shillings;
- (ii) for a nursery of any area—at two shillings;
- (iii) for an orchard, or for any part of an orchard, in the area of which are planted not less than twenty-five fruit trees or fruit vines—at two shillings if and while the fruit trees and fruit vines are less than four years old;

[No. 10 of  
1935, s. 4.]  
[No. 45 of  
1952, s. 2.]  
[No. 60 of  
1958, s. 4.]



- (iv) for an orchard in which are planted fruit trees or fruit vines to a number of more than twenty-four and of less than one hundred—at five shillings; and
- (v) for an orchard of not less than one acre planted with fruit trees or fruit vines—at five shillings for each acre, and at five shillings for each additional part of an acre, of the orchard;
- (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 any pest which commonly attacks or is 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.

[No. 3 of 1949, s. 5.]

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

Judicial notice to be taken of regulations and proclamations. No. 23 of 1914, s. 36, renumbered s. 40 in 1943 reprint.

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

Publication and effect of regulations. Power of disallowance. No. 23 of 1914, s. 37, renumbered s. 41 in 1943 reprint.

- (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.