

Queensland



ANNO VICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE

No. 49 of 1975

An Act to provide for the taking of measures for the extermination or the prevention or control of the dissemination of any disease in timber and for related purposes

[ASSENTED TO 9TH OCTOBER, 1975]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as the *Diseases in Timber Act 1975*.

2. Commencement. This Act shall commence on a date appointed by Proclamation.

3. Interpretation. In this Act, save where a contrary intention appears—

- “article” means any thing manufactured from timber of any species or of which timber of any species forms part;
- “Conservator” means the Conservator of Forests within the meaning of the *Forestry Act 1959–1975*;
- “disease” means a disease that affects timber, caused by or consisting of the presence of an insect, fungus or other organism, declared by Order in Council to be a disease for the purposes of this Act;
- “forest officer” means a forest officer within the meaning of the *Forestry Act 1959–1975*;
- “infected area” means an area declared by Order in Council to be an infected area for the purposes of this Act;
- “occupier” means the person in occupation of any place;
- “owner” means the person other than the Crown or a person representing the Crown who for the time being is entitled to the rents and profits of any land: in the case of land held from the Crown for an estate less than freehold the term means the person who holds directly from the Crown;
- “place” means a place within the meaning of the *Forestry Act 1959–1975*;
- “timber” includes the trunk or a branch, stump or root of a tree and all wood whether or not cut up, sawn, hewn, split or otherwise fashioned.

4. Powers of Governor in Council. (1) The Governor in Council by Order in Council—

- (a) may declare any disease affecting timber to be a disease within the meaning of this Act;
- (b) may, where he is satisfied that there is present in any area an infestation of timber by a disease, declare that area or any part thereof to be an infected area with respect to that disease;
- (c) may declare any disease specified therein to be a disease in respect of which notification is to be given pursuant to this Act.

(2) Where an infected area is declared by Order in Council pursuant to subsection (1) the Governor in Council, by that Order or a subsequent Order in Council—

- (a) may prohibit the removal from an infected area of any timber or article specified therein save upon such terms, conditions or restrictions as are prescribed or so far as not prescribed as the Governor in Council determines;
- (b) may authorize the taking, in an infected area, of measures for the extermination or the prevention or control of the dissemination of the disease in respect of which the infected area is declared.

5. Powers of Conservator. (1) Where an Order in Council made pursuant to section 4 authorizes the taking of measures referred to in section 4 (2) (b), the Conservator shall cause to be taken, in the infected area and in the manner prescribed, such measures as he considers necessary to exterminate or to prevent or control the dissemination of the disease in respect of which the infected area is declared.

(2) For the purposes of exercising the powers and performing the functions and duties conferred or imposed on him by subsection (1), the Conservator may enter into contracts or agreements by himself or through the medium of such officers or agents as he authorizes from time to time.

The authority conferred by this subsection may be exercised in the manner following:—

- (a) any contract or agreement that, if made between private persons, would by law be required to be in writing and under seal may be made by the Conservator in writing and under seal and signed by or on behalf of the Conservator and may be varied or discharged in the same manner;
- (b) any contract or agreement that, if made between private persons, would by law be required to be in writing signed by the parties to be charged therewith may be made in writing signed by or on behalf of the Conservator and may be varied or discharged in the same manner;
- (c) any contract or agreement that, if made between private persons, would by law be valid although not in writing may be made orally by or on behalf of the Conservator and may be varied or discharged in the same manner.

6. Powers of forest officer. (1) A forest officer at any time for the purposes of this Act—

- (a) may enter any place;
- (b) may make with respect to any place an investigation or enquiry;
- (c) may inspect, examine and test any article or timber found by him in any place;
- (d) may inspect, examine and test any article or timber being conveyed, or at any place in the course of or for the purpose of being conveyed, from one place to another;
- (e) may select and remove for inspection or testing any article (or part thereof) or timber (or sample thereof) found by him in any place that he suspects on reasonable grounds may be infested with a disease;
- (f) may seize and detain any article or timber that he suspects on reasonable grounds may be infested with a disease;
- (g) may remove any article or timber seized by him from the place where it was seized to such place as he determines or may allow it to remain at the place of seizure and, in the latter case, may make such arrangements as he considers necessary to protect it;

- (h) may call to his aid any member of the Police Force of the State to assist him in the exercise of his powers or the discharge of his functions and duties under this Act, whereupon it shall be the duty of any member so called to assist him as required and in accordance with this Act and a member so assisting shall have the same powers as are conferred upon a forest officer by or under this Act;
- (i) may exercise such other powers and discharge such other functions and duties as are prescribed.

(2) A forest officer shall not enter any place for the purposes of this Act unless he has upon his person the certificate of authority issued to him.

Upon demand made by the occupier of any place about to be so entered, the forest officer shall show to him that certificate.

(3) (a) Before a forest officer enters any part of a place which part is being used exclusively as a dwelling-house he shall, save where he has the permission of the occupier of that part to his entry, obtain from a justice a warrant to enter.

(b) A justice who is satisfied upon the complaint of a forest officer that there is reasonable cause to suspect that there is in any place within an infected area timber that is infested by the disease in respect of which the infected area has been declared may issue his warrant directed to the forest officer to enter the place specified in the warrant for the purpose of exercising therein the powers conferred on a forest officer under this Act.

(c) A warrant shall be, for the period of one month from the date of its issue, sufficient authority for the forest officer and all persons acting in aid of him—

- (i) to enter the place specified in the warrant; and
- (ii) to exercise therein the powers conferred on a forest officer by this Act.

(d) In this subsection part of a place that is used as a dwelling-house does not include the curtilage of that part.

(4) For the purposes of gaining entry to any place a forest officer may call to his aid such persons as he thinks necessary and those persons, while acting in aid of a forest officer in the lawful exercise by him of his power of entry, shall have a like power of entry.

7. Offences. A person—

- (a) shall not assault, obstruct, threaten, abuse, insult or intimidate a forest officer or other person in the exercise of his powers or the discharge of his functions and duties under this Act, or attempt so to do;
- (b) shall not fail to answer any question put to him for the purposes of this Act by a forest officer or give a false or misleading answer to any question put;
- (c) shall not fail to comply with a lawful requisition or order of a forest officer;
- (d) shall not refuse to allow to be seized, removed or detained in accordance with this Act any timber or article;

- (e) shall not take or retake possession of, remove or otherwise deal with, any timber or article seized, removed or detained under this Act;
- (f) shall not remove from an infected area any timber or article infested with a disease in respect of which the infected area has been declared.

8. Notice to occupiers or owners. Where an infected area has been declared pursuant to section 4 (1) (b), the Conservator shall, prior to taking measures for the extermination or the prevention or control of the dissemination of the disease in respect of which the infected area has been declared, give to the occupier of every place within that area where those measures are to be taken, in writing, 14 days' notice of his intention to take those measures and, where he requires a place to be vacated, of that requirement.

Where there is no occupier of any place or the occupier cannot be found that notice shall be given to the owner thereof.

9. Provision of alternative accommodation. Where measures taken pursuant to this Act necessitate the vacation of a dwelling-house for any period of time by the occupier thereof, the Conservator—

- (a) shall arrange suitable alternative living accommodation during that period for that occupier and the members of his household;
- (b) shall arrange for the removal from that dwelling-house and the storage of any furniture and effects of that occupier or the members of his household, required to be removed from that dwelling-house.

Expenses incurred following action taken pursuant to subparagraphs (a) and (b) shall be paid by the Conservator out of moneys appropriated by Parliament for the administration of this Act.

10. Notice of notifiable disease. (1) A person who discovers in timber or any article in any place evidence of the presence of a disease declared by Order in Council to be a notifiable disease shall, within 24 hours of that discovery, notify the forest officer nearest to that place thereof.

(2) Upon receipt of a notification pursuant to subsection (1), the forest officer shall undertake forthwith investigations and enquiries pertaining to the matter and report thereon to the Conservator.

11. Compensation. A person who suffers loss or damage by reason of any measure taken for the purposes of this Act shall be entitled to claim in the manner prescribed compensation for such loss or damage.

A claim for compensation shall be made to the Minister whose decision thereon shall be final and conclusive.

12. Offences generally and penalty. (1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.

(2) A person who—

- (a) fails to do that which he is directed or required to do;
- (b) does that which he is forbidden to do,

by a person acting under the authority of this Act commits an offence against this Act.

(3) Where no penalty is expressly provided, a person who commits an offence against this Act is liable to a penalty of \$500.

13. Proceedings for offences. A prosecution for an offence against this Act—

- (a) shall be taken by way of summary proceedings under the *Justices Act 1886-1975*;
- (b) may be instituted on complaint by a forest officer or any person authorized in writing in that behalf generally or in a particular case by the Conservator of Forests.

14. Mode of service of documents. A notice, requisition or other writing authorized or required by this Act to be given to any person shall be duly given if—

- (a) it is served personally on the person to whom it is directed;
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives it.

15. Exemption from liability. Liability at law shall not attach to the Crown, the Minister, Conservator, a forest officer or person acting under the direction or authority or in aid of the Minister, Conservator or a forest officer on account of anything done for the purposes of this Act or done in good faith and purporting to be for the purposes of this Act.

16. Evidentiary provisions. In a proceeding for the purposes of this Act it shall not be necessary to prove—

- (a) the appointment of a forest officer or other authorized officer;
- (b) the authority of a forest officer or other authorized officer to do an act or give a direction or issue or serve a notice or take a proceeding.

17. Regulations. The Governor in Council may make regulations not inconsistent with this Act for or in respect of all matters required or permitted by this Act to be prescribed and all matters that are necessary or convenient for the proper administration of this Act or to achieve the objects and purposes of this Act.

The regulations may prescribe penalties not exceeding in each case \$100 for any contravention thereof or failure to comply therewith.

18. Orders in Council. Section 28A of the *Acts Interpretation Act 1954–1971* shall apply with respect to Orders in Council made for the purposes of this Act and, for the purposes of such application, that section shall be read and construed as if references to regulations were references to Orders in Council made for the purposes of this Act.