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**PLANT PROTECTION ACT 1994**

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**No. 74 of 1994**

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TABLE OF PROVISIONS

**PART 1**

PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Owners and occupiers
5. Control and management of land
6. Reference to land
7. Act binding on certain persons

**PART 2**

INSPECTORS

8. Appointment of inspectors
9. Powers of inspectors
10. Impersonation

**PART 3**

DECLARED ENTITIES

*Division 1—Declared and notifiable entities*

11. Declaration of entities
12. Control measures
13. Control by agreement
14. Notifiable entities

*Division 2—Compliance notices*

15. Compliance notice
16. Cancellation of compliance notice
17. Boundary fences
18. Measures in default of compliance

*Division 3—Recovery of costs*

19. Recovery of costs
20. Warrants for unpaid amounts
21. Possession or sale of land
22. Possession of land
23. Lease of land
24. Relinquishing land
25. Sale of land
26. Recovery between owners

*Division 4—Appeals*

27. Appeals against compliance notices
28. Evidence at hearing
29. Determination

## PART 4

## INFESTED AND QUARANTINE AREAS

*Division 1—Infested areas*

30. Infested areas
31. Emergency declaration
32. Duties of occupiers
33. Information about suspected infested things
34. Difficult infested land
35. Compensation

*Division 2—Community programmes*

36. Approval of community programmes
37. Powers of authorized persons
38. Revocation of approval

*Division 3—Prohibited areas and prohibited entities*

39. Prohibited areas
40. Removal of prohibited entity
41. Movement of goods

*Division 4—Quarantine and importation*

42. Declaration of quarantine stations
43. Importation of prohibited and unidentified entities
44. Importation prohibited

## PART 5

## MISCELLANEOUS

45. Obstruction
46. Compensation not payable
47. Entry on land
48. Sale of declared entities
49. Contracts
50. Immunity from action
51. Exemptions
52. False or misleading statements
53. Service of notices
54. Regulations
55. Incorporation by reference
56. Transitional and savings provisions
57. Repeal
58. Administration of Act

## SCHEDULE 1

## TRANSITIONAL AND SAVINGS

## SCHEDULE 2

## ACTS REPEALED



**PLANT PROTECTION ACT 1994**

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**No. 74 of 1994**

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**AN ACT to consolidate and amend the law relating to diseases affecting plants and the control of noxious weeds and noxious invertebrates**

**[Royal Assent 25 November 1994]**

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**PART 1****PRELIMINARY****Short title**

**1**—This Act may be cited as the *Plant Protection Act 1994*.

## Commencement

2—This Act commences on a day to be proclaimed.

## Interpretation

3—In this Act—

- “**animal**” means any member of the animal kingdom other than a human being;
- “**article**” includes any vehicle, implement or machinery;
- “**compliance notice**” means a notice issued under section 15;
- “**control**” includes to eradicate;
- “**council**” means a council within the meaning of the *Local Government Act 1993*;
- “**declared entity**” means an entity declared to be a noxious entity, secondary entity or prohibited entity under section 11;
- “**disease**” includes any condition or injury caused by a noxious entity;
- “**entity**” means any plant, invertebrate, fungus, bacterium, virus or viroid;
- “**goods**” include plants, soil, implements, fixtures, fittings, furniture and personal chattels (other than animals, money and securities for money);
- “**infected**” means containing or supporting any entity which may cause disease;
- “**infested**” means containing or supporting any noxious entity;
- “**infested area**” means any area, premises, building or body of water declared to be an infested area under section 30;
- “**invertebrate**” includes the immature and juvenile stage of an invertebrate;
- “**inspector**” means a person appointed under section 8;
- “**land**” includes buildings, premises, land covered by water and any body of water on land;
- “**material**” includes soil, gravel, shingle, sand and any other material taken from the land;

“**notifiable entity**” means an entity which is required to be notified under section 14;

“**noxious entity**” means any entity declared to be a noxious entity under section 11;

“**noxious invertebrate**” means—

(a) any member of the *Phylum Arthropoda* declared to be a noxious entity under section 11; and

(b) any member of the *Phylum Mollusca* declared to be a noxious entity under section 11; and

(c) any member of the *Phylum Platyhelminthes* declared to be a noxious entity under section 11; and

(d) any member of the sub-kingdom *Invertebrates* declared to be a noxious entity under section 11; and

(e) any other prescribed invertebrate;

“**occupier**” includes the agent of an occupier;

“**package**” includes any means by which plants or goods are packed, cased, covered, enclosed or contained;

“**plant**” includes any tree, flower, shrub, vegetable and any seed, fruit, timber or product of a plant;

“**premises**” includes dwellings and places underground but excludes any grounds surrounding dwellings;

“**prohibited area**” means an area that is declared to be a prohibited area under section 39;

“**prohibited entity**” means any entity that is declared to be a prohibited entity under section 11;

“**quarantine station**” means a place declared to be a quarantine station under section 42;

“**Registrar of Pesticides**” means a person appointed as such under the *Pesticides Act 1968*;

“**recoverable costs**” means the costs referred to in section 19;

“**Secretary**” means the Secretary of the Department;

“**secondary entity**” means an entity that is declared to be a secondary entity under section 11;

“**sell**” includes—

(a) offer or expose for sale; and

(b) keep or have in possession for sale; and

- (c) barter or exchange; and
  - (d) agree to sell; and
  - (e) send, forward or deliver for sale;
- “unidentified entity”** means an entity that—
- (a) does not belong to a scientifically described species; or
  - (b) is incorrectly identified; or
  - (c) has not yet been identified.

### **Owners and occupiers**

- 4—(1) For the purposes of this Act—
- (a) a body corporate constituted under any enactment in which is invested any land is the owner of that land; and
  - (b) a body corporate constituted under any enactment which has the control and management of land vested in the Crown is the owner of that land; and
  - (c) a council is the owner of any highway maintainable by the council.
- (2) For the purposes of this Act—
- (a) any person who has control and management over any land is the occupier of the land; and
  - (b) any person who uses land under any agreement, lease, licence or permit is the occupier of that land.
- (3) In respect of land vested in the Crown of which no person is the occupier or owner, the appropriate Minister is the owner of that land.
- (4) The owner or occupier of any land is taken to be aware of any matter—
- (a) drawn to his or her attention by an inspector; or
  - (b) specified in a notice under this Act.
- (5) For the purposes of subsection (3), the **“appropriate Minister”** means—
- (a) in the case of any land acquired, set apart or reserved under any Act, the Minister responsible for administering that Act; or
  - (b) in any other case, the Minister administering the *Crown Lands Act 1976*.



### Control and management of land

5—A person has the control and management of land if the person—

- (a) has the right to use that land for any agricultural or pastoral purposes or for any purpose that involves the cultivation of that land or the use of any plants growing or standing on the land; or
- (b) is in possession of the land under a contract for the purchase of the land; or
- (c) holds any lease or licence in respect of that land under the *Crown Lands Act 1935* or the *Crown Lands Act 1976*; or
- (d) holds a permit or a forest lease in respect of that land under the *Forestry Act 1920*; or
- (e) holds a lease or licence under the *Mining Act 1920* in respect of that land; or
- (f) has the right to use that land for the purpose of a railway.

### Reference to land

6—Land may be referred to, or specified, by reference to—

- (a) the entry relating to the land in a valuation roll prepared under the *Land Valuation Act 1971*; or
- (b) maps or aerial photographs; or
- (c) any other appropriate unambiguous means.

### Act binding on certain persons

7—This Act is binding on—

- (a) a body corporate which is the owner or occupier of any land even though the functions of the body are exercised, or the land is held by the body, on behalf of the Crown; and
  - (b) the owner or occupier of land even though any estate or interest in the land is vested in the Crown.
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**PART 2****INSPECTORS****Appointment of inspectors**

8—(1) The Secretary may appoint as an inspector—

- (a) a person employed in the Department; and
- (b) with the approval of the Secretary of another department, a suitably qualified person employed in that department; and
- (c) a person employed by a council.

(2) A person appointed as an inspector may hold that office in conjunction with any other office.

(3) A council inspector may only carry out functions and exercise powers in an area specified by the Minister by order.

(4) An inspector appointed under subsection (1) (a) or (b) is to exercise his or her powers subject to any conditions specified by the Secretary.

**Powers of inspectors**

9—(1) For the purposes of this Act, an inspector may at all reasonable times—

- (a) subject to subsection (2), enter and remain on any land or premises where there is, or suspected to be, a declared entity; and
- (b) search and inspect any such land for the presence of any declared entity; and
- (c) board and inspect any aircraft or ship for the presence of any declared entity; and
- (d) stop and inspect and examine any vehicles for the presence of a declared entity; and
- (e) inspect and examine any declared entity or package containing or suspected of containing a declared entity; and
- (f) inspect and examine any animal, article, goods or material for the presence of any declared entity; and
- (g) take any declared entity; and

- (h) subject to subsection (3), destroy or cause to be destroyed any declared entity, article, goods or material; and
- (i) prohibit the removal of any declared entity; and
- (j) remove, or direct the removal of, any declared entity, article, goods or material from any land; and
- (k) direct a vehicle to any place; and
- (l) carry out or by notice in writing direct the occupier or owner of land to carry out any prescribed measures in respect of a declared entity.

(2) An inspector may only enter premises used for residential purposes with the written authority of the Minister.

(3) An inspector may only destroy or cause to be destroyed any declared entity, article, goods or material, the value of which exceeds \$500 with the written approval of the Minister.

(4) If a person fails to comply with a direction of an inspector, the inspector may do anything required by that direction and any costs incurred are payable by the person.

(5) An inspector may be accompanied by any assistant as is necessary to exercise any power under this Act.

### **Impersonation**

**10**—A person must not impersonate an inspector or an authorized person.

Penalty: Fine not exceeding 50 penalty units.

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## **PART 3**

### **DECLARED ENTITIES**

#### ***Division 1—Declared and notifiable entities***

#### **Declaration of entities**

**11**—The Minister, by order, may declare in respect of a specified area—

- (a) an entity to be a noxious entity or a secondary entity; and

- (b) an entity to be a noxious entity and secondary entity; and
- (c) a noxious entity or a secondary entity to be a prohibited entity.

### Control measures

**12**—The occupier, or if there is no occupier, the owner, of land who is aware that a noxious entity or secondary entity is on that land must—

- (a) in the case of a noxious entity or secondary entity, take the prescribed precautions and measures—
  - (i) to control that entity; or
  - (ii) to prevent or minimize its dissemination; and
- (b) in the case of a noxious entity, notify an inspector immediately.

Penalty: Fine not exceeding 50 penalty units.

### Control by agreement

**13**—(1) The Minister or a council may enter into an agreement with the owner or occupier of any land or premises for the carrying out of work—

- (a) to control a noxious entity or secondary entity on the land or premises; or
- (b) to prevent or minimize the dissemination of any noxious entity or secondary entity on the land or premises; or
- (c) to reduce the risk of any noxious entity or secondary entity being disseminated on to the land or premises.

(2) An agreement under this section—

- (a) is subject to any condition the Minister or council considers appropriate; and
- (b) is to provide for the recovery by the Minister or council of the costs incurred in carrying out the agreement.

(3) A person must not fail to comply with a condition of an agreement.

Penalty: Fine not exceeding 50 penalty units.

**Notifiable entities**

**14—(1)** The Minister, by order, may declare a noxious entity or a secondary entity to be a notifiable entity if present on land.

(2) The occupier, or if there is no occupier, the owner, of land is to notify an inspector of any notifiable entity the occupier or owner is aware is present on land.

Penalty: Fine not exceeding 50 penalty units.

***Division 2—Compliance notices*****Compliance notice**

**15—(1)** An inspector may serve on the owner or occupier of land a notice requiring the owner or occupier to take the precautions and measures specified in the notice—

- (a) to control any noxious entity or secondary entity; or
- (b) to prevent or minimize the dissemination of any noxious entity or secondary entity.

(2) A compliance notice may require any one or more of the following measures:—

- (a) the cutting, rooting out, treatment or destruction of any noxious entity, secondary entity, infected material or infested material;
- (b) the subjection of the land, or any entity, animal, article, goods or material to any treatment, process or operation;
- (c) the removal to, or confinement in, any place of any entity, animal, article, goods or material;
- (d) the erection of a fence in accordance with specified instructions;
- (e) the grazing of the land;
- (f) any other prescribed measures.

(3) A compliance notice may prohibit or restrict any one or more of the following:—

- (a) the removal from the land of any noxious entity, secondary entity, infected material or infested material, or any animal, article, goods or material;

- (b) the felling, cutting, injuring or destruction of any trees or other plants on the land;
- (c) the carrying out of any other operation on the land;
- (d) any other prescribed operation or course of action.

(4) A compliance notice must not require the destruction of any entity, animal, article, goods or material unless the inspector believes that they are or may be infested with a noxious entity.

(5) A compliance notice may require any specified measures to be taken—

- (a) in respect of any land or part of any land; or
- (b) within a specified period; or
- (c) on or before a specified date; or
- (d) from time to time as the inspector determines; or
- (e) in specified circumstances.

(6) A person must not—

- (a) fail to comply with a compliance notice; or
- (b) do or cause to be done anything in contravention of a compliance notice.

Penalty: Fine not exceeding 50 penalty units.

(7) An inspector who serves a compliance notice is to forward a copy of the notice to the Secretary within 3 days of that service.

### **Cancellation of compliance notice**

16—(1) An inspector may cancel a compliance notice if satisfied it is appropriate to do so.

(2) Anything done or being done under a compliance notice before it is cancelled continues to have effect.

### **Boundary fences**

17—(1) If a compliance notice served on a person requires the erection of a fence along any part of a boundary between lands, the person is to serve a copy of the notice on the owner of the land adjoining the boundary where the fence is to be erected.

(2) A person—

- (a) who has incurred costs in erecting a boundary fence under a compliance notice; or
- (b) from whom the Minister or council has recovered the costs incurred by the Minister or council in erecting such a fence—

may recover one-half of those costs from the owner of the land adjoining the fence.

(3) The *Boundary Fences Act 1908* does not apply to the erection of a fence under a compliance notice.

### Measures in default of compliance

18—(1) If any precautions or measures required under this Part are not taken within the specified period, the Minister may—

- (a) cause those precautions or measures to be taken; and
- (b) do anything necessary to take those precautions or measures.

(2) The Minister may delegate the powers in subsection (1) to the council in the municipal area in which the relevant land is situated.

### *Division 3—Recovery of costs*

#### Recovery of costs

19—(1) The Minister or the council may recover any costs incurred in taking precautions or measures required under a compliance notice from the person on whom the notice was served.

(2) The Minister may enter into an agreement with a person for the payment by instalments of recoverable costs together with interest as determined by the Minister.

(3) Any recoverable costs under subsection (1) are debts recoverable in a court of competent jurisdiction.

**Warrants for unpaid amounts**

20—(1) The Minister is to cause a notice of demand for payment of recoverable costs incurred under section 19 to be served on the person from whom they are recoverable.

(2) If recoverable costs remain partly or wholly unpaid 30 days after service of a demand notice, the Minister, may apply to a justice for a warrant to levy any amount unpaid by distress and sale of any goods not exempted from distress under any enactment.

(3) In issuing a warrant, a justice may order additional amounts to be levied—

(a) to cover the reasonable cost of obtaining the warrant; and

(b) to meet the cost of taking, keeping and selling the goods.

(4) A warrant under this section prevails over any other warrant issued in respect of the goods.

(5) If any timber on land is liable to be taken and sold under a warrant—

(a) the timber may be felled or removed; and

(b) the purchaser of the timber may enter on the land to fell and remove the timber.

(6) A further distress may be levied under the same warrant if the proceeds of any distress are insufficient to meet the amount specified in the warrant.

(7) If there are no goods or insufficient goods on which to levy the amount specified in the warrant, a justice may certify to that effect.

(8) A defect in the warrant or any proceedings relating to it does not make a distress unlawful.



**Possession, sale or purchase of land**

21—(1) The Minister may take possession of or sell land if—

- (a) any recoverable costs, interest and costs of any proceedings remain partly or wholly unpaid for a period not exceeding 4 years after service of the demand notice; and
- (b) those costs and interest exceed the aggregate of the rates levied in respect of the land during the previous 5 financial years.

(2) The Minister must not sell land within a period of 30 days after giving a notice relating to that land under section 25 (2).

**Possession of land**

22—(1) Before taking possession of any land, the Minister is to serve on each person who has an estate or interest in the land a notice stating—

- (a) the amount of the costs remaining unpaid; and
- (b) the intention of the Minister to enter into possession of the land.

(2) On taking possession of land, the Minister is to place on a conspicuous part of the land a notice stating—

- (a) that the Minister has taken possession of the land; and
- (b) that the land is to be let on lease.

(3) On taking possession of the land, the Minister may—

- (a) cause to be done anything necessary to maintain the land or make it capable of being let; and
- (b) insure any buildings on the land.

**Lease of land**

23—(1) On taking possession of land, the Minister may lease the land for a period not exceeding 7 years on any terms the Minister considers appropriate.

(2) The Minister is to hold in trust for the person entitled to the rents if the Minister had not taken possession of the land so much of the rents which exceed—

- (a) the costs of the preparation and execution of the lease; and
- (b) any cost incurred by the Minister under section 22 (3); and
- (c) any taxes, rates and charges due in respect of the land; and
- (d) any costs recoverable by the Minister in respect of the land.

(3) If at the end of 30 years from the date on which the Minister took possession of the land no person entitled to any rents held in trust under subsection (2) has demanded payment of the rents, the rents are to be paid into the Consolidated Fund.

### **Relinquishing land**

**24—(1)** The Minister is to relinquish land if—

- (a) within 30 years of taking possession of the land the recoverable costs and interest is paid; and
- (b) a person with an estate or interest in the land demands it.

(2) On relinquishing the land—

- (a) any lease granted by the Minister in respect of the land continues to have effect until it expires; and
- (b) the rights, duties, liabilities and obligations of the Minister vest in the person who would have been entitled to the rents.

(3) If, within a period of 30 years of taking possession of the land the Minister is not required to relinquish the land, the land vests in the Crown at the end of that period free and discharged from all estates and interests.

### Sale of land

**25—(1)** If the Minister sells any land under section 21, the Minister is to hold in trust for any person who, immediately before the sale, had an estate or interest in the land any amount received from the sale which exceeds—

- (a) the costs of the sale and conveyance or transfer of the land; and
- (b) any taxes or other sums recoverable in respect of the land.

(2) Before selling any land, the Minister is to serve on each person who has an estate or interest in the land a notice stating—

- (a) the amount of the costs remaining unpaid; and
- (b) the intention of the Minister to sell the land.

### Recovery between owners

**26—(1)** An owner or occupier of land—

- (a) who incurred cost in taking measures required under a compliance notice; or
- (b) who incurred cost in carrying out work under section 13; or
- (c) who incurred cost in taking prescribed precautions and measures under section 12; or
- (d) who suffered loss because of costs incurred under section 19—

may recover, in a court of competent jurisdiction, as a debt due from any other owner or occupier of the land a proportion of those costs or that loss as determined by the court.

(2) In hearing a claim under this section, the court is to take into account—

- (a) the nature of the estates or interests of the parties in the land; and
- (b) the benefits accruing or likely to accrue because of work carried out or the measures taken in respect of the land; and
- (c) any other relevant matter.

**Division 4—Appeals****Appeals against compliance notices**

- 27—(1) A person may appeal to a magistrate against—
- (a) a compliance notice served under section 15; or
  - (b) a copy of a compliance notice served under section 17.
- (2) An appeal is to be—
- (a) instituted within 7 days of the service of the compliance notice; and
  - (b) in a form approved by the Secretary; and
  - (c) accompanied by the prescribed fee.
- (3) The appellant is to serve or cause to be served a copy of the appeal on the inspector who served the compliance notice.
- (4) An inspector served with a notice of appeal—
- (a) is a party to the appeal; and
  - (b) may be represented at the hearing by any other person.

**Evidence at hearing**

28—At a hearing of an appeal, the magistrate may accept any evidence brought before the court.

**Determination**

- 29—(1) In determining an appeal, the magistrate may—
- (a) dismiss the appeal; or
  - (b) order that the compliance notice or part of the compliance notice is of no effect.
- (2) A determination of the magistrate is final.
- (3) In determining a claim where the land is occupied under a lease, the magistrate is to apportion the costs incurred or loss suffered as follows:—
- (a) if the unexpired term of the lease is 4 years or more, the person occupying the land under the lease is to pay at least three-quarters of the costs or loss;

- (b) if the unexpired term of the lease is more than 2 years but less than 4 years, that person is to pay a fraction of the costs or loss that is obtained by multiplying one-quarter by the length of the unexpired term of the lease which exceeds one year;
  - (c) if the unexpired term of the lease is 2 years or less, that person is to pay not more than one-quarter of the costs or loss.
- (4) For the purpose of this section—
- “costs incurred or loss suffered” includes any reasonable sum in respect of labour or equipment provided by the owner or occupier of the land;
  - “unexpired term of a lease” is that term of the lease which had not expired at the commencement of the measures taken or work carried out in respect of which costs were incurred or loss was suffered.

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## PART 4

### INFESTED AND QUARANTINE AREAS

#### *Division 1—Infested areas*

#### Infested areas

**30—(1)** The Minister, by order, may declare any area, premises, building or body of water to be an infested area if satisfied that—

- (a) a noxious entity exists in that area, premises, building or body of water; and
- (b) any land is infested with the noxious entity.

(2) The Minister, by order under subsection (1) or by another order, may—

- (a) prohibit the sale of any article, animal, goods, material or other thing found in the infested area; or

- (b) prohibit or allow the removal from the infested area of any article, animal, goods, material or other thing subject to—
    - (i) specified conditions, restrictions or precautions; or
    - (ii) prescribed conditions, restrictions or precautions; or
  - (c) authorize specified measures or prescribed measures to be taken to control, prevent or minimize the dissemination of the noxious entity.
- (3) The Minister, in an order under subsection (2) (c), may authorize a person to take any measures.
- (4) A person authorized to take measures may—
- (a) enter and remain on land for the purpose of taking those measures; and
  - (b) be accompanied by such assistants as may be necessary.
- (5) A person must not fail to comply with an order under this section.

Penalty: Fine not exceeding 50 penalty units.

### **Emergency declaration**

**31—(1)** Until an order is made under section 30, an inspector may declare any area, premises, building or body of water to be an emergency infested area for a period not exceeding 48 hours if satisfied that immediate action is required in respect of a noxious entity.

- (2) An inspector is to—
- (a) notify the occupier, or if there is no occupier, the owner, of land of a declaration made under subsection (1); and
  - (b) serve a compliance notice on the occupier, or if there is no occupier, the owner.
- (3) A compliance notice under subsection (2) (b) may—
- (a) require immediate specified measures or prescribed measures to be taken to control, prevent or minimize the dissemination of the noxious entity; or

(b) prohibit or allow the removal from the emergency infested area of any article, animal, goods, material or other thing subject to—

(i) specified conditions, restrictions or precautions;  
or

(ii) prescribed conditions, restrictions or precautions.

(4) A compliance notice under subsection (2) (b) is not to allow the destruction of any thing which would not otherwise be allowed to be destroyed under the Act.

(5) A person must not fail to comply with a compliance notice.

Penalty: Fine not exceeding 50 penalty units.

### Duties of occupiers

**32—**(1) The occupier of any land is to notify an inspector of the appearance of any noxious entity on the land as soon as the occupier becomes aware of the fact.

(2) On being notified under subsection (1), an inspector may—

(a) make a declaration under section 31; or

(b) recommend that the Minister make an order under section 30.

### Information about suspected infested things

**33—**(1) An inspector may require a person to answer any question or provide any information and records about the origin of any animal, article, goods or material which the inspector reasonably believes are infested.

(2) A person must not fail without reasonable excuse—

(a) to answer any question asked under subsection (1);  
or

(b) to provide any information or records required under subsection (1).

Penalty: Fine not exceeding 50 penalty units.

**Difficult infested land**

**34—(1)** The Minister, by order, may declare land within an infested area to be difficult infested land if satisfied that the noxious entity on that land would not be dealt with in the course of ordinary land use.

(2) The Minister, by order under subsection (1) or by another order, may do anything specified in section 30 (2).

(3) A person must not fail to comply with an order under subsection (2).

Penalty: Fine not exceeding 50 penalty units.

**Compensation**

**35—(1)** The Minister, on application, may pay such compensation as the Minister considers appropriate to the owner or occupier of land for loss and damages incurred—

(a) in doing anything required under an order under section 30 or a compliance notice under section 31; or

(b) in respect of land declared to be difficult infested land under section 34, in doing anything to comply with this Act.

(2) An application is to—

(a) be in a form approved by the Secretary; and

(b) specify in detail the loss or damages; and

(c) specify any other prescribed matter.

***Division 2—Community programmes*****Approval of community programmes**

**36—(1)** Any person may apply to the Minister for approval to carry out a community programme for the control or suppression of an entity.

(2) An application is to—

(a) be in a form approved by the Secretary; and



- (b) specify the area in which the proposed programme is to be carried out; and
- (c) specify the entity in respect of which the programme is to be carried out.

(3) Before approving a community programme, the Minister is to investigate the extent to which the community in the area in which the proposed programme is to be carried out is able to contribute to the cost of the programme.

(4) In approving a community programme, the Minister may—

- (a) specify the entity or class of entity in respect of which the community programme is to be carried out; and
- (b) specify the area in which the community programme is to be carried out; and
- (c) authorize specified persons to carry out the community programme; and
- (d) specify the powers and functions of those persons; and
- (e) impose conditions subject to which the community programme is to be carried out; and
- (f) specify the amount of contribution required to be made by the community towards the cost of carrying out the community programme.

### **Powers of authorized persons**

37—A person authorized under section 36 to carry out a community programme may be accompanied by any assistant as is necessary to exercise any power under this Act.

### **Revocation of approval**

38—The Minister may revoke approval for a community programme if satisfied that—

- (a) a condition imposed under section 36 (4) (e) has not been complied with; or
- (b) insufficient or no contribution has been made by the community in relation to the community programme.

**Division 3—Prohibited areas and prohibited entities****Prohibited areas**

**39—(1)** The Minister, by order, may declare an area to be a prohibited area if satisfied that it is necessary to do so to prevent dissemination of a prohibited entity.

- (2) A person, in a prohibited area, must not—
- (a) grow any prohibited entity; or
  - (b) keep any goods specified in the order; or
  - (c) carry out any activity specified in the order.

Penalty: Fine not exceeding 50 penalty units.

**Removal of prohibited entity**

**40—(1)** Subject to subsections (2) and (3), a person must not remove a prohibited entity from any place.

Penalty: Fine not exceeding 50 penalty units.

(2) A person, while taking precautions to prevent the dissemination or propagation of a prohibited entity, may, subject to any conditions specified by the Secretary, remove the prohibited entity from any place for any of the following purposes:—

- (a) to identify or destroy the entity;
- (b) to use the entity for human consumption;
- (c) to manufacture or process the entity into anything else whereby its ability to propagate is destroyed;
- (d) to use the entity for research or educational purposes.

(3) Subsection (1) does not apply to the removal of a prohibited entity that is carried out—

- (a) within land occupied or owned by the same person; and
- (b) with the approval of the owner or occupier of the land.

(4) A person must not fail to—

- (a) carry out any prescribed precautions; or
- (b) comply with any prescribed conditions.

Penalty: Fine not exceeding 50 penalty units.

**Movement of goods**

**41—(1)** Subject to subsection (2), a person must not move any animal, article, goods, materials or vehicles ordinarily used for carrying animals, articles, goods or material from one place to another place without taking prescribed measures to ensure that the animals, articles, goods, materials and vehicles are free from any prohibited entity.

Penalty: Fine not exceeding 50 penalty units.

(2) Subsection (1) does not apply to the movement of articles, animals, goods, materials and vehicles that is carried out—

- (a) within land occupied or owned by the same person; or
- (b) on land with the approval of the occupier, or if there is no occupier, the owner, of the land.

***Division 4—Quarantine and importation*****Declaration of quarantine stations**

**42—(1)** The Minister, by order, may declare a place to be a quarantine station.

(2) Except with the authority of the Secretary, a person must not—

- (a) enter a quarantine station; or
- (b) interfere with or otherwise deal with any facility or anything contained in a quarantine station.

Penalty: Fine not exceeding 100 penalty units.

(3) The Secretary may authorize persons to enter and remain on a quarantine station for the purposes of—

- (a) taking to, or removing from, the quarantine station any entity; and
- (b) carrying out the quarantine, inspection, examination or treatment of such an entity.

**Importation of prohibited and unidentified entities**

**43—(1)** Subject to subsection (2), a person must not import into this State any prohibited entity or unidentified entity.

Penalty: Fine not exceeding 50 penalty units.

(2) A person, with the approval of the Minister and subject to any conditions, may import any entity for research, scientific or educational purposes.

**Importation prohibited**

44—(1) The Minister, by order, may prohibit wholly or subject to specified conditions or prescribed conditions the importation to this State of any—

- (a) article, goods or material; or
- (b) class of article, goods or material.

(2) A person must not import to this State anything prohibited from being imported under subsection (1).

Penalty: Fine not exceeding 50 penalty units.

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**PART 5**

**MISCELLANEOUS**

**Obstruction**

45—A person must not obstruct or hinder an inspector, a person assisting an inspector or an authorized person in the exercise of a power or the performance of a duty conferred or imposed by this Act.

Penalty: Fine not exceeding 100 penalty units.

**Compensation not payable**

46—Except as provided in section 35, a person is not entitled to any compensation in respect of any animal, article, goods or material destroyed or taken under this Act.

**Entry on land**

47—(1) The Minister or council, by written authority, may authorize any person to enter on land, other than premises used for residential purposes, for the purposes of this Act.

(2) A person authorized to enter land under subsection (1) may take and use any vehicle, equipment and substance on the land that may be necessary to achieve the purpose for which the authority was given.

### **Sale of declared entities**

**48**—A person must not sell—

(a) any declared entity; or

(b) any animal, article, goods or material which is likely to be infested.

Penalty: Fine not exceeding 50 penalty units.

### **Contracts**

**49**—A contract or agreement made by any person in connection with any matter dealt with in this Act is not a contract or agreement made on behalf of the Crown.

### **Immunity from action**

**50**—Any action or proceeding does not lie against an inspector, a person assisting an inspector or an authorized person acting in good faith who is exercising or reasonably believes is exercising a power or performing a duty conferred or imposed by this Act.

### **Exemptions**

**51**—(1) The Minister, by notice in writing, may exempt any person from the provisions of this Act.

(2) The Minister may exempt a person subject to any condition as may be agreed between the Minister and the person.

(3) A person must not fail to comply with a condition referred to in subsection (2).

Penalty: Fine not exceeding 50 penalty units.

- (4) The Minister may revoke an exemption if—
- (a) any condition is not complied with; or
  - (b) the Minister considers it necessary to do so.

### **False or misleading statements**

**52**—A person must not, in giving any information or furnishing any return under this Act—

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is misleading.

Penalty: Fine not exceeding 100 penalty units.

### **Service of notices**

**53**—(1) A notice may be served on the owner or occupier of land—

- (a) by giving it to the person; or
- (b) by sending it by mail to the person's residential or postal address or place of business or employment; or
- (c) if the land is apparently unoccupied and the owner cannot be found, by posting the notice on a conspicuous place on the land.

(2) A person must not tamper with, destroy or remove a notice posted on land under subsection (1) (c).

Penalty: Fine not exceeding 50 penalty units.

### **Regulations**

**54**—(1) The Governor may make regulations for the purpose of this Act.

(2) Regulations under this Act may—

- (a) prohibit or regulate the removal, movement, use, disposal, destruction or treatment of any entity or class of entity; or

- (b) impose conditions and restrictions in relation to any entity or class of entity; or
- (c) exempt any entity or class of entity from the provisions of this Act in prescribed circumstances; or
- (d) prescribe any entity or class of entity required to be quarantined; or
- (e) prescribe the manner in which any entity or class of entity is to be quarantined; or
- (f) prescribe fees payable for any inspection carried out under this Act.

(3) Regulations may be made subject to conditions or so as to apply differently according to matters, limitations or restrictions specified in the regulations.

(4) Regulations under this section may—

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

### **Incorporation by reference**

**55**—(1) A regulation may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body—

- (a) either wholly or partially; or
- (b) with or without modifications; or
- (c) either specifically or by reference.

(2) If, after the application, adoption or incorporation, the document, code, standard, rule, specification or method is amended or rescinded or replaced, the regulation remains unaltered and its reference is not updated except by an amending regulation.

(3) In any proceedings in relation to any regulation, any printed or mechanically or electronically copied book, booklet, pamphlet, sheet or card purporting to contain the document, code, standard, rule, specification or method referred to is prescribed to be issued by the specified body or association.

### **Transitional and savings provisions**

**56**—Schedule 1 has effect in respect of transitional and savings provisions.

### **Repeal**

**57**—The Acts specified in Schedule 2 are repealed.

### **Administration of Act**

**58**—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Primary Industry and Fisheries; and
  - (b) the Department responsible to the Minister for Primary Industry and Fisheries in relation to the administration of the Act is the Department of Primary Industry and Fisheries.
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## SCHEDULE 1

Section 56

## TRANSITIONAL AND SAVINGS

**Interpretation**

1—In this Schedule—

“**commencement day**” means the day on which this Act commences;

“**repealed Act**” means—

- (a) *Noxious Weeds Act 1964*; and
- (b) *Noxious Insects and Molluscs Act 1951*; and
- (c) *Plant Diseases Act 1930*.

**Inspectors**

2—Any person who, immediately before the commencement day, was an inspector for the purposes of any repealed Act is, on that commencement day, an inspector under this Act.

**Municipal control areas**

3—Any area of the State which, immediately before the commencement day, was an area in which an inspector appointed by a council had jurisdiction to administer any repealed Act is, on that commencement day, an area in which a council inspector may carry out functions and exercise powers under this Act.

**Infested areas**

4—(1) Any area, land or part of the State which, immediately before the commencement day, was an infested area, difficult infested land or an infected area under any repealed Act is, on that commencement, an infested area or difficult infested land under this Act.

Schedule 1—*continued*

(2) Any prohibition in force immediately before the commencement day under any repealed Act in respect of the removal of any thing from an infested area, difficult infested land or infected area continues, on that commencement day, to be in force until revoked by an order made under section 30 or 34.

**Prohibition of introduction and importation of animals, goods and plants**

5—Any prohibition, restriction or condition in force immediately before the commencement day under any repealed Act in respect of the introduction or importation into the State of any animals, goods or plants continues, on that commencement day, to be in force until revoked by an order made under section 44.

**Declared entities**

6—Any thing which, immediately before the commencement day, was a noxious insect, noxious mollusc, noxious weed, secondary weed or prohibited weed under any repealed Act is, on that commencement day, a noxious invertebrate, noxious entity, secondary entity or prohibited entity under this Act.

**Measures and precautions**

7—Any measures or precautions prescribed and in force immediately before the commencement day under any repealed Act continue, on that commencement day, to be in force until any other measures and precautions are prescribed under this Act.

**Enforcement notices**

8—Any enforcement notice in force immediately before the commencement day under any repealed Act is, on that commencement day, a compliance notice under this Act.

Schedule 1—*continued***Recovery of expenses**

9—Any expenses or costs incurred by the Minister, an inspector, a council or any other person immediately before the commencement day in respect of any thing done or work carried out under any repealed Act and not recovered before the commencement day are, on that commencement day, recoverable in a court of competent jurisdiction under that Act.

**Regulations**

10—Any regulations in force immediately before the commencement day under any repealed Act continue, on that commencement day, to be in force until rescinded by regulations made under this Act.

**Actions, proceedings and appeals**

11—Any action, proceeding or appeal instituted or commenced under any repealed Act but not determined before the commencement day may, on that commencement, be continued under that Act until determined.

**Agreements**

12—Any agreement in force immediately before the commencement day under any repealed Act for carrying out work in respect of eradicating, minimizing or preventing the dissemination of declared entities is, on that commencement day, an agreement under this Act.

**Exemptions**

13—Any exemption from compliance with the provisions of any repealed Act in force immediately before the commencement day is, on that commencement day, an exemption under this Act.

Schedule 1—*continued*

**Funds**

**14**—Any fund established and in existence immediately before the commencement day under any repealed Act in respect of the eradication or control of disease is abolished and any money standing to the credit of the fund—

- (a) vests on that commencement day in the Crown; and
  - (b) is to be paid into the Consolidated Fund.
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1994

*Plant Protection*

No. 74 sch. 2

**SCHEDULE 2**

Section 57

**ACTS REPEALED**

*Noxious Weeds Act 1964*

*Noxious Insects and Molluscs Act 1951*

*Plant Diseases Act 1930*

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*[Second reading presentation speech made in:—  
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Legislative Council on 25 October 1994]*

