

Plant Health and Plant Products Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 sets out the purposes of the Bill.

Clause 2 is the commencement provision. The preliminary formal provisions of the Act and Part 5 come into operation on Royal Assent. The remaining provisions come into operation on a day or days to be proclaimed. If a provision to be proclaimed does not come into operation within 12 months beginning on, and including, the day on which the Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

Clause 3 defines various terms used in the Bill.

Clause 4 binds the Crown in right of Victoria and all its other capacities.

Clause 5 enables the Governor in Council to make Orders for the purposes of the Act.

PART 2—PLANT PEST AND DISEASE CONTROL

Division 1—General controls

Clause 6 provides that a person must not import into Victoria from a prescribed State or Territory or a prescribed part of another State or Territory any prescribed plant, plant product, used package, used agricultural equipment or soil unless the person has sent a plant health declaration or plant health certificate to the Secretary and if required by the regulations or an inspector, has presented the plant, plant product, used package, used agricultural equipment or soil for inspection, examination and treatment at a prescribed place or a place nominated by an inspector.

A person must not import into Victoria any plant or plant product affected by any disease or pest except for scientific purposes and with the written consent of the Minister.

Clause 7 provides that a person who knows or suspects that an exotic pest or disease or a notifiable pest or disease is present in any plant or plant product owned by, in the possession, control or charge or on land owned or occupied by that person must notify an inspector of the pest or disease.

Clause 8 provides that a person must not sell any plant or plant product, other than seeds, which the person knows or may be reasonably be expected to know is affected by any pest or disease or any seeds for sowing that the person knows or reasonably may be expected to know are affected by any disease and the affected seeds form a proportion of the total quantity of seeds that exceeds the proportion prescribed.

Division 2—Control areas

Clause 9 enables the Governor in Council to declare any place to be a control area and to specify any prohibitions, restrictions or requirements in respect of that area.

Division 3—Control measures

Clause 10 provides that any plant, plant product, used package, used agricultural equipment or soil which is introduced into the State, a control area or a quarantine area or restricted area contrary to any provisions of the Act, an order or regulations made under the Act may be treated, destroyed or otherwise disposed of as directed in writing by the Minister.

The Minister must cause a copy of the direction to be given to the owner before the direction is carried out unless the owner cannot be located and the Minister considers that the direction must be carried out.

Clause 11 enables an inspector who reasonably suspects that a plant or plant product is affected by a pest or disease to seize the plant or plant product and apply any prescribed physical or chemical treatment or dispose of it in a manner which will prevent the spread of the pest or disease. The inspector must notify the owner of any treatment or disposal. If the owner cannot be located, the inspector may with the approval of the Secretary destroy or otherwise dispose of it.

Clause 12 provides that an inspector who reasonably suspects that any plants or plant products affected by any disease or pest are on any land and he or she reports it to the Secretary, the Secretary may give the owner or occupier of the land a notice prohibiting or restricting, subject to conditions, the removal of any plant, plant product, used package, used agricultural equipment or soil from the specified land or requiring that the owner or occupier destroy or cause the destruction of those plants or plant products.

Clause 13 provides that if an inspector 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 to prevent the outbreak or spread of the pest or disease.

Clause 14 provides that 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 in charge or control 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. A person served with a notice must treat the package or dispose of the plant refuse, package or soil in accordance with the notice.

PART 3—EXOTIC PESTS AND DISEASES

Division 1—Preliminary

Clause 15 provides that any function or power in the Act in relation to an exotic pest or disease applies to all land and places whatever their status and whether or not they are the property of the Crown or vested in any statutory authority.

In the performance of any such function or the exercise of any such power in relation to any land, it is not necessary to obtain the consent of any person or body, or to meet any requirements other than the requirements of this Act.

Clause 16 provides that any function or power in this Act in relation to an exotic pest or disease applies to all plants and plant products whatever their status, and whether or not they are the property of the Crown or any other person.

In the performance of any such function or the exercise of any such power in relation to any plant or plant product, it is not necessary 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

Clause 17 provides that if the Minister reasonably suspects that an exotic pest or disease is present in any place within Victoria, the Minister may by Order declare that place to be a quarantine area and specify any prohibitions, restrictions or requirements which are to operate in respect of that area. The order must identify the classes or descriptions of plants, plant products, used packages or used agricultural equipment or soil that are affected by it.

Clause 18 provides that the Minister must ensure that a notice declaring a quarantine area is published in the Government Gazette and in a newspaper circulating generally in the area. Written notice of an order must be given to the owner or person in charge or apparent control of any place to which the notice relates.

Clause 19 prohibits the movement of any person, plant, plant product, used package, vehicle, used agricultural equipment or soil into or out of a quarantine area, except in accordance with a permit issued by an inspector.

Clause 20 provides that if the Minister 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 declare the area to be a restricted area and specify any prohibitions, restrictions and requirements which are to operate in the area. The order must identify the classes or descriptions of plants, plant products, used packages, used agricultural equipment or soil that are affected by it. The Minister must ensure that notice of an order declaring a restricted area is published in the Government Gazette and in a newspaper circulating generally in the area.

Clause 21 prohibits the movement of any plants, plant products, used packages, used agricultural equipment, soil or vehicle carrying any plants, plant products, used packages, agricultural equipment or soil into, within or from the area except in accordance with a permit issued by an inspector.

Clause 22 provides for further powers of the Minister in relation to orders declaring a quarantine area or a restricted area.

Clause 23 provides that an order made under this Division remains in force for a period of 12 months or any shorter period that is specified.

Division 3—Importation Orders

Clause 24 provides that if the Minister reasonably suspects that 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.

An order may prohibit or restrict the entry or importation into Victoria of any specified plants, plant products, used agricultural equipment, used packages or soil except at places specified in the order and may specify tests or treatment to be applied to any kind of plants, plant products, used agricultural equipment, used packages or soil.

Clause 25 makes it an offence for a person to contravene an importation order.

Clause 26 requires an importation order to be published in the Government Gazette as soon as practicable after its making.

Clause 27 provides that an importation order remains in force for a period of 12 months or any shorter time specified in the order, and may be extended for further periods not exceeding 12 months.

Division 4—Exotic Disease Agents

Clause 28 provides that a person must not possess an exotic disease agent, must not administer or release or cause or permit the administration of an exotic disease agent. These provisions do 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.

Division 5—Testing

Clause 29 enables the Secretary to direct any person to have carried out at a laboratory or place nominated by the Secretary specified examinations of any plant or plant product owned by or in the possession or control of that person. A direction may require the taking, delivery and examination of samples from the plant.

PART 4—PLANTS AND PLANT PRODUCTS

Division 1—Seeds

Clause 30 specifies circumstances where this Division applies. It only applies to seeds sold or intended for sale for the purpose of sowing. It does not apply to seeds used or intended to be used for experimental or breeding purposes authorised by the Minister or a sale of seeds in specified circumstances.

Clause 31 prohibits a person from selling seeds contained in a package unless the seeds are labelled in accordance with a statement of particulars and the seeds comply with those particulars set out in the Act and regulations.

Clause 32 provides that a person must not sell any seeds that are declared to be prohibited seeds or are mixed with any seeds that are declared to be prohibited seeds.

Division 2—Fruit, Vegetables and Nuts

Clause 33 specifies circumstances where this Division does not apply. It does not apply to fruit, vegetables or nuts sold for processing, repackaging, stock food or for any use other than for human consumption.

Clause 34 provides that a person must not pack for sale or sell any fruit, vegetables or nuts unless the package is sound and clean.

Clause 35 provides that a person must not pack for sale or sell any fruit, vegetables or nuts in packages unless the package is marked and labelled to indicate where the produce is grown.

Clause 36 provides that a person must not pack for sale or sell any fruit, vegetables or nuts if the foreign substance in the package exceeds the specified amount.

Clause 37 provides that a person must not sell any fruit, vegetables or nuts unless the packing is of uniform class.

Clause 38 provides that 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 in a package the fruit, vegetables or nuts with a marking or label specifying the description of the produce unless the produce complies with that description.

Division 3—Plant and plant product identification

Clause 39 provides that a person must not sell any prescribed plant or plant product for propagation unless it is in a package or accompanied by a label or advice note marked with a statement of description.

PART 5—CERTIFICATION SCHEMES

Clause 40 provides for the Minister to approve schemes for testing and certifying the variety or origin or the disease status of any kind or class of plant or plant product.

Clause 41 provides that if a certification scheme is in force in respect of a declared variety of plant or plant product, a person is prohibited from using the name of a declared variety in any invoice, agreement, circular or advertisement or on any package 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.

Clause 42 provides for a restriction of use of certain terms unless the plant or plant product has been certified in accordance with a scheme approved under section 40.

PART 6—COMPLIANCE AGREEMENTS

Clause 43 provides that the Secretary, 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, packages or agricultural equipment for the monitoring or control of any pest or disease in accordance with the agreement.

A party to a compliance agreement must pay the charges set out in the agreement for the preparation of the agreement and for ensuring the agreement is complied with.

PART 7—ADMINISTRATION

Division 1—General

Clause 44 enables the Minister to delegate to any person employed in the administration of the Act any power of the Minister under the Act except the power of delegation, the powers to declare quarantine and restricted areas in respect of exotic pests or diseases and the power to fix fees.

The Minister may delegate to the Secretary the power of the Minister to declare a quarantine area provided that such an order must not operate for any period exceeding 7 days.

Clause 45 enables the Secretary to delegate to any person employed in the administration of the Act any power of the Secretary under the Act

Clause 46 enables the Minister by notice published in the Government Gazette to fix fees to be paid under the Act.

Clause 47 provides an indemnity for any person assisting an inspector in exercising any power or authority under this Act.

Clause 48 provides that an order, direction or notice made by an inspector or a notice given by the Secretary under Part 2 must be in writing and be given or served on the person to whom it applies and 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.

Clause 49 provides 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 the person to whom the order or requirement was given or made or any other person who was responsible for that person's failure to comply with the order, direction or requirement.

A person may apply to the Administrative Appeals Tribunal for a review of the determination.

If a person has not lodged an application to the Administrative Appeals Tribunal within the time allowed, costs and expenses may be recovered by the Minister as a debt due to the Crown in any court of competent jurisdiction.

Division 2—Review of decisions

Clause 50 provides that 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, apply to the Secretary for a review of that decision.

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 order or notice, apply to the Minister for a review of that decision.

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 of the receipt of the direction, apply to the Minister for a review of that decision.

The Minister and the Secretary may conduct any review under this section that he or she thinks fit.

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.

PART 8—ENFORCEMENT

Division 1—Inspectors

Clause 51 enables the Secretary to authorise any person holding a position under the **Public Sector Management Act 1992** or any other appropriately qualified person to be an inspector for the purposes of all or any of the provisions of the Act and in respect of all or any plants or plant products or any plant or plant product.

The Secretary may determine the terms and conditions of authorisation of inspectors and may in writing, revoke the appointment of an inspector at any time.

Each inspector must be issued with an identification certificate which must be produced on demand.

Division 2—General powers of inspectors

Clause 52 sets out the general powers of inspectors under the Act. In particular, an inspector has powers to enter and inspect any place other than residential premises, to stop any vehicle, require a driver of any vehicle to present the vehicle for inspection, require a person to answer questions, provide information and produce documents, to deal with plants or plant products, to take samples and to conduct tests.

An inspector in performing any function under the Act may make use of any assistants whose help is reasonably required.

An inspector may not exercise any of these powers if the inspector fails to produce on request his or her identification certificate.

If an inspector opens a package for the purpose of inspection, the inspector must at the completion of the inspection, fasten, secure or seal the package.

Clause 53 sets out inspectors powers of detention and seizure of plants and plant products including procedures in relation to the giving of notice, removal and examination of plants or plant products.

Clause 54 provides for the inspectors powers of detention of any package containing plants or plant products.

Clause 55 provides for procedures on taking samples.

Clause 56 enables an inspector to enter land in a control area after giving 24 hours notice to the occupier or if the occupier consents to the entry and to apply baits. An inspector cannot enter any building or structure occupied as a residence unless the owner consents. Entry must be at a reasonable time.

Clause 57 provides that the Minister may cause to be erected and maintained road barriers, notices or signs upon or near any public highway to enable the exercise by an inspector of any powers under this Part.

Division 3—Additional powers of inspectors for exotic diseases

Clause 58 specifies the additional powers relating to exotic pests or diseases which an inspector may exercise, with or without assistants. If in the opinion of an inspector it is

necessary to do so, the inspector may use reasonable force to restrain a person who is apparently acting contrary to a requirement of the Act relating to exotic pests or diseases.

Clause 59 provides that for the purpose of preventing, controlling or eradicating an exotic pest or disease, an inspector may require a person to answer a question, state the person's name, address, require a person to produce a record or document and may inspect and take extracts from a record or document.

Such a requirement is not duly made unless the person is informed that a refusal or failure to comply constitutes an offence.

Division 4—Infringement Notices

Clause 60 enables an inspector who has reason to believe that a person has committed offences against certain specified provisions of the Act or has committed a prescribed offence against the regulations to serve an infringement notice on that person. An infringement notice may be served personally or sent by post.

Clause 61 provides that an infringement notice is to be in the prescribed form, state the penalty for the offence and set out what occurs if the penalty is paid.

Clause 62 provides for the withdrawal of an infringement notice within 28 days after service of the notice. An infringement notice may be withdrawn even if the penalty has been paid. Any penalty paid before the withdrawal of the notice is to be refunded.

Clause 63 provides that the penalty for an offence for which an infringement notice has been issued is the amount prescribed by the regulations which must not exceed 2 penalty units and the penalty fixed by the Act for that offence.

Clause 64 provides that if the penalty shown on the infringement notice is paid within the time shown on the notice, further proceedings may not be taken, and no conviction is to be recorded for the offence.

Clause 65 provides that if a person has not paid the relevant penalty within the specified time or the infringement notice is withdrawn, proceedings may still be taken or continued for the alleged offence.

Division 5—Provisions related to court proceedings

Clause 66 provides that a charge under the Act or regulations may only be filed by a member of the police or an inspector if the inspector is a person who holds a position under the **Public Sector Management Act 1992**.

Clause 67 provides that, except where other requirements apply, a notice or document under the Act which is required to be served on or given to a person, may be delivered personally, left at the person's last known address or sent by post.

Clause 68 contains provisions relating to liability for offences where a body corporate is guilty of an offence.

Clause 69 provides for proof with regard to samples.

Division 6—General

Clause 70 is an evidentiary provision relating to the proof of the existence and contents of documents issued or made under the Act.

Clause 71 specifies offences relating to the enforcement of the Act. A person may refuse to answer an inspector's question or produce a document if the person believes the answer or information would tend to incriminate the person.

PART 9—REGULATIONS

Clause 72 sets out the regulation-making powers.

The regulations may be of general or limited application, may differ in respect of time, place or circumstances, may leave any matter to be approved or determined by an inspector or the Secretary, may confer powers or impose duties, may apply, adopt or incorporate any document, may require any application to be verified by statutory declaration and may impose penalties not exceeding 10 penalty units.

The regulations may be disallowed in whole or in part by resolution of either House of Parliament.

PART 10—REPEALS, AMENDMENTS AND TRANSITIONAL PROVISIONS

Clause 73 amends the **Agricultural Industry Development Act 1990** by inserting provisions to implement or fund pest and disease control measures for the protection of agricultural commodities and to establish and manage funds to compensate producers for costs incurred in controlling or eradicating pests and diseases of agricultural commodities.

Clause 74 repeals the following Acts—

- (1) The **Fruit and Vegetables Act 1958**
- (2) The **Seeds Act 1982**
- (3) The **Vegetation and Vine Diseases Act 1958**.

Clause 75 makes consequential amendments to the **Forests Act 1958**.

Clause 76 contains transitional and savings provisions and provides that certain matters such as schemes, instruments and orders under the **Fruit and Vegetables Act 1958**, **Seeds Act 1982**, and **Vegetation and Vine Diseases Act 1958** have a continuing effect.

