

Orchard and Garden Pests Act 1896

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An Act to prevent the Introduction and to provide for the Eradication of Diseases affecting Orchards and Gardens.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1 Short Title.

The Short Title of this Act is “The Orchard and Garden Pests Act, 1896.”

2 Interpretation.

In this Act, if not inconsistent with the context,—

“Disease” means the disease named in Schedule A hereto, and any other disease, the importation of which should be prohibited, which the Governor from time to time by Order in Council gazetted declares to be a disease within the meaning of this Act, whether or not any such disease is caused by or consists of presence of any insect, fungus, or parasite:

“Minister” means the Minister for Agriculture, or any Member of the Executive Council, being a responsible Minister of the Crown, who for the time being is acting for him:

“Orchard” extends to and includes garden, vinery, or vineyard:

“Plant” means any tree, flower, shrub, vegetable, or other vegetation of economic value, and extends to the seed, fruit, or other product of such plant, and to every part thereof, whether attached to or separate therefrom:

“Prescribed” means prescribed by regulations under this Act.

3 Powers of Governor for preventing introduction of diseased plants, &c.

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

- (1.) Revoke, either wholly or partially, any Proclamation which is in force at the time of the coming into operation of this Act, and which was issued for any purpose for which a Proclamation or Order in Council may be issued under this Act.
- (2.) Prohibit, either absolutely or subject to regulations hereunder, the introduction into the colony of any plant, fungus, parasite, insect, or any other thing which, in his opinion, is likely to introduce any disease into the colony.
- (3.) Appoint any port to be the only port of entry for plants or for any specified plant.

- (4.) Appoint quarantine grounds where plants and the packages containing the same, or with which the same may have come in contact, may be detained for the purposes of treatment, inspection, or otherwise.
- (5.) Revoke any Proclamation made under this Act.

4 Appointment of officers.

The Governor may from time to time appoint such Inspectors and other officers, with such powers and functions, as he deems necessary in order to carry out the provisions of this Act.

5 Eradication of phylloxera.

It shall be the duty of every owner or occupier of any orchard to at all times do whatever is necessary in order to eradicate phylloxera therefrom, and prevent the spread of that disease therein.

6 Plants, &c., unlawfully introduced may be destroyed.

Any plant, fungus, parasite, insect, or other thing which is in any way introduced or attempted to be introduced into the colony, in contravention of this Act or of any Proclamation made hereunder, may, together with any package containing the same, or with which the same may have come into contact, be seized by the Inspector or by any authorised person, and be disinfected, destroyed, or otherwise disposed of as the Inspector, deems fit, at the expense of the owner, and without compensation to the owner or any other person.

7 No person to introduce plants, &c.

Every person commits an offence who in any way introduces into the colony any such plant, fungus, parasite, insect, or other thing in contravention of this Act or any Proclamation made hereunder, or who attempts so to do or is concerned in so doing, or who keeps or sells or exposes or offers the same for sale, or in any way causes the distribution of the same, or of any diseased plant.

8 Inspector may enter and give notice to eradicate disease.

- (1.) Any Inspector may at any time enter into any conveyance, or upon any land or premises, or on board any vessel, for the purpose of inspecting any plants, or the packages containing the same or with which the same may have come in contact, and shall have all such powers and authorities (including power to dig up plants, open packages, and otherwise) as he deems necessary for enabling him to enforce the provisions of the last three preceding sections of this Act.
- (2.) If the Inspector declares such plants or packages to be diseased, or infected with disease, he shall give notice thereof to the owner, or the person having the charge or control of such plants or packages, and thereupon such owner or person shall forthwith take such measures and do such acts as are necessary in order to eradicate or check the spread of the disease.

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

9 Provision for gazetting disease under this Act.

With respect to phylloxera and any other disease (not being a disease known to exist in the colony at the time of the coming into operation of this Act) which the Governor by Order in Council gazetted declares to be a disease under the meaning of this Act, the following special provisions shall apply:—

10 Procedure when disease found to exist on certain land.

- (1.) If at any time it appears to the Inspector such disease exists, or has within the preceding three months existed, on any land being an orchard or amongst the plants there growing, and that in order to prevent the spread of such disease such land should be declared to be infected, he shall notify the fact to the owner or occupier of the land, and also to the Minister, whereupon the following provisions shall apply:—
- (a.) The Minister may by notice published in the *Gazette* declare such land to be an infected place within the meaning of this Act.
 - (b.) Such notice shall particularly describe the place and area intended to be affected thereby, and, from the date of the gazetting of such notice and until the revocation thereof, such place and area shall be deemed to be an infected place and area from which no plants shall be removed except under the direction of an Inspector, and within which the owner or occupier shall do all such things as are necessary or as the Inspector deems necessary in order to eradicate or check the spread of the disease.
 - (c.) Any such notice may be revoked by the Minister by notification in the *Gazette*.
- (2.) The fact of the Governor in Council declaring any disease to be a disease within the meaning of this Act shall be conclusive evidence that such disease was not known to exist in the colony at the time of the coming into operation of this Act.

11 Owner to give notice of any disease.

The owner or occupier of any orchard or garden on which no disease has previously been found shall, within twenty-four hours after first discovering or becoming aware of the presence of any disease, give written notice thereof to the Minister, at Wellington.

12 Inspector may employ assistants.

Recovery of expenses.

Any Inspector may employ such assistants as he deems necessary in carrying out the provisions of this Act, and may pay them such remuneration as the Minister deems reasonable; and the owner, occupier or other person through whose neglect, omission, or other default, or by reason of the infection of whose plants or place, the expenses of such employment have been incurred, shall repay the same to the Inspector on demand, and, in default of payment such expenses may be recovered as a debt due to the Crown.

13 Compulsory dressing of fruit-trees.

- (1.) Every owner or occupier of land used as an orchard shall, during the autumn or winter season of each year, efficiently dress all the fruit-trees therein with a suitable dressing for the purpose of eradicating or checking the spread of apple-scab and codlin-moth, mentioned in Schedule B; and if he fails or neglects so to do he commits an offence: Provided that for the purposes of this section the Inspector may vary the season to suit any locality.
- (2.) Any Inspector may at any time enter upon any such land for the purpose of inspecting the same, and ascertaining whether the provisions of the last-preceding subsection hereof have been complied with.

14 Person obstructing or hindering Inspector commits an offence.

Every person commits an offence who directly or indirectly obstructs, hinders, or interrupts, or threatens, or assaults, or uses improper or abusive language to, any Inspector or his 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; but every such action may be commenced and proceeded with as if this Act had not been passed, any rule of law to the contrary notwithstanding.

15 Protection of Inspectors.

No Inspector, nor any person authorised by him, shall be deemed to be a trespasser by reason of any entry or removal under this Act, or be liable for any damage unavoidably occasioned in carrying out the provisions of this Act.

16 No compensation.

No person shall be entitled to receive any compensation whatsoever in consequence of any measure taken for the destruction of any plant, or in respect of any loss or injury that may directly or indirectly result therefrom.

17 How notices may be given.

Any notice to be given by any Inspector or his assistant in the performance of his duties under this Act may be given either by delivering the same personally,

or by leaving the same at or posting the same addressed to the usual or last-known place of abode in the colony of the person to whom the same is addressed.

18 Penalty for offences.

Every person offending against any of the provisions of this Act, or of any regulation made hereunder, is liable to a penalty not exceeding ten pounds for every such offence.

19 Recovery of penalties.

All penalties under this Act shall be recovered in a summary way before a Stipendiary Magistrate alone, and upon prosecution by an Inspector or some person authorised by him or by the Minister in that behalf; and all penalties and other moneys recovered or received under this Act shall be paid into the Public Account and form part of the Consolidated Fund.

20 Expenses of administration.

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

21 Limitations of actions against Inspectors.

- (1.) No action shall be brought against any Inspector, or other person acting in execution of this Act, for anything done in pursuance hereof or under the authority hereof, unless such action is commenced within three months after the cause of action arose, nor unless at least seven days before the action is commenced notice in writing of intention to commence the same, and of the cause thereof, and of the damage claimed, is given to the defendant.
- (2.) The defendant in any such action may give this Act and any special matter in evidence.

22 Repeal.

“The Codlin-moth Act, 1884,” is hereby repealed: Provided that all Proclamations, Orders in Council, and regulations made thereunder and in force at the time of the coming into operation of this Act shall continue in force until revoked under this Act.

SCHEDULES

Schedule A

Vine-louse, or Phylloxera (*Phylloxera vastatrix*).

Schedule B

Apple-scab (*Fusicladium dendriticum*).

Codlin-moth (*Carpocapsa pomonella*).