

Plant Biosecurity Act 2010

No. 60 of 2010

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Victoria

Plant Biosecurity Act 2010[†]

No. 60 of 2010

[Assented to 14 September 2010]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to provide for the preventing, monitoring, controlling and eradicating of plant pests and diseases; and
- (b) to provide for the packaging, labelling and description of plants and plant products; and

(c) to facilitate the movement of plants, plant products, used packages, used equipment and earth material within, into and out of Victoria; and

(d) to repeal the **Plant Health and Plant Products Act 1995**.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision of this Act does not come into operation before 1 July 2012, it comes into operation on that day.

3 Definitions

(1) In this Act—

accredited person means a person accredited to give assurance certificates—

(a) under section 48; or

(b) by an officer or authority of a State or Territory administering a corresponding law;

agricultural equipment means any equipment used for the culture, harvesting, packing or processing of any plant or plant product and includes any vehicle;

approved inspection service means an inspection service for the time being approved under section 65;

assurance certificate means a certificate issued under section 11;

contain, in relation to a pest or disease of plants or plant products, means to restrict the spread of the pest or disease;

control, in relation to a pest or disease of plants or plant products, means to reduce the occurrence of the pest or disease;

corresponding law means an Act of another State or Territory that corresponds with this Act;

disease means—

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

(b) an exotic disease;

earth material means soil, gravel, sand or rocks;

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

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

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

exotic pest means any pest which is declared by Ministerial Order or by Order in Council to be an exotic pest;

infected place means a place declared under Part 3 to be an infected place for the containment, control or eradication of an exotic pest or disease;

inspection agent means a principal or an employee of an approved inspection service;

inspector means an inspector authorised under section 62;

kind, in relation to plants, means plants of the same botanical species;

label includes any tag or sticker;

Ministerial Order means an order made under section 6;

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;

officer—

- (a) in relation to a body corporate which is a corporation within the meaning of the Corporations Act, has the same meaning as officer of a corporation has in section 9 of that Act; and
- (b) in relation to a body corporate which is not a corporation within the meaning of that Act, means any person (by whatever name called) who is concerned in or takes part in the management of the body corporate or an employee of the body corporate;

Order in Council means an order made under section 5;

owner, in relation to land, includes—

- (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;
- (c) any joint owner and agent of the owner;

owner, in relation to any plant or plant product, except in sections 97, 99, 100, 101 and 102, includes part-owner, consignor, agent and any person for the time being in charge of the plant or plant product;

package includes—

- (a) anything in or by which a plant or plant product is contained, wrapped or packed; and
- (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
- (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;

plant health certificate means a certificate in the form approved by the Secretary issued by an inspector, inspection agent or officer of a department responsible for the agriculture of another State or Territory;

plant health declaration means a declaration in the form approved by the Secretary made by a person authorised by the Secretary to make plant health declarations;

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

plant vector, in relation to an exotic pest or disease, means any livestock or livestock product within the meaning of the **Livestock Disease Control Act 1994** that is a vector of the exotic pest or disease;

point of entry, in relation to a place, means any gate, driveway or path by which a person or vehicle may be expected to enter the place;

property identification code means a code issued by the Secretary in relation to a property under section 15 or a property identification code issued under section 9B of the **Livestock Disease Control Act 1994**;

recording includes an audio or video recording;

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 Primary Industries;

seeds includes any seeds to which or to clusters of which any fruit normally adheres, any seeds in pods or burrs normally used in agricultural practice and any seeds artificially encased;

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;

this Act includes regulations made under this Act;

used equipment means any—

- (a) used agricultural equipment; or
- (b) used roadwork equipment; or
- (c) used earthmoving equipment;

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;

variety, in relation to plants, means a plant or population of plants recognisable by agronomic, biochemical, morphological or other characters as being distinct from other plants or populations 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.

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.

5 Orders in Council

- (1) The Governor in Council may make any orders that are required for the purposes of this Act.
- (2) The orders must be published in the Government Gazette.
- (3) Without affecting the generality of subsection (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—

- (a) has not been found in Victoria; or
- (b) is being controlled, contained or eradicated in Victoria.

6 Ministerial orders

- (1) The Minister may make any orders that are permitted or required for the purposes of this Act.
- (2) Without affecting the generality of subsection (1), if the Minister is of the opinion that—
 - (a) an organism of the plant or animal kingdom (other than vertebrates); or
 - (b) any bacterium, fungus, protozoa, phytoplasma, virus or viroid; or
 - (c) a disorder, condition or cause of specified symptoms in plants or plant products—

(a *suspected exotic pest or disease*) is harmful to the growth or quality (including the commercial or marketable quality) of plants or plant products, the Minister may, by order published in the Government Gazette, declare the suspected pest or disease to be an exotic pest or disease.

- (3) An order made under subsection (2) may declare the exotic pest or disease by reference to one or both of the following—
 - (a) a general description of the organism, bacterium, fungus, protozoa, phytoplasma, virus or viroid, disorder, condition or symptoms;
 - (b) a description of the effect the suspected exotic pest or disease has on the growth or quality (including the commercial or marketable quality) of plants or plant products.

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Part 1—Preliminary

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- (4) An order under subsection (2) remains in force for 28 days after the date of making unless sooner revoked by the Minister.
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PART 2—PLANT PEST AND DISEASE CONTROL

Division 1—General controls

7 Definition

In this Division, *prescribed material* means any—

- (a) plant, plant product or plant vector;
- (b) used package or used equipment;
- (c) earth material;
- (d) beehive—

that is prescribed or of a class prescribed by the regulations for the purposes of this Division.

8 Importation of prescribed material

- (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 material; or
 - (b) introduce or bring prescribed material into any part of Victoria from another part of Victoria that is declared by order to be a restricted area; or
 - (c) cause or permit any of the things in paragraph (a) or (b) to be done—

unless the person—

- (d) if required by the regulations, has sent to the Secretary and has in the person's possession at the time that the prescribed material is delivered to the person in Victoria a copy of—
 - (i) an assurance certificate; or

- (ii) a plant health certificate; or
- (iii) a plant health declaration; or
- (e) if required by the regulations or an inspector, has presented that prescribed material for inspection, examination and treatment at a prescribed place or a place nominated by an inspector.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
60 penalty units.

- (2) A person must not knowingly, recklessly or negligently do any of the things in subsection (1)(a), (b) or (c) unless the requirements under subsection (1)(d) or (e) have been satisfied.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
240 penalty units.

9 Possession of prescribed material

- (1) A person must not have in the person's possession, custody or control for sale for the first time in Victoria any prescribed material imported, introduced or brought or caused or permitted to be imported, introduced or brought, into Victoria unless the requirements under section 8(1)(d) or (e) have been satisfied.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
60 penalty units.

- (2) A person must not knowingly, recklessly or negligently have in the person's possession, custody or control for sale for the first time in

Victoria any prescribed material imported, introduced or brought, or caused or permitted to be imported, introduced or brought, into Victoria unless the requirements under section 8(1)(d) or (e) have been satisfied.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
240 penalty units.

10 Introduction of prescribed material

(1) A person must not—

(a) import, introduce or bring into Victoria from another State or Territory any prescribed material affected by any disease or pest or any pest or any disease organism; or

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

except—

(c) for scientific purposes or purposes of protecting the environment or furthering agricultural interests; and

(d) in accordance with the written consent of the Minister.

Penalty: 20 penalty units.

(2) A person must not knowingly, recklessly or negligently do any of the things in subsection (1)(a) or (b) unless the person complies with subsection (1)(c) and (d).

Penalty: 120 penalty units.

11 Assurance certificates

An assurance certificate that is required under section 8(1)(d) in respect of prescribed material must—

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- (a) set out details of—
- (i) the person in Victoria to whom the prescribed plant material is being delivered; and
 - (ii) the grower or packer and the consignor of the prescribed material; and
 - (iii) the quantity, type, origin and destination of the prescribed material; and
 - (iv) the condition, treatment or testing of the prescribed material; and
 - (v) the accreditation number assigned to the accredited person by the Secretary or by an officer or authority of a State or Territory administering a corresponding law; and
- (b) contain any other prescribed particulars; and
- (c) be certified by the accredited person who issued the certificate verifying the details set out in paragraph (a) and any other prescribed particulars; and
- (d) be in the form approved by the Secretary.

12 Plant health certificates

A plant health certificate that is required under section 8(1)(d) in respect of prescribed material must—

- (a) set out details of—
- (i) the person in Victoria to whom the prescribed plant material is being delivered; and
 - (ii) the grower or packer and the consignor of the prescribed material; and

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- (iii) the quantity, type, origin and destination of the prescribed material; and
 - (iv) the condition, treatment or testing of the prescribed material; and
 - (b) contain any other prescribed particulars; and
 - (c) be certified by the person issuing it verifying the details set out in paragraph (a) and any other prescribed particulars; and
 - (d) be in the form approved by the Secretary.

13 Plant health declarations

A plant health declaration that is required under section 8(1)(d) in respect of prescribed material must—

- (a) set out details of—
 - (i) the person in Victoria to whom the prescribed plant material is being delivered; and
 - (ii) the grower or packer and the consignor of the prescribed material; and
 - (iii) the quantity, type, origin and destination of the prescribed material; and
 - (iv) the condition, treatment or testing of the prescribed material; and
 - (b) contain any other prescribed particulars; and
 - (c) include a declaration by the person issuing it verifying the details set out in paragraph (a) and any other prescribed particulars; and
 - (d) be in the form approved by the Secretary.
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14 No offence by reason only of transporting from a prescribed State or Territory

A person does not commit an offence under this Division by reason only of transporting into Victoria on behalf of another person any prescribed material from a prescribed State or Territory or a prescribed part of another State or Territory.

15 Property identification code

- (1) A person who owns or occupies a property on which any prescribed plant is grown must, within 30 days after the plant is prescribed or starting to be grown on the property—
 - (a) in the case of a property that does not have a property identification code, apply to the Secretary for the allocation of a code that identifies the property where the prescribed plant is being grown; or
 - (b) in the case of a property that already has a property identification code, advise the Secretary that a prescribed plant is being grown on the property.

Penalty: 60 penalty units.

- (2) An application under subsection (1)(a) must be made in a manner specified by the Secretary by notice published in the Government Gazette.
- (3) The Secretary must issue a property identification code to a person who has applied in accordance with this section.
- (4) A property identification code remains in force for any period that is specified by the Secretary with respect to the property identification code.
- (5) A person who owns or occupies a property that has a property identification code issued under this section must advise the Secretary in writing of

any change in the name, address or telephone number of the owner or occupier of that property within 30 days after the change.

Penalty: 10 penalty units.

- (6) The Secretary may maintain a database containing details of properties that have had a property identification code issued under this section.
- (7) A person must not peruse the information contained in the database referred to in subsection (6) unless the person is doing so for the purposes of administering this Act and the person is—
 - (a) an inspector; or
 - (b) authorised in writing by the Secretary to peruse the database.

16 Consent by Minister

The Minister may grant a consent for the purposes of this Division—

- (a) that applies generally to the importation, movement or possession of samples of plants or plant products from another State or Territory for diagnosis by a plant testing laboratory in Victoria except samples of plants or plant products known to be infected or infested by an exotic pest or disease; and
- (b) that is unconditional or is subject to conditions.

17 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
 - (b) on land owned or occupied by that person; or

(c) dealt with by that person as—

- (i) a consultant or contractor engaged by a person referred to in paragraph (a) or (b); or
- (ii) the owner or person in charge of a diagnostic laboratory—

the person must notify an inspector in accordance with subsection (2) or (3).

Penalty: In the case of a notifiable pest or disease, 120 penalty units;

In the case of an exotic pest or disease, 240 penalty units.

- (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 fastest means of communication available.
- (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.
- (4) In this section *notifiable pest or disease* means a pest or disease which the Governor has declared by order to be a notifiable pest or disease.

18 Prohibition on sale of diseased plants 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

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

Penalty: 60 penalty units.

Division 2—Control areas

19 Declaration of control areas

- (1) The Governor in Council may, by order—
- (a) declare any place within Victoria to be a control area; and
 - (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—
 - (i) preventing the spread of pests or diseases within the control area or from the control area to other parts of Victoria; or
 - (ii) preventing the entry of pests or diseases into the control area.
- (2) Without limiting the powers of the Governor in Council under subsection (1), an order declaring a control area may, for the purposes set out in subsection (1)—
- (a) prohibit absolutely or restrict subject to prescribed conditions—
 - (i) the removal of any plant, plant product, used package, used equipment or earth material from the control area to a place outside the control area; or
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- (ii) the entry of any plant, plant product, used package, used equipment or earth material into the control area; or
 - (iii) the movement of any plant or plant product, used package, used equipment or earth material within the control area; or
- (b) require the owners or occupiers of land within the control area to do any of the following—
- (i) prune any fruit tree;
 - (ii) treat or contain any plant affected by a pest or disease;
 - (iii) grow a variety of plant which is resistant or tolerant to pests or diseases;
 - (iv) destroy any plant;
 - (v) treat earth material in which a plant is grown or has been growing;
 - (vi) treat any used package or used equipment;
 - (vii) take any other prescribed action to control pests or diseases; or
- (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.

20 Restrictions on movement of material into or from control area

- (1) A person who knows, or may be reasonably expected to know, 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 equipment or earth material into or from that control 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—
- (a) is authorised to do so under a permit issued by the Secretary; and
 - (b) complies with any conditions set out in the permit.

Penalty: In the case of an individual, 60 penalty units;

In the case of a body corporate,
300 penalty units.

- (2) A person must not transport, move or take any plant, plant product, used package, used equipment or earth material 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, plant products, used packages, used equipment or earth material into or out of the control area is prohibited under the order.

Penalty: 10 penalty units.

- (3) A person who contravenes any prohibition, restriction or requirement specified in an order declaring any place to be a control area, where that person is not liable for an offence under subsection (1) in respect of that contravention, is guilty of an offence and liable to a penalty not

exceeding 10 penalty units in the case of an individual and 60 penalty units in the case of a corporation.

- (4) Subsection (3) does not apply if the person is acting under a permit issued by the Secretary and the person complies with any conditions set out in the permit.

21 Permits for movement of material into or from control area

- (1) The Secretary may issue a permit for the purposes of section 19 or 20 for the transport or movement of any plant, plant product, used package, used equipment or earth material into or out of a control area subject to any conditions about the treatment of the plant, plant product, used package, used equipment or earth material.
- (2) The Secretary may revoke or vary a permit at any time by notice in writing to the holder.
- (3) 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.

Division 3—Control measures

22 Destruction or disposal of plants etc. at direction of Minister

- (1) If any plant, plant product, plant vector, used package, used equipment, earth material or beehive is introduced into—
- (a) Victoria; or
- (b) a control area declared by the Governor in Council under section 19; or

(c) an infected place or restricted area—

contrary to any provision of this Act or an order made under this Act, the plant, plant product, plant vector, used package, used equipment, earth material or beehive 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 subsection (1) to be given to the owner or person apparently in charge of the plant, plant product, plant vector, used package, used equipment, earth material or beehive before the direction is carried out unless—

(a) the owner or person apparently in charge of the plant, plant product, plant vector, used package, used equipment, earth material or beehive cannot be found after reasonable search or inquiry; and

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

23 Return, treatment or disposal of plants etc. at direction of inspector

(1) This section applies if any plant, plant product, plant vector, used package, used equipment, earth material or beehive is introduced into—

(a) Victoria; or

(b) a control area declared by the Governor in Council under section 19; or

(c) an infected place or restricted area—

contrary to any provision of this Act or an order made under this Act.

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- (2) An inspector may, by direction in writing given to the owner or person apparently in charge of the plant, plant product, plant vector, used package, used equipment, earth material or beehive, require that owner or person to do one of the following in accordance with the requirements of the direction—
- (a) return the plant, plant product, plant vector, used package, used equipment, earth material or beehive to the consignor;
 - (b) treat the plant, plant product, plant vector, used package, used equipment, earth material or beehive;
 - (c) dispose of the plant, plant product, plant vector, used package, used equipment, earth material or beehive.
- (3) A person who has been given a direction in writing under subsection (2) must—
- (a) return the plant, plant product, plant vector, used package, used equipment, earth material or beehive to the consignor in accordance with the requirements of the direction; or
 - (b) treat or dispose of the plant, plant product, plant vector, used package, used equipment, earth material or beehive in accordance with the requirements of the direction.

Penalty: 60 penalty units.

24 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

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- (b) dispose of the plant or plant product in a manner which will prevent the spread of the pest or disease; or
 - (c) order the things set out in paragraph (a) or (b) to be done.
- (2) Without limiting an inspector's powers under subsection (1), an inspector may—
- (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;
 - (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 subsection (1) or (2).
- (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 Infested land notice

- (1) If an inspector knows or reasonably suspects that any plant or plant product affected by any disease or pest or any pest is on any land and the inspector so reports to the Secretary, the Secretary may give the owner or occupier of the land a notice—
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- (a) prohibiting or restricting, subject to specified conditions, the removal of any plant, plant product, used package, used equipment or earth material from the land specified in the notice; or
- (b) requiring that the owner or occupier destroy or cause the destruction of that pest, plant or plant product; or
- (c) requiring that the owner or occupier control or eradicate, or cause the control or eradication of, the disease or pest affecting that plant or plant product.
- (2) If a notice is given under subsection (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 equipment or earth material 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: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

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- (4) If a notice is given under subsection (1)(c), the owner or occupier must control or eradicate, or cause the control or eradication of, the disease or pest affecting the plant or plant products specified in the notice.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

26 Control notices

- (1) This section applies if an inspector knows or reasonably suspects that any plant, plant product, used package, used equipment or earth material is or might become affected by a pest or disease.
- (2) The inspector may issue a notice to the person who owns or has possession or control of the plant, plant product, used package, used equipment or earth material containing any orders or directions that the inspector considers may be reasonably necessary to prevent the outbreak or spread of the pest or disease.
- (3) A notice under subsection (2) may contain orders or directions in relation to any plant, plant product, used package, used equipment or earth material that is or might become affected by the pest or disease requiring any of the following—
- (a) that it be kept at a specified place for a specified period;
 - (b) that it be subjected to specified treatment;
 - (c) that 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;

- (d) that its sale or supply or the purposes for which it may be used be restricted;
 - (e) that it be destroyed or disposed of in a specified manner.
- (4) The inspector must cause a notice under subsection (2) to be served on the person referred to in that subsection.
- (5) A person served with a notice under subsection (2) must not contravene or fail to comply with any order or direction in the notice.

Penalty: In the case of a natural person,
10 penalty units;
In the case of a body corporate,
50 penalty units.

27 Disposal of plant refuse etc.

- (1) If the Secretary is satisfied that any plant refuse, used package or earth material 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 earth material a notice specifying the means, method or manner of disposing of that plant refuse, package or earth material or of treating the package before it is disposed of.
- (2) A person served with a notice under subsection (1) must treat the used package or dispose of the plant refuse, used package or earth material described in the notice in accordance with the notice.

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

PART 3—EXOTIC PESTS AND DISEASES

Division 1—Preliminary

28 Application of this Part to land

- (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.
- (2) Without limiting subsection (1), any provision of this Act that operates in relation to an exotic pest or disease applies to places—
 - (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.
- (3) It is not necessary, in order for any place to be declared to be an infected place 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.
- (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 taken to have been served on them all.

29 Application of this Part to plants etc.

- (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 subsection (1), any provision of this Act that operates in relation to an exotic pest or disease applies to any plant and plant product—
 - (a) that is 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 plant or plant product, or for the exercise of any other power conferred by this Act 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.

Division 2—Declared areas

30 Declaration of infected place

- (1) If the Secretary reasonably suspects that an exotic pest or disease is present in any place within Victoria, the Secretary may by order published in the Government Gazette—
 - (a) declare that place to be an infected place; and

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- (b) specify any prohibitions, restrictions or requirements that are to operate in the infected place or part of the infected place.
- (2) The order must identify the classes or description of any plant, plant product, used package, used equipment or earth material that are affected by it.
- (3) If the Secretary is satisfied that any livestock or livestock product within the meaning of the **Livestock Disease Control Act 1994** is a vector of an exotic pest or disease, the Secretary may specify in an order under subsection (1) any prohibitions, restrictions or requirements that are to operate in the infected place or part of the infected place with respect to that vector and the order must identify the classes or description of vector that are affected by the order.
- (4) An order made under subsection (1) remains in force for a period of 21 days after the date of publication of the order in the Government Gazette, unless sooner revoked.
- (5) A person must not contravene any prohibition, restriction or requirement specified in an order made under subsection (1).

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

31 Notice of order declaring infected place

- (1) The Secretary must ensure that notice of an order declaring an infected place is published in a newspaper circulating generally in the vicinity of the place.

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- (2) The Secretary must ensure that written notice of an order declaring an infected place is given to the owner or person in charge or in apparent control of any place to which the notice relates.
 - (3) The Secretary must display a copy of an order declaring an infected place at any point of entry to the place to which the notice relates.

32 Declaration of restricted area

- (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—
 - (a) declare the area to be a restricted area; and
 - (b) specify any prohibitions, restrictions and requirements that are to operate in the restricted area.
 - (2) The order must identify the classes or descriptions of any plant, plant product, used package, used equipment, earth material or beehive that is affected by it.
 - (3) If the Minister is satisfied that any livestock or livestock product within the meaning of the **Livestock Disease Control Act 1994** is a vector of an exotic pest or disease, the Minister may specify in an order under subsection (1) any prohibitions, restrictions or requirements which are to operate in the restricted area with respect to that vector and the order must identify the classes or description of vector that are affected by the order.
 - (4) 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.
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- (5) An order under this section remains in force for a period of 12 months or any shorter period that is specified in the order, unless sooner revoked.
 - (6) The Minister may from time to time, by notice published in the Government Gazette, extend the duration of an order under this section for any period not exceeding 12 months.

33 Movement in restricted area

- (1) A person must not knowingly—
 - (a) cause or permit the movement of any plant, plant product, plant vector, used package, used equipment, earth material or beehive to which the declaration of the restricted area applies into, within or from that area; or
 - (b) contravene any prohibition, restriction or requirement specified in the order which declared the restricted area.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (2) Subsection (1) does not apply if the person is authorised to do so under a permit issued by an inspector and complies with any conditions set out in the permit.
- (3) A person who contravenes any prohibition, restriction or requirement specified in an order declaring any place to be a restricted area, where that person is not liable for an offence under subsection (1) in respect of that contravention, is—
 - (a) guilty of an offence; and

- (b) liable to a penalty not exceeding 10 penalty units in the case of an individual and 60 penalty units in the case of a body corporate.
- (4) Subsection (3) does not apply if the person is acting under a permit issued by an inspector and the person complies with any conditions set out in the permit.

34 Permits for activity in restricted area

- (1) An inspector may issue a permit for the purposes of section 33 subject to any conditions that the inspector specifies in the permit.
- (2) A permit has effect for the period specified in the permit.
- (3) Without limiting subsection (1), 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.
- (5) If a permit issued under this section is revoked, the holder must, on request by an inspector, immediately deliver the revoked permit to the inspector.

35 Further powers under orders

- (1) Without limiting the powers of the Secretary under section 30 or of the Minister under section 32, an order declaring an infected place or a restricted area may—
 - (a) prohibit the removal from the declared area of—
 - (i) any plant, plant product or plant vector of a species, kind or variety;
 - (ii) any used package or used equipment;

- (iii) any earth material; or
 - (iv) any beehive—
specified in the order that might, in the opinion of the Minister or Secretary, transmit an exotic pest or disease;
 - (b) require owners or occupiers of any place within the area to take measures, including the destruction of any plant, plant product or plant vector, specified in the order that are, in the opinion of the Minister or Secretary, necessary for the containment, eradication or control of the exotic 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 any plant, plant product or plant vector), specified in the order, than the owners or occupiers of other places within the declared area;
 - (d) prohibit the planting and propagation of any plant or plant product, or plant or plant product of a specified species, kind or variety within the restricted area or infected place during a period specified in the order;
 - (e) restrict the purposes for which any plant, plant product, plant vector, used package or used equipment may be used;
 - (f) require any plant, plant product, plant vector, used package or used 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 an exotic pest or disease;
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- (g) require any plant, plant product, plant vector, plant refuse, used package or used equipment to be destroyed or disposed of in a specified manner;
 - (h) require any used package or used equipment to be cleansed, disinfected or otherwise treated in a specified manner;
 - (i) require any plant, plant product, plant vector, beehive or any place to be identified in a specified manner;
 - (j) control or prohibit the movement of any specified plant, plant product, plant vector, used package, used equipment or earth material in the restricted area or infected place;
 - (k) require any plant, plant product or plant vector 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;
 - (l) control or prohibit the removal of any specified plant, plant product, plant vector, used package, used equipment or earth material from the whole or part of the restricted area or infected place;
 - (m) specify tests or treatments to be applied to any plant, plant product, plant vector, used package, used equipment or earth material;
 - (n) specify tests or treatments to be applied to a place whether or not there are any plants growing there;
 - (o) apply to the whole or any part of an infected place or a restricted area;
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- (p) require beekeepers who keep beehives within the area to take measures, including the destruction of bees, honey, beeswax, honeycomb, beehives or pollen, specified in the order that are, in the opinion of the Minister or Secretary, necessary for the containment, eradication or control of the exotic pest or disease.
- (2) An order may authorise an inspector to issue any directions to any person to do any of the things specified in subsection (1).
- (3) A direction issued by an inspector under subsection (2) must—
- (a) be in writing; and
 - (b) be given to the person to whom it applies; and
 - (c) fix a reasonable time by which the direction is to be complied with.
- (4) A person must not contravene any direction of an inspector under subsection (2).

Penalty: 60 penalty units.

Division 3—Importation orders

36 Border security

- (1) If the Minister reasonably suspects an exotic disease or pest exists within Australia but outside Victoria, the Minister may by order prohibit absolutely, restrict, or impose conditions upon, the entry or importation into Victoria of any plant, plant product, plant vector, used equipment, used package, earth material or beehive.

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- (2) Without limiting subsection (1), an order—
- (a) may prohibit or restrict the entry or importation into Victoria of any plant, plant product, plant vector, used equipment, used package, earth material or beehive from a State or Territory, or part of a State or Territory, that the Secretary reasonably suspects is affected by an exotic disease or pest;
 - (b) may specify tests or treatment to be applied to any kind of plant, plant product, plant vector, used equipment, used package, earth material or beehive;
 - (c) may require the plant, plant product, plant vector, used equipment, used package, earth material or beehive referred to in the order to be accompanied by a plant health certificate, assurance certificate or a plant health declaration that complies with section 37.
- (3) Without limiting subsection (1), an order may, in relation to a requirement for a plant health declaration under subsection (2)(c), limit or restrict the circumstances in which a plant health declaration may be issued by reference to all or any of the following—
- (a) the plant, plant product, plant vector, used equipment, used package, earth material or beehive or class of plant, plant product, plant vector, used equipment, used package, earth material or beehive;
 - (b) the area or the class of area in which the plant, plant product, plant vector, used equipment, used package, earth material or beehive was grown, produced or packed or from which it was consigned, having regard to the pest and disease status of that area;
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- (c) the persons or class of persons authorised or permitted by this Act to issue plant health declarations.

37 Plant health certificate, assurance certificate or plant health declaration

If an order made under section 36 requires a plant health certificate, assurance certificate or a plant health declaration, the certificate or declaration must—

- (a) set out details of—
- (i) the person in Victoria to whom the plant, plant product, plant vector, used equipment, used package, earth material or beehive is being delivered; and
 - (ii) the grower or packer and the consignor of the plant, plant product, plant vector, used equipment, used package, earth material or beehive; and
 - (iii) the quantity, type, origin and destination of the plant, plant product, plant vector, used equipment, used package, earth material or beehive; and
- (b) state that the plant, plant product, plant vector, used equipment, used package, earth material or beehive has been treated or tested in accordance with the requirements of the order; and
- (c) provide a description of the treatment or tests.

38 Contravention of importation order

- (1) A person must not knowingly cause, permit or assist any plant, plant product, plant vector, used equipment, used package, earth material or beehive to enter or be imported into Victoria in contravention of an importation order under section 36.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (2) A person who contravenes any prohibition, restriction or requirement specified in an importation order, and is not liable for an offence under subsection (1) in respect of that contravention, is—
- (a) guilty of an offence; and
 - (b) liable to a penalty not exceeding 10 penalty units in the case of an individual and 60 penalty units in the case of a body corporate.

39 Notification of importation order

The Minister must ensure that notice of an order under section 36 is published in the Government Gazette as soon as practicable after the making of the order.

40 Duration of importation order

- (1) An order under section 36 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 or periods not exceeding 12 months.

Division 4—Special provisions

41 Possession or administration of exotic disease agents

- (1) A person must not—
- (a) possess an exotic disease agent; or
 - (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.

Penalty: 240 penalty units.

- (2) Subsection (1)(a) and (b) 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.
- (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.

42 Certificates relating to exotic pest or disease

- (1) The Minister may by order certify that—
- (a) an outbreak of an exotic pest or an exotic disease exists in any part of Victoria; or
 - (b) an outbreak of an exotic pest or an exotic disease exists in any part of Australia outside Victoria and it is necessary or expedient to take action, including making an order under this Act, to prevent or reduce the risk of the spread of the pest or disease to Victoria.
- (2) An order under this section comes into force on the date it is published in the Government Gazette.

Division 5—Testing

43 Testing for exotic pests or diseases

- (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.
- (2) The direction may require the taking, delivery and examination of samples from the plant or plant product.
- (3) Any direction issued by the Secretary under subsection (1) must—
 - (a) be in writing; and
 - (b) be given to the person to whom it applies; and
 - (c) fix a reasonable time by which the direction must be complied with.
- (4) A person given a direction under this section must comply with it.

Penalty: 60 penalty units.

PART 4—PLANTS AND PLANT PRODUCTS

44 Application

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

45 Packages to be sound and clean

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

- (a) clean to touch; and
- (b) free of extraneous visible matter; and
- (c) free of objectionable odour; and
- (d) in good repair.

Penalty: 60 penalty units.

(2) An inspector may by order require used packages referred to in subsection (1)—

- (a) to be subject to a specified treatment or a specified course of treatment or to be subject to other action of a specified kind for the purpose of ensuring compliance with subsection (1);
- (b) to be destroyed or disposed of in a specified manner;
- (c) to be cleaned, repaired or otherwise treated in a specified manner.

(3) Any order issued by an inspector under subsection (2) must—

- (a) be in writing; and
- (b) be given to the person to whom it applies; and

(c) fix a reasonable time by which the order must be complied with.

(4) A person must not contravene any written order of an inspector under subsection (2).

Penalty: 60 penalty units.

46 Marking or labelling where produce grown

(1) A person must not pack for sale or sell any fruit, vegetables or nuts in a package unless the package is correctly labelled with the required information in accordance with this section.

Penalty: 60 penalty units.

(2) For the purposes of subsection (1), a package is correctly labelled if the required information is legibly marked—

(a) on the outside of the package; or

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

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

(3) For the purposes of subsections (1) and (2), the required information is—

(a) the kind of fruit, vegetable or nut in the package; and

(b) 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 or a code indicating the location of their packing or production that is approved by the Secretary for use by that person.

**PART 5—COMPLIANCE AGREEMENTS AND
ACCREDITATION**

47 Compliance agreements

- (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 any plant, plant product, used package, used equipment or earth material for the 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.
- (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) An inspector may release any plant, plant product, used package, used equipment or earth material to which a compliance agreement applies from seizure or detention under this Act on the basis of a certificate or assurance, given by a person authorised under the agreement to give such a certificate or assurance, that all procedures under this Act to which the agreement refers have been complied with in respect of the plants, plant products, used package, used equipment or earth material.

- (5) A party to a compliance agreement must take reasonable steps to ensure that any requirements imposed on that party under the agreement are complied with.

Penalty: 120 penalty units.

- (6) 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 taking reasonable steps to ensure that it complies with the agreement.

48 Accreditation

- (1) The Secretary may grant accreditation to a person to issue assurance certificates about any plant, plant product, used equipment, used package or earth material that—
- (a) is grown, produced, packed, treated or tested in Victoria; or
 - (b) is to be imported, introduced or brought into Victoria.
- (2) A person may apply to the Secretary for accreditation.
- (3) The Secretary may—
- (a) grant the accreditation applied for or another accreditation; or
 - (b) refuse accreditation; or
 - (c) grant accreditation subject to conditions, limitations or restrictions.
- (4) If the Secretary is considering refusing to grant accreditation to an applicant, the Secretary must give the applicant a written notice stating—
- (a) the proposed refusal; and

- (b) the reasons for the proposed refusal; and
 - (c) that the applicant may make a submission in support of their application.
- (5) If, after sending a notice under subsection (4) and considering any further submission made by the applicant, the Secretary decides to refuse the application, the Secretary must give the applicant a written notice stating—
- (a) the decision; and
 - (b) the reasons for the decision; and
 - (c) that the applicant may apply to VCAT for a final review of the Secretary's decision.

49 Register

- (1) The Secretary must keep a register of accredited persons.
- (2) The register must include particulars of—
 - (a) all current accreditations;
 - (b) any amendment or suspension of an accreditation.
- (3) A person must not access the register unless the person—
 - (a) is employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act; and
 - (b) is authorised in writing by the Secretary to do so.

50 Amendment and cancellation

- (1) If the Secretary considers that a ground exists to amend or cancel an accreditation the Secretary must give the accredited person written notice—
 - (a) of the Secretary's intention to take the proposed action; and
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- (b) of the reasons and grounds for the proposed action; and
 - (c) inviting the accredited person (within a stated time of at least 28 days) to show cause why the action should not be taken.
- (2) If, after considering all written submissions made within the time stated in the notice, the Secretary still considers a ground exists to take the proposed action, the Secretary may amend or cancel the accreditation in accordance with the terms of the notice.
- (3) The Secretary must give the person written notice of the decision and, if the Secretary decides to amend or cancel the accreditation, the reasons for the decision and that the person may apply to the Secretary for a reconsideration of the decision.

51 Suspension

- (1) If the Secretary considers that a ground exists to suspend an accreditation, the Secretary must—
- (a) immediately suspend that accreditation; and
 - (b) give the accredited person written notice of the suspension as soon as practicable stating—
 - (i) the reasons and grounds for the suspension; and
 - (ii) that the accredited person may appeal against the suspension within 7 days after receiving the notice.
- (2) After considering any appeal by the accredited person made under subsection (1)(b), the Secretary may—
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- (a) if the Secretary still considers a ground exists to suspend the accreditation, suspend the accreditation for such period as the Secretary may determine; or
 - (b) in any other case, cancel the suspension.
- (3) A decision under subsection (2) must be made within 21 days of the appeal by the accredited person.

52 Grounds for cancellation or suspension

For the purposes of section 50 and 51, the grounds for cancellation, suspension or amendment of the accreditation of an accredited person are—

- (a) a substantial failure to comply with any conditions imposed on an accreditation granted under section 48; or
 - (b) a series of minor failures to comply with any conditions imposed on an accreditation granted under section 48.
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PART 6—ADMINISTRATION

Division 1—General

53 Delegations by Minister

- (1) The Minister may, by instrument, delegate to any person or class of persons employed in the administration of this Act (other than an inspection agent) any power of the Minister under this Act except this power of delegation and the powers under sections 6, 32 and 55.
- (2) The Minister may by instrument delegate to the Secretary the power of the Minister under section 6.

54 Delegations by Secretary

The Secretary may by instrument delegate to any person or class of persons employed in the administration of this Act (other than an inspection agent) any power of the Secretary under this Act except this power of delegation.

55 Fees and charges

- (1) The Minister may, by notice published in the Government Gazette, fix fees and charges and the rate of interest on those fees and charges for anything done under this Act, other than inspection fees payable to an approved inspection service.
- (2) A fee or charge fixed under subsection (1) must be fixed as one or more fee units or as part of a fee unit.

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- (3) The following applies in respect of a fee or charge—
- (a) the fee or charge may be expressed as being, or including, a part of a fee unit, but only of a part that is a tenth or more of a fee unit;
 - (b) the amount of the fee or charge is to be calculated by multiplying the number of fee units applicable by the value of a fee unit fixed from time to time under section 5 of the **Monetary Units Act 2004**;
 - (c) despite section 7(3) of the **Monetary Units Act 2004**, if the amount of a fee or charge calculated in accordance with paragraph (b) is not a multiple of 5 cents, the amount must be rounded down to the nearest multiple of 5 cents.
- (4) Any fee or charge due under this Act bears interest at the rate fixed under subsection (1) from the date that the fee or charge becomes due to the date that it is paid.

56 When and how the power to fix fees or charges may be exercised

The power to fix fees or charges under section 55 may be exercised—

- (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 the cases in relation to which the power is exercised—
 - (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

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

57 Requirements for orders etc. under Part 2

- (1) 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.
- (2) Despite subsection (1)(c), an inspector or the Secretary may fix a time, of not less than 2 days, in which an order, direction or notice comes into effect or must be carried out or complied with if the inspector or Secretary is satisfied that it is necessary to do so.

58 Non-compliance under order

- (1) If a person fails for any reason to comply with an order of the Minister, a direction by the Secretary or an inspector or any notice or other requirement under this Act, an inspector may cause the order, direction, notice or requirement to be carried out.
- (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, notice or requirement may be recovered by the Minister from—

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- (a) the person to whom the order, direction or notice was given or of whom the requirement was made; or
 - (b) any other person who was responsible for that person's failure to comply with the order, direction, notice or requirement.
- (3) The Minister must send a copy of a determination under subsection (2) to the person from whom the Minister has determined that the reasonable costs and expenses should be recovered.

59 Review of Minister's determination on costs

- (1) A person whose interests are affected by a determination of the Minister under section 58 may apply to VCAT for review of the determination.
 - (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the determination is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the determination, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
 - (3) Costs and expenses determined under section 58 and this section may be recovered by the Minister as a debt in a court of competent jurisdiction.
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Division 2—Review of decisions

60 Review of decisions

- (1) If a person is aggrieved by any decision of an inspector under section 24 or 26 to issue an order or notice, the person may apply to the Secretary for a review of that decision 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.
 - (2) If a person is aggrieved by any decision of the Secretary under section 25 or 27 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 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 101, the person may, within 7 days after the receipt of the direction, apply to the Minister for a review of that decision.
 - (4) The Minister or the Secretary may conduct any review under this section in any manner that the Minister or Secretary 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.
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PART 7—ENFORCEMENT

Division 1—Inspectors

61 Inspectors

The Secretary may, by instrument, appoint—

- (a) any person employed under Part 3 of the **Public Administration Act 2004**; 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 any plants, plant products, plant vectors, used packages, used equipment or earth material.

62 Secretary may authorise other persons to be inspectors

(1) This section applies if—

- (a) the Secretary makes an order under section 30 declaring an infected place; or
- (b) the Minister makes an order under section 32 declaring a restricted area.

(2) The Secretary may, by instrument, authorise members of the police force or persons employed or engaged by emergency services agencies within the meaning of the **Emergency Management Act 1986** to be inspectors—

- (a) for the purposes of all or any of the provisions of this Act; and
- (b) in respect of any plants, plant products, plant vectors, used packages, used equipment or earth material specified in the order—

for the period the order remains in force.

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- (3) A person in a class of persons appointed under subsection (2) may perform all of the functions and exercise all of the powers of an inspector under this Part.
 - (4) The Secretary may determine the terms and conditions of authorisation of inspectors.
 - (5) The Secretary may, in writing, revoke the authorisation of an inspector at any time.
 - (6) The terms and conditions of authorisation may contain general directions as to how the inspector's powers may be exercised.

63 Inspector's identification certificates

- (1) The Secretary must issue an identification certificate to each inspector appointed under section 61 which sets out the provisions of this Act and the plants and other items the inspector is authorised to be an inspector for.
- (2) An inspector appointed under section 61 must, in the course of performing the inspector's functions under this Act, produce the inspector's identification certificate for inspection—
 - (a) before exercising a power under this Act other than a requirement made by post; and
 - (b) at any time during the exercise of a power under this Act, if any person requests its production.

Penalty: 10 penalty units.

- (3) An inspector authorised under section 62 must, in the course of performing any function or exercising any power under this Act, produce to any person who requests its production—

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- (a) the inspector's identification as a member of the police force or a person employed or engaged by an emergency services agency; and
 - (b) in the case of a person employed or engaged by an emergency services agency, a copy of the instrument of appointment under section 62.

Division 2—Approved inspection services

64 Approved inspection services

- (1) The Secretary may, by instrument, approve a person or body to be an approved inspection service—
 - (a) to provide examination, inspection and treatment services for monitoring, controlling and eradicating plant pests and diseases;
 - (b) to ascertain whether plants, plant products, packages, used equipment or earth material comply with this Act;
 - (c) to verify any documents relating to plants, plant products, used packages, used equipment and earth material, and any marking and labelling on packages containing plants and plant products;
 - (d) to issue plant health certificates;
 - (e) to monitor proper observance of compliance agreements under Part 5;
 - (f) to provide services for the monitoring, examination, investigation and inspection of accredited persons and the operating procedures of those persons.
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- (2) The Secretary must not give approval under subsection (1) unless the Secretary—
- (a) is satisfied that the person or body can provide an adequate, appropriate and efficient inspection service and that the service will be provided by appropriately qualified persons; and
 - (b) has entered into an agreement under section 66 with the person or body.

65 Secretary may approve inspection services with conditions

An approval by the Secretary under section 64—

- (a) may authorise the person or body to carry out all of the powers, functions and duties referred to in sections 64 and 70 or be limited to powers, functions and duties of a particular kind;
- (b) may apply to the whole of Victoria or be limited to particular areas of Victoria;
- (c) may be subject to any condition or restriction that the Secretary thinks fit.

66 Agreements relating to approved inspection services

- (1) The Secretary, on behalf of the Crown, may enter into an agreement with an approved inspection service under this section.
- (2) An agreement must provide for—
 - (a) compliance by the inspection service with all relevant provisions of this Act or of any other Act or instrument of a legislative character;
 - (b) objectives and performance standards in relation to the provision of the services;

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- (c) the circumstances in which services may be provided;
 - (d) the fees, costs and charges to be paid for services provided by the inspection service;
 - (e) the submission of periodic reports in relation to the inspection service's operations under the agreement;
 - (f) an indemnity by the inspection service in favour of the Crown and the Secretary;
 - (g) the office the holder of which is to be the principal officer for the purposes of the application of the **Freedom of Information Act 1982** to the inspection service;
 - (h) the office the holder of which is to be the principal officer for the purposes of the application of the **Ombudsman Act 1973** to the inspection service;
 - (i) the termination of the agreement if the Secretary withdraws approval of the service;
 - (j) the prohibition of subcontracting of services.
- (3) The Secretary and an approved inspection service may, by agreement, vary or terminate an agreement under this section.

67 Matters an agreement for inspection services may cover

An agreement under section 66 may—

- (a) provide for consideration to be paid to or received by the Secretary in respect of the giving of the right to provide the services;
 - (b) provide for any matter to be determined, approved or dispensed with by the Secretary;
 - (c) provide for the Secretary to delegate powers and functions under the agreement;
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- (d) require the provision by the inspection service of a performance bond;
 - (e) provide for the suspension of obligations under the agreement in specified circumstances;
 - (f) contain any other provisions agreed between the Secretary and the inspection service that are not inconsistent with this Act.

68 Withdrawal of approval of inspection service

The Secretary may, by instrument given to an approved inspection service, withdraw approval of the service if the Secretary is satisfied that the service is in breach of a condition or restriction of the approval or of the agreement under this Part.

69 Approved inspection services and employed or appointed inspectors

Sections 64, 65 and 66, and any agreement entered into under those sections, do not prevent the performance of a function or duty or the exercise of a power—

- (a) by an inspector appointed or authorised by the Secretary under this Part; or
- (b) by a person having the functions, duties and powers of an inspector (other than an inspection agent).

70 Powers of inspection agents

- (1) An inspection agent carrying out any of the functions set out in section 64(1) has any of the powers and duties of an inspector under Division 3 that are reasonably required for carrying out those functions.

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- (2) In addition to the powers and duties set out in subsection (1), an inspection agent may carry out any other powers and duties conferred on the inspection agent under this Act.
 - (3) If an inspection agent is carrying out any functions under section 64(1)(a) to (d), the provisions of section 132(1)(a), (f) and (g) apply in relation to the inspection agent as if the inspection agent were an inspector.
 - (4) If an inspection agent is monitoring the proper observance of compliance agreements in accordance with section 64(1)(e), all of the provisions of section 132 apply in relation to the inspection agent as if the inspection agent were an inspector.

71 Identification of inspection agents of approved inspection services

- (1) The Secretary must issue an identification certificate to each inspection agent.
 - (2) An identification certificate must—
 - (a) state the inspection agent's name; and
 - (b) include a photograph of the inspection agent; and
 - (c) set out the provisions of this Act and the plants and plant products in respect of which the inspection agent is authorised to carry out powers, functions or duties under this Act.
 - (3) An inspection agent must, in the course of performing the inspection agent's functions under this Act, produce the inspection agent's identification certificate for inspection—
 - (a) before exercising a power under this Act other than a requirement made by post; and
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- (b) at any time during the exercise of a power under this Act, if any person requests its production.

72 Fees

- (1) An approved inspection service may enter into an agreement or an arrangement with any person who requires services that the inspection service is authorised to provide under an agreement with the Secretary under section 66.
- (2) An agreement or arrangement under this section may require payment of fees in accordance with an agreement with the Secretary under section 66.
- (3) If the person liable to pay the fee does not pay, or cause to be paid, the fee on or before the date on which it is required to be paid, it is recoverable as a debt due to the approved inspection service.

73 Application of FOI

- (1) The **Freedom of Information Act 1982** applies to an approved inspection service in its capacity as a provider of services in accordance with an agreement under section 66 as if—
 - (a) the approved inspection service were an agency within the meaning of that Act; and
 - (b) the holder of the office specified in the agreement under section 66 for the purposes of the application of the **Freedom of Information Act 1982** were the principal officer of that agency; and
 - (c) the Minister were the responsible Minister of that agency; and
 - (d) the persons employed by the approved inspection service were officers of that agency.

- (2) Nothing in this section applies the **Freedom of Information Act 1982** to an approved inspection service—
- (a) in any capacity other than that mentioned in subsection (1); or
 - (b) with respect to any period during which services under an agreement under section 66 were not actually being provided by the approved inspection service.

74 Investigation of administrative actions

- (1) The **Ombudsman Act 1973** applies to an approved inspection service in its capacity as a provider of services in accordance with an agreement under section 66 as if—
- (a) the approved inspection service were a public statutory body within the meaning of that Act; and
 - (b) the holder of the office specified in the agreement under section 66 for the purposes of the application of the **Ombudsman Act 1973** were the principal officer of that public statutory body; and
 - (c) the persons employed by the approved inspection service were employees of that public statutory body.
- (2) Nothing in this section applies the **Ombudsman Act 1973** to an approved inspection service—
- (a) in any capacity other than that mentioned in subsection (1); or
 - (b) with respect to any period during which services under an agreement under section 66 were not actually being provided by the approved inspection service.
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Division 3—General powers of inspectors

75 Purpose of exercise of powers

An inspector may exercise any powers under this Division for determining whether this Act is being or has been complied with (other than under this Division).

76 Power to enter and inspect premises

- (1) An inspector may at any reasonable time enter and inspect any premises, other than any building or structure occupied as a residence, and inspect any plants, plant products or used packages found at that place if the inspector reasonably believes—
 - (a) the premises are being kept for the propagation, growing, sale, storage, delivery, treatment, packaging or preparation for sale of any plants or plant products; and
 - (b) entry to the premises is necessary to monitor for pests and diseases.
- (2) If the occupier of the premises or any other person is present when an inspector exercises a power of entry under this section, the inspector must before entering the premises—
 - (a) inform the occupier or any person at the premises that he or she is authorised to enter and inspect the premises; and
 - (b) give the occupier or any person at the premises an opportunity to allow entry to the premises.
- (3) If the occupier of the premises is not present when an inspector exercises a power of entry under this section, the inspector must, on leaving the premises, leave a notice setting out—
 - (a) the time of entry; and

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- (b) the purpose of entry; and
 - (c) a description of all things done while on the premises; and
 - (d) the time of departure; and
 - (e) the procedure for contacting the inspector for further details of the entry.
- (4) In exercising any powers under this section, an inspector must—
- (a) cause as little inconvenience as possible; and
 - (b) not remain on premises any longer than is reasonably necessary.

77 Power to stop and inspect vehicles

- (1) An inspector may at any reasonable time 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.
- (2) If an inspector stops a vehicle under subsection (1) but considers that it is not safe or practical to inspect or enter the vehicle, the inspector may require the driver or person in charge of the vehicle to present the vehicle at some other reasonable time and place for inspection by an inspector.

78 Power to require information

An inspector may at any reasonable time require a person—

- (a) to answer a question to the best of that person's knowledge, information and belief;
or
- (b) to take reasonable steps to provide information.

79 Powers regarding production of documents

An inspector may at any reasonable time require a person to produce any document that is required by or under this Act and any other document that the inspector reasonably requires and—

- (a) examine that document; or
- (b) make copies of it or take extracts from it; or
- (c) remove the document for as long as is reasonably necessary to make copies or take extracts.

80 Powers to inspect

An inspector may at any reasonable time—

- (a) inspect, count, examine or mark for identification, any plant, plant product, used package, used equipment or earth material; or
- (b) 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.

81 Power to take samples

- (1) An inspector may at any reasonable time take and remove for examination samples of or from, or specimens of—
 - (a) any plant or plant product, used package, used equipment or earth material which the inspector reasonably believes to be affected by a pest or disease; or

(b) any pest found in or on a plant or plant product, used package, used equipment or earth material.

(2) An inspector may submit any sample or specimen taken in accordance with this Act to a laboratory or place approved by the Secretary for examination.

82 Power to take photographs, etc.

An inspector may at any reasonable time take photographs or measurements or make sketches or recordings.

83 Power to attach warnings

An inspector may at any reasonable time 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.

Division 4—Further powers of inspectors

84 Inspector may use assistants

An inspector may, in performing any function under this Act, make use of any assistants whose help is reasonably required to perform that function.

85 Inspector must reseal inspected packages

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.

86 Use of electronic equipment at premises

- (1) This section applies if—
- (a) while acting under section 76, an inspector finds a thing at the premises that is or includes a disk, tape or other device for the storage of information; and
 - (b) there is at the premises equipment that may be used with the disk, tape or other storage device; and
 - (c) the inspector believes, on reasonable grounds, that information stored in the disk, tape or other storage device may be relevant to determine whether this Act has been complied with.
- (2) An inspector may operate, or may require the occupier of the premises or an employee of the occupier to operate, the equipment to access the information.

87 Copying information on electronic storage devices

If an inspector finds that a disk, tape or other storage device at the premises contains information that the inspector believes, on reasonable grounds, stores information that is relevant to determine whether this Act has been complied with, the inspector may—

- (a) put the information in a documentary form and seize the documents so produced; or
- (b) copy the information to another disk, tape or other storage device and remove that disk, tape or storage device from the premises.

88 Use only if no damage to equipment

An inspector must not operate equipment for a purpose set out in section 86 or 87 unless the inspector believes, on reasonable grounds, that the operation can be carried out without damage to the equipment.

89 Application for search warrants

- (1) An inspector, with the written approval of the Secretary, may apply to a magistrate for the issue of a search warrant in relation to particular premises, if the inspector believes on reasonable grounds that there is on the premises any evidence that a person or persons may have contravened this Act.
- (2) If a magistrate is satisfied by the evidence, on oath or by affidavit, of the inspector that there are reasonable grounds to believe that there is evidence of a particular kind connected with a contravention of this Act on any premises, the magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**, authorising an inspector named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—
 - (a) to enter the premises specified in the warrant, if necessary by force; and
 - (b) to do all or any of the following—
 - (i) search for;
 - (ii) seize;
 - (iii) secure against interference;
 - (iv) examine;

- (v) inspect and make copies of, or take extracts from—

evidence of a particular kind named or described in the warrant and which the inspector believes, on reasonable grounds, to be connected with the alleged contravention.

90 Application for warrants for access to residences

- (1) An inspector, with the written approval of the Secretary, may apply to a magistrate for the issue of a warrant in relation to particular residential premises if the inspector cannot reasonably gain access by other means to a place where entry is reasonably necessary to monitor for pests or diseases or exotic pests or diseases except through that premises.
- (2) If a magistrate is satisfied that there are reasonable grounds to believe that there is no other means by which to reasonably gain access to a place where entry is reasonably necessary to monitor for pests or diseases or exotic pests or diseases except through that residential premises, the magistrate may issue a warrant, in accordance with the **Magistrates' Court Act 1989**, authorising an inspector named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—
- (a) to enter the premises specified in the warrant, if necessary by force; and
- (b) use the residential premises to access the place where entry is reasonably necessary to monitor for pests or diseases or exotic pests or diseases.

91 Information to be included in a search warrant

- (1) A search warrant issued under this Part must state—
 - (a) the purpose for which the search is required and the nature of the alleged contravention; and
 - (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (2) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this Part.

92 Announcement before entry

- (1) On executing a search warrant, the inspector executing the warrant—
 - (a) must announce that the inspector is authorised by the warrant to enter the premises; and
 - (b) if the inspector has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
 - (2) An inspector need not comply with subsection (1) if the inspector believes, on reasonable grounds, that immediate entry to the premises is required to ensure—
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- (a) the safety of any person; or
- (b) that the effective execution of the search warrant is not frustrated.

93 Details of warrant to be given to occupier

- (1) If the occupier is present at premises where a search warrant is being executed, the inspector must—
 - (a) identify himself or herself to the occupier; and
 - (b) give to the occupier a copy of the warrant.
- (2) If the occupier is not present at premises where a search warrant is being executed, the inspector must—
 - (a) identify himself or herself to any person at the premises; and
 - (b) give to the person a copy of the warrant.

94 Seizure of evidence not mentioned in the warrant

A search warrant under section 89 authorises an inspector executing the search warrant, in addition to the seizure of any document of the kind described in the warrant, to seize or take any evidence which is not of the kind described in the warrant if—

- (a) the inspector believes, on reasonable grounds, that the evidence is of a kind which could have been included in a search warrant issued under this Part; and
- (b) in the case of seizure, the inspector believes, on reasonable grounds, that it is necessary to seize that evidence in order to prevent its concealment, loss or destruction or its use in the contravention of this Act.

95 Copies of seized documents

- (1) If an inspector retains possession of a document seized from a person pursuant to a search warrant under section 89 or seized in accordance with section 94, the inspector must give the person, within 21 days of the seizure, a copy of the document certified as correct by the inspector.
- (2) A copy of a document certified under subsection (1) shall be received in all courts and tribunals to be evidence of equal validity to the original.

96 Powers of detention and seizure

An inspector may detain or seize—

- (a) any plant, plant product or used package, if the inspector is satisfied that the importation of that plant, plant product or package into Victoria is prohibited;
- (b) any plant or plant product if the inspector is satisfied that the sale of the plant or plant product is prohibited;
- (c) any plant or plant product if the inspector is satisfied that the plant or plant product is affected by a pest or disease.

97 Inspector must give notice of detention or seizure

If an inspector detains or seizes any plants or plant products (whether contained in a package or not) the inspector must immediately—

- (a) give a notice of the detention or seizure including a statement of reasons for detaining or seizing the plants or plant products to—
 - (i) the owner or consignor, if the name and address of the owner or consignor appears 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

- (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

- (b) take or 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.

98 Offence to remove detained or seized items without authority

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.

Penalty: 60 penalty units.

99 Return of detained or seized items after examination

If the results of an examination under section 97(b) of plants or plant products or a 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).

100 Retention of detained or seized items after examination

- (1) If the results of the examination under section 97(b) of plants or plant products or a 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—
 - (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;
 - (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 section 97, except the requirement for taking any further sample of the plants or plant products; and
 - (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 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.
- (2) Plants or plant products to which subsection (1) applies must not be released from detention or seizure unless the Secretary receives the declaration required by section 102(d).

101 Secretary to provide directions

The Secretary, after considering the report and recommendation of an inspector under section 100(1)(c), 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.

102 Compliance with directions

If a person—

- (a) receives a direction under section 101 and has not lodged an application in accordance with section 60; or
- (b) has lodged an application in accordance with section 60 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—

- (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.

103 Power to take legal proceedings not affected

Nothing in this Part 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.

104 Inspector's powers of detention

- (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) An inspector may detain any package that has been used, or is to be used, for packing for sale any fruit, vegetables or nuts and does not comply with section 45 for a period not exceeding 48 hours to complete an inspection and examination of the package.
- (3) 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.
- (4) 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 package, plant or plant products.
- (5) 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: 60 penalty units.

105 Procedures on taking samples

If an inspector proposes to take a sample of a plant or plant product, the inspector must—

- (a) pay or tender to the owner the current market value of the sample; and

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- (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
 - (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.

106 Retention and return of seized documents or other things

- (1) If an inspector seizes a document or other thing under this Part, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
 - (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period; and
 - (b) those proceedings (including any appeal) have not been completed.
- (3) This section does not apply to a sample taken by an inspector in the exercise of a power under this Part.

107 Magistrates' Court may extend 3 month period

- (1) An inspector may apply to the Magistrates' Court—
- (a) within 3 months after seizing a document or other thing under this Part; or
 - (b) if an extension has been granted under this section, before the end of the period of the extension—

for an extension (not exceeding 3 months) of the period for which the inspector may retain the document or thing but so that the total period of retention does not exceed 12 months.

- (2) The Magistrates' Court may order such an extension if it is satisfied that—
- (a) it is in the interests of justice; and
 - (b) the total period of retention does not exceed 12 months; and
 - (c) retention of the document or other thing is necessary—
 - (i) for the purposes of an investigation into whether a contravention of this Act has occurred; or
 - (ii) to enable evidence of a contravention of this Act to be obtained for the purposes of a proceeding under this Act.
- (3) At least 7 days prior to the hearing of an application under this section, notice of the application must be sent to the owner of the document or thing described in the application.

108 Power to enter private property to lay baits etc.

- (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) install, inspect or retrieve any lure, bait, trap
or any other equipment—

to monitor, control or eradicate any pest or disease.

- (2) An inspector cannot under this section enter any building or structure occupied as a residence unless the occupier consents.
- (3) An inspector must make an entry under this section at a reasonable time.
- (4) In exercising any powers under this section, an inspector must—
- (a) cause as little inconvenience as possible; and
 - (b) not remain on the land any longer than is reasonably necessary.

109 Road barriers

- (1) Without limiting, but for better enabling the exercise by an inspector of an inspector's 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—
- (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;

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- (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 an inspector's 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 subsection (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.
- (3) In this section, *Act* does not include the Charter of Human Rights and Responsibilities.

110 Signs regarding road barriers or inspectors

- (1) 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.
- (2) 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
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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.

111 Inspector may stop vehicles at road barriers

- (1) Without limiting section 110(2) 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.
- (2) 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 60 penalty units.

112 Inspector may require access to ratepayer details

- (1) For the purposes of exercising a power under this Act, an inspector may require the person having custody of any records relating to ratepayers (within the meaning of the **Local Government Act 1989**) to provide the inspector with—
 - (a) the name and address or other contact details of a ratepayer; or
 - (b) the address or description of any land in respect of which the ratepayer is liable to pay rates and charges under Part 8 of the **Local Government Act 1989**.
 - (2) The inspector may make a record of any information provided to the inspector under subsection (1).
 - (3) An inspector must not be charged a fee for any thing done, or required to be done, by the inspector under this section.
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Division 5—Additional powers of inspectors for exotic pests and diseases

113 Search and entry powers

- (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 any building or structure occupied as a residence at any reasonable time if the inspector reasonably believes that entry to the place is necessary to monitor for exotic pests and diseases;
 - (b) with the consent of the occupier enter and search any building or structure occupied as a residence;
 - (c) break open and search any box, container, package or receptacle (including any place that could be used as a receptacle);
 - (d) inspect, count, examine, mark for identification, fumigate, treat, disinfect or take samples from any plant or plant product, used package, used equipment, earth material or any bees, honey, beeswax, honeycomb, beehives or pollen or any item or receptacle;
 - (e) inspect, examine, test, disinfect, fumigate or take samples from a place or vehicle.
- (2) If the occupier of the premises or any other person is present when an inspector exercises a power of entry under this section, the inspector must before entering the premises—
 - (a) inform the occupier or any person at the premises that he or she is authorised to enter and inspect the premises; and

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- (b) give the occupier or any person at the premises an opportunity to allow entry to the premises.
- (3) If the occupier of the premises is not present when an inspector exercises a power of entry under this section, the inspector must, on leaving the premises, leave a notice setting out—
- (a) the time of entry; and
 - (b) the purpose of entry; and
 - (c) a description of all things done while on the premises; and
 - (d) the time of departure; and
 - (e) the procedure for contacting the inspector for further details of the entry.
- (4) In exercising any powers under this section, an inspector must—
- (a) cause as little inconvenience as possible; and
 - (b) not remain on the premises any longer than is reasonably necessary.

114 Power to stop and search vehicles

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 stop, board, enter, search or detain any vehicle.

115 Power to stop movement of material

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 stop the movement or order the movement of any plant or plant product, used package, used equipment, earth material, or any bees, honey, beeswax, honeycomb, beehives or pollen for the

purpose of any inspection, examination, fumigation, treatment, disinfection or the taking of samples.

116 Power to remove material

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 remove or cause to be removed to another place any plant or plant product, used package, used equipment, earth material or any bees, honey, beeswax, honeycomb, beehives or pollen or vehicle or any item or receptacle.

117 Power to obtain information

- (1) For the purpose of preventing, controlling or eradicating an exotic pest or disease or any plant or plant product that the inspector has reasonable grounds for suspecting is infected or infested with 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;
 - (b) require a person to state the person's name and place of residence;
 - (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) An inspector must not make a requirement under subsection (1) unless the inspector has first informed the person of whom the requirement is to be made—

(a) that a refusal or failure to furnish the answer, record or document, as the case may be, constitutes an offence; and

(b) of the effect of section 118.

118 No privilege against self-incrimination

(1) A person cannot decline to answer any question that the person has been required to answer, or to produce any record or other document that the person has been required to produce, on the ground that the answer, record or document might tend to incriminate the person.

(2) If, before answering the question or producing the record or document, the person claims that the answer, record or document might tend to incriminate the person, then neither the question nor the answer, nor any record or document produced, is admissible in evidence against the person in any criminal proceedings other than proceedings relating to—

(a) the refusal or failure to answer any question or produce any record or document; or

(b) the furnishing of any answer, record or document that is false or misleading.

Division 6—Infringement notices

119 Power to serve a notice

(1) An inspector may serve an infringement notice on any person that the inspector has reason to believe has committed an offence specified by the regulations as an offence in respect of which an infringement notice may be issued.

(2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006** and the penalty for that

offence is the prescribed infringement penalty in respect of that offence.

120 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 10 penalty units in the case of a natural person and 40 penalty units in the case of a body corporate and must not exceed the penalty fixed by this Act for that offence.

Division 7—Power to accept undertakings relating to contraventions

121 Secretary may accept undertakings

- (1) The Secretary may accept (by written notice) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act or the regulations.
- (2) The person may withdraw or vary the undertaking at any time but only with the Secretary's written consent.
- (3) Neither the Secretary nor an inspector may bring a proceeding for an offence against this Act or the regulations constituted by the contravention or alleged contravention to which the undertaking relates.

122 Enforcement of undertakings

- (1) If the Secretary considers that a person has contravened an undertaking accepted by the Secretary, the Secretary may apply to the Magistrates' Court for enforcement of the undertaking.

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- (2) If the Magistrates' Court is satisfied that the person has contravened the undertaking, it may make—
- (a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking; or
 - (b) any other order that it considers appropriate.
- (3) A person must comply with any order made under subsection (2).

Penalty: In the case of a natural person,
120 penalty units;
In the case of a body corporate,
600 penalty units.

123 Copy of undertaking

The Secretary must give a copy of an undertaking under section 121 to the person who made the undertaking.

Division 8—Provisions related to court proceedings

124 Power to file charges under this Act

A charge for an offence under this Act may only be filed by—

- (a) a member of the police force; or
- (b) an inspector authorised under section 61(a).

125 Extension of time

Despite section 7 of the **Criminal Procedure Act 2009**, proceedings for an offence under sections 8, 9, 10, 17, 20(1), 30(5), 33, 38, 41, 132(1)(d), 132(1)(h), 134 and 135 may be commenced within 3 years after the commission of the alleged offence.

126 Service of documents

Except where otherwise provided for in this Act, a notice (other than an infringement 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
- (b) if it is left at the person's 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 the person by post.

127 Offences by bodies corporate

- (1) If a body corporate contravenes any provision of this Act, each officer of the body corporate is deemed to have contravened the same provision if the officer knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision in accordance with subsection (1) whether or not the body corporate has been proceeded against under that provision.
- (3) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act.

128 Conduct by officers, employees or agents of a body corporate

- (1) If, in any proceedings under this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—

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- (a) that the conduct was engaged in by an officer of that body corporate within the scope of the officer's actual or apparent authority and the officer had that state of mind; or
 - (b) that the conduct was engaged in by an agent of the body corporate and—
 - (i) the agent acted at the specific direction or with the specific consent or agreement of the body corporate; and
 - (ii) the agent had that state of mind; and
 - (iii) the body corporate was aware of the agent's state of mind when the conduct was engaged in.
- (2) For the purposes of any proceedings under this Act, any conduct engaged in on behalf of a body corporate is deemed to have been engaged in also by the body corporate if the conduct was engaged in by—
- (a) an officer of the body corporate within the scope of the officer's actual or apparent authority; or
 - (b) any other person at the specific direction or with the specific consent or agreement of an officer of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer.

129 Deemed proof with regard to samples

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.

130 Adverse publicity orders

- (1) If a court convicts a person, or finds a person guilty of an offence against this Act, the court may make an order (an *adverse publicity order*) in relation to the offender requiring the offender—
 - (a) to take either or both of the following actions within the period specified in the order—
 - (i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter;
 - (ii) to notify a specified person or specified class of persons, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter; and
 - (b) to give the Secretary, within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.
- (2) The court may make an adverse publicity order on its own initiative or on the application of the prosecutor.
- (3) If the offender fails to give evidence to the Secretary in accordance with subsection (1)(b), the Secretary, or a person authorised in writing by the Secretary, may take the action or actions specified in the order.
- (4) However, if—
 - (a) the offender gives evidence to the Secretary in accordance with subsection (1)(b); and

(b) despite that evidence, the Secretary is not satisfied that the offender has taken the action or actions specified in the order in accordance with the order—

the Secretary may apply to the court for an order authorising the Secretary, or a person authorised in writing by the Secretary, to take the action or actions.

- (5) If the Secretary or a person authorised in writing by the Secretary takes an action or actions in accordance with subsection (3) or an order under subsection (4), the Secretary is entitled to recover from the offender, by action in a court of competent jurisdiction, an amount in respect of the reasonable expenses of taking the action or actions as a debt due to the Secretary.
- (6) The court must not make an adverse publicity order unless it is satisfied that the costs of complying with the order do not exceed the maximum penalty amount that the court may impose on the offender for the offence concerned.
- (7) The court may make an adverse publicity order in relation to an offender in addition to or instead of—
- (a) imposing a penalty on the offender; or
 - (b) making any other order that the court may make in relation to the offence.

Division 9—General

131 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.

- (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.

132 Offences relating to enforcement

- (1) A person must not—
- (a) without reasonable excuse obstruct or hinder an inspector in exercising the inspector's powers under this Act; or
 - (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
 - (d) give to an inspector any information or answer that is false or misleading if the inspector's request for the information is lawfully made and the person knows the information or answer to be false or misleading in a material particular; or
 - (e) refuse to produce any plant, plant product, used package, used equipment or earth material when lawfully requested to do so by an inspector; or
 - (f) give, procure or offer or promise any bribe, recompense, inducement or reward to influence an inspector in the exercise of the inspector's powers or the discharge of the
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inspector's duties under this Act or attempt to do so; or

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

Penalty: 60 penalty units.

- (2) Despite anything to the contrary in subsection (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.

133 Offences about certification

A person who is not an accredited person must not—

- (a) issue for, or in respect of, any plant, plant product, used equipment, used package, earth material, bees, honey, beeswax, honeycomb, beehives or pollen anything that purports to be an assurance certificate; or
- (b) use for the purposes of this Act anything that purports to be an assurance certificate.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

134 False statement in certificates and declarations

A person must not include in any assurance certificate, plant health certificate or plant health declaration a statement or information that the person knows to be false.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

135 Alterations to certificates and declarations

(1) A person must not—

(a) alter or permit to be altered any information or statement in a plant health certificate unless the alteration is authorised in writing by an inspector, inspection agent or officer who is authorised by this Act to issue plant health certificates; or

(b) alter or permit to be altered any information or statement in a plant health declaration unless the alteration is authorised in writing by a person authorised by the Secretary to make plant health declarations.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

(2) A person must not alter or permit to be altered any information or statement in an assurance certificate unless—

(a) the alteration is authorised in writing by the accredited person who issued the assurance certificate; or

(b) the alteration—

- (i) relates to the splitting of a consignment to which that assurance certificate relates; and
- (ii) is made by a person authorised by the Secretary or by an officer or authority of a State or Territory administering a corresponding law to split consignments.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

136 Release of information

A person employed under Part 3 of the **Public Administration Act 2004** who is authorised by the Secretary either generally or in a particular case may communicate information that comes to the person's knowledge in the exercise of the person's powers or authorities or the discharge of the person's functions or duties under this Act or under any scheme or agreement between the States and Territories of the Commonwealth relating to the movement of material to which this Act applies to—

- (a) an officer or authority of a State or Territory of the Commonwealth administering a corresponding law; or
 - (b) any department or authority of the Commonwealth that the Secretary specifies.
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PART 8—GENERAL

137 No appeal or review of decisions under section 42

If an order has been made by the Minister under section 42(1), no proceedings for an injunction, or for any order in the nature of a prerogative writ, or an order of any other kind, may be instituted or continued in any court against the Minister, the Secretary, an inspector or any other person that would stop, prevent or restrain the Minister, Secretary, inspector or other person from taking or purporting to take any action, including the making of orders and authorisations under this Act, in relation to, or in consequence of, an outbreak or suspected outbreak of an exotic pest or an exotic disease within Victoria or within any other part of Australia referred to in an order under section 42(1)(b).

138 Protection of court actions

Nothing in section 137 prevents the institution or continuation in any court of any action or proceedings to recover damages in respect of any loss incurred or damage suffered as a result of any act or omission in the negligent exercise or purported exercise by any person of a power or authority conferred by or under this Act.

139 Supreme Court—limitation of jurisdiction

It is the intention of section 137 to alter or vary section 85 of the **Constitution Act 1975**.

140 Power to approve forms

- (1) The Secretary may approve forms for the purposes of this Act.
- (2) The Secretary must ensure forms approved under subsection (1) are—
 - (a) available at the offices of the Department of Primary Industries; or
 - (b) published on the Internet site of the Department of Primary Industries.

141 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) prohibiting or controlling the movement of plants, plant products, used packages, used equipment or earth material which are likely to spread any pests or disease;
 - (b) securing the effectual treatment of plants, plant products, plant refuse, used equipment, used packages or earth material 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, used package, used equipment or earth material which may be affected with a pest or disease;
 - (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 equipment or earth material or supervising the destruction or disposal of any plant, plant product, plant refuse, used
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- package, used equipment or earth material or for the preparation of a compliance agreement and ensuring that the agreement is complied with;
- (d) exempting any person, place, plant or plant product from the application of this Act, whether wholly or partially or subject to conditions, restrictions or limitations;
 - (e) requirements for the packing of fruit, vegetables and nuts for human consumption for sale;
 - (f) the markings to be placed on packages containing fruit, vegetables or nuts for sale and prohibiting the use of marks other than those prescribed;
 - (g) prescribing a system for lodging and issuing electronic copies of plant health certificates, assurance certificates and plant health declarations in a manner consistent with the **Electronic Transactions (Victoria) Act 2000**;
 - (h) prescribing the size, form and quality of labels required to be attached to packages of plants or plant products;
 - (i) 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;
 - (j) prescribing, 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.
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- (2) The regulations—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances; and
 - (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
 - (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
 - (f) may require any application, return or other document required by this Act to be verified by statutory declaration; and
 - (g) may impose penalties not exceeding 10 penalty units for any contravention of the regulations.
- (3) Without limiting subsections (1) and (2), for the purposes of Part 2, the regulations may limit or restrict the persons or class of persons authorised or permitted by the Act to issue plant health declarations in relation to particular prescribed material or classes of prescribed material.
- (4) 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**.
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PART 9—REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

See:
Act No.
51/1995.
Reprint No. 2
as at
31 December
2003
and
amending
Act Nos
22/2004,
108/2004,
29/2006,
32/2006 and
68/2009.
LawToday:
www.
legislation.
vic.gov.au

142 Repeal of Plant Health and Plant Products Act 1995

The **Plant Health and Plant Products Act 1995**
is repealed.

143 Transitional and savings provisions

- (1) Despite the repeal of the **Plant Health and Plant Products Act 1995**, any permit, notice or direction issued or made by an inspector, the Secretary or the Minister under that Act and in force immediately before the commencement of this section continues in operation under this Act and is taken to be a permit, notice or direction issued under this Act.
- (2) Despite the repeal of the **Plant Health and Plant Products Act 1995**, any Order under that Act by—
 - (a) the Governor in Council; or
 - (b) the Minister; or

(b) an inspector (except for orders made under section 57 of that Act)—

and in force immediately before the commencement of this section continues in operation under this Act and is taken to be an Order made under this Act.

(3) Despite the repeal of the **Plant Health and Plant Products Act 1995**, any consent given by the Minister under section 6(2)(d) or 6(3A) of that Act and in force immediately before the commencement of this section continues in operation under this Act and is taken to be a consent given under this Act.

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ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 28 July 2010

Legislative Council: 12 August 2010

The long title for the Bill for this Act was "A Bill for an Act to re-enact with amendments the laws relating to plant pest and disease control and plant product description, to repeal the **Plant Health and Plant Products Act 1995** and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 28 July 2010

Legislative Council: 12 August 2010

Absolute majorities:

Legislative Assembly: 12 August 2010

Legislative Council: 2 September 2010

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Plant Biosecurity Act 2010
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