

Plant Health and Plant Products Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1°

(*Brought in by*)

A BILL

to provide for plant pest and disease control and plant product description, to amend the **Agricultural Industry Development Act 1990** to provide for industry funded control measures and compensation schemes, to repeal the **Fruit and Vegetables Act 1958**, the **Seeds Act 1982** and the **Vegetation and Vine Diseases Act 1958** and for other purposes.

Plant Health and Plant Products Act 1995

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The main purposes of this Act are to—

- 5 (a) provide for the monitoring, controlling and eradicating of plant pests and diseases;

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

- (b) provide for the packaging, labelling and description of plants and plant products;
- (c) amend the **Agricultural Industry Development Act 1990** to provide for industry funded schemes for pest and disease control measures and for compensating producers for the costs of controlling certain pests and diseases; 5
- (d) repeal the **Fruit and Vegetables Act 1958**, the **Seeds Act 1982** and the **Vegetation and Vine Diseases Act 1958**. 10

2. *Commencement*

- (1) This Part and Part 5 comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed. 15
- (3) If a provision referred to in sub-section (2) does not come into operation within the period of 12 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period. 20

3. *Interpretation*

- (1) In this Act—
 - “**agricultural equipment**” means any equipment used for the culture, harvesting, packing or processing of any plant or plant product and includes any vehicle; 25
 - “**contain**”, in relation to a pest or disease of plants or plant products, means to restrict the spread of the pest or disease; 30
 - “**control**”, in relation to a pest or disease of plants or plant products, means to reduce the occurrence of the pest or disease;

“disease” means—

- 5 (a) any disease of plants or plant products caused by any bacterium, fungus, protozoa, phytoplasma, virus, viroid or other organism which is declared by Order in Council to be a disease; or
- (b) an exotic disease;

10 **“eradication”** means the reduction of a disease or pest to a level where it can no longer be detected;

“examination” includes any analysis or test or any combination of analyses or tests;

15 **“exotic disease”** means any disease of plants or plant products which is declared by Order in Council to be an exotic disease;

“exotic pest” means any pest which is declared by Order in Council to be an exotic pest;

20 **“foreign substance”** means any earthy matter, stones, sand or gravel and includes any substance declared by Order in Council to be a foreign substance;

“inspector” means an inspector authorised under section 51;

25 **“kind”**, in relation to plants, means plants of the same botanical species;

“label” includes any tag or sticker;

“lot”—

- 30 (a) with respect to fruit, vegetables or nuts, means any quantity of unpackaged fruit, vegetables or nuts and includes any fruit, vegetables or nuts, whether packaged or not, used or intended to be used to supplement the lot; and

- 35 (b) with respect to seeds, includes any individual package of seed which has been packed from the lot;

- “occupier”**, in relation to land, means any person or body in occupation or possession or having the control or management of land and includes any joint occupier;
- “owner”**, in relation to land, includes— 5
- (a) any person or body holding or occupying land under lease or licence from the Crown or deriving title from, under or through that person or body;
 - (b) any mortgagee of land in possession of the land; 10
 - (c) any joint owner and agent of the owner;
- “owner”**, in relation to any plant or plant product, except in section 53, includes part-owner, consignor, agent and any person for the time being in charge of the plant or plant product; 15
- “package”** includes—
- (a) anything in or by which a plant or plant product is contained, wrapped or packed; and 20
 - (b) bulk containers;
- “pest”** means—
- (a) any centipede, eelworm, insect, millipede, mite, scorpion, slug, snail, spider or invertebrate animal declared by Order in Council to be a pest; or 25
 - (b) an exotic pest;
- “place”** includes any land, road, structure and premises;
- “plant”** means any member of the vegetable kingdom and includes any tree, vegetable, vine and edible fungi but does not include any plant product; 30
- “plant product”** means the whole or part of any flower, fruit, nut, seed, leaf, bulb, corm, tuber or stem which has been separated from a plant and 35

includes dried plant material and timber that has been sawn or dressed;

5 “**quarantine area**” means a place declared under Part 3 to be a quarantine area for the containment, control or eradication of an exotic pest or disease;

10 “**Rules of the International Seed Testing Association**” means the rules set out in the journal *Seed Science and Technology*, Volume 21, Supplement 1993 published by the International Seed Testing Association, as amended from time to time;

15 “**restricted area**” means a place declared under Part 3 to be a restricted area for the containment, control or eradication of an exotic pest or disease;

 “**Secretary**” means the Secretary to the Department of Agriculture, Energy and Minerals;

20 “**seeds**” includes any seeds to which or to clusters of which any fruit or part thereof normally adheres, any seeds in pods or burrs normally used in agricultural practice and any seeds artificially encased;

25 “**sell**” includes barter or exchange, agreeing to sell, offering or exposing for sale or having in possession for sale or sending, forwarding, delivering or receiving for or on sale and authorising, directing, causing, suffering, permitting or attempting those things;

30 “**this Act**” includes regulations made under this Act;

 “**used package**” means any package which contains or is known to have contained or may reasonably be suspected of containing or having contained any plant or plant product;

35 “**variety**”, in relation to plants, means a plant or population of plants recognisable by agronomic, biochemical, morphological or other characters

Plant Health and Plant Products

as being distinct from other plants or population of plants of the same botanical species;

“**vehicle**” includes aircraft or vessel.

- (2) In this Act any reference to a plant, fruit, vegetable or nut includes a reference to all or any part of a plant, fruit, vegetable or nut. 5

4. *Binding of Crown*

This Act binds the Crown, not only in right of the State of Victoria but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities. 10

5. *Orders in Council*

- (1) The Governor in Council may make any orders published in the Government Gazette that are required for the purposes of this Act. 15
- (2) Without affecting the generality of sub-section (1), the Governor in Council may make an order declaring any pest or disease to be an exotic pest or disease even though the pest or disease has not been found in Victoria or the pest or disease is being controlled, contained or eradicated in Victoria. 20

PART 2—PLANT PEST AND DISEASE CONTROL**Division 1—General controls****6. *Importation of plants, plant products packages or equipment*** 25

- (1) A person must not—
- (a) import, introduce or bring into Victoria from a prescribed State or Territory or a prescribed part of another State or Territory any prescribed plant, plant product, used package or used agricultural equipment or soil; or 30

- (b) cause or permit any of the things in paragraph (a) to be done—

unless the person has—

- 5 (c) sent a plant health declaration or plant health certificate to the Secretary stating that the plant, plant product, used package or used agricultural equipment complies with the requirements of this Act; and
- 10 (d) if required by the regulations or an inspector, presented that plant, plant product or used package or used agricultural equipment for inspection, examination and treatment at a prescribed place or a place nominated by an inspector.

15 Penalty: 100 penalty units.

- (2) A person must not—

- (a) import, introduce or bring into Victoria from another State or Territory any plant or plant product affected by any disease or pest or any pest or any disease organism; or
- 20 (b) cause or permit any of the things in paragraph (a) to be done—

except—

- (c) for scientific purposes; and
- 25 (d) with the written consent of the Minister.

Penalty: 100 penalty units.

- (3) In this section—

30 **“plant health certificate”** means a certificate in the prescribed form issued by an officer of a department responsible for agriculture of another State or Territory;

“plant health declaration” means a declaration in the prescribed form made by a person authorised by the Secretary to make plant health declarations.

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7. Notification of plant pests or diseases

- (1) If a person knows or has reason to suspect that an exotic pest or disease or a notifiable pest or disease is present in any plant or plant product—
- (a) owned by that person or in the possession, control or charge of that person; or 5
 - (b) on land owned or occupied by that person—
- the person must notify an inspector in accordance with sub-section (2) or (3).
- Penalty: 100 penalty units, in the case of a notifiable pest or disease; 10
 200 penalty units, in the case of an exotic pest or disease.
- (2) In the case of an exotic pest or disease, the person must notify an inspector without delay after becoming aware or suspecting that the pest or disease is present by the quickest means of communication available. 15
- (3) In the case of a notifiable pest or disease, the person must notify an inspector, orally or in writing, within 7 days after becoming aware or suspecting that the pest or disease is present. 20
- (4) In this section “**notifiable pest or disease**” means a pest or disease which the Governor in Council has declared by order to be a notifiable pest or disease. 25

8. Prohibition on sale of diseased seeds etc.

A person must not sell—

- (a) any plant or plant product, other than seeds, which the person knows, or may be reasonably expected to know, is affected by any disease or pest; or 30
- (b) any seeds for sowing that are mixed with any seeds that the person knows, or may be reasonably expected to know, are affected by any disease and the affected seeds form a 35

proportion of the total quantity of seeds that exceeds the proportion prescribed.

Penalty: 50 penalty units.

Division 2—Control areas

5 **9. Declaration of control areas**

(1) The Governor in Council may, by order—

(a) declare any place within Victoria to be a control area; and

10 (b) specify any prohibitions, restrictions or requirements which are to operate in, or in relation to, the whole or part of the control area for the purpose of preventing the spread of pests or diseases within the control area or from the control area to other parts of Victoria or preventing the entry of pests or diseases into the control area.

15 (2) Without limiting the powers of the Governor in Council under sub-section (1), an order declaring a control area may, for the purposes set out in sub-section (1)—

20 (a) prohibit absolutely or restrict subject to prescribed conditions—

25 (i) the removal of plants, plant products, used packages, used agricultural equipment or soil from the control area to a place outside the control area; or

(ii) the entry of plants, plant products, used packages, used agricultural equipment or soil into the control area; or

30 (iii) the movement of plants or plant products, used packages, used agricultural equipment or soil within the control area;

35 (b) require the owners or occupiers of land within the control area to prune any fruit tree, treat any plant, grow a variety of plant which is resistant

or tolerant to pests or diseases, destroy any plant, treat soil in which plants are grown or have been growing, treat any used packages or used agricultural equipment or to take any other prescribed action to control pests or diseases; 5

(c) require owners or occupiers of land in specified parts of the control area to take more stringent measures, as specified in the order, than owners or occupiers of other land in the control area.

(3) A person who knows, or has reason to believe, that any place has been declared to be a control area must not cause or permit the movement of any plant, plant product, used package, used agricultural equipment or soil into or from that area or within specified parts of the control area or within the control area contrary to any prohibition or restriction in the order unless the person is authorised to do so under a permit issued by the Secretary and complies with any conditions set out in the permit. 10
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Penalty: 100 penalty units. 20

(4) A person must not transport, move or take any plant or plant product into or out of a control area past a sign posted on or within sight of a public highway passing in or out of a control area contrary to any prohibition in an order if the sign indicates that the movement of plants or plants products into or out of the control area is prohibited under the order. 25

Penalty: 10 penalty units.

(5) The Secretary may issue a permit for the purposes of this section for the transport or movement of plants, plant products or soil into or out of a control area for scientific purposes or to examine samples of the plants, plant products or soil subject to any conditions about the treatment of the plants, plant products or soil. 30
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(6) The Secretary may revoke or vary a permit at any time by notice in writing to the holder.

- (7) If a permit given under this section is revoked, the holder must, upon request by the Secretary, immediately deliver the revoked permit to the Secretary.

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Division 3—Control measures

10. *Destruction or disposal of plants etc.*

- (1) If any plant, plant product, used package, used agricultural equipment or soil is introduced into—

- (a) Victoria; or
10 (b) a control area declared by the Governor in Council under section 9; or
(c) a quarantine area or restricted area—

15 contrary to any provision of this Act or an order made under this Act, the plant, plant product, package, agricultural equipment or soil may be treated, destroyed or otherwise disposed of as directed in writing by the Minister.

- (2) The Minister must cause a copy of a direction under sub-section (1) to be given to the owner or person
20 apparently in charge of the plant, plant product, package, agricultural equipment or soil before the direction is carried out unless—

- (a) the owner or person apparently in charge of the
25 plant, plant product, package, agricultural equipment or soil cannot be found after reasonable search or inquiry; and

- (b) the Minister considers that, in the
30 circumstances, the direction must be carried out without prior notice to the owner or person apparently in charge.

11. *Treatment or disposal of diseased plants etc.*

- (1) If an inspector knows or reasonably suspects that a plant or plant product is affected by any disease or

- pest the inspector may seize the plant or plant product and—
- (a) apply any prescribed physical or chemical treatment to the plant or plant product; or
 - (b) dispose of the plant or plant product in a manner which will prevent the spread of the pest or disease; or 5
 - (c) order the things set out in paragraph (a) or (b) to be done.
- (2) Without limiting an inspector's powers under sub-section (1), an inspector may— 10
- (a) process the plant or plant product;
 - (b) allow the plant or plant product to be used for stock food or for any other purpose other than for human consumption; 15
 - (c) dispose of the plant or plant product by burning, burial or leaving it on a waste disposal site—
- or order the owner of the plant or plant product to do any of the things set out in paragraph (a), (b) or (c).
- (3) The inspector must notify the owner or person apparently in charge of the plant or plant product of the inspector's intention to do any of the things set out in sub-section (1) or (2). 20
- (4) If an inspector knows or reasonably suspects that any plants or plant products are affected by any disease or pest and the owner of the plants or plant products cannot be located after reasonable inquiry and there is no person apparently in charge of them the inspector may, with the approval of the Secretary, destroy or otherwise dispose of them. 25 30

12. *Infested land notice*

- (1) If an inspector knows or reasonably suspects that any plants or plant products affected by any disease or pest or any pest are on any land and he or she so reports to the Secretary, the Secretary may give the owner or occupier of the land a notice— 35

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- (a) prohibiting or restricting, subject to specified conditions, the removal of any plant, plant product, used package, used agricultural equipment or soil from the land specified in the notice; or
 - (b) requiring that the owner or occupier destroy or cause the destruction of those pests, plants or plant products.

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- (2) If a notice is given under sub-section (1) (a), a person must not remove or allow or cause or permit to be removed from the land specified in the notice any plant, plant product, used package used agricultural equipment or soil specified, or of a type or class specified, in the notice contrary to any prohibition, or contrary to the conditions of any restriction, in the notice.

Penalty: 100 penalty units.

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- (3) If a notice is given under sub-section (1) (b), the owner or occupier must destroy or cause the destruction of the pests, plants or plant products specified in the notice.

Penalty: 100 penalty units.

13. Control notices

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- (1) If an inspector knows or reasonably suspects that any plant, plant product or soil is or might become affected by a pest or disease, the inspector may issue a notice to the person who owns or has possession or control of the plant, plant product or soil containing any orders or directions that that the inspector considers may be reasonably necessary to prevent the outbreak or spread of the pest or disease.
 - (2) A notice under sub-section (1) may contain orders or directions in relation to any plant, plant product, used package, used agricultural equipment or soil that is or might become affected by the pest or disease—

requiring that—

- (a) it be kept at a specified place for a specified period;
 - (b) it be subjected to specified treatment;
 - (c) it be subjected to examinations at specified intervals or that other specified action be taken for the purposes of determining the presence of a pest or disease; 5
 - (d) its sale or supply or the purposes for which it may be used be restricted; 10
 - (e) it be destroyed or disposed of in a specified manner.
- (3) The inspector must cause a notice under sub-section (1) to be served on the person referred to in that sub-section. 15
- (4) A person served with a notice under sub-section (1) must not contravene or fail to comply with any order or direction in the notice.

Penalty: 50 penalty units.

14. *Disposal of plant refuse etc.* 20

- (1) If the Secretary is satisfied that any plant refuse, used package or soil is affected by or contaminated with any pest or disease, the Secretary may cause to be served on the owner or person apparently in charge of the plant refuse, used package or soil a notice specifying the means, method or manner of disposing of that plant refuse, package or soil or of treating the package before it is disposed of. 25
- (2) A person served with a notice under sub-section (1) must treat the package or dispose of the plant refuse, package or soil described in the notice in accordance with the notice. 30

Penalty: 100 penalty units.

PART 3—EXOTIC PESTS AND DISEASES

Division 1—Preliminary

15. *Application of this Part to land*

- 5 (1) Any provision of this Act that operates in relation to an exotic pest or disease, to the extent that it confers any function or power that may be exercised in relation to land, applies to all land, whatever its status.
- 10 (2) Without limiting sub-section (1), any provision of this Act that operates in relation to an exotic pest or disease applies to places—
- 15 (a) that are the property of the Crown, or that are dedicated or reserved for any purpose, or protected or otherwise dealt with under any other Act; or
- (b) the care, control or supervision of which is vested in any statutory authority or other person.
- 20 (3) It is not necessary, in order for any place to be declared to be a quarantine area or restricted area under this Part or for the validity of any order or the exercise of any power to enter a place or of any other power conferred by this Act and exercised in relation to an exotic pest or disease, to obtain the consent of any person or body or to meet any requirements other than the requirements of this Act.
- 25 (4) If land is owned, jointly or as tenants in common or otherwise, by 2 or more persons an order, notice or other document relating to an exotic pest or disease which is, under this Act, served on one of them as owner of the land is deemed to have been served on them all.
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16. *Application of this Part to plants etc.*

- 35 (1) Any provision of this Act that operates in relation to an exotic pest or disease, to the extent that it confers any function or power that may be exercised in

relation to plants or plant products applies to all plants or plant products whatever their status and whether or not the property of the Crown or any other person.

- (2) Without limiting sub-section (1), any provision of this Act that operates in relation to an exotic pest or disease applies to plants and plant products—
- (a) that are protected or otherwise dealt with under any Act; or
 - (b) the care, control, management or supervision of which is vested by any Act in the Crown or any statutory authority or other person.
- (3) It is not necessary for the validity of any order under this Part for the destruction, confinement or other control or treatment of, or otherwise affecting, any plants or plant products, or for the exercise of any other power conferred by this Act in relation to exotic pests or diseases to obtain the consent of any person or body or to meet any requirements other than the requirements of this Act.

Division 2—Declared Areas

17. Declaration of quarantine area

- (1) If the Minister reasonably suspects that an exotic pest or disease is present in any place within Victoria, the Minister may by order published in the Government Gazette—
- (a) declare that place to be a quarantine area; and
 - (b) specify any prohibitions, restrictions or requirements which are to operate in the quarantine area or part of the quarantine area.
- (2) The order must identify the classes or description of plants, plant products, used packages, used agricultural equipment or soil that are affected by it.

18. Notice of order declaring quarantine area

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- (1) The Minister must ensure that notice of an order declaring a quarantine area is published in a newspaper circulating generally in the vicinity of the area.
 - (2) The Minister must ensure that written notice of an order declaring an area to be a quarantine area is given to the owner or person in charge or in apparent control of any place to which the notice relates.

10 **19. Permit for entry or exit**

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- (1) A person must not—
 - (a) enter or leave any area declared to be a quarantine area; or
 - (b) cause, permit or assist any other person to enter or leave any such area; or
 - (c) bring, move, take or allow any person to bring, move or take any plant, plant product, used package, vehicle, used agricultural equipment or soil into, within or out of any such area—

20 unless the person is authorised to do so under a permit issued by an inspector and complies with any conditions set out in the permit.

Penalty: 200 penalty units.

- 25
- (2) An inspector may issue a permit for the purposes of this section—
 - (a) subject to any conditions; and
 - (b) to be effective for any period of time—that the inspector specifies in the permit.
 - (3) Without limiting sub-section (2), an inspector may issue a permit subject to any conditions relating to the control or eradication of the pest or disease.
 - (4) An inspector may revoke or vary a permit at any time by notice in writing to the holder.
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- (5) If a permit given under this section is revoked the holder must, upon request by an inspector, immediately deliver the revoked permit to the inspector.

20. Declaration of restricted area 5

- (1) If the Minister reasonably believes or suspects that there is a possibility that an exotic pest or disease is present in or may be introduced into any area within Victoria, the Minister may by order published in the Government Gazette— 10
- (a) declare the area to be a restricted area; and
- (b) specify any prohibitions, restrictions and requirements which are to operate in the restricted area.
- (2) The order must identify the classes or descriptions of plants, plant products, used packages, used agricultural equipment or soil that are affected by it. 15
- (3) The Minister must ensure that notice of an order declaring a restricted area is published in a newspaper circulating generally in the vicinity of the area. 20

21. Permits for activity in restricted area

- (1) A person who knows, or has reason to believe, that any area has been declared to be a restricted area must not— 25
- (a) cause or permit the movement of any plants, plant products, used packages, used agricultural equipment, or soil to which the declaration of the restricted area applies into, within or from that area; or 30
- (b) contravene any prohibition, restriction or requirement specified in the order which declared the restricted area—

unless the person is authorised to do so under a permit issued by an inspector and complies with any conditions set out in the permit.

Penalty: 100 penalty units.

- 5 (2) An inspector may issue a permit for the purposes of this section—
- (a) subject to any conditions; and
 - (b) to be effective for any period of time—
- that the inspector specifies in the permit.
- 10 (3) Without limiting sub-section (2), an inspector may issue a permit subject to any conditions relating to the control or the eradication of the pest or disease.
- (4) An inspector may revoke or vary a permit at any time by notice in writing to the holder.
- 15 (5) If a permit given under this section is revoked the holder must, upon request by an inspector, immediately deliver the revoked permit to the inspector.

22. Further powers under orders

- 20 (1) Without limiting the powers of the Minister under sections 17 and 20, an order declaring a quarantine area or a restricted area may—
- (a) prohibit the removal from the declared area of—
 - 25 (i) any plant or plant product of a species, kind or variety;
 - (ii) any used package or used agricultural machinery;
 - 30 (iii) any soil—specified in the order that might, in the opinion of the Minister, transmit an exotic pest or disease;
 - (b) require owners or occupiers of any place within the area to take measures, including the
- 35 destruction of plants and plant products, specified in the order that are, in the opinion of

- the Minister, necessary for the containment, eradication or control of the pest or disease;
- (c) require owners or occupiers of places within specified portions of the area to take more stringent measures (including the destruction of plants and plant products), as specified in the order, than the owners or occupiers of other places within the declared area; 5
- (d) prohibit the planting and propagation of plants or plant products, or plants or plant products of a specified species, kind or variety within the declared area during a period specified in the order; 10
- (e) restrict the purposes for which plants, plant products, used packages or used agricultural equipment may be used; 15
- (f) require plants, plant products, used packages or used agricultural equipment to be subject to a specified treatment or a specified course of treatment or requiring other action of a specified kind to be taken for the purpose of controlling pests or diseases; 20
- (g) require plants, plant products, plant refuse, used packages or used agricultural equipment to be destroyed or disposed of in a specified manner; 25
- (h) require used packages or used agricultural equipment to be cleansed, disinfected or otherwise treated in a specified manner;
- (i) require plants, plant products or any place to be identified in a specified manner; 30
- (j) control or prohibit the movement of specified plants, plant products, used packages, used agricultural machinery or soil in the area;
- (k) require plants and plant products suspected of being affected by an exotic pest or disease to be kept in a place which is separate from unaffected plants or plant products; 35
- (l) control or prohibit the removal of specified plants, plant products, used packages, used

agricultural machinery or soil from the whole or part of the area;

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(m) specify tests or treatments to be applied to plants, plant products, used packages, used agricultural equipment or soil;

(n) specify tests or treatments to be applied to a place whether or not there are any plants growing there;

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(o) apply to the whole or any part of a quarantine area or a restricted area.

(2) An order may authorise an inspector to issue any directions to any person to do any of the things specified in sub-section (1).

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(3) A person must not contravene any written direction of an inspector under sub-section (2).

Penalty: 50 penalty units.

23. Duration of orders

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(1) An order under this Division remains in force for a period of 12 months or any shorter period that is specified in the order, unless sooner revoked.

(2) The Minister may from time to time, by notice published in the Government Gazette, extend the duration of an order for any period not exceeding 12 months.

25

Division 3—Importation Orders

24. Border security

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(1) If the Minister reasonably suspects an exotic disease or pest exists in Australia but outside Victoria, the Minister may, by order, prohibit absolutely, or impose conditions upon, the entry or importation into Victoria of plants, plant products, used agricultural equipment, used packages or soil.

(2) Without limiting sub-section (1), an order—

(a) may prohibit or restrict the entry or importation into Victoria of any kind of plants, plant products, used agricultural equipment, used packages or soil except at places specified in the order; and 5

(b) may specify tests or treatment to be applied to any kind of plants, plant products, used agricultural equipment, used packages or soil.

25. *Contravention of importation order* 10

A person who causes, permits or assists any plant, plant product, used agricultural equipment, used package or soil to enter or be imported into Victoria, knowing that in doing so the person contravenes an importation order under section 24 is guilty of an offence and liable to a penalty not exceeding 200 penalty units. 15

26. *Notification of importation order*

The Minister must ensure that notice of an importation order under section 24 is published in the Government Gazette as soon as practicable after the making of the order. 20

27. *Duration of importation order*

(1) An importation order under section 24 remains in force for a period of 12 months or any shorter period that is specified in the order, unless sooner revoked. 25

(2) The Minister may from time to time, by notice published in the Government Gazette, extend the duration of an order for any period or periods not exceeding 12 months. 30

Division 4—Exotic Disease Agents

28. Possession or administration of exotic disease agents

- (1) A person must not—
- (a) possess an exotic disease agent; or
 - 5 (b) administer or release an exotic disease agent, or cause or permit the administration or release of an exotic disease agent; or
 - (c) threaten to release or administer an exotic disease agent.
- 10 Penalty: 200 penalty units.
- (2) Sub-section (1) (a) and (b) does not apply to a person who has the authority of the Secretary to be in possession of an exotic disease agent for the purposes of research.
- 15 (3) In this section, “**exotic disease agent**” means any exotic pest or disease organism or any plant or plant product affected by an exotic pest or disease.

Division 5—Testing

29. Testing for exotic pests or diseases

- 20 (1) The Secretary may direct any person to have carried out, at a laboratory or place nominated by the Secretary, a specified examination of any plant or plant product owned by or in the possession or control of that person.
- 25 (2) The direction may require the taking, delivery and examination of samples from the plant or plant product.
- (3) The direction must be in writing.
- 30 (4) A person given a direction under this section must comply with it.
- Penalty: 50 penalty units.

PART 4—PLANTS AND PLANT PRODUCTS**Division 1—Seeds****30. Application**

- (1) This Division only applies to seeds sold or intended for sale for the purpose of sowing. 5
- (2) This Division does not apply to seeds used or intended to be used for experimental or breeding purposes authorised by the Minister.
- (3) Section 31 does not apply to a sale of seeds if—
- (a) the seller is the grower of the seeds and is not in the business of producing seeds for sale for the purpose of sowing; and 10
 - (b) the seeds are for the use of the purchaser; and
 - (c) the seeds are seeds of wheat, barley, oats, cereal rye, triticale or any other prescribed kinds of seeds. 15
- (4) Nothing in sub-section (3) exempts from section 31 a sale of seeds if the seeds are sold as seeds which have been certified in accordance with a seed certification scheme approved under section 40. 20
- (5) This Division applies to seeds supplied to a grower under a written agreement for the growing of a crop to be purchased in whole or part by the supplier of the seeds and, for the purposes of this Division, the supplier is to be treated as the seller and the grower is to be treated as the purchaser. 25

31. Labelling of seeds

- (1) A person must not sell seeds contained in a package unless—
- (a) at the time of sale or delivery there is clearly written or printed on the package, or on a label securely attached to the package, a statement setting out the particulars referred to in sub-section (2); and 30

(b) the seeds comply with the particulars set out in the statement.

Penalty: 50 penalty units.

5

(2) The statement referred to in sub-section (1) must include—

(a) the following—

10

(i) in respect of each kind of seed contained in the package in a proportion of or greater than that prescribed for that kind—

(A) the name of that kind;

(B) the proportion expressed as prescribed of pure seed of that kind in the package; and

15

(C) the particulars of the germination of the seeds expressed as prescribed;

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(ii) in respect of any seeds contained in the package which are not named under sub-paragraph (i) the prescribed description of the seeds and the proportion in aggregate of the seeds in the package expressed as prescribed;

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(iii) the lot designation and code or mark required by the regulations relating to the source of the seeds contained in the package;

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(iv) any chemical treatment of the seeds contained in the package that the seller has authorized or of which the seller is aware;

(v) in respect of seeds sold in packages the contents of which are less than the prescribed weight or value the words that are prescribed to indicate the month and year before which the seeds should be planted;

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(vi) any other particulars that are prescribed; or

(b) any of the particulars referred to in paragraph (a) that may be prescribed in any prescribed case or class of cases.

- (3) If seeds—
- (a) being the whole of a lot of seeds; or
 - (b) being part of a lot of seeds sold separately from the lot—
- are sold in a quantity greater than 2 tonnes or 50 packages, it is sufficient compliance with sub-section (1) if—
- (c) the seeds are identified with a lot designation branded on the package containing the seed or printed on a label attached to the package; and
 - (d) at the time of sale the seller gives or sends to the purchaser an advice note containing a statement setting out the particulars referred to in sub-section (2) in respect of the lot of seeds.
- (4) A person must comply with the Rules of the International Seed Testing Association, when—
- (a) taking a sample of the seeds for examination; and
 - (b) conducting the examination—
- for the purposes of this section.

32. Sale of prohibited seeds

A person must not sell any seeds that—

- (a) are declared by Order in Council to be prohibited seeds; or
- (b) are mixed with any seeds that are declared by Order in Council to be prohibited seeds.

Penalty: 50 penalty units.

Division 2—Fruit, Vegetable and Nuts

33. Application

Nothing in this Division applies to fruit, vegetables or nuts sold for processing, repackaging, stock food or for any use other than for human consumption.

34. Packages to be sound and clean

(1) A person must not pack for sale or sell any fruit, vegetables or nuts in a package unless the package is clean and in good repair and in the case of—

5

(a) bags and sacks, the package is free of patches; and

(b) in the case of fibreboard or expanded polystyrene packages, the packages—

10

(i) have not been used before; or

(ii) have been reconditioned so as not to be readily distinguishable from a package that has not been used before.

Penalty: 50 penalty units.

15

(2) A person must not pack for sale or sell any bulb, root or tuber vegetable in a wooden package which has been used before.

Penalty: 50 penalty units.

35. Marking or labelling where produce grown

20

(1) A person must not pack for sale or sell any fruit, vegetables or nuts in a package unless—

(a) the outside of the package; or

(b) a label or ticket affixed to the outside of the package; or

25

(c) in the case of a transparent package, a label or ticket placed inside the package which can be read from the outside—

is legibly marked with—

(d) the kind of fruit, vegetable or nut; and

30

(e) in the case of prescribed fruit, vegetables or nuts grown in Australia, the name and postcode of the city or town nearest to the locality where the fruit, vegetables or nuts were grown; and

(f) in the case of fruit, nuts or vegetables grown outside Australia or New Zealand, the name of the country where the fruit, vegetables or nuts were grown.

Penalty: 50 penalty units. 5

(2) A person must not display for sale in a lot, fruit, vegetables or nuts that have been grown outside Australia or New Zealand unless there is displayed with the fruit, vegetables or nuts a ticket legibly marked with the name of the country where the fruit, vegetables or nuts were grown. 10

Penalty: 50 penalty units.

36. Foreign substances

A person must not pack for sale or sell any fruit, vegetables or nuts in a package if the mass of any foreign substance in the package exceeds 0.5% of the total mass of fruit, vegetables or nuts in the package. 15

Penalty: 50 penalty units.

37. Packing to be uniform

A person must not pack for sale or sell any fruit, vegetables or nuts contained in a package or comprised in any lot unless the fruit, vegetables or nuts are so packed, stacked or arranged that the exposed surface of each external layer is of a uniform class, and gives a true indication of— 20

- (a) the representative class of the fruit, vegetables or nuts in the package or lot; and
- (b) the manner in which the whole of the fruit, vegetables and nuts in the package or lot are packed, arranged or stacked; and 25
- (c) the presence of any foreign substance in the package or lot. 30

Penalty: 50 penalty units.

38. Description of produce

5 If a prescribed system of grade or quality description of fruit, vegetables or nuts is in operation, a person must not pack for sale or sell any fruit, vegetables or nuts in a package with a marking or label specifying or indicating a description, grade or quality of the fruit, vegetables or nuts unless the fruit, vegetables or nuts comply with that description, grade or quality.

Penalty: 50 penalty units.

10 **Division 3—Plant identification**

39. Identification of plants for propagation

15 A person must not sell any bulb, corm, tuber or plant for propagation unless it is in a package, or accompanied by a label or advice note, marked with a statement setting out—

- (a) the common description or botanical name of the bulb, corm, tuber or plant; and
- (b) the name and address of the grower or seller of the bulb, corm, tuber or plant; and
- 20 (c) if the bulb, corm, tuber or plant was grown in Australia, the post code of the city or town nearest to the locality where the bulb, corm, tuber or plant was grown.

Penalty: 50 penalty units.

25 **PART 5—CERTIFICATION SCHEMES**

40. Certification schemes

- (1) The Minister may approve schemes for testing and certifying—
 - (a) the variety or origin; or
 - 30 (b) the disease status—
- of any class or kind of plant or plant product.

- (2) If a plant or plant product has been certified in accordance with a certification scheme approved under sub-section (1) the person or body responsible for certification under the scheme must ensure that the plant or plant product is identified with a label setting out the name of the certification scheme and the body responsible for the scheme. 5
- (3) The Minister may revoke or vary an approval under sub-section (1).
- (4) The Minister must ensure that an approval under sub-section (1) or a revocation or variation under sub-section (3) is notified in the Government Gazette. 10

41. Varietal names

- (1) If a certification scheme is in operation in respect of a declared variety of plant or plant product at the time the plant or plant product is grown for sale, a person must not— 15
- (a) in any invoice, agreement, circular or advertisement relating to plant or plant product of that declared variety; or 20
- (b) on any package of plant or plant product of that declared variety or any label attached to the package—
- use or cause to be used the name of that declared variety unless the variety has been established in accordance with a certification scheme as it operated at the time the plant or plant product was grown. 25
- Penalty: 50 penalty units.
- (2) In this section “**declared variety**” means a variety of plant or plant product which the Governor in Council declares by order to be a variety of plant or plant product. 30

42. Restriction of use of certain terms

A person must not use or permit the use of the words or expressions “**certified**”, “**approved**”, “**verified**”, 35

5 or “**accredited**” or any words or expressions of similar effect if that use is intended or apparently intended to imply that any plant or plant product to which the words or expression relates is certified under or in accordance with a scheme approved under section 40—

- 10 (a) in any invoice, agreement, circular or advertisement or on any sign or notice relating to any plant or plant product;
- (b) on any package containing any plant or plant product; or
- (c) on any label attached to the package or to any plant or plant product—

15 unless the plant or plant product has been certified under or in accordance with a scheme approved under section 40.

Penalty: 50 penalty units.

PART 6—COMPLIANCE AGREEMENTS

43. *Compliance agreements*

- 20 (1) The Secretary, on behalf of the Crown may enter into a compliance agreement with a person in connection with the application of particular procedures under this Act in respect of plants, plant products, used packages or used agricultural equipment for the
- 25 monitoring or control of any pest or disease in accordance with the agreement.
- (2) The terms and conditions of a compliance agreement must be in accordance with this section.
- 30 (3) A compliance agreement may provide that in the circumstances stated in the agreement, the Secretary may, by written notice given to a party to the agreement other than the Crown, cancel the agreement or suspend its operation for a period, or until the happening of an event, stated in the notice.

- (4) A compliance agreement may include provision for the giving of security for the proper observance of the agreement by a party other than the Crown and, if security is so given under such a provision, the security may be enforced or forfeited regardless of any liability or penalty to which the person may be subject under this Act. 5
- (5) An inspector may release plants, plant products, packages or agricultural equipment to which a compliance agreement complies from seizure or detention under this Act on the basis of a certificate or assurance, given by a person authorized under the agreement to give such a certificate or assurance, that all procedures under this Act to which the agreement refers to have been complied with in respect of the plants, plant products, packages or agricultural equipment. 10
15
- (6) A party to a compliance agreement must not intentionally or recklessly fail to ensure that any requirements imposed on that party under the agreement are complied with. 20
- Penalty: 200 penalty units.
- (7) A party to a compliance agreement, other than the Crown, must pay the charges set out in the agreement for the preparation of the agreement and for ensuring the agreement is complied with. 25

PART 7—ADMINISTRATION

Division 1—General

44. *Delegations by Minister*

- (1) The Minister may by instrument delegate to any person or class of persons employed in the administration of this Act any power of the Minister under this Act except this power of delegation and the powers under sections 17, 20 and 46. 30

- 5 (2) The Minister may by instrument delegate to the Secretary the power of the Minister under section 17, subject to the condition that an order made by the Secretary under that section as delegate of the Minister must not operate for any period exceeding 7 days.

45. *Delegations by Secretary*

10 The Secretary may by instrument delegate to any person or class of persons employed in the administration of this Act any power of the Secretary under this Act except this power of delegation.

46. *Fees and charges*

15 (1) The Minister may, by notice published in the Government Gazette, fix fees and charges to be paid for anything done under this Act.

(2) The power to fix fees and charges under this section may be exercised—

20 (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and

(b) so as to make, with respect to cases in relation to which the power is exercised—

25 (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or

30 (ii) any such provision either unconditionally or subject to any specified condition.

47. Protection of persons assisting inspector

- (1) A person is not personally liable for anything done or omitted to be done in good faith at the request of an inspector to provide assistance to the inspector—
- (a) in the exercise of a power or authority of the inspector under this Act; or 5
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or authority of the inspector under this Act.
- (2) Any liability resulting from an act or omission that would, but for sub-section (1) attach to a person, attaches instead to the Crown. 10

48. Requirements for orders etc. under Part 2

- An order, direction or notice made, issued or given by an inspector, or a notice issued or given by the Secretary, under Part 2 must—
- (a) be in writing; and
 - (b) be given to or served on the person to whom it applies; and
 - (c) fix a time, of not less than 7 days, within which the order, direction or notice comes into effect or must be carried out or complied with. 20

49. Non-compliance under order

- (1) If a person fails for any reason to comply with an order of the Minister or a direction by the Secretary or an inspector or any other requirement under this Act, an inspector may cause the order, direction or requirement to be carried out. 25
- (2) The Minister may determine that all reasonable costs and expenses incurred by an inspector as a result of the failure of any person to comply with an order, direction or requirement may be recovered by the Minister from—
- (a) the person to whom the order or direction was given or of whom the requirement was made; or 35

- (b) any other person who was responsible for that person's failure to comply with the order, direction or requirement.
- 5 (3) The Minister must send a copy of a determination under sub-section (2) to the person from whom the Minister has determined that the reasonable costs and expenses should be recovered.
- (4) A person may apply for a review of the determination to the Administrative Appeals Tribunal.
- 10 (5) If a person has not lodged an application under sub-section (4) within the time allowed under section 31 (1) (c) of the **Administrative Appeals Tribunal Act 1984** the costs and expenses may be recovered by the Minister as a debt due and payable to the
- 15 Crown in any court of competent jurisdiction.

Division 2—Review of decisions

50. Review of decisions

- 20 (1) If a person is aggrieved by any decision of an inspector under section 11 or 13 to issue an order or notice, the person may, before the end of the period stated in the order or notice within which the order or notice takes effect or must be carried out or complied with, apply to the Secretary for a review of that decision.
- 25 (2) If a person is aggrieved by any decision of the Secretary under section 12 or 14 to issue or give a notice, the person may, before the end of the period stated in the notice within which the notice takes effect or must be carried out or complied with, apply
- 30 to the Minister for a review of that decision.
- (3) If a person is aggrieved by any decision of the Secretary to give a direction under section 53 (6), the person may, within 7 days after the receipt of the direction, apply to the Minister for a review of that
- 35 decision.

- (4) The Minister and the Secretary may conduct any review under this section in any manner that he or she thinks fit.
- (5) The Secretary must ensure that notice of any decision following a review by the Minister or Secretary is given or sent to the person who made the application. 5

PART 8—ENFORCEMENT

Division 1—Inspectors

51. *Inspectors*

- (1) The Secretary may, by instrument, authorise— 10
- (a) any person holding a position under the **Public Sector Management Act 1992**; or
- (b) any other appropriately qualified person—
- to be an inspector for the purposes of all or any of the provisions of this Act and in respect of all plants and plant products or any plant or plant product. 15
- (2) The Secretary, may determine the terms and conditions of authorisation of inspectors.
- (3) The Secretary may, in writing, revoke the authorisation of an inspector at any time. 20
- (4) The terms and conditions of authorisation may contain general directions as to how the inspector's powers may be exercised.
- (5) The Secretary must issue an identification certificate to each inspector which sets out the provisions of this Act and the plants and plant products the inspector is authorised to be an inspector for. 25
- (6) An inspector must, in the course of performing his or her functions under this Act, produce his or her identification certificate to any person who requests its production. 30

Division 2—General powers of inspector

52. *General powers of inspectors*

- 5 (1) An inspector may for the purposes of exercising any power conferred on the inspector by this Act or determining whether this Act is being or has been complied with—
- 10 (a) at any reasonable time enter and inspect any place, other than premises being used as a residence, which the inspector reasonably believes is being kept for the propagation, sale, storage, delivery, treatment, packaging or preparation for sale of any plants or plant products and inspect any plants, plant products or used packages found at that place;
- 15 (b) stop any vehicle the inspector reasonably believes or suspects is being used to transport plants or plant products and enter the vehicle and examine any plants or plant products found in the vehicle;
- 20 (c) require the driver or person in charge of any vehicle to present the vehicle at some other reasonable time and place for inspection by an inspector;
- 25 (d) require a person—
- (i) to answer a question to the best of that person's knowledge, information and belief;
- (ii) to take reasonable steps to provide information;
- 30 (e) require a person to produce any document that the inspector reasonably requires for ascertaining whether this Act is being complied with, and—
- (i) examine that document; and
- 35 (ii) make copies of it or take extracts from it; and

- (iii) remove the document for as long as is reasonably necessary to make copies or take extracts;
- (f) inspect, count, examine or mark for identification, any plant, plant product or used package or used agricultural equipment or soil; 5
- (g) require any person who appears to be in charge, for the time being, of plants or plant products to produce any package in which the plants or plant products are contained and to permit the inspector to open and inspect the package or the plant or plant products and to take a sample of the plants or plant products in accordance with this Act; 10
- (h) take and remove for examination samples of or from, or specimens of, any used package or used agricultural equipment or soil which the inspector reasonably believes is affected by a pest or disease; 15
- (i) submit any sample or specimen taken in accordance with this Act to a laboratory or place approved by the Secretary for examination; 20
- (j) attach a warning to or mark in the prescribed manner any package containing plants or plant products or any plants or plant products that are seized or detained pursuant to this Act indicating that the package, plants or plant products do not comply with this Act. 25
- (2) An inspector may, in performing any function under this Act, make use of any assistants whose help is reasonably required to perform that function. 30
- (3) An inspector may not exercise any powers under this Act if the inspector fails to produce, on request, his or her identification certificate for inspection by the occupier of the place or the person in charge or apparent control of the plant, plant product, package or agricultural equipment. 35
- (4) If, for the purpose of any inspection, an inspector opens a package containing plants or plant products

the inspector must, at the completion of the inspection, fasten, secure or seal the package.

53. *Inspector's powers of detention and seizure*

- (1) An inspector may detain or seize—
- 5 (a) any plant, plant product or used package, if he or she is satisfied that the importation of that plant, plant product or package into Victoria is prohibited;
 - 10 (b) any plant or plant product if he or she is satisfied that the sale of the plant or plant product is prohibited;
 - (c) any plant or plant product if he or she is satisfied that the plant or plant product is affected by a pest or disease;
 - 15 (d) any plants or plant products which are seeds if he or she is satisfied that the package in which they are contained does not comply with this Act.
- (2) If an inspector detains or seizes any plants or plant products (whether contained in a package or not) the inspector must immediately—
- 20 (a) give a notice of the detention or seizure including a statement of reasons for detaining or seizing the plants or plant products to—
 - 25 (i) the owner or consignor, if the name and address of the owner or consignor appear on the package enclosing the plant or plant product or any label attached to the package and the address is an address in Victoria; and
 - 30 (ii) the person in whose possession the plants or plant products were found, if the name and address of the owner or consignor do not appear on the package enclosing the plants or plant products or any label attached to the package or, if so appearing, the address is not an address in Victoria; and
 - 35

- (b) take and send to a laboratory or place approved by the Secretary for examination the plants or plant products or a sample of the plants or plant products.
- (3) A person must not remove the whole or any part of the plants or plant products detained or seized while the detention or seizure notice remains in force except on the written authority or direction of an inspector or the Secretary. 5
- Penalty: 50 penalty units. 10
- (4) If the results of the examination of the plants or plant products or the sample sent to the laboratory or place show that the plants or plant products are not affected by a pest or disease and that their sale or importation is not prohibited under this Act, the inspector must immediately release or return the plants or plant products to the owner or consignor or the person in whose possession the plants or plant products were found (whichever is appropriate). 15
- (5) If the results of the examination of the plants or plant products or the sample sent to a laboratory or place by an inspector indicate that the plants or plant products are affected by a pest or disease or that their importation or sale is prohibited under this Act an inspector must— 20
- (a) in writing inform the owner or consignor or person in whose possession the plants or plant products were found (whichever case is appropriate) of the results; 25
- (b) if the plants or plant products are not already the subject of a detention or seizure notice, detain or seize the plants or plant products in accordance with sub-section (2) except the requirement for taking any further sample of the plants or plant products; and 30
- (c) after consultation with the owner or consignor or person in possession of the plants or plant products and within 30 days after writing to that person under paragraph (a), submit a report of 35

the results to the Secretary recommending the action that the owner or consignor or person in possession of the plants or plant products should be required to take—

5 and the plants or plant products shall not be released
from detention or seizure until the Secretary receives
the declaration required by sub-section (7).

10 (6) The Secretary, after considering the report and
recommendation of an inspector, must serve on, or
send to, the owner, consignor or person in charge a
direction requiring the owner, consignor or person in
charge to take any action which the Secretary
considers necessary to prevent any further
contravention of this Act.

15 (7) If a person—
(a) receives a direction under sub-section (6) and
has not lodged an application in accordance with
section 49; or
20 (b) has lodged an application in accordance with
section 49 and has received a notice of the
Minister's decision in respect of the application
which requires action on the part of the owner,
consignor or person in charge—

the person must—

25 (c) comply with the direction or decision; and
(d) within 7 days of the compliance make a
statutory declaration that the person has
complied with the direction or decision and send
it to the Secretary.

30 (8) Nothing in this section limits an inspector's power to
take legal proceedings in respect of any package,
plant or plant product found not to comply with this
Act.

54. *Inspector's powers of detention*

35 (1) An inspector may detain any package containing
plants or plant products—

- (a) if the plants or plant products do not comply with the particulars set out on the package or on a label attached to the package or an advice note accompanying the package;
- (b) if the package or a label attached to the package or an advice note accompanying the package does not comply with the requirements of this Act—

for a period not exceeding 48 hours to complete an inspection and examination of the package, the label or advice note, or the plants or plant products contained in the package.

- (2) The inspector must give the owner or consignor of the package notice, orally or in writing, that the package is being detained under this section.
- (3) The package and any plant or plant products contained in the package, are at all times during the detention period kept at the risk and the cost and expense of the owner or consignor of the packages, plant or plant products.
- (4) A person must not remove any package or the whole or any part of any plant or plant product detained in accordance with this section except with the written authority of an inspector or the Secretary.

Penalty: 50 penalty units.

55. *Procedures on taking samples*

- (1) If an inspector proposes to take a sample, the inspector must—
- (a) pay or tender to the owner the current market value of the sample; and
- (b) if the plants or plant products are kept for retail sale in an unopened package, buy the whole package unless a sample can be removed in a manner which leaves the package fit for sale without relabelling or repacking ; and

- 5
- (c) advise the owner or the person having the charge of the plants or plant products, if practicable prior to taking the sample, that it is detained for the purpose of examination; and
 - (d) divide the sample into 3 parts and give 1 part to the owner and retain 1 part for examination and 1 part untouched for future comparison.

56. *Power to enter private property to lay baits etc.*

- 10
- (1) An inspector may enter land in a control area—
 - (a) after giving 24 hours notice to the occupier; or
 - (b) if the occupier consents to the entry—and—
 - (c) apply any bait; or
 - (d) instal, inspect or retrieve any lure, bait, trap or
- 15
- (1) An inspector may enter land in a control area—
 - (a) after giving 24 hours notice to the occupier; or
 - (b) if the occupier consents to the entry—and—
 - (c) apply any bait; or
 - (d) instal, inspect or retrieve any lure, bait, trap or any other equipment—to monitor, control or eradicate any pest or disease.
- 20
- (2) An inspector cannot under this section enter any building or structure occupied as a residence unless the occupier consents.
 - (3) Entry under this section must be at a reasonable time.

57. *Road barriers*

- 25
- (1) Without limiting but for better enabling the exercise by an inspector of his or her powers under this Part to stop, detain and enter any vehicle, the Minister may cause to be erected and maintained or placed on or near any public highway—
- 30
- (a) any road barrier capable of being closed, lowered or placed upon or across the public highway or any part of it in the path of any vehicle travelling on the highway;
 - (b) notices, signs, lights and other devices to warn users of the highway of the presence upon the highway—
 - (i) of any road barrier; or

- (ii) of any inspector exercising his or her powers of stopping and entering any vehicle.
- (2) Despite any Act or law to the contrary the operation by any inspector, or by any person under the direct supervision and control of any inspector, of any road barrier and the placing by any inspector or any such person of any notice, sign, light or other device purporting to be erected, maintained or placed under sub-section (1) upon or across any public highway or any part of a highway is not an unlawful obstruction of or interference with the public highway or the use of the highway. 5
10
- (3) If any notice or sign warning of the presence of a road barrier upon the highway is displayed to traffic approaching the road barrier, the notice or sign constitutes and is to be treated as an order addressed by the inspector operating the road barrier or causing the road barrier to be operated to the driver of any vehicle approaching the road barrier to stop the vehicle at or near and before reaching the road barrier and to keep the vehicle stationary until permitted by an inspector to proceed. 15
20
- (4) If any notice or sign warning of the presence upon the highway of an inspector exercising powers of stopping and entering any vehicle is displayed to traffic approaching the inspector, the notice or sign constitutes and is to be treated as an order addressed by the inspector to the driver of any vehicle approaching the inspector to stop the vehicle near the inspector and before reaching the inspector and keep the vehicle stationary until permitted by the inspector to proceed. 25
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- (5) Without limiting sub-section (4) any inspector may order the driver of a vehicle to stop the vehicle whether at or near a road barrier or otherwise, by spoken word, by any recognised hand signal or by any other prescribed signal. 35

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- (6) The driver of a vehicle who fails to stop the vehicle and keep the vehicle stationary until permitted to proceed when ordered to do so by an inspector is guilty of an offence and liable to a penalty of not more than 50 penalty units.
- 10
- (7) The driver of any vehicle or any other person who wilfully or negligently damages or interferes with any road barrier, notice, sign, light or other device erected and maintained under this section is, in addition to any other penalty which may be imposed upon that person, liable to the Crown for the cost of repairing or replacing the road barrier, notice, sign, light or other device.

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**Division 3—Additional powers of inspectors for exotic
pests and diseases**

58. Search and entry and other powers

- 20
- (1) For the purpose of exercising the powers of an inspector under this Act relating to exotic pests or diseases, an inspector, with or without assistants, may do any of the following—
- (a) enter and search any place other than a residence;
- (b) with the consent of the occupier enter and search any residence;
- 25
- (c) stop, board, enter, search or detain any vehicle;
- (d) break open and search any box, container, package or receptacle (including any place that could be used as a receptacle);
- 30
- (e) inspect, count, examine, mark for identification, examine, fumigate, treat, disinfect or take samples from any plant or plant product or any item or receptacle;
- 35
- (f) stop the movement or order the movement of any plant or plant product for the purpose of any inspection, examination, fumigation, treatment, disinfection or the taking of samples;

- (g) remove or cause to be removed to another place any plant or plant product or vehicle or any item or receptacle;
 - (h) inspect, examine, test, disinfect, fumigate or take samples from a place or vehicle. 5
- (2) An inspector may, if in the opinion of that inspector it is necessary to do so, use reasonable force to restrain a person who is apparently acting contrary to a requirement of this Act relating to exotic pests or diseases from so acting. 10

59. Power to obtain information

- (1) For the purpose of preventing, controlling or eradicating an exotic pest or disease, an inspector may do any of the following—
- (a) require a person to answer any question that the inspector reasonably believes may provide information bearing on the prevention, control or eradication of the pest or disease; 15
 - (b) require a person to state the person's name and place of residence; 20
 - (c) require a person to produce any record or other document;
 - (d) inspect and take extracts from or copies of any record or other document.
- (2) Such a requirement is not duly made unless, at the time of making the requirement, the person of whom the requirement is made has been informed by the inspector that a refusal or failure to furnish the answer, record or document, as the case may be, constitutes an offence. 25 30

Division 4—Infringement Notices

60. Power to serve a notice

- (1) If an inspector has reason to believe that a person has committed an offence against section 9 (4), 31, 32,

35, 38, 39, 41, 42 or 57 (6) or a prescribed offence against the regulations, he or she may serve an infringement notice on that person.

(2) An infringement notice may be served—

- 5
- (a) by personally serving the notice upon the alleged offender; or
 - (b) by sending the notice by post addressed to him or her at his or her last known place of residence or business.

10 **61. *Form of notice***

An infringement notice must—

- (a) be in the prescribed form; and
- (b) state the penalty fixed by the regulations for the offence; and
- 15 (c) state that if the amount of the penalty is tendered at the place referred to in the notice the matter will not be brought before the Court unless the notice is withdrawn before the end of the period specified in the notice as the time for payment of
- 20 the penalty.

62. *Withdrawal of notice*

- (1) The inspector may withdraw an infringement notice at any time within 28 days after the notice is served by serving a withdrawal notice on the alleged offender.
- 25 (2) An infringement notice may be withdrawn even if the appropriate penalty has been paid.
- (3) Once the notice of withdrawal is served, the Secretary must refund the amount of any penalty paid
- 30 on an infringement notice before it is withdrawn.

63. *Penalties to be paid for offences under infringement notices*

The penalty for an offence for which an infringement notice has been issued is the penalty prescribed by

the regulations, which must not exceed 2 penalty units and must not exceed the penalty fixed by this Act for that offence.

64. *Payment of penalty*

- (1) If the person pays the penalty shown on the infringement notice within the time shown in the notice or, if the inspector allows, at any time before the service of the summons in respect of the offence— 5
- (a) further proceedings may not be taken in respect of the offence; and 10
- (b) no conviction is to be recorded against the person for the offence.
- (2) A penalty paid under this section must be applied as if the offender had been convicted of the offence in the Magistrates' Court on a charge filed by the inspector who served the infringement notice. 15

65. *Notice not to prejudice further proceedings*

- (1) If—
- (a) a person served with an infringement notice has not paid the penalty within the time specified in the notice; or 20
- (b) an infringement notice is withdrawn—
- proceedings may still be taken or continued for the alleged offence. 25
- (2) If proceedings have been taken or continued for an alleged offence because the person has not paid the penalty specified in the infringement notice and a conviction is imposed by the court, the conviction must not be taken to be a conviction for any purpose except in relation to— 30
- (a) the making of the conviction itself; and
- (b) subsequent proceedings which may be taken in respect of the conviction itself, including proceedings by way of appeal. 35

Division 5—Provisions related to court proceedings

66. *Power to file charges under this Act*

5 A charge for an offence under this Act or under the regulations made under this Act, may only be filed by—

- (a) a member of the police force; or
- (b) an inspector authorised under section 51 (1) (a).

67. *Service of documents*

10 Except where otherwise provided for in this Act, a notice or other document authorised or required by this Act to be served on or given to a person is to be taken to have been served on or given to that person—

- (a) if it is delivered to him or her personally; or
- 15 (b) if it is left at his or her last known address, last known residence or business premises with a person apparently over 16 years of age and apparently residing or employed there; or
- (c) if it is sent to him or her by post.

20 **68. *Offences by bodies corporate***

If a body corporate is guilty of an offence against this Act any person who is concerned in or takes part in the management of that body corporate who knowingly authorised or permitted that contravention is also guilty of an offence and liable to a penalty for that offence.

25 **69. *Deemed proof with regard to samples***

30 If in any prosecution or proceeding under this Act a contravention of any of the provisions of this Act is proved in regard to any sample, the contravention is deemed to have been proved with regard to the lot from which the sample was taken.

Division 6—General**70. Evidence of certain matters**

- (1) A document appearing to be a copy of an instrument of authorisation of an inspector, approval, agreement or permit issued granted or made under this Act if accompanied by a certificate appearing to be signed by the Secretary to the effect that it is a copy is evidence and, in the absence of evidence to the contrary, is proof of the existence and contents of the original. 5 10
- (2) A certificate appearing to be signed by the Secretary to the effect that, on a date specified in the certificate, a person held or did not hold an authority under this Act specified in the certificate is evidence and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate. 15

71. Offences relating to enforcement

- (1) A person must not—
- (a) without reasonable excuse obstruct an inspector in exercising his or her powers under this Act; or 20
- (b) contravene a lawful direction, order or requirement of an inspector; or
- (c) refuse to answer a question lawfully asked by an inspector or to produce a document lawfully required by an inspector; or 25
- (d) give to an inspector any information or answer that is false or misleading; or
- (e) refuse to produce any plant, plant product, used package, used agricultural equipment or soil when lawfully requested to do by an inspector; or 30
- (f) give, procure or offer or promise any bribe, recompense, inducement or reward to influence an inspector in the exercise of his or her powers or the discharge of his or her duties under this Act or attempt to do so; or 35

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- (g) interfere with anything done by an inspector in the exercise of his or her powers under this Act; or
 - (h) include in an application or request to the Secretary under this Act a statement that he or she knows to be false or misleading in a material respect.

Penalty: 10 penalty units.

- 10
- (2) Despite anything to the contrary in sub-section (1) a person may refuse to answer an inspector's question or to produce a document to the inspector if the person believes that the answer or information in the document would tend to incriminate the person.

PART 9—REGULATIONS

15 **72. Regulations**

- (1) The Governor in Council may make regulations for or with respect to—
 - 20 (a) prohibiting or controlling the movement of plants, plant products, used packages, used agricultural equipment and soil which in the opinion of the Governor in Council are likely to spread any pests or disease;
 - 25 (b) securing the effectual treatment of plants, plant products, plant refuse, used agricultural equipment or used packages affected by or which may be affected by pests or diseases and the effectual control or eradication of any pest or disease and the destruction of any plant, plant product, plant refuse, agricultural equipment or
 - 30 package which may be affected with a pest or disease;
 - 35 (c) authorising and requiring inspectors to impose fees and charges of such amounts or rates as the Minister may determine for inspecting plants, plant products, equipment, packages or land or supervising the treatment of any plant, plant

- product, used package, used agricultural equipment or land or supervising the destruction or disposal of any plant, plant product, plant refuse, used agricultural equipment or used package or for the preparation of a compliance agreement and ensuring that the agreement is complied with; 5
- (d) exempting any person, place, plant or plant product from the application of this Act;
- (e) requirements for the packing of fruit, vegetables and nuts for human consumption for sale; 10
- (f) systems for describing the grade or quality of fruit, vegetables or nuts for human consumption for sale;
- (g) the markings to be placed on packages containing fruit, vegetables or nuts for sale and prohibiting the use of marks other than those prescribed; 15
- (h) the examination of seeds to establish the proportion of pure seeds and the germination rate of the seeds including tolerances permitted in the examination and in the publication of the results of examination; 20
- (i) regulating and controlling certification schemes approved under Part 5 and prescribing conditions under which certificates under those schemes may be issued; 25
- (j) prescribing the size, form and quality of labels required to be attached to packages of plants or plant products; 30
- (k) prescribing the manner and size of printing or writing and any particulars to be set out on any package of plants, plant products or any label to the package.
- (l) generally, any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act. 35

- (2) The regulations—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances; and
 - 5 (c) may leave any matter to be approved or determined by an inspector or the Secretary; and
 - (d) may confer powers or impose duties on any person; and
 - 10 (e) may apply, adopt or incorporate by reference any document either—
 - (i) as in force at the date of the regulations or at any date before then; or
 - (ii) wholly or in part or as amended by the regulations; and
 - 15 (f) may require any application, return or other document required by this Act to be verified by statutory declaration;
 - (g) may impose penalties not exceeding 10 penalty units for any contravention of the regulations.
- 20 (3) The regulations may be disallowed in whole or in part by resolution of the Parliament in accordance with the requirements of section 23 (2) of the **Subordinate Legislation Act 1994**.

25 **PART 10—REPEALS, AMENDMENTS AND TRANSITIONAL PROVISIONS**

73. Agricultural Industry Development Act

In the **Agricultural Industry Development Act 1990**—

- 30 (a) in section 1 (a), in sub-paragraph (v) **omit** “and”;
- (b) in section 1 (a), after sub-paragraph (v) **insert**—
“(vi) To implement or fund pest and disease control measures for the protection of agricultural commodities; and

(vii) To establish and manage funds to compensate producers for costs incurred in controlling or eradicating pests and diseases of agricultural commodities;”;

(c) in section 15 (1) after paragraph (c) **insert—** 5

“(ca) To implement or fund pest and disease control measures for the protection of the relevant commodity;

(cb) To establish and manage funds to compensate producers for costs incurred in controlling or eradicating pests and diseases;”.

74. *Repeal of plant disease control legislation*

- No. 6256. (1) **The Fruit and Vegetables Act 1958 is repealed.**
- N . 9775. (2) **The Seeds Act 1982 is repealed.** 15
- N . 6407. (3) **The Vegetation and Vine Diseases Act 1958 is repealed.**

75. *Consequential amendment of other Acts*

N . 6254. In section 100 (3) of the **Forests Act 1958** for “**Vegetation and Vine Diseases Act 1958**” substitute “**Plant Health and Plant Products Act 1995**”. 20

76. *Transitional and saving provisions*

- (1) Despite the repeal of section 13 of the **Seeds Act 1982**, any seed certification scheme approved and implemented under section 13 (1) of that Act or any seed certification scheme approved under section 13 (2) of that Act and in force immediately before the commencement of this section continues in operation under this Act and is deemed for the purposes of this Act to be a seed certification scheme approved under section 40. 25
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- (2) Despite the repeal of section 14A of the **Vegetation and Vine Diseases Act 1958**, any scheme prescribed by the Minister or recognised by the Minister under that section as a scheme for the purpose of testing and certifying trees, plants or vegetation in relation to freedom from or resistance to or immunity to disease and in force immediately before the commencement of this section continues in operation under this Act and is deemed for the purposes of this Act to be a certification scheme approved under section 40.
- 15
- (3) Despite the repeal of sections 5, 5A and 25 of the **Vegetation and Vine Diseases Act 1958**, any proclamation made by the Governor in Council under any of those sections and in force immediately before the commencement of this section continues in force under this Act and is deemed for the purposes of this Act to be an order declaring a control area under Part 2.
- 20
- (4) Despite the repeal of sections 33 and 44 of the **Vegetation and Vine Diseases Act 1958**, any order made by the Governor in Council under either of those sections and in force immediately before the commencement of this section continues in force under this Act and is deemed to be an order declaring a control area under Part 2.
- 25
- (5) Despite the repeal of the **Fruit and Vegetables Act 1958** a person must not sell fruit or vegetables whether or not they have been packed unless the fruit or vegetables have been classed and labelled in accordance with the Export Control (Fresh Fruits and Vegetables) Orders as amended and in force from time to time made under the Export Control Act 1982 of the Commonwealth.
- 30
- (6) Sub-section (5) ceases to have effect on 30 June 1997 unless the Governor in Council makes an order declaring that the sub-section ceases to have effect before that date.
- 35

- (7) Nothing in this section affects or takes away from the **Interpretation of Legislation Act 1984.**