



Australian Capital Territory

Plant Diseases Act 2002

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Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Plant Diseases Act 2002* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 July 2011. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 July 2011.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



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Australian Capital Territory

Plant Diseases Act 2002

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

Part 1 Preliminary

1 Name of Act

This Act is the *Plant Diseases Act 2002*.

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 terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*disease*—see section 5.' means that the term '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, 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, s 127 (1), (4) and (5) for the legal status of notes.

4A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

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

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.

- (4) A declaration under this section may provide for its commencement on or before the declaration's notification day.

Note This subsection provides express authority for a declaration to commence on or before its notification day—see Legislation Act, s 73 (2) (d) (General rules about commencement).

- (5) However—

- (a) a declaration may not provide for a commencement date or time that would result in the declaration commencing before it is made; and

- (b) a declaration may not commence before it is notified under the Legislation Act unless the Minister is satisfied that the circumstances are of such seriousness and urgency that commencement before notification is necessary to prevent a disease or pest becoming established, or spreading, in the ACT.
- (6) If a declaration commences before it is notified under the Legislation Act, the Minister must give notice of the declaration to the required media as soon as possible after the declaration is made.

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.

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.

- (4) A declaration under this section may provide for its commencement on or before the declaration's notification day.

Note This subsection provides express authority for a declaration to commence on or before its notification day—see Legislation Act, s 73 (2) (d) (General rules about commencement).

- (5) However—

- (a) a declaration may not provide for a commencement date or time that would result in the declaration commencing before it is made; and
- (b) a declaration may not commence before it is notified under the Legislation Act unless the Minister is satisfied that the circumstances are of such seriousness and urgency that commencement before notification is necessary to prevent a disease or pest becoming established, or spreading, in the ACT.

- (6) If a declaration commences before it is notified under the Legislation Act, the Minister must give notice of the declaration to the required media as soon as possible after the declaration is made.

Part 3

Measures for the control of diseases and pests

8 Prohibition of introduction etc of plants, insects, diseases and pests

- (1) The Minister may, in writing, prohibit the introduction into, or transport within or through, the ACT of—
- (a) a plant, insect, disease or pest; or
 - (b) anything that the Minister believes on reasonable grounds may contain a plant, insect, disease or pest.

- (2) The Minister may make a prohibition under subsection (1) only if the Minister believes on reasonable grounds that the introduction or transport of the plant, insect, disease or pest is likely to increase the risk of a disease or pest becoming established, or spreading, in the ACT.

- (3) A prohibition may be absolute or subject to conditions.

- (4) A prohibition is a disallowable instrument.

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

- (5) A prohibition under this section may provide for its commencement on or before the prohibition's notification day.

Note This subsection provides express authority for a prohibition to commence on or before its notification day—see Legislation Act, s 73 (2) (d) (General rules about commencement).

- (6) However—

- (a) a prohibition may not provide for a commencement date or time that would result in the prohibition commencing before it is made; and
- (b) a prohibition may not commence before it is notified under the Legislation Act unless the Minister is satisfied that the

circumstances are of such seriousness and urgency that commencement before notification is necessary to prevent a disease or pest becoming established, or spreading, in the ACT.

- (7) If a prohibition commences before it is notified under the Legislation Act, the Minister must give notice of the prohibition to the required media as soon as possible after the prohibition is made.
- (8) A person commits an offence if the person intentionally contravenes a prohibition under this section.
- Maximum penalty: 1 000 penalty units.
- (9) A person commits an offence if the person contravenes a prohibition under this section.
- Maximum penalty: 50 penalty units.
- (10) An offence against subsection (9) is a strict liability offence.

9 Declaration of places of entry and quarantine stations

- (1) The Minister may, in writing—
- (a) declare places to be the only places of entry for plants, insects, soil or goods into the ACT; and
 - (b) appoint stated places to be quarantine stations for—
 - (i) the quarantine of plants, insects, soil or goods; or
 - (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.

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.
- (5) A declaration under this section may provide for its commencement on or before the declaration's notification day.

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

Note This subsection provides express authority for a declaration to commence on or before its notification day—see Legislation Act, s 73 (2) (d) (General rules about commencement).

- (6) However—
- (a) a declaration may not provide for a commencement date or time that would result in the declaration commencing before it is made; and
 - (b) a declaration may not commence before it is notified under the Legislation Act unless the Minister is satisfied that the circumstances are of such seriousness and urgency that commencement before notification is necessary to prevent a disease or pest becoming established, or spreading, in the ACT.
- (7) If a declaration commences before it is notified under the Legislation Act, the Minister must give notice of the declaration to the required media as soon as possible after the declaration is made.
- (8) A person commits an offence if the person intentionally contravenes a declaration under this section.
- Maximum penalty: 1 000 penalty units.
- (9) A person commits an offence if the person contravenes a declaration under this section.
- Maximum penalty: 50 penalty units.
- (10) An offence against subsection (9) is a strict liability offence.

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 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 intentionally 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.

- (5) A declaration under this section may provide for its commencement on or before the declaration's notification day.

Note This subsection provides express authority for a declaration to commence on or before its notification day—see Legislation Act, s 73 (2) (d) (General rules about commencement).

- (6) However—

(a) a declaration may not provide for a commencement date or time that would result in the declaration commencing before it is made; and

(b) a declaration may not commence before it is notified under the Legislation Act unless the Minister is satisfied that the circumstances are of such seriousness and urgency that commencement before notification is necessary to prevent a disease or pest becoming established, or spreading, in the ACT.

- (7) If a declaration commences before it is notified under the Legislation Act, the Minister must give notice of the declaration to the required media as soon as possible after the declaration is made.

- (8) A person commits an offence if the person intentionally contravenes a declaration under this section.

Maximum penalty: 1 000 penalty units.

- (9) A person commits an offence if the person contravenes a declaration under this section.

Maximum penalty: 50 penalty units.

- (10) An offence against subsection (9) is a strict liability offence.

13 Direction for seizure, disinfection, destruction etc of plants etc

- (1) The Minister may, in writing, direct—
 - (a) an inspector to seize a stated plant, fruit, vegetable, vehicle or another stated thing; or
 - (b) the owner or person in charge of premises or a plant, fruit, vegetable or another thing to take the action stated in the direction to disinfect the premises, plant, fruit, vegetable or other thing; or
 - (c) the owner or person in charge of premises to destroy or treat a stated plant, fruit, vegetable or another stated thing at the premises; or
 - (d) an inspector or another person to take another stated action the Minister considers necessary.
- (2) The Minister may give a direction under subsection (1) only if the Minister believes on reasonable grounds that the direction is necessary or desirable to prevent a disease or pest becoming established, or spreading, in the ACT.
- (3) A direction given to a person other than an inspector must state the time within which, and how, the disinfection, destruction, treatment or other action must be taken.
- (4) A person commits an offence if the person intentionally contravenes a direction under this section.
Maximum penalty: 1 000 penalty units.
- (5) Subsection (4) does not apply to a direction given to an inspector.
- (6) In this section:
vehicle includes a caravan, trailer or vessel.

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.

16 Obligation to report notifiable diseases and pests

- (1) A person commits an offence if the person—
 - (a) has reasonable grounds for believing that there is a notifiable disease or a notifiable pest at premises; and
 - (b) does not 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.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (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 a prerogative order 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 director-general may appoint a person to be an inspector for this Act.

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

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, 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 director-general 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) A person commits an offence if the person—
- (a) was appointed as an inspector under section 19; and
 - (b) ceases to be an inspector; and
 - (c) does not return the person's identity card to the director-general within 7 days after the day the person ceases to be an inspector.

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

- (3) An offence against subsection (2) is a strict liability offence.

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 commits an offence if the person intentionally contravenes 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 commits an offence if the person contravenes 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.

- (5) An offence against this section is a strict liability offence.

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 commits an offence if the person intentionally interferes with a thing to which access has been restricted under subsection (5) (b).
- Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (7) Subsection (6) does not apply if the Minister approved the interference.

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 director-general 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

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, 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, pt 19.4.
- (2) Subsection (1) has effect despite the Legislation Act, section 254A (Delegation by Minister).

39 Determination of fees

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

Note The Legislation Act 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.

40 Approved forms

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

Note The Legislation Act contains provisions about forms (see 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.

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.

- (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.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACT
- daily newspaper
- director-general (see s 163)
- function
- public servant
- the Territory.

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

disease—see section 5.

goods includes all kinds of movable property.

insect—see section 6.

inspector means a person appointed as an inspector under section 19.

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.

pest—see section 7.

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).

required media means—

- (a) a daily newspaper; and
- (b) all national or commercial broadcasting services within the meaning of the *Broadcasting Services Act 1992* (Cwlth) broadcasting in the ACT.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Plant Diseases Act 2002 A2002-42

notified LR 2 December 2002

s 1, s 2 commenced 2 December 2002 (LA s 75 (1))

remainder commenced 2 June 2003 (s 2 and LA s 79)

as amended by

Animal and Plant Diseases Amendment Act 2003 A2003-44 pt 3

notified LR 2 October 2003

s 1, s 2 commenced 2 October 2003 (LA s 75 (1))

pt 3 commenced 3 October 2003 (s 2 (2))

Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 2 pt 2.67

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.67 commenced 9 April 2004 (s 2 (1))

Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 2 pt 2.27

notified LR 28 September 2006

s 1, s 2 commenced 28 September 2006 (LA s 75 (1))

sch 2 pt 2.27 commenced 29 September 2006 (s 2 (1))

Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.59

notified LR 1 September 2009

s 1, s 2 commenced 1 September 2009 (LA s 75 (1))

sch 3 pt 3.59 commenced 22 September 2009 (s 2)

Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.122

notified LR 30 June 2011

s 1, s 2 commenced 30 June 2011 (LA s 75 (1))

sch 1 pt 1.122 commenced 1 July 2011 (s 2 (1))

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Offences against Act—application of Criminal Code etc

s 4A ins A2003-44 s 11

Meaning of *disease*

s 5 am A2003-44 s 12

Meaning of *pest*

s 7 am A2003-44 s 13

Prohibition of introduction etc of plants, insects, diseases and pests

s 8 am A2003-44 s 14

Declaration of quarantine area

s 10 am A2003-44 s 15

Undertaking by owners

s 11 am A2003-44 s 16

Declaration of area subject to importation restriction

s 12 am A2003-44 s 17

Direction for seizure, disinfection, destruction etc of plants etc

s 13 sub A2003-44 s 18

Obligation to report notifiable diseases and pests

s 16 am A2003-44 s 19

Court proceedings

s 17 am A2006-40 amdt 2.169

Appointment of inspectors

s 19 am A2011-22 amdt 1.353

Identity cards

s 20 am A2003-44 s 20; A2011-22 amdt 1.353

General powers on entry to premises

s 26 am A2003-44 s 21

Power to require name and address

s 27 am A2003-44 s 22

Power to seize things

s 28 am A2003-44 s 23

Return of things seized

s 31 am A2011-22 amdt 1.354

False or misleading informations 32 sub A2003-44 s 24
om A2004-15 amdt 2.144

Endnotes

5 Earlier republications

False or misleading documents

s 33 sub A2003-44 s 24
om A2004-15 amdt 2.144

Hindering or obstructing an inspector

s 34 sub A2003-44 s 24
om A2004-15 amdt 2.144

Repeals and consequential amendment

pt 6 hdg om R1 LA

Repeal of Plant Diseases Act 1934

s 42 om LA s 89 (3)

Repeal of Plant Diseases Regulations 1938

s 43 om LA s 89 (3)

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

s 44 om LA s 89 (3)

Dictionary

dict am A2009-20 amdt 3.163; A2011-22 amdt 1.355
def **required media** ins A2003-44 s 25
am A2009-20 amdt 3.164

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 2 June 2003	2 June 2003– 2 Oct 2003	not amended	new Act
R2 3 Oct 2003	3 Oct 2003– 8 Apr 2004	A2003-44	amendments by A2003-44
R3	9 Apr 2004–	A2004-15	amendments by

Republication No and date	Effective	Last amendment made by	Republication for
9 Apr 2004	28 Sept 2006		A2004-15
R4 29 Sept 2006	29 Sept 2006– 21 Sept 2009	A2006-40	amendments by A2006-40
R5 22 Sept 2009	22 Sept 2009– 30 June 2011	A2009-20	amendments by A2009-20

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