

PLANT PROTECTION ACT

No. 14 of 1989

ANALYSIS OF CONTENTS

1. Short title
2. Repeals and savings
3. Interpretation
4. Administration
5. Appointment of officers
6. Authorized persons
7. Registration of prescribed places
8. Control over introduction of pests
9. Control over spread of pest infestations within Queensland
10. Crop plant district
11. Pest quarantine area
12. Notification of pests
13. Special powers in relation to specific pest infestations
14. Destruction of healthy crop to prevent pest infestation
15. Special powers in respect of volunteer plants
16. Completion of unsatisfied requirements
17. Costs and expenses
18. Charge on land
19. General powers of inspectors
20. Restricted entry into dwelling-house
21. Duty to convert stored information to writing
22. Duty to comply with notice given to one of several owners
23. Offences in relation to information
24. Obstruction
25. Voluntary forfeiture to Crown
26. Dealing with seized matters or things
27. Right of entry in order to comply with this Act
28. Limitation of action
29. Liability for offence as employee
30. Modes of Service
31. Offences
32. Proceedings
33. Evidence
34. Regulations

FIRST SCHEDULE

SECOND SCHEDULE

Queensland



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ELIZABETHAE SECUNDAE REGINAE

No. 14 of 1989

An Act to provide for the prevention, control and eradication
of pest infestation of plants and for related matters

[ASSENTED TO 30TH MARCH, 1989]

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 *Plant Protection Act 1989*.

2. Repeals and savings. (1) The Acts set forth in the First Schedule are repealed to the extent specified therein and in this Act are referred to as the “repealed Acts”.

(2) Without limiting the operation of the *Acts Interpretations Act 1954-1985* in relation to the repeals effected by subsection (1)—

- (a) any person appointed and holding office as an inspector under the repealed Acts immediately before the commencement of this Act shall on and from the commencement of this Act be deemed to be appointed as an inspector for the purposes of this Act;
- (b) any Proclamation made by the Governor in Council under “*The Diseases in Plants Act of 1929*” or that Act as amended declaring an absolute or conditional prohibition upon the introduction into Queensland of any plant or appliance and in force immediately before the commencement of this Act shall on and from the commencement of this Act continue in force and have effect as if it were an Order in Council made under section 8 of this Act;
- (c) anything seized under the repealed Acts before the commencement of this Act, may on and from the commencement of this Act be dealt with as prescribed by section 26 and the provisions of this Act in respect of any action taken by an inspector under that section shall have effect accordingly.

3. Interpretation. (1) In this Act, except where the contrary intention appears—

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

“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 subsection (1) of section 10;

“director-general” means the chief executive of the department of government by which this Act is administered and includes a person for the time being performing the duties of the chief executive;

“land” includes premises;

“Minister” means the Minister of the Crown who, at the material time, is charged with the administration of this Act and includes any Minister of the Crown who is temporarily performing the duties of the Minister;

“movement” includes movement by any form of transport;

“notification” means a notification made by the Minister and published in the Gazette for the purposes of this Act;

“owner” includes—

(a) in relation to land, every person other than the Crown—

(A) 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;

(B) 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

(C) 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 his possession;

“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 pursuant to subsection (2) or (3);

“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 any member of the plant kingdom and includes the seed or seedling of or any part of a plant whether living or dead and whether attached to a plant or separate therefrom and does not include timber in service or sugar cane;

“records” includes any papers, documents or writings, accounts or accounting records and any record of information however compiled, recorded or stored;

“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;

“this Act” includes Proclamations, Orders in Council, regulations and notifications made under this Act;

“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.

(2) Where the Governor in Council is satisfied, upon the recommendation of the Minister, that any organism of the plant or animal kingdom (excluding vertebrates) or any virus or viroid or disorder or condition or cause of specified symptoms in plants is harmful to the growth or quality, including the commercial or marketable quality, of crop plants, he may by Order in Council declare the organism, virus, viroid, disorder, condition or cause to be a pest for the purposes of this Act.

The Governor in Council shall not declare a declared animal or declared plant within the meaning of the *Rural Lands Protection Act 1985* to be a pest for the purposes of this Act except upon the joint recommendation of the Minister and the Minister within the meaning of the *Rural Lands Protection Act 1985* at the material time.

(3) Where the Minister is of the opinion that any organism of the plant or animal kingdom (excluding vertebrates) or any virus or viroid or disorder or condition or cause of specified symptoms is harmful to the growth or quality, including the commercial or marketable quality, of crop plants and that the circumstances require that urgent action should be taken under this Act in respect thereof he may, by notification published in the Gazette, declare the organism, virus, viroid, disorder, condition or cause to be a pest for the purposes of this Act.

A notification made by the Minister for the purposes of this subsection shall remain in force for a period of 21 days and thereafter—

(a) the notification shall expire;

and

(b) unless the Governor in Council exercises the power conferred on him by subsection (2) in respect thereof, the matter or thing shall cease to be a pest for the purposes of this Act.

(4) For the purpose of the exercise by any person of any power under this Act that may be exercised by him 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.

(5) For the purposes of this Act a person shall be deemed to be in possession of any matter or thing if he has actual possession or custody of it or if he has it under his control in any place whether for his own use or another's use or benefit and although another person has actual possession or custody of it.

(6) A power of the Minister under this Act that is exercised by means of a notification published in the Gazette includes the power to revoke, amend or otherwise modify any such notification in like manner.

(7) Subject to this Act, the provisions of section 20 of the *Acts Interpretation Act 1954-1985* apply in respect of a notification as they apply in respect of an Order in Council.

4. Administration. This Act shall be administered by the Minister and, subject to him, by the director-general and such other persons as are from time to time appointed for the purpose.

5. Appointment of officers. The Governor in Council may appoint under and subject to the *Public Service Management and Employment Act 1988* such inspectors and other officers as he considers necessary for the purposes of this Act.

6. Authorized persons. The Minister may authorize in writing any person to exercise all or any of the powers of an inspector under this Act subject to such conditions as he thinks fit.

A person so authorized, for all purposes relating to the exercise by him of a power within the Minister's authorization, shall be deemed to be an inspector appointed under this Act.

7. Registration of prescribed places. (1) For the purposes of preventing, controlling or eradicating pest infestation of plants, the Governor in Council, by Order in Council, may order that every farm or other place of a class prescribed therein where there is grown a plant of a class prescribed therein shall be registered in accordance with the Order in Council.

(2) An Order in Council may prescribe—

- (a) a person who shall register the farm or place;
- (b) the manner in which a person shall register the farm or place;
- (c) a fee to accompany a registration;
- (d) any other matter necessary or convenient to achieve the objects of the Order in Council.

8. Control over introduction of pests. (1) For the purpose of preventing, controlling or eradicating pest infestation of crop plants—

- (a) the Governor in Council, by Order in Council;
or
- (b) if the Minister is of the opinion that the circumstances require that urgent action should be taken under this section, the Minister, by notification published in the Gazette,

may—

- (c) 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;
- (d) prohibit the introduction into Queensland of any pest;
- (e) authorize the introduction into Queensland of any such matter or thing as is referred to in paragraphs (c) and (d) upon such conditions imposed by or under an Order in Council as are reasonably necessary to prevent, control or eradicate pest infestation of crop plants.

(2) In this section “introduction into Queensland” includes introduction into Queensland generally or from a place outside Australia or from another State or a Territory of the Commonwealth.

(3) A notification made by the Minister for the purposes of this section shall remain in force for a period of 21 days and thereafter—

- (a) the notification shall expire;
and
- (b) unless the Governor in Council exercises the power conferred on him by subsection (1) in respect thereof, the restrictions therein imposed shall cease to have effect in relation to the introduction thereafter into Queensland of the matter or thing in question.

(4) A person who commits an offence against this Act by introducing any matter or thing into Queensland contrary to the provisions of an Order in Council or a notification made for the purposes of this section shall be liable to a penalty not exceeding 1 000 penalty units.

9. Control over spread of pest infestations within Queensland. (1)

For the purposes of preventing, controlling or eradicating pest infestation of plants—

- (a) the Governor in Council, by Order in Council;
or
- (b) if the Minister is of the opinion that the circumstances require that urgent action should be taken under this section, the Minister by notification published in the Gazette,

may prohibit generally or in circumstances prescribed therein the movement of any plant, soil, appliance or other matter or thing prescribed therein—

- (c) from any place in Queensland to any other place in Queensland;
- (d) from any place within a part of Queensland defined in the order or notification to any other place in the part so defined or into or out of any such part;
- (e) to or from any place specified in the order or notification;
- (f) from any place within any farm, orchard, holding or other place of a class specified in the order or notification to any other place therein,

or prohibit any such movement except in accordance with conditions imposed by or under the order or the notification.

(2) A notification made by the Minister for the purposes of this section shall remain in force for a period of 21 days and thereafter—

- (a) the notification shall expire;
and
- (b) unless the Governor in Council exercises the power conferred on him by subsection (1) in respect thereof, the restrictions therein imposed in relation to a movement shall cease to have effect in relation to any such movement that thereafter occurs.

10. Crop plant district. (1) The Governor in Council, by Order in Council, 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;
- (b) vary the area of any crop plant district;
- (c) abolish a crop plant district.

(2) In relation to a crop plant district, the Minister, by notification published in the Gazette, may give such directions as in his opinion are necessary or desirable to prevent, control or eradicate pest infestation of the crop plant for which the crop plant district was declared, 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 notification;

- (b) ordering the eradication in accordance with the provisions of the notification 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 his 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 notification.

(3) An inspector may give such directions and take all such action as may be necessary or convenient to ensure compliance with the provisions of a notification made under this section.

11. Pest quarantine area. (1) For the purposes of preventing, controlling or eradicating pest infestation of plants—

(a) the Governor in Council, by Order in Council;

or

(b) if the Minister is of the opinion that the circumstances require that urgent action should be taken under this section, the Minister, by notification published in the Gazette,

may declare any area to be a pest quarantine area and may define the boundaries of the quarantine area so declared.

(2) The Minister by notification published in the Gazette 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) In lieu of declaring particular land to be a pest quarantine area or a part thereof, the Minister may accept an undertaking in the prescribed form given by the owner that he shall comply with conditions

imposed by the Minister in respect of the undertaking either at the time of the acceptance or thereafter.

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

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 this subsection.

(4) An inspector may give such directions and take such action as may be necessary or convenient to ensure compliance with the provisions of any notification made under this section or the conditions imposed in respect of any undertaking given under this section or to achieve the declared objects of a quarantine imposed under this section.

(5) A notification made by the Minister for the purposes of subsection (1) shall remain in force for a period of 21 days and thereafter—

(a) the notification shall expire;

and

(b) unless the Governor in Council exercises the power conferred on him by subsection (1) to declare the area in question to be a pest quarantine area, the duties, obligations, prohibitions and restrictions imposed pursuant to subsection (2) shall cease to have effect thereafter.

(6) A person who commits an offence against this Act—

(a) by contravening or failing to comply with the provisions of an Order in Council or a notification made for the purposes of this section or a condition imposed by the Minister under subsection (3);

or

(b) by obstructing an inspector in the exercise of his powers under this section or by contravening or failing to comply with a direction given by an inspector under this section,

shall be liable to a penalty not exceeding 1 000 penalty units.

12. Notification of pests. (1) The Governor in Council by Order in Council may declare a pest to be a notifiable pest for the purposes of this Act.

(2) The owner of any land who discovers or becomes aware that there is a notifiable pest on his land, and any consultant or contractor engaged by the owner of land otherwise than as a servant who discovers or becomes aware of the existence of a notifiable pest on the owner's land, shall—

(a) within 24 hours notify an inspector thereof;

and

(b) within 7 days confirm his notice in writing to the director-general.

(3) Section 23 applies in respect of the requirement under this section to give notice as it applies in respect of any requirement made under this Act to furnish information.

13. Special powers in relation to specific pest infestations. (1) Subject to subsection (3), an inspector for the purposes of controlling or eradicating 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 him 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 eradicating 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.

If the pest or thing in respect of which an inspector proposes to give directions under this subsection is being carried on consignment the inspector if he considers it necessary or convenient may give to the consignor or the consignee any direction that he is authorized 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.

14. Destruction of healthy crop to prevent pest infestation. (1) The director-general, if he considers it necessary to do so in order to prevent, control or eradicate 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.

Directions given under this subsection 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 he 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 director-general may mutually agree upon.

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

The decision of the arbitrator shall be final.

15. Special powers in respect of volunteer plants. If he considers such action is necessary to prevent, control or eradicate any pest infestation of plants, an 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.

16. Completion of unsatisfied requirements. If any person to whom directions have been given pursuant to this Act by the director-general or an inspector directing him 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 he 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 one such person, those persons shall be jointly and severally liable, to pay to the Crown the costs and expenses reasonably incurred in connexion 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.

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 subsection (1) 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 him under this Act

requiring him to take, or forbidding him 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 subsection (2) of section 17, the director-general may lodge with the public officer charged with maintaining a register of title to the land a notice in the prescribed form identifying the land and stating that there exists a charge over it securing payment to the Crown of the amount in question.

This subsection 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 him 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 1974-1986* in relation to a charge such as is provided for by this section, sections 83 to 92 (both inclusive) 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 director-general shall give notice thereof in the prescribed 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 his register as are necessary to record that the charge has ceased to have effect.

This subsection 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 him by this Act;
- (b) take with him into any place entered, pursuant to paragraph (a), such assistants, vehicles and equipment as he considers necessary for the proper performance of his 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 himself remove it to some other place, for the purposes of the performance by the inspector of a duty or the exercise by him of a power, imposed or conferred upon him by this Act;
 - (e) seize any matter or thing with respect to which he has reasonable grounds for believing that an offence against this Act has been committed or is being committed or that he believes will afford evidence of the commission of an offence against this Act or that is a pest or that he 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 him to a place determined by him, 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 he considers necessary to achieve the objects of the seizure;
 - (g) direct any person to furnish for inspection at such times and places as he 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 him by this Act, and subject to section 23, require the person to answer the questions put;
 - (j) require any person found by him committing an offence against this Act or who he 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 his full name and the address of his usual place of residence and, if he considers it necessary, the name and the address of the usual place or residence of any other person, and if he suspects on reasonable grounds that a name or address is false, require evidence of the correctness thereof in accordance with his 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 non-compliance has occurred;
- (l) in a case where he is obstructed or has reasonable grounds to believe that he will be obstructed in the exercise of his powers, call to his aid—
 - (i) a member of the Queensland Police Force;
 - (ii) any person he considers competent to assist him in the exercise of his powers.

(2) Directions given pursuant to paragraph (k) of subsection (1) 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 called in aid of an inspector pursuant to paragraph (l) of subsection (1) shall assist the inspector as required by him 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 he 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.

20. Restricted entry into dwelling-house. (1) Before an inspector enters a dwelling-house for the purpose of exercising his powers under this Act, save where he has the permission of the occupier to his entry, he shall make an application to a justice who is a Stipendiary Magistrate and obtain from him 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 his warrant directed to an inspector to enter the place specified in the warrant for the purpose of exercising therein the powers conferred upon him 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 he 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 authorized 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 he informs the applicant of the facts upon which he relies in issuing the warrant and obtains from the applicant an undertaking that he shall deliver to the justice as directed by him as soon as practicable a statement in writing given under oath, affirmation or declaration or under some other sanction authorized by law, that verifies those facts;

(b) if the justice issues the warrant he shall inform the applicant that he 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 he

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 him pursuant to paragraph (a) and if he fails to do so the warrant on and from such failure shall be deemed to be cancelled.

The failure of a justice to send a warrant to the Minister in compliance with paragraph (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 him—

- (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.

21. Duty to convert stored information to writing. Where a person records or stores any matter by means of mechanical, electronic or other device, any duty imposed by this Act to furnish records containing those matters shall be construed as a duty to make the matters available in written form.

Where the duty imposed is to furnish a copy of any records that duty shall be construed as a duty to make available a clear reproduction in writing.

22. Duty to comply with notice given to one 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 one 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 him, as if he were the only owner of the land, matter or thing.

23. Offences in relation to information. A person shall not—

- (a) refuse or fail to furnish to the best of the person's knowledge any information or any records or copies thereof, required of him under this Act;
- (b) in response to a requirement made of him under this Act to furnish information or records or copies thereof, furnish false or misleading information, records or copies thereof.

This section shall not apply in respect of a refusal or failure to furnish any information required of a person pursuant to paragraph (i) of section 19 (1) that would tend to incriminate him of any offence.

If in response to a requirement made of him pursuant to paragraph (i) of section 19 (1) a person furnishes any information that would tend to incriminate him in any offence, other than an offence defined in paragraph (b) of this section, the information so furnished shall not be

admissible in evidence against him in proceedings relating to the first mentioned offence.

24. Obstruction. (1) A person shall not obstruct an inspector in the exercise of his powers under this Act.

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

(a) assaults, abuses, intimidates or insults an inspector or any other person assisting an inspector in the exercise of his powers under this Act;

(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 his 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.

25. Voluntary forfeiture to Crown. (1) If the owner of any matter or thing seized under this Act notifies an inspector that he 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 director-general.

(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 director-general.

26. Dealing with seized matters or things. (1) If it is necessary or convenient to do so for the purpose of preventing, controlling or eradicating pest infestation of plants, an inspector, with the approval of the Minister first had and obtained or in accordance with instructions issued by the Minister 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 he 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 one 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 connexion with the seizure, destruction, disposal or treatment.

Where the amount of any costs, charges or expenses with respect to any measures is prescribed, the liability provided for in this subsection 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 connexion 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 Revenue Fund,

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

This subsection shall not be construed so as to bar the right of a person entitled to recover by action proceeds payable under this subsection from a person to whom they have been paid by the Crown under this 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 him by or under this Act.

28. Limitation of action. (1) Liability at law shall not attach to the Crown, the Minister, the director-general, 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.

This subsection does not affect the liability of a person to disciplinary action under the *Public Service Management and Employment Act 1988*.

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

29. Liability for offence as employee. A person is not liable to be convicted for an offence against this Act committed by him as an employee if he satisfies the court that the offence was committed while the business of his 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 him 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. Offences. (1) Subject to this Act, a person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.

(2) A person who fails to do that which he is required or directed to do, or who 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) Unless a specific penalty is otherwise prescribed, a person who commits an offence against this Act is liable to a penalty not exceeding 20 penalty units.

32. Proceedings. Proceedings in respect of an offence against this Act shall be taken in a summary way under the *Justices Act 1886-1988* within 12 months after the offence is committed or within 6 months after the offence comes to the knowledge of the complainant, whichever period is the later to expire, upon the complaint of—

- (a) an inspector;
or
- (b) a person authorized by the Minister or the director-general.

33. Evidence. In a proceeding for the purposes of this Act—

- (a) the appointment of an inspector or other officer under this Act, 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 director-general, an inspector or other officer appointed or authorized under this Act 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 director-general, inspector or other officer appointed or authorized under this Act shall upon its production in the proceedings be evidence and, in the absence of evidence to the contrary, conclusive 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 connexion therewith—
 - (i) stating when it was that the commission of the offence came to the knowledge of the complainant;
 - (ii) identifying the place where the offence was committed;
 - (iii) stating that the place where the offence was committed was within the State;
 - (iv) 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, and in the absence of evidence to the contrary, conclusive evidence of the matters stated therein;
- (e) a certificate purporting to be made by the director-general 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 therein shall, if the amount in question is material to the proceedings, be admitted in evidence and, in the absence of evidence to the contrary, be conclusive evidence of the matters contained therein and that the costs and expenses were reasonably incurred.

34. Regulations. (1) The Governor in Council may make regulations not inconsistent with this Act with respect to—

- (a) all matters required or permitted by this Act to be prescribed by regulation or to be prescribed and in respect of which no other means of prescription is specified;
- and
- (b) all matters necessary or expedient to be prescribed for the proper administration of this Act or to achieve the objects and purposes of this Act.

(2) Without limiting the generality of subsection (1), the Governor in Council may make regulations for or with respect to the matters set forth in the Second Schedule.

(3) The power to regulate conferred by this section includes the power to prohibit.

(4) Regulations made under this Act—

- (a) may be made to apply generally throughout the State or within a part thereof and may be made to apply generally with respect to any class of person or matter or thing or to apply with such limited application as is indicated therein or with variations in respect of classes of persons, matters or things;
- (b) may adopt wholly or partly and specifically or by reference any of the standard rules, codes, specifications or methods of the Standards Association of Australia, the British Standards Institute, the National Biological Standards Laboratory, the Standing Committee on Agriculture or any like body identified in the regulations.

FIRST SCHEDULE

[section 2]

Year and Number of Act	Short Title	Extent of Repeal
20 Geo. 5 No. 11 21 Geo. 5 No. 22	<i>The Diseases in Plants Act of 1929 The Primary Producers' Organisation and Marketing, Fruit Marketing Organisation, Wheat Pool and Diseases in Plants Acts Amendment Act of 1930</i>	The whole Part V
25 Geo. 5 No. 3	<i>The Diseases in Plants Acts Amendment Act of 1934</i>	The whole
26 Geo. 5 No. 17	<i>The Diseases in Plants Acts and Fruit and Vegetables Act Amendment Act of 1935</i>	The whole
1 Geo. 6 No. 16	<i>The Diseases in Plants Acts and Another Act Amendment Act of 1937</i>	Part II
13 Geo. 6 No. 2	<i>The Diseases in Plants Acts Amendment Act of 1948</i>	The whole
1965 No. 37	<i>The Tobacco Industry Protection Act of 1965</i>	The whole
1985 No. 63	<i>Tobacco Industry Protection Act Amendment Act 1985</i>	The whole
3 Geo. 6 No. 23	<i>The Peanut Industry Protection and Preservation Act of 1939</i>	The whole
5 Geo. 6 No. 14	<i>The Primary Producers' Organisation and Marketing Acts and Other Acts Amendment Act of 1941</i>	Section 3
1965 No. 12	<i>The Primary Producers' Organisation and Marketing Acts and Another Act Amendment Act of 1965</i>	Part III

FIRST SCHEDULE— <i>continued</i>		[section 2]
Year and Number of Act	Short Title	Extent of Repeal
14 Geo. V. No. 28	<i>The Cotton Industry Act of 1923</i>	The whole
15 Geo. V. No. 14	<i>The Cotton Industry Act Amendment Act of 1924</i>	The whole
17 Geo. V. No. 8	<i>The Cotton Industry Acts Amendment Act of 1926</i>	The whole

SECOND SCHEDULE

[section 34]

Subject Matter for Regulations

1. Powers, functions and duties. The discharge of any function, the performance of any duty or the exercise of any power by any body or person under this Act.

2. Qualifications and appointments. The qualifications required before a person is appointed under this Act.

3. Instruments. Forms required or authorized in respect of any notice, application, licence or other matter under this Act.

4. Fees, expenses and costs. The fees, expenses, costs or other amounts payable in respect of any matter under this Act.

5. Regulation of sale, possession, cultivation. The cultivation of any plant, the possession and sale of any plant, matter or thing where regulation is necessary to prevent, control or eradicate pest infestation of plants.

6. Inspection. The inspection for pest infestation of any land, matter or thing, inspection programmes, the notification of circumstances under which inspection is required or authorized.

7. Regulations in lieu of Orders in Council. All matters in respect of which an Order in Council or notification may be made under this Act. The supplementing of any Order in Council to achieve its objects.

8. Introduction into Queensland. The procedures to be followed for introduction into Queensland of any plant, matter or thing which may be controlled under section 8, including the determination of inspection or entry places at a border or port or place inside Queensland.

9. Movement within Queensland. The movement within Queensland by any means or in circumstances prescribed of any plant, matter or thing where regulation is necessary or desirable to prevent control or eradicate pest infestation of plants.

10. Agricultural husbandry. All matters in respect of agricultural husbandry where regulation is necessary or desirable to prevent, control or eradicate pest infestation of plants. The carrying on of any nursery or other business concerning the production or sale of any plant, matter or thing where regulation is necessary to prevent, control or eradicate pest infestation of plants.

11. Pests. The possession of pests for any purpose whatsoever. Requirements that pests shall be destroyed or treated and the manner of destruction or treatment.

12. Statistics. The provision of statistics or other information in the form of returns or otherwise.