

2002

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

PLANT DISEASES BILL 2002

EXPLANATORY STATEMENT

Circulated by authority of

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Minister for Urban Services

EXPLANATORY MEMORANDUM

Outline

This Bill sets out new provisions for regulation of plant diseases issues in the Territory. It replaces the *Plant Diseases Act 1934* and the *Plant Diseases Regulations 1938*. The Bill simplifies and streamlines procedures for imposing quarantines, prohibiting entry of material that could spread disease and for dealing with outbreak of plant diseases or pests. The overall approach is to allow people to regulate their own affairs, and deal with pest and disease issues in relation to their plants and fruit as they see fit, but to allow the Government to intervene if necessary to address an occurrence of a disease or pest.

Revenue/Cost Implications

There is no additional cost involved in the Bill as all infrastructure is in place under existing arrangements.

Formal Clauses

Part 1- Preliminary

Clauses 1 and 2 are formal requirements. They deal with the short title of the Bill, commencement provisions.

Clause 3 provides for a dictionary of terms used within the Bill and notifies that the dictionary is located at the end of the Bill.

Clause 4 advises that the notes included within the Bill are explanatory and do not form part of the Act.

Part 2 – Key Concepts

Clause 5 defines disease. The definition is intended to be broad, and to allow the Minister to make a declaration in relation to a particular disease in order to remove doubt.

Clause 6 defines insect. The definition is intended to be broad (and includes arachnids), and to allow the Minister to make a declaration in relation to a particular animal in order to remove doubt.

Clause 7 defines pest. Again, a broad definition is adopted, and a power vested in the Minister to remove doubt in relation to a particular animal.

Part 3 – Measures for the Control of Diseases and Pests

This Part contains the main machinery provisions of the Bill.

Clause 8 empowers the Minister to prohibit the bringing in or through the Territory things that are likely to increase the risk of a disease or pest becoming established or spreading in the Territory. A prohibition under this section will be disallowable in the Assembly. Breach of a prohibition is an offence,

Clause 9 empowers the Minister to establish places of entry and quarantine of goods entering the Territory. A declaration is notifiable in the Legislation Register. This power will typically be used in the event of an outbreak of a disease or pest that requires a coordinated response to control.

Clause 10 empowers the Minister to declare quarantine areas, on the grounds that the quarantine is necessary to prevent the establishment or spread of a disease or pest. The declaration is disallowable in the Assembly. Breach of a quarantine declaration is an offence.

It will be possible to use quarantine declarations to quarantine single properties or sections of the Territory, as the situation requires.

Clause 11 allows for an alternative procedure for quarantine of a property. If a quarantine declaration could be made, the Minister may instead accept an undertaking from a land owner if the land owner is prepared to cooperate. This will be enforceable in the same way as a declaration of quarantine, but need not be made public.

Clause 12 complements the quarantine power. It empowers the Minister to effectively quarantine an area outside the Territory, by preventing material from that area coming into the ACT. This would typically arise in the case of an outbreak of a disease in another part of Australia that was of concern to the ACT.

The declaration is disallowable in the Assembly.

Clause 13 empowers the Minister to order the owner or person in charge of premises to destroy or treat a thing on the premises that is infected, or likely to be infected with a disease or pest. Such an order may only be made if the Minister reasonably believes that it is necessary or desirable to eradicate or control the disease or pest.

Breach of such an order is to be an offence. The Bill does not provide for any appeal against this order power. In many of the instances in which this power is to be used, it will be necessary for the work (in destroying or treating the plants or things affected by it) to be carried out expeditiously or immediately in order to meet the objective of preventing the spread of the disease or pest. This is particularly true in relation to viral and fungal diseases of plants. The provision of an appeal mechanism (and the necessary provision of a stay to make the appeal meaningful) would frequently compromise the object of preventing spread of the disease or pest.

Clause 14 empowers the Minister to authorise another person to carry out the work the owner or occupier was to do as required by an order in the event of that they do not carry it out. This will allow the Government to ensure that the purpose of the

order (preventing spread or establishment of a disease or pest) can be met, even in the face of resistance from the person ordered to carry out the work.

Clause 15 empowers the Minister to declare a disease or pest to be notifiable. Such a declaration is disallowable in the Assembly. **Clause 16** establishes an offence of failure to report a notifiable disease or pest. A person is obliged to report a disease or pest within 24 hours if they have reasonable grounds for believing there is an instance of such a disease.

Clause 17 limits the rights of people affected by quarantine declarations, and orders used to support such declarations to challenge those declarations or orders in Court. This provision is necessary to prevent persons taking such action from hampering the ability of the Government to respond to a plant disease or pest outbreak. In the event of such an outbreak, it will be necessary to take strict measures to control it, and efforts to challenge those measures in Court will likely compromise the desired outcome of controlling spread of the disease and its ultimate eradication.

Part 4 – Enforcement

Clause 18 defines “connected” for the purposes of the Part

Clause 19 empowers the chief executive to appoint inspectors for the Act. **Clause 20** empowers the chief executive to issue identity cards.

Clause 21 empowers an inspector to enter premises with consent, under a warrant, or in emergency situations where entry without warrant is justified. Non-residential premises may be entered at any reasonable time.

Clause 22 provides that an inspector may only remain on premises if he or she produces an identity card when asked to do so.

Clause 23 establishes the procedure required for an inspector to obtain consent to entry, and the requirement for giving acknowledgement of that consent.

Clause 24 makes provision for inspectors to apply for a warrant.

Clause 25 empowers an inspector to seek a warrant by phone, fax, radio or other form of distant communication if the circumstances require it.

Clause 26 sets out the powers of inspectors on entry of premises.

Clause 27 empowers inspectors to require a person’s name and address, and establishes a penalty for failure to do so.

Clause 28 sets out the conditions under which things may be seized when an inspector has entered premises, and what may be done with such things.

Clause 29 sets out the requirement for provision of a receipt for things seized.

Clause 30 governs access to things seized, and **clause 31** provides for the return of things seized.

Part 5 – Miscellaneous

Clause 32 establishes an offence of providing false information. **Clause 33** establishes a similar offence for providing false or misleading documents. **Clause 34** establishes an offence of hindering an inspector.

Clause 35 imposes a requirement on inspectors to cause as little inconvenience, detriment and damage as possible. Subclause 2 requires inspectors to give written notice of damage caused.

Clause 36 makes provision for the Territory to pay compensation to a person who incurs loss and expense as a result of an inspector exercising his or her powers under Part 4, provided that payment of compensation is just in the circumstances.

Clause 37 provides for compensation to be payable to a person if action taken under the Act amounts to acquisition of property other than on just terms, and the acquisition would be unlawful because of the Self Government Act.

Clause 38 limits the Minister's broad power of delegation under the Legislation Act to delegation to public servants.

Clause 39 empowers the Minister to set fees for the Act.

Clause 40 empowers the Minister to approve forms for the Act.

Clause 41 sets the regulation making power.

Part 6 – Repeals and Consequential Provisions

Clauses 42 and 43 effect repeal of the *Plant Diseases Act 1934* and the *Plant Diseases Regulations 1938*.

Clause 44 makes a consequential amendment to the *Administrative Decisions (Judicial Review) Act 1989*, to add the decisions made by the Minister under this Act to those that cannot be reviewed (or have other action taken) under that Act.