



Australian Capital Territory

# **Pest Plants and Animals Act 2005**

**A2005-21**

**Republication No 6**

**Effective: 2 February 2009 – 16 December 2009**

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Last amendment made by A2008-37

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Pest Plants and Animals Act 2005* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 February 2009. It also includes any amendment, repeal or expiry affecting the republished law to 2 February 2009.

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](http://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 includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### 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 *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Pest Plants and Animals Act 2005

## Contents

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	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
3	Objects 2
4	Dictionary 2
5	Notes 3
6	Offences against Act—application of Criminal Code etc 3
<b>Part 2</b>	<b>Pest plants</b>
7	Declaration of pest plant 4
8	Pest plant management plan 4
9	Notification of notifiable pest plant 5
10	Propagation of prohibited pest plant 5

---

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Pest Plants and Animals Act 2005  
Effective: 02/02/09-16/12/09

contents 1

## Contents

---

		Page
10A	Reckless importation of prohibited pest plant etc	6
11	Commercial supply of prohibited pest plant	6
12	Reckless supply of prohibited pest plant etc	7
13	Reckless use of vehicle or machinery	8
14	Permits relating to prohibited pest plants	8
15	Reckless disposal of prohibited pest plant etc	9
<b>Part 3</b>	<b>Pest animals</b>	
16	Declaration of pest animal	10
17	Pest animal management plan	10
18	Notification of notifiable pest animal	11
19	Commercial supply of prohibited pest animal	11
20	Reckless supply of prohibited pest animal etc	12
21	Reckless use of vehicle or machinery	12
22	Keeping prohibited pest animal	13
23	Permit to supply prohibited pest animal	13
24	Reckless disposal of prohibited pest animal etc	14
<b>Part 4</b>	<b>Pest management directions</b>	
25	Pest management direction by chief executive	15
26	Service of pest management direction	16
27	Contravention of pest management direction—offence	16
28	Contravention of pest management direction—action by authorised person	16
<b>Part 5</b>	<b>Enforcement</b>	
<b>Division 5.1</b>	<b>General</b>	
29	Definitions for pt 5	18
<b>Division 5.2</b>	<b>Authorised people</b>	
30	Appointment of authorised people	18
31	Identity cards	19
<b>Division 5.3</b>	<b>Powers of authorised people</b>	
32	Power to enter premises	19
33	Production of identity card	20

	Page
34	21
35	22
36	23
37	23
<b>Division 5.4</b>	
<b>Search warrants</b>	
38	25
39	26
40	27
41	28
42	28
<b>Division 5.5</b>	
<b>Return and forfeiture of things seized</b>	
43	28
44	29
45	30
46	30
<b>Division 5.6</b>	
<b>Miscellaneous</b>	
47	32
48	32
<b>Part 6</b>	
<b>Notification and review of decisions</b>	
49	34
50	34
50A	34
<b>Part 7</b>	
<b>Miscellaneous</b>	
51	35
52	35
53	35
54	36

Contents

---

<b>Schedule 1</b>	<b>Reviewable decisions</b>	Page 37
<b>Dictionary</b>		38
<b>Endnotes</b>		
1	About the endnotes	41
2	Abbreviation key	41
3	Legislation history	42
4	Amendment history	42
5	Earlier republications	44



Australian Capital Territory

# **Pest Plants and Animals Act 2005**

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An Act about pest plants and animals, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Pest Plants and Animals Act 2005*.

### 3 Objects

The main objects of this Act are—

- (a) to protect the ACT's land and aquatic resources from threats from pest plants and animals; and
- (b) to promote a strategic and sustainable approach to pest management; and
- (c) to identify pest plants and animals; and
- (d) to manage pest plants and animals.

### 4 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 '*pest management direction*—see section 25.' means that the term 'pest management direction' 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)).



## 5 Notes

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

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

## 6 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 Pest plants

### 7 Declaration of pest plant

- (1) The Minister may declare a plant to be a pest plant.

*Note* A power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters (see Legislation Act, s 48).

- (2) Without limiting subsection (1), a declaration may declare—
- (a) that a plant is a pest plant whose presence must be notified to the chief executive (a *notifiable pest plant*); or
  - (b) that a plant is a pest plant that must be suppressed; or
  - (c) that a plant is a pest plant that must be contained; or
  - (d) that a plant is a pest plant whose propagation and supply is prohibited (a *prohibited pest plant*).
- (3) A declaration is a disallowable instrument.

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

### 8 Pest plant management plan

- (1) The Minister may prepare a plan (a *pest plant management plan*) for the management of a pest plant.
- (2) Without limiting subsection (1), a pest plant management plan may outline requirements for the following, having regard to the potential threat and the practicality of control measures:
- (a) the suppression or destruction of a pest plant of a particular kind if that is achievable with current knowledge, techniques and resources;

- (b) the containment of a pest plant if its complete suppression or destruction is impractical.

*Note* A power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters (see Legislation Act, s 48).

- (3) A pest plant management plan is a notifiable instrument.

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

## **9 Notification of notifiable pest plant**

A person commits an offence if—

- (a) the person is the occupier of premises; and
- (b) there is a notifiable pest plant at the premises; and
- (c) the person is reckless about whether the pest plant is at the premises; and
- (d) the person does not give the chief executive written notice about the presence of the pest plant within 2 working days after the day the person becomes aware that there is a substantial risk of the presence of the pest plant at the premises.

Maximum penalty: 20 penalty units.

## **10 Propagation of prohibited pest plant**

- (1) A person commits an offence if—
  - (a) the person propagates a plant; and
  - (b) the plant is a prohibited pest plant; and
  - (c) the person is reckless about whether the plant is a prohibited pest plant.

Maximum penalty: 50 penalty units.

- (2) This section does not apply if the propagation is done—
  - (a) by an entity prescribed by regulation; or
  - (b) under a permit.

**10A Reckless importation of prohibited pest plant etc**

- (1) A person commits an offence if—
  - (a) the person imports something into the ACT; and
  - (b) the thing imported is—
    - (i) a prohibited pest plant; or
    - (ii) contaminated by a prohibited pest plant; and
  - (c) the person is reckless about whether the thing imported is—
    - (i) a prohibited pest plant; or
    - (ii) contaminated by a prohibited pest plant; and
  - (d) is reckless about whether the importation would result or would be likely to result in the spread of prohibited pest plants of that kind.

Maximum penalty: 50 penalty units.

- (2) This section does not apply if the importation is—
  - (a) by an entity prescribed by regulation; or
  - (b) under a permit.

**11 Commercial supply of prohibited pest plant**

- (1) A person commits an offence if—
  - (a) the person, in the conduct of a business supplying plants, supplies a plant to someone else; and

(b) the plant supplied is a prohibited pest plant.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply if the supply is—
- (a) to an entity prescribed by regulation; or
  - (b) under a permit.

## 12 **Reckless supply of prohibited pest plant etc**

A person commits an offence if—

- (a) the person supplies something to someone else; and
- (b) the thing supplied is—
  - (i) a prohibited pest plant; or
  - (ii) contaminated by a prohibited pest plant; and
- (c) the person is reckless about whether the thing supplied is—
  - (i) a prohibited pest plant; or
  - (ii) contaminated by a prohibited pest plant; and
- (d) is reckless about whether the supply would result or would be likely to result in the spread of prohibited pest plants of that kind.

Maximum penalty: 50 penalty units.

### **Example of thing contaminated by a prohibited pest plant**

an agricultural, horticultural or aquacultural product that contains a prohibited pest plant

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**13 Reckless use of vehicle or machinery**

A person commits an offence if—

- (a) the person uses a vehicle or machinery; and
- (b) a prohibited pest plant, or something contaminated by a prohibited pest plant, is in or on the vehicle or machinery; and
- (c) the person is reckless about whether a prohibited pest plant or something contaminated by a prohibited pest plant is in or on the vehicle or machinery; and
- (d) the person is reckless about whether the use of the vehicle or machinery would result or would be likely to result in the spread of prohibited pest plants of that kind.

Maximum penalty: 50 penalty units

**14 Permits relating to prohibited pest plants**

- (1) A person may apply, in writing, to the chief executive for a permit to propagate, import into the ACT or supply something that is a prohibited pest plant.
- (2) The chief executive may issue a written permit for the propagation, importation or supply of the thing if satisfied that the propagation, importation or supply would not result in the spread of prohibited pest plants of that kind in a way that would endanger the environment or agriculture.
- (3) A permit is subject to any conditions stated in the permit by the chief executive.

*Note 1* If a form is approved under s 52 for this provision, the form must be used.

*Note 2* A fee may be determined under s 51 for this provision.

**15 Reckless disposal of prohibited pest plant etc**

A person commits an offence if the person—

- (a) disposes of something that is—
  - (i) a prohibited pest plant; or
  - (ii) contaminated by a prohibited pest plant; and
- (b) is reckless about whether the thing is—
  - (i) a prohibited pest plant; or
  - (ii) contaminated by a prohibited pest plant; and
- (c) is reckless about whether the disposal would result or be likely to result in the spread of prohibited pest plants of that kind.

Maximum penalty: 50 penalty units.

## Part 3 Pest animals

### 16 Declaration of pest animal

- (1) The Minister may declare an animal to be a pest animal.

*Note* A power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters (see Legislation Act, s 48).

- (2) Without limiting subsection (1), a declaration may declare—
- (a) that an animal is a pest animal whose presence must be notified to the chief executive (a *notifiable pest animal*); or
  - (b) that an animal is a pest animal whose supply or keeping is prohibited (a *prohibited pest animal*).
- (3) A declaration is a disallowable instrument.

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

### 17 Pest animal management plan

- (1) The Minister may prepare a plan (a *pest animal management plan*) for the management of a pest animal.
- (2) Without limiting subsection (1), a pest animal management plan may outline requirements for the following, having regard to the potential threat and the practicality of control measures:
- (a) managing the environmental and agricultural impact of a pest animal in a cost effective way if its eradication is impractical;
  - (b) controlling potential sources of invasion through trade, transport and escape from urban areas.

*Note* A power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters (see Legislation Act, s 48).



- (3) The plan must be consistent with any code of practice under the *Animal Welfare Act 1992* that applies to the pest animal.
- (4) A pest animal management plan is a notifiable instrument.

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

## **18 Notification of notifiable pest animal**

A person commits an offence if—

- (a) the person is the occupier of premises; and
- (b) there is a notifiable pest animal at the premises; and
- (c) the person is reckless about whether a pest animal is at the premises; and
- (d) the person does not give the chief executive written notice about the presence of the pest animal within 2 working days after the day the person becomes aware that there is a substantial risk of the presence of the pest animal at the premises.

Maximum penalty: 20 penalty units.

## **19 Commercial supply of prohibited pest animal**

- (1) A person commits an offence if—
  - (a) the person, in the conduct of a business supplying animals, supplies an animal to someone else; and
  - (b) the animal supplied is a prohibited pest animal.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply if the supply is—
  - (a) to an entity prescribed by regulation; or

- (b) under a permit.

## 20 Reckless supply of prohibited pest animal etc

A person commits an offence if—

- (a) the person supplies something to someone else; and
- (b) the thing supplied is—
  - (i) a prohibited pest animal; or
  - (ii) contaminated by a prohibited pest animal; and
- (c) the person is reckless about whether the thing supplied is—
  - (i) a prohibited pest animal; or
  - (ii) contaminated by a prohibited pest animal; and
- (d) is reckless about whether the supply would result or would be likely to result in the spread of prohibited pest animals of that kind.

Maximum penalty: 50 penalty units.

### **Example of thing contaminated by a prohibited pest animal**

an agricultural, horticultural or aquacultural product that contains a prohibited pest animal

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## 21 Reckless use of vehicle or machinery

- (1) A person commits an offence if—
  - (a) the person uses a vehicle or machinery; and
  - (b) a prohibited pest animal, or something contaminated by a prohibited pest animal, is in or on the vehicle or machinery; and

- (c) the person is reckless about whether a prohibited pest animal or something contaminated by a prohibited pest animal is in or on the vehicle or machinery; and
- (d) the person is reckless about whether the use of the vehicle or machinery would result or would be likely to result in the spread of prohibited pest animals of that kind.

Maximum penalty: 50 penalty units

## **22 Keeping prohibited pest animal**

- (1) A person commits an offence if—
  - (a) the person keeps an animal; and
  - (b) the animal is a prohibited pest animal; and
  - (c) the person is reckless about whether the animal is a prohibited pest animal; and
  - (d) the person is reckless about whether keeping the animal would result or would be likely to result in the spread of prohibited pest animals of that kind.

Maximum penalty: 50 penalty units.

## **23 Permit to supply prohibited pest animal**

- (1) A person may apply, in writing, to the chief executive for a permit to supply something that is a prohibited pest animal.
- (2) The chief executive may issue a written permit for the supply of the thing if satisfied that the supply would not result in the spread of prohibited pest animals of that kind in a way that would endanger the environment or agriculture.

- (3) A permit is subject to any conditions stated in the permit by the chief executive.

*Note 1* If a form is approved under s 52 for this provision, the form must be used.

*Note 2* A fee may be determined under s 51 for this provision.

## **24 Reckless disposal of prohibited pest animal etc**

A person commits an offence if the person—

- (a) disposes of something that is—
- (i) a prohibited pest animal; or
  - (ii) contaminated by a prohibited pest animal; and
- (b) is reckless about whether the thing is—
- (i) a prohibited pest animal; or
  - (ii) contaminated by a prohibited pest animal; and
- (c) is reckless about whether the disposal would result or be likely to result in the spread of prohibited pest animals of that kind.

Maximum penalty: 50 penalty units.

## Part 4 Pest management directions

### 25 Pest management direction by chief executive

- (1) The chief executive may give the occupier of premises a written direction (a *pest management direction*) to do or not do something in relation to a pest plant or pest animal at the premises.

#### Examples of pest management directions

- 1 to use chemicals or other means for managing or eradicating a pest plant
- 2 to take stated measures to reduce the presence of a pest animal

*Note 1* The power to make a statutory instrument (including a heritage direction) includes power to amend or repeal the instrument (see Legislation Act, s 46)

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The direction must state a reasonable time within which the person must comply with the direction.
- (3) The chief executive may give the direction only if the chief executive believes, on reasonable grounds, that—
- (a) the pest plant or pest animal is, or may be, present at the premises; and
  - (b) the occupier of the premises has not complied with the pest management plan for the pest plant or pest animal.
- (4) The direction must be consistent with the pest management plan for the pest plant or pest animal.

**26 Service of pest management direction**

A pest management direction may be given to the occupier of premises by leaving it, secured conspicuously, at the premises.

*Note 1* For how directions may be served generally, see the Legislation Act, pt 19.5.

*Note 2* *At* premises includes in or on the premises (see dict).

**27 Contravention of pest management direction—offence**

A person commits an offence if the person engages in conduct that contravenes a requirement of a pest management direction.

Maximum penalty: 50 penalty units.

**28 Contravention of pest management direction—action by authorised person**

- (1) This section applies if a person (the *occupier*) does not comply with a pest management direction requiring the occupier to do something.
- (2) An authorised person may, with any reasonable and necessary assistance and force, enter premises to which the direction relates and do anything the occupier was required to do under the direction that was not done.
- (3) The reasonable cost incurred by the Territory in doing anything under subsection (2) is a debt owing to the Territory by the occupier.
- (4) The chief executive must endeavour to give the occupier of premises written notice of any action proposed to be taken under subsection (2) at least 2 working days before the day the action is to begin.
- (5) The notice must include the following:
  - (a) a statement about the operation of this section;

- (b) the purpose and nature of the proposed action;
  - (c) the parts of the premises likely to be affected;
  - (d) the times when the action is proposed to be taken;
  - (e) a statement about the obligations of an authorised person and the Territory under subsection (7).
- (6) The occupier may waive the right to all or part of the minimum period of notice under subsection (4).
- (7) Section 47 (Damage etc to be minimised) and section 48 (Compensation for exercise of enforcement powers) apply to action taken under subsection (2) as if—
- (a) it were action taken by an authorised person in the exercise of a function under part 5 (Enforcement); and
  - (b) all other necessary changes, and any changes prescribed by regulation, were made.

## Part 5                                  Enforcement

### Division 5.1                          General

#### 29                                  Definitions for pt 5

In this part:

*connected*—a thing is *connected* with an 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.

*occupier*, of premises includes—

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

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

### Division 5.2                          Authorised people

#### 30                                  Appointment of authorised people

The chief executive may appoint a public servant to be an authorised person for this Act.

*Note 1*    For the making of appointments (including acting appointments), see the 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).



### **31 Identity cards**

- (1) The chief executive must give an authorised person an identity card stating the person's name and that the person is an authorised person.
- (2) The identity card must show—
  - (a) a recent photograph of the person; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
  - (a) the person stops being an authorised person; and
  - (b) the person does not return the person's identity card to the chief executive as soon as practicable, but no later than 7 days after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

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

## **Division 5.3 Powers of authorised people**

### **32 Power to enter premises**

- (1) For this Act, an authorised person may—
  - (a) at any reasonable time, enter premises if the authorised person suspects, on reasonable grounds, that any of the following may be at the premises:
    - (i) a notifiable pest plant;
    - (ii) a prohibited pest plant or something contaminated by a prohibited pest plant;
    - (iii) a notifiable pest animal;

- (iv) a prohibited pest animal or something contaminated by a prohibited pest animal; or
  - (b) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
  - (c) at any time, enter premises with the occupier's consent; or
  - (d) enter premises in accordance with a search warrant.
- (2) However, subsection (1) (a) and (b) does not authorise entry into a part of premises that is being used only for residential purposes.
- (3) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) In this section:
- at any reasonable time* includes at any time—
- (f) for subsection (1) (a)—during normal business hours; and
  - (g) for subsection (1) (b)—when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money).

### **33 Production of identity card**

An authorised person must not remain at premises entered under this part if the authorised person does not produce his or her identity card when asked by the occupier.

### **34 Consent to entry**

- (1) When seeking the consent of an occupier of premises to enter premises under section 32 (1) (c), an authorised person 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 authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
  - (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 authorised person must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this part if—
  - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and

- (b) an acknowledgment of consent for the entry is not produced in evidence; and
- (c) it is not proved that the occupier consented to the entry.

### **35 General powers on entry to premises**

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
  - (a) inspect or examine;
  - (b) take measurements or conduct tests;
  - (c) take samples;
  - (d) take photographs, films, or audio, video, or other recordings;
  - (e) seize a thing if the authorised person believes, on reasonable grounds, that the thing is—
    - (i) a notifiable pest plant; or
    - (ii) a prohibited pest plant or something contaminated by a prohibited pest plant; or
    - (iii) a notifiable pest animal; or
    - (iv) a prohibited pest animal or something contaminated by a prohibited pest animal;
  - (f) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this part.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (f).

Maximum penalty: 50 penalty units.

### **36 Power to require name and address**

- (1) An authorised person may require a person to state the person's name and home address if the authorised person believes, on reasonable grounds, that the person is committing or has just committed an offence against this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The authorised person must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The person may ask the authorised person to produce his or her identity card for inspection by the person.
- (4) A person must comply with a requirement made of the person under subsection (1) if the authorised person—
- (a) tells the person the reason for the requirement; and
  - (b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

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

*home address*, of a person, means the address of the place where the person usually lives.

### **37 Power to seize things**

- (1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if—
- (a) the authorised person 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 told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises 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) Having seized a thing, an authorised person may—
  - (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (5) A person commits an offence if—
  - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and
  - (b) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

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

## **Division 5.4                      Search warrants**

### **38                      Warrants generally**

- (1) An authorised person 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 authorised person gives the magistrate all 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—
    - (i) is, or is being engaged in, at the premises; or
    - (ii) may be, or may be engaged in, at the premises within the next 14 days.
- (5) The warrant must state—
  - (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person's powers under this part; and
  - (b) the offence for which the warrant is issued; and
  - (c) the things 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.

**39                    Warrants—application made other than in person**

- (1) An authorised person may apply for a warrant by phone, fax, radio or other form of communication if the authorised person considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised person—
  - (a) the magistrate must—
    - (i) tell the authorised person the terms of the warrant; and
    - (ii) tell the authorised person the date and time the warrant was issued; and
  - (b) the authorised person must complete a form of warrant (the **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 authorised person, authorises the entry and the exercise of the authorised person’s powers under this part.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—



- (a) the sworn application; and
  - (b) if the authorised person 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 find that a power exercised by the authorised person was not authorised by a warrant under this section if—
- (a) the question arises in a proceeding in 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.

#### **40 Search warrants—announcement before entry**

- (1) An authorised person must, before anyone enters premises under a search warrant—
- (a) announce that the authorised person is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.
- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes, on reasonable grounds, that immediate entry to the premises is required to ensure—
- (a) the safety of anyone (including the authorised person or any person assisting); or

(b) that the effective execution of the warrant is not frustrated.

#### **41 Details of search warrant to be given to occupier etc**

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

#### **42 Occupier entitled to be present during search etc**

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
  - (a) to do so would impede the search; or
  - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

### **Division 5.5 Return and forfeiture of things seized**

#### **43 Receipt for things seized**

- (1) As soon as practicable after an authorised person seizes a thing under this part, the authorised person must give a receipt for it to the person from whom it was seized.

- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously, at the place of seizure under section 37 (Power to seize things).
- (3) A receipt under this section must include the following:
  - (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) the authorised person's name, and how to contact the authorised person;
  - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

#### **44 Moving things to another place for examination or processing under search warrant**

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
  - (a) both of the following apply:
    - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
    - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
  - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for no longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes, on reasonable grounds, that the thing cannot be examined or processed within 72 hours.

- (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
  - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
  - (b) allow the occupier or the occupier’s representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

#### **45 Access to things seized**

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

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

#### **46 Return of things seized**

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing, if—
  - (a) an infringement notice for an offence relating to the thing is not served on the owner within 90 days after the day of the seizure and—
    - (i) a prosecution for an offence relating to the thing is not begun within the 90-day period; or

- (ii) a prosecution for an offence relating to the thing is begun within the 90-day period but the court does not find the offence proved; or
  - (b) an infringement notice for an offence relating to the thing is served on the owner within 90 days after the day of the seizure, the infringement notice is withdrawn and—
    - (i) a prosecution for an offence relating to the thing is not begun within the 90-day period; or
    - (ii) a prosecution for an offence relating to the thing is begun within the 90-day period but the court does not find the offence proved; or
  - (c) an infringement notice for an offence relating to the thing is served on the owner and not withdrawn within 90 days after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and—
    - (i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under section 132 that liability is disputed; or
    - (ii) an information is laid in the Magistrates Court against the person for the offence within the 60-day period, but the Magistrates Court does not find the offence proved.
- (2) If anything seized under this part is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—
- (a) is forfeited to the Territory; and
  - (b) may be sold, destroyed or otherwise disposed of as the chief executive directs.

- (3) This section does not apply to any of the following seized under this part:
- (a) a notifiable pest plant;
  - (b) a prohibited pest plant or something contaminated by a prohibited pest plant;
  - (c) a notifiable pest animal;
  - (d) a prohibited pest animal or something contaminated by a prohibited pest animal.

## **Division 5.6                    Miscellaneous**

### **47                    Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as practicable.
- (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person the authorised person believes, on reasonable grounds, is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

### **48                    Compensation for exercise of enforcement powers**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised person or a person assisting an authorised person.

- (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) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation 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.

## Part 6 Notification and review of decisions

### 49 Meaning of *reviewable decision*—pt 6

In this part:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 50 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

*Note 1* The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

### 50A Applications for review

The following people may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.



## Part 7                      Miscellaneous

### 51                      Determination of fees

- (1) The Minister may 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.

### 52                      Approved forms

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

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

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

- (3) An approved form is a notifiable instrument.

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

### 53                      Regulation-making power

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

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

- (2) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.

**54            Review of Act**

- (1) The Minister must review the operation of this Act as soon as practicable after the end of its 5th year of operation.
- (2) The Minister must present a report on the review to the Legislative Assembly within 3 months after the day the review is started.
- (3) This section expires 7 years after the day it commences.

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## Schedule 1      Reviewable decisions

(see pt 6)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	14	refuse to issue permit	applicant for permit
2	14	issue permit subject to condition	applicant for permit
3	23	refuse to issue permit	applicant for permit
4	23	issue permit subject to condition	applicant for permit
5	25	give pest management direction	person to whom direction given

## Dictionary

(see s 4)

*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:

- ACAT
- chief executive (see s 163)
- Executive
- in relation to
- Minister (see s 162)
- public servant
- reviewable decision notice.

***animal*** includes—

- (a) a vertebrate and an invertebrate; and
- (b) an egg, embryo, ovum or sperm, or other product, of an animal from which another animal could be produced;

but does not include a human being.

***at*** premises includes in or on the premises.

***authorised person*** means an authorised person under section 30.

***connected***, for part 5 (Enforcement)—see section 29.

***notifiable pest animal***—see section 16.

***notifiable pest plant***—see section 7.

***occupier***, of premises, for part 5 (Enforcement)—see section 29.

***offence***, for part 5 (Enforcement)—see section 29.

***permit*** means a permit issued under section 14 or section 23.

***pest animal*** means an animal declared to be a pest animal under section 16.

***pest animal management plan***—see section 17.

***pest management direction***—see section 25.

***pest plant*** means a plant declared to be a pest plant under section 7.

***pest plant management plan***—see section 8.

***plant*** includes part of a plant.

***premises*** includes land or a structure or vehicle and any part of an area of land or a structure or vehicle.

***prohibited pest animal***—see section 16.

***prohibited pest plant***—see section 7.

***propagate*** a plant includes plant the plant.

**Examples of propagating a plant**

- 1 planting a seed, seedling or cutting
- 2 grafting a plant
- 3 propagating a plant using hydroponics

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

***reviewable decision***, for part 6 (Notification and review of decisions)—see section 49.

***sell*** includes—

- (a) barter and agree to sell; and
- (b) display for sale; and
- (c) have in possession for sale.

**supply** includes—

- (a) sell; and
- (b) agree to supply; and
- (c) dispose of by way of raffle, lottery or other game of chance; and
- (d) offer as a prize or reward.

**vehicle**—

- (a) see the *Road Transport (General) Act 1999*, dictionary; and
- (b) includes a boat, hovercraft, raft, pontoon and anything else that can carry people or goods through on or over water.

## 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

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	R1 = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Pest Plants and Animals Act 2005 A2005-21**

notified LR 12 May 2005

s 1, s 2 commenced 12 May 2005 (LA s 75 (1))

sch 1 pt 1.4 commenced 29 March 2006 (LA s 79A and A2005-51)

remainder commenced 12 November 2005 (s 2 and LA s 79)

as amended by

#### **Pest Plants and Animals Amendment Act 2006 A2006-18**

notified LR 10 May 2006

s 1, s 2 commenced 10 May 2006 (LA s 75 (1))

remainder commenced 11 May 2006 (s 2)

#### **Statute Law Amendment Act 2006 A2006-42 amdt 3.152**

notified LR 26 October 2006

s 1, s 2 taken to have commenced 12 November 2005 (LA s 75 (2))

amdt 3.152 commenced 16 November 2006 (s 2 (1))

#### **ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.81**

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.81 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

### 4 Amendment history

#### **Commencement**

s 2 om LA s 89 (4)

#### **Declaration of pest plant**

s 7 am A2006-42 amdt 3.152

#### **Reckless importation of prohibited pest plant etc**

s 10A ins A2006-18 s 4

#### **Permits relating to prohibited pest plants**

s 14 sub A2006-18 s 5

#### **Declaration of pest animal**

s 16 am A2006-42 amdt 3.152



**Notification and review of decisions**

pt 6 hdg sub A2008-37 amdt 1.349

**Meaning of *reviewable decision*—pt 6**s 49 am A2006-18 s 6  
sub A2008-37 amdt 1.349**Reviewable decision notices**

s 50 sub A2008-37 amdt 1.349

**Applications for review**

s 50A ins A2008-37 amdt 1.349

**Determination of fees**

s 51 am A2006-42 amdt 3.152

**Approved forms**

s 52 am A2006-42 amdt 3.152

**Review of Act**s 54 exp 12 November 2012 (s 54 (3))**Transitional**

pt 8 hdg exp 12 November 2007 (s 56)

**Transitional regulations**

s 55 exp 12 November 2007 (s 56)

**Expiry of pt 8**

s 56 exp 12 November 2007 (s 56)

**Consequential amendments**

pt 9 hdg om LA s 89 (3)

**Legislation amended—sch 1**

s 57 om LA s 89 (3)

**Reviewable decisions**sch 1 om LA s 89 (3)  
ins A2008-37 amdt 1.350**Dictionary**dict am A2008-37 amdt 1.351  
def *propagate* ins A2006-18 s 7  
def *reviewable decision* sub A2008-37 amdt 1.352

## Endnotes

### 5 Earlier republications

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#### 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.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R1 (R1) 28 Mar 2006	12 Nov 2005– 28 Mar 2006	not amended	new Act reissue for republication correction
R2 29 Mar 2006	29 Mar 2006– 10 May 2006	not amended	commenced provisions
R3 11 May 2006	11 May 2006– 15 Nov 2006	A2006-18	amendments by A2006-18
R4 16 Nov 2006	16 Nov 2006– 12 Nov 2007	A2006-42	amendments by A2006-42
R5 13 Nov 2008	13 Nov 2008– 1 Feb 2009	A2006-42	commenced expiry

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