

PLANTS' DISEASES ORDINANCE, 1911-1913.⁽¹⁾

An Ordinance to Prevent the Introduction and to Provide for the Eradication of Diseases affecting Vegetation and for other purposes.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1.—(1.) This Ordinance may be cited as the *Plants' Diseases Ordinance, 1911-1913.*⁽¹⁾

Short title.
Sub-section (1)
amended by
No. 2 of 1930,
s. 2.
Commencement.

(2.) This Ordinance shall commence on a day to be fixed by the Lieutenant-Governor by Proclamation published in the *Gazette.*⁽¹⁾

2. *The Plants' Diseases Ordinance of 1892 (No. 8 of 1892)* is repealed.

Repeal.

3. In this Ordinance unless the context otherwise indicates or requires—

Interpretation.
Q. 60 Vic. No.
25, s. 2.

“Director”—means the Director of Agriculture.

“Disease”—any disease affecting trees plants or vegetables caused by or consisting of the presence of any insect or fungus and any other disease affecting trees plants or vegetables which the Lieutenant-Governor⁽²⁾ may from time to time by Proclamation⁽³⁾ in the *Gazette* declare

(1) The *Plants' Diseases Ordinance, 1911-1913*, comprises the *Plants' Diseases Ordinance, 1911*, as amended by the other Ordinance referred to in the following Table:—

ORDINANCES OF THE LEGISLATIVE COUNCIL FOR THE TERRITORY OF PAPUA.

Short title, number and year.	Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
<i>Plants' Diseases Ordinance, 1911 (No. 28 of 1911)</i>	20.11.1911	(a)	1.1.1912 (<i>Papua Govt. Gaz. of 6.12.1911</i>)
<i>Plants' Diseases Ordinance, 1913 (No. 17 of 1913)</i>	26.11.1913	(a)	26.11.1913 (<i>Statute Law of Papua, 1888 to 1916, Vol. III, p. 780</i>)

(a) No notice of non-disallowance has been published in *Papua Govt. Gaz.*

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(3) Pursuant to Section 3, the Lieutenant-Governor, by Proclamation dated 26.1.1912 and published in *Papua Govt. Gaz. of 7.2.1912*, proclaimed and declared that the following diseases should be diseases within the meaning of the Ordinance:—

“DISEASES.

COCONUTS.
Leaf disease.
Root disease.
Bleeding disease.
Bud rot.

RUBBER.
Root rot.

SUGAR CANE.
Leaf disease.
Red rust.”

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to be a disease within the meaning of this Ordinance and whether or not caused by or consisting of the presence of any insect or fungus;

“Diseased”—affected with disease;

“Tree” “Plant” and “Vegetable” respectively include the fruit or other product of any tree plant or vegetable and every part of any tree plant or vegetable and of the fruit or product thereof;

“Insect”—any insect which the Lieutenant-Governor⁽²⁾ may from time to time by Proclamation⁽⁴⁾ in the *Gazette* declare to be an insect within the meaning of this Ordinance in whatever stage of existence such insect may be;

“Fungus”—any fungus or vegetable parasite which the Lieutenant-Governor⁽²⁾ may from time to time by Proclamation⁽⁵⁾ in the *Gazette* declare to be a fungus within the meaning of this Ordinance in whatever stage of existence such fungus or vegetable parasite may be;

“Inspector”—any inspector appointed under this Ordinance;

“Occupier”—the person in actual occupation of any land or if there is no such person then the person entitled to possession thereof;

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(4) Pursuant to Section 3, the Lieutenant-Governor, by Proclamation dated 26.1.1912 and published in *Papua Govt. Gaz.* of 7.2.1912, proclaimed and declared that the following insects should be insects within the meaning of the Ordinance:—

“INSECTS.

COCONUTS.

Solomon Island stag beetle—*Eurytrachelus pilosipes*.
Solomon Island elephant beetle—*Xylotrupes nimrod*.
Solomon Island rhinoceros beetle—*Trichogomphus semilinki*.
Ceylon rhinoceros beetle—*Oryctes rhinoceros*.
Red beetle or Asiatic palm weevil—*Rhynchophorus ferrugineus*.
Cane beetle—*Sphenophorus obscurus*.
Small palm weevil—*Calandra taitensis*.
Cabbage beetle or Leaf hispa—*Brontispa froggatti*.
Copra bug—*Necrobia rufipes*.
Longicorns (a)—*Xizuthrus costatus*.
Longicorns (b)—*Olethrius tyrannus*.
Phasma or Leaf insect—*Graeffia (Lopaphus) cocophagus*. *Coccidae*.
Stink bugs—*Pentatomidae*.

RUBBER.

White ants—*Termes sp.*

SUGAR CANE.

Cane beetle—*Sphenophorus obscurus*.
Leaf hoppers—*Perkinsiella vastatrix*.
Leaf hoppers—*Perkinsiella lalokensis*.
Leaf hoppers—*Perkinsiella rattlei*.
Leaf hoppers—*Perkinsiella variegata*.
Leaf hoppers—*Perkinsiella bicoloris*.
Leaf hoppers—*Perkinsiella papuensis*.”

(5) Pursuant to Section 3, the Lieutenant-Governor, by Proclamation dated 26.1.1912 and published in *Papua Govt. Gaz.* of 7.2.1912, proclaimed and declared that the following fungi should be fungi within the meaning of the Ordinance:—

“FUNGI.

COCONUTS.

Pestalozzia palmarum.
Pythium palmivorum.

RUBBER.

Formes semitosa.”

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“Orchard”—includes garden and plantation;

“Owner”—the person other than His Majesty who is for the time being entitled to receive the rent of any land or who if the same were let to a tenant at a rack rent would be entitled to receive such rack rent.

4. The Lieutenant-Governor⁽²⁾ may from time to time by Proclamation⁽⁶⁾ in the *Gazette* declare that the importation or introduction into the Territory or any portion of the Territory specified in such Proclamation of any or every tree plant or vegetable which is in his opinion likely to introduce any insect fungus or disease shall be either absolutely prohibited or permitted only subject to such restrictions and upon such conditions as may be prescribed.

Importation of plants may be prohibited or restricted.
Q. 60 Vic. No. 25, s. 4.

5. The Lieutenant-Governor⁽²⁾ may from time to time by Proclamation⁽⁷⁾ in the *Gazette* declare that the removal of any or every tree plant or vegetable from or out of any nursery orchard or other place the boundaries whereof shall be defined in such Proclamation shall either be absolutely prohibited or permitted only subject to such restrictions and upon such conditions as may be prescribed.

Removal of plants may be prohibited or restricted.
Q. *Ib.* s. 5.

6. Every Proclamation issued under this Ordinance shall be published in the *Gazette* and upon such publication shall have the full force of law.

Proclamation how published and effect.
Q. *Ib.* s. 6.

And every such Proclamation shall be laid before the Legislative Council within fourteen days after the publication thereof if the Legislative Council is then sitting and if not then during the next sitting of the Legislative Council.

Proclamations to be laid before Council.

7.—(1.) No person shall import or introduce or cause to be imported or introduced into the Territory or into any portion of the Territory any insect fungus tree plant or vegetable contrary to the provisions of this Ordinance or to any Proclamation issued thereunder or to any regulations.

Importation of plants contrary to Ordinance prohibited.
Q. *Ib.* s. 7.

(2.) No person shall remove or cause to be removed from or out of any nursery orchard or other place any tree plant or vegetable contrary to the provisions of this Ordinance or to any Proclamation issued thereunder or to any regulations.

Removal of plants contrary to Ordinance prohibited.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(6) Pursuant to Section 4, the Lieutenant-Governor, by Proclamation dated 23.5.1927 and published in *Papua Govt. Gaz.* of 1.6.1927, prohibited “the importation or introduction of any banana, banana plant or part thereof”. By further Proclamation dated 8.2.1932 and published in *Papua Govt. Gaz.* of 2.3.1932, the Lieutenant-Governor prohibited “the importation or introduction into the Territory from the Malay Archipelago of any living palms, ornamental trees and shrubs and fruit trees, and any living parts thereof except seeds”.

(7) No proclamation has been published in *Papua Govt. Gaz.*

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Appointment of
inspectors.
Q. 60 Vic.
No. 25, s. 8.

8. The Lieutenant-Governor⁽²⁾ may from time to time appoint such officers of the Customs and other persons as may be deemed necessary to be inspectors under this Ordinance.

The production of a copy of the *Gazette* containing any notice of the appointment of any person to the office of an inspector shall be sufficient evidence of such appointment.

Insects fungi
plants packages
&c. may be
seized.
Q. Ib. s. 9.

9. Every insect and every fungus and every tree plant and vegetable imported or introduced into the Territory or any portion of the Territory or removed from or out of any nursery orchard or other place contrary to the provisions of this Ordinance or to any Proclamation issued thereunder or to any regulations and every diseased tree plant or vegetable imported or introduced into the Territory or removed from one part of the Territory to another part thereof and every box basket package or case harbouring infested by or containing any such insects fungus tree plant or vegetable may forthwith be seized by or on the order of the Director or any inspector and shall be dealt with whether by the destruction thereof or otherwise as the Director or such inspector may direct.

Inspectors and
others
empowered to
examine plants
packages &c.
Q. Ib. s. 10.

10. Every inspector and every other person authorized in writing by the Director may seize and detain any tree plant and vegetable which is suspected to be diseased and which is being imported into the Territory or removed from one part of the Territory to another part thereof and every box basket package or case which is suspected to contain any diseased tree plant or vegetable or to harbour or to be infested by any insect or fungus and may remove and examine the same.

Inspectors may
enter upon
land to search
for diseased trees
&c.
Q. Ib. s. 11.

11. Every inspector and every other person authorized in writing by the Director may without notice and with or without such assistants as he may think fit enter at reasonable times upon any land upon which any diseased tree plant or vegetable is or is suspected to be growing for the purpose of searching for and examining such tree plant or vegetable and may remain on such land so long as may be reasonably necessary for such purpose.

Occupier or
owner may be
ordered to
eradicate disease.
Q. Ib. s. 12.

12. When any inspector or other person authorized as aforesaid finds upon any land any tree plant or vegetable which is in his opinion diseased he may issue an order to the occupier or if there be no occupier then to the owner of such land directing him to take within a definite time after the service of such order to be therein specified all such measures for the eradication of such disease (other than by destruction of the tree plant or vegetable) as shall in his opinion be necessary and are set forth in such order or as may be prescribed by the regulations for the treatment of such disease.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

Plants' Diseases Ordinance, 1911-1913.

But when in the opinion of the inspector or other person authorized as aforesaid such disease cannot be eradicated otherwise than by the destruction of the tree plant or vegetable or when it is in his opinion necessary for the prevention of the spread of any virulent disease to cause the destruction of any trees plants or vegetables which are not affected thereby he shall report the same to the Director who may thereupon issue an order to the occupier or if there be no occupier to the owner of the land whereon such trees plants or vegetables may be directing him to destroy such trees plants or vegetables within a definite time after the service of such order to be therein specified and in such manner as shall be thereby directed or as shall be prescribed by the regulations.

13. If any such owner or occupier shall fail to comply with the direction contained in any such order served upon him he may on the complaint of an inspector or other person authorized as aforesaid be summoned to appear before any court of petty sessions to show cause why such order should not be enforced and if on the hearing of such complaint the defendant fails to show cause satisfactory to the court for such default the court may authorize any such inspector or other person as aforesaid and with or without assistants to enter upon such land at any reasonable times and to take such measures for the eradication of such disease or the destruction of such trees plants or vegetables as may be necessary for the enforcement of such order.

Inspectors may take measures to eradicate disease in certain cases.

Q. 60 Vic. No. 25, s. 13.

The production of any order purporting to be signed by the Director or any inspector or of any certified copy thereof shall in the absence of proof to the contrary be sufficient evidence of the due making of such order and that it was duly signed by the person by whom it purported to be signed.

14. If there is no occupier of any land and the owner thereof is absent from the Territory service of such notice order or summons under this Ordinance may be made by delivery thereof to the recognized agent (if any) of such owner in the Territory but if there is no such recognized agent of the owner or if the owner is unknown service of any notice or order may be made by affixing the same in some conspicuous place upon such land and by the publication of a copy thereof in the *Gazette* or in some newspaper circulating in the neighbourhood thereof and it shall not be necessary to specify in any notice order complaint or summons the name of any person as the owner of any land of which the owner is unknown and the court may if satisfied that there is no occupier of such land and that the owner thereof is absent from the Territory or is unknown proceed to hear and adjudicate upon any complaint in respect thereof *ex parte*.

Notice if no occupier and owner unknown.
Q. 1b. s. 14.

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Recovery of costs charges and expenses.
Q. 60 Vic.
No. 25, s. 15.

15. The amount of any costs charges and expenses incurred by any inspector or other person authorized as aforesaid in or about taking such measures as aforesaid shall in addition to or in lieu of any proceedings for the recovery of a penalty be recoverable from the occupier or if there be no occupier then from the owner of the land by summary proceedings before two or more justices or by action in any court of competent jurisdiction:

Provided that an unsatisfied judgment or order for the recovery of any such costs charges or expenses shall not be a bar to the recovery thereof from any other person liable to the payment thereof.

Diseases to be reported.
Inserted by
No. 17 of 1913,
s. 2.

15A. If within any orchard garden or plantation any disease shall appear the owner occupier or person in charge of the orchard garden or plantation shall immediately notify the fact in writing to the Director and in the event of his neglecting so to do such owner occupier or person shall on conviction be liable to a penalty not exceeding Twenty pounds.

Immunity of inspectors and others.
Q. *Ib.* s. 16.

16. No inspector or other person authorized as aforesaid and no person acting under the direction or order of such inspector or other person authorized as aforesaid shall be deemed to be a trespasser by reason of an entry or destruction under this Ordinance or be liable for any damage occasioned by carrying out any of the provisions of this Ordinance unless the same were occasioned maliciously and without reasonable or probable cause:

Compensation in certain cases.

Provided however that in any case where any tree plant or vegetable not diseased is destroyed by or under the direction of the Director for the purpose of preventing the spread of any disease of a virulent character the owner of the tree plant or vegetable so destroyed shall be entitled to such compensation therefor as the Lieutenant-Governor⁽²⁾ shall determine and such compensation shall be deemed to be an expense under this Ordinance.

No proceedings shall be taken against any owner of land for failing to comply with any notice or order to eradicate all disease from or destroy insects or fungi on trees or plants upon such land until the provisions of this Ordinance have been enforced against any occupier of such land upon which such insects or fungi are found.

No compensation for damage occasioned by carrying out the provisions of this Ordinance.
Q. *Ib.* s. 16.

And no person shall be entitled to receive any compensation whatsoever in consequence of any measures lawfully taken for the eradication of any disease or the destruction of any insect or fungus or any prohibited or diseased tree plant or vegetable or in

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

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respect of any loss or injury that may result to him therefrom either directly or indirectly.

17. No action shall be brought against any person acting in the execution of this Ordinance for anything done thereunder unless the same be commenced within four months after the act complained of has been committed.

Limitation of action.
Q. 60 Vic.
No. 25, s. 17.

18. Every person shall be guilty of an offence against this Ordinance who—

Offences.

- (1) in any manner obstructs or impedes any person in the execution of any of the powers conferred by this Ordinance; or
- (2) disobeys or neglects to comply with any of the provisions of this Ordinance or the terms of any Proclamation issued thereunder or any regulations or any order given in pursuance thereof respectively.

19. If any person is guilty of an offence against this Ordinance he shall for every such offence be liable on conviction to a penalty not exceeding Fifty pounds.

Penalty.
Q. *Ib.* s. 19.

20. All penalties incurred by any breach of this Ordinance or any Proclamation issued thereunder or any regulations may be recovered before any two or more justices on the complaint of any inspector or other person authorized by the Director.

Recovery of penalties.
Q. *Ib.* s. 20.

And in every case where a conviction is obtained the justices may adjudge the defendant to pay to the prosecutor all necessary expenses of the prosecution.

21. All expenses incurred in the administration of this Ordinance shall be paid out of moneys to be appropriated by the Legislative Council for that purpose.

Expenses of Ordinance.
Q. *Ib.* s. 21.

22. The Lieutenant-Governor⁽²⁾ may make regulations⁽⁸⁾ for all or any of the following purposes namely:—

Regulations.

- (1) For regulating or prohibiting the importation or introduction into the Territory or any portion of the Territory or the removal from any nursery orchard or other place of any trees plants or vegetables;
- (2) for securing the detention and examination of trees plants and vegetables which are suspected to be diseased and of boxes baskets packages and cases which

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(8) See the *Plants' (Importation) Regulations, 1923*, printed on p. 3635.

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are suspected to contain diseased trees plants or vegetables or to harbour or to be infested by insects or fungi;

- (3) for securing the effectual treatment of diseased trees plants and vegetables and the effectual destruction of insects and fungi;
- (4) for securing the disinfecting of boxes baskets packages and cases used for shipping or forwarding fruit to any destination previous to the same being returned to any orchard storeroom salesroom or other place;
- (5) for defining the duties of inspectors under this Ordinance;
- (6) for prescribing penalties not exceeding Twenty pounds for the breach of any regulations; and
- (7) generally for carrying into effect the provisions of this Ordinance.

The regulations⁽⁹⁾ made under the Ordinance hereby repealed shall until cancelled⁽¹⁰⁾ continue in force as regulations under this Ordinance.

(9) The regulations made under *The Plants' Diseases Ordinance of 1892* were the *Plants' Diseases Regulation No. 1* dated 18.6.1909 and published in *Papua Govt. Gaz.* of 7.7.1909, and the *Plants' Diseases Regulation No. 2* dated 28.4.1910 and published in *Papua Govt. Gaz.* of 4.5.1910.

(10) Regulation 3 of the *Plants' (Importation) Regulations, 1923*, repealed "all regulations heretofore made under the *Plants' Diseases Ordinance, 1911-1913.*"