



Australian Capital Territory

Plant Diseases Act 2002

Act 2002 No 42

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Australian Capital Territory

Plant Diseases Act 2002

Act 2002 No 42

An Act for the control of diseases and pests affecting plants, and for other purposes

*Notified under the Legislation Act 2001 on 2 December 2002
(see www.legislation.act.gov.au)*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Plant Diseases Act 2002*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Legislation Act 2001*, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see *Legislation Act 2001*, s 79).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*disease*—see section 5 (Meaning of *disease*).' means that the word 'disease' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Key concepts

5 Meaning of *disease*

(1) For this Act:

disease means—

- (a) any of the following that causes an abnormal or unhealthy condition in plants:
 - (i) an organism of the vegetable kingdom;
 - (ii) a virus;
 - (iii) a mycoplasma organism; or
 - (b) a disease declared by the Minister under section (2).
- (2) The Minister may, in writing, declare a thing to be a disease for this Act.
- (3) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

6 Meaning of *insect*

(1) For this Act:

insect means—

- (a) a form of animal life, within the biological classification Insecta, having a segmented body and paired jointed appendages (including, for example, an ant, bee, beetle, bug, butterfly, earwig, flea, fly, gnat, grasshopper, leaf-hopper, louse, locust, scale insect, termite or thrip); or
- (b) a form of animal life, within the biological classification Arachnida (including, for example, a spider, mite or tick); or

- (c) a member of another animal species declared by the Minister under subsection (3).
- (2) It does not matter what stage of development the insect is in.
- (3) The Minister may, in writing, declare that a member of an animal species (other than Insecta and Arachnida) is an insect for this Act.
- (4) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

7 Meaning of *pest*

- (1) For this Act:
pest means—
 - (a) an organism of the animal kingdom that feeds on or is injurious to plants; or
 - (b) a pest declared by the Minister under subsection (2).
- (2) The Minister may, in writing, declare that a thing is a pest for this Act.
- (3) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (ii) the introduction of plants or insects into the ACT for scientific purposes; or
 - (iii) the treatment of plants, soil or goods affected by diseases or pests.
- (2) An appointment is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

10 Declaration of quarantine area

- (1) The Minister may, in writing, declare an area of land to be a quarantine area.
- (2) The Minister may make a declaration under subsection (1) only if the Minister believes on reasonable grounds that the declaration is necessary or desirable to prevent a disease or pest becoming established, or spreading, in the ACT.
- (3) A declaration must—
- (a) contain a diagram showing the quarantine area; and
 - (b) state—
 - (i) the disease or pest to which the declaration relates; and
 - (ii) the restrictions on entry to, exit from and movement within the quarantine area; and
 - (iii) the restrictions on the sale of any plant, plant product or other stated thing that has, during a stated period, been kept in or travelled through the quarantine area; and
 - (iv) the date the declaration takes effect; and
 - (v) if the declaration is to have effect for a limited period—the date when (unless sooner revoked) it stops having effect.

- (4) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified under the *Legislation Act 2001*.

- (5) A person must not contravene a declaration under this section.

Maximum penalty: 1 000 penalty units.

11 Undertaking by owners

- (1) If the Minister could declare particular land to be a quarantine area under section 10, the Minister may instead accept a written undertaking given by the owner of the land that the owner will comply with requirements stated in the undertaking.

Note If a form is approved under s 40 (Approved forms) for an undertaking, the form must be used.

- (2) An undertaking has effect when it is accepted by the Minister and stops having effect when the Minister releases the owner from it.
- (3) A person must not contravene an undertaking given by the person under this section.

Maximum penalty: 1 000 penalty units.

- (4) In this section:

owner means—

- (a) for land held in fee simple—the person in whom the fee simple is vested; and
- (b) for land held under a lease—the lessee.

12 Declaration of area subject to importation restriction

- (1) The Minister may, in writing, declare an area of land outside the ACT (the *declared area*) to be subject to an importation restriction.
- (2) The Minister may make a declaration under subsection (1) only if the Minister believes on reasonable grounds that the declaration is

necessary or desirable to prevent a disease or pest becoming established, or spreading, in the ACT.

- (3) A declaration must—
- (a) contain a diagram showing the declared area; and
 - (b) state—
 - (i) the disease or pest to which the declaration relates; and
 - (ii) the restrictions on importing into, or selling in, the ACT any plant, plant product or other stated thing that has, during a stated period, been kept in or travelled through the declared area; and
 - (iii) the date the declaration takes effect; and
 - (iv) if the declaration is to have effect for a limited period—the date when (unless sooner revoked) it stops having effect.
- (4) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified under the *Legislation Act 2001*.

- (5) A person must not contravene a declaration under this section.

Maximum penalty: 1 000 penalty units.

13 Order for destruction or treatment of plants etc

- (1) The Minister may, in writing, order the owner or person in charge of premises to destroy or treat a stated plant, fruit or vegetable, or another stated thing, that—
- (a) is on the premises; and
 - (b) the Minister believes on reasonable grounds is infected, or is likely to be infected, with a disease or pest.

Note For how documents may be served, see *Legislation Act 2001*, pt 19.5.

- (2) The Minister may make an order under subsection (1) only if the Minister believes on reasonable grounds that the destruction or treatment is necessary or desirable to eradicate or control the establishment or spread of a disease or pest.
- (3) The order must state the time within which, and how, the destruction or treatment must happen.
- (4) A person must not contravene an order under this section.

Maximum penalty: 1 000 penalty units.

14 Measures if order contravened

- (1) If a person contravenes an order under section 13, the Minister may authorise a person to take stated measures to ensure the destruction or treatment ordered by the Minister.
- (2) The reasonable cost of taking the measures is a debt owing to the Territory by the person who contravened the order.

15 Declaration of notifiable diseases and pests

- (1) The Minister may, in writing, declare that—
 - (a) a disease is a notifiable disease for this Act; or
 - (b) a pest is a notifiable pest for this Act.
- (2) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

16 Obligation to report notifiable diseases and pests

- (1) A person who has reasonable grounds for believing that there is a notifiable disease or a notifiable pest on premises must report the existence of the disease or pest to the Minister within 24 hours after becoming aware of the facts on which those grounds are based.

- (2) A person must not, without reasonable excuse, contravene subsection (1).

Maximum penalty: 50 penalty units.

- (3) In this section:

notifiable disease means a disease declared by the Minister under section 15 (1) (a) to be a notifiable disease.

notifiable pest means a pest declared by the Minister under section 15 (1) (b) to be a notifiable pest.

17 Court proceedings

- (1) This section applies to—
- (a) a declaration in force under section 10 (Declaration of quarantine area); and
 - (b) a declaration in force under section 12 (Declaration of area subject to importation restriction); and
 - (c) an order in force under section 13 (Order for destruction or treatment of plants etc) to destroy or treat something infected, or likely to be infected, with a disease or pest to which a declaration in force under section 10 or 12 applies.
- (2) This part does not create a right in relation to the making of a declaration or order to which this section applies.
- (3) Without limiting subsection (2), a declaration or order to which this section applies—
- (a) may not be challenged or called into question in any court; and
 - (b) is not subject to prohibition, mandamus or injunction in any court.

Part 4 Enforcement

Division 4.1 Definitions for part 4

18 Definitions for pt 4

In this part:

connected—a thing is *connected* with a particular offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be committed.

Division 4.2 Inspectors

19 Appointment of inspectors

The chief executive may appoint a person to be an inspector for this Act.

Note 1 For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see *Legislation Act 2001*, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

20 Identity cards

- (1) The chief executive must issue an inspector with an identity card that states the person's name and appointment as an inspector, and shows—
 - (a) a recent photograph of the person; and

- (b) the date of issue of the card; and
 - (c) the date of expiry for the card; and
 - (d) anything else prescribed under the regulations.
- (2) Within 7 days after ceasing to be an inspector, a person must return the identity card to the chief executive.

Maximum penalty (subsection (2)): 1 penalty unit.

Division 4.3 Powers of inspectors

21 Power to enter premises

- (1) For this Act, an inspector may—
- (a) enter premises (other than residential premises) at any reasonable time; or
 - (b) enter premises at any time with the occupier's consent; or
 - (c) enter premises in accordance with a warrant under this part; or
 - (d) enter premises at any time if the inspector believes, on reasonable grounds, that the circumstances are of such seriousness and urgency as to require the immediate entry to the premises without the authority of a warrant.
- (2) An inspector may, without the occupier's consent, enter the land around premises to ask for consent to enter the premises.
- (3) For subsection (1) (d), the inspector may enter the premises with any necessary assistance and force.

22 Production of identity card

An inspector must not remain on premises entered under this part if, when asked by the occupier, the inspector does not produce his or her identity card for inspection by the occupier.

23 Consent to entry

- (1) When seeking the consent of an occupier to enter premises under this part, an inspector must—
 - (a) produce his or her identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time, and date, when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.
- (4) A court must assume that an occupier of premises did not consent to an entry to the premises by an inspector under this part if—
 - (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and
 - (b) an acknowledgment under this section is not produced in evidence for the entry; and
 - (c) it is not proved that the occupier consented to the entry.

24 Warrants

- (1) An inspector may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity connected with an offence against this Act; and
 - (b) the thing or activity is at the premises, or may be at the premises within the next 14 days.
- (5) The warrant must state—
 - (a) that an inspector may, with necessary assistance and force, enter the premises and exercise the inspector's powers under this part; and
 - (b) the offence for which the warrant is sought; and
 - (c) the evidence that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and
 - (e) the date, within 14 days after the day of the warrant's issue, the warrant ends.

25 Warrants—application made other than in person

- (1) An inspector may apply for a warrant by phone, fax, radio or other form of communication if the inspector considers it necessary because of—
 - (a) urgent circumstances; or

- (b) other special circumstances.
- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) The inspector may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the inspector—
 - (a) the magistrate must—
 - (i) tell the inspector the terms of the warrant; and
 - (ii) tell the inspector the date and time the warrant was issued; and
 - (b) the inspector must complete a form of warrant (*warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the inspector's powers under this part.
- (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the inspector completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.

- (9) A court must assume that a power exercised by an inspector was not authorised by a warrant under this section if—
- (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

26 General powers on entry to premises

- (1) An inspector who enters premises under this part may, for this Act, do any of the following in relation to the premises or anything on the premises:
- (a) inspect or examine;
 - (b) take measurements or conduct tests;
 - (c) take samples of or from anything on the premises;
 - (d) take photographs, films, or audio, video or other recordings;
 - (e) subject to section 28 (Power to seize things), seize a thing;
 - (f) require the occupier, or a person on the premises, to give the inspector reasonable help to exercise a power under this part.
- (2) A person must not, without reasonable excuse, contravene a requirement under subsection (1) (f).

Maximum penalty: 50 penalty units.

27 Power to require name and address

- (1) An inspector may require a person to state the person's name and address if the inspector—
- (a) finds the person committing an offence against this Act; or
 - (b) has reasonable grounds for believing that the person has just committed an offence against this Act.

- (2) If an inspector makes a requirement of a person under subsection (1), the inspector must—
- (a) tell the person the reasons for the requirement; and
 - (b) as soon as practicable, record those reasons.
- (3) A person must not, without reasonable excuse, contravene a requirement under subsection (1).
- Maximum penalty: 5 penalty units.
- (4) However, a person is not required to comply with a requirement under subsection (1) if, when asked by the person, the inspector does not produce his or her identity card for inspection by the person.

28 Power to seize things

- (1) An inspector who enters premises under a warrant under this part may seize the evidence for which the warrant was issued.
- (2) An inspector who enters premises under this part with the occupier's consent may seize a thing on the premises if—
- (a) the inspector is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of the entry as told to the occupier when seeking the occupier's consent.
- (3) An inspector may also seize anything on premises entered under this part if satisfied on reasonable grounds that—
- (a) the thing is connected with an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.

- (4) An inspector may also seize anything on premises entered under this part if satisfied on reasonable grounds that it is necessary to seize the thing to prevent a disease or pest becoming established, or spreading, in the ACT.
- (5) Having seized a thing, an inspector may—
 - (a) remove the thing from the premises where it was seized; or
 - (b) leave the thing at the premises where it was seized but restrict access to it.
- (6) A person must not, without the Minister's approval, interfere with a thing to which access has been restricted under subsection (5) (b).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

29 Receipt for things seized

- (1) As soon as practicable after a thing is seized by an inspector under this part, the inspector must give a receipt for it to the occupier of the premises where it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must leave the receipt, secured conspicuously at the place of seizure.

30 Access to things seized

A person who would, apart from the seizure of a thing under this part, be entitled to the thing may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

31 Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
 - (a) a prosecution for an offence relating to the thing is not begun within 90 days after the day of the seizure; or
 - (b) if a prosecution is begun within the 90 days—the court does not find the offence proved.
- (2) A thing seized under this part is forfeited to the Territory if a court—
 - (a) finds an offence relating to the thing to be proved; and
 - (b) orders the forfeiture.
- (3) If subsection (2) (a) applies, but the court does not order the forfeiture of the thing seized, the chief executive must return the thing to its owner or the Territory must pay reasonable compensation to the owner for the loss of the thing.
- (4) For subsections (1) and (3), if the thing seized was a fruit, vegetable or other plant that has deteriorated or perished since it was seized, the owner is entitled to reasonable compensation for the deterioration or loss.

Part 5 Miscellaneous

32 **Providing false or misleading information**

A person must not, in purported compliance with a requirement under this Act, knowingly provide information that is false or misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

33 **Providing false or misleading documents**

A person must not, in purported compliance with a requirement under this Act, produce a document that the person knows is false or misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

34 **Hindering or obstructing an inspector**

A person must not, without reasonable excuse, hinder or obstruct an inspector in the exercise of a function under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

35 **Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this Act, an inspector must take reasonable steps to ensure that the inspector, and anyone helping the inspector, causes as little inconvenience, detriment and damage as is practicable.

- (2) If an inspector, or anyone helping an inspector, damages anything in the exercise, or purported exercise, of a function under this Act, the inspector must give written notice of the particulars of the damage to the person whom the inspector believes is the owner of the thing.

Note For how documents may be served, see *Legislation Act 2001*, pt 19.5.

- (3) If the damage happens on premises entered under this Act, the notice may be given—
- (a) to the occupier; or
 - (b) if the occupier is not present—by securing it in a conspicuous place on the premises.

36 Compensation—actions by inspectors

- (1) A person may claim reasonable compensation from the Territory if the person incurs loss or expense because of the exercise, or purported exercise, of a function under part 4 by an inspector or anyone helping an inspector.
- (2) Compensation may be claimed and ordered in a proceeding for—
- (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) The court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) The regulations may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

37 Compensation—safety net

- (1) If, apart from this section and section 36—
 - (a) the operation of any provision of this Act would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be unlawful because of the Self-Government Act, section 23 (1);

the person acquiring the property (the *acquirer*) is liable to pay reasonable compensation to the other person for the acquisition.

- (2) If the acquirer and the other person do not agree on the amount of compensation, the other person may, by proceeding in a court of competent jurisdiction, recover from the acquirer the reasonable compensation that the court decides.

38 Delegation by Minister

- (1) The Minister must not delegate the Minister's functions under this Act to someone other than a public servant.

Note For the making of delegations and the exercise of delegated functions, see *Legislation Act 2001*, pt 19.4.

- (2) Subsection (1) has effect despite the *Legislation Act 2001*, section 254A (Delegation by Minister).

39 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

40 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.

Note For other provisions about forms, see *Legislation Act 2001*, s 255.

- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

41 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

Part 6 Repeals and consequential amendment

42 **Repeal of *Plant Diseases Act 1934***

The *Plant Diseases Act 1934* No 21 is repealed.

43 **Repeal of *Plant Diseases Regulations 1938***

The *Plant Diseases Regulations 1938* (made on 11 February 1938) are repealed.

44 **Administrative Decisions (Judicial Review) Act 1989, schedule 1, new clause 6**

insert

- 6 This Act does not apply to decisions of the Minister under the *Plant Diseases Act 2002*, part 3 (Measures for the control of diseases and pests).

Dictionary

(see s 3)

Note The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

connected, for part 4 (Enforcement)—see section 18 (Definitions for pt 4).

disease—see section 5 (Meaning of *disease*).

goods includes all kinds of movable property.

insect—see section 6 (Meaning of *insect*).

inspector means a person appointed as an inspector under section 19 (Appointment of inspectors).

occupier, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

offence, for part 4 (Enforcement)—see section 18 (Definitions for pt 4).

pest—see section 7 (Meaning of *pest*).

plant means a member, or part of a member, of the plant kingdom.

premises includes a building of any description, or a part of a building, a vehicle, and land (whether built on or not).

Endnotes

Republications of amended laws

- 1 For the latest republication of amended laws, see www.legislation.act.gov.au.

Penalty units

- 2 The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

[Presentation speech made in Assembly on 27 June 2002]

I certify that the above is a true copy of the Plant Diseases Bill 2002 which was passed by the Legislative Assembly on 12 November 2002.

Clerk of the Legislative Assembly

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