

Queensland



PLANT PROTECTION ACT 1989

**Reprinted as in force on 6 November 2003
(includes commenced amendments up to 2003 Act No. 82)**

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Also see endnotes for information about—

- **when provisions commenced**
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PLANT PROTECTION ACT 1989

[as amended by all amendments that commenced on or before 6 November 2003]

An Act about preventing, controlling and removing pest infestation of plants, and for related purposes

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Plant Protection Act 1989*.

2 Objectives of Act

The main objectives of this Act are to—

- (a) prevent, control or remove pest infestation of plants in Queensland; and
- (b) help other jurisdictions prevent, control or remove plant pests, diseases, pest infestations, infections or conditions; and
- (c) facilitate the movement of plants into and out of Queensland.

3 Definitions

The dictionary in the schedule defines particular words used in this Act.

4 Pest declarations

(1) If the Governor in Council is satisfied that—

- (a) an organism of the plant or animal kingdom (other than vertebrates); or

- (b) a virus or viroid; or
- (c) a disorder, condition or cause of specified symptoms in plants;

(an **“undeclared pest”**) is harmful to the growth or quality (including the commercial or marketable quality) of crop plants, the Governor in Council may, by regulation, prescribe the undeclared pest to be a pest for the purposes of this Act.

(2) If the Minister is of the opinion—

- (a) that—
 - (i) an organism of the plant or animal kingdom (other than vertebrates); or
 - (ii) a virus or viroid; or
 - (iii) a disorder, condition or cause of specified symptoms in plants;(an **“undeclared pest”**) is harmful to the growth or quality (including the commercial or marketable quality) of crop plants; and
- (b) that the circumstances require that urgent action should be taken to declare the undeclared pest to be a pest;

the Minister may, by notice, declare the undeclared pest to be a pest for the purposes of this Act.

(3) A notice under subsection (2) remains in force until whichever of the following first happens—

- (a) the commencement of a regulation prescribing the undeclared pest to be a pest for the purposes of this Act;
- (b) the end of 3 months.

(4) A notice under subsection (2) is subordinate legislation.

5 Exercise of pest infestation powers

For the purpose of the exercise by any person of any power under this Act that may be exercised by the person in relation to land or a matter or thing that is infested with a pest, it shall be deemed that the land, matter or thing in question is infested with a pest if it is subject to pest infestation or if, in the opinion of the person, having regard to—

- (a) the proximity of the land, matter or thing in question to a known outbreak of a pest infestation of any land, matter or thing;
- (b) the degree to which the known outbreak of the pest infestation has advanced;
- (c) the ability of the pest in question to spread and the means by which the pest in question is known to spread;
- (d) the degree of possibility that the land, matter or thing in question is subject to pest infestation whether or not the pest infestation is evident;

it is desirable to deem that the land, matter or thing is infested with pest.

6 Power for corresponding laws

The chief executive or an inspector may—

- (a) exercise functions or powers under a corresponding law; and
- (b) do anything necessary or convenient to perform functions under a corresponding law.

PART 2—APPOINTMENT OF INSPECTORS

6A Appointing inspectors

(1) The chief executive may appoint a person as an inspector.

(2) The chief executive may appoint a person as an inspector only if the chief executive is satisfied the person has the necessary expertise or experience.

6B Limiting inspectors' powers

The powers of an inspector may be limited under—

- (a) a regulation; or
- (b) a condition of appointment; or
- (c) a written notice given by the chief executive to the inspector.

6C Inspectors' appointment conditions

(1) An inspector holds office on the conditions stated in the instrument of appointment and other limitations mentioned in section 6B.

(2) If the appointment provides for a term of appointment, the inspector stops holding office at the end of the term.

(3) The inspector may resign by signed notice of resignation given to the chief executive.

(4) However, a person may not resign as an inspector if a term of appointment to another office held by the person under an Act requires the person to be an inspector.

(5) The conditions of appointment may provide that the inspector stops holding office when the inspector stops holding another office stated in the appointment conditions.

PART 3—PEST CONTROL*Division 1—Pest control measures under subordinate legislation***6D Purpose of powers**

This division provides powers to prevent, control or remove pest infestation of plants.

7 Registration of certain places

(1) A regulation may be made requiring every farm or other place of a specified type where a specified type of plant is grown to be registered under the regulation.

(2) The regulation may specify—

- (a) who must register the farm or place; and
- (b) the way in which the farm or place must be registered; and
- (c) a registration fee.

8 Control over introduction of pests

(1) The Governor in Council may by regulation, or, if the Minister considers urgent action is needed, the Minister may by notice—

- (a) prohibit the introduction into Queensland of any plant, soil, appliance or other matter or thing if it is in a condition of pest infestation prescribed therein or upon failure to comply with conditions prescribed therein reasonably necessary to prevent, control or eradicate pest infestation of crop plants;
- (b) prohibit the introduction into Queensland of any pest;
- (c) authorise the introduction into Queensland of any such matter or thing as is referred to in paragraphs (a) and (b) upon such conditions imposed under a regulation as are reasonably necessary to prevent, control or eradicate pest infestation of crop plants.

(2) A notice under subsection (1) is subordinate legislation.

(3) A notice under subsection (1) remains in force until whichever of the following first happens—

- (a) the commencement of a regulation under subsection (1) in relation to the same matter;
- (b) the end of 3 months.

(4) A person must not contravene a regulation or notice under this section.

Maximum penalty—1 000 penalty units.

(5) In this section—

“introduction into Queensland” includes introduction into Queensland generally, from a place outside Australia and from another State.

9 Control over spread of pest infestations within Queensland

(1) The Governor in Council may by regulation, or, if the Minister considers urgent action is needed, the Minister may by notice, prohibit the movement of any plant, soil, appliance or other specified matter—

- (a) from a place in Queensland to another place in Queensland; or
- (b) from a place within a specified part of Queensland to another place in that part of Queensland; or

- (c) into or out of a specified part of Queensland; or
- (d) to or from a specified place; or
- (e) from a place within a farm, orchard, holding or other specified place to another specified place.

(2) A notice under subsection (1) is subordinate legislation.

(3) A notice under subsection (1) remains in force until whichever of the following first happens—

- (a) the commencement of a regulation under subsection (1) in relation to the same matter;
- (b) the end of 3 months.

(4) A person must not contravene a regulation or notice under this section.

Maximum penalty—1 000 penalty units.

10 Crop plant district

(1) A regulation may—

- (a) declare any part or parts of the State to be a crop plant district on terms that define a crop plant for which it is declared (the “**declared crop plant**”);
- (b) vary the area of any crop plant district;
- (c) abolish a crop plant district.

(2) For a crop plant district, the Minister, may by notice, give directions the Minister considers necessary or desirable to prevent, control or remove pest infestation of the declared crop plant, including directions—

- (a) establishing periods of the year in which the crop plant may be planted or grown and prohibiting the planting or growing of the crop plant at any other time absolutely or except in accordance with conditions imposed by or under the provisions of the notice;
- (b) ordering the eradication in accordance with the provisions of the notice of crop plants from which the crop has been harvested, volunteer plants, crop residues and seedlings no longer suitable for planting;
- (c) prohibiting or regulating the removal of a crop plant into or out of the district;

- (d) prohibiting or regulating the movement of a crop plant from one place in the district to another place therein;
- (e) prohibiting the planting of varieties of a plant that are in the Minister's opinion susceptible to pest infestation or which favour the continued existence or spread of a pest;
- (f) prohibiting or regulating or requiring the application of pest control measures specified by or under the provisions of the notice.

(3) An inspector may give such directions and take all such action as may be necessary or convenient to ensure compliance with notice under subsection (2).

(4) A notice under subsection (2) is subordinate legislation.

(5) A person must not contravene a notice under subsection (2).

Maximum penalty—250 penalty units.

11 Pest quarantine area

(1) The Governor in Council may by regulation, or, if the Minister considers urgent action is needed, the Minister may by notice, declare any area to be a pest quarantine area and may define the boundaries of the quarantine area so declared.

(2) The Minister, by notice, may declare the objects and nature of the quarantine imposed in respect of a pest quarantine area including—

- (a) a pest infestation in respect of which the quarantine is declared;
- (b) the duties and obligations imposed upon owners of land within the pest quarantine area or part thereof or imposed upon any other person in order to achieve the objects of the quarantine;
- (c) the prohibitions and restrictions imposed in respect of the movement within or into or out of the pest quarantine area or part thereof of any pest, plant, soil, appliance or other matter or thing.

(3) A notice under subsection (1) or (2) is subordinate legislation.

(4) In lieu of declaring particular land to be a pest quarantine area or a part thereof, the Minister may accept an undertaking in the approved form given by the owner that the owner shall comply with conditions imposed by the Minister in respect of the undertaking either at the time of the acceptance or thereafter.

(5) An owner who gives an undertaking for the purposes of subsection (4) shall comply with the conditions imposed from time to time by the Minister in respect thereof.

(6) Land may be declared to be a pest quarantine area or part thereof pursuant to subsection (1) notwithstanding that an undertaking in respect thereof has previously been accepted by the Minister pursuant to subsection (4).

(7) An inspector may give such directions and take such action as may be necessary or convenient to ensure compliance with, or permit an exemption from, the provisions of a notice under this section or the conditions imposed in respect of any undertaking given under this section or the declared objects of a quarantine imposed under this section.

(8) Subsection (7) does not limit another provision of this Act.

(9) A notice under subsection (1) remains in force until whichever of the following first happens—

- (a) the commencement into effect of a regulation under subsection (1) in relation to the same matter;
- (b) the end of 3 months.

(10) A person must not—

- (a) contravene a regulation or notice made for the purposes of this section; or
- (b) contravene a condition imposed by the Minister under subsection (4); or
- (c) contravene a direction given by an inspector under subsection (7); or
- (d) obstruct an inspector in the exercise of powers under this section.

Maximum penalty—1 000 penalty units.

11A Approved plant variety

(1) The chief executive may declare—

- (a) a variety of a plant (the “**approved plant variety**”) for planting or cultivating in the pest quarantine area; and
- (b) the way, and the conditions under which, the approved plant variety may be planted or cultivated in the pest quarantine area.

(2) A declaration mentioned in subsection (1) is an “**approved plant declaration**”.

(3) The chief executive may decide to make an approved plant declaration only if the chief executive is satisfied the planting or cultivating of the approved plant variety will not spread the pest to a crop plant within the pest quarantine area.

(4) The chief executive must, when making a decision under subsection (3), consider the following things—

- (a) the resistance or susceptibility of the approved plant variety to the pest;
- (b) whether the approved plant variety is a host of the pest;
- (c) all other relevant circumstances, including, for example—
 - (i) whether, and to what extent, the pest would be visible on the approved plant variety; and
 - (ii) whether the approved plant variety shows any symptoms of pest infestation; and

Example—

A particular variety of bananas shows dark green marks on the underside of the leaf and at the bottom of the flower bell on the plant if it is infested with *banana bunchy top virus*.

- (iii) the way the pest is spread; and
- (iv) the likelihood of its spread.

(5) An approved plant declaration is subordinate legislation.

(6) An inspector may give directions and take action as may be necessary or convenient to ensure compliance with, or permit exemption from, an approved plant declaration.

(7) Subsection (6) does not limit another provision of this Act.

(8) If—

- (a) the Minister has, by notice under section 11(2), declared the pest quarantine area; and
- (b) a regulation in relation to the same matter has not, under section 11(1), commenced within 3 months after the Minister makes the notice;

the approved plant declaration remains in force until the notice lapses.

(9) A person must not—

- (a) contravene an approved plant declaration; or
- (b) contravene a direction given by an inspector under subsection (6); or
- (c) obstruct an inspector in the exercise of powers under subsection (6).

Maximum penalty for subsection (9)—1 000 penalty units.

12 Notification of pests

(1) A regulation may declare a pest to be a notifiable pest for this Act.

(2) Subsection (3) applies to an owner of land or a vehicle, and a person engaged by an owner of land to carry out an activity on the land, if the owner or person becomes aware of the existence of a notifiable pest on the land or vehicle.

(3) The owner or person must—

- (a) notify an inspector about the pest within 24 hours after becoming aware of it; and
- (b) confirm the notification by written notice given to the chief executive within 7 days after becoming aware of it.

Maximum penalty—1 000 penalty units.

Division 2—Other pest control measures

13 Special powers in relation to specific pest infestations

(1) Subject to subsection (3), an inspector for the purposes of controlling or removing a pest existing in or upon any land or for the purpose of preventing the spread of any existing pest to any land may give directions to the owner of the land directing the owner forthwith or within a time specified by the inspector to take such measures as the inspector thinks fit including to—

- (a) quarantine, upon conditions as directed, all or any part of the land in question;

- (b) destroy pests thereon or any plants, packages or other matters or things that are infested with pests or that, in the opinion of the inspector, it is necessary or desirable to destroy in the circumstances;
- (c) treat as directed all or any part of the land or any plant, appliance, soil or other matter or thing thereon;
- (d) take such measures as may be prescribed.

(2) An inspector, for the purposes of controlling or removing an existing pest or an existing pest infestation of any appliance, plant, harvested crop, produce, container or other thing may give in respect of the pest or thing and in respect of any other thing with which it has been mixed or associated, or which has been exposed to it, such directions to the owner thereof as the inspector thinks fit including to—

- (a) quarantine it upon conditions as directed;
- (b) destroy it;
- (c) treat it as directed;
- (d) take such measures as may be prescribed.

(2A) If the pest or thing in respect of which an inspector proposes to give directions under subsection (2) is being carried on consignment the inspector if the inspector considers it necessary or convenient may give to the consignor or the consignee any direction that the inspector is authorised under this section to give to an owner of the pest or thing.

(3) It shall not be competent to an inspector to give directions under this section ordering the destruction of any part of a growing or harvested crop that is not infested with pest.

(4) A person must comply with a direction under this section, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—1 000 penalty units.

14 Destruction of healthy crop to prevent pest infestation

(1) The chief executive, if the chief executive considers it necessary to do so in order to prevent, control or remove pest infestation of plants, may give directions in writing—

- (a) to the owner of land ordering the destruction of a crop or part thereof growing on the land that is not infested with pest;

- (b) to the owner of a harvested crop ordering the destruction of the crop or part thereof that is not infested with pest.

(1A) Directions given under subsection (1) may include a direction that the destruction in question shall be carried out in accordance with the directions of an inspector.

(2) If a crop or part thereof is destroyed in compliance with directions given under subsection (1), the owner thereof shall be entitled to compensation under, subject to and in accordance with this section, and the owner shall not be otherwise entitled to compensation.

(3) If a crop or part thereof is destroyed in compliance with directions given under subsection (1), the owner thereof shall be entitled to such compensation as the owner and the chief executive may mutually agree upon.

(4) If the owner and the chief executive fail to agree upon the amount of compensation that shall be paid, the chief executive shall submit the matter to an arbitrator chosen by the owner and the chief executive, or in the case where the owner and the chief executive do not agree upon which arbitrator the matter shall be submitted to, the chief executive shall submit the matter to an arbitrator chosen by the Minister.

(5) The decision of the arbitrator shall be final.

(6) A person must comply with a direction under this section, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—200 penalty units.

15 Special powers in respect of volunteer plants

If an inspector considers such action is necessary to prevent, control or remove any pest infestation of plants, the inspector may in respect of any volunteer plant wherever situated—

- (a) direct the owner of the land where the volunteer plant is situated to destroy the volunteer plant in accordance with directions given by the inspector; or
- (b) without giving directions under paragraph (a), destroy the volunteer plant or take measures to ensure that the volunteer plant is destroyed.

(2) A person must comply with a direction under this section, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—200 penalty units.

Division 3—Enforcement

16 Completion of unsatisfied requirements

If any person to whom directions have been given pursuant to this Act by the chief executive or an inspector directing the person to carry out any destruction or treatment or other act in accordance with the directions fails to comply with the directions, an inspector may take all measures the inspector considers necessary or convenient to carry out the destruction or treatment or act in question.

17 Costs and expenses

(1) Where an inspector takes measures under section 16, any person through whose default such measures were taken shall be liable, and if there is more than 1 such person, those persons shall be jointly and severally liable, to pay to the Crown the costs and expenses reasonably incurred in connection with the measures and the Crown may recover any outstanding amount thereof together with interest at the prescribed rate in action as for a debt in any court of competent jurisdiction.

(1A) Where a cost or expense is prescribed, the liability shall be to pay the prescribed amount if it is demanded.

(2) Without limiting the effect of subsections (1) and (1A) and subject to section 18, if measures are taken under section 16 because an owner of land has failed to comply with directions given to the owner under this Act requiring the owner to take, or forbidding the owner to take, action on the land as directed, the amount for which the owner is liable under this section shall be a charge on the land.

(3) The provisions of this section shall operate without prejudice to any proceedings that may be taken against a person for an offence against this Act.

18 Charge on land

(1) For the purpose of charging land with the amount of any costs expenses and interest as provided for in section 17(2), the chief executive may lodge with the public officer charged with maintaining a register of title to the land a notice in the approved form identifying the land and stating that there exists a charge over it securing payment to the Crown of the amount in question.

(1A) Subsection (1) shall be given effect notwithstanding that any copy of the relevant instrument of title is not produced for endorsement.

(2) The public officer with whom a notice is lodged under subsection (1) shall cause to be made in the appropriate register maintained by the public officer all such entries as are necessary to record on the title to the land identified in the notice a charge as described in the notice.

(3) Upon the making of entries on the title of land pursuant to subsection (2), the land shall become, and be, subject to a charge—

- (a) that secures payment to the Crown of the amount in question;
- (b) that has priority over all interests and mortgages and other charges existing in or over the land.

(4) Without limiting the operation of any other provision of the *Property Law Act 1974* in relation to a charge such as is provided for by this section, sections 83 to 92 of that Act shall apply to such a charge as they apply to a mortgage made by instrument within the meaning of those sections.

(5) Upon payment to the Crown of the amount secured, the charge shall cease to have effect.

(6) When a charge ceases to have effect, the chief executive shall give notice thereof in the approved form to the public officer charged with maintaining the register of title on which the charge is recorded who shall thereupon make all such entries in the public officer's register as are necessary to record that the charge has ceased to have effect.

(6A) Subsection (6) shall be given effect notwithstanding—

- (a) that there exists a caveat affecting the land in question; or
- (b) that any copy of the relevant instrument of title is not produced for endorsement.

(7) A failure to comply with this section does not render any person liable to a penalty.

19 General powers of inspectors

(1) Subject to section 20, an inspector, at any time, may—

- (a) enter any place (including any vehicle) in order to ascertain whether the provisions of this Act have been complied with or to investigate any offence against this Act or to perform a duty or exercise a power imposed or conferred upon the inspector by this Act;
- (b) take with the inspector into any place entered, pursuant to paragraph (a), such assistants, vehicles and equipment as the inspector considers necessary for the proper performance of the inspector's duties;
- (c) search any place entered pursuant to paragraph (a) and make therein such investigation, inspection or inquiry as is necessary for the purposes of this Act including by breaking open and searching any receptacle or enclosed place, conducting tests and taking without payment samples of any matter or thing for testing or as evidence;
- (d) stop and detain any vehicle or direct a person in charge of the vehicle to remove it to some other place, or the inspector may remove it to some other place, for the purposes of the performance by the inspector of a duty or the exercise by the inspector of a power, imposed or conferred upon the inspector by this Act;
- (e) seize any matter or thing with respect to which the inspector has reasonable grounds for believing that an offence against this Act has been committed or is being committed or that the inspector believes will afford evidence of the commission of an offence against this Act or that is a pest or that the inspector believes is infested with a pest together with any packing material or container or vehicle convenient to facilitate the seizure;
- (f) remove any matter or thing seized by the inspector to a place determined by the inspector, or allow it to remain at, or return it to, the place of seizure or place it in the custody of a person and in any case, make such arrangements and give such directions as the inspector considers necessary to achieve the objects of the seizure;

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- (g) direct any person to furnish for inspection at such times and places as the inspector specifies—
 - (i) records or copies of or extracts from records prepared or kept for a purpose connected with this Act or which in the opinion of the inspector would assist in ascertaining whether this Act has been complied with or whether an offence against this Act has been committed;
 - (ii) any instrument issued under this Act or a copy thereof;
- (h) take notes or copies of or extracts from anything furnished pursuant to paragraph (g);
- (i) question any person to ascertain whether this Act has been complied with or whether an offence has been committed against this Act or whether an occasion has arisen for the performance or exercise by the inspector of a duty or power imposed or conferred upon the inspector by this Act, and subject to subsection (7), require the person to answer the questions put;
- (j) require any person found by the inspector committing an offence against this Act or who the inspector believes on reasonable grounds has committed an offence against this Act or whose name and address are reasonably required for the purposes of this Act to state the person's full name and the address of the person's usual place of residence and, if the inspector considers it necessary, the name and the address of the usual place or residence of any other person, and if the inspector suspects on reasonable grounds that a name or address is false, require evidence of the correctness thereof in accordance with the inspector's directions;
- (k) direct a person who has failed to comply with this Act to take steps as directed in order to remedy those matters in respect of which the noncompliance has occurred;
- (l) if the inspector is obstructed, or reasonably believes he or she will be obstructed, ask anyone the inspector considers can help, to help the inspector exercise the inspector's powers.

(2) Directions given pursuant to subsection (1)(k) shall not prejudice or affect in any way any proceeding or action that has been or may be taken for the failure to comply that has resulted in the directions except that the person to whom the order is given is not liable for a continuation of the failure to comply during the time allowed for compliance with the directions.

(3) A person asked to help an inspector under subsection (1)(l) must help the inspector as required by the inspector and in accordance with this Act.

(4) If any matter or thing seized by an inspector is marked with a broad arrow and words to the effect that the matter or thing is impounded under the Plant Protection Act it shall be deemed for the purposes of this Act that all persons are directed not to remove or to interfere with the matter or thing so as to affect its seizure except in accordance with the directions of an inspector.

(5) The power of an inspector to seize any matter or thing with respect to which the inspector has reasonable grounds for believing that an offence against this Act has been committed includes the power to seize any plant grown from any plant—

- (a) that has been unlawfully introduced into the State; or
- (b) that has been unlawfully moved within the State to the place where the plant that is subject to seizure is growing.

(6) A person must comply with a direction or requirement under this section, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—200 penalty units.

(7) For a direction or requirement under subsection (1)(g)(i) to produce anything or under subsection (1)(i) to answer a question, it is a reasonable excuse for the person to fail to comply with the direction or requirement if the production of the thing or answering the question might tend to incriminate the person.

19A Inspectors' powers—certificates

(1) An inspector may give a person a certificate (an “**inspector's certificate**”) about a plant, or other thing the inspector is satisfied may spread a pest, including, for example, that the plant or thing—

- (a) is free of any or a stated pest infestation; or

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- (b) is free of any or a stated pest, disease, pest infestation, infection or condition within the meaning of a corresponding law to this Act; or
- (c) is in a stated condition; or
- (d) is from a stated area; or
- (e) has been treated with stated treatments; or
- (f) complies with accreditation conditions or stated accreditation conditions; or
- (g) meets stated requirements.

(2) Before giving a person an inspector's certificate for a plant or other thing, an inspector may—

- (a) inspect, test or treat the plant or thing; or
- (b) take samples of the plant or thing; or
- (c) supervise the treatment or grading of the plant or thing; or
- (d) examine materials or equipment used to treat or grade the plant or thing; or
- (e) do anything else the inspector reasonably considers necessary or desirable.

(3) A certificate may be for movement of the plant or thing within Queensland or out of Queensland or for another purpose.

(4) The chief executive may charge a reasonable fee for an inspector's certificate.

(5) A person who is not an inspector must not give an inspector's certificate.

Maximum penalty—1 000 penalty units.

(6) A person must not make a statement or other representation about a plant or other thing that is likely to cause someone reasonably to believe that an inspector's certificate has been given for the plant or thing if—

- (a) an inspector's certificate has not been given for the plant or thing; and

- (b) the representation is made—
 - (i) for the sale or movement of the plant or thing; or
 - (ii) to an inspector.

Maximum penalty—50 penalty units.

20 Restricted entry into dwelling house

(1) Before an inspector enters a dwelling house for the purpose of exercising the inspector's powers under this Act, save where the inspector has the permission of the occupier to the inspector's entry, the inspector shall make an application to a justice who is a magistrate and obtain from the justice a warrant to enter.

(2) A justice who is satisfied upon an application made under this section that there is reasonable cause to suspect or believe—

- (a) that in any place an offence against this Act has been or is being committed; or
- (b) that there is in any place any matter or thing with respect to which an offence against this Act has been or is being committed, or with respect to which an inspector may exercise a power under this Act;

may issue a warrant directed to an inspector to enter the place specified in the warrant for the purpose of exercising therein the powers conferred upon an inspector by this Act.

(3) The justice shall specify in the warrant the powers the inspector may exercise and shall note thereon the basis upon which the warrant is issued.

(4) An application to a justice for the issue of a warrant under this section—

- (a) may be heard in any place, and subject to subsections (5) and (6), in such manner as the justice thinks fit;
- (b) may be made in person or by telephone, radio or by means of any other form of distant communication.

(5) Except where a warrant is issued upon an application made by telephone, radio or by means of any other form of distant communication, in determining whether or not the justice should issue a warrant, the justice shall not rely on any statement of facts unless it is provided by means of an oral or written statement given under oath, affirmation or declaration or under some other sanction authorised by law.

(6) If an application is made by means of telephone, radio or any other form of distant communication the following provisions shall apply—

- (a) the justice shall not issue the warrant unless the justice informs the applicant of the facts upon which the justice relies in issuing the warrant and obtains from the applicant an undertaking that the applicant shall deliver to the justice as directed by the justice as soon as practicable a statement in writing given under oath, affirmation or declaration or under some other sanction authorised by law, that verifies those facts;
- (b) if the justice issues the warrant—the justice shall inform the applicant that the justice has done so and shall send the warrant to the Minister within 7 days of its issue;
- (c) on and from the issue of the warrant, a form of warrant completed by the applicant substantially in the terms of the warrant issued by the justice and stating the name of the justice and the date on which and the place at which the justice issued it shall for all purposes be deemed to be a warrant issued under this section;
- (d) as soon as practicable after the issue of a warrant, the applicant shall deliver to the justice a statement in writing in compliance with the undertaking obtained from the applicant pursuant to paragraph (a) and if the applicant fails to do so the warrant on and from such failure shall be deemed to be cancelled.

(6A) The failure of a justice to send a warrant to the Minister in compliance with subsection (6)(b) shall not affect the validity of the warrant.

(7) A warrant issued under this section shall be, for a period of 21 days from the date of its issue, sufficient authority for the inspector and all persons acting in aid of the inspector—

- (a) to enter the place specified in the warrant; and
- (b) subject to the terms of the warrant, to exercise the powers conferred upon an inspector under this Act.

20A Inspectors' powers—imminent risk of infestation

(1) This section applies if the chief executive is satisfied on reasonable grounds it is necessary to exercise powers under this division to avoid an imminent risk of a pest infesting plants or other things on land, other than land in a pest quarantine area for the pest.

(2) In considering whether there is an imminent risk of the pest infesting plants or other things on the land, the chief executive must have regard to—

- (a) the proximity of the land to a known infestation of the pest; and
- (b) the ability of the pest to spread and the way in which it spreads.

(3) An inspector may, without a warrant or consent of the owner of the land, enter the land.

(4) Before entering the land, the inspector must, or make a reasonable attempt to—

- (a) tell the owner of the land the inspector is authorised under this Act to enter the land; and
- (b) give the owner an opportunity to allow the inspector immediate entry to the land without using force.

(5) The inspector may—

- (a) direct the owner to take stated reasonable steps within a stated reasonable period, including, for example, steps about monitoring for, or treating, the pest; or
- (b) take the reasonable steps; or
- (c) authorise another person to take the reasonable steps.

(6) The direction may be given orally or by written notice.

(7) If the direction is given orally, the inspector must as soon as practicable confirm the direction by written notice given to the owner.

(8) When giving the direction under subsection (5)(a), the inspector must warn the owner it is an offence not to comply with the direction unless the owner has a reasonable excuse.

(9) The owner must comply with the direction unless the owner has a reasonable excuse.

Maximum penalty—100 penalty units.

(10) If the inspector takes the steps, the inspector may also exercise any of the powers of an inspector under this division.

(11) The inspector may exercise the powers mentioned in subsections (3), (5)(b) and (10) with the help, and using the force, that is necessary and reasonable in the circumstances.

(12) In exercising or attempting to exercise the powers mentioned in subsections (3), (5)(b) and (10), an inspector must take all reasonable steps to ensure the inspector causes as little inconvenience to any person on the land, and does as little damage, as is practicable in the circumstances.

(13) This section does not limit any power an inspector has apart from this section.

(14) If an inspector authorises a person to take steps under subsection (5)(c)—

- (a) the person may exercise the powers mentioned in subsection (10); and
- (b) the inspector must inform the person—
 - (i) of the steps the person is authorised to take; and
 - (ii) of the person's powers under this section.

(15) In this section—

“land” does not include premises, or a part of premises, where a person resides.

PART 4—ACCREDITATION

Division 1—Accreditation

21 Purpose and operation of accreditation system

(1) The purpose of the accreditation system provided by this part is to allow for accredited persons to give assurance certificates about plants, or other things that may spread a pest, that—

- (a) best suit particular circumstances of accredited persons; and
- (b) reduce the need for day-to-day oversight by the chief executive and exercise of powers by inspectors.

(2) An assurance certificate is intended to provide a convenient way to comply with or be exempted from the requirements of this Act or of the laws of another jurisdiction about plants or other things that may spread a pest, including, for example, about the origin, condition or movement of the plants or things.

(3) An assurance certificate may be given by an accredited person or, if accreditation conditions permit, by a person acting for an accredited person.

(4) An assurance certificate may be given for the person giving the certificate or someone else, subject to accreditation conditions, the certificate and any Act.

21A Accreditation

(1) A person may apply to the chief executive for the grant of an accreditation.

(2) The chief executive may—

- (a) grant the accreditation applied for or another accreditation; or
- (b) refuse accreditation.

(3) An accreditation may be given in a way the chief executive considers appropriate.

Example—

The chief executive may give an accreditation in the form of a certificate, or an agreement or arrangement with the accredited person.

21B Refusal to grant accreditation

If the chief executive refuses to grant accreditation to an applicant, the chief executive must give the applicant a written notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the applicant may apply to the chief executive for reconsideration of the decision.

21C Accreditation conditions

(1) The chief executive may grant an accreditation on conditions (“**accreditation conditions**”).

(2) A condition may provide for—

- (a) the accredited person to give only a stated type of assurance certificate; or
- (b) conditions on which an assurance certificate may be given; or
- (c) other restrictions on the use of the accreditation; or
- (d) the chief executive to cancel the accreditation or suspend the accreditation for a stated period or until the happening of a stated event; or
- (e) security for the performance of the conditions by the accredited person and the enforcement of the security, even if there is a penalty or liability under this Act; or
- (f) payment to the chief executive by the accredited person of the reasonable costs stated in the conditions for preparing or performing the conditions and ensuring that the conditions are complied with; or
- (g) a matter prescribed under a regulation.

(3) Subsection (2) does not limit conditions that may be imposed by the chief executive.

(4) In this section—

“**security**” includes mortgage, bond, insurance and surety.

21D Register

(1) The chief executive must keep a register of accredited persons.

(2) The register may be kept in the form (whether or not in a documentary form) the chief executive considers appropriate.

*Division 2—Cancellation, suspension and amendment***21E Cancellation and suspension—grounds**

(1) Each of the following is a ground for cancelling or suspending an accreditation—

- (a) the accreditation was obtained by incorrect or misleading information or documents;
- (b) the holder has not paid fees or other amounts payable to the chief executive;
- (c) the holder has contravened an accreditation condition;
- (d) the holder has committed an offence against this Act;
- (e) the holder is within 5 years convicted of an offence—
 - (i) in the State involving fraud; or
 - (ii) elsewhere, if the act or omission that formed the offence would have been an offence involving fraud had it happened in the State;
- (f) the holder was accredited or held similar accreditation (however described) in another jurisdiction within 2 years and that accreditation was cancelled.

(2) In this section—

“**holder**”, if the holder of an accreditation is a corporation, includes a related entity of the holder under the Corporations Act, section 9.¹

21F Amendment of accreditation

If the chief executive considers an accreditation should be amended, the chief executive may amend the accreditation under section 21G.

¹ Corporations Act, section 9 (Dictionary)

21G Cancellation suspension and amendment—procedures

(1) If the chief executive considers a ground exists to cancel or suspend an accreditation or if the chief executive proposes to amend an accreditation (the “**proposed action**”), the chief executive must give the holder written notice—

- (a) stating the proposed action; and
- (b) stating the ground for the proposed action; and
- (c) outlining the facts and circumstances forming the basis for the ground; and
- (d) if the proposed action is to suspend the accreditation—stating the proposed suspension period; and
- (e) if the proposed action is to amend the accreditation—stating the proposed amendment; and
- (f) inviting the holder to show (within a stated time of at least 28 days) why the proposed action should not be taken.

(2) If, after considering all written representations made within the stated time, the chief executive still considers a ground exists to take the proposed action, the chief executive may—

- (a) if the proposed action was to cancel the accreditation—amend the accreditation, suspend the accreditation for a period or cancel it; or
- (b) if the proposed action was to suspend the accreditation—suspend the accreditation for no longer than the period stated in the notice; or
- (c) if the proposed action was to amend the accreditation—amend the accreditation.

(3) The chief executive must inform the holder of the decision by written notice.

(4) If the chief executive decides to cancel, suspend or amend the accreditation, the notice must state—

- (a) the reasons for the decision; and
- (b) that the holder may apply to the chief executive for reconsideration of the decision.

(5) The decision takes effect on the later of the following—

- (a) the day the notice is given to the holder;
- (b) the day stated in the notice.

(6) However, despite subsection (1), if the chief executive considers it necessary in the public interest, the chief executive may, by written notice given to the holder, immediately suspend the accreditation until the earliest of the following—

- (a) the chief executive informs the holder of the chief executive's decision by notice under subsection (3), given after complying with subsections (1) and (2);
- (b) the end of 56 days after the notice is given to the holder.

(7) If the chief executive immediately suspends the accreditation, the notice must state—

- (a) the reasons for the decision; and
- (b) that the holder may apply to the chief executive for reconsideration of the decision.

(8) Subsections (1) to (7) do not apply—

- (a) if the chief executive proposes to amend the accreditation only—
 - (i) for a formal or clerical reason; or
 - (ii) in another way that does not adversely affect the holder's interests; or
- (b) if the holder asks the chief executive to cancel or amend the accreditation and the chief executive proposes to give effect to the request.

(9) The chief executive may cancel or amend an accreditation under subsection (8) by written notice given to the holder.

21H Return of cancelled suspended or amended accreditation

(1) This section applies if the chief executive cancels, suspends or amends an accreditation.

(2) The chief executive may, by written notice, require the holder to return an accreditation document to the chief executive within 14 days, or a later stated time.

(3) The holder must comply with the notice, unless the holder has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

(4) If a suspended accreditation document is returned, the chief executive must return the document to the holder at the end of the suspension period.

(5) If an amended accreditation document is returned, the chief executive must return the document to the holder after amending it.

(6) However, the amendment of an accreditation does not depend on an accreditation document being returned.

Division 3—Offences about accreditation

21I Contravention of accreditation conditions

An accredited person must not contravene an accreditation condition.

Maximum penalty—200 penalty units.

21J Offences about certification

(1) A person who is not an accredited person or an inspector must not give for a plant or other thing anything that purports to be an assurance certificate.

Maximum penalty—1 000 penalty units.

(2) A person must not make a statement or other representation about a plant or other thing that is likely to cause someone reasonably to believe that an acceptable assurance certificate has been given for the plant or thing, if—

- (a) an acceptable assurance certificate has not been given for the plant or thing; and
- (b) the representation is made—
 - (i) for the sale or movement of the plant or thing; or
 - (ii) to an inspector.

Maximum penalty—1 000 penalty units.

PART 5—INTERGOVERNMENTAL AGREEMENTS

21K Purpose of intergovernmental agreements

(1) The purpose of this part is to provide for intergovernmental agreements with other jurisdictions for the objectives of this Act.²

(2) The purpose is to be achieved mainly by ensuring the integrity and mutual recognition of acceptable assurance certificates.

21L Intergovernmental agreements

(1) The chief executive may, as agent of the State, enter into an intergovernmental agreement with another jurisdiction (an “**intergovernmental agreement**”).

(2) The agreement may—

- (a) provide for recognition of assurance certificates given under the corresponding law of the other jurisdiction; and
- (b) impose audit, inspection or other requirements on a party to ensure the integrity and mutual recognition of acceptable assurance certificates; and
- (c) provide for another matter necessary or convenient to achieve the objects of this Act.

PART 6—PROVISIONS ABOUT ADMINISTRATIVE DECISIONS

Division 1—General provision

21LA Failure to decide particular decisions taken to be refusal

(1) This section applies to the following—

- (a) an application for accreditation made under section 21A;

² For the objectives of this Act see section 2 (Objectives of Act).

- (b) an application, whether oral or written, to an inspector for an inspector's certificate or approval.

(2) If the chief executive or inspector fails to decide the application within 28 days after the application is made, the failure is taken to be a decision by the chief executive or inspector to refuse the application at the end of the 28 days.

(3) However, the chief executive or inspector may extend the period within which the decision may be made by giving, within 28 days of the application, written notice to the applicant stating the following—

- (a) the chief executive or inspector has extended the period within which the decision may be made;
- (b) the extended period.

(4) The extended period must be no longer than—

- (a) 28 days after the notice is given; or
- (b) if the applicant agrees to a longer period—the agreed period.

(5) If the chief executive or inspector gives a notice under subsection (3) and fails to decide the application within the extended period stated in the notice, the failure is taken to be a decision by the chief executive or inspector to refuse the application at the end of the extended period.

Division 2—Reconsideration of decisions

21M Application for reconsideration of administrative decisions

(1) A person aggrieved by the making of a decision of an administrative character under this Act may apply to the chief executive for reconsideration of the decision.³

(2) The application must—

- (a) be made within 28 days after the relevant day; and
- (b) be made in writing; and

3 Under the *Judicial Review Act 1991*, part 4, a person aggrieved by an administrative decision of the chief executive can also ask the chief executive to provide a written statement of reasons for the decision, if they were not given. See the *Acts Interpretation Act 1954*, section 27B for what the chief executive must set out in those reasons.

- (c) state the grounds on which the applicant seeks the reconsideration.

(3) A decision made by the chief executive on an application for reconsideration under this section can not be the subject of a further application for reconsideration of the decision.

(4) References in this section to a person aggrieved, to the making of a decision, and to a decision of an administrative character, have the same respective meanings as in the *Judicial Review Act 1991*.⁴

(5) In this section—

“**relevant day**” means—

- (a) if the person is given notice of the decision—the day the person is given notice; or
- (b) otherwise—the day that is the later of the following—
- (i) 28 days after the application for the decision was made;
 - (ii) the end of any extended period under section 21LA(3) for deciding the application.

21N Decision on reconsideration

(1) The chief executive may on an application under section 21M—

- (a) confirm, amend or reverse the decision subject to the application; or
- (b) set aside the decision and make a decision in substitution for the decision set aside.

(2) The chief executive must immediately give the applicant written notice of the decision.

(3) If the decision is not the decision sought by the applicant, the notice must state—

4 Under the *Judicial Review Act 1991*, section 7, a reference to a person aggrieved by a decision includes a reference to a person whose interests are adversely affected by the decision. Under the *Judicial Review Act 1991*, section 5, references to making, or refusing to make, a decision are defined in an inclusive way and in the widest possible terms. For example, the making of a decision includes the doing or refusing to do anything. Under the *Judicial Review Act 1991*, decisions of an administrative character do not include decisions to make legislative instruments, e.g. instruments that are subordinate legislation.

- (a) the reasons for the decision; or
- (b) that the applicant may appeal against the decision to a Magistrates Court within 28 days.

Division 3—Appeal to court

21O Right to appeal to the Magistrates Court

(1) A person dissatisfied by a decision of the chief executive under section 21N may appeal against the decision.

(2) The appeal may be made to the Magistrates Court nearest the place where the dissatisfied person lives, or carries on, or proposes to carry on, a business affected by the decision.

21P How to start appeal

(1) An appeal is started by filing a written notice of appeal with the relevant clerk of the court.

(2) A copy of the notice must be served on the chief executive.

(3) A person may only appeal within 28 days after notice of the decision was given to the person.

(4) However, if—

- (a) the notice did not state the reasons for the decision, and
- (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (3);

the person may apply within 28 days after the person is given a statement of the reasons.

(5) Also, the court may at any time extend the period for filing the notice of appeal.

(6) The notice of appeal must state the grounds of appeal.

21Q Stay of operation of decisions

(1) The Magistrates Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

- (a) may be given on the conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(3) The period of a stay under this section must not extend past the time when the court decides the appeal.

(4) An appeal against a decision affects the decision, or carrying out of the decision, only if the decision is stayed.

21R Powers of Magistrates Court on appeal

(1) In deciding an appeal, the Magistrates Court—

- (a) has the same powers as the chief executive; and
- (b) is not bound by the rules of evidence; and
- (c) must comply with natural justice; and
- (d) may hear the appeal in court or chambers.

(2) An appeal is by way of rehearing.

(3) The court may—

- (a) confirm the decision; or
- (b) set aside the decision and substitute another decision; or
- (c) set aside the decision and return the issue to the chief executive with the directions the court considers appropriate.

21S Effect of Magistrates Court's decision on appeal

If the Magistrates Court substitutes another decision, the substituted decision is, for this Act, taken to be the chief executive's decision.

21T Appeals

An appeal to a District Court from a decision of a Magistrates Court may be made only on a question of law.

PART 7—MISCELLANEOUS

22 Duty to comply with notice given to 1 of several owners

If directions that are authorised by this Act to be given to the owner of land or a matter or thing are given to 1 of several owners of the land, matter or thing, the directions so given shall be as valid and effectual, and the provisions of this Act shall apply to the owner, as if the owner were the only owner of the land, matter or thing.

23 False or misleading information

(1) A person must not state to the chief executive or an inspector anything the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

(2) A complaint against a person for an offence against subsection (1) is sufficient if it states the statement made was false or misleading to the person's knowledge.

23A False, misleading or incomplete documents

(1) A person must not give the chief executive or an inspector a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the chief executive or inspector, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) gives the correct information to the chief executive or inspector if the person has, or can reasonably obtain, the correct information.

(3) A complaint against a person for an offence against subsection (1) is sufficient if it states the document was false, misleading or incomplete to the person's knowledge.

24 Obstruction

(1) A person shall not obstruct an inspector in the exercise of an inspector's powers under this Act.

Maximum penalty—200 penalty units.

(2) For the purpose of this Act a person shall be deemed to obstruct an inspector in the exercise of the inspector's powers under this Act if the person—

- (a) assaults, abuses, intimidates or insults an inspector or any other person assisting an inspector in the exercise of the inspector's powers under this Act; or
- (b) directly or indirectly deliberately prevents any person from being questioned by an inspector or from furnishing under this Act any information or records or copies thereof or attempts to do so; or
- (c) in any other way obstructs or attempts to obstruct an inspector in the exercise of the inspector's powers under this Act.

(3) A person shall not obstruct the performance by another person of a duty or obligation imposed on the other person by this Act.

Maximum penalty—200 penalty units.

25 Voluntary forfeiture to Crown

(1) If the owner of any matter or thing seized under this Act notifies an inspector that the owner does not wish to take possession of it, the matter or thing is forfeited to the Crown and may be destroyed or otherwise disposed of as directed by the chief executive.

(2) If—

- (a) an inspector has given a notice to the owner of a matter or thing seized under this Act that it is released from detention and may be collected by the owner; and
- (b) the owner fails to collect the item within 7 days in the case of perishables, or within 30 days in any other case, of the date upon which notice was given;

the item is forfeited to the Crown and may be destroyed or otherwise disposed of as directed by the chief executive.

26 Dealing with seized matters or things

(1) If it is necessary or convenient to do so for the purpose of preventing, controlling or removing pest infestation of plants, an inspector, with the approval of the chief executive first had and obtained or in accordance with instructions issued by the chief executive from time to time, may destroy or otherwise dispose of any matter or thing seized under this Act or may treat in such manner as the inspector thinks fit any such matter or thing.

(2) Where the matter or thing is seized because of the failure of any person to comply with the provisions of this Act in respect thereto, the person in default shall be liable, and if there is more than 1 such person, they shall be jointly and severally liable, to pay to the Crown the amount of any costs, charges or expenses reasonably incurred in connection with the seizure, destruction, disposal or treatment.

(2A) Where the amount of any costs, charges or expenses with respect to any measures is prescribed, the liability provided for in subsection (2) shall be to pay the prescribed amount where that amount is demanded.

(3) If any matter or thing is destroyed or otherwise disposed of under this section, the proceeds thereof (if any) less the amount of any costs, charges or expenses reasonably incurred by the Crown in connection therewith shall be paid by it—

- (a) to the person or (in varying amounts if necessary) to the persons appearing to the Crown to be entitled thereto; or
- (b) if no such person can be located after reasonable inquiries—to the consolidated fund;

and thereupon it shall not be liable at the suit of any person for the proceeds.

(3A) Subsection (3) shall not be construed so as to bar the right of a person entitled to recover by action proceeds payable under the subsection from a person to whom they have been paid by the Crown under the subsection.

(4) A court before which proceedings are brought for an offence by reason of which any matter or thing has been seized under this Act may give such directions as it thinks fit in relation to the disposal of the matter or thing if it remains in the possession of the Crown at the time of the completion of those proceedings and all persons concerned shall abide by those directions.

27 Right of entry in order to comply with this Act

An owner of land occupied by another person, whether as lessee or in any other capacity, has the right to enter and remain on the land for the purpose of performing a duty or obligation imposed on the owner by or under this Act.

28 Limitation of action

(1) Liability at law shall not attach to the Crown, the Minister, the chief executive, an inspector or any other person acting in aid of an inspector on account of any act or thing—

- (a) done or omitted to be done pursuant to this Act; or
- (b) done or omitted to be done bona fide for the purposes of this Act and without negligence.

(1A) Subsection (1) does not affect the liability of a person to disciplinary action under the *Public Service Act 1996*.

(2) Notwithstanding the provisions of subsection (1), where a person suffers damage through compliance with this Act, whether by himself or herself or another person, no compensation shall be payable to the person except in a case where the person is entitled to compensation pursuant to section 14(3).

29 Liability for offence as employee

A person is not liable to be convicted for an offence against this Act committed by the person as an employee if the person satisfies the court that the offence was committed while the business of the person's employer was being conducted under the personal superintendence of that employer or of a manager or other representative of that employer, and that the offence was committed with the knowledge of that employer, manager or representative.

30 Modes of service

(1) A notice or other instrument under this Act that is required to be given to any person shall be taken to have been duly given to the person to whom it is directed if—

- (a) it is served personally on the person or, in the case of a body corporate, on its secretary or a member of its governing body;
- (b) it is addressed to the person and left at, or sent by prepaid post to, the place of residence or of business of the person last known to the sender.

(2) A notice or other instrument which is intended to be served on the owner of any land may be addressed to the owner by that expression or a description within the meaning of that expression under this Act without a name together with the address or other description of the land in question.

(3) Without limiting the effect of subsection (1), a notice or other instrument addressed as provided for by subsection (2), shall be taken to be duly given if—

- (a) it is given to some person on the land in question who is apparently above the age of 16 years and apparently employed or resident thereon; or
- (b) it is affixed to some structure on the land so as to make the notice or instrument conspicuous.

31 Delegation by chief executive

The chief executive may delegate to an officer or employee of the department the chief executive's powers under this Act, other than the power to—

- (a) appoint inspectors; or
- (b) enter into intergovernmental agreements.

32 Prosecution of offences

The prosecution of an offence against this Act is a summary proceeding under the *Justices Act 1886*.

33 Evidence

In a proceeding for the purposes of this Act—

- (a) the appointment of an inspector, or the authority of any person or body to do any act, take any proceeding or give any directions or orders pursuant to this Act shall be presumed unless the contrary is proved;
- (b) a signature purporting to be that of the Minister, the chief executive, an inspector shall be taken to be the signature it purports to be unless the contrary is proved;
- (c) a document purporting to be a copy of directions or any order given under this Act signed by the Minister, the chief executive, inspector shall upon its production in the proceedings be evidence of the terms of the directions or order in question and of the lawful issuing thereof;
- (d) in relation to an offence against this Act a statement in the complaint or in particulars issued in connection therewith—
 - (i) identifying the place where the offence was committed;
 - (ii) stating that the place where the offence was committed was within the State;
 - (iii) stating that the defendant was the owner of land or of a matter or thing in respect of which the offence was committed;shall be evidence of the matters stated therein;
- (e) a certificate purporting to be made by the chief executive stating the amount of costs or expenses incurred by an inspector or other person or body acting under an authority provided by this Act in taking measures under this Act described in the certificate is evidence that the measures were taken and the costs or expenses were reasonably incurred for the measures.

34 Approval of forms

The chief executive may approve forms for use under this Act.

35 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may—

- (a) impose fees; and
- (b) create offences and prescribe penalties of not more than 20 penalty units for each offence.

SCHEDULE**DICTIONARY**

section 3

“acceptable assurance certificate” means—

- (a) an assurance certificate given by an accredited person in accordance with the conditions of the person’s accreditation; or
- (b) a certificate given under a corresponding law to part 4.

“accreditation conditions” see section 21C(1).⁵

“accreditation document” means a document given to an accredited person by the chief executive for the accreditation.

“accredited person” means a person who is accredited under part 4 to give assurance certificates.

“amendment” of an accreditation document, includes amendment of an accreditation condition.

“another jurisdiction” means the Commonwealth or another State.

“appliance” includes any vehicle, machinery, equipment or apparatus of any kind.

“approved form” see section 34.

“assurance certificate” means a certificate under part 4 about a plant or other thing, including, for example, a certificate that a plant or thing—

- (a) is free of any or a stated pest infestation; or
- (b) is free of any or a stated pest, disease, pest infestation, infection or condition within the meaning of a corresponding law to this Act; or
- (c) is in a stated condition; or
- (d) is from a stated area; or
- (e) has been treated in a stated way; or

5 Section 21C (Accreditation conditions)

SCHEDULE (continued)

- (f) complies with accreditation conditions or stated accreditation conditions; or
- (g) meets other stated requirements, including requirements prescribed under a regulation.

“corresponding law”, to this Act or a provision of this Act, means a law of another jurisdiction that is declared under a regulation to be a corresponding law to this Act or the provision.

“crop plant” means a plant that is intentionally grown for its consumption as food or fodder or for its resale or the sale of its products or for a commercial use.

“crop plant district” means a district established under section 10(1).

“inspector” means a person who is appointed under this Act as an inspector.

“inspector’s certificate” see section 19A(1).⁶

“intergovernmental agreement” see section 21L(1).⁷

“land” includes premises.

“movement” includes movement by any form of transport.

“owner” includes—

- (a) in relation to land, every person other than the Crown—
 - (i) who is for the time being entitled to receive the rent of the land, or who, if the land were let to a tenant at a rack rent, would be entitled to receive the rack rent; or
 - (ii) who is the holder of any lease, licence or other permission to occupy the land from the Crown or a person deriving title thereunder; or
 - (iii) who is the occupier of the land or who has the care, control or management of the land; and
- (b) in relation to a thing, the person who has the thing in the person’s possession.

⁶ Section 19A (Inspectors’ powers—certificates)

⁷ Section 21L (Intergovernmental agreements)

SCHEDULE (continued)

“pest” means any organism of the plant or animal kingdom (excluding vertebrates) or any virus or viroid or disorder or condition or cause of specified symptoms that is declared to be a pest under section 4.

“pest infestation” means a condition whereby the land, plant, soil, appliance or other matter or thing in respect of which the term is used supports a pest physically, nutritionally or in any other way or a condition whereby the presence of the pest in or on the land, plant, soil, appliance or other matter or thing in question exposes any plant either directly or indirectly to pest infestation.

“pest quarantine area” means a quarantine area declared under section 11.

“plant” means a member of the plant kingdom and includes the seed or seedling of or a part of a plant, whether living or dead and whether attached to a plant but does not include timber in service.

“possess” a thing, for a person, includes have under control anywhere—

- (a) whether for the use or benefit of the person or anyone else; and
- (b) although someone else has the actual possession or custody of the thing.

“sale” includes sale by barter or exchange, agreement to sell, offering or exposure or having in possession for sale, receiving, forwarding or delivery for or on sale, and attempted sale.

“State” includes Territory.

“vehicle” includes a conveyance of any kind, whether or not it is at the material time capable of being operated or moved in any manner, and includes any aircraft, vessel or any caravan, trailer or railway rolling stock.

“volunteer plant” means a plant that has not been intentionally grown or cultivated, and includes an uncultivated self-sown plant occurring on land on which plants of the same species have been growing as crop plants.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 6 November 2003. Future amendments of the Plant Protection Act 1989 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	to 1993 Act No. 32	3 June 1993	22 February 1994
2	to 1995 Act No. 58	28 November 1995	21 December 1995
3	to 1996 Act No. 14	23 May 1996	5 July 1996
3A	to 1996 Act No. 37	1 December 1996	10 January 1997
3B	to 1999 Act No. 51	1 January 2000	17 January 2000
3C	to 2000 Act No. 5	23 March 2000	6 April 2000
3D	to 2001 Act No. 45	15 July 2001	27 July 2001
3E	to 2001 Act No. 63	25 October 2001	8 November 2001
			(Column discontinued)
			Notes
3F	to 2002 Act No. 36	1 October 2002	R3F withdrawn, see R4
4	to 2002 Act No. 36	1 October 2002	
4A	to 2003 Act No. 44	1 September 2003	
4B	to 2003 Act No. 82	6 November 2003	

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed names and titles	1, 2
Corrected minor errors	3
Renumbered provisions	1

6 List of legislation

Plant Protection Act 1989 No. 14

date of assent 30 March 1989
 commenced on date of assent
 amending legislation—

Sugar Industry Act 1991 No. 20 pt 14 div 1

date of assent 1 May 1991
 commenced 15 July 1991 (1991 SL No. 19)

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 1

date of assent 7 December 1992
 commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1993 No. 32 ss 1–3 sch 1

date of assent 3 June 1993
 commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995
 commenced on date of assent

Plant Protection Amendment Act 1996 No. 14

date of assent 23 May 1996
 s 22 commenced 20 October 1995
 remaining provisions commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Sugar Industry Act 1999 No. 51 ss 1, 2(2), 228 sch 1

date of assent 18 November 1999
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 January 2000 (see s 2(2))

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2(1)–(2), 373 sch 2

date of assent 23 March 2000
 commenced on date of assent (see s 2(1)–(2))

Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

Primary Industries Legislation Amendment Act 2001 No. 63 s 1, pt 6, s 58 sch

date of assent 25 October 2001

commenced on date of assent

Animal and Plant Health Legislation Amendment Act 2002 No. 36 pts 1, 5, s 45 sch 2

date of assent 29 August 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 2002 (2002 SL No. 257)

Sugar Industry and Other Legislation Amendment Act 2003 No. 44 ss 1, 2(2), pt 4

date of assent 27 August 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 2003 (2003 SL No. 200)

Primary Industries and Other Legislation Amendment Act 2003 No. 82 ss 1–2(1)(a), pt 9, s 88 sch

date of assent 6 November 2003

commenced on date of assent (see s 2(1)(a))

7 List of annotations

Title sub 1996 No. 14 s 4**PART 1—PRELIMINARY****pt hdg** ins 1996 No. 14 s 3 sch**Objectives of Act****s 2** prev s 2 om 1993 No. 32 s 3 sch 1

pres s 2 ins 1996 No. 14 s 5

Definitions**prov hdg** sub 1996 No. 14 s 3 sch**Note**—prev s 3 contained definitions for this Act. Definitions are now located in the schedule—Dictionary.**s 3** amd 1991 No. 20 s 14.2(b); 1993 No. 32 s 3 sch 1; 1996 No. 14 s 3 sch

(2)–(3B) renum as s 4(1)–(4) 1996 No. 14 s 3 sch

(4) renum as s 5 1996 No. 14 s 3 sch

amd 2002 No. 36 s 21

Pest declarations**prov hdg** ins 1996 No. 14 s 3 sch**s 4** prev s 4 om 1995 No. 58 s 4 sch 1

pres s 4 (prev s 3(2)–(3B)) renum 1996 No. 14 s 3
amd 1996 No. 14 s 3 sch; 2002 No. 36 s 22

Exercise of pest infestation powers

prov hdg ins 1996 No. 14 s 3 sch
s 5 prev s 5 om 1996 No. 14 s 7
pres s 5 (prev s 3(4)) renum 1996 No. 14 s 3 sch

Power for corresponding laws

s 6 sub 1996 No. 14 s 7

Act applies to sugar cane

s 6AA ins 1999 No. 51 s 228 sch 1
amd 2001 No. 63 s 58 sch
om 2003 No. 44 s 30

PART 2—APPOINTMENT OF OFFICERS

pt hdg ins 1996 No. 14 s 7

Appointing inspectors

s 6A ins 1992 No. 68 s 3 sch 1
amd 1995 No. 58 s 4 sch 1
sub 1996 No. 14 s 7

Limiting inspectors' powers

s 6B ins 1996 No. 14 s 7

Inspectors' appointment conditions

s 6C ins 1996 No. 14 s 7

PART 3—PEST CONTROL

pt hdg ins 1996 No. 14 s 7

Division 1—Pest control measures under subordinate legislation

div hdg ins 1996 No. 14 s 7

Purpose of powers

s 6D ins 1996 No. 14 s 7

Registration of certain places

s 7 sub 1993 No. 32 s 3 sch 1
amd 1996 No. 14 s 3 sch

Control over introduction of pests

s 8 amd 1993 No. 32 s 3 sch 1; 1996 No. 14 s 3 sch; 2002 No. 36 s 23

Control over spread of pest infestations within Queensland

s 9 sub 1993 No. 32 s 3 sch 1
amd 1996 No. 14 ss 8, 3 sch; 2002 No. 36 s 24

Crop plant district

s 10 amd 1993 No. 32 s 3 sch 1; 1996 No. 14 ss 9, 3 sch

Pest quarantine area

s 11 amd 1993 No. 32 s 3 sch 1; 1995 No. 58 s 4 sch 1; 1996 No. 14 s 3 sch; 2002 No. 36 s 25

Approved plant variety

s 11A ins 2003 No. 44 s 31

Notification of pests

s 12 amd 1993 No. 32 s 3 sch 1; 1996 No. 14 ss 10, 3 sch; 2002 No. 36 s 26

Division 2—Other pest control measures

div hdg ins 1996 No. 14 s 3 sch

Special powers in relation to specific pest infestations

s 13 amd 1996 No. 14 ss 11, 3 sch

Destruction of healthy crop to prevent pest infestation

s 14 amd 1996 No. 14 ss 12, 3 sch

Special powers in respect of volunteer plants

s 15 amd 1996 No. 14 ss 13, 3 sch

Division 3—Enforcement

div hdg ins 1996 No. 14 s 3 sch

Charge on land

s 18 amd 1995 No. 58 s 4 sch 1

General powers of inspectors

s 19 amd 1996 No. 14 s 14; 2000 No. 5 s 373 sch 2

Inspectors' powers—certificates

s 19A ins 1996 No. 14 s 15
amd 2002 No. 36 s 27

Restricted entry into dwelling house

s 20 amd 1995 No. 58 s 4 sch 1

Inspectors' powers—imminent risk of infestation

s 20A ins 2002 No. 36 s 28

PART 4—ACCREDITATION

pt hdg ins 1996 No. 14 s 16

Division 1—Accreditation

div hdg ins 1996 No. 14 s 16

Purpose and operation of accreditation system

s 21 sub 1996 No. 14 s 16
amd 2002 No. 36 s 29

Accreditation

s 21A ins 1996 No. 14 s 16

Refusal to grant accreditation

s 21B ins 1996 No. 14 s 16

Accreditation conditions

s 21C ins 1996 No. 14 s 16

Register

s 21D ins 1996 No. 14 s 16

Division 2—Cancellation, suspension and amendment**div hdg** ins 1996 No. 14 s 16**Cancellation and suspension—grounds****s 21E** ins 1996 No. 14 s 16

amd 2001 No. 45 s 29 sch 3

Amendment of accreditation**s 21F** ins 1996 No. 14 s 16**Cancellation suspension and amendment—procedures****s 21G** ins 1996 No. 14 s 16**Return of cancelled suspended or amended accreditation****s 21H** ins 1996 No. 14 s 16**Division 3—Offences about accreditation****div hdg** ins 1996 No. 14 s 16**Contravention of accreditation conditions****s 21I** ins 1996 No. 14 s 16**Offences about certification****s 21J** ins 1996 No. 14 s 16

amd 2002 No. 36 s 30

PART 5—INTERGOVERNMENTAL AGREEMENTS**pt hdg** ins 1996 No. 14 s 16**Purpose of intergovernmental agreements****s 21K** ins 1996 No. 14 s 16**Intergovernmental agreements****s 21L** ins 1996 No. 14 s 16**PART 6—PROVISIONS ABOUT ADMINISTRATIVE DECISIONS****pt hdg** ins 1996 No. 14 s 16

sub 2003 No. 82 s 85

Division 1—General provision**div hdg** ins 2003 No. 82 s 85**Failure to decide particular decisions taken to be refusal****s 21LA** ins 2003 No. 82 s 85**Division 2—Reconsideration of decisions****div hdg** ins 2003 No. 82 s 85**Application for reconsideration of administrative decisions****s 21M** ins 1996 No. 14 s 16

amd 2003 No. 82 s 86

Decision on reconsideration**s 21N** ins 1996 No. 14 s 16**Division 3—Appeal to court****div hdg** ins 2003 No. 82 s 87

Right to appeal to the Magistrates Court

s 21O ins 1996 No. 14 s 16

Division 3—Appeal to court

div hdg ins 2003 No. 82 s 87

How to start an appeal

s 21P ins 1996 No. 14 s 16

Stay of operation of decisions

s 21Q ins 1996 No. 14 s 16

Power of Magistrates Court on appeal

s 21R ins 1996 No. 14 s 16

Effect of Magistrates Court's decision on appeal

s 21S ins 1996 No. 14 s 16

Appeals

s 21T ins 1996 No. 14 s 16

PART 7—MISCELLANEOUS

pt hdg ins 1996 No. 14 s 16

False or misleading information

s 23 sub 1996 No. 14 s 17

False, misleading or incomplete documents

s 23A ins 1996 No. 14 s 17

Obstruction

s 24 amd 1996 No. 14 s 18

Dealing with seized matters or things

s 26 amd 1996 No. 14 ss 19, 3 sch

Limitation of action

s 28 amd 1996 No. 37 s 147 sch 2

Delegation by chief executive

s 31 sub 1996 No. 14 s 20

Prosecution of offences

s 32 amd 1995 No. 58 s 4 sch 1
sub 1996 No. 14 s 20

Evidence

s 33 amd 1996 No. 14 s 3 sch

Approval of forms

s 34 sub 1993 No. 32 s 3 sch 1; 1995 No. 58 s 4 sch 1

Regulation-making power

s 35 prev s 35 ins 1993 No. 32 s 3 sch 1
om R1 (see RA s 37)
pres s 35 ins 1995 No. 58 s 4 sch 1
amd 1996 No. 14 s 21

Validations

s 35A ins 1996 No. 14 s 22 (retro)
exp 24 May 1996 (see s 35A(3))

Transitional provision about forms

s 36 prev s 36 ins 1993 No. 32 s 3 sch 1
om R1 (see RA s 37)
pres s 36 ins 1995 No. 58 s 4 sch 1
exp 28 May 1996 (see s 36(3))

SCHEDULE—DICTIONARY

ins 2002 No. 36 s 45 sch

Note—definitions for this Act were originally located in prev s 3.

def “**acceptable assurance certificate**” ins 1996 No. 14 s 6

sub 2001 No. 63 s 24

amd 2002 No. 36 s 21(2)

reloc 2002 No. 36 s 21(3)

def “**accreditation conditions**” ins 1996 No. 14 s 6

reloc 2002 No. 36 s 21(3)

def “**accreditation document**” ins 1996 No. 14 s 6

reloc 2002 No. 36 s 21(3)

def “**accredited person**” ins 1996 No. 14 s 6

reloc 2002 No. 36 s 21(3)

def “**amendment**” ins 1996 No. 14 s 6

reloc 2002 No. 36 s 21(3)

def “**another jurisdiction**” ins 1996 No. 14 s 6

reloc 2002 No. 36 s 21(3)

def “**appliance**” reloc 2002 No. 36 s 21(3)

def “**approved form**” ins 1995 No. 58 s 4 sch 1

reloc 2002 No. 36 s 21(3)

def “**assurance certificate**” ins 1996 No. 14 s 6

sub 2002 No. 36 s 21(2)

reloc 2002 No. 36 s 21(3)

def “**corresponding law**” ins 1996 No. 14 s 6

reloc 2002 No. 36 s 21(3)

def “**crop plant**” reloc 2002 No. 36 s 21(3)

def “**crop plant district**” reloc 2002 No. 36 s 21(3)

amd 2003 No. 82 s 88 sch

def “**Director-General**” om from prev s 3 1995 No. 58 s 4 sch 1

def “**inspector**” ins 1996 No. 14 s 6

reloc 2002 No. 36 s 21(3)

def “**inspector’s certificate**” ins 1996 No. 14 s 6

reloc 2002 No. 36 s 21(3)

def “**intergovernmental agreement**” ins 1996 No. 14 s 6

reloc 2002 No. 36 s 21(3)

def “**land**” reloc 2002 No. 36 s 21(3)

def “**movement**” reloc 2002 No. 36 s 21(3)

def “**Minister**” om from prev s 3 1993 No. 32 s 3 sch 1

def “**notification**” om from prev s 3 1993 No. 32 s 3 sch 1

def “**owner**” reloc 2002 No. 36 s 21(3)

def “**pest**” amd 1996 No. 14 s 3 sch

reloc 2002 No. 36 s 21(3)
 def “**plant**” amd 1991 No. 20 s 14.2(a)
 sub 1996 No. 14 s 3 sch
 amd 1999 No. 51 s 228 sch 1
 reloc 2002 No. 36 s 21(3)
 def “**possess**” ins 1996 No. 14 s 6
 reloc 2002 No. 36 s 21(3)
 def “**records**” om from prev s 3 1995 No. 58 s 4 sch 1
 def “**sale**” reloc 2002 No. 36 s 21(3)
 def “**State**” ins 1996 No. 14 s 6
 reloc 2002 No. 36 s 21(3)
 def “**this Act**” om from prev s 3 1993 No. 32 s 3 sch 1
 def “**vehicle**” reloc 2002 No. 36 s 21(3)
 def “**volunteer plant**” reloc 2002 No. 36 s 21(3)

SCHEDULE 1

om 1993 No. 32 s 3 sch 1

SCHEDULE 2—SUBJECT MATTER FOR REGULATIONS

amd 1993 No. 32 s 3 sch 1
 om 1995 No. 58 s 4 sch 1

8 List of forms notified or published in the gazette**Form 1—Application for Accreditation of a Business for a Plant Health Certification Assurance (CA) Arrangement**

pubd gaz 26 July 1996 p 1541

Form 2—Certificate of Accreditation of a Business

pubd gaz 26 July 1996 p 1541

Form 3—Plant Health Assurance Certificate

pubd gaz 26 July 1996 p 1541

Form 4—Plant Health Certificate for Movement of Fruit from a Papaya Fruit Fly Pest Quarantine Area

pubd gaz 26 July 1996 p 1541

Form 4A—Directions

pubd gaz 8 March 2001 p 980A

Form 12—Undertaking Given by Owner

pubd gaz 8 March 2001 p 980A