

Plant Disease and Control Act 1953

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Plant Disease and Control Act 1953,

Being an Act—

- (a) relating to diseases of plants; and
 - (b) to prohibit and restrict keeping certain plants,
- and for related purposes.

PART I.—PRELIMINARY.

1. Interpretation—

In this Act, unless the contrary intention appears—

"the Chief Inspector of Plants" means the Chief Inspector of Plants appointed under Section 2;

"customary rights" means rights of a proprietary or possessory kind belonging to an automatic citizen or community of automatic citizens in relation to land that arise from and are regulated by custom;

"destroy" means burn or destroy completely in the prescribed manner so that the plant, package, goods or thing to be destroyed cannot harbour a disease or pest;

"destroy", with special reference to a noxious plant, means to grub and burn or to treat, in a manner satisfactory to the Chief Inspector of Plants, so as to prevent the survival, regeneration or regermination of the plant;

"disease" means any form of fungus, bacterium, virus, algal disease or other organism that may, directly or indirectly, injure or cause an unhealthy condition in a plant;

"diseased" means attacked by, infested with or harbouring a disease or pest;

"goods" includes all kinds of movable property;

"Inspector" means the Chief Inspector of Plants or an Inspector of Plants appointed under Section 3;

"noxious plant" means a plant declared under Section 10 to be a noxious plant for the purposes of this Act;

"occupier" includes a person in actual occupation of premises, without regard to the title under which he occupies;

"owner" includes—

(a) the person—

(i) for the time being entitled to receive the rent of the premises in connection with which the expression is used, whether on his own account, or as manager for, agent of, or trustee for, any other person; or

(ii) who would be entitled to receive the rent if the premises were let at a rent; and

(b) a lessee or licensee under a lease or licence granted or continued in force under or by the *Land Act* 1996, the *Mining Act* 1992 or the *Miners' Homestead Leases (Validation) Act* 1970, of the former Territory of New Guinea (Adopted); and

(c) an automatic citizen or community of automatic citizens owning or possessing land by virtue of customary rights;

"package" includes—

(a) every means by which a plant is cased, covered, enclosed, contained or packed for carriage or keeping; and

(b) soil, compost, hay, straw or admixtures of them or any other substance or material—

(i) in which plants are growing or packed; or

(ii) that is adhering to a part of a plant or package;

"packing material" means material used for or part of a package;

"pest" means an insect, invertebrate animal, nematode, or mollusc that is, directly or indirectly—

(a) destructive or injurious to, or apt to be destructive or injurious to, plants; or

(b) a vector of a disease;

"plant" means a member of the vegetable kingdom, or a part of any such member, whether living or dead;

"premises" includes a vessel;

"the regulations" means any regulations made under this Act;

"this Act" includes any regulations and notices made under this Act.

PART II.—INSPECTORS.

2. Chief Inspector of Plants.

(1) The Minister may, by notice in the National Gazette, appoint an officer to be the Chief Inspector of Plants for the purposes of this Act.

(2) Subject to this Act, the Chief Inspector of Plants is charged with the administration of this Act.

3. Inspectors.

(1) The Chief Inspector of Plants may, by notice in the National Gazette—

(a) appoint officers to be Inspectors of Plants for the purposes of this Act; and

(b) limit the powers of an Inspector to some or all of the powers conferred by this Act.

(2) The Chief Inspector of Plants may appoint temporary Inspectors of Plants for such periods and for such purposes as he thinks necessary.

(3) For the period of and for the purposes of their respective appointments, temporary Inspectors of Plants have all the powers of Inspectors.

4. General powers of Inspectors.

(1) For the purposes of this Act, an Inspector may at any time—

(a) examine a plant, package, packing material or any goods or thing; and

(b) with or without assistants, enter any land, premises, ship, vehicle, aeroplane or airship for the purpose of—

(i) examining or treating a plant, package, packing material or any goods or thing; or

(ii) enforcing this Act; and

(c) order a person—

- (i) to produce documents or papers in his possession or under his control relating to a plant; and
- (ii) to answer truly a question put to him relating to a plant; and
- (d) order the owner or occupier of land to provide such assistance as the Inspector reasonably requires; and
- (e) destroy, or order the destruction of, a plant that is, or is suspected of being, diseased, as to which the Inspector alone (subject to Section 26) shall decide; and
- (f) carry out tests on or treat a plant, or take away samples or specimens of a plant or of a disease or pest; and
- (g) seize, detain and remove a plant for the purpose of—
 - (i) examination; or
 - (ii) destruction; or
 - (iii) submission to a system of quarantine; or
 - (iv) carrying out tests or treatment; and
- (h) order the owner of a diseased plant or of a plant suspected to be diseased to disinfect or carry out prescribed treatment on the plant or the premises on which it is or has been kept; and
- (i) destroy, disinfect or treat any package, packing material, goods or thing by which there may be a danger of a disease or pest being introduced to or propagated in the country or a part of the country; and
- (j) seize and destroy, or otherwise deal with, a plant introduced into or removed from a part of the country in contravention of a notice under Section 16; and
- (k) order the owner of any land to take such measures as are prescribed or as he requires for the prevention of the spread or the eradication of a disease, pest or noxious plant on the land; and
- (l) issue certificates and carry out such action as is prescribed.
- (2) Where practicable, before exercising a power conferred under Subsection (1), an Inspector shall give to the owner or occupier of the premises or thing in relation to which the power is to be exercised, reasonable notice of his intention to do so.

PART III.—PLANT DISEASES AND PESTS.

5. Application of Part III.

(1) For the purposes of this section, "vessel" means a ship, boat, aircraft or other description of vessel or vehicle used in navigation by sea or air.

(2) This Part does not apply to a plant—

(a) while it is subject, or deemed to be subject, to quarantine or to quarantine surveillance under a law relating to quarantine; or

(b) before it leaves or is removed from the vessel in which it arrives in the country.

6. Notifiable disease or pest.

(1) The Minister may, by notice in the National Gazette, declare a disease or pest to be a notifiable disease or pest.

(2) The owner or occupier of land on which there is, or on which he suspects or ought, if he used reasonable diligence, to know or suspect that there is, a notifiable disease or pest, who fails to notify an inspector immediately, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

7. Destruction of plants to prevent spread of disease, etc.

(1) For the purpose of preventing the spread of a disease or pest that the Chief Inspector of Plants considers to be a disease or pest easily communicable to other plants, the Chief Inspector of Plants may order a plant that is not diseased to be destroyed.

(2) Where a plant is destroyed under Subsection (1), the Minister may authorize the payment of such compensation as he thinks proper to the owner of the plant.

(3) Where plants of a species that is grown for economic purposes—

(a) are not cultivated or otherwise properly attended to for a period exceeding 12 months; and

(b) in the opinion of the Chief Inspector of Plants, harbour a disease or pest,

the Chief Inspector of Plants may order the owner to cultivate or otherwise properly attend to the plants within a period to be specified in the order not being less than three months.

(4) Where an order under Subsection (3) has not been complied with, then in addition to the penalty prescribed by this Act the Minister may direct or cause a plant, the subject of the order, to be destroyed without compensation to the owner.

[cclxi]

8. Disease areas.

(1) The Minister may, by notice in the National Gazette, declare an area—

(a) in which there is, or is suspected to be, a virulent disease or pest that, in his opinion, is of serious economic or social importance; or

(b) in which there is, in his opinion, danger of the outbreak of any such disease or pest,

to be a disease area.

(2) Where the Minister has made a declaration under Subsection (1) he may, by notice in the National Gazette, order the restriction of the movement of persons—

(a) into; and

(b) out from; and

(c) within,

the disease area.

(3) A notice under Subsection (2) shall specify the extent of the restriction.

(4) A person who—

(a) removes a plant, package, packing material or goods that is or are diseased, or likely to be diseased, from a disease area without the written approval of an Inspector and after such treatment and subject to such conditions as the Inspector thinks necessary or expedient; or

(b) fails to comply with an order under Subsection (2),

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(5) For the purposes of this section, 'disease area' means an area declared to be a disease area under Subsection (1).

9. Host plants in disease areas.

(1) In the notice declaring a disease area under Section 8 or in a subsequent notice in the National Gazette, the Minister may—

(a) declare a plant that harbours or may harbour, or is or may be infested with, the disease or pest in relation to which the disease area is declared to be a host plant of the disease or pest; and

(b) prohibit or restrict the planting or propagation of the plant.

(2) A person who contravenes or fails to comply with a provision of a notice under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(3) This section does not derogate any power or duty conferred or imposed on a person by any other provision of this Act.

PART IV.—NOXIOUS PLANTS.

10. Declaration of noxious plants.

The Minister may, by notice in the National Gazette, declare a plant to be a noxious plant for the purposes of this Act, in relation to the whole of the country or a part of the country.

11. Notification of noxious plants.

(1) The Minister may, by notice in the National Gazette, declare a noxious plant to be a notifiable noxious plant.

(2) The owner or occupier of land on which there is, or on which he suspects or ought, if he used reasonable diligence, to know or suspect that there is, a notifiable noxious plant, who fails to immediately notify an Inspector, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

12. Notice to destroy noxious plants.

(1) Where a noxious plant is found on any land an Inspector shall cause to be served—

(a) on the occupier of the land; or

(b) if there is no occupier on the owner,

a notice requiring him—

(c) to destroy the plant within 30 days from the service of the notice or such further period as the Chief Inspector of Plants allows; and

(d) to keep the land free from the plant.

(2) Within the period of 30 days or within such further period as the Chief Inspector of Plants allows, the occupier or owner served with a notice under Subsection (1) who fails—

(a) to effectually destroy the noxious plant growing or being on the land; and

(b) to keep the land free from the plant,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(3) A person who has received a notice under Subsection (1) shall not be convicted under Subsection (2) if he has used, and is using, reasonable exertions to destroy the noxious plant.

13. Destruction of noxious plants.

(1) If—

(a) at the expiration of the period or further period referred to in Section 12(1) the plant has not been destroyed; or

(b) the land is not kept clear from the plant,

an Inspector may—

(c) immediately enter or authorize a person appointed by him to enter on the land; and

(d) expend such sums of money made available for the purpose as he thinks expedient in endeavouring to destroy the noxious plant.

(2) Any reasonable expense incurred under Subsection (1) is recoverable from the occupier, or if there is no occupier from the owner, of the land as a debt.

(3) The liability of the occupier or owner for the expense recoverable under Subsection (2) is in addition to his liability to any penalty under this Act.

14. Entry to search for noxious plants.

An Inspector may, without notice, enter on any land for the purpose of ascertaining whether a noxious plant is on the land.

15. Destruction of noxious plants on Government land.

The Chief Inspector of Plants may, out of moneys available for the purpose—

(a) employ the necessary labourers for the destruction of; and

(b) destroy,

noxious plants on unoccupied Government land.

PART V.—RESTRICTED PLANTS.

16. Introduction or removal of plants.

(1) The Minister may, by notice in the National Gazette, declare that the introduction of a plant into, or the removal of a plant from, a part of the country is prohibited absolutely or subject to such restrictions and conditions as are specified in the notice.

(2) A person who—

(a) introduces a plant into or removes a plant from; or

(b) attempts to introduce a plant into or remove a plant from,

a part of the country in contravention of a notice under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K200.00.

17. Growing, etc., of certain plants prohibited.

(1) The Minister may, by notice in the National Gazette, declare that the planting, growing or cultivation of a plant is prohibited absolutely or subject to such restrictions and conditions as are specified in the notice.

(2) A person who—

(a) plants, grows or cultivates; or

(b) permits to be planted, grown or cultivated,

a plant contrary to a notice under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K200.00.

PART VI.—LEGAL PROCEEDINGS, ETC.

18. Service of notices, etc.

(1) A notice, order, or other document required or authorized under this Act to be given or served to or on a person may be served—

(a) by delivering it to him; or

(b) by leaving it at his usual or last-known place of abode; or

(c) by forwarding it by post in a prepaid letter addressed to him at his usual or last-known place of abode.

(2) A document referred to in Subsection (1) addressed to the owner or occupier of any premises may be served—

(a) by delivering it, or a true copy of it, to an adult person on the premises; or

(b) if there is no such person on the premises who can be so served, by fixing it on some conspicuous part of the premises.

(3) If—

(a) a notice is required to be given by this Act to the owner or occupier of premises; and

(b) the name of the owner or occupier is not known,

the notice may be addressed to him by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given, without name or further description.

(4) If there are more owners or occupiers than one, it is sufficient if—

(a) the notice or order is served on one of them; and

(b) the name of one of them is specified in the notice with the addition of the words "and others".

(5) Non-service on the owner does not affect the validity of service on the occupier, and non-service on the occupier does not affect the validity of service on the owner.

19. Proof of notices, orders or documents.

(1) In any proceedings for an offence against this Act in which a notice, order or other document given, made or served, is to be proved—

(a) the defendant shall be deemed to have received notice to produce it; and

(b) until the contrary is shown, it and service of it may be sufficiently proved by or on behalf of the complainant by the production of what purports to be a copy bearing what purports to be a certificate under the hand of the person authorized to issue the original that—

- (i) the copy is a true copy of the original; and
- (ii) the original was served on the date specified in the certificate.

(2) The validity of a notice, order, or other document, or of the service of it, is not affected by an error, misdescription or irregularity that, in the opinion of the court hearing the case, is not likely to mislead or that in fact does not mislead.

20. Continued operation of notices and orders.

If—

(a) under this Act a notice or order is required to be served on an owner or occupier; and

(b) due service of it has been made on any owner or occupier of the premises,

the notice or order is binding on a person claiming by, from or under the owner or occupier to the same extent as if it has been served on the person concerned or the owner or occupier, as the case may be.

21. References to owner or occupier.

Where in any proceedings under this Act it is necessary to mention or refer to the owner or occupier of any premises, it is sufficient to designate him as the "owner" or "occupier" of the premises (naming them) without name or further description.

22. Averments, etc.

In a prosecution for an offence against Section 9(2) or 17(2)—

(a) an averment that a plant was planted in contravention of a notice under Section 9 or 17 is, in the absence of evidence to the contrary, evidence of that fact; and

(b) the fact that a plant to which a notice under Section 9 or 17 applies is found on land occupied by a person is, in the absence of evidence to the contrary, evidence that the person planted the plant or permitted it to be planted.

PART VII.—MISCELLANEOUS.

23. Failure to comply with order, etc.

(1) A person who refuses or fails to do an act or thing that he is ordered or required to do under this Act is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) Where a person fails to do an act or thing that he is ordered or required under this Act to do—

(a) an Inspector may cause the act or thing to be done; and

(b) the expenses of doing the act or thing may be recovered by the State from the person as a debt.

24. Immunity of Inspectors, etc.

An Inspector or a person to whom powers are delegated by an Inspector under Section 8(4), or a person acting in the course of his duties under the authority, direction or order of an Inspector or any such person, is not liable for damage occasioned by carrying out any of the provisions of this Act unless the damage was occasioned maliciously and without reasonable or probable cause.

25. Compensation for damage.

(1) Except as provided in this section a person is not entitled to receive compensation in respect of loss or injury that may result to him directly or indirectly from any measures lawfully taken under this Act.

(2) Where a plant or thing destroyed under this Act is proved by the owner or his agent after destruction not to have been diseased at the time of its destruction, and the owner or agent claims that the value of the plant or thing exceeds K10.00, the Minister may, in his discretion, compensate the owner.

(3) In the event of a dispute between the Minister and the owner of the plant or thing as to the amount of compensation payable under Subsection (2), the matter shall be submitted to arbitration.

26. Appeals.

(1) Subject to Subsection (2), the owner of a plant or thing about to be ordered to be destroyed under this Act or his agent may within 14 days appeal to the Minister against the destruction.

(2) Where an Inspector or other person empowered under this Act to destroy or order the destruction of a plant or thing thinks that the plant or thing should, as a matter of emergency be destroyed immediately, he may so order.

(3) A decision of the Minister under this section is final.

27. Obstruction, etc.

A person who obstructs or impedes a person in the exercise of any of the powers conferred by this Act is guilty of an offence.

Penalty: A fine not exceeding K200.00.

28. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular—

- (a) for securing the inspection of plants, land and premises; and
- (b) for securing the examination, seizure or submission to a system of quarantine of plants, packages, packing material, goods and things; and
- (c) for regulating a system of quarantine to which plants, packages, packing material, goods and things may be subjected; and
- (d) for securing the carrying out of tests on plants, packages, packing material, goods and things; and
- (e) for securing and prescribing the effectual treatment on, or destruction of—
 - (i) diseased plants or plants suspected of being diseased; or
 - (ii) packages, packing material, goods or things containing or suspected of being or having been in contact with diseases or pests; and
- (f) for prescribing grades of plants and nursery stock, defining standards for purity and trueness of type and variety, securing the proper labelling and freedom from weeds, weed seeds and other impurities of plants or seeds offered for sale in the country; and
- (g) for issuing, renewing or refusing any prescribed permit or certificate and for prescribing the form of any permit or certificate; and
- (h) for securing the reporting of the movement of plants; and
- (i) for defining the qualifications and duties of Inspectors; and

(j) for prescribing the method of control, prevention and eradication of diseases, pests and noxious plants; and

(k) for prescribing penalties of fines not exceeding K200.00 for offences against the regulations.

[cclxi]Section 8 repealed and replaced by *Plant Disease and Control (Amendment) Act* 1986 (No. 32 of 1986).