

1993—No. 428

**HORTICULTURAL STOCK AND NURSERIES ACT 1969—
REGULATION**

(Horticultural Stock and Nurseries Regulation 1993)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Horticultural Stock and Nurseries Act 1969, has been pleased to make the Regulation set forth hereunder.

I. R. CAUSLEY, M.P.,
Minister for Agriculture and Fisheries.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Horticultural Stock and Nurseries Regulation 1993.

Commencement

2. This Regulation commences on 1 September 1993.

Definitions

3. (1) In this Regulation:

“**grower**” means a person who carries on the business of growing stock;

“**prescribed stock**” means stock whose fruit is the apple, apricot, avocado, blueberry, boysenberry, carambola, casimiroa, cherry, custard apple, feijoa, fig, grape, grapefruit, kiwifruit, lemon, lime, longan, lychee, macadamia, mandarin, mango, nectarine, orange, passionfruit, peach, pea, persimmon, plum, quince, raspberry, sapodilla, strawberry, tangelo or tangor;

“**stock**” means proclaimed horticultural stock;

“**the Act**” means the Horticultural Stock and Nurseries Act 1969.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

PART 2—REGISTRATION

Registration as a nurseryman

4. (1) For the purposes of section 8 of the Act:

- (a) the prescribed form for an application for registration, or for renewal of registration, as a nurseryman is Form 1; and
- (b) the prescribed fee to accompany such an application is \$40 for each place in respect of which the registration or renewal is sought.

(2) For the purposes of section 9 of the Act, the prescribed form for a certificate of registration as a nurseryman is Form 2.

Registration as a reseller

5. (1) For the purposes of section 8 of the Act:

- (a) the prescribed form for an application for registration, or for renewal of registration, as a reseller is Form 3; and
- (b) the prescribed fee to accompany such an application is \$25 for each place in respect of which the registration or renewal is sought.

(2) For the purposes of section 9 of the Act, the prescribed form for a certificate of registration as a reseller is Form 4.

Return of unexpired certificate of registration following suspension or cancellation

6. For the purposes of section 9 (4) of the Act:

- (a) the prescribed manner in which the certificate of registration as a nurseryman or reseller is to be returned to the Director-General is by certified mail or by delivery to an inspector; and
- (b) the prescribed time within which the nurseryman or reseller is to return the certificate is 21 days after being notified of the suspension or cancellation.

PART 3—CERTIFICATION SCHEMES**Applications to participate**

7. For the purposes of section 13C (2) of the Act:
- (a) the prescribed form for an application to participate in an approved certification scheme is Form 5; and
 - (b) the prescribed fee to accompany such an application is \$40.

Applications for labels

8. For the purposes of section 13G (2) of the Act:
- (a) the prescribed form for an application for labels for stock grown in accordance with an approved certification scheme is Form 6; and
 - (b) the prescribed fee to accompany such an application is \$40.

PART 4—LABELLING**Labels generally**

9. (1) For the purposes of sections 13H (2) and 14 (2) of the Act, a label for stock is of the prescribed size if it is:
- (a) at least 100 mm in length and 25 mm in width; and
 - (b) of sufficient thickness to ensure that it will withstand rough usage.
- (2) For the purposes of sections 13H (2) and 14 (2) of the Act, the prescribed particulars to be set out on a label for stock are the following:
- (a) the name and address of the nurseryman by whom the stock was propagated, or the letter “N” followed by the number of the certificate of registration issued to the nurseryman; and
 - (b) the kind and variety of scion; and
 - (c) if the stock has been propagated on a rootstock, the kind of rootstock; and
 - (d) if the seller is not the propagator of the stock, the name and address of the seller, or the letter “R” followed by the number of the certificate of registration issued to the seller; and
 - (e) if the label is attached to a package, the number of pieces of stock to which the label relates; and
 - (f) if the stock is the subject of a notification under section 11 of the Act:

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- (i) in the case of stock propagated from propagating material obtained from a source of supply approved by the notification, the words “PROPAGATED FROM APPROVED MATERIAL OBTAINED FROM” followed by words specifying the source of supply of the approved propagating material; or
 - (ii) in any other case, the words “NOT PROPAGATED FROM APPROVED MATERIAL”; and
 - (g) if the stock is grown in accordance with an approved certification scheme, the words “GROWN IN ACCORDANCE WITH A CERTIFICATION SCHEME APPROVED UNDER PART 3A OF THE HORTICULTURAL STOCK AND NURSERIES ACT 1969”.
- (3) The particulars required by this clause must be set out in clearly legible and indelible letters and figures of at least 3 mm in height.

PART 5—FINANCE**Refund of application fees**

10. (1) The Director-General may refund the whole of any application fee under this Regulation:

- (a) if, before the application is determined, the application is withdrawn; or
- (b) if, after the application is determined, the Director-General decides that registration is unnecessary.

(2) A refund may not be made under subclause (1) (b) unless any certificate of registration granted as a result of the application is returned to the Director-General.

Amount to be paid out of Horticultural Stock and Nurseries Account

11. (1) The object of this clause is to fix the proportion of the annual revenue received into the Horticultural Stock and Nurseries Account that is to be paid into the Consolidated Fund for the purpose of meeting the costs of administering the Act.

(2) For the purposes of section 20 (4) (b) of the Act, the prescribed proportion is 20 per cent.

Compensation payable

12. (1) For the purposes of section 20 (3) (b) of the Act, the prescribed circumstances in which compensation may be paid are:

- (a) that the stock is owned by a person who is and claims compensation as:
 - (i) a nurseryman who has propagated or obtained the stock for the purpose of commercially selling it; or
 - (ii) a reseller who has purchased the stock for the purpose of commercially reselling it; or
 - (iii) a grower who has propagated or obtained the stock for the purpose of commercially growing it; and
 - (b) that the stock is destroyed in accordance with:
 - (i) a notification published under section 8 of the Plant Diseases Act 1924; or
 - (ii) a notice served by an inspector under section 14 or 15 of the Plant Diseases Act 1924; or
 - (iii) a written agreement or undertaking (entered into between the Chief of the Division of Plant Industries and the nurseryman, reseller or grower) under which the stock is destroyed by or under the supervision of an inspector for the purpose of preventing the spread of a pest or disease or eradicating an exotic pest or disease.
- (2)** Compensation is not payable:
- (a) if, at the time of its destruction, the stock is infected solely by a pest or disease determined by the Director-General to be endemic in the area where the stock was destroyed; or
 - (b) if the stock has been procured, grown or distributed contrary to any law of New South Wales (such as the Plant Diseases Act 1924) or of the Commonwealth (such as the Quarantine Act 1908).
- (3)** The amount of compensation payable is to be determined by the Minister, but is not to exceed the sum of:
- (a) the amount determined by the Minister being the reasonable value of the stock immediately before its destruction; and
 - (b) an additional amount (if any) determined by the Minister as covering the reasonable costs of any fumigation, spraying or sterilisation.
- (4)** If stock is destroyed wholly or partly in order to prevent the spread of, or to eradicate, a pest or disease that is not endemic in the area in which the stock is destroyed, the reasonable value of the stock is to be determined as if the stock had not been infected by the pest or disease.

PART 6—MISCELLANEOUS**Exemption**

13. A person selling stock (other than prescribed stock) is exempt from the provisions of section 14 of the Act.

Notice of appeal against order for destruction of stock

14. For the purposes of section 13 (3) of the Act:

- (a) the prescribed manner of making an appeal against an order under section 13 (1) of the Act is:
 - (i) by giving a notice in or to the effect of Form 7 to the Clerk of the Local Court to which the appeal is made; and
 - (ii) by forwarding a copy of the notice to the Director-General;
- (b) the prescribed time is 10 days after service of the order to which the appeal relates.

Prescribed period for retention of certain stock and material

15. For the purposes of section 17 (1) (f) of the Act, the prescribed period for the retention of proclaimed stock or material is 14 days.

Records to be kept by nurseryman

16. (1) For the purposes of section 19 of the Act, the records to be kept by a registered nurseryman in respect of prescribed stock that the nurseryman propagates are records specifying:

- (a) the quantity, kind, date of procurement and source of supply of all propagating material used for propagating the stock; and
- (b) the number of pieces of the stock propagated from the propagating material and the dates of propagation; and
- (c) if the sale is of stock of one variety in a lot of 20 or more pieces, the name of the purchaser, the date of supply and the number of pieces of the stock sold.

(2) If stock is propagated from propagating material obtained from a source of supply approved by a notification in force under section 11 of the Act, the records kept in respect of that stock must be kept separately from the records of other stock.

(3) A record kept under this clause must be retained by the nurseryman for a period of 5 years from the making of the record.

Repeal of Horticultural Stock and Nurseries Regulations

17. (1) The Horticultural Stock and Nurseries Regulations are repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Horticultural Stock and Nurseries Regulations, had effect under those Regulations is taken to have effect under this Regulation.

SCHEDULE 1—FORMS

Form 1

(Cl. 4)

APPLICATION FOR REGISTRATION AS A NURSERYMAN

(HORTICULTURAL STOCK AND NURSERIES ACT 1969)

*I/We
(Full name/s)

of
(Address/es)

trading under the name of
apply for *registration/renewal of registration as a nurseryman in respect of the following places at which *I/we carry on, or propose to carry on, business as a nurseryman:

- +
- +

The fee of \$..... prescribed by clause 4 of the Horticultural Stock and Nurseries Regulation 1993 is enclosed.

#The numbers of each of the certificates of registration currently held by *me/us are:
.....

**
(Signature)

* Cross out if not applicable.
 + Each place of business must be listed separately.
 # Delete from initial application for registration.
 ** The application must be signed by the applicant or by a person authorised by the applicant to do so.

Form 2

(Cl. 4)

CERTIFICATE OF REGISTRATION AS A NURSERYMAN
(HORTICULTURAL STOCK AND NURSERIES ACT 1969)

This is to certify that
has been granted registration as a nurseryman in respect of the place situated at

This registration remains in force for a period of 12 months from the date of this certificate unless it is suspended or cancelled in accordance with the provisions of the Horticultural Stock and Nurseries Act 1969.

Date:
Director-General

Form 3

(Cl. 5)

APPLICATION FOR REGISTRATION AS A RESELLER
(HORTICULTURAL STOCK AND NURSERIES ACT 1969)

* I/We
(Full name/s)

of
(Address/es)

trading under the name of
apply for *registration/renewal of registration as a reseller in respect of the following places at which *I/we carry on, or propose to carry on, business as a reseller:

+
+

*We declare that no place in respect of which this application is made is used for the propagation of stock.

The fee of \$..... prescribed by clause 5 of the Horticultural Stock and Nurseries Regulation 1993 is enclosed.

#The numbers of each of the certificates of registration currently held by *me/us are:
.....

**
(Signature)

* Cross out if not applicable.

+ Each place of business must be listed separately.

Delete from initial application for registration.

** The application must be signed by the applicant or by a person authorised by the applicant to do so.

Form 4

(Cl. 5)

CERTIFICATE OF REGISTRATION AS A RESELLER
(HORTICULTURAL STOCK AND NURSERIES ACT 1969)

This is to certify that
has been granted registration as a reseller of horticultural stock in respect of the place
situated at

This registration remains in force for a period of 12 months from the date of this
certificate unless it is suspended or cancelled in accordance with the provisions of the
Horticultural Stock and Nurseries Act 1969.

Date:
Director-General

Form 5

(Cl. 7)

**APPLICATION FOR APPROVAL TO PARTICIPATE IN AN APPROVED
CERTIFICATIONSCHEME**

(HORTICULTURAL STOCK AND NURSERIES ACT 1969)

* I/We
(Full name/s)

of
(Address/es)

trading under the name of
apply for approval to participate in the following approved certification scheme:

- +
- +

The fee of \$..... prescribed by clause 7 of the Horticultural Stock and Nurseries
Regulation 1993 is enclosed.

The numbers of each of the certificates of registration currently held by *me/us are:
.....

**
(Signature)

* *Cross out if not applicable.*

+ *Give particulars of the scheme concerned.*

** *The application must be signed by the applicant or by a person authorised by
the applicant to do so.*

Form 6

(Cl. 8)

**APPLICATION FOR LABELS FOR STOCK GROWN IN ACCORDANCE
WITH AN APPROVED CERTIFICATION SCHEME**

(HORTICULTURAL STOCK AND NURSERIES ACT 1969)

*I/We
(Full name/s)

of
(Address/es)

trading under the name of
apply for the issue of labels for stock grown in accordance with the following approved
certification scheme:

- +
- +

The fee of \$..... prescribed by clause 8 of the Horticultural Stock and Nurseries
Regulation 1993 is enclosed.

The numbers of each of the certificates of registration currently held by *me/us are:

.....

**
(Signature)

* *Cross out if not applicable.*

+ *Give particulars of the scheme concerned.*

** *The application must be signed by the applicant or by a person authorised by
the applicant to do so.*

Form 7

(Cl. 14)

NOTICE OF APPEAL

(HORTICULTURAL STOCK AND NURSERIES ACT 1969)

To the Clerk of the Local Court

at

WHEREAS on the day of 19,
the Minister for Agriculture and Fisheries ordered that certain proclaimed horticultural
stock be destroyed, I am a person aggrieved by that order,

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I HEREBY APPEAL against the order on the following grounds:

.....
.....
.....

A copy of the order is attached to this Notice of Appeal.

.....
(Signature of Appellant)

Appellant's address for service:

.....
.....

To the Director-General,
Department of Agriculture:

There will be a hearing at the Local Court referred to above on the day of 19, for the purpose of ascertaining the state of readiness of this appeal and, if appropriate, for the purpose of fixing a date for hearing.

.....
(Clerk of the Local Court)

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SCHEDULE 1—FORMS

EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, with minor changes only, the provisions of the Horticultural Stock and Nurseries Regulations. The new Regulation makes provision with respect to the following matters:

- (a) matters relating to the registration of nurserymen and resellers (Part 2);
- (b) matters relating to certification schemes under Part 3A of the Act (Part 3);
- (c) matters relating to labelling (Part 4);
- (d) matters relating to finance (Part 5);
- (e) other matters of a minor, consequential or ancillary nature (Parts 1 and 6).

This Regulation is made under the Horticultural Stock and Nurseries Act 1969, including section 23 (the general regulation making power) and various other sections mentioned in the Regulation.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
