NORTHERN TERRITORY OF AUSTRALIA

PLANT HEALTH ACT

As in force at 1 May 2015

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 May 2015

PLANT HEALTH ACT

An Act for the control of pests, certification of plant health and related purposes

Part 1 Introduction

1 Short title

This Act may be cited as the *Plant Health Act*.

2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3 Objects of Act

The objects of this Act are:

(a) to ensure appropriate actions can be taken for the control of pests; and

(b) to facilitate the production and trading of plants and plant products that are free from pests.

4 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

5 Definitions

In this Act:

accredited person means an accredited person mentioned in section 41(1).

accredited production place means an accredited production place mentioned in section 37(1).

affected, by a pest, see section 11.

appointment criteria, see section 40(2)(b).

assurance certificate, see section 39(2).

Chief Inspector means the person holding or occupying the office of Chief Inspector of Plant Health mentioned in section 47(1).

control, of a pest, see section 7.

declared host plant means a host plant declared under section 8(2)(a).

declared pest means a pest declared under section 6(2)(a).

Director of Parks and Wildlife means the Director as defined in the *Parks and Wildlife Commission Act*.

draft plan, see section 31(1).

host plant, see section 8(1).

inspection certificate, see section 36(2).

inspector means an inspector of plant health mentioned in section 53(1).

notifiable pest means a notifiable pest mentioned in section 6(4).

owner, see section 9.

packaging, of a plant or plant product, includes any covering and container for the plant or product.

pest, see section 6(1).

place includes:

(a) land; and

(b) a building, vehicle or vessel, or any part of a building, vehicle or vessel.

plan means a plant health management plan mentioned in section 30(1).

plant means:

(a) any kind of organism (including a genetically modified organism) in the plant kingdom; or

(b) any individual organism or part of an organism (including a genetically modified organism) in the plant kingdom, whether dead or alive.

plant health assurance scheme, see section 39(1).

plant health management plan, see section 30(1).

plant product, see section 10(a).

plant-related material, see section 10.

production, of a plant or plant product, includes the processing of the plant or product.

production requirements, see section 40(2)(c).

quarantine place means a quarantine place mentioned in section 18(1).

regulation means a regulation under this Act.

relevant decision, see section 58(1).

scheme means a plant health assurance scheme mentioned in section 39(1).

statutory charge, see section 4 of the *Land Title Act*.

6 Pest

(1) A ***pest*** is an organism (whether or not taxonomically classified):

(a) that feeds on a plant; or

(b) that causes an abnormal or unhealthy condition in a plant.

(2) The Chief Inspector may:

(a) declare pests by *Gazette* notice; and

(b) publish a list of the declared pests as the Chief Inspector considers appropriate.

(3) A declared pest must be an organism covered by subsection (1).

(4) The notice may further specify that a declared pest is a notifiable pest.

(5) The Chief Inspector must not declare an indigenous organism of Australia as a pest unless the Chief Inspector has consulted with the Director of Parks and Wildlife about the declaration.

7 Control of pest

(1) To ***control*** a pest is:

(a) to prevent an outbreak or spreading of the pest; or

(b) to manage an outbreak or spreading of the pest; or

(c) to eradicate the pest.

(2) Without limiting subsection (1), to control a pest may involve the treatment or disposal of:

(a) a host plant for the pest; or

(b) a thing affected by the pest.

8 Host plant

(1) A ***host plant*** for a pest is a plant that is susceptible to, uses or harbours the pest.

(2) The Chief Inspector may:

(a) declare host plants by *Gazette* notice; and

(b) publish a list of the declared host plants as the Chief Inspector considers appropriate.

(3) A declared host plant must be a plant covered by subsection (1).

(4) The Chief Inspector must not declare an indigenous organism of Australia as a host plant unless the Chief Inspector has consulted with the Director of Parks and Wildlife about the declaration.

9 Owner

(1) The ***owner*** of a place includes, but is not limited to, an occupier of the place.

(2) The owner of a thing includes, but is not limited to, someone having the possession or control of the thing.

(3) If this Act imposes an obligation on the owner of a place or thing, each owner of the place or thing is jointly and severally liable for the obligation.

10 Plant-related material

Plant-related material is any of the following:

(a) a product (***plant product***) that is wholly or partly derived from a plant;

(b) the packaging of a plant or plant product;

(c) soil or a growth medium;

(d) a pest;

(e) any other thing that is, or might reasonably be, affected by a pest.

11 Affected by pest

(1) Without limiting how a thing might be affected by a pest, a thing is ***affected*** by a pest if the thing:

(a) contains the pest; or

(b) is or has been in close proximity to, or in contact with, the pest.

(2) Subsection (1) applies whether or not the pest has any apparent effect on the thing.

12 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note

Part IIAA of the Criminal Code states the general principles of criminal responsibility (including burdens of proof and general defences) and defined terms used for offences.

Part 2 Control of pests

Division 1 Obligations about plants and plant-related materials

13 Prevention of infestation

(1) The owner of a plant or plant-related material must take reasonable measures to prevent the infestation of the plant or material by a declared pest.

Fault elements:

The person:

(a) knows there is a risk of the infestation of the plant or material by the declared pest; and

(b) intentionally fails to take the measures.

Maximum penalty: 100 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

14 Prevention of spreading

(1) The owner of a plant or plant-related material that is affected by a declared pest must take reasonable measures to prevent the pest spreading from the plant or material.

Fault elements:

The person:

(a) knows the plant or material is affected by the pest; and

(b) intentionally fails to take the measures.

Maximum penalty: 100 penalty units.

(2) A person who is leaving a place that is affected by a declared pest must take reasonable measures to prevent the pest spreading from the place.

Fault elements:

The person:

(a) knows the place is affected by the pest; and

(b) intentionally fails to take the measures.

Maximum penalty: 100 penalty units.

(3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant establishes a reasonable excuse.

15 Notification about pest

(1) A person must notify an inspector of the presence of a pest at a place within 24 hours after becoming aware of the presence of the pest at the place.

Fault elements:

The person:

(a) knows the pest is present at the place; and

(b) intentionally fails to notify an inspector.

Maximum penalty: 500 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

16 Requirements about affected plant and material

(1) A person must not engage in any of the following acts:

(a) propagating or growing a plant that is affected by a declared pest;

(b) dealing with a plant or plant-related material that is affected by a declared pest in any way (including, for example, using, selling, purchasing, hiring, handling, storing, transporting and disposing of the plant or material);

(c) offering to do any of the things mentioned in paragraph (a) or (b) in relation to a plant or plant-related material that is affected by a declared pest.

Fault elements:

The person:

(a) knows the plant or material is affected by the pest; and

(b) intentionally engages in the act.

Maximum penalty: 500 penalty units.

(2) Subsection (1) does not apply if the defendant engaged in the act:

(a) under a written permit given by the Chief Inspector; or

(b) for the purposes of this Act or another Act.

Example

Giving the plant or material to an inspector for section 22.

(3) A regulation may provide for any of the following:

(a) a permit mentioned in subsection (2)(a);

(b) any other matter arising from this section.

17 Requirements about specified plant and material

(1) For the control of a declared pest, a regulation may prohibit or restrict, or impose other requirements in relation to, any of the following acts:

(a) the introduction (including introduction by importation) into the Territory of a specified plant or plant-related material;

(b) the export from the Territory of a specified plant or plant-related material;

(c) the possession of a specified plant or plant-related material in the Territory or a part of the Territory;

(d) the storage of a specified plant or plant-related material in the Territory or a part of the Territory;

(e) the transportation into the Territory of a specified plant or plant-related material;

(f) the transportation of a specified plant or plant-related material within the Territory.

(2) For the control of a declared pest, the Chief Inspector may, by *Gazette* notice, prohibit or restrict, or impose other requirements in relation to, an act mentioned in subsection (1).

(3) The Chief Inspector may do so only if the Chief Inspector reasonably believes the prohibition, restriction or requirement is urgently needed for the control of the declared pest.

(4) The notice:

(a) must not have effect for longer than 12 months; and

(b) must not be extended after the end of the 12 months.

(5) A regulation under subsection (1) or a notice under subsection (2):

(a) must specify the declared pest and the related prohibition, restriction or requirement; and

(b) may specify that the prohibition, restriction or requirement is subject to specified conditions, including:

(i) the holding of a written permit given by the Chief Inspector; and

(ii) any other specified conditions.

(6) A person must comply with the regulation or notice.

Fault element: Intention.

Maximum penalty: 2 500 penalty units.

(7) It is a defence to a prosecution for an offence against subsection (6) if the defendant establishes a reasonable excuse.

(8) The court imposing a penalty for an offence against subsection (6) may also order a plant or plant-related material relating to the offence be treated or disposed of as directed by the court or Chief Inspector.

(9) A regulation may provide for any of the following:

(a) a permit mentioned in subsection (5)(b)(i);

(b) any other matter arising from this section.

18 Quarantine place

(1) The Chief Inspector may, by *Gazette* notice, declare a place to be a quarantine place if the Chief Inspector reasonably believes it is necessary to do so for the control of a declared pest.

(2) The quarantine place must be declared for 1 or more of the following purposes:

(a) the inspection of plants or plant-related materials at the place;

(b) the treatment and disposal of plants or plant-related materials at the place;

(c) prohibiting or restricting, or imposing other requirements in relation to, 1 or more of the following:

(i) the entry into the place by anyone or anything;

(ii) the movement of anyone or anything within the place;

(iii) the departure from the place of anyone or anything;

(iv) the cultivation of plants or the carrying on of any other activity at the place;

(d) the removal of anyone or anything from the place.

(3) The notice:

(a) must specify the declared pest, the purposes of the quarantine place and any related prohibitions, restrictions or requirements; and

(b) may specify that specified prohibitions, restrictions or requirements apply to the whole of the place or 1 or more specified parts of the place; and

(c) may specify that the prohibitions, restrictions or requirements apply only in specified circumstances (for example, only in relation to specified plants or plant-related materials); and

(d) may specify that the prohibitions, restrictions or requirements are subject to specified conditions, including:

(i) the holding of a written permit given by the Chief Inspector; and

(ii) any other specified conditions; and

(e) must specify:

(i) the reasons for the decision to make the declaration; and

(ii) the right of a person whose interests are or might be affected by the decision to apply under section 58 for a reconsideration of the decision.

Example

Because of subsection (3)(b), the notice may specify additional requirements for a part of the place to deal with a high level of infestation in that part of the place.

(4) A person must comply with the notice.

Fault element: Intention.

Maximum penalty: 2 500 penalty units.

(5) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.

(6) A regulation may provide for any of the following:

(a) a permit mentioned in subsection (3)(d)(i);

(b) any other matter arising from this section.

19 Treatment or disposal – owners generally

(1) For the control of a declared pest, a regulation may be made to require the owners of specified plants or plant-related materials to treat, or dispose of, the plants or materials in a specified way.

(2) For the control of a declared pest, the Chief Inspector may, by *Gazette* notice, require the owners of specified plants or plant-related materials to treat, or dispose of, the plants or materials in a specified way.

(3) The Chief Inspector may do so only if the Chief Inspector reasonably believes the treatment or disposal is urgently needed for the control of the pest.

(4) The notice:

(a) must not have effect for longer than 12 months; and

(b) must not be extended after the end of the 12 months.

(5) A regulation under subsection (1) or a notice under subsection (2):

(a) must specify when the treatment or disposal is to be carried out; and

(b) may specify that the regulation or notice applies only to plants or plant-related materials located in a specified part of the Territory.

(6) An owner of plants or plant-related materials to which the regulation or notice applies must comply with the regulation or notice.

Fault element: Intention.

Maximum penalty: 500 penalty units.

(7) It is a defence to a prosecution for an offence against subsection (6) if the defendant establishes a reasonable excuse.

20 Treatment or disposal – specific owner

(1) For the control of a declared pest, the Chief Inspector may, by written notice given to a particular owner of specified plants or plant-related materials, require the owner to treat, or dispose of, the plants or materials in a specified way.

(2) The Chief Inspector may do so only if the Chief Inspector reasonably believes the treatment or disposal is urgently needed for the control of the pest.

(3) The notice must also specify the following:

(a) the reasons for the decision to give the notice;

(b) the owner's right under section 58 to apply for a reconsideration of the decision.

(4) The owner must comply with the notice.

Fault element: Intention.

Maximum penalty: 500 penalty units.

(5) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.

21 Failure of owner to act

(1) This section applies if the owner of specified plants or plant-related materials contravenes any of the following:

(a) a regulation under section 19(1);

(b) a notice under section 19(2);

(c) a notice under section 20(1).

(2) The Chief Inspector may:

(a) direct an inspector or another person to treat, or dispose of, the plants or materials as specified by the Chief Inspector; and

(b) recover the expenses for the treatment or disposal from the owner.

(3) In addition, the Chief Inspector may register under the *Land Title Act* a statutory charge, for an amount not exceeding the expenses, on any land of which the owner is a registered owner.

(4) If the Chief Inspector exercises the power under subsection (3), the Chief Inspector must give a written notice to the owner specifying:

(a) the reasons for the decision to exercise the power; and

(b) the owner's right under section 58 to apply for a reconsideration of the decision.

Division 2 Inspectors' powers

22 Powers relating to search and seizure

(1) An inspector may exercise any of the powers mentioned in subsections (2) and (3) if the inspector reasonably believes it is necessary to do so for:

(a) the control of a pest; or

(b) monitoring the compliance with this Act; or

(c) the exercise of a power or the performance of a function of an inspector under this Act.

(2) The inspector may do 1 or more of the following at a place:

(a) enter, inspect and search the place;

(b) require a person at the place to give the inspector specified information about specified plants or plant-related materials;

(c) operate any electronic equipment at the place for the purposes of retrieving or recording the information;

(d) inspect, take samples of, or seize, any plant or plant-related material found at the place for a specified examination or treatment;

(e) open any packagings found at the place for paragraph (d);

(f) apply, or require a person having the control of the place to apply, a specified treatment to the place;

(g) install any thing at the place for controlling or monitoring a pest;

(h) inspect and retrieve any thing or information for paragraph (g);

(i) make a record in relation to an exercise of a power for this subsection (including, for example, by taking a photograph or making a video recording).

(3) In addition, the inspector may do 1 or more of the following:

(a) require a person having the control of a plant or plant-related material to do 1 or more of the following:

(i) to apply a specified treatment to the plant or material;

(ii) to give the plant or material to someone for a specified examination or treatment;

(iii) to refrain from doing a specified thing in relation to the plant or material until an inspection certificate is given for the plant or material;

(iv) to dispose of the plant or material as specified by the inspector;

(b) take control of the plant or material mentioned in paragraph (a) and to do a thing covered by the paragraph in relation to the plant or material;

(c) require a person having the control of a means of transport (including, for example, an animal or vehicle) to do 1 or more of the following:

(i) to stop the means of transport;

(ii) to give it (including anything found on or in it) to someone, or to remove it to a place, for a specified examination, treatment or disposal;

(iii) to remove it (including anything found on or in it) to a specified place and leave it there until an inspection certificate for it is given;

(d) take control of the means of transport mentioned in paragraph (c) for the examination, treatment, disposal or the giving of the certificate.

(4) A person must comply with a requirement made by an inspector for subsection (2) or (3).

Fault elements:

The person:

(a) knows the inspector is acting in an official capacity; and

(b) intentionally fails to comply with the requirement.

Maximum penalty: 100 penalty units.

(5) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.

(6) A requirement made orally for subsection (2) or (3) must be confirmed in writing as soon as practicable after it is given.

23 Notice for entry to a place

(1) This section applies if an inspector intends to enter a place under section 22(2).

(2) If the place is not a dwelling house, the inspector must, as far as practicable, give notice to the owner of the place of the inspector's intention to enter the place before doing so.

(3) If the place is a dwelling house, the inspector must not enter the place unless:

(a) the inspector has given written notice to the owner of the place of the inspector's intention to enter the place; and

(b) the inspector:

(i) is permitted by the owner (whether orally or in writing) to enter the place; or

(ii) is authorised to enter the place under a warrant issued by a Local Court Judge.

(4) A Local Court Judge may issue the warrant only if the Local Court Judge is satisfied the warrant is reasonably required in the circumstances.

(5) In this section:

dwelling house means a building ordinarily occupied for residential purposes.

24 Obligations of owners

(1) A person who complies with a requirement under section 22 for a place or thing:

(a) may recover from the owner of the place or thing the expenses incurred by the person in complying with the requirement; and

(b) is not liable to the owner for any damage to the place or thing.

(2) If a requirement is given under section 22 for an animal (for example, a requirement about examining the animal), the owner of the animal remains responsible for its care and wellbeing.

25 Requirement to give information

(1) This section applies if an inspector reasonably suspects a person of committing or attempting to commit an offence against this Act.

(2) The inspector may require the person to give the following information to the inspector:

(a) specified information about a specified plant or plant-related material;

(b) the person's name;

(c) the person's residential and postal addresses;

(d) any other information specified by the inspector to enable the inspector to contact the person at a later time.

(3) The person must comply with the requirement.

Fault elements:

The person:

(a) knows the inspector is acting in an official capacity; and

(b) intentionally fails to comply with the requirement.

Maximum penalty: 100 penalty units.

(4) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

(5) A requirement made orally for subsection (2) must be confirmed in writing as soon as practicable after it is given.

26 Self-incrimination

(1) It is not a reasonable excuse for a person to fail to give information or a document for section 22 or 25 on the grounds that it might incriminate the person.

(2) However, any information or document so given by the person is not admissible in any civil or criminal proceeding (other than a proceeding for an offence against section 62).

27 Signs and barriers

(1) An inspector may set up a sign or barrier for a place that:

(a) is or might be affected by a pest; and

(b) is subject to a requirement under this Act.

Example

Signs and barriers may be set up for a quarantine place.

(2) The sign or barrier:

(a) must specify the requirement; and

(b) may be placed within, or outside, the place.

(3) A person must not:

(a) remove or tamper with the sign or barrier; or

(b) fail to comply with the requirement.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

(4) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

28 Markings

(1) An inspector may mark a place or thing:

(a) indicating that it:

(i) is or might be affected by a specified pest; or

(ii) is free from a specified pest; or

(iii) has been examined or treated for a specified pest; and

(b) specifying any requirement in relation to the place or thing (including, for example, any storage, transportation or handling requirement).

(2) The inspector may do so in any way the inspector considers appropriate.

(3) A person must comply with the requirement.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

(4) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

Division 3 Plant health management plans

29 Object of Division

The object of this Division is to ensure long-term plans for the control of pests are developed and implemented with community support and involvement.

30 What is a plant health management plan

(1) A ***plant health management plan*** is a plan that provides for a long-term strategy for the control of 1 or more specified pests.

(2) Without limiting subsection (1), the plan must specify:

(a) the plant and plant product to which the plan relates; and

(b) whether the plan applies to the whole of the Territory or a specified part of the Territory; and

(c) the period (not exceeding 10 years) for which the plan is to be in force; and

(d) any other related matters, including, for example:

(i) the obligations of persons under the plan; and

(ii) the powers and functions of the Chief Inspector and inspectors under the plan.

(3) The plan must be consistent with this Act.

31 Preparation of plan

(1) The Chief Inspector may prepare a draft plant health management plan (a ***draft plan***).

(2) Any other person may prepare a draft plan and give it to the Chief Inspector.

32 Notification

(1) The Chief Inspector must publish a notice for a draft plan if the Chief Inspector thinks the plan should be made.

(2) The notice:

(a) must be published in a newspaper circulating in the Territory; and

(b) must include a copy of the draft plan or state how a copy of it may be obtained; and

(c) must specify a period during which comments on the draft plan may be given to the Chief Inspector.

33 Making of plan

(1) After the end of the specified period, the Chief Inspector may, having regard to any comments given under section 32(2)(c):

(a) change the draft plan; and

(b) make the plan by *Gazette* notice.

(2) The *Gazette* notice must include a copy of the plan or state how a copy of it may be obtained.

(3) The plan:

(a) takes effect on the date of the notice or a later date specified in the notice; and

(b) is in force for the period specified in the plan.

(4) The Chief Inspector must publish the plan in a way the Chief Inspector considers appropriate.

(5) The Chief Inspector may, by *Gazette* notice, correct any error in the plan.

(6) The plan must not be revoked or amended except under subsection (5) or section 34.

34 Review

(1) The Chief Inspector may conduct a review of the operation of a plan.

(2) Before conducting the review, the Chief Inspector must publish a notice of the proposed review in a newspaper circulating in the Territory.

(3) The notice must specify a period during which comments on the operation of the plan may be given to the Chief Inspector.

(4) The Chief Inspector must:

(a) consider any comments given under subsection (3) when conducting the review; and

(b) on completing the review – affirm, revoke or amend the plan (including extending the period of its operation) by *Gazette* notice.

(5) The plan may be extended more than once.

(6) Each extension must not exceed 10 years.

35 Compliance

(1) This section applies if a person contravenes a plan.

(2) The Chief Inspector may, by written notice given to the person, require the person to take specified measures to remedy the contravention within a reasonable time specified in the notice.

(3) The person must comply with the notice.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

(4) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

(5) If the person fails to comply with the notice, the Chief Inspector may:

(a) direct someone else to take the measures; and

(b) recover from the person the expenses for taking the measures.

Part 3 Certification of plant health

Division 1 Inspection certificates

36 Giving of certificate

(1) This section applies if an inspector has carried out an inspection of a place or thing under this Act.

(2) The inspector may give to the owner of the place or thing a certificate (an ***inspection certificate***):

(a) stating the inspection has been carried out; and

(b) specifying any examination or treatment of the place or thing carried out under this Act in connection with the inspection.

(3) A regulation may make provision about giving an inspection certificate.

Division 2 Accredited production places

37 Declaration for accredited production place

(1) The Chief Inspector may, by *Gazette* notice, declare a place to be an accredited production place for 1 or more of the following:

(a) a specified plant produced at the place;

(b) a specified plant product produced at the place.

(2) The Chief Inspector may do so:

(a) on application of a person; or

(b) on the Chief Inspector's initiative.

(3) The Chief Inspector may make the declaration only if the Chief Inspector is satisfied the place is free from 1 or more pests prescribed by regulation for each of the plants or plant products.

(4) The notice must specify:

(a) the reasons for the decision to make the declaration; and

(b) the right of a person whose interests are or might be affected by the decision to apply under section 58 for a reconsideration of the decision.

(5) The notice may specify:

(a) words or phrases that may be used in advertising, packaging or selling any of the plants or plant products; and

(b) prohibitions, restrictions and other requirements about the use of the words or phrases.

(6) A person must comply with the notice.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

(7) It is a defence to a prosecution for an offence against subsection (6) if the defendant establishes a reasonable excuse.

Division 3 Plant health assurance schemes

38 Object of Division

The object of this Division is to facilitate the compliance of this Act through a system of plant health assurance schemes.

39 Schemes and assurance certificates under scheme

(1) A ***plant health assurance scheme*** is a scheme that provides for the making of assurance certificates by accredited persons for the production of 1 or more of the following:

(a) a specified plant;

(b) a specified plant product.

(2) An ***assurance certificate*** under the scheme is a certificate stating that specified requirements for the production of any of the plants or products have been met.

40 Establishing schemes

(1) The Chief Inspector may, by *Gazette* notice, establish a plant health assurance scheme.

(2) The notice must specify the following:

(a) each plant and plant product to which the scheme relates;

(b) the criteria (the ***appointment criteria***) for appointing an accredited person for the scheme;

(c) the requirements (the ***production requirements***) for the production of the plant or product for the making of an assurance certificate under the scheme.

41 Accredited persons

(1) A person may apply to the Chief Inspector for the person to be appointed as an accredited person for the scheme.

(2) The Chief Inspector must:

(a) appoint the applicant as an accredited person for the scheme if the Chief Inspector is satisfied the applicant meets the appointment criteria; or

(b) otherwise – refuse the application.

(3) The appointment must be in writing.

(4) If the Chief Inspector refuses the application, the Chief Inspector must give a written notice to the applicant, specifying:

(a) the reasons for the decision to refuse the application; and

(b) the applicant's right under section 58 to apply for a reconsideration of the decision.

(5) More than 1 accredited person may be appointed for the scheme.

42 Accreditation conditions

(1) The appointment of an accredited person for the scheme is subject to the following conditions:

(a) a condition that the person must not make an assurance certificate under the scheme unless the production requirements have been met;

(b) a condition that the person must comply with any audit or other requirements (including, for example, the payment of fees) for holding the appointment;

(c) any other condition specified in the appointment;

(d) any other condition prescribed by regulation.

(2) The person must not contravene any of the conditions.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

(3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

43 Register of accredited persons

(1) The Chief Inspector must keep a register of accredited persons for each scheme.

(2) The register must be kept in a form the Chief Inspector considers appropriate.

44 Offences about assurance certificates

(1) A person who is not an accredited person for a scheme must not make a document that purports to be an assurance certificate under the scheme.

Fault elements:

The person:

(a) intentionally makes the document; and

(b) is reckless as to whether anyone might reasonably believe the document is an assurance certificate under a scheme.

Maximum penalty: 1 000 penalty units.

(2) A person must not make a statement about a plant or plant product if:

(a) the statement is reasonably likely to cause someone to believe that an assurance certificate has been made for the plant or product; and

(b) no assurance certificate has been made for the plant or product.

Fault elements:

The person:

(a) knows no assurance certificate has been made for the plant or product; and

(b) is reckless as to whether the statement is reasonably likely to cause someone to believe that an assurance certificate has been made for the plant or product.

Maximum penalty: 1 000 penalty units.

45 Agreements with other jurisdictions for certificates

(1) The Chief Inspector may, on behalf of the Territory, enter into an agreement with the Commonwealth, a State or another Territory for:

(a) the recognition of an assurance certificate for a corresponding law; and

(b) the recognition of a document made under a corresponding law that is in the nature of an assurance certificate; and

(c) the imposition of audit and other requirements on a person for the integrity or recognition of:

(i) an assurance certificate; or

(ii) a document mentioned in paragraph (b); and

(d) any other related matters.

(2) A regulation may provide for a matter arising from this section.

(3) In this section:

corresponding law means a law of the Commonwealth, a State or another Territory that is declared by regulation to be a corresponding law.

Part 4 Administration

Division 1 Minister

46 Power of exemption

(1) The Minister may, by *Gazette* notice, exempt a specified place from the application of all or a specified provision of this Act.

(2) A regulation may provide for the control of pests at the place by applying (with or without changes) a law of a State or another Territory as in force or existing at a time or from time to time.

Division 2 Chief Inspector

47 Appointment

(1) The Minister must appoint a person who is a public sector employee to be the Chief Inspector of Plant Health.

(2) The Minister may do so only if the Minister is satisfied the person has appropriate qualifications or experience for the appointment.

(3) The Chief Inspector holds office for the period (not exceeding 3 years) specified in the appointment and is eligible for re-appointment.

48 Directions

(1) For the control of a pest, the Chief Inspector may direct an inspector to take specified measures under a specified provision of this Act.

(2) The inspector must comply with the direction.

49 Approved forms

(1) The Chief Inspector may approve forms for documents to be used for this Act.

(2) If a form is approved for a document to be used for this Act, the document must be made in that form.

50 Powers and functions of inspector

The Chief Inspector may exercise any power, and perform any function, of an inspector under this Act.

51 Delegation

(1) The Chief Inspector may delegate to a person any of the Chief Inspector's powers and functions under this Act.

(2) The Chief Inspector may do so only if the Chief Inspector is satisfied the person has appropriate qualifications or experience for the delegation.

(3) The delegation must be in writing.

52 Acting Chief Inspector

(1) The Minister may appoint a public sector employee to act as the Chief Inspector during any period or all periods when:

(a) the Chief Inspector is absent from duty; or

(b) the Chief Inspector is otherwise unable to exercise the powers, or to perform the functions, of the Chief Inspector; or

(c) the office of Chief Inspector is vacant.

(2) The Minister may do so only if the Minister is satisfied the person has appropriate qualifications or experience for the appointment.

Division 3 Inspectors

53 Appointment

(1) The Chief Inspector may, in writing, appoint a person to be an inspector of plant health.

(2) The Chief Inspector may do so only if the Chief Inspector is satisfied the person has appropriate qualifications or experience for the appointment.

(3) The person may exercise a power and perform a function of an inspector under this Act as specified in the appointment.

54 Identity card

(1) In exercising a power or performing a function under this Act, an inspector must carry an identity card provided by the Chief Inspector that:

(a) states the name and office of the inspector; and

(b) includes:

(i) the signature of the inspector; and

(ii) a photograph of the inspector; and

(iii) the verification of the signature and photograph by the Chief Inspector.

(2) A person who ceases to be an inspector must return the identity card to the Chief Inspector within 2 weeks after the cessation.

Fault element: Strict liability offence.

Maximum penalty: 10 penalty units.

(3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

(4) If an inspector purports to exercise a power under this Act without producing the inspector's identity card when requested to do so:

(a) the inspector is not authorised to exercise the power; and

(b) a person is not required to comply with a requirement made by the inspector.

55 Receipts

An inspector must give a receipt to a person for seizing or receiving a thing from the person under this Act.

56 Report to Chief Inspector

(1) An inspector must give a report to the Chief Inspector about the exercise of a power, or the performance of a function, by the inspector under this Act.

(2) The inspector must do so as soon as practicable after the exercise of the power or performance of the function.

(3) This section has effect subject to any direction of the Chief Inspector.

57 Reasonable force and assistance

(1) An inspector may use any reasonable force and assistance in exercising a power under this Act.

(2) Without limiting subsection (1), the inspector may use any reasonable force and assistance to restrain a person or animal in exercising the power.

Division 4 Reconsideration of decisions

58 Right to seek reconsideration

(1) This Division applies to any of the following decisions (each of which is a ***relevant decision***):

(a) a decision to exercise a power under section 18(1), 20(1), 21(3), 37(1) or 41(2)(b);

(b) a decision made by the Chief Inspector under this Division in reconsidering a decision mentioned in paragraph (a).

(2) A person whose interests are or might be affected by a relevant decision to make a declaration under section 18(1) or 37(1), or who is given a notice of a decision otherwise mentioned in subsection (1), may apply:

(a) for a reconsideration of the decision; or

(b) if the Chief Inspector has reconsidered the decision under this Division – for a reconsideration of the Chief Inspector's decision.

59 Procedure for reconsideration

(1) The application must be made:

(a) to the following (as appropriate):

(i) the Chief Inspector if the relevant decision was made by a delegate of the Chief Inspector;

(ii) otherwise – the Minister; and

(b) within 14 days after the following (as appropriate):

(i) the date of the *Gazette* notice for the decision if it was a decision to make a declaration under section 18(1) or 37(1);

(ii) otherwise – the date on which the applicant receives a written notice of the decision.

(2) The Chief Inspector or Minister (the ***reviewer***) must, within 1 month after receiving the application, reconsider the relevant decision.

(3) The reviewer may reconsider the relevant decision in any way the reviewer considers appropriate.

(4) The application does not affect the operation or implementation of the relevant decision.

(5) However, the reviewer may make another decision staying or otherwise affecting the operation or implementation of so much of the relevant decision as the reviewer considers appropriate to effectively decide the application.

(6) The other decision:

(a) is subject to the conditions specified by the reviewer; and

(b) has effect:

(i) for the period specified by the reviewer; and

(ii) if no period is specified by the reviewer – until the application is decided.

(7) The reviewer must give a written notice of the reviewer's decision to the applicant, specifying:

(a) the reasons for the decision; and

(b) if the reviewer is the Chief Inspector – the applicant's right under section 58 to apply for a reconsideration of the decision.

Division 5 Other offences

60 Obstruction and failure to comply with requirement

(1) A person must not obstruct an inspector, or another person assisting an inspector, who is exercising a power or performing a function under this Act.

Fault elements:

The person:

(a) knows the inspector or other person is acting in an official capacity; and

(b) intentionally obstructs the inspector or other person.

Maximum penalty: 500 penalty units.

(2) A person must comply with a requirement given to the person for this Act by an inspector, or another person assisting an inspector, who is exercising a power or performing a function under this Act.

Fault elements:

The person:

(a) knows the inspector or other person is acting in an official capacity; and

(b) intentionally fails to comply with a requirement given to the person for this Act by the inspector or other person.

Maximum penalty: 500 penalty units.

(3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant establishes a reasonable excuse.

(4) In this section:

inspector includes the Chief Inspector.

obstruct includes hinder and resist.

61 Interference with or damage to things used by inspector

(1) A person must not interfere with or damage a thing used by an inspector:

(a) for the exercise of a power or the performance of a function under this Act; or

(b) for monitoring compliance with this Act.

Fault elements:

The person:

(a) knows the thing is used for official purposes; and

(b) intentionally interferes with or damages the thing.

Maximum penalty: 100 penalty units.

(2) In this section:

inspector includes the Chief Inspector.

62 Misleading information and document

(1) A person must not give misleading information to an inspector who is exercising a power or performing a function under this Act.

Fault elements:

The person:

(a) knows the inspector is acting in an official capacity; and

(b) knows the information is misleading.

Maximum penalty: 50 penalty units.

(2) A person must not give a document containing misleading information to an inspector who is exercising a power or performing a function under this Act.

Fault elements:

The person:

(a) knows the inspector is acting in an official capacity; and

(b) knows the document contains misleading information.

Maximum penalty: 50 penalty units.

(3) Subsection (2) does not apply if the defendant, when giving the document:

(a) draws the misleading aspect of the document to the inspector's attention; and

(b) to the extent to which the defendant can reasonably do so – gives the inspector the information necessary to correct the document.

(4) In this section:

inspector includes the Chief Inspector.

misleading information means information that is misleading in a material particular because it:

(a) does not include relevant information; or

(b) includes misinformation.

63 Continuing offence

(1) This section applies if a court has found a person guilty of an offence against section 13(1), 14(1) or (2), 15(1), 16(1), 17(6), 18(4), 19(6), 20(4), 22(4), 25(3), 27(3)(b), 28(3), 35(3), 37(6), 42(2) or 60(1) or (2).

(2) The court may, in addition to any penalty imposed for the offence, impose a penalty not exceeding 10 penalty units for each day during which the offence continues after the day on which the offence is committed.

Division 6 Other matters

64 Aboriginal land

(1) An inspector may enter and remain on Aboriginal land if it is reasonably necessary for the inspector to exercise a power or to perform a function under this Act.

(2) Subsection (1):

(a) has effect despite any law in force in the Territory; but

(b) does not affect the operation of other provisions of this Act (for example, sections 22 and 23).

(3) In this section:

Aboriginal land, see section 3 of the *Aboriginal Land Act*.

65 Management system must be taken into account

(1) This section applies if the Chief Inspector or an inspector imposes a requirement under this Act on a person in relation to:

(a) the examination or treatment of a place or thing; or

(b) the disposal of a thing.

(2) In imposing the requirement, the Chief Inspector or inspector must, as far as practicable, take into account:

(a) any management system for the place or thing that is in force; and

(b) the person's preference in relation to how the requirement is to be implemented.

66 Giving notice

(1) A notice required to be given to a person under this Act by the Chief Inspector or an inspector may be given:

(a) personally; or

(b) by registered post, email or fax if the receipt of the notice by the person is confirmed.

(2) If the Chief Inspector or inspector is unable to give a notice in accordance with subsection (1) to the owner of a place, the notice is taken to have been given to the owner if it is:

(a) affixed conspicuously at the place; or

(b) published in a newspaper that:

(i) is published in the Territory; and

(ii) circulates in the part of the Territory that includes the place.

67 Criminal liability of executive officer of body corporate

(1) An executive officer of a body corporate commits an offence if:

(a) the body corporate commits an offence by contravening a declared provision (a ***relevant offence***) and the officer was reckless about whether the contravention would happen; and

(b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and

(c) the officer recklessly failed to take reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

(2) Strict liability applies to subsection (1)(b).

(3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

(a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):

(i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;

(ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);

(iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;

(b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.

(4) Subsection (3) does not limit the matters the court may consider.

(5) This section does not affect the liability of the body corporate.

(6) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.

(7) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.

(8) In this section:

declared provision means:

(a) section 13(1), 14(1), 22(4), 25(3), 28(3), 35(3), 37(6), 60(1) or (2), 61(1) or 62(1); or

(b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

67A Criminal liability of executive officer of body corporate – evidential burden of proof on defence

(1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a ***relevant offence***).

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

(2) An offence against subsection (1) is an offence of absolute liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:

(a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or

(b) took reasonable steps to prevent the contravention; or

(c) did not know, and could not reasonably have been expected to know, that the contravention would happen.

(4) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

(a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):

(i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;

(ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);

(iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;

(b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.

(5) Subsection (4) does not limit the matters the court may consider.

(6) This section does not affect the liability of the body corporate.

(7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.

(8) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.

(9) In this section:

declared provision means:

(a) section 15(1), 16(1), 17(6), 18(4), 19(6) or 20(4); or

(b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

68 Retention of things seized

(1) The Chief Inspector has the control of a thing seized under this Act.

(2) If the Chief Inspector considers the thing poses a threat to the public, the Chief Inspector must destroy the thing or otherwise render the thing harmless.

(3) If the thing is not destroyed, a court may order the thing be forfeited to the Territory if:

(a) the thing is relevant to the prosecution of an offence under this Act; and

(b) the prosecution for the offence started within 12 months after the seizure; and

(c) the defendant is found guilty of the offence.

(4) The Chief Inspector must release the thing to its owner if:

(a) it has not been destroyed; and

(b) if it was relevant to the prosecution of an offence under this Act – proceedings for the prosecution has ended and it is not forfeited to the Territory.

69 Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:

(a) the Chief Inspector;

(b) an inspector;

(c) someone assisting the Chief Inspector or an inspector in exercising a power or performing a function under this Act.

(2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(3) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

70 Acquisition on just terms

If the operation of this Act would, apart from this section, result in an acquisition of property otherwise than on just terms:

(a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and

(b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

71 Reimbursement

(1) The Chief Inspector may reimburse the owner of a place or thing for any damage caused by, or costs incurred because of, an inspector exercising a power or performing a function under this Act.

(2) A regulation may provide for a matter arising from this section.

72 Evidentiary certificate

In a proceeding for an offence against this Act, a certificate signed by the Chief Inspector stating any of the following matters is evidence of the matter in the absence of proof to the contrary:

(a) a specified person was an inspector having specified powers under this Act at a specified time;

(b) a specified notice or other document is made or given at a specified time;

(c) a specified thing has been identified as stated in the certificate;

(d) a specified thing has been affected by a specified pest as stated in the certificate.

73 Regulations

(1) The Administrator may make regulations under this Act.

(2) The regulations may:

(a) provide for the examination, treatment, storage, transportation, handling and disposal of a plant or plant-related material for this Act; or

(b) prescribe fees payable under this Act; or

(c) apply, adopt or incorporate (with or without changes) a matter contained in another instrument as in force or existing at a particular time or from time to time; or

(d) prescribe a fine not exceeding 200 penalty units for an offence against the regulations; or

(e) provide for an offence against the regulations to be an offence of strict liability; or

(f) provide for a code of practice for the exercise of a power or the performance of a function under this Act; or

(g) provide for the enforcement of the code of practice, including, for example, providing for a contravention of the code to be an offence against the regulations.

Part 5 Repeal and transitional matters for Plant Health Act 2008

74 Repeals

The Acts specified in the Schedule are repealed.

75 Definitions

In this Part:

commencement means the commencement of this Act.

former Act means the *Plant Diseases Control Act*.

pre-existing, for a thing done under the former Act, means the thing as in force under the former Act immediately before the commencement.

76 Savings – pest

(1) A pre-existing declaration of a disease or pest under section 6 of the former Act is taken to be a declaration of the disease or pest to be a pest under section 6(2)(a) of this Act.

Note

*For the power to make the pre-existing declaration, see the definitions of **disease** and **pest** in section 6 of the former Act .*

(2) A pre-existing declaration of a notifiable disease or pest under section 12 of the former Act is taken to be a declaration of the disease or pest to be a notifiable pest under section 6(4) of this Act.

77 Savings – requirement relating to movement of plant and plant-related material

A pre-existing notice under section 8 or 9 of the former Act is taken to be a notice under section 17(2) of this Act.

78 Savings – quarantine place

(1) This section applies to any of the following declarations:

(a) a pre-existing declaration of a quarantine station under section 10 of the former Act;

(b) a pre-existing declaration of a quarantine area under section 11 of the former Act.

(2) The declaration is taken to be a declaration of the station or area to be a quarantine place under section 18(1) of this Act.

(3) Any pre-existing prohibition, restriction or other requirement for the station or area is taken to be a prohibition, restriction or requirement for the quarantine place under this Act.

79 Savings – treatment or disposal of plant and plant-related material

A pre-existing notice under section 13 or 13A of the former Act is taken to be a notice issued on the day of commencement under section 19(2) of this Act.

80 Savings – accredited production place

(1) A pre-existing declaration of an accredited production area under section 11A of the former Act is taken to be a declaration of the area to be an accredited production place under section 37(1) of this Act.

(2) Any pre-existing prohibition, restriction or other requirement for the area is taken to be a prohibition, restriction or requirement for the place under section 37(5)(b) of this Act.

81 Savings – Chief Inspector and inspector

(1) A pre-existing appointment of a person to be the Chief Inspector of Plants and Diseases under section 7(1) of the former Act is taken to be an appointment of the person to be the Chief Inspector of Plant Health under section 47(1) of this Act.

(2) A pre-existing appointment of a person to be an inspector under section 7(2) of the former Act:

(a) is taken to be an appointment of the person to be an inspector of plant health under section 53(1) of this Act; and

(b) has effect as if it had provided for the person to exercise all the powers and perform all the functions of an inspector of plant health under this Act.

Part 6 Transitional matters for Statute Law Amendment (Directors' Liability) Act 2015

82 Offences – before and after commencement

(1) Sections 67 and 67A, as inserted by the *Statute Law Amendment (Directors' Liability) Act 2015*, (the ***new sections***) apply in relation to a relevant offence committed by a body corporate after the commencement of Part 2, Division 27 of that Act (the ***commencement***) only if:

(a) all the conduct constituting the relevant offence occurred after the commencement; and

(b) all the conduct of the executive officer constituting the offence against the new section occurred after the commencement.

(2) Section 67, as in force before the commencement:

(a) continues to apply in relation to offences committed by a body corporate before the commencement; and

(b) applies in relation to relevant offences committed by a body corporate after the commencement to which, as a result of subsection (1), the new sections do not apply.

Schedule Repealed Acts

section 74

Plant Diseases Control Act 1979	Act No. 126 of 1979
Plant Diseases Control Amendment Act 1989	Act No. 2 of 1989
Plant Diseases Control Amendment Act 1994	Act No. 80 of 1994

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Plant Health Act 2008* (Act No. 37, 2008)**

Assent date	8 December 2008
Commenced	1 July 2011 (*Gaz* G26, 29 June 2011, p 2)

***Statute Law Amendment (Directors' Liability) Act 2015* (Act No. 26, 2015)**

Assent date	18 September 2015
Commenced	14 October 2015 (*Gaz* G41, 14 October 2015, p 3)

***Local Court (Related Amendments) Act 2016* (Act No. 8, 2016)**

Assent date	6 April 2016
Commenced	1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz* S34, 29 April 2016)

3 LIST OF AMENDMENTS

s 23	amd No. 8, 2016, s 45
s 67	sub No. 26, 2015, s 86
s 67A	ins No. 26, 2015, s 86
pt 6 hdg	ins No. 26, 2015, s 87
s 82	ins No. 26, 2015, s 87