

COOK ISLANDS

PLANTS ACT 1973

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1973, No. 21

An Act to provide for plant control and plant diseases

(15 February 1974)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and commencement - (1) This Act may be cited as the Plants Act 1973.
- (2) This Act shall come into force on the date to be appointed by notice in the Gazette.
2. Interpretation - (1) In this Act, unless the context otherwise requires, -

"Aircraft" includes a hovercraft:

"Approved" means approved by the Director:

"Beneficial organism" means any organism designated as a beneficial organism by the Director under section 26 of this Act:

"Conveyance" means any kind of vehicle, whether self-propelled or not, which may travel by land, sea, or air; and includes a cargo container:

"Director" means the Director of Agriculture:

"Disease" means any unhealthy condition in any plant material or beneficial organism which may be caused directly or indirectly by any form of fungus, bacterium, virus, or micro-organism; and includes any form of fungus, bacterium, virus, or micro-organism which may cause such a condition; and "diseased" has a corresponding meaning:

"Fruit" means the edible product of any plant whether attached to the plant or not; and includes any peel, skin, shell, or seeds, whether edible or not:

"Infected", in relation to any plant material or beneficial organism, means that the plant material or beneficial organism is not known to be actually diseased or pestiferous, but may in the opinion of an inspector have had direct or indirect contact or been in association with, or been in the vicinity of, any disease, pest, or infected plant material or infected beneficial organism; and, in relation to any package, includes any case, container, cargo container, or other package or packing material in which any disease or pest, or any diseased, pestiferous, or infected plant material is,

or has been packed, or which in the opinion of an inspector may have had direct or indirect contact or association with, or been in the vicinity of, any disease or pest, or any diseased, pestiferous, or infected plant material:

"Inspector" means any inspector or temporary inspector appointed for the purposes of this Act; and includes any officer appointed as an inspector under section 6 of the Department of Agriculture Act 1970:

"Land" includes any area, field, plantation, farm, garden, orchard, nursery, hothouse, glasshouse, shadehouse, cool store, dwellinghouse, shop, building, room, or other place or premises; and references to land extend to and include any water, harbour, highway, road, wharf, and port:

"Minister" means the Minister in charge of the Department of Agriculture:

"Nursery" means any place used for raising or growing any plant material for sale:

"Occupier", in relation to any land, means the occupant of the land, and if the land is unoccupied or the occupant is unknown or cannot be found includes the owner of the land or of any estate or interest in the land:

"Pest" includes the living stage of any insect, mite, or other invertebrate animal, which may directly or indirectly cause an unhealthy condition in any plant material or beneficial organism; and includes any such condition caused by any pest; and "pestiferous" has a corresponding meaning:

"Plant material" includes any plant, tree, shrub, herb, flower, nursery stock, culture, vegetable, or other vegetation; and also includes any fruit, seed, spore, and portion or product of any plant unless, by any manufacturing process, it has been rendered no longer viable, and has been freed from all diseases and pests, and has been made incapable of carrying any disease or pest:

"Port" includes seaport, airport, and post office:

"Serious disease or pest" means a disease or pest that is not known to be present in the Cook Islands, or, if known to be present in the Cook Islands, is one in respect of which measures are being taken under this Act to eradicate it from the Cook Islands or from any part of the Cook Islands:

"Soil" includes earth, water, peat, compost, sand, clay, and any other substance capable of supporting plant life, or transmitting any disease or pest, whether or not used or intended to be used as a growing medium, or in any process of manufacture, or as ballast, or for any other purpose whatsoever.

(2) Any power vested in any person by this Act and expressed to be for the purposes of this Act may be exercised by that person for the purposes of any instrument made or any direction given under this Act in every way as if the purposes of that instrument or direction were express purposes of this Act.

(3) Any duty, obligation, or requirement imposed on any person by any instrument made or any direction given under this Act may be enforced against that person in every way as if the duty, obligation, or requirement imposed by that instrument or direction were expressly imposed by this Act; and any person who fails to comply with or observe and perform any such duty, obligation, or requirement commits an offence against this Act.

3. Act to bind Crown - This Act shall bind the Crown.

PART I - IMPORTATION

4. Quarantine stations - (1) The Director may from time to time by notice in the Gazette define any land under his control or, with the consent of the appropriate Minister, any land of the Crown and declare it to be a quarantine station for the detention of imported plant material or of one or more kinds of imported plant material, and from time to time may vary, alter, re-define, or abolish any such quarantine station.

(2) The cost of erecting buildings and fencing on quarantine stations shall be met out of any money from time to time appropriated by the Legislative Assembly for the purposes of this section.

(3) The Director may from time to time give directions on the regulation, management, and control of quarantine stations and the disposal, treatment, or destruction of plant material while in a quarantine station or in transit to or from a quarantine station; and may by any such direction specify the time during which any plant material intended to be introduced into the Cook Islands shall remain a quarantine station.

(4) The appropriate Minister to grant his consent under this section shall be the Minister for the time being charged with the administration of the land or with the administration of the enactment (if any) to which the land is subject, or, if there is no such Minister, shall be the Minister in charge of the Department of Agriculture. If any question arises as to who is the appropriate Minister to grant his consent under this section in any case it shall be determined by the Executive Council, whose decision shall be final.

5. Minister may appoint ports - The Minister may from time to time, by notice in the Gazette-

(a) Appoint any specified ports to be the only ports at which any plant material or any specified class of plant material may lawfully be imported or exported, either generally or to or from any specified country or place:

(b) Appoint fit buildings to be stores for the inspection and grading therein of any plant material or any specified class of plant material:

(c) Appoint fit buildings to be stores for the storage, cooling, fumigation, or other treatment of any plant material after importation or before exportation; and

(d) Prescribe the manner in which and the conditions subject to which stores for inspection, grading, or treatment of any plant material or any specified class of plant material shall be used.

6. Emergency restrictions on importation - (1) Notwithstanding anything in this Act, the Director may for the purpose of preventing the introduction of any serious disease or pest into the Cook Islands, at any time by notice in the Gazette prohibit or restrict the introduction of any plant material, disease, pest, soil, package, or any other thing whatsoever.

(2) Any notice under subsection (1) of this section shall expire at the expiration of six months from the date of its publication in the Gazette, but may from time to time be renewed.

7. Importation for purposes of scientific research - Notwithstanding anything in this Act, the Director may, for the purpose of scientific research or experiment and subject to such terms and conditions as he thinks fit, permit the importation into the Cook Islands of anything not otherwise eligible under this Act for importation into the Cook Islands.

8. Plant material, etc., illegally introduced may be seized - Anything introduced into the Cook Islands from abroad, or brought into any part of the Cook Islands from any other part of the Cook Islands, contrary to this Act, may, together with anything else which may thereby be infected, be seized by an inspector or an assistant of an inspector, and be disinfected, destroyed, or otherwise disposed of as the inspector or his assistant thinks fit, or may be required to be taken to a quarantine station, or be placed in isolation or under quarantine conditions, for further inspection and treatment as may be required.

9. Duty of Post Office officers and Customs officers - It shall be the duty of all officers of the Post Office and of the Customs respectively to assist in carrying out the provisions of section 8 of this Act, and to prevent the introduction into the Cook Islands or the bringing to any part of the Cook Islands of anything contrary to this Act, and for that purpose they may, in respect of anything so introduced or attempted to be introduced or brought, exercise all the powers conferred by the Post Office Act 1959 in the case of postal articles posted in breach of that Act, and by the Customs Act 1913 in the case of uncustomed or prohibited goods.

10. Regulations- (1) The High Commissioner may from time to time, by order in Executive Council, make regulations for all or any of the following purposes:-

(a) Prohibiting or restricting the introduction into the Cook Islands, either generally or from any specific region, country, or place of origin, of all plant material as may be named, identified, or specified in the regulations as being likely to introduce any disease or pest into the Cook Islands, or as having noxious or undesirable characteristics, or as being of a weak, inferior, or undesirable strain:

(b) Prohibiting or restricting the introduction into the Cook Islands, either generally or from any specified region, country, or place of origin, of any soil, package, or other thing specified in the regulations as being likely to introduce any disease or pest into the Cook Islands:

(c) Prohibiting or restricting the introduction into the Cook Islands of any disease or pest:

(d) Prescribing conditions for introducing plant material into the Cook Islands, either generally or from any specified region, country, or place of origin:

(e) Prescribing treatment for aircraft or any other conveyance arriving from overseas and the procedure to be adopted on their arrival so as to prevent the introduction of any disease or pest into the Cook Islands:

(f) Requiring the sealing to the satisfaction of an inspector, on any ship or aircraft arriving from overseas, of food lockers containing any plant material that has come from any overseas country, or any plant material that has been in the same locker as plant material that has come from an overseas country; and providing for the seizure of all such plant material if the locker cannot be sealed to the satisfaction of an inspector:

(g) Providing for masters of ships and aircraft and controlling authorities of ports to give such information for the purposes of this Act as may be prescribed from time to time:

(h) Requiring every person (including every member of the crew of any vessel or aircraft) arriving in the Cook Islands from overseas to give a certificate declaring in such form as may be prescribed whether he has any plant material, fungus, bacterium, virus, or micro-organism, or any insect, mite, or other invertebrate animal, or any soil, in his possession:

(i) Providing for the production of plant health certificates granted or issued overseas:

(j) Providing for the inspection, observation, disinfection, treatment, destruction, reshipment, or disposal of any introduced plant material and the progeny of any introduced plant material, or any soil, package, or other thing:

(k) Requiring the provision and maintenance by harbour boards, airport authorities, and local authorities or any of them of -

(i) Suitable office accommodation at such place or places as the Minister (after consultation with the Board or authority) may direct, for the exclusive use of inspectors; and

(ii) Suitable containers for use in conveying garbage, rubbish and packing material to the place at which it is to be incinerated:

(l) Authorising harbour boards, airport authorities, and local authorities to make reasonable charges for the use of anything installed, provided, or maintained by them in accordance with any regulations made under paragraph (k) of this section:

(m) Providing for the control of plant material kept or grown in isolation or under quarantine conditions other than in quarantine stations.

(2) Regulations made under this section may prescribe for offences punishable by a fine not exceeding \$500.

PART II - DISEASE CONTROL

11. Control or eradication of disease - (1) The occupier of any land or the owner or person in charge of any conveyance shall do whatever is directed by an inspector to be necessary in respect of that land or conveyance to eradicate any serious disease or pest from, or to control or prevent the spread of any disease or pest to or from, any place whatsoever.

(2) If the occupier, owner, or person in charge fails to comply, to the satisfaction of the inspector, with any direction given under subsection (1) of this section, the inspector may with the authority of the Director carry out the measures directed in every way at the expense, but without prejudice to the liability under this Act, of the occupier, owner, or person in charge.

12. Proclamation of plant disease emergency - (1) if at any time it appears to the High Commissioner that an emergency has arisen or is likely to arise by reason of an outbreak of any serious disease or pest having occurred or being likely to occur in the Cook Islands or in any part or parts of the Cook Islands the High Commissioner may by Proclamation approved in Executive Council declare that a state of plant disease emergency exists throughout an area or areas comprising, according to the tenor of the Proclamation, the whole of the Cook Islands or such part or parts thereof as may be specified or defined in the Proclamation in that behalf.

(2) The High Commissioner may at any time in like manner revoke any such Proclamation.

(3) No such Proclamation shall remain in force for more than six months, but nothing in this subsection shall prevent the issue of another Proclamation before or after the end of that period.

13. (1) Emergency powers for eradication of serious disease- If the High Commissioner has, by Proclamation approved Executive Council under section 12 of this Act, declared that a state of plant disease emergency exists throughout all or any part or parts of the Cook Islands while that state of emergency continues the Minister may direct that such measures be taken as he, or any other person authorised in writing by him, may specify as necessary for the purpose of preventing the establishment of the serious disease or pest in the Cook Islands or any part of the Cook Islands, or eradicating it from the Cook Islands or any part of the Cook Islands.

(2) The Minister may pay, out of money appropriated by the Legislative Assembly for the purpose, to the owner of plant material or any other thing destroyed as an emergency measure an amount by way of compensation equal to the fair market value thereof, fixed as at the time of the inspection that results in the destruction of the plant material.

Such compensation shall be ascertained in the case of dispute by two assessors, one to be appointed by an inspector and one by the owner, with power to the two assessors to appoint an umpire. The decision of the two assessors or the umpire shall be final.

14. Regulations - (1) Without limiting the power to make regulations conferred by section 10 of this Act, the High Commissioner may from time to time, by Order in Executive Council, make regulations for all or any of the following purposes:-

(a) Providing that any land on which any specified disease or pest is found, together with any land which is within a specified distance from any part of that land may be declared by the Director to be an infected area;

(b) Prohibiting or restricting, except with the approval of an inspector and upon or subject to any conditions he may think fit to impose, the introduction into an infected area or the removal from an infected area of any conveyance, machinery, tools, equipment, or other thing or any plant material or any form of fungus, bacterium, virus, or micro-organism, or any insect, mite, or other invertebrate animal, or soil:

(c) Prescribing the treatment and measures to be adopted in respect of any plant material which is diseased, pestiferous, or infected, and requiring the cleansing or disinfecting of soil, conveyances, machinery, tools, equipment, clothing, footwear, or other things which may have come into contact with that plant material:

(d) Providing for the destruction or special treatment of any specified plant material and the special treatment of land and, if eradication of a disease or pest is involved, for the payment of compensation for the destruction or treatment at such rates as may be fixed by the regulations;

(e) Prescribing the manner in which plant material, soil, and packages shall be treated, cleansed, destroyed, or otherwise disposed of.

(2) Regulations made under this section may prescribe for offences punishable by a fine not exceeding \$500.

PART III - PLANT CONTROL

15. Diseases and pests in cross for export - (1) If the Director has reason to believe that any disease, pest, or residue of toxic chemical is present in any crop which the grower intends to pack and submit for export, and in the opinion of the Director that disease, pest, or residue is present to such a degree that it would be impossible by grading and post-harvest treatment to eliminate the disease or pest and all infected plant material, or to reduce the residue to a level which in his opinion is permissible, he may by notice in writing direct the grower not to submit for export all or such portion of the crop on all or such portion of the property of the grower as the Director may decide.

(2) Any grower or any other person who, contrary to any such notice, packs or submits any crop for export commits an offence against this Act.

16. Regulations - (1) Without limiting the power to make regulations conferred by sections 10 and 14 of this Act, the High Commissioner may from time to time, by Order in Executive Council, make regulations for all or any of the following purposes:-

(a) Providing for a system of grading, packing, and packaging plant material in accordance with grades and methods and types of packing to be determined from time to time by the Director:

(b) Prescribing standard packages for specific kinds of plant material intended for export or for sale in the Cook Islands:

(c) Providing for the branding or marking of packages or specific kinds of plant material, and for the registration of brands and marks;

(d) Prescribing the conditions under which any package or case may be used more than once for the carriage of fruit or plant material:

(e) Providing for the registration of nurseries subject to prescribed terms and conditions:

(f) Providing that any person who sows or plants the seed or viable portion of any specified plant shall give such information or make such returns in relation thereto as may be specified in the regulations:

(g) Declaring any specified area to be a plant or fruit growing district under a name to be specified in the regulations:

(h) Prescribing modes of treatment of plant material before export, and prescribing such other things as shall be required of plant material for export:

(i) Prohibiting or restricting the export of any plant material.

(2) Regulations made under this section may prescribe for offences punishable by a fine not exceeding \$500.

PART IV - POWERS OF INSPECTORS

17. Appointment of inspectors - (1) There shall be appointed from time to time, under the Public Service Act 1969, such inspectors as may be necessary for the purposes of this Act.

(2) For the purposes of this Act the Director may from time to time appoint temporary inspectors who may be fulltime officers of the Department of Agriculture or persons other than full-time officers of the Department of Agriculture. Temporary inspectors shall perform their duties only when so directed by the Director. If any person who is appointed as a temporary inspector is a full-time officer or employee in the Public Service he shall not be entitled to any additional remuneration in respect of his appointment under this subsection.

18. Powers of inspectors - Every inspector may, for the purposes of this Act, detain, open, inspect, examine, sample, submit for diagnostic examination, direct reshipment, direct removal to a quarantine area, remove for treatment, treat, quarantine, disinfect, or destroy or otherwise dispose of, any plant material, beneficial organism, disease, pest, soil, package, packing material, article of luggage, or other thing, in such manner as he thinks fit:

Provided that no inspector shall direct reshipment or destroy or otherwise dispose of any thing under this section, unless with the concurrence of another inspector other than a temporary inspector.

19. Rights of entry - Every inspector may, for the purposes of this Act and on producing (if so required) due evidence of his appointment, enter at any time upon any land or into any conveyance; but no inspector shall enter any dwelling-house pursuant to this section unless

authorised in that behalf by a warrant under the hand of a Judge or Commissioner of the High Court, who shall not grant the warrant unless he is satisfied that the inspector has reasonable grounds for requiring entry to the dwelling house.

20. Inspector may employ assistants - An inspector may, whenever necessary for the purposes of this Act, employ at such rate of remuneration as may be approved by the Director any person or persons to assist him.

21. Liability for causing inspector to incur expense - If any person, by failing to comply with or acting contrary to this Act, causes an inspector or an assistant of an inspector or an employee in the Public Service to incur an expense that he would not otherwise have incurred, that person shall reimburse the Crown for the full amount of that expense reasonably and properly incurred and that amount shall be recoverable from him as a debt due to the Crown.

22. Obstructing or hindering inspector an offence - Every person commits an offence against this Act who directly or indirectly obstructs, hinders, interrupts, threatens, or assaults any inspector or any assistant of an inspector in the performance of his duty under this Act.

23. Protection of inspectors - An inspector or an assistant of an inspector shall not be liable for any loss or damage resulting from the exercise of powers conferred by this Act unless the loss or damage is caused otherwise than in the reasonable exercise of those powers.

PART V - MISCELLANEOUS PROVISIONS

24. Give notice under this Act - Any notice or direction which may be given to any occupier of land or other person by an inspector in the performance of his duties under this Act may be given by delivering the notice or direction to the occupier or other person or by leaving it or posting it addressed to him at his usual or last known place of abode or business in the Cook Islands, or if he is unknown or cannot be found in the Cook Islands and the notice or direction relates to land, by affixing a copy of the notice or direction in some conspicuous place on the land to which the notice relates.

25. Dispatch of plants to the Cook Islands - (1) No person shall be deemed to have introduced into the Cook Islands plant material received by him from beyond the Cook Islands without his consent given before dispatch of the material to the Cook Islands.

(2) Notwithstanding that any person receives plant material from beyond the Cook Islands without his consent given before dispatch of the material, he shall, on receipt of the plant material, immediately notify an inspector and carry out to the satisfaction of the inspector such directions as the inspector may give as to the destruction, disposal, or treatment of the plant material.

26. Existence of disease - (1) For the purposes of this Act, the Director may at any time issue an instruction in writing -

(a) Stating that any disease or pest is or is not known or believed to exist in any place, country, or region:

(b) Determining the classification, name, or identity of any plant material, disease, or pest:

(c) Designating any organism, other than a vertebrate animal, recognised to be beneficial to plants generally or to any kind of plants, or to any living process carried on by plants, as a beneficial organism.

(2) Every instruction given under this section shall, for the purposes of this Act, be conclusive until revoked or amended in writing by the Director.

27. Erroneous and knowingly false declarations - Every person who makes any false declaration or gives any false certificate under this Act knowing the declaration or certificate to be false commits an offence against this Act.

28. Offences - Every person commits an offence against this Act who directly or indirectly by himself, his servant or agent-

(a) Possesses, keeps, retains, sells, offers or exposes for sale, carries, conveys, gives, or distributes in any manner, any plant material, soil, package, fungus, bacterium, virus, insect, mite or other invertebrate animal, or other thing whatsoever, which to his knowledge has been introduced into the Cook Islands contrary to this Act: or

(b) Possesses, keeps, retains, sells, offers or exposes for sale, carries, conveys, gives, or distributes in any manner, any plant material or beneficial organism which to his knowledge is suffering from a serious disease or pest, or from a disease or pest which an inspector has by notice in writing directed him to control; or

(c) Possesses, keeps, retains, sells, offers or exposes for sale, carries, conveys, gives, or distributes in any manner, any soil, package, or other thing whatsoever, which to his knowledge is infected by a serious disease or pest, or is infected by a disease or pest which an inspector has by notice in writing directed him to control; or

(d) Does any other act in breach of this Act; or

(e) Fails to observe and perform any duty or obligation imposed on him by this Act.

29. Fines - Every person who commits an offence against this Act is liable on conviction to a fine not exceeding \$500.

30. Money to be paid into Public Account - All money other than fines, recovered or received under this Act shall be paid into the Cook Islands Government Account by remitting it to the Director.

31. Regulations - (1) Without limiting the power to make regulations conferred by sections 10, 14 and 16 of this Act, the High Commissioner may from time to time, by Order in Executive Council, make regulations for all or any of the following purposes:-

(a) Prescribing the matters for which fees shall be payable under this Act, fixing the amount of those fees, and the mode of their payment and recovery;

(b) Providing for the appointment of advisory committees, and for assessors;

(c) Providing for such matters as are necessary to give full effect to the provisions of this Act and for its due administration.

(2) There may be paid to the members of any advisory committee or assessors appointed pursuant to any regulations made under this Act such remuneration by way of fees, salary, and allowances, and travelling allowance and expenses as shall be determined by the Minister with the approval of the Minister responsible for finance.

(3) Any regulations under this Act may provide that it shall be necessary to obtain a permit from the Minister, the Director, the holder of any specified office in the Public Service, or any inspector, for the introduction into the Cook Islands of any plant material, beneficial organism, package, soil, fungus, bacterium, virus, or micro-organism, or any other thing, and that the Minister, the Director, the holder for the time being of the office, or the inspector, may in his discretion refuse any application for a permit or may grant the application wholly or partly and either unconditionally or on or subject to such conditions as he thinks fit.

(4) Any regulations under this Act may confer on the Minister, the Director, or any inspector, power to issue, in such manner as may be prescribed, instructions, orders, requirements, permits, authorities, or notices for the purposes of this Act, whether by way of written instrument or by oral direction as the regulations shall provide.

(5) Regulations made under this section may prescribe for offences punishable by a fine not exceeding \$500.

(6) Any regulations under this Act may be so made as to apply generally throughout the Cook Islands or within any specified part or parts thereof, or within the whole of the Cook Islands except such part or parts as may be specified in the regulations.

32. Repeal - The Cook Islands Plant Quarantine Regulations 1955 (Serial No. 1955/69) are hereby repealed.

This Act is administered in the Department of Agriculture.