



Western Australia

# **Agriculture and Related Resources Protection Act 1976**

Compare between:

[21 May 2012, 03-10-02] and [29 Aug 2012, 03-m0-02]



Western Australia

## **Agriculture and Related Resources Protection Act 1976**

**An Act to provide for the management, control and prevention of certain plants and animals, for the prohibition and regulation of the introduction and spread of certain plants and of the introduction, spread and keeping of certain animals, for the protection of agriculture and related resources generally, and for incidental and other purposes.**

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Agriculture and Related Resources Protection Act 1976*<sup>1</sup>.

### **2. Commencement**

The provisions of this Act shall come into operation on such date or dates as is or are, respectively, fixed by proclamation<sup>1</sup>.

### **3. Object of Act**

The object of this Act is to protect primary industries and the resources related to primary industries.

### **4. Construction**

- (1) In this section reference to the provisions of an Act includes reference to the provisions of any regulation, local law, by-law, Order in Council, proclamation, declaration, and notice, made, given or promulgated under the provisions of that Act.

*[(2) deleted]*

- (3) Where the provisions of the *Bush Fires Act 1954* are in conflict or inconsistent with those of this Act the provisions of that Act shall, to the extent of the conflict or inconsistency, prevail.

*[Section 4 amended by No. 14 of 1996 s. 4; No. 46 of 2010 s. 4.]*

*[5. Deleted by No. 59 of 1986 s. 4.]*

*[6. Deleted by No. 46 of 2010 s. 5.]*

### **7. Definitions and interpretation**

- (1) In this Act unless the contrary intention appears —  
***animal*** means any living thing that is not a human being or a plant;

***animal-proof fence*** means any substantial fence used to impede the movement of declared animals being a fence that —

- (a) conforms with the prescribed description of an animal-proof fence; or
- (b) is approved of in writing by the Director General as being an animal-proof fence;

***authorised person*** means a person authorised by the Director General pursuant to section 11;

***barrier fence*** means any animal-proof or rabbit-proof fence under the control of the Director General and any other animal-proof or rabbit-proof fence erected out of public moneys;

***category*** means a category mentioned in section 36(3) or (4);

***class***, in relation to plants or animals, means any group or grouping of plants or animals;

***Commissioner*** means the Commissioner of State Revenue;

***control***—

- (a) in relation to declared plants of a class assigned to category P2 or declared animals of a class assigned to category A2, means to destroy, prevent and eradicate those plants or animals or cause those plants or animals to be destroyed, prevented and eradicated;
- (b) in relation to declared plants of a class assigned to category P3, means —
  - (i) to destroy, prevent and eradicate those plants or cause those plants to be destroyed, prevented and eradicated; or
  - (ii) to control those plants by taking or causing to be taken such measures as are approved by an inspector or authorised person to reduce the numbers or distribution of those plants;
- (c) in relation to declared plants of a class assigned to category P4, means —

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- (i) to destroy, prevent and eradicate those plants or cause those plants to be destroyed, prevented and eradicated; or
  - (ii) to control those plants by taking or causing to be taken such measures as are approved by an inspector or authorised person to prevent the spread of those plants;
- (d) in relation to declared plants of category P5, means to take or cause to be taken such action in respect of those plants as is prescribed;
- (e) in relation to declared animals of category A5, means —
- (i) to destroy, prevent and eradicate those animals or cause those animals to be destroyed, prevented and eradicated; or
  - (ii) to control those animals by taking or causing to be taken such measures as are approved by an inspector or authorised person to reduce and restrict the number of those animals;
- (f) in relation to declared animals of category A7, means to do or cause to be done such acts, matters and things for the management and regulation of the movement, numbers and distribution of those animals as are set out in a management programme having effect in the area of the State in which those animal are situated and applying to animals of that class,

and inflexions and derivatives have correlative meanings;

**declaration** means a declaration made by the Minister and published in the *Gazette* and the verb **to declare** and inflexions and derivatives have correlative meanings;

**declared animal** means an animal belonging to a class of animals declared under section 35 to be declared animals and includes —

- (a) such an animal of any kind or sex;
- (b) the egg or semen of such an animal; and

- (c) such an animal when in the larval stage or any other immature stage,

and, unless otherwise specified in a declaration under that section, includes any hybrid or cross derived from such an animal;

**Declared Pest Account** has the meaning given in the *Biosecurity and Agriculture Management Act 2007* section 6;

**declared plant** means a plant belonging to a class of plants declared under section 35 to be declared plants and includes —

- (a) any part of such a plant;  
(b) the product of such a plant;

**department** means the department principally assisting in the administration of this Act;

**Director General** means the chief executive officer of the department;

**district** means, in relation to a local government, the district of that local government under the *Local Government Act 1995*;

**Government department** means a Minister of the Crown acting in his official capacity, a department of the Public Service of the State, a State trading concern, instrumentality or public utility, and any other person or body corporate or unincorporate who or which, under the authority of an Act, administers or carries on for the benefit of the State a public social service or utility;

**inspector** means an inspector appointed under the *Biosecurity and Agriculture Management Act 2007* section 162;

**land under the control of a local government** means land which is —

- (a) vested in or leased by a local government;  
(b) within a public place, including a road;  
(c) within a public reserve under the care, control and management of a local government; or

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- (d) vested in a local government as trustee or of which a local government has been appointed trustee;

**management programme** means a programme approved and published by the Minister under section 66;

**occupier**, in relation to land, means the person by whom or on whose behalf land is actually occupied, or, if there is no occupier, the person entitled to possession, and includes a person in the unauthorised occupation of Crown land, and a person who, under a licence or concession relating to specified land vested in the Crown, has the right of taking a profit of the land, and **occupy** and inflexions and derivatives have, in relation to land, meanings correlative to “occupier”;

**owner**, in relation to land, means —

- (a) (i) a person who is in possession of the land as —

- (A) the holder of a legal or equitable estate of freehold in possession in the land, including an estate or interest under a contract or arrangement with the Crown or any other person by virtue of which the land is held or occupied with the right to acquire the fee simple by purchase or otherwise;
- (B) a Crown lessee or a lessee or tenant under a lease or tenancy agreement;
- (C) a mortgagee of the land;
- (D) a trustee, attorney or authorised agent of such a holder, lessee, tenant or mortgagee;

or

- (ii) where there is no such person in possession of the land the person who is entitled to possession in any of those capacities,



and, for the purposes of this paragraph, receipt of the rents and profits shall be regarded as possession;

- (b) a person who —
- (i) under a licence or concession relating to specific Crown land, has the right of taking a profit of the land;
  - (ii) is lawfully entitled to occupy the land which is vested in the Crown, and which has no other owner within the meaning of this definition;
  - (iii) is in the actual occupation, with or without title, of the surface of the whole or portion of a mining tenement within the meaning of the *Mining Act 1904*<sup>2</sup>;
  - (iv) has, without title, a tent, camp or other habitation on the land which is land belonging to another person;
  - (v) is in the unauthorised occupation of the land which is Crown land,

and *own* and inflexions and derivatives have, in relation to land, meanings correlative to “owner”;

*pastoral lease* has the meaning ascribed to that term in and for the purposes of the *Land Administration Act 1997*;

*plant* means vegetation of any kind;

*private land* means land alienated by the Crown or land which the holder is in the course of purchasing or has the right to purchase from the Crown, or land held under lease or licence or permit from the Crown for any period or reserved or dedicated for a public purpose and vested in trustees other than a local government or committed to the control and management of a Board appointed pursuant to the provisions of the *Parks and Reserves Act 1895*, or land held or used by a person in any of the cases referred to in paragraph (b) of the definition “owner” in this subsection;

*prohibited material* —

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- (a) in relation to the State generally, means a plant that is, for the time being, declared in respect of the whole of the State or any part of the State and includes any packet, parcel, packing material, seeds, soil, vegetable matter or other substance in or with which that plant is packed or associated;
- (b) in relation to a part of the State, that means a plant that is, for the time being, declared in respect of part of the State and includes any packet, parcel, packing material, seeds, soil, vegetable matter or other substance in or with which that plant is packed or associated;

**public land** means land other than private land and other than land under the control of a local government;

**rabbit-proof fence** means any substantial fence used to impede the movement of rabbits being a fence that —

- (a) conforms with the prescribed description of a rabbit-proof fence; or
- (b) is approved of in writing by the Director General as being a rabbit-proof fence;

**train** includes a railway locomotive, railway carriage and railway wagon;

**vehicle** has the meaning ascribed to that term in and for the purposes of the *Road Traffic Act 1974*;

**watercourse** includes any waters, whether running or still, permanent or temporary, or natural or artificially constructed.

- (2) For the purposes of this Act —
  - (a) a reference to a class of declared plants or class of declared animals of, or assigned to, a category identified by a letter and a numeral refers to a class of declared plants or class of declared animals assigned, by declaration under section 35, to the category so identified in section 36(3) or (4);

- (b) a reference to a declared plant or declared animal of a category identified by a letter and a numeral refers to a declared plant or declared animal of a class of declared plants or declared animals, as the case may be, assigned by declaration under section 35 to the category so identified in section 36(3) or (4).
- (3) A declared plant or declared animal shall be deemed to be on land for the purposes of this Act notwithstanding that it is on or in any watercourse on that land or is, in the case of a declared animal, in the air above that land.
- (4) For the purposes of this Act —
  - (a) a fence shall be taken to be on the boundary of any land, or on the common boundary of any lands, if it follows the line which is such actual, reputed, or accepted boundary, or where the boundary is inaccessible, or incapable of being fenced, if the fence follows such boundary as nearly as practicable having regard to the physical features of the country, or if in any case such fence follows any line which is reasonably approximate to such boundary; and
  - (b) the intervention of a road, railway or watercourse or a reserve set aside for the purposes of the transmission of electricity or the piping of gas or water shall not prevent lands being taken to be adjoining, or prevent a fence along either side of any such road, railway, watercourse or reserve being taken to be on the common boundary of the lands on either side of such road, railway, watercourse or reserve.

*[Section 7 amended by No. 59 of 1986 s. 5; No. 14 of 1996 s. 4; No. 31 of 1997 s. 141; No. 45 of 2002 s. 7(2); No. 74 of 2003 s. 26; No. 55 of 2004 s. 24; No. 77 of 2006 s. 17; No. 46 of 2010 s. 6 and 55.]*

## **Part II — Administration**

*[8, 9. Deleted by No. 46 of 2010 s. 7.]*

### **10. Delegation by Minister**

- (1) The Minister may delegate to the Director General any power or duty of the Minister under another provision of this Act.
- (2) The delegation must be in writing signed by the Minister.
- (3) The delegation may expressly authorise the Director General to further delegate the power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under, or as authorised under, this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary intention is shown.
- (5) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

*[Section 10 inserted by No. 46 of 2010 s. 8.]*

### **11A. Delegation by Director General**

- (1) The Director General may delegate to an officer of the department any power or duty of the Director General under another provision of this Act.
- (2) The delegation must be in writing signed by the Director General.
- (3) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary intention is shown.
- (4) Nothing in this section limits the ability of the Director General to perform a function through an officer or agent.

*[Section 11A inserted by No. 46 of 2010 s. 8.]*

**11. Authorised persons**

- (1) The Director General may, from time to time, in writing, authorise persons to take all such measures and do all such things as are necessary or convenient for controlling, and preventing the introduction and spread, of declared plants and declared animals.
- (2) Every authorised person shall, if required to do so, produce his written authority to the owner or occupier of any land or premises he may enter pursuant to the powers conferred on him by this Act.

*[Section 11 amended by No. 46 of 2010 s. 9.]*

*[12. Deleted by No. 46 of 2010 s. 10.]*

*[Part III: s. 13-16 deleted by No. 46 of 2010 s. 11;  
s. 17 deleted by No. 9 of 1998 s. 3;  
s. 18-34A deleted by No. 46 of 2010 s. 11.]*

## **Part IV — Declaration of plants and animals**

### **35. Classes of plants and animals may be declared**

- (1) The Minister may, by declaration, declare —
  - (a) plants of a class specified in the declaration to be declared plants;
  - (b) animals of a class specified in the declaration to be declared animals.
- (2) A declaration under subsection (1) in relation to a class of plants or animals shall specify —
  - (a) whether those plants or animals are declared plants or declared animals, as the case may be, in respect of the whole of the State and every part of the State or only in respect of a part or parts of the State specified in the declaration;
  - (b) whether those plants or animals are declared generally or only in particular circumstances specified in the declaration; and
  - (c) the category or categories to which that class of declared plants or declared animals is assigned for the purposes of this Act.

*[Section 35 amended by No. 46 of 2010 s. 55(1).]*

### **36. Categories of declared plants and animals**

- (1) Subject to, and in accordance with, subsection (3) and (4), a class of declared plants or class of declared animals may, by declaration under section 35, be assigned to one or more categories for the purposes of this Act according to the measures that, in the opinion of the Minister, need to be taken in relation to declared plants or declared animals of that class in order to achieve the object of this Act.

- (2) A class of declared plants or class of declared animals may, by declaration under section 35, be assigned to different categories in respect of different parts of the State.
- (3) For the purposes of this Act a class of declared plants may be assigned to —
- (a) category P1 in respect of an area if the introduction into and movement within that area of those plants should, in the opinion of the Minister, be prohibited;
  - (b) category P2 in respect of an area if those plants should, in the opinion of the Minister, be eradicated in that area;
  - (c) category P3 in respect of an area if the numbers or distribution, or both, of those plants should, in the opinion of the Minister, be reduced in that area;
  - (d) category P4 in respect of an area if those plants should, in the opinion of the Minister, be prevented from spreading beyond the places in which they occur in that area for the time being;
  - (e) category P5 in respect of an area, if, in the opinion of the Minister, particular action should be taken in relation to those plants on land in that area that is public land or land under the control of a local government.
- (4) For the purposes of this Act a class of declared animals may be assigned to —
- (a) category A1 in respect of an area if the introduction of those animals into that area should, in the opinion of the Minister, be prohibited;
  - (b) category A2 in respect of an area if those animals —
    - (i) are not vertebrate animals native to that area; and
    - (ii) should, in the opinion of the Minister, be eradicated in that area;
  - (c) category A3 in respect of an area if the keeping of those animals in that area should, in the opinion of the Minister, be prohibited;

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- (d) category A4 in respect of an area if the introduction of those animals into that area should, in the opinion of the Minister, be subject to conditions and restrictions imposed by or under the regulations;
  - (e) category A5 in respect of an area if the numbers of those animals in that area should, in the opinion of the Minister, be reduced and kept under restriction;
  - (f) category A6 in respect of an area if the keeping of those animals in that area should, in the opinion of the Minister, be subject to conditions and restrictions imposed by or under the regulations;
  - (g) category A7 in respect of an area if those animals are native to that area and are animals for which a management programme should, in the opinion of the Minister, be approved and published by the Minister and implemented in and in relation to that area.
- (5) In subsections (3) and (4) *area* means the whole of the State or a part of the State.

*[Section 36 amended by No. 31 of 1983 s. 3; No. 14 of 1996 s. 4; No. 46 of 2010 s. 55(1).]*

**37. List of declared animals and plants**

The Director General must —

- (a) maintain, on or accessible through the department's website, a publicly accessible list setting out —
  - (i) every class of plants or animals that is for the time being the subject of a declaration made under section 35; and
  - (ii) the matters for the time being specified under section 35(2) in relation to each class referred to in subparagraph (i);

and



- (b) make copies of the list available to the public for inspection at the head office and regional offices of the department during business hours.

*[Section 37 inserted by No. 46 of 2010 s. 12.]*

## **Part V — Control of declared plants and declared animals**

### **Division 1 — Interpretation**

#### **38. Interpretation and application**

(1) In this Part —

*declared animal* means a declared animal of category A2, A5 or A7;

*declared plant* means a declared plant of category P2, P3 or P4 and, in relation to public land and land under the control of a local government, includes a declared plant of category P5.

(2) A provision of this Part relating to declared plants or declared animals on land or to the control of declared plants on and in relation to land applies to and in relation to plants or animals, as the case may be, that are, for the time being, declared in respect of the part of the State in which that land is situated.

*[Section 38 amended by No. 14 of 1996 s. 4.]*

### **Division 2 — Public land**

#### **39. Department to control declared plants and animals**

A Government department shall control declared plants and declared animals on and in relation to public land under its control.

#### **40. Inspection and advice**

(1) An inspector or authorised person who finds declared plants or declared animals or signs or marks of declared animals on or in the vicinity of public land that is under the control of a Government department shall notify the department of that fact.

- (2) An inspector or authorised person may advise a Government department as to the measures that should be taken by it to control declared plants and declared animals on and in relation to land under its control.

**41. Agreements**

- (1) The Director General and a Government department may enter into agreements for the supply by the Director General to the Government department of materials, appliances and services for the control of declared plants and declared animals at such costs as shall be agreed.
- (2) Subject to such limitations as may be prescribed the Director General and a Government department, as parties to an agreement referred to in subsection (1), may agree to extend or vary the agreement from time to time, or to discharge the agreement.
- (3) The Director General may supply poison under subsection (1) despite anything to the contrary in the *Poisons Act 1964*.

*[Section 41 amended by No. 46 of 2010 s. 13 and 55(2).]*

**Division 3 — Local government land**

*[Heading amended by No. 14 of 1996 s. 4.]*

**42. Local government to control declared plants and animals**

A local government shall control declared plants and declared animals on and in relation to land under its control.

Penalty: a fine of \$20 000.

*[Section 42 amended by No. 59 of 1986 s. 7; No. 20 of 1989 s. 3; No. 14 of 1996 s. 4; No. 46 of 2010 s. 14.]*

**43. Notice to comply may be served on local government**

- (1) Without affecting any proceeding against or liability of any local government under section 42, if an inspector or authorised

person is of the opinion that a local government is not making all reasonable endeavours to comply with that section he may, by notice in writing served on that local government, direct that declared plants or declared animals specified in the notice be controlled on and in relation to land specified in the notice in the manner and to the extent specified in the notice.

- (2) An inspector or authorised person may, by notice served under subsection (1), direct 2 or more local governments to act in conjunction in controlling declared plants or declared animals on and in relation to land under the control of each of them respectively and may fix the proportion of the expense of so doing to be paid by each of them.

*[Section 43 amended by No. 14 of 1996 s. 4.]*

**44. Failure to comply with direction**

- (1) A local government that fails to comply with a direction contained in a notice served on it under section 43 commits an offence.

Penalty: a fine of \$50 000.

- (2) For the purposes of this section and section 45 a local government on which a notice has been served under section 43 shall not be regarded as having failed to comply with the direction contained in the notice by reason only that it has not controlled declared plants or declared animals in the manner specified in the notice so long as it has controlled the plants or animals in some other manner.

*[Section 44 amended by No. 59 of 1986 s. 7; No. 20 of 1989 s. 3; No. 14 of 1996 s. 4; No. 46 of 2010 s. 15.]*

**45. Powers of inspectors, etc. on failure to comply with direction**

- (1) Without affecting any proceeding against or liability of any local government for an offence under section 44 if that local government has not, in the opinion of an inspector or authorised person, complied with a direction contained in a notice served

on it under section 43 he may enter the land to which the notice relates and carry out all or any of the requirements of the direction, and the expense of doing so, together with interest at the prescribed rate, shall be a debt due by the local government to the State and may be sued for and recovered by the Director General on behalf of the State in a court of competent jurisdiction.

- (2) For the purposes of subsection (1), if a notice under section 43 has been served on 2 or more local governments, the expense incurred under subsection (1) in carrying out the requirements of the direction contained in the notice shall be recoverable from those local governments in the proportions fixed by the notice.

*[Section 45 amended by No. 14 of 1996 s. 4; No. 46 of 2010 s. 16.]*

**46. Agreements**

- (1) Subject to the provisions of the *Local Government Act 1995* the Director General and a local government may enter into agreements for the supply by the Director General to the local government of materials, appliances and services for the control of declared plants and declared animals at such cost as shall be agreed.
- (2) Subject to such limitations as may be prescribed, and to the provisions of the *Local Government Act 1995*, the Director General and a local government, as parties to an agreement referred to in subsection (1), may agree to extend or vary the agreement from time to time, or to discharge the agreement.
- (3) The Director General may supply poison under subsection (1) despite anything to the contrary in the *Poisons Act 1964*.

*[Section 46 amended by No. 14 of 1996 s. 4; No. 46 of 2010 s. 17 and 55(2).]*

### **Division 4 — Private land**

#### **47. Application to certain roads**

- (1) For the purposes of this Division, an owner or occupier of private land shall be regarded, subject to subsection (2), as owning or occupying as the case may be, in addition to that land —
- (a) the land comprising any road that —
    - (i) intersects the private land; or
    - (ii) bounds the private land and is fenced only on the side further from the common boundary of the road and the private land;
  - (b) the land comprising half of the width of any road that bounds the private land and is fenced on both sides being the half that is nearer the common boundary of the road and the private land; and
  - (c) the land comprising half the width of any road that separates the private land from other private land being the half that is nearer the common boundary of the road and the first-mentioned private land.
- (2) Subsection (1) does not apply to or in relation to a road dedicated and open to public use and fenced on both sides.

#### **48. Notice of declared plants and animals, etc. to be given by occupier**

An occupier of any private land who finds or learns that declared plants or declared animals or signs or marks of declared animals are present on that land shall forthwith notify the Director General or an inspector or authorised person.

Penalty: a fine of \$20 000.

*[Section 48 amended by No. 20 of 1989 s. 3; No. 46 of 2010 s. 55(2) and 56.]*

**49. Occupiers of private land to control declared plants and animals**

The occupier of any private land shall control declared plants and declared animals on and in relation to that land.

Penalty: a fine of \$20 000..

*[Section 49 amended by No. 59 of 1986 s. 7; No. 20 of 1989 s. 3; No. 46 of 2010 s. 18.]*

**50. Notice to owner and occupier to control declared plants and animals**

(1) Without affecting any proceeding against or liability of any occupier under section 49 —

- (a) an inspector or an authorised person may, if he is satisfied that an occupier of private land is not making all reasonable endeavours to comply with that section, serve on the occupier or the owner of the land, or on both the occupier and the owner, a notice in writing;
- (b) the Director General may, for the purpose of coordinating the control of declared plants or declared animals by occupiers of private land in a particular area, serve on the occupier or the owner of any such land, or on both the occupier and the owner, a notice in writing,

directing that declared plants or declared animals specified in the notice be controlled on and in relation to the land in the manner and to the extent specified in the notice and specifying a commencement date on or before which the person on whom the notice is served shall commence to comply with the direction contained in the notice and a completion date on or before which that person shall fully comply with that direction.

(2) Without limiting the generality of subsection (1) a notice under that subsection may be served by publishing a copy of the notice in the *Gazette* and in a newspaper circulating generally in the area where the private land to which the notice relates is

situated, not less than one month before the date specified in the notice as the date on or before which the person on whom the notice is served shall commence to comply with the direction contained therein.

- (3) A notice served in accordance with subsection (2) —
- (a) may be directed to any number of owners or occupiers of private land;
  - (b) shall be deemed to have been served on both the owner and the occupier of any private land specified in the notice.

*[Section 50 amended by No. 31 of 1983 s. 4; No. 46 of 2010 s. 55(2).]*

**51. Failure to comply with direction**

- (1) An owner or occupier of private land who has been served with a notice under section 50 and who —
- (a) fails to commence to comply with the direction contained in the notice on or before the commencement date specified in the notice; or
  - (b) fails to fully comply with the direction contained in the notice on or before the completion date specified in the notice,

commits an offence.

Penalty: a fine of \$50 000.

- (2) Where the owner and the occupier of private land are both served with a notice under subsection (1) it is a defence in any proceeding against either of them under subsection (1)(a) or (b) for the accused to show that the other has complied with the provisions of that paragraph.
- (2a) In any proceeding under subsection (1) for an offence relating to a notice by the Director General under section 50(1)(b), it is a defence for the accused to show that the direction contained in



the notice was, in so far as it applied to the land to which the proceedings relate, unnecessary or inappropriate.

- (3) For the purposes of this section and section 52 an owner or occupier of private land who has been served with a notice under section 50 —
- (a) shall not be regarded as having failed to commence to comply with the direction contained in the notice by reason only that he has not commenced to control declared plants or declared animals in the manner specified in the notice so long as he has commenced to control the plants or animals in some other manner;
  - (b) shall not be regarded as having failed to comply, or fully comply, with the direction contained in the notice by reason only that he has not controlled declared plants or declared animals in the manner specified in the notice so long as he has controlled the plants or animals in some other manner.

*[Section 51 amended by No. 31 of 1983 s. 5; No. 59 of 1986 s. 7; No. 20 of 1989 s. 3; No. 84 of 2004 s. 82; No. 46 of 2010 s. 19 and 55(2).]*

## **52. Work and recovery of costs**

- (1) Without affecting any proceeding against or liability of any owner or occupier under section 51, if an inspector or authorised person is of the opinion that neither the owner nor the occupier of private land has complied with the direction contained in a notice served on either or both of them under section 50 that inspector or authorised person may enter the land to which the notice relates and carry out all or any of the requirements of the direction.
- (2) All expenses incurred by an inspector or authorised person under subsection (1), together with interest at the prescribed rate, shall be a debt due by the owner or occupier served with the notice referred to in that subsection, and if both are served,

by them jointly and each of them severally, to the State, and may be sued for and recovered by the Director General on behalf of the State in a court of competent jurisdiction.

*[Section 52 amended by No. 46 of 2010 s. 20.]*

**53. Powers of owner and occupier to control declared plants and animals**

- (1) An owner or occupier of private land shall have full power to do all that is necessary to control declared plants and declared animals on and in relation to that land and to comply with a direction contained in a notice served on him under section 50.
- (2) Every owner of private land shall permit any occupier of that land, and every occupier shall permit any owner, to exercise the power referred to in subsection (1) and if in the attempted exercise thereof the occupier obstructs the owner, or the owner obstructs the occupier, the person causing the obstruction commits an offence.

Penalty: a fine of \$20 000.

*[Section 53 amended by No. 20 of 1989 s. 3; No. 46 of 2010 s. 56.]*

**54. Apportionment of expense between persons interested in land**

- (1) As between the owner and occupier or successive owners and occupiers of private land the expense of controlling declared plants or declared animals on and in relation to the land in compliance with a direction contained in a notice served under section 50, whether the controlling be done by the owner or occupier or an inspector or authorised person, shall, subject to the provisions of any agreement between the owner or occupier or successive owners and occupiers, be borne in such proportions as shall be prescribed, and until prescribed, as shall be decided by the Director General.

- (2) The Director General must notify the parties concerned of any decision made under subsection (1).
- (3) A party paying more than his proportion, may recover the excess from the other by action in a court of competent jurisdiction.
- (4) An owner having only a partial interest or a particular estate in the land may apply to the Director General for the Director General to declare what portion of any expense of or incidental to the control of declared plants and declared animals on and in relation to the land paid or to be paid by the owner is to be borne by any other person having a partial interest or an estate in the land, and the Director General may, subject to the provisions of this Act, make such declaration as in the circumstances the Director General considers just, and an owner paying, or who has paid, more than that owner's proportion of the expenses as declared by the Director General may, by action in a court of competent jurisdiction, recover the excess from any person the Director General declares to be liable to pay it.
- (5) A party dissatisfied with a decision of the Director General under subsection (1) or (4) may apply to the State Administrative Tribunal for a review of the decision.

*[Section 54 amended by No. 55 of 2004 s. 25; No. 46 of 2010 s. 21 and 55(2).]*

## **55. Agreements**

- (1) The Director General and an owner or occupier, or both, of private land may enter into agreements for the supply by the Director General to the owner or occupier, or both, of materials, appliances and services for the control of declared plants and declared animals at such cost as shall be agreed.
- (2) Subject to such limitations as may be prescribed the Director General and the owner or occupier, or both, of land, as parties to an agreement referred to in subsection (1) may agree to extend

or vary the agreement from time to time or to discharge the agreement.

- (3) The Director General may supply poison under subsection (1) despite anything to the contrary in the *Poisons Act 1964*.

*[Section 55 amended by No. 46 of 2010 s. 22 and 55(2).]*

**56. Director General may delegate powers to local governments**

- (1) The Director General may, from time to time with the written approval of the Minister, delegate to a local government the power to exercise all or any of the powers of the Director General or of inspectors and authorised persons under sections 50 and 52 in relation to private land situated within the district of the local government and in relation to owners and occupiers of that land.

- (2A) The delegation must be in writing signed by the Director General.

- (2) A delegation under this section shall have effect according to its tenor and shall be revocable at the will of the Director General and no delegation shall prevent the exercise of any power by the Director General or an inspector or authorised person.

*[Section 56 amended by No. 31 of 1983 s. 6; No. 14 of 1996 s. 4; No. 46 of 2010 s. 23 and 55(2).]*

**Division 5 — Operational work**

*[Heading amended by No. 46 of 2010 s. 24.]*

**57. Interpretation**

In this Division *operational work* means the doing of such acts, matters and things as may be necessary for or conducive to the control of declared plants and declared animals.

**58. Operational work may be carried out**

- (1) In this section —

*dwelling* has the meaning given in the *Biosecurity and Agriculture Management Act 2007* section 63.

- (2A) Inspectors and authorised persons may, at any time and to such extent as the Director General may determine, carry out operational work on and in relation to any place other than a dwelling without cost to the owner or occupier of that place.
- (2B) The operational work may be carried out —
- (a) out of moneys from time to time appropriated by Parliament for that purpose; or
  - (b) out of moneys from time to time standing to the credit of the Declared Pest Account other than moneys derived from rates under section 60; or
  - (c) on and in relation to private land held under pastoral lease out of moneys from time to time standing to the credit of the Declared Pest Account and derived from rates under section 60; or
  - (d) on and in relation to public land, land under the control of a local government or private land pursuant to an agreement under section 41, 46 or 55.
- (2) An inspector or authorised person may enter any land for the purpose of exercising powers under this section.

*[Section 58 amended by No. 14 of 1996 s. 4; No. 6 of 2006 s. 4; No. 77 of 2006 s. 17; No. 46 of 2010 s. 25.]*

## **59. Saving provisions**

- (1) The provisions of section 58 are in addition to and not in derogation of any other provision, whether of this Act or another Act, conferring power to control declared plants and declared animals.
- (2) Nothing in section 58 limits or otherwise affects the application of Divisions 2, 3 and 4 to and in relation to land if, and to the extent that, declared plants or declared animals are not

controlled on and in relation to that land pursuant to operational work carried out under the provisions of that section.

*[Section 59 amended by No. 46 of 2010 s. 26.]*

### **Division 6 — Rating and finance**

#### **60. Rates on pastoral leases**

- (1) This section applies to the financial year commencing on 1 July immediately following the coming into operation of the *Agriculture and Related Resources Protection Amendment Act 2010* section 27 and to each financial year thereafter.
- (2) Subject to and in accordance with the provisions of this Act, in respect of each financial year to which this section applies there shall be assessed, collected and paid on and in relation to all land held under pastoral lease rates at such rate as may be imposed under subsection (3) in respect of such land.
- (3) The Minister may, by notice published in the *Gazette* on or before the 30 June immediately preceding a financial year to which this section applies, impose in respect of that financial year rates in respect of land held under pastoral lease.
- (4) A rate imposed under subsection (3) —
  - (a) must be imposed upon the unimproved value of land to which the rate applies; and
  - (b) must not be at a rate exceeding 10 cents in the dollar of the unimproved value of land.
- (5) Different rates may be imposed in respect of different land and different classes of land.
- [(6) deleted]*
- (7) Despite the amendments made by the *Agriculture and Related Resources Protection Amendment Act 2006*, this Act, as in force immediately before the day on which that Act comes into

operation, continues to apply in relation to a rate payable for a financial year commencing before 1 July 2006.

- (8) Despite the amendments made by the *Agriculture and Related Resources Protection Amendment Act 2010* section 27 (the **amending section**), this section, as in force immediately before the amending section came into operation, continues to apply in relation to a rate payable for a financial year commencing before a financial year referred to in subsection (1).

*[Section 60 amended by No. 40 of 1978 s. 10; No. 22 of 1980 s. 3; No. 31 of 1983 s. 7; No. 6 of 2006 s. 5; No. 46 of 2010 s. 27.]*

[61. Deleted by No. 46 of 2010 s. 28.]

**62. Calculation of unimproved value**

[(1) deleted]

- (2) For the purposes of section 60, the unimproved value of land to which a rate imposed under that section applies is —
- (a) where the land is the whole of the land held under a pastoral lease, a sum equal to 20 times the amount of the relevant annual rent on that lease; or
  - (b) where the land is only part of the land held under a pastoral lease, a sum calculated by use of the following formula —

$$\frac{A}{B} \times C \times 20 = D$$

where —

- A is the area of the land to which the rate applies;
- B is the area of the whole of the land held under that lease;
- C is the relevant annual rent on that lease; and
- D is the unimproved value of the land to which the rate applies.

*[(3)-(7) deleted]*

- (8) In relation to a rate imposed under section 60 in respect of the financial year commencing on the 1 July 1984 or any financial year thereafter the relevant annual rent on a pastoral lease is, for the purposes of this section, the annual rent payable in respect of that lease as at the 1 February immediately preceding the financial year in respect of which the rate applies.

*[Section 62 amended by No. 76 of 1981 s. 3; No. 31 of 1983 s. 8; No. 31 of 1997 s. 7; No. 46 of 2010 s. 29.]*

**63. Assessment, payment and recovery**

- (1) Where a rate is imposed under section 60 in respect of a financial year the Commissioner shall assess the amount payable by way of rates under that section on and in relation to all land to which the rate applies and the rates so assessed are payable by the person who was the owner of the land at noon on the 30 June immediately preceding that financial year.

*[(2) deleted]*

- (3) Rates assessed under section 60 shall, subject to this Act, be due and payable 30 days after the service by post of a notice of assessment.
- (3a) When rates assessed under section 60 are due and payable —
- (a) they are a debt due to the State and payable to the Commissioner;
  - (b) they may be sued for and recovered by the Commissioner suing on behalf of the State; and
  - (c) Part 6 Division 2 of the *Taxation Administration Act 2003* applies to and in relation to them as if they were land tax assessed by the Commissioner.
- (4) The Commissioner may, with the approval of the Minister, write off arrears of rates assessed and due on and in relation to land under section 60.



*[(5) deleted]*

- (6) Notwithstanding anything contained in any other law, for the purposes of this Act the amount of rates treated as having been recovered by the Commissioner under section 60 in a financial year shall be the amount of the rates which becomes payable in that financial year under that section.

*[Section 63 amended by No. 22 of 1980 s. 4; No. 45 of 2002 s. 7(3); No. 6 of 2006 s. 7; No. 46 of 2010 s. 30.]*

**64. Postponement of payment of rates payable by pensioners**

- (1) Subject to subsection (5), a person who is a pensioner may claim to be exempt from liability for the payment of rates assessed under section 60 in respect of land of which he is in actual occupation as owner.
- (2) On receipt of the claim the Commissioner shall postpone the payment of the rates to which the claim relates until the person ceases to own the land or dies, whichever first occurs, or until the person ceases to be entitled to be exempt from liability for payment of rates assessed under section 60 in respect of the land.
- (3) Where the payment of any rates is postponed pursuant to subsection (2), nothing contained in the *Limitation Act 2005* prevents the Commissioner from recovering the amount of any of those rates which but for this subsection he would have been prevented from so doing by that Act.
- (4) While the rates remain unpaid they are by force of this section a charge on the land ranking equally with any other charge on the land created by an Act and before any other charge on the land.
- (5) A person is not entitled to be exempt under this section from liability for payment of rates assessed under section 60 in respect of any land if —

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- (a) the land is occupied by that person and a person who is neither a pensioner nor a dependant of the first-mentioned person; or
- (b) the land is partly owned by that person and partly owned by a person who is neither a pensioner nor a dependant of the first-mentioned person.

(6)(a) In this section the term *pensioner* means a pensioner as defined under the *National Health Act 1953* of the Parliament of the Commonwealth but does not include a person who comes within that definition by reason only that he is a person to whom or in respect of whom —

- (i) there is being paid a sheltered employment allowance under the *Social Services Act 1947* of the Parliament of the Commonwealth or that allowance would be payable if he were not receiving vocational training under Part VIII of that Act; or
- (ii) there is being paid an allowance under the *Tuberculosis Act 1948* of the Parliament of the Commonwealth.

(b) Any reference in this subsection to an Act of the Parliament of the Commonwealth includes any Act amending the Act or enacted in substitution for it.

*[Section 64 amended by No. 20 of 2005 s. 23; No. 46 of 2010 s. 31.]*

**65. Rates to be credited to Declared Pest Account**

(1) All rates recovered under section 60 are to be credited to the Declared Pest Account.

*[(2) deleted]*

*(3)[(a) deleted]*

(b) In each financial year a sum equal to the rates recovered by the Commissioner in that year under section 60 shall be appropriated from the Consolidated Account, without authority

other than that of this subsection, and credited to the Declared Pest Account.

- (4) The costs of assessing, receiving and recovering rates under section 60 are to be charged under this subsection to the Consolidated Account.
- (5) If, in any financial year, the costs referred to in subsection (4) exceed the sum approved from time to time by the Treasurer, the Minister must, upon receipt of a certificate from the Commissioner certifying the amount of that excess, charge to the Declared Pest Account and credit to the Consolidated Account a sum equal to the amount of that excess.

*[Section 65 amended by No. 40 of 1978 s. 11; No. 22 of 1980 s. 5; No. 31 of 1983 s. 9; No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 28 of 2006 s. 9; No. 77 of 2006 s. 4 and 17; No. 46 of 2010 s. 32.]*

### **Division 7 — Management programmes**

#### **66. Management programmes**

- (1) The Minister may approve a management programme with respect to declared animals of a class assigned to category A7 being a programme designed to ensure that the movement, numbers and distribution of animals of that class are managed and regulated so as to achieve the object of this Act whilst also ensuring that the continued existence of that class of animals in the area or areas of the State in which the programme has effect is not endangered.
- (2) A programme approved under subsection (1) shall specify the area or areas of the State in which the programme shall have effect.
- (3) The Minister shall publish every programme approved under subsection (1) in the *Gazette* and in a newspaper circulating in the area or areas in which the programme shall have effect.

- (4) A programme published under subsection (3) —
- (a) shall take and have effect on and from the day specified in the programme as the day on which it takes effect or, if a day is not so specified, on the day on which it is so published;
  - (b) may amend or vary any previous programme so published and may cancel any previous programme so published for the purpose of substituting its provisions for the provisions of the programme so cancelled;
  - (c) may be cancelled wholly or in part by the Minister by notice published in the *Gazette* and in a newspaper circulating in the area or areas in which the programme has effect.

*[Section 66 amended by No. 46 of 2010 s. 55(1).]*

### **Division 8 — Miscellaneous**

**67. Local government may assist owner or occupier to control declared plants and animals**

Without affecting the operation or effect of any other provision of this Act, where there are declared plants or declared animals on any public or private land, the local government of the district in which that land is situate may render such financial or other assistance to any owner or occupier of that land as the local government considers necessary or expedient for the control of those declared plants or declared animals on and in relation to that land.

*[Section 67 amended by No. 14 of 1996 s. 4.]*

**68. Protection of human health and life**

- (1) In this section —
- take*, in relation to an animal, means to trap, snare, shoot or catch that animal by any means other than poisoning and *taking* has a corresponding meaning.

- (2) The object of this section is to protect human health and life from danger or detriment likely to result from the handling or consumption of poisoned animals.
- (3) Where the Director General or an inspector or authorised person proposes —
- (a) to use; or
  - (b) to specify in a notice under section 43 or 50 the use of, poison, or other means likely to endanger or be detrimental to human health or life, for the control of declared animals in any area, the Director General shall cause notice to be published in the *Gazette* and in a newspaper circulating in the area, and in such other manner as the Director General considers necessary in order to notify the public of the proposal.
- (4) In a notice published under subsection (3) the Director General shall cause to be stated —
- (a) the proposal;
  - (b) the area to which the proposal relates;
  - (c) notification —
    - (i) that the taking of animals of a class specified in the notice is prohibited absolutely until such time as a further notice cancelling the prohibition is published by the Director General; or
    - (ii) that the taking, for human consumption, of animals of a class specified in the notice is prohibited until such time as a further notice cancelling the prohibition is published by the Director General,whichever the Director General considers appropriate in the circumstances;
  - (d) notification that the taking of animals of a class specified in the notice in breach of the prohibition is an offence against subsection (6); and

- (e) a warning that if animals of a class specified in the notice are taken they are likely to endanger or be detrimental to human health or life if handled or consumed.
- (5) Where the Director General has caused a notice to be published under subsection (3), if the Director General is of the opinion that the prohibition mentioned in that notice may without danger or detriment to human health or life be cancelled, the Director General shall cause a further notice cancelling the prohibition to be published in the *Gazette* and in a newspaper circulating in the area concerned.
- (6) A person who takes an animal of a class specified in a notice for the time being in force under subsection (3) in breach of the prohibition mentioned in that notice commits an offence.  
Penalty: a fine of \$50 000.

*[Section 68 amended by No. 40 of 1978 s. 12; No. 20 of 1989 s. 3; No. 46 of 2010 s. 55(2) and 56.]*

**69. Use of poison, setting traps, etc.**

- (1) Subject to this Act, it shall be lawful for the Director General and the owners and occupiers of land and all persons acting with their authority for the purpose of controlling declared animals, to lay poison and set traps or snares on any land.
- (2) An inspector or authorised person shall not use poison for the control of declared animals on or in relation to any land unless notice has been given to the actual occupant (if any) of the land of the intention to use poison.
- (3) Any person who, without lawful authority (proof whereof shall lie on him) destroys, injures, removes or interferes with any trap, snare, poison, matter or thing which is used for the purpose of controlling declared animals and which is lawfully placed upon any land for that purpose, commits an offence.  
Penalty: a fine of \$20 000.

*[Section 69 amended by No. 20 of 1989 s. 3; No. 46 of 2010 s. 55(2) and 56.]*

**70. Natural enemies of declared plants and animals**

- (1) The Governor, by notice published in the *Gazette*, may declare anything to be a natural enemy of a declared plant or declared animal and prohibit the destruction, injuring and capturing of that thing in any area specified in the notice.
- (2) A notice published under subsection (1) may be varied or revoked by a subsequent notice so published.
- (3) Any person who without lawful excuse —
  - (a) destroys, injures or captures any thing contrary to a notice under subsection (1); or
  - (b) is in possession of any thing that has been captured contrary to a notice under subsection (1),

commits an offence.

Penalty: a fine of \$20 000.

*[Section 70 amended by No. 20 of 1989 s. 3; No. 46 of 2010 s. 56.]*

## **Part VI — Prevention of introduction and spread of declared plants and declared animals**

### **Division 1 — Declared plants**

#### **71. Interpretation**

- (1) In this Part unless the contrary intention appears —
- coat* means wool, or the coat of a restricted animal;
- fodder* means hay, chaff, meal or grain or any animals feed preparation of which hay, chaff, meal or grain is an ingredient or to which the provisions of sections 74 of 75 have been declared to apply under subsection (2);
- machinery* means a vehicle or machine that has been used for agricultural, excavation or earthmoving purposes;
- restricted animal* means a sheep, a bovine or equine animal, or any animal to which the provisions of sections 74 and 75 have been declared to apply under subsection (2);
- sack* means an empty used sack;
- seed* means any seed to which the provisions of sections 74 and 75 have been declared to apply under subsection (2);
- wool pack* means an empty used wool pack.
- (2) The Director General may, from time to time, by declaration declare that the provisions of sections 74 and 75 apply to such seed, animal feed preparations and animals as it thinks fit.
- [Section 71 amended by No. 31 of 1983 s. 10; No. 46 of 2010 s. 55(2).]*

#### **72. Prohibition of introduction of prohibited material**

Any person who, for any purpose or in any manner, brings any prohibited material —

- (a) into the State from elsewhere; or



- (b) into any part of the State from some other part of the State or from elsewhere,

commits an offence.

Penalty: a fine of \$50 000.

*[Section 72 amended by No. 59 of 1986 s. 7; No. 20 of 1989 s. 3; No. 46 of 2010 s. 33.]*

**73. Power to detain and deal with contaminated animals or things**

Any animal or thing which is intended to be, is being, or has been brought —

- (a) into the State from elsewhere; or  
(b) into any part of the State from some other part of the State or from elsewhere,

and which is found by an inspector or authorised person to carry or contain prohibited material, may be detained and dealt with in accordance with the regulations.

**74. Notice to be given of certain imports**

- (1) A person shall not bring into the State from elsewhere any coat, fodder, machinery, sack, seed, wool pack or restricted animal without first giving to the Director General —
- (a) notice, in the manner prescribed, of his intention to do so; and  
(b) such particulars relating to that coat, fodder, machinery, sack, seed, wool pack or animal, as may be prescribed.

Penalty: a fine of \$50 000.

- (2) A person who brings into the State from elsewhere any coat, fodder, machinery, sack, seed, wool pack or restricted animal must, immediately on arrival of that thing, deliver the thing into the custody of an inspector or authorised person.

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Penalty: a fine of \$50 000.

*[Section 74 amended by No. 31 of 1983 s. 11; No. 59 of 1986 s. 7; No. 20 of 1989 s. 3; No. 46 of 2010 s. 34 and 55(2).]*

**75. Examination by owner or person in possession or control**

- (1) A person who, in any part of the State, becomes the owner of, or takes possession or control of any coat, fodder, machinery, sack, seed, wool pack or restricted animal, shall examine it or cause it to be examined for the presence of material that is prohibited material in that part of the State.

Penalty: a fine of \$20 000.

- (1a) A person who, in any part of the State, sells or offers or exposes for sale any coat, fodder, machinery, sack, seed, wool pack or restricted animal shall first examine it or cause it to be examined for the presence of material that is prohibited material in that or any other part of the State.

Penalty: a fine of \$20 000.

- (1b) Subject to subsection (5), a person shall not, in any part of the State, sell or offer or expose for sale any coat, fodder, machinery, sack, seed, wool pack or restricted animal in or on which there is any material that is prohibited material in that part of the State except pursuant to approval given by an inspector or authorised person and in accordance with the conditions, if any, subject to which that approval is given.

Penalty: a fine of \$20 000.

- (2) Where an examination carried out as required by subsection (1) or (1a), discloses the presence of prohibited material, the person referred to in that subsection shall notify the Director General or an inspector or authorised person, giving details of —
- (a) the number and description of coats, sacks, wool packs or animals affected and the place where they may be inspected; or

- (b) the quantity and description of fodder, seed or machinery affected and the place where it may be inspected,

and describing the prohibited material which has been found.

Penalty: a fine of \$20 000.

- (3) Any coat, fodder, machinery, sack, seed, wool pack or animal mentioned in a notification given under the provisions of subsection (2) may be inspected by an inspector or authorised person.

*[(4) deleted]*

- (5) The regulations may provide that subsection (1b) does not apply in circumstances, or circumstances of a kind, specified in the regulations and the operation of that subsection is subject to any such provision of the regulations.

*[Section 75 amended by No. 31 of 1983 s. 12; No. 59 of 1986 s. 7; No. 20 of 1989 s. 3; No. 46 of 2010 s. 35 and 55(2).]*

**76. Destruction or disposal of prohibited material**

- (1) An inspector or authorised person who discovers, or is notified of the discovery of, material that is prohibited material in any part of the State may seize, detain and destroy that prohibited material forthwith, or may notify the Director General of the discovery.
- (2) On being notified under the provisions of this section or of section 75 of the discovery of prohibited material, the Director General may cause the prohibited material to be destroyed or otherwise dealt with by the owner, consignor, consignee or person in possession or control of it.

*[Section 76 amended by No. 46 of 2010 s. 55(2).]*

**Division 2 — Declared animals**

**77. Prohibition of introduction of category A1 animals**

- (1) Any person who, for any purpose or in any manner, —
- (a) brings into the State from elsewhere an animal that is a declared animal of category A1 in respect of the whole of the State; or
  - (b) brings into a part of the State from another part of the State, or from elsewhere, an animal that is a declared animal of category A1 in respect of the first-mentioned part of the State,

commits an offence.

Penalty: a fine of \$50 000.

- (2) A person who wishes to bring a declared animal of category A1 into the State or part of the State for scientific or educational purposes may apply to the Director General for permission to bring that animal into the State, or that part of the State, as the case may be, and the Director General may grant such permission subject to such conditions and restrictions as the Director General considers necessary, or may refuse such permission.
- (3) Permission under subsection (2) may be applied for and granted in conjunction with permission under section 80(2).
- (4) In proceedings for an offence against subsection (1)(a) or (b) it is a defence for the accused to show that the declared animal was brought into the State or part of the State, as the case may be, pursuant to permission granted by the Director General under subsection (2) and in accordance with the conditions and restrictions imposed by the Director General under subsection (2).

*[Section 77 amended by No. 59 of 1986 s. 7; No. 20 of 1989 s. 3; No. 84 of 2004 s. 82; No. 46 of 2010 s. 36 and 55(2).]*

**78. Restrictions on introduction of category A4 animals**

A person shall not, for any purpose or in any manner, —

- (a) bring into the State from elsewhere any animal that is a declared animal of category A4 in respect of the whole of the State; or
- (b) bring into a part of the State from another part of the State, or from elsewhere, an animal that is a declared animal of category A4 in respect of the first-mentioned part of the State,

unless that animal is brought into the State or that part of the State, as the case may be, subject to and in accordance with the conditions and restrictions imposed by or under the regulations in relation to the introduction of animals of that class.

Penalty: a fine of \$20 000.

*[Section 78 amended by No. 31 of 1983 s. 13; No. 59 of 1986 s. 7; No. 20 of 1989 s. 3; No. 46 of 2010 s. 37.]*

**79. Delivery of declared animals into custody**

- (1) Where a person —
  - (a) brings into the State from elsewhere an animal that is a declared animal in respect of the whole or the State; or
  - (b) brings into a part of the State from another part of the State, or from elsewhere, an animal that is a declared animal in respect of the first-mentioned part of the State,

that person shall, if required by an inspector or authorised person, deliver that animal into the custody of an inspector or authorised person at any place nominated by an inspector or authorised person.

Penalty: a fine of \$20 000.

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- (2) Where a declared animal has been delivered to a place pursuant to subsection (1) a person shall not remove the animal from that place without the prior written authority of the Director General or an inspector or authorised person.

Penalty: a fine of \$20 000.

*[Section 79 amended by No. 59 of 1986 s. 7; No. 20 of 1989 s. 3; No. 46 of 2010 s. 38 and 55(2).]*

**80. Prohibition on keeping category A3 animals**

- (1) Any person who keeps, in any part of the State, an animal that is a declared animal of category A3 in respect of that part of the State commits an offence.

Penalty: a fine of \$20 000.

- (2) A person who wishes to keep a declared animal of category A3 for scientific or educational purposes may apply to the Director General for permission to keep that animal and the Director General may grant such permission subject to such conditions and restrictions as the Director General considers necessary, or may refuse such permission.

- (3) Permission under subsection (2) may be applied for and granted in conjunction with permission under section 77(2).

- (4) In proceedings for an offence against subsection (1) it is a defence for the accused to show that the declared animal was being kept pursuant to permission granted by the Director General under subsection (2) and in accordance with the conditions and restrictions imposed by the Director General under subsection (2).

*[Section 80 amended by No. 59 of 1986 s. 7; No. 20 of 1989 s. 3; No. 84 of 2004 s. 82; No. 46 of 2010 s. 39 and 55(2).]*

**81. Restrictions on keeping of category A6 animals**

A person shall not keep, in any part of the State, an animal that is a declared animal of category A6 in respect of that part of the

State unless that animal is kept subject to and in accordance with the conditions and restrictions imposed by or under the regulations in relation to the keeping of animals of that class.

Penalty: a fine of \$20 000.

*[Section 81 amended by No. 31 of 1983 s. 14; No. 59 of 1986 s. 7; No. 20 of 1989 s. 3; No. 46 of 2010 s. 40.]*

**82. Inspector or authorised person may order destruction of declared animals**

- (1) Where a person has in his possession or under his control in any part of the State, whether on land or not and whether as owner or not, a declared animal that —
- (a) is being or has been introduced into the State or into that part of the State contrary to section 77 of 78; or
  - (b) is being kept contrary to section 80 or 81,

an inspector or authorised person may —

- (c) by notice in writing served on that person, require him forthwith to destroy, or cause the destruction of, that animal; or
  - (d) seize that animal and —
    - (i) destroy it or cause it to be destroyed; or
    - (ii) dispose of it in some other manner.
- (2) Where a person fails to comply with a notice served under subsection (1)(c) an inspector or authorised person may destroy, or cause the destruction of, the declared animal referred to in the notice.

**83. Prohibition on declared animals**

- (1) Any person who, without lawful excuse (proof whereof shall lie on him), —

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- (a) liberates or attempts to liberate in any part of the State an animal that is a declared animal of any category other than category A7 in respect of that part of the State; or
- (b) abandons, or permits or fails to take reasonable precautions to prevent, the being at large in any part of the State of an animal that becomes a declared animal in that part of the State by reason of being at large,

commits an offence.

Penalty: a fine of \$20 000.

- (2) For the purposes of this section, a person in charge of any vehicle, vessel, train or aircraft is deemed to have liberated any animal that escapes or is free to escape, from that vehicle, vessel, train or aircraft, unless he shows that he might not reasonably have prevented its escape or freedom to escape.

*[Section 83 amended by No. 59 of 1986 s. 7; No. 20 of 1989 s. 3; No. 46 of 2010 s. 41.]*



**Part VIA — Protection of agriculture and related resources from agricultural chemicals**

**83A. Protection from agricultural chemicals**

- (1) The object of this section is to protect agriculture and related resources, from danger or detriment likely to result from the storage, use, or transport of prescribed agricultural chemicals.
- (2) A person shall not in any prescribed part of the State store, use, or transport a prescribed agricultural chemical in a manner which does not conform to the regulations.

Penalty: a fine of \$50 000.

*[(3)-(6) deleted]*

*[Section 83A inserted by No. 55 of 1979 s. 7; amended by No. 20 of 1989 s. 3; No. 46 of 2010 s. 42 and 56.]*

## **Part VII — General**

### **Division 1 — Powers of inspectors and authorised persons**

#### **84. Power of entry**

- (1) An inspector or authorised person may, at any time, by virtue of an without warrant than the provisions of this Act enter upon land and into any premises on land, not being a dwelling house or a hut, tent, caravan or other erection used as a permanent residence, in order to —
  - (a) make a search to ascertain —
    - (i) whether declared plants or declared animals are in or upon the land or premises and, if so, whether those declared plants or declared animals are being controlled as required by this Act;
    - (ii) whether the direction contained in a notice served under Part V is being or has been complied with;
    - (iii) whether there is any declared plant or prohibited material in or upon the land or premises that has been introduced contrary to this Act;
    - (iv) whether there is any declared animal in or upon the land or premises that has been introduced or is being kept contrary to this Act; or
    - (v) whether any chemical is being or has been stored or used upon the land or in the premises contrary to this Act;
  - (b) patrol and inspect any fence on or bounding that land.
- (2) If it appears to a justice, on an application supported by evidence on oath or affirmation by an inspector or authorised person, that there are reasonable grounds for suspecting that there is in any of the premises excepted under subsection (1) —

- (a) any declared plant or declared animal that is required by this Act to be controlled;
- (b) any declared plant or prohibited material that has been introduced contrary to this Act;
- (c) any declared animal that has been introduced or is being kept contrary to this Act;
- (d) any chemical that is being stored or has been used contrary to this Act,

the justice may grant a warrant authorising the inspector or authorised person to enter the premises during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, for the purpose of searching the premises and taking such action in relation to any declared plant or declared animal or chemical found in the premises as is prescribed.

- (3) Where an inspector or authorised person enters upon or searches the enclosed garden or curtilage of a dwelling house the owner or occupier of that dwelling house may apply to the Magistrates Court for a review of the exercise of that power on the grounds there were no reasonable grounds for its exercise and the court shall inquire into the matter and make its findings known to the applicant and the Minister.
- (4) An inspector or authorised person who has entered and searched land or premises, or both, under this section or under a warrant granted under this section shall draw up and sign a report of the result of the entry and search and shall furnish that report to the Director General.
- (5) This section is in addition to, and not in derogation of, any other provision of this Act under which an inspector or authorised person is authorised to enter land or premises for the purpose of exercising any power or performing any duty or function.

- (6) Where, under the provisions of this Act or of a warrant granted under this Act, an inspector or authorised person is authorised to enter land, or premises on land, for any purpose —
- (a) he may, with or without assistants or contractors, enter and remain on that land or in those premises for such period as is reasonable for carrying out that purpose; and
  - (b) he shall have for himself and those assistants or contractors such rights of ingress, egress and regress into, over and across that land for that period with such vehicles, instruments, appliances and materials as are reasonable for carrying out that purpose.

*[Section 84 amended by No. 22 of 1980 s. 6; No. 84 of 2004 s. 80; No. 46 of 2010 s. 55(2).]*

**85. Power to search conveyances, etc.**

- (1) An inspector or authorised person may at any time search and inspect any vehicle, vessel, aircraft or train in order to ascertain if —
- (a) any declared plant, declared animal or prohibited material is on or in that vehicle, vessel, aircraft or train;
  - (b) any animal or thing is being brought into the State on or in that vehicle, vessel, aircraft or train contrary to section 74; or
  - (c) any chemical is being transported on or in that vehicle, vessel, aircraft or train contrary to section 83A.
- (2) An inspector or authorised person may take possession of any declared plant or declared animal or prohibited material found in the course of a search and inspection under subsection (1).
- (3) For the purpose of exercising his powers under this section an inspector or authorised person —
- (a) may stop any vehicle or vessel;

- (b) may, with or without assistants, enter into or upon any vehicle, vessel, aircraft or train and search and inspect every part of it and everything on or in it.
- (4) A person who, being in charge of a vehicle or vessel, fails to stop the vehicle or vessel when so required by a person who makes himself known as being an inspector or authorised person, commits an offence.  
Penalty: a fine of \$20 000.
- (5) This section is in addition to, and not in derogation of, any other provision of this Act under which an inspector or authorised person is authorised to search for, take possession of, detain or destroy or cause the destruction of any plant, animal or prohibited material.

*[Section 85 amended by No. 22 of 1980 s. 7; No. 20 of 1989 s. 3; No. 46 of 2010 s. 56.]*

**86. Name and address may be required**

An inspector or authorised person acting in the exercise or performance of his powers, duties or functions under this Act may —

- (a) require any person to state his name and address;
- (b) require any occupier of land to state, to the best his knowledge, information and belief, the name and address of the owner of that land.

**87. Obstruction, etc.**

Any person who —

- (a) without lawful excuse, wilfully obstructs, hinders or resists an inspector or authorised person in the exercise or performance of his powers, duties or functions under this Act;
- (b) without lawful excuse, refuses or wilfully fails to comply with any lawful requirement of an inspector or authorised person under this Act;

- (c) wilfully makes any false statement to or misleads, or attempts to mislead an inspector or authorised person in the exercise or performance of his powers, duties or functions under this Act; or
- (d) assaults or uses abusive language to an inspector or authorised person, or a person assisting an inspector or authorised person,

commits an offence.

Penalty: a fine of \$20 000.

*[Section 87 amended by No. 59 of 1986 s. 7; No. 20 of 1989 s. 3; No. 46 of 2010 s. 56.]*

**88. Personating officers**

Any person who falsely represents himself to be, or personates, an inspector or authorised person commits an offence.

Penalty: a fine of \$20 000.

*[Section 88 amended by No. 20 of 1989 s. 3; No. 46 of 2010 s. 56.]*

**Division 2 — Agents, mortgagees and trustees**

**89. Attorneys and agents to represent principal**

- (1) An attorney or agent of an owner who is absent from the State, shall be deemed to represent his principal for the purposes of this Act, so far as regards land which the attorney or agent is authorised to manage, or of which he is authorised to hold possession, or the rents and profits of which he is authorised to collect on behalf of the owner.
- (2) Service on such a representative of the owner of land of —
  - (a) a notice required or authorised to be served on the owner;

- (b) a summons or legal process for the recovery of money payable by the owner in respect of the land, pursuant to the provisions of this Act,

shall be regarded as effective service on the owner.

**90. Powers of trustees**

A trustee who is an owner of land in accordance with the definition “owner” in section 7 may apply any of the funds under his control as trustee, for the owner of the land, in defraying charges, costs and expenses necessarily or properly incurred by him pursuant to, or by virtue of, the provisions of this Act in that capacity.

**91. Mortgagees**

Where a mortgagee of land, pursuant to any obligation imposed on him by this Act, has paid an amount of money which otherwise would have been payable by the mortgagor, he may add the amount paid to the debt, the subject of the mortgage.

**Division 3 — Procedure**

**92. Manner in which notices may be served**

- (1) Service of a notice, the giving of which is authorised or required pursuant to the provisions of this Act may be effected —
  - (a) by delivering it personally to the person upon whom it is to be served;
  - (b) by leaving it for him at his usual or last known place of abode or business;
  - (c) by forwarding it by post in a prepaid letter, or transmitting it by telegram addressed to his last known place of abode or business, or to his last known postal address, or to the address (if any) shown in the rate record kept by a local government pursuant to the *Local*

*Government Act 1995* as his address for the service of rate notices under that Act; or

- (d) where an address for service pursuant to paragraph (b) or (c) cannot be discovered by the person giving the notice, by advertising the notice at least twice in a newspaper circulating in the district in which the land to which the notice relates is situated, an interval of at least a week being allowed to elapse between the advertisements,

and shall be regarded as effective whether the notice comes or does not come to the hands or knowledge of the person for whom it is intended.

- (2) A notice may be served on a body corporate by delivering it, leaving it, posting it in a prepaid letter, or transmitting it by telegram, the notice being addressed in each case to the body corporate at its principal or any known place of business.
- (3) A notice may be served on all the members of a partnership or unincorporated body by delivering it, leaving it, posting it in a prepaid letter, or transmitting it by telegram, the notice being addressed in each case to the partnership or body at its principal or any known place of business.
- (4) When a person on whom it is desired to serve a notice relating to land, is not within the State and has no attorney authorised, by power of attorney filed and noted under the *Transfer of Land Act 1893* or enrolled under the *Registration of Deeds Act 1856*, to represent him for the purposes of this Act in respect to the land, then the notice shall be deemed to have been effectively served on the owner if —
- (a) it has been affixed or displayed on or over a conspicuous part of the land, and left so affixed or displayed for at least 14 days; and
- (b) a copy of the notice has been posted to the person appearing to be the owner on search made in a register or other records referred to in section 94(1)(b),



addressed to him at his place of abode or business, as disclosed by the search.

- (5) Any notice required by this Act to be given to the occupier or owner, as the case may be, of any land, shall in cases where several persons are the occupiers or owners thereof be duly given if given to one of such occupiers or owners with the addition of the words “and another” or “and others” as the case requires.
- (6) Where an occupier of land, who is not the owner of the land, is served with a notice, he shall inform the owner of the fact as soon as practicable after being served.  
Penalty: a fine of \$20 000.
- (7) Non-service on the owner shall not affect the validity of service on the occupier, nor shall non-service on the occupier affect the validity of service on the owner.
- (8) A notice by this Act required to be given to the owner or occupier of any land, may, if the name of the owner or occupier is not known, be addressed to him by the description of the “owner” or “occupier” of the land, describing it, in respect of which the notice is given, without further name or description.
- (9) All notices authorised or required under this Act to be served on any owner or occupier shall, if service has been made on any owner or occupier, be binding on every subsequent owner or occupier to the same extent as if such notice had been served on each subsequent owner or occupier.
- (10) In a notice a description of the land affected by it shall be sufficient if the description allows of no reasonable doubt as to the land affected, notwithstanding that the description does not particularly define the land.
- (11) In the case of service by post or by telegram, the service shall be presumed, unless the contrary is shown, to have been effected at

the time when, in the ordinary course, the letter or telegram would be delivered.

- (12) The provisions of this section shall be in addition to, and not in derogation of, any other provision of this Act relating to the service of notices and those of section 31 of the *Interpretation Act 1918*<sup>7</sup>.

*[Section 92 amended by No. 59 of 1986 s. 7; No. 20 of 1989 s. 20; No. 14 of 1996 s. 4; No. 81 of 1996 s. 153(2); No. 60 of 2006 s. 121(2); No. 46 of 2010 s. 56.]*

**93. Proof of documents and service**

- (1) For the purposes of this section **document** means a requisition, notice, order, demand or summons or other process under the *Criminal Procedure Act 2004* issued or made for any of the purposes of this Act and **serve** includes deliver, give and send.
- (2) In all proceedings in which a document has to be proved, the accused shall be deemed to have received notice to produce it, and until the contrary is shown, the document and its effective service may be sufficiently proved by or on behalf of the prosecutor, by the production of what purports to be a copy, bearing what purports to be a certificate, signed by a person authorised to issue the original, that the copy is a true copy of the original, and that the original was served on the date specified in the certificate.
- (3) The validity of any document or of the effective service of it shall not be affected by any error, misdescription or irregularity which does not mislead or which is not likely to mislead.

*[Section 93 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 78, 80 and 82.]*

**94. Proof of ownership or occupancy**

- (1) In proceedings brought pursuant to the provisions of this Act, in addition to other methods of proof available —

- (a) evidence that the person proceeded against is rated under the *Local Government Act 1995* as owner of land; or
- (b) evidence by the certificate of —
  - (i) the Registrar of Titles, or an Assistant Registrar of Titles, that any person's name appears in the Register under the *Transfer of Land Act 1893*, as owner of land;
  - (ii) the Registrar of Deeds and Transfers, or his substitute, or an Assistant Registrar of Deeds and Transfers, that a person appears from a memorial of registration of a deed, conveyance or other instrument, to be the owner of land;
  - (iii) the chief executive officer of the department principally assisting in the administration of the *Land Administration Act 1997* that a person is registered in that department as the owner or occupier of land;
  - (iiia) the chief executive officer of the department principally assisting in the administration of the *Mining Act 1978* that a person is registered in that department as the owner or occupier of land;
  - (iv) the CEO as defined in section 3 of the *Conservation and Land Management Act 1984*, that any person is registered as the holder of a permit, licence or lease under Part VIII of that Act,

shall until the contrary is proved, be evidence that such person is the owner or occupier, as the case may be, of the land.

- (2) All courts and all person having by law, or by consent of parties, authority to hear, receive and examine evidence, shall, for the purposes of this Act, take judicial notice of the signature attached to a certificate referred to in of subsection (1)(b).

- (3) The averment in a claim, prosecution notice or other document in proceedings instituted for the purposes of this Act, that a person is or was at any time, the owner or occupier of land, shall be deemed to be proved in the absence of proof to the contrary.

*[Section 94 amended by No. 112 of 1984 s. 25; No. 14 of 1996 s. 4; No. 81 of 1996 s. 153(1); No. 84 of 2004 s. 80; No. 28 of 2006 s. 10; No. 60 of 2006 s. 121(3).]*

**94A. Proof of plant or animal**

In any proceedings for an offence against this Act a certificate signed or purporting to be signed by or on behalf of the Director General stating that the plant or animal in relation to which the proceedings are brought is a plant or animal of the kind specified in the certificate shall, until the contrary is proved, be sufficient evidence that the plant or animal is of the kind so specified.

*[Section 94A inserted by No. 55 of 1979 s. 8; amended by No. 31 of 1983 s. 15; No. 46 of 2010 s. 43.]*

**95. Judicial notice of signatures**

A person acting judicially must take judicial notice of the signature of the Director General and of the Minister.

*[Section 95 inserted by No. 46 of 2010 s. 44.]*

**96. Authentication of documents**

Subject to this Act, every document required or used for or in connection with the purposes of this Act may be authenticated by the signature of the Director General or the Minister.

*[Section 96 inserted by No. 46 of 2010 s. 44.]*

**97. Evidentiary provisions**

- (1) In any proceedings to recover the amount of any costs, charges, or expenses recoverable by the State under this Act, it shall be

sufficient to produce the certificate of the Minister or the Director General, and such certificate shall be *prima facie* evidence that such costs, charges and expenses were actually and lawfully incurred by a person authorised by the Minister or the Director General in that behalf, and the onus of disproving the amount shall be upon the defendant.

- (2) In any proceedings under this Act a report drawn up and signed by an inspector or authorised person pursuant to section 84(4) shall be *prima facie* evidence of the matters stated in that report.

*[Section 97 amended by No. 46 of 2010 s. 45.]*

**98. Prosecutions**

A prosecution for an offence under this Act cannot be commenced except by or with the approval of the Director General.

*[Section 98 inserted by No. 46 of 2010 s. 46.]*

**Division 4 — Miscellaneous**

**99. Variation or cancellation of declarations**

Where the Minister has made a declaration pursuant to the power conferred by this Act or any other Act, the Minister may, by subsequent declaration, —

- (a) vary the provisions and operation of the earlier declaration;
- (b) cancel the provisions and operation of the earlier declaration wholly or in part absolutely; or
- (c) cancel the provisions and operation of the earlier declaration wholly or in part and substitute other provisions and their operation for those so cancelled.

*[Section 99 amended by No. 46 of 2010 s. 47 and 55(1).]*

**100.    Indemnity to persons acting in execution of powers conferred by Act**

A person shall not —

- (a) be regarded as a trespasser by reason of anything done by him in the course of the execution of any powers vested in him under or pursuant to this Act or an agreement made under this Act; or
- (b) be liable for any damage occasioned by him in the course of the exercise of those powers unless such damage is occasioned otherwise than in the reasonable exercise of those powers.

*[101. Deleted by No. 20 of 1989 s. 3.]*

**102.    Offences to be dealt with by magistrate**

A court of summary jurisdiction dealing with an offence under this Act is to be constituted by a magistrate.

*[Section 102 inserted by No. 59 of 2004 s. 141.]*

## **Part VIII — Regulations**

### **103. Governor may make regulations**

The Governor may make regulations prescribing all matters which by this Act are required or permitted to be prescribed or are contemplated as being prescribed or which are necessary or expedient to be prescribed for carrying this Act into effect.

*[Section 103 inserted by No. 46 of 2010 s. 48.]*

### **104. Regulations — general**

Without limiting the generality of section 103 the Governor may make regulations —

*[(a)-(d) deleted]*

- (e) with respect to the manner of applying for any permit under this Act or any variation or renewal of such a permit;
- (f) prescribing forms for use under this Act;
- (g) prescribing rates of interest payable under this Act on debts due to the State.

*[Section 104 amended by No. 14 of 1996 s. 4; No. 46 of 2010 s. 49.]*

### **105. Regulations — declared plants and declared animals**

Without limiting the generality of section 103 the Governor may make regulations —

- (a) with respect to —
  - (i) measures, whether mechanical, biological, chemical or otherwise, to be taken and things to be done with respect to the control of declared plants and declared animals;

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- (ii) dissemination of information and the giving of directions relating to the measures, things and action referred to in subparagraph (i);
  - (iii) the time at which or the period within which, those measures or that action shall be taken, those directions shall be complied with and those things shall be done;
  - (iv) enforcement of the taking of those measures or that action, compliance with those directions or the doing of those things;
- (b) with respect to the use of appliances and materials for controlling declared plants and declared animals and the manner of mixing materials;
  - (c) prohibiting or regulating the use of any particular chemical or spray in or for the control of declared plants or declared animals, or for the destruction of other plants or animals, whether that chemical or spray is applied by aircraft or by any other means, at any time, or during particular periods or in relation to any area or boundary specified in the regulations;
  - (d) prescribing the proportions in which owners and occupiers, and successive owners and occupiers, of private land shall bear the cost of controlling declared plants and declared animals on and in relation to that land in compliance with notice served under section 50;
  - (e) prescribing the manner in which notice shall be given pursuant to section 74 and the particulars to be given for the purposes of that section;
  - (f) with respect to the disposal of declared plants by incineration and other methods;
  - (g) with respect to the disposal or sale of hay, chaff, fodder or grain made or produced from any crop grown on land in or upon which declared plants are, or are suspected to be, present;



- (h) providing for the branding or labelling of packages containing hay, chaff, fodder or grain made or produced from any crop grown on land in or upon which declared plants are, or are suspected to be, present;
- (i) with respect to the agistment of stock on land in or upon which declared plants are, or are suspected to be, present;
- (ia) controlling the entry of persons into, and, movement of persons on and from, land in or upon which declared plants are, or are suspected to be, present;
- (j) with respect to the movement of stock from land in or upon which declared plants are, or are suspected to be, present;
- (k) with respect to the keeping of stock on land in or upon which declared plants are, or are suspected to be, present;
- (l) with respect to the fencing of land in or upon which declared plants are, or are suspected to be, present;
- (m) with respect to the use of land in or upon which declared plants are, or are suspected to be, present;
- (n) prescribing the time or period of keeping stock on land in or upon which declared plants are, or are suspected to be, present;
- (o) prescribing the time, period or method of cultivating land in or upon which declared plants are, or are suspected to be, present;
- (p) with respect to the use, storage, or carriage in any area of any vehicle, machine, including an aeroplane, or thing which harbours or is likely to harbour, the seeds of any declared plant;
- (q) providing for the inspection of stock, hay, chaff, fodder or grain and the granting of certificates as to the freedom thereof from the seeds of declared plants;

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- (r) providing for the branding of stock moved from or through land in or upon which declared plants are, or are suspected to be, present;
- (s) with respect to the prevention of the introduction into the State, or into any part of the State from some other part of the State, of any prohibited material and the control and prevention of the introduction and spread of declared plants generally, and without limiting the generality of the foregoing —
  - (i) providing for the shearing or clipping of wool or other animal coats known or likely to be carrying the seeds of declared plants;
  - (ii) providing for the inspection, detention, cleansing treatment and disposal by release, export from the State, sale, destruction or other means, of animals or things found or likely to carry or contain prohibited material or declared plants;
  - (iii) providing for the recovery from the owner, consignor, consignee, or person in possession or control of any animal, thing or prohibited material, of the expenses incurred by officers of the department in connection with that animal, thing or prohibited material;
  - (iv) prescribing fees for the issue of permits under regulations made pursuant to this paragraph and fees for carrying out inspections for the purpose of determining whether any such permits should issue, and providing for the recovery of such fees;
- (t) imposing conditions and restrictions on —
  - (i) the introduction into the State from elsewhere of animals that are declared animals of category A4 in respect of the whole of the State;

- (ii) the introduction into a part of the State from another part of the State, or from elsewhere, of animals that are declared animals of category A4 in respect of the first-mentioned part of the State;
- (iii) the keeping, sale or disposal in a part of the State of animals that are declared animals of category A6 in respect of that part of the State, authorising the Director General to impose, in any permit issued by the Director General under regulations made under this paragraph, any further conditions and restrictions as to such introduction, keeping, sale or disposal that the Director General sees fit to specify in the permit, prescribing fees for the issue of such permits and fees for carrying out inspections for the purpose of determining whether, or the conditions and restrictions subject to which, any such permit should issue, and providing for the recovery of such fees;
- (u) prohibiting or regulating —
  - (i) the setting and use of traps, other than live capture traps, for the purpose of capturing declared animals;
  - (ii) the laying of poison for the purpose of destroying declared animals,in any area specified in the regulations;
- (v) with respect to the movement of stock, vehicles, machinery or any other thing on or from land in or upon which declared animals are, or are suspected to be, present;
- (w) preventing interference with experiments conducted by or on behalf of the department on or in relation to declared plants or declared animals and, without limiting the generality of the foregoing, —

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- (i) prohibiting or regulating entry to a location or reserve on which such experiments are being conducted;
- (ii) prohibiting the trapping, catching or killing of declared animals on any location or reserve on which such experiments are being conducted on or in relation to declared animals of that class;
- (x) with respect to the circumstances and manner in which bonuses for the destruction of declared animals may be claimed and paid and to the prevention of fraudulent or other improper practices in respect of such bonuses.

*[Section 105 amended by No. 40 of 1978 s. 13; No. 55 of 1979 s. 9; No. 22 of 1980 s. 8; No. 31 of 1983 s. 16; No. 46 of 2010 s. 50.]*

**106. Regulations — fencing**

- (1) Without limiting the generality of section 103 the Governor may make regulations —
  - (a) authorising the Director General to erect, improve, alter, maintain, repair, renew, dismantle, remove and dispose of barrier fences and prescribing the powers that may be exercised for those purposes by the Director General and the department's officers, employees and agents;
  - (b) making provision with respect to the ownership of barrier fences by the State and providing for the control and maintenance of barrier fences by persons other than the State;
  - (c) regulating the use of barrier fences by owners of land, providing for and prescribing the amounts to be paid to the Director General by those owners for the use of barrier fences, and providing for the recovery of those amounts by the Director General;
  - (d) authorising the Director General to improve, alter, repair or renew animal-proof fences and rabbit-proof fences

belonging to owners of land, providing for and prescribing the amounts to be paid to the Director General by those owners for such work, and providing for the recovery of those amounts by the Director General;

- (e) providing for the erection or creation of animal-proof fences between land in different ownership or occupancy, providing for contributions to be made by owners and occupiers of adjoining land in respect of expenses incurred by one or more of them in erecting or creating an animal-proof fence or rabbit-proof fence between such land, prescribing the amounts of those contributions, and providing for the apportionment of those contributions between those owners and occupiers;
- (f) providing for the maintenance and repair of animal-proof fences and rabbit-proof fences between land in different ownership or occupancy, providing for agreements in writing to be entered into by owners and occupiers of adjoining land with respect to the maintenance and repair of animal-proof fences or rabbit-proof fences between such land, and providing that such an agreement shall run with the land and be binding on succeeding owners and occupiers according to its tenor;
- (g) providing for disputes arising in relation to barrier fences and other animal-proof fences and rabbit-proof fences to be determined by arbitration under the *Arbitration Act 1895*<sup>8</sup>;
- (h) providing for agreements in writing to be entered into by owners and occupiers of adjoining or adjacent land with respect to the enclosure of the whole of the land by an animal-proof fence or rabbit-proof fence as a ring fence, prescribing the matters to be provided for in such agreements, and providing that such an agreement shall run with the land and be binding on succeeding occupiers and owners according to its tenor;

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- (i) authorising the Director General to declare an area to be infested with declared animals and require owners of land in the area to enclose water supplies on their land with animal-proof fences or rabbit-proof fences or other appliances approved by the Director General, prescribing the manner in which water supplies are to be enclosed, exempting certain land from the operation of such a requirement, providing that where an owner fails to comply with such a requirement the Director General may cause water supplies on the holding to be enclosed, and recover the costs of the work from that owner, prescribing the respective rights, obligations and liabilities of the owner and the occupier of land and their successors with respect to such a requirement and with respect to the cost, maintenance and repair of a fence or appliance erected pursuant to such a requirement;
- (j) providing for the issue by the Director General of a certificate certifying a fence to be an animal-proof fence or rabbit-proof fence within the meaning of this Act and prescribing the fee payable for the issue of such a certificate;
- (k) providing that where any land is divided or bounded by a road, travelling stock route or reserve, or by Crown land, the Director General may grant permission to the owner of the land to carry an animal-proof fence or rabbit-proof fence across that road, route, reserve or Crown land;
- (l) providing for the provision and construction of gates in animal-proof fences or rabbit-proof fences crossing roads and travelling stock routes;
- (m) prohibiting any person from —
  - (i) destroying or damaging any animal-proof fence or rabbit-proof fence or any part thereof or gate therein;

- (ii) leaving a gate in an animal-proof fence or rabbit-proof fence open after opening or passing through that gate;
- (iii) carrying, driving or passing any live declared animal through, under or over any animal-proof fence or rabbit-proof fence or any gate therein;
- (iv) attaching any animal trap or other prescribed attachment to an animal-proof fence or rabbit-proof fence,

and providing that, for the purposes of regulations made under this paragraph, *animal-proof fence* includes any fence that is apparently intended to protect any land from declared animals, and *rabbit-proof fence* includes any fence that is apparently intended to protect any land from rabbits;

- (n) prohibiting or regulating —
  - (i) the driving of cattle along or over any Crown lands adjoining a barrier fence and set apart for the use of the State for the purposes of this Act, or partly for such purposes;
  - (ii) the confinement, encampment or keeping of any such cattle against, or in proximity to, a barrier fence;
- (o) prohibiting persons from entering, remaining on or travelling along any Crown land adjoining a barrier fence and set apart for the protection or maintenance of that fence, or regulating the doing of all or any of those things;
- (p) providing that water on Crown lands or reserves set apart for the purposes of this Act, or partly for such purposes, shall be deemed to be the property of the State and to be capable of being stolen;

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(q) describing an “animal-proof fence” and a “rabbit-proof fence” for the purposes of the definitions of those terms contained in section 7.

(2) In subsection (1)(n)(i) —

**cattle** includes horses, mares, fillies, foals, geldings, colts, camels, bulls, bullocks, cows, heifers, steers, calves, asses, mules, sheep, lambs, goats and swine.

*[Section 106 amended by No. 14 of 1996 s. 4; No. 46 of 2010 s. 51 and 55(2).]*

**106A. Regulations — storage, use and transport of prescribed chemicals**

(1) Without limiting the generality of section 103 the Governor may, for the protection of agriculture and related resources, make regulations with respect to the storage, use, and transport of prescribed agricultural chemicals.

(2) Regulations may authorise the taking of samples of chemicals, the seizure and removal of chemicals and the giving of directions for the removal of chemicals.

*[Section 106A inserted by No. 55 of 1979 s. 10; amended by No. 22 of 1980 s. 9.]*

**107. General provisions as to regulations**

(1) Regulations may be made under this Act —

(a) so as to apply —

(i) generally or to any specified class or classes of case or subject-matter;

(ii) at all times or at any specified time or times;

(iii) throughout the State or in any specified part or parts of the State;

(b) so that different regulations apply to different areas, or different classes of persons, or different classes or



categories of declared plants or declared animals, or in different circumstances, or so that regulations apply differently according to such factors as may be specified;

- (c) so as to require a matter affected by them to be —
  - (i) in accordance with a specified standard or specified requirement; or
  - (ii) as approved by, or to the satisfaction of, a specified person or body, or a specified class of person or body;
- (d) so as to confer on or delegate to a specified person or body, or a specified class of person or body, a discretionary authority;
- (e) so as to provide that, in specified cases or a specified class of case or specified classes of cases, whether on specified conditions or unconditionally, persons or things or a class or classes of persons or things may be exempted from the provisions of the regulations, either wholly or to such extent as is specified;
- (f) so as to require any matter or thing to be verified by statutory declaration.

- (2) In subsection (1) *specified* means specified in the regulations.

#### **108. Penalties under regulations**

Regulations made under this Act may impose for a breach of a regulation so made a maximum penalty not exceeding \$20 000, with or without a fine for each separate and further offence committed under the *Interpretation Act 1984* section 71 of not more than \$500.

*[Section 108 inserted by No. 46 of 2010 s. 52.]*

## **Part IX — Pest plants**

### **109. Definition**

In this Part *pest plant* in relation to a district means a plant that is prescribed by local laws made by a local government under section 110 as a pest plant in that district.

*[Section 109 amended by No. 14 of 1996 s. 4.]*

### **110. Local government may make local laws**

Subject to and in accordance with the *Local Government Act 1995* a local government may, in respect of its district, make local laws —

- (a) prescribing as a pest plant in that district any plant (other than a declared plant) that, in its opinion, is likely to adversely affect the value of property in the district or the health, comfort or convenience of the inhabitants of the district;
- (b) requiring the owner or occupier of private land within the district to destroy, eradicate or otherwise control pest plants on and in relation to that land in a manner and within a time specified in a notice given by the local government and served on the owner or occupier of the land;
- (c) where the owner or occupier does not comply with the notice given by the local government, for authorising the local government without payment of any compensation in respect thereof to destroy, eradicate or otherwise control the pest plants at the expense of, and recover in a court of competent jurisdiction the amount of the expense from, the owner or occupier to whom the notice was given.

*[Section 110 amended by No. 14 of 1996 s. 4.]*

**111. Local government and Government departments to control pest plants**

- (1) A local government shall destroy, eradicate or otherwise control pest plants on and in relation to land under its control in its district.
- (2) A Government department having public land in a district under its control shall destroy, eradicate or otherwise control pest plants on and in relation to that land.

*[Section 111 amended by No. 14 of 1996 s. 4.]*

**112. Local government may assist owner or occupier to control pest plants**

Without affecting the operation or effect of local laws made under section 110, where there are pest plants on any public or private land in its district a local government may render such financial or other assistance to any owner or occupier of that land as the local government considers necessary or expedient for the destruction, eradication or control of those plants.

*[Section 112 amended by No. 14 of 1996 s. 4.]*

*[Part X (s. 113-119) deleted by No. 46 of 2010 s. 53.]*

**Part XI — Agriculture and Related Resources  
Protection Amendment Act 2010 — Savings and  
transitional provisions**

*[Heading inserted by No. 46 of 2010 s. 54.]*

**120. Terms used**

In this Part —

**commencement day** means the day on which the *Agriculture and Related Resources Protection Amendment Act 2010* section 7 comes into operation;

**Protection Board** means the Agriculture Protection Board of Western Australia constituted under the *Agriculture Protection Board Act 1950*.

*[Section 120 inserted by No. 46 of 2010 s. 54.]*

**121. Approvals and certificates**

An approval or certificate given by the Chief Officer under this Act as in force before the commencement day and of effect on that day has effect on and after that day as if it were an approval or certificate of the Director General.

*[Section 121 inserted by No. 46 of 2010 s. 54.]*

**122. Authorised persons**

An authorisation given under section 11 as in force before the commencement day and in effect immediately before that day has effect on and after that day as if it were an authorisation of the Director General.

*[Section 122 inserted by No. 46 of 2010 s. 54.]*

**123. Declarations**

A declaration made by the Protection Board under this Act as in force before the commencement day and in effect immediately

before that day has effect on and after that day as if it were a declaration of the Minister.

*[Section 123 inserted by No. 46 of 2010 s. 54.]*

**124. Rates payable under section 61**

Despite the amendments made by the *Agriculture and Related Resources Protection Amendment Act 2010* sections 28 to 32 (the **amending sections**), sections 61 to 65, as in force before the amending sections came into operation, continue to apply in relation to a rate payable for a financial year commencing on a day before the amending sections came into operation except that —

- (a) any reference in section 63(3a) or (4) to the Protection Board is to be taken to be a reference to the Minister; and
- (b) rates recovered under section 61 after the coming into operation of the *Agriculture and Related Resources Protection Amendment Act 2010* section 28 are to be credited to the Declared Pest Account.

*[Section 124 inserted by No. 46 of 2010 s. 54.]*

**125. Funds in, or payable to, former account**

- (1) In this section —

**closure day** means the day on which the *Agriculture and Related Resources Protection Amendment Act 2010* section 32 comes into operation;

**former account** means the Declared Plants and Animals Control Fund referred to in section 65 as in force before the closure day.

- (2) On the closure day any moneys standing to the credit of the former account are to be credited to the Declared Pest Account and the former account is then to be closed.
- (3) Moneys referred to in subsection (2) may be applied —

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- (a) in the payment of any liabilities of the former account which arose before the closure day; and
  - (b) for the purposes set out in the *Biosecurity and Agriculture Management Act 2007* section 138.
- (4) The Declared Pest Account is to be credited with any money that became payable to the former account before the closure day and that is paid after that day.
- (5) If in an agreement, instrument or other document there is a reference to the former account, that reference is, unless the context otherwise requires, to be read and have effect on and after the closure day as if it were a reference to the Declared Pest Account.

*[Section 125 inserted by No. 46 of 2010 s. 54.]*

**126. Management programmes**

A management programme made and published under section 66 as in force before the commencement day and in effect immediately before that day has effect on and after that day as if it were made and published under that section by the Minister.

*[Section 126 inserted by No. 46 of 2010 s. 54.]*

**127. Notices**

A notice given to the Protection Board under section 74, 75 or 76 as in force before the commencement day has effect on and after that day as if it were a notice given under that section to the Director General.

*[Section 127 inserted by No. 46 of 2010 s. 54.]*

**128. Permissions and authorities**

- (1) Permission granted by the Protection Board under section 77 or 80 as in force before the commencement day has effect on and

after that day as if it were permission granted under that section by the Director General.

- (2) A written authority given by the Protection Board under section 79(2) as in force before the commencement day has effect on and after that day as if it were given under that section by the Director General.

*[Section 128 inserted by No. 46 of 2010 s. 54.]*

**129. Transitional regulations**

- (1) If there is no sufficient provision in this Part for dealing with a transitional matter, regulations may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.
- (2) In subsection (1) —  
***transitional matter*** means a matter that needs to be dealt with for the purpose of effecting the transition from an Act (including this Act) as enacted immediately before the commencement day to the Act as amended by the *Agriculture and Related Resources Protection Amendment Act 2010*.
- (3) Regulations made under subsection (1) may provide that specified provisions of this Act as in force after the commencement of the *Agriculture and Related Resources Protection Amendment Act 2010*, or of subsidiary legislation made under this Act, or of an Act amended by the *Agriculture and Related Resources Protection Amendment Act 2010* —
- (a) do not apply; or
  - (b) apply with specified modifications,
- to or in relation to any matter.
- (4) If regulations under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the

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commencement day, the regulations have effect according to their terms.

- (5) In subsections (3) and (4) —  
*specified* means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as to —
- (a) affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or
  - (b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

*[Section 129 inserted by No. 46 of 2010 s. 54.]*

*[Schedule deleted by No. 6 of 2006 s. 8.]*



### Notes

<sup>1</sup> This is a compilation of the *Agriculture and Related Resources Protection Act 1976* and includes the amendments made by the other written laws referred to in the following table <sup>1a, 15, 18</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Agriculture and Related Resources Protection Act 1976</i>	42 of 1976	9 Jun 1976	Long title and s. 1-5, 7 and Pt. V Div. 6: 18 Jun 1976 (see s. 2 and <i>Gazette</i> 18 Jun 1976 p. 2048); balance: 1 Jul 1976 (see s. 2 and <i>Gazette</i> 18 Jun 1976 p. 2048)
<i>Agriculture and Related Resources Protection Act Amendment Act 1978</i>	40 of 1978	29 Aug 1978	29 Aug 1978
<i>Agriculture and Related Resources Protection Act Amendment Act 1979</i>	55 of 1979	12 Nov 1979	s. 3, 4(b), 7, 10 and 11: 1 Jul 1976 (see s. 2(1)); balance: 12 Nov 1979 (see s. 2(2))
<i>Agriculture and Related Resources Protection Amendment Act 1980</i>	22 of 1980	15 Oct 1980	s. 5: 1 Jul 1980 (see s. 2(2)); balance: 15 Oct 1980 (see s. 2(1))
<b>Reprint of the <i>Agriculture and Related Resources Protection Act 1976</i> approved 10 Feb 1981</b> (includes amendments listed above)			
<i>Agriculture and Related Resources Protection Amendment Act 1981</i>	76 of 1981	9 Nov 1981	Act other than s. 3(d): 1 Jul 1976 (see s. 2(1)); s. 3(d): 9 Nov 1981 (see s. 2(3))
<i>Agriculture and Related Resources Protection Amendment Act 1983</i>	31 of 1983	1 Dec 1983	29 Dec 1983 (see s. 2)
<i>Acts Amendment (Conservation and Land Management) Act 1984</i> Pt. V	112 of 1984	19 Dec 1984	22 Mar 1985 (see s. 2 and <i>Gazette</i> 15 Mar 1985 p. 931)
<i>Agriculture and Related Resources Protection Amendment Act 1986</i> <sup>11</sup>	59 of 1986	26 Nov 1986	5 Jan 1987 (see s. 2 and <i>Gazette</i> 19 Dec 1986 p. 4860)

## **Agriculture and Related Resources Protection Act 1976**

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Agricultural Legislation (Penalties) Amendment Act 1989 s. 3</i>	20 of 1989	1 Dec 1989	15 Dec 1989 (see s. 2 and <i>Gazette</i> 15 Dec 1989 p. 4513)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994 s. 3(1)</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Industrial Legislation Amendment Act 1995 s. 35</i>	1 of 1995	9 May 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 24 Nov 1995 p. 5389)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Transfer of Land Amendment Act 1996 s. 153(1) and (2)</i>	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
<i>Acts Amendment (Land Administration) Act 1997 Pt. 5 and s. 141</i>	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Agricultural Legislation Amendment and Repeal Act 1998 Pt. 2</i>	9 of 1998	30 Apr 1998	4 Jul 1998 (see s. 2 and <i>Gazette</i> 3 Jul 1998 p. 3581)
<b>Reprint of the Agriculture and Related Resources Protection Act 1976 as at 15 Oct 1999</b> (includes amendments listed above)			
<i>Taxation Administration (Consequential Provisions) Act 2002 s. 7<sup>12</sup></i>	45 of 2002	20 Mar 2003	1 Jul 2003 (see s. 2(1) and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 26</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)

## Agriculture and Related Resources Protection Act 1976

Short title	Number and year	Assent	Commencement
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141 <sup>15</sup>	59 of 2004 (as amended by No. 2 of 2008 s. 77(13))	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 6 <sup>15</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 78, 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Limitation Legislation Amendment and Repeal Act 2005</i> Pt. 10	20 of 2005	15 Nov 2005	15 Nov 2005 (see s. 2)
<i>Agriculture and Related Resources Protection Amendment Act 2006</i>	6 of 2006	12 Apr 2006	12 Apr 2006 (see s. 2)
<b>Reprint 3: The Agriculture and Related Resources Protection Act 1976 as at 16 Jun 2006</b> (includes amendments listed above)			
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 2 Div 2 <sup>16</sup>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Land Information Authority Act 2006</i> s. 121	60 of 2006	16 Nov 2006	1 Jan 2007 (see s. 2(1) and <i>Gazette</i> 8 Dec 2006 p. 5369)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Agriculture and Related Resources Protection Amendment Act 2010</i> Pt. 2	46 of 2010	28 Oct 2010	18 Dec 2010 (see s. 2(b) and <i>Gazette</i> 17 Dec 2010 p. 6349)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

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**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 27 <sup>14</sup>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
<i>Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007</i> s. 27 <sup>17</sup>	24 of 2007	12 Oct 2007	23 Nov 2011 (see s. 2(2) and <i>Gazette</i> 22 Nov 2011 p. 4843); Repeal of Act operative when proclamation published under s. 27
<i>Road Traffic Legislation Amendment Act 2012</i> Pt. 4 Div. 1 <sup>19</sup>	8 of 2012	21 May 2012	Operative on commencement of the <i>Road Traffic (Administration) Act 2008</i> (see s. 2(d))
<a href="#"><u><i>Commercial Arbitration Act 2012</i> s. 45 it. 1<sup>20</sup></u></a>	<a href="#"><u>23 of 2012</u></a>	<a href="#"><u>29 Aug 2012</u></a>	<a href="#"><u>To be proclaimed (see s. 1B(b))</u></a>

<sup>2</sup> Repealed by the *Mining Act 1978*.

<sup>3</sup> Repealed by the *Public Service Appeal Board Act Repeal Act 1977*.

<sup>4</sup> The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39, but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26. See also endnote 14.

<sup>5, 6</sup> No longer applicable.

<sup>7</sup> Repealed by the *Interpretation Act 1984*.

<sup>8</sup> Repealed by the *Commercial Arbitration Act 1985*.

<sup>9</sup> Repealed by section 6 of this Act.

<sup>10</sup> Now see the *Local Government Act 1995*.

<sup>11</sup> The *Agricultural and Related Resources Protection Amendment Act 1986* s. 8 is a transitional provision that is of no further effect.

<sup>12</sup> The *Taxation Administration (Consequential Provisions) Act 2002* s. 3, 4 and Pt. 4 read as follows:

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**3. Relationship with other Acts**

The *Taxation Administration Act 2003* is to be read with this Act as if they formed a single Act.

**4. Meaning of terms used in this Act**

The Glossary at the end of the *Taxation Administration Act 2003* defines or affects the meaning of some of the words and expressions used in this Act and also affects the operation of other provisions.

**Part 4 — Transitional provisions**

**Division 1 — Interpretation**

**33. Definitions**

In this Part —

*commencement day* means the day on which the *Taxation Administration Act 2003* comes into operation;

*old Act* means —

- (a) an Act repealed by section 5;
- (b) the old Stamp Act; or
- (c) section 41 of the *Metropolitan Region Town Planning Scheme Act 1959* as in force immediately before the commencement day;

*old Stamp Act* means the *Stamp Act 1921* as in force immediately before the commencement day;

*substantive provisions*, in relation to an old Act, means the provisions of the old Act other than those dealing with matters dealt with in the *Taxation Administration Act 2003*.

**Division 2 — General transitional provisions**

**34. General transitional arrangements**

- (1) Section 37(1) of the *Interpretation Act 1984*, except paragraphs (a) and (b), does not apply in relation to the repeal of an old Act.
- (2) The repeal of an old Act does not, unless the contrary intention appears —
  - (a) affect any right, interest, title, power or privilege created, acquired, accrued, established or exercisable or any status or capacity existing prior to the repeal;
  - (b) affect any duty, obligation, liability, or burden of proof imposed, created, or incurred prior to the repeal;

- (c) subject to section 11 of *The Criminal Code* and section 10 of the *Sentencing Act 1995*, affect any penalty or forfeiture incurred or liable to be incurred in respect of an offence committed against the old Act; or
  - (d) affect any investigation, legal proceeding or remedy in respect of any such right, interest, title, power, privilege, status, capacity, duty, obligation, liability, burden of proof, penalty or forfeiture.
- (3) Subject to subsections (4) and (5) —
- (a) a right, interest, title, power, privilege, duty, obligation, liability or burden of proof referred to in subsection (2)(a) or (b) may be exercised or enforced;
  - (b) a penalty or forfeiture referred to in subsection (2)(c) may be imposed and enforced; and
  - (c) an investigation, legal proceeding or remedy referred to in subsection (2)(d) may be instituted, continued, or enforced,
- as if the substantive provisions of the relevant old Act —
- (d) had not been repealed;
  - (e) were a taxation Act for the purposes of the *Taxation Administration Act 2003*; and
  - (f) had been amended to make any modifications necessary for this section to have effect.
- (4) If an objection, appeal or other legal proceeding (the “**action**”) was instituted under an old Act and was not finally determined before the commencement day —
- (a) the action may be continued;
  - (b) any requirement to pay interest on an amount of tax determined in the action to have been overpaid applies and may be enforced;
  - (c) any penalty may be imposed and enforced; and
  - (d) any decision, order or determination made in the action has effect, and may be enforced,
- as if this Act and the taxation Acts had not commenced.
- (5) If the time limited by an old Act for doing anything is longer than the time limited by a taxation Act for doing the equivalent thing under that Act, then in relation to a matter to which subsection (3) applies, the time limited under the old Act applies in relation to the doing of the thing under the taxation Act.

- (6) If the time limited by an old Act for commencing proceedings in relation to an offence under that Act is shorter than the 5 year period limited by section 111 of the *Taxation Administration Act 2003*, then despite section 111, proceedings in relation to an offence under the old Act (including an offence under a provision of the old Act that is continued in force under this Part) cannot be commenced after the expiry of the shorter period provided for by the old Act.
- (7) In this section a reference, in relation to the *Stamp Act 1921*, to the repeal of the old Act is a reference to the amendment of the Act by the *Stamp Amendment Act 2003*.

**35. Commissioner not to increase tax liability**

Despite Part 3 Division 1 of the *Taxation Administration Act 2003*, the Commissioner must not make a reassessment that increases the amount of tax a person is liable to pay in relation to anything that happened before the commencement day if the reassessment could not have been made under the relevant old Act.

**36. Delegations**

A delegation made under an old Act and in force immediately before the commencement day continues in force on and after that day as a delegation made under section 10 of the *Taxation Administration Act 2003*.

**Division 3 — Debits tax**

**37. Certificates of exemption from tax (*Debits Tax Assessment Act 1990*, s. 11)**

- (1) A certificate issued under section 11 of the *Debits Tax Assessment Act 1990* and in force immediately before the commencement day continues in force on and after that day as a certificate issued under section 10 of the *Debits Tax Assessment Act 2002*.
- (2) Where section 13(1) of the *Debits Tax Assessment Act 2002* applies in relation to a certificate issued under section 11 of the *Debits Tax Assessment Act 1990* the Commissioner cannot make a reassessment of the amount of debits tax payable on a debit for the purpose of giving effect to that section more than 3 years after —
- (a) if the financial institution has recovered the amount of the debits tax paid on the debit from the customer — the date on which that amount was recovered; or
  - (b) otherwise — the date on which the debits tax on the debits was paid.

**Division 4 — Land tax**

**38. Exemptions for certain home unit owners (*Land Tax Assessment Act 1976, s. 19*)**

If the amount of land tax payable on land for the financial year commencing on 1 July 2001 was assessed under section 19 of the *Land Tax Assessment Act 1976*, then on and after the commencement day section 16 of the *Land Tax Assessment Act 2002* applies in relation to that land as if that assessment had been made under section 16.

**39. Inner city residential property rebate (*Land Tax Assessment Act 1976, s. 23AB*)**

A notice given by the Commissioner under section 23AB(7) of the *Land Tax Assessment Act 1976* and in force immediately before the commencement day continues in force on and after that day as a notice under section 28(4) of the *Land Tax Assessment Act 2002*.

**40. Land tax relief Acts**

Despite —

- (a) the repeal of the *Land Tax Assessment Act 1976* and *Land Tax Act 1976*; and
- (b) the amendment of section 41 of the *Metropolitan Region Town Planning Scheme Act 1959*,

on and after the commencement day the *Land Tax Relief Act 1991* and *Land Tax Relief Act 1992* apply as if the substantive provisions of the Acts mentioned in paragraphs (a) and (b) —

- (c) had not been repealed;
- (d) were a taxation Act for the purposes of the *Taxation Administration Act 2003*; and
- (e) had been amended to make any modifications necessary for this section to have effect.

**Division 5 — Pay-roll tax**

**41. Treatment of certain contributions (*Pay-roll Tax Assessment Act 1971, Sch. 2 cl. 5*)**

Despite the repeal of the *Pay-roll Tax Assessment Act 1971*, Schedule 2 clause 5 of that Act continues to apply on and after the commencement day in relation to contributions wholly or partly in respect of services performed or rendered before 1 July 1997 as if that Act had not been repealed.



**42. Reassessments and refunds (*Pay-roll Tax Assessment Act 1971*, s. 19)**

Despite sections 16(3), 20(3) and 22(4) of the *Pay-roll Tax Assessment Act 2002* and section 16(1)(a) of the *Taxation Administration Act 2003*, the Commissioner is not required to make a reassessment of the amount of pay-roll tax payable by an employer in respect of wages paid or payable before the commencement day unless an application for a reassessment is made within 2 years after the tax was paid.

**Division 6 — Stamp duty**

**43. Adhesive stamps (*Stamp Act 1921*, s. 15, 21 and 23)**

- (1) Despite its repeal by the *Stamp Amendment Act 2003*, section 15 of the old Stamp Act continues in force for 12 months after the commencement day in relation to adhesive stamps that were affixed on instruments before that day.
- (2) Despite their repeal by the *Stamp Amendment Act 2003*, sections 21 and 23 of the old Stamp Act continue in force for 3 months after the commencement day in relation to adhesive stamps that were affixed on instruments before that day.
- (3) If adhesive stamps affixed to an instrument have been cancelled in accordance with the old Stamp Act (including the provisions of the old Stamp Act continued in force by subsections (1) and (2)) the instrument is taken to have been endorsed in accordance with section 17C of the *Stamp Act 1921*.

**44. Printing of “Stamp Duty Paid” on cheques (*Stamp Act 1921*, s. 52)**

- (1) An authorisation of a financial institution granted under section 52 of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement made under the *Taxation Administration Act 2003*.
- (2) Any requirement that applied, immediately before the commencement day, to a person to whom an authorisation continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the authorisation was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

**45. First home owners — reassessment (*Stamp Act 1921*, s. 75AG)**

Despite section 17(1) of the *Taxation Administration Act 2003*, if property that included a dwellinghouse was conveyed or

transferred before the commencement day, an application for a reassessment of the duty payable on the conveyance or transfer on the basis that a rebate under section 75AG of the old Stamp Act should have been, but was not, allowed cannot be made more than 12 months after the date of the original assessment.

**46. Reassessment of duty on grant or transfer of vehicle licences  
(Stamp Act 1921, s. 76C(18) and (19), 76CA(3a) and 76CB(9))**

- (1) This section applies in relation to a grant or transfer of a licence that occurred before the commencement day.
- (2) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the grant or transfer of a licence on the basis that the duty should not have been paid because —
  - (a) in the case of a grant — no vehicle licence fee was payable under the *Road Traffic Act 1974* in respect of the licence; or
  - (b) in the case of a transfer — had the transferee applied for the licence on the date of the transfer no vehicle licence fee would have been payable under the *Road Traffic Act 1974*,

cannot be made more than 15 months after the licence was granted or transferred.

- (3) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty paid on the transfer of a licence on the basis that the duty should have been, but was not, charged in accordance with item 6 of the Second Schedule to the old Stamp Act because the transfer did not pass a beneficial interest, cannot be made more than 12 months after the licence was transferred.
- (4) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the grant or transfer of a licence on the basis that the duty should have been, but was not, assessed on the net market value of the vehicle (as defined in section 76CB of the old Stamp Act), cannot be made more than 12 months after the licence was granted or transferred.

**47. Alternative to stamping individual insurance policies  
(Stamp Act 1921, s. 95A)**

- (1) A permission granted under section 95A of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement made under the *Taxation Administration Act 2003*.

- (2) Any requirement that applied, immediately before the commencement day, to a person to whom a permission continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the permission was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

**48. Workers' compensation insurance (*Stamp Act 1921*, s. 97 and item 16 of the Second Schedule)**

- (1) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the issue or renewal of a policy of insurance that occurred before the commencement day on the basis that the duty was assessed under item 16(1)(a)(i) of the Second Schedule to the old Stamp Act but should have been assessed under item 16(1)(a)(ii), cannot be made more than 2 years after the beginning of the insurance policy's cover period.
- (2) Despite the amendment of Schedule 2 item 16(1)(a) of the *Stamp Act 1921*, on and for 12 months after the commencement day —
- (a) the reference in Schedule 2 item 16(1)(a)(i)(A) to the *Pay-roll Tax Assessment Act 2002* includes a reference to the *Pay-roll Tax Assessment Act 1971*; and
  - (b) the reference in Schedule 2 item 16(1)(a)(i)(B) to section 39 or 40 of the *Pay-roll Tax Assessment Act 2002* includes a reference to section 10 of the *Pay-roll Tax Assessment Act 1971*.

**49. Payment of duty by returns (*Stamp Act 1921*, s. 112V)**

- (1) A permission granted under section 112V of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement under the *Taxation Administration Act 2003*.
- (2) Any requirement that applied, immediately before the commencement day, to a person to whom a permission continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the permission was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

<sup>13</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>14</sup> On the date on which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 27 had not come into operation. It reads as follows:

“

**27. Agriculture and Related Resources Protection Act 1976 amended**

Section 9(5) of the *Agriculture and Related Resources Protection Act 1976* is amended as follows:

- (a) by deleting “1994,” and inserting instead —  
“ 1994 or ”;
- (b) by deleting “or the *Superannuation and Family Benefits Act 1938*”.

”.

<sup>15</sup> The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 4 was repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 77(13).

<sup>16</sup> The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 23 reads as follows:

“

**Division 23 — Transitional provisions**

**151. Commissioner for Fair Trading**

- (1) On commencement, the person holding the office of Commissioner for Fair Trading immediately before commencement is to be taken to have been designated as the Commissioner or Registrar (as the case requires) for the purposes of each of the following enactments —
  - (a) the *Associations Incorporation Act 1987*;
  - (b) the *Business Names Act 1962*;
  - (c) the *Chattel Securities Act 1987*;
  - (d) the *Companies (Co-operative) Act 1943*;
  - (e) Part 8 of the *Competition Policy Reform (Western Australia) Act 1996*;
  - (f) the *Consumer Affairs Act 1971*;
  - (g) the *Co-operative and Provident Societies Act 1903*;
  - (h) the *Credit Act 1984*;
  - (i) the *Credit (Administration) Act 1984*;
  - (j) the *Employment Agents Act 1976*;
  - (k) the *Hire-Purchase Act 1959*;

- (l) the *Limited Partnerships Act 1909*;
  - (m) the *Motor Vehicle Dealers Act 1973*;
  - (n) the *Petroleum Products Pricing Act 1983*;
  - (o) the *Petroleum Retailers Rights and Liabilities Act 1982*;
  - (p) the *Residential Tenancies Act 1987*;
  - (q) the *Retirement Villages Act 1992*;
  - (r) the *Travel Agents Act 1985*.
- (2) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under a provision of the *Consumer Affairs Act 1971* for the purposes of another enactment listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted —
- (a) by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that other enactment as in force after commencement; and
  - (b) where relevant, under the corresponding provision of that other enactment as in force after commencement.
- (3) To the extent that a thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under, or for the purposes of, an enactment listed in subsection (1) is not covered by subsection (2), it has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that enactment as in force after commencement.
- (4) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading before commencement under, or for the purposes of, an enactment not listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.
- (5) A reference in an enactment to the Commissioner for Fair Trading is to have effect after commencement as if it had been amended to be a reference to —
- (a) in the case of an enactment listed in subsection (1) or subsidiary legislation made under such an enactment — the Commissioner or Registrar (as the case requires) as

defined in the enactment as in force after commencement; or

- (b) in the case of any other enactment or subsidiary legislation — the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.

**152. Commissioner for Corporate Affairs and Registrar of Co-operative and Financial Institutions**

- (1) A thing done or omitted to be done by, to or in relation to, the Commissioner for Corporate Affairs before commencement under, or for the purposes of, the *Companies (Co-operative) Act 1943* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.
- (2) A thing done or omitted to be done by, to or in relation to, the Registrar of Co-operative and Financial Institutions before commencement under, or for the purposes of, the *Co-operative and Provident Societies Act 1903* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.

**153. Consumer Affairs Act 1971**

Each office in existence immediately before commencement because of section 15(1) of the *Consumer Affairs Act 1971* does not cease merely because that subsection is repealed by this Act.

**154. Petroleum Products Pricing Act 1983**

Each office in existence immediately before commencement because of section 5(2)(b) of the *Petroleum Products Pricing Act 1983* does not cease merely because that paragraph is deleted by this Act.

**155. Interpretation**

In this Division —

**commencement** means the time at which this Division comes into operation;

**Commissioner for Fair Trading** means the Commissioner for Fair Trading referred to in section 15 of the *Consumer Affairs Act 1971* as in force before commencement;

**Prices Commissioner** means the Prices Commissioner referred to in section 5(1) of the *Petroleum Products Pricing Act 1983* as in force before commencement.

<sup>17</sup> On the date as at which this compilation was prepared, the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* s. 27 was in force. This does not have effect of repealing the *Agriculture and Related Resources Protection Act 1976*. This Act will be repealed upon publication of a proclamation made under s. 27 of the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007*. It reads as follows:

**Division 6 — Agriculture and Related Resources Protection Act 1976**

**Subdivision 1 — Repeal and consequential amendments**

**27. Repeal**

- (1) The *Agriculture and Related Resources Protection Act 1976* is repealed on a day to be fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

<sup>18</sup> The *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* Pt. 2 Div. 6 Subdivision 2 reads as follows:

**Subdivision 2 — Transitional and savings provisions**

**30. Meaning of terms used in this Subdivision**

In this Subdivision —

*commencement day* means the day on which the repealed Act Part V Division 6 is repealed;

*repealed Act* means the *Agriculture and Related Resources Protection Act 1976*.

[Section 30 amended by No. 46 of 2010 s. 60.]

**31. Rates on pastoral leases**

Despite section 27, the repealed Act Part V Division 6, as in force immediately before the commencement day, continues to apply in relation to a rate payable under that Division for a financial year commencing before the commencement day.

<sup>19</sup> On the date as at which this compilation was prepared, the *Road Traffic Legislation Amendment Act 2012* Pt. 4 Div. 1 had not come into operation. It reads as follows:

**Division 1 — *Agriculture and Related Resources Protection Act 1976* amended**

**39. Act amended**

This Division amends the *Agriculture and Related Resources Protection Act 1976*.

**40. Section 7 amended**

In section 7(1) in the definition of *vehicle* delete “ascribed to that term in and for the purposes of the *Road Traffic Act 1974*,” and insert:

given in the *Road Traffic (Administration) Act 2008* section 4;

<sup>20</sup> On the date as at which this compilation was prepared, the *Commercial Arbitration Act 2012* s. 45 it. 1 had not come into operation. It reads as follows:

**45. Acts amended**

(1) This section amends the Acts listed in the Table.

(2) Amend the provisions listed in the Table as set out in the Table.

**Table**

<u>Provision</u>	<u>Delete</u>	<u>Insert</u>
<b><u>1. <i>Agriculture and Related Resources Protection Act 1976</i></u></b>		
<u>s. 106(1)(g)</u>	<u><i>Arbitration Act 1895</i></u>	<u><i>Commercial Arbitration Act 2012</i></u>