Western Australia

Biosecurity and Agriculture Management Bill 2006

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Objects of Act	2
4.	Relationship with other Acts	3
5.	Act binds the Crown	3
6.	Meaning of terms used in this Act	4
7.	Meaning of "contaminated"	15
8.	Meaning of "owner" in relation to land	15
9.	Meaning of "animal feed"	16
10.	When organism is to be taken to be on land	18

Part 2 — Biosecurity

Division 1 — Permitted, prohibited and unlisted organisms

11.	Permitted organisms	19
12.	Prohibited organisms	19
13.	Consultation with other Ministers and Biosecurity Council	19
14.	Unlisted organisms	20

Division 2 — Importing organisms into Western Australia

15.	Import restrictions	20
16.	How to obtain import permit	21
17.	Supply of unlawful import	21
18.	Possession of unlawful import	21
19.	Obligations of commercial passenger carrier	21

20.	Obligation of commercial carrier	22
21.	Reporting and presenting import	23
	Division 3 — Biosecurity within Western Australia	
22.	Declared pests	24
23.	Dealing with declared pest	25
24.	Introducing or supplying declared pest	26
25.	Authorised dealing with declared pest	27
26.	Duty to report declared pest	27
27.	Pest exclusion notice	28
28.	SAT review: pest exclusion notice	29
29.	Compliance with pest exclusion notice	29
30.	Duty to control declared pest	30
31.	Pest control notice	31
32.	Compliance with pest control notice	33
33.	Apportionment of costs of controlling declared pests on land	33
34.	SAT review: costs of controlling declared pests	34
35.	Pest keeping notice	34
36.	Director General review: pest control notice or pest keeping notice	35
37.	SAT review: pest control notice or pest keeping notice	35
38.	Remedial action by Director General	36
39.	Power to control pests	36
40.	Agreements to supply pest control materials	36
41.	Public authority may assist owner or occupier to control declared pest	37
42.	Department may carry out operational work	37
	Division 4 — Urgent measures	
43.	Director General may give directions for urgent measures to control declared pest	38
44.	Director General may approve alternative measure or requirement	38
	Division 5 — Management plans	
45.	Management plans	39
46.	Consultation with affected persons	39
47.	Management plans are subject to disallowance	40

Division 6 — Biosecurity Council

48. Biosecurity Council 40
49. Membership of Biosecurity Council 41
50. Functions of Biosecurity Council 41
51. Annual report 41

Part 3 — Residues on land, chemical products and adulteration

Division 1 — Residues on land

52. Residue management notices 42
53. Duration of residue management notice 43
54. SAT review: residue management notices 43
55. Notification may be lodged with Registrar of Titles 44

Division 2 — Chemical products

56. Dealing with chemical products 44
57. Dealing with things that are treated, or not treated, with chemical product or are contaminated 45
58. Certain agreements void 46

Division 3 — Adulteration of agricultural products or animal feed

59. Meaning of terms used in this Division 47
60. Adulterating goods to cause public alarm or economic loss 47
61. Threatening to adulterate goods to cause public alarm or economic loss 48
62. Making false statements concerning adulteration of goods to cause public alarm or economic loss 48

Part 4 — Inspection and compliance

Division 1 — Preliminary

63. Meaning of terms used in this Part 49

Division 2 — Inspection and other functions

64. Purposes for which an inspection may be carried out 49
65. Entry and access to place or conveyance, and inspection powers 50
66. Obtaining records 52
67. Other directions 53

Division 3 — Entry warrants

68. Applying for entry warrant 55
69. Applications, how they are to be made 56
70. Issuing an entry warrant 57
71. Effect of entry warrant 58
72. Report on entry and search 58

Division 4 — Seizure, treatment, destruction and recall powers

73. Power to seize, treat or destroy 59
74. SAT review: seizure 61
75. SAT review: forfeiture 61
76. Power to direct that organism or potential carrier be moved for treatment 61
77. Power to direct person to treat, refrain from treating, destroy or dispose of thing 62
78. SAT review: section 77 direction 63
79. Treatment or destruction to prevent risk 64
80. SAT review: treatment or destruction notice 65
81. Provisions do not limit making of regulations 65
82. Inspector may direct removal of organism or potential carrier 65
83. SAT review: direction to remove from State 66
84. Recall of organism or substance 66
85. Notice may be published 68
86. SAT review: recall notice 68
87. Remedial action 68

Division 5 — General

88. Time and place for compliance 69
89. Direction may be given orally or in writing 69
90. Exercise of power may be recorded 69
91. Use of force and assistance 69
92. Offences 70
93. Self-incriminating information 70

Division 6 — Remedial action by Director General

94. Taking remedial action 71
95. Charge on land to secure cost of remedial action 72
96. Priority of charge 72
97. Dealing with certain charged land 73
98. Recovery of unpaid charge amount 73

99. Certificate of charge amount 74
100. Withdrawal of memorial 74

Division 7 — Registration of memorials and notices affecting land

101. Approved form of memorials and notices 75
102. Exemption from stamp duty 75
103. Notice to mortgagees 76

Part 5 — Legal proceedings

Division 1 — Legal proceedings

104. Prosecutions, who may commence 77
105. Time for bringing prosecution 77
106. Court's power to make ancillary orders on conviction 77
107. Order as to costs of analysis 78
108. Penalties for continuing offences 78
109. Injunctions to ensure compliance with this Act 79

Division 2 — Responsibility of certain persons

110. Liability of body corporate's officers 80
111. Liability of principal for acts of agent 81
112. Liability of employer for offence of employee 81

Division 3 — Evidentiary provisions

113. Meaning of "specified" 82
114. Proof of exemptions 83
115. Evidence of place of offence 83
116. Evidence of seller or packer of container 83
117. Evidence of purpose or intent 84
118. Evidence of authorisation and enforcement matters 84
119. Evidence of scientific matters 85
120. Evidence of type or class of organism or thing 86
121. Documentary and signed evidence 87
122. Evidence of documents and service 88
123. Evidence of ownership or occupancy 88
124. Provisions are in addition to the *Evidence Act 1906* 89

Division 4 — Modified penalties for certain offences

125. Meaning of terms used in this Division 89
126. Infringement notices 90
127. Withdrawal of infringement notice 90

128. Effect of payment of modified penalty 91

Part 6 — Financial provisions

Division 1 — Declared Pest Account

Subdivision 1 — General

129. Meaning of terms used in this Division 92

Subdivision 2 — Rates imposed on land

130. Determination of rate 92
131. Procedure for making rate determination 93
132. Minimum and maximum rates 93
133. Rates amounts 94
134. Multiple rating 94
135. Application of *Taxation Administration Act 2003* and *Land Tax Assessment Act 2002* 95
136. Postponement of rates payable by pensioners 96

Subdivision 3 — Establishment and operation of Declared Pest Account

137. Declared Pest Account 97
138. Use of funds in Declared Pest Account 97
139. Appropriations against the Consolidated Account 98

Division 2 — Industry funding schemes

140. Terms used in this Division 98
141. Establishment of accounts, management committees and schemes 98
142. Constitution and administration of prescribed accounts 99
143. Management committee 100
144. Contributions to account — prescribed scheme 100
145. Application of prescribed account 101
146. Treasurer may make advances to a prescribed account in event of a deficiency 103
147. Review of regulations 103

Division 3 — Modified Penalties Revenue Account

148. Modified Penalties Revenue Account 104
149. Use of funds in Modified Penalties Revenue Account 104

Part 7 — Administration

Division 1 — The Western Australian Agriculture Authority

150. Western Australian Agriculture Authority 106
151. Purpose of Western Australian Agriculture Authority 106
152. Powers of Authority 106
153. Treasurer to consider proposals under section 152(3)(b) 108
154. Intellectual property 108
155. Execution of documents by Authority 109
156. Accountability under this Division 110

Division 2 — Compiling and publishing essential information

157. Publication of certain declarations 110
158. Records of status of various organisms 111
159. The department's electronic site 111
160. Information available on department's electronic site 111
161. Availability of published information 112

Division 3 — Inspectors

162. Appointment of inspectors 112
163. Director General has functions of inspector 113
164. Identification cards 113

Division 4 — Quarantine facilities, inspection points and other places

165. Arrangements for provision of quarantine facilities 114
166. Inspection points 114
167. Use of other places 114

Division 5 — Advisory groups and recognised biosecurity groups

168. Advisory groups 114
169. Recognised biosecurity groups 115
170. Funds available to recognised biosecurity groups 115
171. Publication of report by recognised biosecurity group 116

Division 6 — Service of documents

172. Service on the Director General 116

173. Method of service 117
174. Alternate methods of service of documents relating to land 118
175. Service of notice by publication 119
176. Service where more than one owner or occupier 119
177. Time of service 120
178. Description of person or land 121
179. Documents binding on subsequent owners and occupiers 121
180. Non-exclusivity of this Division 121

Division 7 — General

181. Delegation by Minister 121
182. Delegation by Director General 122
183. Arrangements with corresponding authorities 123
184. Information sharing 124
185. Results and other matters may be published 126
186. Compliance statements 126
187. Immunity from tortious liability 128

Part 8 — Regulations, codes of practice and local laws

188. Regulations — general power 129
189. Regulations prescribing high impact organisms 129
190. Regulations and management plans may adopt codes or legislation and other references 129
191. Codes of practice 130
192. Regulations and codes of practice: consultation 131
193. Local government may make local laws 132

Part 9 — Miscellaneous

194. Review of Act 133

Schedule 1 — Matters for which regulations may be made

Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

Biosecurity and Agriculture Management Bill 2006

A Bill for

An Act to provide for —

- **the control of certain organisms;**
- **the use of agricultural and veterinary chemicals;**
- **the identification and attainment of standards of quality and safety for agricultural products, animal feeds, fertilisers and other substances and things;**
- **the establishment of a Declared Pest Account, a Modified Penalties Revenue Account and accounts for industry funding schemes; and**
- **related matters.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Biosecurity and Agriculture Management Act 2006*.

2. Commencement

(1) This Act comes into operation on a day fixed by proclamation.

(2) Different days may be fixed under subsection (1) for different provisions.

3. Objects of Act

(1) The objects of this Act are to provide effective biosecurity and agriculture management for the State by providing the means to —

(a) control the entry, establishment, spread and impact of organisms that have or may have an adverse effect on —

(i) other organisms; or

(ii) human beings; or

(iii) the environment or part of the environment; or

(iv) agricultural activities, fishing or pearling activities, or related commercial activities, carried on, or intended to be carried on, in the State or part of the State;

and

(b) control the use of agricultural and veterinary chemicals; and

(c) establish standards to ensure the safety and quality of agricultural products; and

(d) raise funds for biosecurity-related purposes.

(2) Nothing in this Act empowers the regulation of diseases which affect only human health.

4. Relationship with other Acts

(1) Each of the following written laws must be read with this Act as if they formed a single Act —

(a) the *Biosecurity and Agriculture Management Rates and Charges Act 2006*;

(b) the *Land Tax Assessment Act 2002*, in its application to the assessment of rates payable under Part 6 Division 1 Subdivision 2;

(c) the *Taxation Administration Act 2003*, in its application to rates payable under Part 6 Division 1 Subdivision 2.

(2) The provisions of this Act are in addition to the provisions of the following Acts —

(a) the *Agricultural and Veterinary Chemicals (Western Australia) Act 1995*;

(b) the *Animal Welfare Act 2002*;

(c) the *Environmental Protection Act 1986*;

(d) the *Exotic Diseases of Animals Act 1993*;

(e) the *Genetically Modified Crops Free Areas Act 2003;*

(f) the *Health Act 1911*;

(g) the *Poisons Act 1964*;

(h) the *Police Act 1892.*

(3) Except as provided in section 40(3), if a provision of this Act is inconsistent with a provision of an Act referred to in subsection (2), the latter provision prevails to the extent of the inconsistency.

5. Act binds the Crown

This Act binds the Crown in right of the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.

6. Meaning of terms used in this Act

In this Act, unless the contrary intention appears —

"agricultural activity" includes apiculture, aquaculture, silviculture, viticulture and the raising or supply of plants or animals, and any related activity, including fallowing or resting land used for an agricultural activity;

"agricultural product" means —

(a) a plant; or

(b) stock; or

(c) an animal product; or

(d) a commodity derived from a plant or an animal product; or

(e) any other product of an agricultural activity;

"Agvet Code of Western Australia" has the meaning given to that term in the *Agricultural and Veterinary Chemicals (Western Australia) Act 1995*;

"analysis" means an examination, biological assay, bacteriological assay, chemical assay or any other assay or test relevant to determining the classification, quality, composition or any other particular of an organism, agricultural product, animal feed, fertiliser, chemical product or other substance or thing;

"animal" means a living or previously living thing except a human being, plant or micro-organism, and includes —

(a) the ovum, semen or any other genetic material of an animal; and

(b) an animal when in the embryonic or larval stage or any other immature stage;

"animal feed" has the meaning given in section 9;

"animal product" means —

(a) a carcass or a part of a carcass of an animal; or

(b) meat, skin, hide, hair, wool, horn, feather, antler, feet, offal, viscera or blood of an animal; or

(c) fat, milk, whey, cream, butter, cheese, egg or part of an egg, or other food derived from an animal; or

(d) honey, beeswax, honeycomb or any other product of bees; or

(e) a secretion, excretion, faecal matter or other waste of an animal; or

(f) any other animal tissue;

"authorisation" includes a licence, permit, registration, approval or accreditation under this Act;

"Authority" means the Western Australian Agriculture Authority established under section 150;

"biosecurity" means protection from the adverse effect an organism has or may have on —

(a) another organism; or

(b) a human being; or

(c) the environment, or part of the environment; or

(d) agricultural activities, fishing or pearling activities, or related commercial activities carried on, or intended to be carried on, in the State or part of the State;

"Biosecurity Council" means the Biosecurity Council established under section 48;

"breed" includes hatch;

"CALM Act Minister" means the Minister administering the *Conservation and Land Management Act 1984*;

"charge amount", in relation to land, means the amount secured by a charge on the land arising under section 95;

"chemical product" means —

(a) an agricultural chemical product as defined in the Agvet Code of Western Australia; or

(b) a veterinary chemical product; or

(c) a substance prescribed for the purposes of this definition;

"code of practice" means a code of practice issued or approved under section 191;

"container" includes —

(a) a case, box, bag, wrapper or material of any kind used or intended to be used to cover, contain or package something; and

(b) a bulk container, or any means of bulk transport, used or intended to be used to cover, contain or package something;

"contaminated", in relation to an animal, agricultural product, animal feed, fertiliser or other substance or thing, has the meaning given by section 7;

"control", in relation to a declared pest or other organism, includes eradicate, destroy, prevent the presence or spread of, manage, examine or test for, survey for or monitor the presence or spread of, and treat;

"conveyance" means a vehicle, vessel, aircraft or train;

"cultivate" includes culture;

"declared pest" means —

(a) a prohibited organism; or

(b) an organism for which a declaration under section 22(2) is in force;

"Declared Pest Account" means the account established under section 137(1);

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

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

"disease" means —

(a) a disease that is capable of having a detrimental effect on an animal or a plant and includes —

(i) a micro-organism; and

(ii) a disease agent; and

(iii) an infectious agent; and

(iv) a parasite at any stage of its life cycle;

or

(b) a genetic disorder of an animal or plant;

"electronic site", in relation to the department, means —

(a) a website on the internet; or

(b) a site on another public electronic system, or other site approved under the regulations,

established and maintained under section 159;

"environment" has the meaning given to that term in the *Environmental Protection Act 1986* section 3;

"export" means to take out of, or cause to be taken out of, Western Australia;

"fertiliser" means —

(a) a substance containing nitrogen, phosphorus, potassium or any other element required for plant growth, or a compound of such a substance, manufactured, prepared, produced or supplied for the purpose of fertilising the soil or supplying nutriments to plants; or

(b) a substance used for conditioning the soil for the purpose of fertilising the soil or supplying nutriments to plants; or

(c) a substance prescribed for the purposes of this definition,

but does not include —

(d) animal or plant manure or other unmanufactured refuse except to the extent that the manure or refuse is mixed with a substance referred to in paragraph (a), (b) or (c) and is so mixed, manufactured, prepared, produced or supplied as a fertiliser; or

(e) a substance prescribed not to be a fertiliser;

"fish" has the meaning given to that term in the *Fish Resources Management Act 1994* and includes pearl oyster;

"fisheries officer" means a fisheries officer appointed under the *Fish Resources Management Act 1994* section 11;

"high impact organism" means a prohibited organism that has been prescribed as a high impact organism;

"identification card" means —

(a) in relation to an inspector appointed under section 162 — the identity card issued to the inspector under section 164(1); and

(b) in relation to an inspector who is a fisheries officer, an inspector as that term is defined in the *Pearling Act 1990*, a wildlife officer or a police officer — a like identification issued to the person under the written law under which the person was appointed as such an officer or inspector;

"identifier" means a brand, stencil, eartag, earmark, electronic device or other device or marking used to identify an organism, an agricultural product, a place or a prescribed potential carrier;

"import" means to bring, or cause to be brought, into Western Australia;

"import permit" means a permit issued under section 16(2);

"infected" means actually infected or liable, by reason of contact or proximity, to be infected;

"infested" means actually infested or liable, by reason of contact or proximity, to be infested;

"inspection point" means a place designated as an inspection point under section 166;

"inspector" means —

(a) in relation to the identification or movement of stock — an inspector appointed under section 162 or a police officer; and

(b) in relation to fish — an inspector appointed under section 162, a fisheries officer or an inspector appointed under the *Pearling Act 1990* section 35(1); and

(c) in relation to a declared pest other than fish — an inspector appointed under section 162 or a wildlife officer; and

(d) in relation to anything else — an inspector appointed under section 162;

"keep" means have in possession or be in control of, and includes exhibit;

"label" means —

(a) when used as a noun — an identifier or a tag, mark or statement in writing however effected, and whether or not comprising a trade mark, logo or other distinguishing or descriptive material; and

(b) when used as a verb — to mark a package, container or other thing to identify it or its contents by affixing to it or inserting in it an identifier or a tag, stamp, mark or statement referred to in paragraph (a);

"land" means —

(a) all land within the limits of the State; and

(b) all marine and other waters within the limits of the State; and

(c) all coastal waters of the State as defined by section 3(1) of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth; and

(d) the sea-bed and subsoil beneath, and all islands and structures within, the waters referred to in paragraphs (b) and (c); and

(e) in respect of fish managed by the State under an arrangement with the Commonwealth under the *Fish Resources Management Act 1994* Part 3 or the *Pearling Act 1990*, the waters of the Australian fishing zone as defined by the *Fisheries Management Act 1991* of the Commonwealth;

"Land Titles Register" means the Register as defined in the *Transfer of Land Act 1893*;

"management plan" means a plan that is in force under section 45 for the management of an area;

"maximum residue limit", in relation to a chemical product or other prescribed substance, means the maximum residue limit prescribed in respect of that chemical product or substance in relation to —

(a) an animal, agricultural product, animal feed, fertiliser or other substance or thing; or

(b) a prescribed organism or other thing from which an agricultural product, animal feed, fertiliser or other substance or thing may be derived;

"Minister for the Environment" means the Minister administering the *Environmental Protection Act 1986*;

"Minister for Fisheries" means the Minister administering the *Fish Resources Management Act 1994*;

"Modified Penalties Revenue Account" means the account established under section 148(1);

"occupier", in relation to land, means a person who is in occupation or control of the land, or is entitled to be in

occupation or control of the land, whether or not that person owns the land;

"organism" means —

(a) a living thing, except a human being or part of a human being; or

(b) a prion or other prescribed organic agent that can cause disease; or

(c) a disease;

"owner" —

(a) in relation to land — has the meaning given to that term in section 8 or 129, as the case requires; and

(b) in relation to a vehicle — has the meaning given to that term in the *Road Traffic Act 1974*; and

(c) in relation to a vessel — has the meaning given to that term in the *Western Australian Marine Act 1982*; and

(d) in relation to a thing other than land, a vehicle or a vessel — includes an agent or manager of the owner, and any other person who has possession or control of the thing at the material time;

"pearl oyster" has the meaning given to that term in the *Pearling Act 1990*;

"permitted organism" means an organism for which a declaration is in force under section 11;

"pest control notice" means a notice under section 31(1);

"pest exclusion notice" means a notice under section 27(1);

"pest keeping notice" means a notice under section 35(1);

"place" means land, premises or a conveyance, or a part of land, premises or a conveyance;

"plant" means any vegetation or fungus and includes —

(a) a cutting or the leaf, flower or flower head of a plant; and

(b) the fruit or seed of a plant; and

(c) the peel, skin or shell of a fruit or seed of a plant; and

(d) genetic material of a plant; and

(e) any other product or part of a plant;

"potential carrier" means —

(a) anything that is capable of carrying an organism; or

(b) anything that is capable of carrying anything else that is capable of carrying an organism;

"premises" includes a building or structure, or part of a building or structure, of any type;

"prescribed" means prescribed under regulations made under this Act;

"prohibited organism" means an organism for which a declaration is in force under section 12;

"public authority" means —

(a) a Minister of the State; or

(b) an agency or an organisation as those terms are defined in the *Public Sector Management Act 1994*; or

(c) a body, corporate or unincorporate, that is established or continued for a public purpose by the State, regardless of the way it is established; or

(d) a local government or regional local government;

"quality assurance scheme" means a scheme relating to animals, agricultural products, potential carriers, animal feed or fertilisers that is designed to assure that the animals, plants, agricultural products, potential carriers, animal feed or fertilisers —

(a) are of a particular quality or grade; or

(b) are in a particular condition; or

(c) were produced in a particular area or place; or

(d) were produced in a particular manner; or

(e) have been treated in a particular way; or

(f) are free from a particular organism, chemical residue, contaminant or adulterant; or

(g) comply with particular conditions or requirements;

"quarantine facility" means a place used or to be used as a quarantine facility under an arrangement under section 165 or another secure facility used for quarantine purposes;

"record" means a document or record of information, irrespective of how the information is recorded or stored or able to be recovered and includes —

(a) a thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and

(b) a thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

"residue", in relation to a chemical product or other prescribed substance, includes residue of a derivative or metabolite of the chemical product or other substance;

"residue management notice" means a notice given under section 52;

"stock" means any animal prescribed for the purposes of this definition;

"supply" includes do, or cause or permit the doing of, any of the following —

(a) sell;

(b) send or deliver for sale or on sale;

(c) dispose of under a hire purchase agreement;

(d) give;

(e) offer to do an act that would be a supply (including an act referred to in any of the above paragraphs),

and includes supply under a contract for work or labour that also involves the supply of any thing;

"treat" includes disinfect, disinfest, clean, vaccinate or apply other prophylactic measures, and isolate;

"unimproved value", in relation to land —

(a) has the meaning given to that term in the *Valuation of Land Act 1978*; and

(b) in relation to a part of a lot, as that term is defined in the *Land Tax Assessment Act 2002*, has the meaning given in section 13 of that Act;

"unlisted organism" has the meaning given to that term in section 14;

"vehicle" has the meaning given to that term in the *Road Traffic Act 1974*;

"veterinary chemical product" means a veterinary chemical product as defined in the Agvet Code of Western Australia except that —

(a) despite section 5(4) of the Code, it includes a substance or mixture of substances that is —

(i) prepared in accordance with the instructions of a veterinary surgeon by a pharmaceutical chemist registered under the *Pharmacy Act 1964* in the course of practice as a pharmacist; or

(ii) prepared by a veterinary surgeon in the course of practice as a veterinary surgeon;

and

(b) it does not include a substance prescribed for the purposes of this definition;

"veterinary surgeon" means a registered veterinary surgeon as defined in the *Veterinary Surgeons Act 1960*;

"wildlife officer" means a wildlife officer designated as such under the *Conservation and Land Management Act 1984*.

7. Meaning of "contaminated"

For the purposes of this Act an animal, agricultural product, animal feed, fertiliser or other substance or thing is contaminated if —

(a) it contains more of a chemical product or other substance than the maximum residue limit of that chemical product or other substance prescribed in relation to that animal, agricultural product, animal feed, fertiliser or other substance or thing; or

(b) it contains such an amount of a chemical product or other substance that ordinary use of the animal, agricultural product, animal feed, fertiliser or other substance or thing is likely to result, directly or indirectly, in the presence of more than the maximum residue limit of that chemical product or other substance in another animal, agricultural product, animal feed, fertiliser or other substance or thing; or

(c) it contains a substance or thing, other than a substance or thing in relation to which a maximum residue limit is prescribed, in the circumstances prescribed in relation to that substance or thing; or

(d) the regulations prescribe circumstances in which an animal, agricultural product, animal feed, fertiliser or other substance or thing is contaminated, and those circumstances occur in relation to the animal, agricultural product, animal feed, fertiliser or other substance or thing.

8. Meaning of "owner" in relation to land

(1) For the purposes of this Act, other than Part 6 Division 1, a person is an owner of land if the person is —

(a) in relation to land alienated from the Crown, the holder (at law or in equity) of an estate in fee simple in the land; or

(b) in relation to land that the Crown has lawfully agreed to alienate, the person who is entitled to the benefit of the agreement; or

(c) in relation to land held under a lease lawfully granted by the Crown, the lessee; or

(d) in relation to any other land, the public authority that has the care, control or management of the land or, if there is no such public authority, the Crown.

(2) For the purposes of this Act, an owner of land referred to in subsection (1)(a), (b) or (c) (**"private land"**) is to be taken to be the owner, in addition to that land, of —

(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;

and

(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.

(3) Subsection (2) does not apply to or in relation to a road dedicated and open to public use and fenced on both sides.

9. Meaning of "animal feed"

(1) In this Act —

"animal feed" means a substance, mixture or compound consumed or intended for consumption by an animal or supplied for consumption by an animal, including —

(a) basic animal feed; and

(b) processed animal feed or manufactured animal feed; and

(c) a by-product, additive, supplement or nutrient; and

(d) any other substance that is prescribed for the purposes of this definition.

(2) In this section —

"additive" means a substance or combination of substances added to basic animal feed for continuous long-term administration to an animal for a specific purpose;

"basic animal feed" means grain, seeds, hay, meat, fish or milk used as animal feed, or in the preparation of animal feed;

"by-product" means —

(a) a by-product of the production of basic animal feed or processed animal feed; or

(b) a by-product of the production of food for human consumption; or

(c) another substance prescribed for the purposes of this definition;

"manufactured animal feed" means a feed consisting of, or containing —

(a) a feed made mainly or partly of basic animal feed (but not consisting solely of one or more basic animal feeds or products derived from milk); or

(b) a processed animal feed, additive or supplement; or

(c) a stock lick;

"processed animal feed" means —

(a) a basic animal feed that has been changed in form by chemical, physical or mechanical treatment; or

(b) a by-product.

10. When organism is to be taken to be on land

For the purposes of this Act, a reference to an organism being on land is to be taken to include a reference to an organism that is —

(a) on or in any water on or under the land; or

(b) in the air above the land.

Part 2 — Biosecurity

Division 1 — Permitted, prohibited and unlisted organisms

11. Permitted organisms

(1) The Minister may declare that an organism of a kind specified or described in the declaration is a permitted organism.

(2) Section 157 applies to a declaration made under this section.

12. Prohibited organisms

(1) The Minister may declare that an organism of a kind specified or described in the declaration is a prohibited organism if there are reasonable grounds for believing that the organism —

(a) has or may have an adverse effect on —

(i) another organism; or

(ii) human beings; or

(iii) the environment or part of the environment; or

(iv) agricultural activities, fishing or pearling activities, or related commercial activities, carried on, or intended to be carried on, in the State or part of the State;

or

(b) may have an adverse effect on any of those things if it were present in the State or part of the State, or if it were present in the State or the part in greater numbers or to a greater extent.

(2) Section 157 applies to a declaration made under this section.

13. Consultation with other Ministers and Biosecurity Council

Before making a declaration under section 11 or 12 the Minister must consult with —

(a) any Minister who in the opinion of the Minister has a relevant interest; and

(b) if the Minister is of the opinion that such consultation is necessary for the purpose of properly informing himself or herself as to whether or not the declaration should be made, the Biosecurity Council.

14. Unlisted organisms

An organism that is not a permitted organism or a declared pest is an **"unlisted organism"**.

Division 2 — Importing organisms into Western Australia

15. Import restrictions

(1) A person must not import a prohibited organism except in accordance with an import permit and the regulations.

Penalty:

(a) a fine of $50 000; or

(b) if the organism is a high impact organism, a fine of $100 000 and imprisonment for 12 months.

(2) A person must not import an unlisted organism except in accordance with an import permit and the regulations.

Penalty: a fine of $20 000.

(3) A person must not import a prescribed potential carrier unless —

(a) the import is permitted under the regulations; and

(b) the prescribed potential carrier is imported in accordance with the regulations.

Penalty:

(a) a fine of $50 000; or

(b) if the prescribed potential carrier is prescribed as a potential carrier of a high impact organism, a fine of $100 000 and imprisonment for 12 months.

(4) The regulations may prohibit or regulate the importation of a permitted organism.

16. How to obtain import permit

(1) A person may apply for an import permit in accordance with the regulations.

(2) The Director General may issue, or refuse to issue, an import permit.

(3) An import permit may be issued subject to conditions.

17. Supply of unlawful import

A person must not supply an organism, the progeny of an organism, or a potential carrier if the person knows, or ought reasonably to know, that the organism or potential carrier was imported in contravention of section 15.

Penalty:

(a) a fine of $50 000; or

(b) if the organism is a high impact organism, a fine of $100 000 and imprisonment for 12 months.

18. Possession of unlawful import

A person must not receive or possess an organism, the progeny of an organism, or a potential carrier if the person knows, or ought reasonably to know, that the organism or potential carrier was imported in contravention of section 15.

Penalty:

(a) a fine of $20 000; or

(b) if the organism is a high impact organism, a fine of $100 000 and imprisonment for 12 months.

19. Obligations of commercial passenger carrier

(1) In this section —

"commercial passenger carrier" means a person who provides transport for individuals for fee or reward.

(2) A commercial passenger carrier who transports passengers into the State by means of a conveyance from a location outside the State must not bring the conveyance into the State unless the carrier has given to the passengers the prescribed information about importing organisms and potential carriers.

Penalty: a fine of $15 000.

(3) A commercial passenger carrier who transports passengers into the State by means of a conveyance from a location outside the State must provide a secure facility that complies with the regulations (if any) for the passengers to deposit any organism or potential carrier that is or could be imported in contravention of section 15.

Penalty: a fine of $15 000.

(4) If an organism or potential carrier is deposited by a passenger in a facility provided by the commercial passenger carrier for that purpose, the commercial passenger carrier must dispose of the organism or potential carrier in accordance with the regulations.

Penalty: a fine of $20 000.

20. Obligation of commercial carrier

(1) In this section —

"commercial carrier" means a person who provides transport for individuals, or transports freight, for fee or reward.

(2) A commercial carrier transporting a prescribed declared pest, a declared pest of a prescribed class, or a prescribed potential carrier, into the State from a location outside the State commits an offence if —

(a) the regulations require that carrier to give notice to the Director General of the transport of that declared pest or potential carrier; and

(b) the carrier does not give the notice in accordance with the regulations.

Penalty: a fine of $15 000.

21. Reporting and presenting import

(1) If the regulations so require, a person who proposes to import an organism or prescribed potential carrier must, before the organism or prescribed potential carrier is imported, give notice, in accordance with the regulations, of the time and place of entry into the State of the organism or prescribed potential carrier.

(2) A person who —

(a) imports an organism or prescribed potential carrier; and

(b) fails to comply with subsection (1) in respect of the organism or prescribed potential carrier,

commits an offence.

Penalty: a fine of $10 000.

(3) A person who imports an organism or prescribed potential carrier must —

(a) if an import permit has been issued in respect of the organism or prescribed potential carrier or if the regulations so require, present the organism or prescribed potential carrier to an inspector in accordance with the regulations; and

(b) give the inspector any import permit issued in respect of the organism or prescribed potential carrier; and

(c) give the inspector any relevant information the inspector requires about the organism or prescribed potential carrier.

Penalty: a fine of $20 000.

(4) A person who imports an organism or prescribed potential carrier must, if the regulations so require, give an inspector a declaration in accordance with the regulations.

Penalty: a fine of $20 000.

Division 3 — Biosecurity within Western Australia

22. Declared pests

(1) A prohibited organism is a declared pest for the whole of Western Australia.

(2) The Minister may declare that any other organism of a kind specified or described in the declaration is a declared pest for an area if there are reasonable grounds for believing that the organism —

(a) has or may have an adverse effect on —

(i) another organism in the area; or

(ii) human beings in the area; or

(iii) the environment, or part of the environment, in the area; or

(iv) agricultural activities, fishing or pearling activities, or related commercial activities, carried on, or intended to be carried on, in the area;

or

(b) may have an adverse effect on any of those things if it were present in the area, or if it were present in the area in greater numbers or to a greater extent.

(3) A declaration under this section may assign the declared pest to a category designated by the regulations.

(4) Before making a declaration under this section the Minister must consult with —

(a) any other Minister who in the opinion of the Minister has a relevant interest; and

(b) if the Minister is of the opinion that such consultation is necessary for the purpose of properly informing himself or herself as to whether or not the declaration should be made, the Biosecurity Council.

(5) The area for which an organism is declared to be a declared pest may be the whole or part of the State.

(6) The declaration may set out or identify a management plan that must be followed by a person who has a duty under section 30 to control the declared pest.

(7) Section 157 applies to a declaration made under subsection (2).

23. Dealing with declared pest

(1) Except as otherwise provided in the regulations or in a management plan, a person must not, in an area for which an organism is a declared pest —

(a) keep, breed or cultivate the declared pest; or

(b) keep, breed or cultivate an animal, plant or other thing that is infected or infested with the declared pest; or

(c) release into the environment the declared pest, or an animal, plant or other thing that is infected or infested with the declared pest; or

(d) intentionally infect or infest, or expose to infection or infestation, a plant, animal or other thing with a declared pest.

Penalty:

(a) a fine of $50 000; or

(b) if the declared pest is a high impact organism, a fine of $100 000 and imprisonment for 12 months.

(2) The regulations may provide that a person must not move a declared pest, or an animal, plant or other thing that is infected or infested with the declared pest, from the place where it is found.

(3) A person who contravenes a regulation referred to in subsection (2) commits an offence.

Penalty:

(a) a fine of $20 000; or

(b) if the contravention is in relation to a declared pest that is a high impact organism, a fine of $100 000 and imprisonment for 12 months.

24. Introducing or supplying declared pest

(1) The regulations or a management plan may provide that a person must not bring into an area of the State from another area of the State —

(a) an organism that is a declared pest for the first-mentioned area; or

(b) an animal, plant or other thing that is infected or infested with an organism that is a declared pest for the first-mentioned area; or

(c) a potential carrier of an organism that is —

(i) a declared pest for the first-mentioned area; and

(ii) prescribed by the regulations or specified in the management plan.

(2) A person who contravenes a provision referred to in subsection (1) commits an offence.

Penalty:

(a) a fine of $20 000; or

(b) if the contravention is in relation to a declared pest that is a high impact organism, a fine of $100 000 and imprisonment for 12 months.

(3) The regulations or a management plan may provide that a person must not supply to a person in an area of the State —

(a) an organism that is a declared pest for the area; or

(b) an animal, plant or other thing that is infected or infested with an organism that is a declared pest for the area; or

(c) a potential carrier of an organism that is —

(i) a declared pest for the area; and

(ii) prescribed by the regulations or specified in the management plan.

(4) A person who contravenes a provision referred to in subsection (3) commits an offence.

Penalty:

(a) a fine of $20 000; or

(b) if the contravention is in relation to a declared pest that is a high impact organism, a fine of $100 000 and imprisonment for 12 months.

25. Authorised dealing with declared pest

A person who is authorised under this Act to keep, breed, cultivate or supply a declared pest must do so in accordance with this Act and the terms and conditions, if any, of the authorisation.

Penalty:

(a) a fine of $20 000; or

(b) if the declared pest is a high impact organism, a fine of $100 000 and imprisonment for 12 months.

26. Duty to report declared pest

(1) A person who finds or suspects that, in an area for which an organism is a declared pest, there is the declared pest on or in a place, or that an organism or thing is infected or infested with the declared pest, must report, in accordance with subsection (2), the presence or suspected presence of the declared pest to the Director General or an inspector.

Penalty:

(a) a fine of $20 000; or

(b) if the declared pest is a high impact organism, a fine of $100 000 and imprisonment for 12 months.

(2) A report —

(a) may be made orally or in writing; and

(b) must indicate, as far as practicable, where the declared pest, or the infected or infested organism or thing, was found, or the reasons for suspecting its presence; and

(c) must give any other relevant information within the person's knowledge; and

(d) must be made within the prescribed period or, if no period is prescribed, as soon as practicable after finding the pest or suspecting its presence; and

(e) must be made in accordance with the regulations (if any).

(3) A veterinary surgeon, analyst or other person is not excused from compliance with subsection (1) on the grounds that he or she found or came to suspect the presence of the declared pest on or in the place, or found or came to suspect that the organism or thing was infected or infested, in the course of giving professional or other advice, or providing professional or other services, to the owner, occupier or other person in control of the place, organism or thing.

(4) Subsection (3) has effect whether the advice was sought or given, or the services were provided, in relation to the place, organism or thing, or in relation to any other matter.

27. Pest exclusion notice

(1) If the Director General is of the opinion that, in an area for which an organism is a declared pest, measures are required to be taken to ensure that a place or an agricultural product remains free from the declared pest, the Director General may give a pest exclusion notice to any or all of the following persons —

(a) in the case of a notice in respect of land — the owner or occupier of the land or a person who is conducting an activity on that land;

(b) in the case of a notice in respect of another place — the owner, occupier or person who has control of the place;

(c) in the case of a notice in respect of an agricultural product — the owner or person who has control of the agricultural product.

(2) A pest exclusion notice —

(a) must be in writing; and

(b) must identify the declared pest in respect of which the notice is given; and

(c) may direct the person to whom it is given to comply with a code of practice specified in the notice, or to take the measures set out in the notice or prescribed by the regulations specified in the notice, for the purpose of keeping the place or agricultural product free from the declared pest; and

(d) must specify the period within which, or for the duration of which, the person to whom it is given must comply with the notice; and

(e) must inform the person to whom it is given that failure to comply with the notice could result in a fine, the Director General taking remedial action under section 38, or both.

28. SAT review: pest exclusion notice

(1) Subject to the regulations referred to in subsection (2), a person aggrieved by a direction in a pest exclusion notice under section 27 may apply to the State Administrative Tribunal for a review of the direction.

(2) The regulations may prescribe circumstances relating to a matter of emergency or urgent need in which subsection (1) does not apply.

29. Compliance with pest exclusion notice

A person to whom a pest exclusion notice is given must comply with the notice.

Penalty: a fine of $20 000.

30. Duty to control declared pest

(1) In this section —

"prescribed control measures", in relation to a declared pest, means the measures to control that declared pest required under the regulations or a management plan.

(2) The owner or other person in control, in an area for which an organism is a declared pest, of an organism or thing infected or infested with the declared pest must take the prescribed control measures to control the declared pest.

Penalty: a fine of $20 000.

(3) The owner or occupier of land in an area for which an organism is a declared pest or a person who is conducting an activity on the land must take the prescribed control measures to control the declared pest if it is present on the land, or has infected or infested an organism or thing on the land, or is likely to be present on the land or to infect or infest an organism or thing on the land.

Penalty: a fine of $20 000.

(4) Subsections (2) and (3) apply to a person in relation to a declared pest regardless of whether the person is also required to comply with a pest control notice or a pest exclusion notice in relation to the declared pest.

(5) Where 2 or more persons are required to take prescribed control measures under subsection (2) or (3) in relation to the same organism or thing, it is a defence to a charge of an offence by any of them under subsection (2) or (3) to show that another person has complied with the requirement imposed on that person.

(6) It is a defence to a charge of an offence by a person under subsection (2) or (3) if the person establishes that the person did not know, and could not reasonably have been expected to know, at the material time, that the declared pest was present on

the land or was likely to be present or that an organism or thing was infected or infested or was likely to be infected or infested.

31. Pest control notice

(1) An inspector may give a pest control notice to any or all of the following persons —

(a) an owner or occupier of land in an area for which an organism is a declared pest or a person who is conducting an activity on the land if —

(i) the declared pest has been found on or in the vicinity of the land; or

(ii) the keeping of the declared pest on the land is authorised under this Act; or

(iii) there are reasonable grounds for suspecting that the declared pest is on or in the vicinity of the land;

and

(b) to any other person in respect of an area for which an organism is a declared pest if —

(i) the declared pest has been found on or in the vicinity of a place or any other thing in that area owned or occupied by, or under the control, of that person; or

(ii) the keeping of the declared pest on a place in that area owned or occupied by, or under the control, of that person is authorised under this Act; or

(iii) there are reasonable grounds for suspecting that the declared pest is on or in the vicinity of a place or any other thing in that area owned or occupied by, or under the control of, that person.

(2) A pest control notice —

(a) must be in writing; and

(b) must identify the declared pest in respect of which the notice is given, and indicate where the pest was found, is suspected to be, or is authorised under this Act to be kept; and

(c) may direct the person to whom it is given to comply with a code of practice specified in the notice, or to take the measures set out in the notice or required under the regulations or a management plan specified in the notice, for the purpose of controlling the declared pest or, if the declared pest is authorised to be kept, for the purpose of keeping the declared pest as authorised under this Act; and

(d) must specify the period within which, or for the duration of which, the person to whom it is given must comply with the notice; and

(e) inform the person to whom it is given that failure to comply with the notice could result in a fine, the Director General taking remedial action under section 38, or both.

(3) The Director General may give a copy of a pest control notice, for information —

(a) to another person if —

(i) that person is the owner or occupier of land that is in close proximity to the land, premises or thing in respect of which the pest control notice is given; and

(ii) there are reasonable grounds for believing the person's agricultural activities or land would be adversely affected if the declared pest were to infect or infest the person's land or any plants or animals on the land, or the premises or any other thing owned or occupied by, or under the control or management of, the person;

and

(b) to a management committee established by regulations made under section 141(1)(b) if the Director General is of the opinion that the information is relevant to the functions of the management committee.

32. Compliance with pest control notice

A person to whom a pest control notice is given must comply with the notice.

Penalty:

(a) a fine of $50 000; or

(b) if the declared pest is a high impact organism, a fine of $100 000 and imprisonment for 12 months.

33. Apportionment of costs of controlling declared pests on land

(1) As between the owner and occupier or successive owners and occupiers of land the costs of controlling declared pests on and in relation to the land in accordance with a pest control notice are, subject to any agreement between the owner or occupier or successive owners and occupiers, to be borne in such proportions —

(a) as are prescribed; or

(b) if no proportions are prescribed, as determined by the Director General.

(2) A person who has paid more than the proportion of that person may recover the excess from the other in a court of competent jurisdiction.

(3) An owner having only a partial interest or a particular estate in the land may apply to the Director General for a determination as to what portion of any expense of or in relation to the control of a declared pest on and in relation to the land paid or to be paid by the owner must be borne by any other person having a partial interest or estate in the land.

(4) The Director General may make a determination for the purposes of subsection (3).

(5) An owner paying, or who has paid, more than that owner's proportion of the expenses as determined by the Director General may recover the excess in a court of competent jurisdiction from a person the Director General determines to be liable to pay it.

(6) This section does not apply in relation to land owned by, or vested in, a public authority or the State.

34. SAT review: costs of controlling declared pests

A person aggrieved by —

(a) a determination of the Director General under section 33(1)(b); or

(b) a determination of the Director General under section 33(4) or (5),

may apply to the State Administrative Tribunal for a review of the determination.

35. Pest keeping notice

(1) The Director General may give a pest keeping notice to a person if there are reasonable grounds for suspecting that person is not complying with section 25.

(2) A pest keeping notice must —

(a) be in writing; and

(b) identify the declared pest in respect of which the notice is given; and

(c) specify the action the Director General requires to be taken to keep, breed, cultivate or supply the declared pest in accordance with section 25; and

(d) specify the time within which the action must be taken; and

(e) inform the person to whom the notice is given that failure to take the action could result in the Director General taking remedial action under section 38.

36. Director General review: pest control notice or pest keeping notice

(1) A person who has been given a pest control notice or pest keeping notice may, in writing, request the Director General to review it.

(2) On receiving such a request the Director General may suspend the notice pending making a decision under subsection (3).

(3) On receiving such a request the Director General may —

(a) review the notice and amend, suspend, cancel or confirm it; or

(b) refuse to review the notice.

(4) If the Director General amends a pest control notice or a pest keeping notice it has effect accordingly.

(5) The Director General must give the person who requested the review written advice of the decision on the review and the reasons for that decision.

(6) Nothing in this section prejudices any right of review that a person might have under section 37 but, if a request for review has been made under this section, that right of review must not be exercised until a decision under subsection (3) has been made.

37. SAT review: pest control notice or pest keeping notice

(1) Subject to the regulations referred to in subsection (2) and to section 36(6), a person aggrieved by a decision of the Director General to give a pest control notice or a pest keeping notice or a decision of the Director General under section 36, may apply to the State Administrative Tribunal for a review of the decision.

(2) The regulations may prescribe circumstances relating to a matter of emergency or urgent need in which subsection (1) does not apply.

38. Remedial action by Director General

If a person does not comply with a requirement of a pest exclusion notice, a pest control notice or a pest keeping notice, the Director General may —

(a) take remedial action in accordance with section 94; and

(b) recover the cost of taking remedial action from the person accordingly.

39. Power to control pests

(1) A person required under this Act to take measures to control a declared pest has full power to do all that is necessary to comply with the requirement.

(2) A person who obstructs a person referred to in subsection (1) in the exercise of a power under that subsection commits an offence.

Penalty: a fine of $5 000.

40. Agreements to supply pest control materials

(1) The Director General may enter into an agreement with a person to supply to that person materials, appliances or services for the control of declared pests.

(2) An agreement may be discharged, extended or varied as agreed by the parties.

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

41. Public authority may assist owner or occupier to control declared pest

Without affecting the operation or effect of any other provision of this Act, if, in an area for which an organism is a declared pest, the declared pest is on any land, the local government of the district in which that land is situate, or any other public authority, may render such financial or other assistance to any owner or occupier of that land as the local government or other public authority considers necessary or expedient for the control of that declared pest on and in relation to that land.

42. Department may carry out operational work

(1) In this section —

"operational work" means the doing of such acts, matters and things as may be necessary for or conducive to the control in an area of an organism that is a declared pest for the area;

"place" does not include a dwelling as that term is defined in section 63.

(2) An officer of the department or an inspector may at any time carry out operational work on or in relation to any place without cost to the owner or occupier of the place.

(3) An officer of the department or an inspector may enter any place for the purpose of exercising powers under this section.

(4) The provisions of this section are in addition to and not in derogation of any other written law conferring power to control declared pests.

(5) Nothing in this section limits or otherwise affects the application of this Act to and in relation to the control of declared pests if, and to the extent that, declared pests are not controlled under operational works carried out under this section.

Division 4 — Urgent measures

43. Director General may give directions for urgent measures to control declared pest

(1) Where, in the opinion of the Director General, a measure or action must be carried out immediately to control a declared pest, the Director General may, in writing, direct an inspector to carry out that measure or action.

(2) A direction referred to in subsection (1) must specify the measure or action to be carried out.

(3) Despite any other provision of this Act or any other law, an inspector is authorised to carry out a measure or action in accordance with a direction under this section.

(4) The Director General must give the Minister a copy of the direction and a written report on the measure or action carried out.

44. Director General may approve alternative measure or requirement

(1) If satisfied that a measure, action or requirement is appropriate, the Director General may grant temporary approval for an alternative measure or action to be carried out or requirement imposed from that prescribed by the regulations or in a management plan for the control of a declared pest.

(2) An approval under subsection (1) must specify —

(a) the alternative measure, action or requirement; and

(b) the period, being not more than 6 months, during which the approval remains in force.

(3) A measure or requirement approved under this section as an alternative from that prescribed by the regulations or in a management plan has the same effect as if it were prescribed under the regulations or a management plan.

(4) The Director General must give the Minister a copy of the approval and a written report on the measure or action carried out or requirement imposed.

Division 5 — Management plans

45. Management plans

(1) The Minister may, by instrument published in the *Gazette*, issue a plan for the management of an area to provide for the control of a declared pest in the area.

(2) The area may be the whole or part of the State.

(3) A management plan must —

(a) identify the area to which the plan relates; and

(b) set out the purposes of the plan; and

(c) set out the practices to be followed under the plan; and

(d) specify any obligations that are imposed on owners, occupiers or other persons for the purposes of the plan.

(4) A management plan may create offences punishable by a fine not exceeding $20 000.

(5) The Minister must not issue —

(a) a management plan in relation to fish, or a declared pest in an aquatic environment, unless the plan is approved by the Fisheries Minister; or

(b) a management plan in relation to a declared pest that is an animal native to Australia, other than a fish, unless the plan is approved by the CALM Act Minister.

(6) If a provision of a management plan is inconsistent with a regulation, the regulation prevails to the extent of the inconsistency.

46. Consultation with affected persons

(1) Before issuing a management plan, the Minister must, as far as is appropriate and reasonably practicable to undertake, consult

with the public authorities and any other persons which or who appear to the Minister to be likely to be —

(a) required to take part in implementing the plan; or

(b) put to expense in complying with the plan; or

(c) affected, or interested, in a significant way by the operation of the plan.

(2) Consultation may be undertaken in any way that the Minister thinks appropriate in the circumstances, having regard to the proposed management plan and the number of persons which or who are likely to be affected by its operation.

47. Management plans are subject to disallowance

(1) A management plan is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(2) The *Interpretation Act 1984* section 42 applies to and in relation to a management plan as if the plan were regulations made under this Act.

Division 6 — Biosecurity Council

48. Biosecurity Council

(1) The Minister must establish a Biosecurity Council by an instrument signed by the Minister that sets out —

(a) the membership of the Council; and

(b) any other matters in relation to the operation and procedures of the Council that the Minister considers appropriate.

(2) The Minister may, by instrument signed by the Minister, amend an instrument made under subsection (1).

(3) Subject to the instrument made under subsection (1), the Biosecurity Council may determine its own procedures.

(4) Each member of the Biosecurity Council must be paid such remuneration and allowances as the Minister, on the recommendation of the Minister for Public Sector Management, determines in the case of that member.

49. Membership of Biosecurity Council

(1) The Biosecurity Council must —

(a) be comprised of members who, in the opinion of the Minister, have a general or specific interest and expertise in the management of biosecurity in the State; and

(b) include members of community and producer organisations.

(2) The regulations may make provision for the nomination of members referred to in subsection (1) by prescribed community and producer organisations.

50. Functions of Biosecurity Council

The functions of the Biosecurity Council are —

(a) to advise the Minister or the Director General, as the case requires, on any matter related to biosecurity, whether referred to the Council by the Minister or the Director General or of its own motion; and

(b) if the Minister so approves, to advise any other Minister on any matter related to biosecurity.

51. Annual report

(1) The Biosecurity Council must on or before 30 November in each year make and submit to the Minister an annual report of its proceedings for the year ending on the preceding 30 June.

(2) The Minister must cause a copy of the annual report to be laid before each House of Parliament within 14 sitting days of the House after the report is received by the Minister.

Part 3 — Residues on land, chemical products and adulteration

Division 1 — Residues on land

52. Residue management notices

(1) If land is found to contain such an amount of an organochlorine, another chemical product or another prescribed substance that an agricultural product derived from the land would be likely to contain more than the maximum residue limit of the organochlorine, chemical product or other substance, the Director General may give the owner or occupier of the land a residue management notice.

(2) A residue management notice must —

(a) be in a form approved by the Director General; and

(b) advise the owner or occupier of the land to whom it is given that the land has been found to contain such an amount of an organochlorine, another chemical product or another prescribed substance that an agricultural product derived from the land would be likely to contain more than the maximum residue limit of the organochlorine, chemical product or other substance; and

(c) direct that the use of the land for the production of agricultural products is restricted as specified in the notice.

(3) Without limiting subsection (2)(c), a direction in a residue management notice may require the owner or occupier of the land to obtain the written approval of an inspector before using the land in a manner, or for a purpose, specified in the notice.

(4) An owner or occupier of land who uses land in contravention of a direction in a residue management notice that is binding on the owner or occupier commits an offence.

Penalty: $50 000.

(5) A residue management notice remains in force until it is cancelled under section 53(2).

(6) A residue management notice —

(a) while it remains in force, binds each person to whom it is given; and

(b) while a notification of the residue management notice remains registered under section 101(4), and unless a removal of notification is registered under that section, binds each successive owner or occupier of the land to which the residue management notice relates.

53. Duration of residue management notice

(1) The Director General must review each residue management notice from time to time in accordance with the regulations.

(2) If the Director General is satisfied that land in respect of which a residue management notice has been given no longer contains such an amount of an organochlorine, another chemical product or another prescribed substance that an agricultural product derived from the land would be likely to contain more than the maximum residue limit of the organochlorine, chemical product or other substance, the Director General must cancel the notice.

54. SAT review: residue management notices

A person aggrieved by —

(a) a decision of the Director General —

(i) to give a residue management notice; or

(ii) upon a review under section 53(1), not to cancel a residue management notice;

or

(b) a refusal of an inspector to give an approval under a residue management notice,

may apply to the State Administrative Tribunal for a review of the decision or refusal.

55. Notification may be lodged with Registrar of Titles

(1) The Director General may lodge a notification in respect of a residue management notice with the Registrar of Titles.

(2) When a residue management notice in respect of which a notification is registered under section 101(4) ceases to be in force, the Director General must lodge a removal of notification with the Registrar of Titles.

Division 2 — Chemical products

56. Dealing with chemical products

(1) A person who acquires, supplies, uses, stores, handles or transports a chemical product commits an offence if —

(a) the regulations require that person to have a prescribed qualification or authorisation; and

(b) the person does not have that qualification or authorisation.

Penalty: a fine of $50 000.

(2) A person who acquires, supplies, uses, stores, handles or transports a chemical product commits an offence if —

(a) the regulations require that person to give notice of the acquisition, supply, use, storage, handling or transport of that chemical product; and

(b) the person does not give the notice in accordance with the regulations.

Penalty: a fine of $50 000.

(3) A person who acquires, supplies, uses, stores, handles or transports a chemical product commits an offence if —

(a) the regulations require that person to acquire, supply, use, store, handle or transport the chemical product in accordance with the regulations; and

(b) the person does not comply with those regulations.

Penalty: a fine of $50 000.

(4) A person who advises on the acquisition, supply, use, storage, handling or transport of a chemical product commits an offence if —

(a) the regulations require that person to provide that advice in accordance with the regulations; and

(b) the person does not comply with those regulations.

Penalty: a fine of $50 000.

(5) A person must not acquire, supply, use, store, handle or transport a chemical product if the regulations prohibit such acquisition, supply, use, storage, handling or transport.

Penalty: a fine of $50 000.

(6) A person who acquires, supplies, uses, stores, handles or transports a chemical product commits an offence if —

(a) the regulations require that person to keep prescribed records of the acquisition, supply, use, storage, handling or transport of the chemical product; and

(b) the person does not comply with those regulations.

Penalty: a fine of $50 000.

57. Dealing with things that are treated, or not treated, with chemical product or are contaminated

A person who contravenes a regulation providing for duties or obligations in relation to —

(a) the identification, handling, keeping, supply, purchase, transport or use of an animal, agricultural product, animal feed or fertiliser that is treated, or not treated, with a chemical product or is contaminated; or

(b) the provision of information in relation to that identification, handling, keeping, supply, purchase, transport or use,

commits an offence.

Penalty: a fine of $50 000.

58. Certain agreements void

(1) An agreement, whether made in the State or elsewhere, relating to the supply of an agricultural product in the State that purports to exclude any part of the application of this Act in relation to the treatment of an agricultural product with a chemical product is void.

(2) A person who agrees or purports to agree to supply an agricultural product under an agreement that is void under this section commits an offence.

Penalty: a fine of $20 000.

(3) An agreement, whether made in the State or elsewhere, relating to the supply of an agricultural product in the State that contains a provision to the effect that the agricultural product is treated with a chemical product or declared not to be treated with a chemical product is voidable by the purchaser, unless the requirements imposed under —

(a) this Act in relation to the treatment of the agricultural product with a chemical product; and

(b) any system of declarations or returns in operation under this Act in relation to a supply of that kind,

have been observed and are met.

(4) Despite any other law in force in the State, a purchaser under an agreement that is, under this section, void or voidable —

(a) is not prevented from making a claim with respect to damages suffered by the purchaser; and

(b) may recover any money paid under the agreement.

Division 3 — Adulteration of agricultural products or animal feed

59. Meaning of terms used in this Division

(1) In this Division —

"adulterate", in relation to an agricultural product or animal feed, includes —

(a) contaminate the agricultural product or animal feed; or

(b) interfere with the agricultural product or animal feed; or

(c) make it appear that the agricultural product or animal feed has been adulterated;

"animal feed" includes water intended to be used for stock to drink.

(2) In this Division, a reference to economic loss includes a reference to economic loss through —

(a) members of the public not purchasing an agricultural product or animal feed, or an agricultural product derived from another agricultural product; or

(b) steps taken to avoid public alarm or anxiety or to avoid harm to members of the public.

60. Adulterating goods to cause public alarm or economic loss

A person must not adulterate an agricultural product or animal feed with the intention of causing, or being reckless as to whether or not the adulteration would cause —

(a) public alarm or anxiety; or

(b) economic loss.

Penalty: a fine of $100 000 and imprisonment for 12 months.

61. Threatening to adulterate goods to cause public alarm or economic loss

(1) A person must not make a threat that an agricultural product or animal feed will be adulterated with the intention of causing, or being reckless as to whether or not the threat would cause —

(a) public alarm or anxiety; or

(b) economic loss.

Penalty: a fine of $100 000 and imprisonment for 12 months.

(2) For the purposes of this section, a threat may be made by any conduct, and may be explicit or implicit and conditional or unconditional.

62. Making false statements concerning adulteration of goods to cause public alarm or economic loss

(1) A person must not make a statement that the person believes to be false —

(a) with the intention of inducing the person to whom the statement is made or others to believe that an agricultural product or animal feed has been adulterated; and

(b) with the intention of thereby causing, or being reckless as to whether or not the statement would cause —

(i) public alarm or anxiety; or

(ii) economic loss.

Penalty: a fine of $100 000 and imprisonment for 12 months.

(2) For the purposes of this section, making a statement includes conveying information by any means.

Part 4 — Inspection and compliance

Division 1 — Preliminary

63. Meaning of terms used in this Part

In this Part, unless the contrary intention appears —

"dwelling" means —

(a) a building, structure or tent, or part of a building, structure or tent, that is ordinarily used for human habitation; or

(b) a mobile home,

and it does not matter that it is uninhabited from time to time;

"entry warrant" means a warrant issued under Division 3;

"inspection purposes" means the purposes set out in section 64;

"mobile home" means a conveyance, other than a vessel —

(a) that is ordinarily used for human habitation; and

(b) that is permanently or semi-permanently stationary in a single location;

"structure" does not include a conveyance.

Division 2 — Inspection and other functions

64. Purposes for which an inspection may be carried out

An inspection may be carried out for any or all of the following purposes —

(a) to search for or inspect any organism, agricultural product, animal feed, identifier, chemical product or potential carrier, or anything else regulated by this Act;

(b) to search for and inspect any records that are kept under or for the purposes of this Act, or that are relevant to determining whether this Act is being complied with;

(c) to ascertain whether this Act, or a management plan, code of practice, direction, notice or other instrument given, issued, made or adopted under this Act is being complied with;

(d) to search for and seize or otherwise obtain evidence of a contravention of this Act;

(e) any other prescribed purpose.

65. Entry and access to place or conveyance, and inspection powers

(1) For inspection purposes, an inspector may —

(a) at any time stop, detain, board or enter a conveyance (except a conveyance that is a mobile home); and

(b) at any time enter a place that is not a dwelling; and

(c) at any time enter a dwelling with the consent of the person apparently in control of the dwelling; and

(d) at any time enter a place, including a dwelling, in accordance with an entry warrant; and

(e) take onto or into the place any assistants, contractors, animals, vehicles, instruments, equipment or materials that are needed to carry out the inspection; and

(f) remain on or in the place, with the assistants, contractors, animals, vehicles, instruments, equipment or materials, for as long as is necessary to complete the inspection; and

(g) inspect and open any package, compartment, cupboard or container of any kind, and inspect its contents; and

(h) restrain, muster, round up, yard, draft or otherwise move or handle any stock or other animal; and

(i) patrol and inspect any fence on or bounding land or premises; and

(j) take samples or specimens of or from organisms, agricultural products, chemical products, animal feed, fertilisers, water, soil or potential carriers; and

(k) survey and mark out land for any purpose relevant to carrying out the inspection; and

(l) photograph or film a place or conveyance and anything in or on the place or conveyance; and

(m) label any thing to indicate its identity or contents.

(2) Before obtaining the consent of a person for the purposes of subsection (1)(c), the inspector must inform the person —

(a) that the inspector wants to exercise the power under subsection (1)(c); and

(b) of the reason why the inspector wants to exercise the power; and

(c) that the person can refuse to consent to the inspector doing so.

(3) Before exercising a power under subsection (1)(a), (b) or (i) an inspector must take reasonable steps to inform the owner, occupier or person in charge of the place, as the case requires, of his or her intention to exercise the power.

(4) Subsection (3) does not apply if —

(a) the inspector reasonably suspects that to do so will endanger any person, including the inspector, or jeopardise the purpose of the proposed entry or the effectiveness of any search of the place; or

(b) the power is to be exercised in a public place or quarantine facility.

(5) In subsection (4) —

"public place" includes —

(a) a place to which the public, or any section of the public, has or is permitted to have access, whether on payment or not; and

(b) a place to which the public has access with the express or implied approval of, or without interference from, the occupier of the place; and

(c) a school, university or other place of education, other than a part of it to which neither a student nor the public usually has access.

66. Obtaining records

(1) In this section —

"relevant record" means a record that —

(a) contains information about the storage, handling, transport, possession, supply, use or distribution of organisms, agricultural products, potential carriers, chemical products, animal feed or fertilisers; or

(b) is required to be kept under this Act; or

(c) contains information that is relevant to a contravention of this Act.

(2) For inspection purposes an inspector may do all or any of the following —

(a) direct a person who has the custody or control of a record to give the inspector the record or a copy of it;

(b) direct a person who has the custody or control of a record, computer or thing to make or print out a copy of the record or to operate the computer or thing;

(c) operate a computer or other thing on which a record is or may be stored;

(d) direct a person who is or appears to be in control of a record that the inspector suspects on reasonable grounds is a relevant record to give the inspector a translation, code, password or other information necessary to gain access to or interpret and understand the record;

(e) take extracts from or make copies of, or download or print out, or photograph or film, a record that the

inspector suspects on reasonable grounds is a relevant record;

(f) seize and retain, for so long as is necessary for the purposes of this Act, a computer or other thing on which a record is or may be stored;

(g) seize a record that the inspector suspects on reasonable grounds is a relevant record and retain it for as long as is necessary for the purposes of this Act;

(h) take reasonable measures to secure or protect a record, or computer or other thing on which a record is or may be stored, against damage or unauthorised removal or interference.

(3) If an inspector seizes or is given a record, the inspector must if practicable allow a person who otherwise has custody or control of it to have reasonable access to it.

67. Other directions

(1) An inspector may —

(a) for inspection purposes, direct a person who is on or in a place, or who is or appears to be in possession or control of a place or thing, to —

(i) state his or her full name and residential address and telephone number, and a local address and telephone number if the person is away from home and the inspector thinks it may be necessary to contact the person before he or she returns home; and

(ii) produce evidence of the person's identity; and

(iii) give the inspector any information in the person's possession or control as to the name and address of the owner of the place or thing; and

(iv) give the inspector, orally or in writing, any information in the person's possession or control that is relevant to carrying out the inspection; and

(b) for inspection purposes, direct a person who is or appears to be in possession or control of an organism, prescribed potential carrier, animal feed, fertiliser or chemical product to give the inspector any information in the person's possession or control as to the name and address of any person from whom the organism, potential carrier, animal feed, fertiliser or chemical product was obtained or to whom a similar organism, potential carrier, animal feed, fertiliser or chemical product has been supplied; and

(c) direct a person who is or appears to be in control of a place to give the inspector a plan, or access to a plan, of the place; and

(d) direct a person who is or appears to be in control of a place or thing to give the inspector any assistance that the inspector reasonably needs to carry out the inspector's functions in relation to the place or thing; and

(e) direct a person who is or appears to be in control of a conveyance to take the conveyance to an inspection point, quarantine facility or other place for inspection or treatment; and

(f) direct a person who is or could be carrying an organism or potential carrier to go to an inspection point, quarantine facility or other place for inspection or treatment; and

(g) direct an importer or other person who is or appears to be in control of a consignment of goods or a potential carrier to remove the consignment or potential carrier to an inspection point, quarantine facility or other place for inspection or treatment; and

(h) direct a person who is or appears to be in control of an organism to do anything necessary to identify the organism; and

(i) direct a person who is or appears to be in control of an animal to restrain, muster, round up, yard, draft or otherwise move or handle the animal or to remove the animal to an inspection point, quarantine facility or other place for inspection or treatment; and

(j) direct a person who is or appears to be in control of any goods, conveyance, package or container to label it to identify its contents; and

(k) direct a person who is or appears to be in control of an organism or other thing regulated under this Act to keep that organism or other thing in the possession of that person until further directed by the inspector; and

(l) direct a person who is or appears to be in control of an organism or other thing regulated under this Act to leave that organism or other thing at an inspection point, quarantine facility or other place until further directed by the inspector.

(2) If a person does not comply with a direction under subsection (1)(e), (f), (g) or (i) the inspector may do anything the inspector considers necessary to achieve, so far as is practicable, the purpose of the direction.

(3) Without limiting subsection (2), an inspector may move a conveyance to achieve the purpose of the direction.

Division 3 — Entry warrants

68. Applying for entry warrant

(1) An inspector may apply to a justice for an entry warrant authorising the entry of a place for inspection purposes.

(2) An inspector may apply for an entry warrant for a place even if, under Division 2, the inspector may enter the place without an entry warrant.

(3) The application must be in accordance with section 69 and must include the prescribed information (if any).

69. Applications, how they are to be made

(1) In this section —

"application" means an application for an entry warrant;

"remote communication" means any way of communicating at a distance including by telephone, fax, email and radio.

(2) A reference in this section to making an application includes a reference to giving information in support of the application.

(3) An application must be made in person before a justice unless —

(a) the warrant is needed urgently; and

(b) the applicant reasonably suspects that a justice is not available within a reasonable distance of the applicant,

in which case —

(c) it may be made to the justice by remote communication; and

(d) the justice must not grant it unless satisfied about the matters in paragraphs (a) and (b).

(4) An application must be made in writing unless —

(a) the application is made by remote communication; and

(b) it is not practicable to send the justice written material,

in which case —

(c) it may be made orally; and

(d) the justice must make a written record of the application and any information given in support of it.

(5) An application must be made on oath unless —

(a) the application is made by remote communication; and

(b) it is not practicable for the justice to administer an oath to the applicant,

in which case —

(c) it may be made in an unsworn form; and

(d) if the justice issues an entry warrant, the applicant must as soon as is practicable send the justice an affidavit verifying the application and any information given in support of it.

(6) If on an application made by remote communication a justice issues an entry warrant, the justice must if practicable send a copy of the original warrant to the applicant by remote communication, but otherwise —

(a) the justice must send the applicant by remote communication any information that must be set out in the warrant; and

(b) the applicant must complete a form of warrant with the information received and give the justice a copy of the form as soon as is practicable after doing so; and

(c) the justice must attach the copy of the form to the original warrant and any affidavit received from the applicant and make them available for collection by the applicant.

(7) The copy of the original warrant sent, or the form of the warrant completed, as the case may be, under subsection (6) has the same force and effect as the original warrant.

(8) If an applicant contravenes subsection (5)(d) or (6)(b), any evidence obtained under the entry warrant is not admissible in proceedings in a court.

70. Issuing an entry warrant

(1) A justice may issue an entry warrant if satisfied that it is necessary for an inspector to enter a place for inspection purposes.

(2) An entry warrant must contain —

(a) a reasonably particular description of the place to which it relates; and

(b) a reasonably particular description of the inspection purpose for which entry to the place is required; and

(c) the period in which it may be executed; and

(d) the date and time when it was issued; and

(e) any other prescribed matter.

71. Effect of entry warrant

(1) An entry warrant has effect according to its content and this section.

(2) An entry warrant may be executed by any inspector.

(3) If in the course of executing an entry warrant in an area an inspector by chance finds a thing that is not specified in the warrant that the inspector suspects on reasonable grounds is —

(a) a declared pest for the area where the warrant is executed, an unlisted organism or other thing prescribed for the purposes of this subsection; or

(b) evidence of a contravention of this Act,

the inspector may seize the thing if the inspector reasonably suspects that it is necessary to do so for one or more of the following purposes —

(c) to prevent the thing from being sold, disposed of, concealed, damaged, destroyed, interfered with or lost;

(d) to preserve the thing's evidentiary value;

(e) to submit the thing to an analysis;

(f) to prevent the thing being used in the commission of an offence under this Act.

72. Report on entry and search

An inspector who has entered and searched a place under an entry warrant must give a written report of the result of the entry and search to the Director General.

Division 4 — Seizure, treatment, destruction and recall powers

73. Power to seize, treat or destroy

(1) Subject to the regulations (if any) an inspector may —

(a) seize and detain an organism or potential carrier until —

(i) it can be determined whether the organism or potential carrier was imported in contravention of section 15; or

(ii) it can be determined whether the organism is a declared pest; or

(iii) it can be determined whether the organism or potential carrier is infected or infested with a declared pest or is contaminated; or

(iv) the organism or potential carrier is treated, destroyed, disposed of or otherwise dealt with under subsection (2); and

(b) seize and detain an agricultural product, animal feed, fertiliser, chemical product or other substance or thing until it can be determined whether it is infected or infested with a declared pest or is contaminated; and

(c) without limiting paragraph (a) or (b), seize and detain an organism, potential carrier, agricultural product, animal feed, fertiliser, chemical product or other substance or thing until it is treated, destroyed, disposed of or otherwise dealt with under subsection (2) if there are reasonable grounds for believing that —

(i) an offence under this Act is being or has been committed in relation to the organism, potential carrier, agricultural product, animal feed, fertiliser, chemical product or other substance or thing; or

(ii) the organism is a declared pest; or

(iii) the organism, potential carrier, agricultural product, animal feed, fertiliser, chemical product

or other substance or thing is infected or infested with a declared pest or is contaminated.

(2) If an inspector seizes a thing under subsection (1), the inspector may do any of the following —

(a) direct the person from whom the thing is seized to keep the thing in accordance with the directions of the inspector;

(b) remove and keep the thing so seized;

(c) treat the thing so seized to control declared pests or unlisted organisms or to lessen the risk of the spread of declared pests or unlisted organisms;

(d) whether or not proceedings have been or are intended to be taken under this Act in respect of the thing seized, but subject to subsection (4) and the regulations (if any) —

(i) destroy, dispose of or otherwise deal with the thing; or

(ii) direct the person from whom the thing is seized to destroy, dispose or otherwise deal with the thing; or

(iii) declare anything so seized to be forfeited to the Crown;

(e) subject to such direction, if any, as the inspector thinks fit to make under section 77 or 79, restore anything so seized to the person from whom it was seized.

(3) An organism or potential carrier may be treated under subsection (2)(c) whether or not the organism or potential carrier is infected or infested with a declared pest or unlisted organism.

(4) An action must not be taken under subsection (2)(d) before the expiry of the time within which an application may be made under section 74 for a review of the decision to seize the thing or, where an application has been so made, before the determination of the application.

74. SAT review: seizure

(1) Subject to the regulations referred to in subsection (4), a person aggrieved by the seizure of any thing under section 73 may apply to the State Administrative Tribunal for a review of the decision to seize the thing.

(2) In dealing with an application under subsection (1) the State Administrative Tribunal may determine whether the thing seized must be destroyed, disposed of, forfeited to the Crown, restored to the person from whom it was seized or otherwise dealt with.

(3) Subsection (2) does not limit the powers that the *State Administrative Tribunal Act 2004* gives the State Administrative Tribunal.

(4) The regulations may prescribe circumstances relating to a matter of emergency or urgent need in which subsection (1) does not apply.

75. SAT review: forfeiture

(1) Subject to the regulations referred to in subsection (2), a person aggrieved by a declaration under section 73(2)(d)(iii) may apply to the State Administrative Tribunal for a review of the declaration.

(2) The regulations may prescribe circumstances relating to a matter of emergency or urgent need in which subsection (1) does not apply.

76. Power to direct that organism or potential carrier be moved for treatment

(1) An inspector may —

(a) direct the owner, consignor, consignee or person in control of an organism or potential carrier to take the organism or potential carrier, in accordance with the direction, to a place specified in the direction for it to be

treated to control declared pests or unlisted organisms or to lessen the risk of the spread of declared pests or unlisted organisms; and

(b) at that place treat the organism or potential carrier accordingly.

(2) A direction may be given under subsection (1)(a), and an organism or potential carrier may be treated under subsection (1)(b), whether or not the organism or potential carrier is infected or infested with a declared pest or unlisted organism.

(3) The direction must —

(a) be in writing; and

(b) inform the person to whom the direction is given that failure to comply with the direction could result in a fine, the Director General taking remedial action under section 87, or both.

77. Power to direct person to treat, refrain from treating, destroy or dispose of thing

(1) An inspector may direct the owner, consignor, consignee or person in control of an organism, potential carrier, agricultural product, animal feed, fertiliser, chemical product or other substance or thing to treat, refrain from treating, destroy or otherwise dispose of it if there are reasonable grounds for believing that —

(a) an offence under this Act is being or has been committed in relation to the organism, potential carrier, agricultural product, animal feed, fertiliser, chemical product or other substance or thing; or

(b) it is infected or infested with a declared pest or unlisted organism or is contaminated.

(2) A direction may be given under this section in relation to an organism, potential carrier, agricultural product, animal feed,

fertiliser, chemical product or other substance or thing whether or not it has been seized and detained under section 73(1).

(3) An inspector may direct a person to do any or all of the following —

(a) deliver each or any specified declared pest in the person's possession to the inspector at a specified time and place;

(b) destroy each or any specified declared pest in the person's possession within a specified period and by a specified means;

(c) produce evidence that a direction under paragraph (b) has been complied with.

(4) The direction must —

(a) be in writing; and

(b) inform the person to whom the direction is given that failure to comply with the direction could result in a fine, the Director General taking remedial action under section 87, or both.

78. SAT review: section 77 direction

(1) Subject to the regulations referred to in subsection (4), a person aggrieved by a direction under section 77 may apply to the State Administrative Tribunal for a review of the direction.

(2) The commencement of a proceeding under subsection (1) in respect of a direction to destroy any thing has the effect of staying the operation of the direction.

(3) The State Administrative Tribunal may act under the *State Administrative Tribunal Act 2004* section 25(6) in relation to a direction that is stayed under subsection (2) as if the direction were stayed by an order of the Tribunal under section 25 of that Act, and section 25(7) of that Act applies accordingly.

(4) The regulations may prescribe circumstances relating to a matter of emergency or urgent need in which subsection (1) does not apply.

79. Treatment or destruction to prevent risk

(1) If —

(a) the Director General —

(i) has reasonable grounds for believing that an organism, a progenitor of that organism or a potential carrier was imported; and

(ii) is not satisfied that it was imported in accordance with this Act;

or

(b) the Director General —

(i) has reasonable grounds for believing that an organism, a progenitor of that organism or potential carrier was brought from one area of the State into another area of the State; and

(ii) is not satisfied that it was brought into that area in accordance with this Act,

the Director General may, by notice given to the owner, require the owner to treat or destroy the organism or potential carrier, and any progeny of the organism, in the manner and within the time specified in the notice.

(2) Subsection (1) does not apply to the progeny of an organism if the progeny was imported, or brought into the relevant area, in accordance with this Act.

(3) The notice must —

(a) be in writing; and

(b) inform the person to whom the notice is given that failure to comply with the notice could result in a fine,

the Director General taking remedial action under section 87, or both.

(4) A person to whom a notice is given under this section must not contravene the notice, unless that person has a lawful excuse for the contravention.

Penalty: a fine of $20 000.

80. SAT review: treatment or destruction notice

(1) Subject to the regulations referred to in subsection (4), a person aggrieved by a requirement in a notice given by the Director General under section 79 may apply to the State Administrative Tribunal for a review of the requirement.

(2) The commencement of a proceeding under subsection (1) in respect of a requirement to destroy any thing has the effect of staying the operation of the requirement.

(3) The State Administrative Tribunal may act under the *State Administrative Tribunal Act 2004* section 25(6) in relation to a direction that is stayed under subsection (2) as if the direction were stayed by an order of the Tribunal under that section, and section 25(7) of that Act applies accordingly.

(4) The regulations may prescribe circumstances relating to a matter of emergency or urgent need in which subsection (1) does not apply.

81. Provisions do not limit making of regulations

Nothing in section 73, 77 or 79 limits or restricts the making of regulations under Schedule 1.

82. Inspector may direct removal of organism or potential carrier

If an inspector has reasonable grounds for believing that —

(a) an organism or prescribed potential carrier has been imported in contravention of section 15; or

(b) an imported organism or an imported prescribed potential carrier is infected or infested with a declared pest or an unlisted organism,

the inspector may direct the importer of the organism or prescribed potential carrier to remove it from the State or from an area of the State.

83. SAT review: direction to remove from State

(1) Subject to the regulations referred to in subsection (3) a person aggrieved by a direction under section 82 may apply to the State Administrative Tribunal for a review of the direction.

(2) An organism or prescribed potential carrier the subject of a direction referred to in subsection (1) may be detained by the Director General until the direction is reviewed.

(3) The regulations may prescribe circumstances relating to a matter of emergency or urgent need in which subsection (1) does not apply.

84. Recall of organism or substance

(1) In this section —

"recallable substance" means an agricultural product, animal feed, fertiliser or other thing, or a batch of an agricultural product, animal feed, fertiliser or other thing, which is, or appears to the Director General to be, infected or infested with a declared pest or contaminated.

(2) The Director General may, by notice in writing given to a person (the **"notified person"**) who has, or has had, possession or control of a prohibited organism or a recallable substance, require that person to do any one or more of the things mentioned in subsection (4).

(3) The notice must —

(a) be in writing; and

(b) inform the person to whom it is given that failure to comply with the notice could result in a fine, the Director General taking remedial action under section 87, or both.

(4) The things that a notified person may be required to do under subsection (2) are as follows —

(a) not to supply, or to stop supplying, the prohibited organism or recallable substance, either immediately or within a specified period;

(b) to take any action stated in the notice that the notified person is reasonably capable of taking to recover stocks of the prohibited organism or recallable substance from any other person —

(i) to whom the prohibited organism or recallable substance has been supplied by the notified person; or

(ii) who has possession or control of any such prohibited organism or recallable substance directly or indirectly because of supply by the notified person;

(c) to take any action that is specified in the notice, or that the notified person thinks necessary, to prevent or reduce any harmful effects that may have resulted from the use of the prohibited organism or recallable substance;

(d) to destroy, as specified in the notice, stocks of the prohibited organism or recallable substance in the possession or control of, or recovered by, the notified person or to deal with them as specified in the notice;

(e) to report to the Director General within the specified period on the action taken by the notified person under the notice.

(5) A person to whom a notice is given under this section must comply with the notice, unless that person has a lawful excuse for failing to do so.

Penalty: a fine of $20 000.

85. Notice may be published

After giving a notice under section 84, the Director General may, but is not required to, publish a notice in the *Gazette* or in any other manner that the Director General thinks fit setting out a brief statement of the matters to which the notice under section 84 relates.

86. SAT review: recall notice

(1) Subject to the regulations referred to in subsection (4) a person aggrieved by a requirement in a notice given by the Director General under section 84 may apply to the State Administrative Tribunal for a review of the requirement.

(2) The commencement of a proceeding under subsection (1) in respect of a requirement to destroy any thing has the effect of staying the operation of the requirement.

(3) The State Administrative Tribunal may act under the *State Administrative Tribunal Act 2004* section 25(6) in relation to a direction that is stayed under subsection (2) as if the direction were stayed by an order of the Tribunal under that section, and section 25(7) of that Act applies accordingly.

(4) The regulations may prescribe circumstances relating to a matter of emergency or urgent need in which subsection (1) does not apply.

87. Remedial action

If a person does not comply with a direction under section 76(1)(a) or 77, or a requirement of a notice under section 79 or 84, the Director General may —

(a) take remedial action in accordance with section 94; and

(b) recover the cost of taking remedial action from the person accordingly.

Division 5 — General

88. Time and place for compliance

An inspector may specify the date and time when, and place where, a direction must be complied with.

89. Direction may be given orally or in writing

(1) Unless otherwise specified, a direction may be given under this Part orally or in writing.

(2) A direction given orally must be confirmed in writing within 5 working days after it is given, unless within that period it is complied with or cancelled.

(3) Failure to comply with subsection (2) does not invalidate the direction.

90. Exercise of power may be recorded

An inspector may record the exercise of a power under this Part, including by making an audiovisual recording.

91. Use of force and assistance

(1) In this section —

"security officer" means a person who holds a security officer's licence under the *Security and Related Activities (Control) Act 1996*.

(2) An inspector may use assistance and force that is reasonably necessary in the circumstances when carrying out a function under this Act.

(3) However, if the use of reasonable force is likely to cause significant damage to property, the inspector is not entitled to

use force without the authority of the Director General in the particular case.

(4) An inspector may request a police officer, a security officer, or other person, to assist the inspector in carrying out functions under this Act.

(5) While a police officer, security officer or other person is assisting an inspector at the request of the inspector and in accordance with this Act, the police officer, security officer or other person has the same functions as an inspector, and the same liability and protection as an inspector in relation to carrying out the functions.

92. Offences

A person commits an offence if the person —

(a) without lawful excuse, wilfully obstructs, hinders or resists an inspector who is carrying out a function under this Act; or

(b) without lawful excuse, wilfully obstructs, hinders or resists a person assisting an inspector who is carrying out a function under this Act; or

(c) without lawful excuse, does not comply with a direction under this Part; or

(d) without lawful excuse, does not comply with any other lawful requirement (however described) of an inspector under this Act; or

(e) wilfully makes a false statement to, or misleads, an inspector who is carrying out a function under this Act.

Penalty: a fine of $20 000.

93. Self-incriminating information

(1) A person is not excused from giving any information to an inspector in response to a direction or requirement of the inspector on the ground that the information might tend to incriminate the person or render the person liable to a penalty.

(2) However, if the person gives the information after objecting on the ground referred to in subsection (1), neither the information given by the person, nor the fact that it was given by the person, is admissible in evidence in any civil or criminal proceedings against the person except in proceedings for perjury or for an offence under this Act arising out of the person's giving false or misleading information.

(3) If an objection is made and the information is recorded, in writing or otherwise, the record must set out the fact of the objection having been made.

Division 6 — Remedial action by Director General

94. Taking remedial action

(1) For the purpose of taking remedial action under section 38 or 87 or under the regulations the Director General —

(a) may do anything that has not been done by the owner, occupier or other person required to comply with a notice, direction or other requirement; and

(b) may do anything incidental to doing something under paragraph (a).

(2) If the Director General is to take remedial action under section 38 or 87 or under the regulations, an inspector may exercise any of the powers specified in section 65(1)(b), (c), (d), (e) and (f) that are necessary or expedient for the purposes of taking the remedial action, as if the remedial action were an inspection purpose.

(3) The regulations may make provision as to any or all of the following —

(a) the procedure for taking remedial action;

(b) the determination of the costs of remedial action under section 38 or 87 or under the regulations;

(c) the payment of the costs of the remedial action;

(d) the recovery of the costs payable.

(4) Nothing in this section affects the liability of a person to be proceeded against for an offence under this Act or the recovery of a penalty in any such proceedings.

95. Charge on land to secure cost of remedial action

(1) The amount payable under section 94 in relation to taking remedial action in respect of anything that has not been done by the owner of land is a charge on the land —

(a) whether or not the amount is due for payment; and

(b) whether or not a memorial of the charge has been registered under section 101(4).

(2) If the charge amount is not paid by the due date, the Director General may lodge a memorial of the charge with the Registrar of Titles.

(3) The liability of the owner to pay the charge amount continues until it is paid, despite any disposition of the land.

(4) If part of the work was carried out on land comprising a number of separate lots or parcels —

(a) the charge attaches to each separate lot or parcel; and

(b) the charge amount on a lot or parcel is the amount that is the same proportion of the total charge amount as the unimproved value of the lot or parcel is of the total unimproved value of the land.

(5) This section does not apply in relation to land owned by, or vested in, a public authority or the State.

96. Priority of charge

(1) When a memorial of a charge on land is registered under section 101(4), the charge is the first charge on the land and has priority over all other mortgages, charges and encumbrances over the land.

(2) However, if there is another statutory charge on the same land that ranks as a first charge under another Act, the relative priority of the charges must be determined according to the order of registration.

97. Dealing with certain charged land

A memorial lodged under section 95(2) is to provide that, after it is registered, the Registrar of Titles is not to register any dealing with the land, without the consent of the Director General, unless the Director General has lodged a withdrawal of the memorial and the withdrawal has been registered.

98. Recovery of unpaid charge amount

(1) If an amount charged on land that is under the operation of the *Transfer of Land Act 1893* remains unpaid after the due date, the Director General has and may exercise in respect of the land the functions conferred by that Act on a mortgagee under a mortgage in respect of which a default has been made in payment.

(2) If an amount charged on land that is alienated from the Crown but is not under the operation of the *Transfer of Land Act 1893* remains unpaid after the due date, the Director General has and may exercise in respect of the land the functions referred to in subsection (1) with such modifications as are necessary because the land is not under the operation of that Act.

(3) If an amount charged on land that is the subject of a lease or licence under the *Land Administration Act 1997* remains unpaid after the due date, the Director General has and may exercise in respect of the land the functions conferred by that Act upon a mortgagee under a mortgage in respect of which a default has been made in payment.

(4) The Director General must not exercise a power of sale in relation to land referred to in this section unless the Director General is satisfied that other reasonable means of recovering the amount charged on the land have been exhausted.

(5) The existence of a charge or registration of a memorial of a charge on land does not affect the Director General's discretion to proceed for recovery of the unpaid amount in proceedings unrelated to the charge.

99. Certificate of charge amount

(1) The Director General must, on application by the owner of land or a purchaser of land, issue a certificate —

(a) stating whether there is a charge on the land under this Division; and

(b) if there is — stating the charge amount, or, if the charge amount is yet to be determined, estimating the amount.

(2) If a certificate has been issued the Director General cannot —

(a) assert the existence of a charge not disclosed in the certificate; or

(b) assert that a charge covered (at the date of the certificate) an amount exceeding the amount disclosed in the certificate.

(3) However, giving an estimate of the charge amount in the certificate does not prevent the Director General from determining a different charge amount if further relevant information becomes available.

(4) The fee (if any) prescribed is payable for the issue of the certificate.

100. Withdrawal of memorial

If a memorial of a charge on land is registered in the Land Titles Register, then, on payment of the charge amount, the Director General must lodge a withdrawal of memorial with the Registrar of Titles.

Division 7 — Registration of memorials and notices affecting land

101. Approved form of memorials and notices

(1) In this Division —

"land document" means —

(a) a notification or removal of notification lodged with the Registrar of Titles under Part 3 Division 1; or

(b) a memorial or withdrawal of memorial lodged with the Registrar of Titles under Part 4 Division 6;

"register", in relation to a land document, means —

(a) endorse the particulars of the document on the certificate of title for the land to which the document relates; and

(b) register or enter the particulars of the document in the Land Titles Register.

(2) A land document must be in a form approved by the Registrar.

(3) The Registrar of Titles may —

(a) approve the form of land documents; and

(b) require the Director General to give to the Registrar the information specified in the land document and any further information required by the Registrar for the purpose of registering the land document.

(4) The Registrar of Titles may, on the lodging of a land document and payment of any relevant fee, register the document.

102. Exemption from stamp duty

A land document registered under section 101 is exempt from stamp duty.

103. Notice to mortgagees

When a memorial is registered under section 101, the Director General must notify all mortgagees who hold registered mortgages over the land to that effect (but failure to do so does not invalidate the registration of the memorial).

Part 5 — Legal proceedings

Division 1 — Legal proceedings

104. Prosecutions, who may commence

A prosecution for an offence under this Act may only be commenced by the Director General or a person authorised to do so by the Director General.

105. Time for bringing prosecution

(1) A prosecution for an offence under this Act must be commenced within 5 years after the date on which the offence is alleged to have been committed.

(2) Despite subsection (1), if a prosecution notice alleging an offence under this Act specifies the day on which evidence of the alleged offence first came to the attention of a person authorised to institute the prosecution under section 104 —

(a) the prosecution may be commenced within 5 years after that day; and

(b) the prosecution notice need not contain particulars of the day on which the offence is alleged to have been committed.

(3) The day on which evidence first came to the attention of a person authorised to institute a prosecution under section 104 is, in the absence of evidence to the contrary, the day specified in the prosecution notice.

106. Court's power to make ancillary orders on conviction

If a court convicts a person of an offence under this Act, the court may, if the court thinks it appropriate in the circumstances of the case, do any or all of the following —

(a) order the offender to notify persons specified in the order, or persons in a class of persons specified in the order, of the commission of the offence and the conviction of the offender;

(b) if the offender is a person or public authority required under a written law to make an annual report — order the offender to include in the report notice of the commission of the offence and the conviction of the offender;

(c) order the offender to take measures specified in the order, within the time specified in the order —

(i) to prevent, control, abate or mitigate damage caused by the commission of the offence;

(ii) to prevent any continuation or repetition of the offence;

(d) order the offender to pay the Director General, a public authority or another person the costs reasonably incurred by the Director General, authority or person in repairing any damage caused as a result of the commission of the offence;

(e) make any other order the court thinks appropriate in the circumstances.

107. Order as to costs of analysis

In any proceedings under this Act, if evidence is given of an analysis made for the purposes of this Act, the court may, in addition to any penalty or other order as to costs, and without regard to the outcome of the proceedings generally, make an order as to the costs of and incidental to the obtaining of the analysis and the giving of evidence as to the analysis.

108. Penalties for continuing offences

For the purposes of the *Interpretation Act 1984* section 71, in relation to an offence committed under this Act, the penalty for each separate and further offence committed by a person is —

(a) for an individual, a fine of $1 000; and

(b) for a body corporate, a fine of $5 000.

109. Injunctions to ensure compliance with this Act

(1) The Director General may apply to the Supreme Court or the District Court for an injunction restraining a person —

(a) from doing something that would, or would be likely to, constitute an offence under this Act; or

(b) from aiding, abetting, counselling or procuring the commission of an offence under this Act; or

(c) from conspiring with others to contravene or bring about the commission of an offence under this Act; or

(d) from attempting to do anything referred to in paragraph (a), (b) or (c).

(2) The Director General may apply to the Supreme Court or the District Court to enjoin a person to do something where the person's omission to do it constitutes or would constitute an offence under this Act.

(3) The court may grant an injunction whether or not the person has previously committed the offence, or would, if the injunction is not granted, be likely to commit or to continue to commit the offence.

(4) An interim injunction may be granted before final determination of an application under subsection (1).

(5) The court is not to require, as a condition of granting an interim injunction, that an undertaking be given as to damages or costs.

(6) The taking of proceedings against a person for an offence under this Act is not affected by —

(a) the making of an application for an injunction in relation to the commission of the offence; or

(b) the grant of or refusal to grant an injunction; or

(c) the rescission, variation or expiry of an injunction.

Division 2 — Responsibility of certain persons

110. Liability of body corporate's officers

(1) In this section —

"officer", in relation to a body corporate, has the same meaning as in the *Corporations Act 2001* of the Commonwealth but does not include an employee of the body corporate unless the employee was concerned in the management of the body corporate.

(2) If a body corporate is charged with an offence under this Act, each person who was an officer of the body corporate at the time of the alleged offence may also be charged with the offence.

(3) If a body corporate and an officer are charged as permitted by subsection (2) and the body corporate is convicted of the offence, the officer is to be taken to have also committed the offence, subject to subsection (6).

(4) If a body corporate commits an offence under this Act, then, although the body corporate is not charged with the offence, every person who was an officer of the body corporate at the time the offence was committed may be charged with the offence.

(5) If an officer is charged as permitted by subsection (4) and it is proved that the body corporate committed the offence, the officer is to be taken to have also committed the offence, subject to subsection (6).

(6) If under this section an officer is charged with an offence it is a defence to prove that —

(a) the offence was committed without the officer's consent or connivance; and

(b) the officer took all the measures to prevent the commission of the offence that the officer could

reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.

111. Liability of principal for acts of agent

(1) If a person (the **"agent"**) acting, otherwise than as an employee, for or on behalf of another person (the **"principal"**) is charged with an offence under this Act, the principal may also be charged with the offence.

(2) If an agent and a principal are charged as permitted by subsection (1) and the agent is convicted of the offence, the principal is to be taken to have also committed the offence, subject to subsection (5).

(3) If a person (the **"agent"**) acting, otherwise than as an employee, for or on behalf of another person (the **"principal"**) commits an offence under this Act, then, although the agent is not charged with the offence, the principal may be charged with the offence.

(4) If a principal is charged as permitted by subsection (3) and it is proved that the agent committed the offence, the principal is to be taken to have committed the offence, subject to subsection (5).

(5) If under this section a principal is charged with an offence it is a defence to prove that —

(a) the offence was committed without the principal's consent or connivance; and

(b) the principal took all the measures to prevent the commission of the offence that the principal could reasonably be expected to have taken having regard to all the circumstances.

112. Liability of employer for offence of employee

(1) If an employee of another person (the **"employer"**) is charged as an employee with an offence under this Act, the employer may also be charged with the offence whether or not the

employee acted without the employer's authority or contrary to the employer's orders or instructions.

(2) If an employee and an employer are charged as permitted by subsection (1) and the employee is convicted of the offence, the employer is to be taken to have also committed the offence, subject to subsection (5).

(3) If an employee of another person (the **"employer"**) commits an offence under this Act as an employee, then, although the employee is not charged with the offence, the employer may be charged with the offence whether or not the employee acted without the employer's authority or contrary to the employer's orders or instructions.

(4) If an employer is charged as permitted by subsection (3) and it is proved that the employee committed the offence, the employer is to be taken to have committed the offence, subject to subsection (5).

(5) If under this section an employer is charged with an offence it is a defence to prove that —

(a) the offence was committed without the employer's consent or connivance; and

(b) the employer took all the measures to prevent the commission of the offence that the employer could reasonably be expected to have taken having regard to all the circumstances.

Division 3 — Evidentiary provisions

113. Meaning of "specified"

In this Division —

"specified", in relation to a claim, prosecution notice or other document, means specified in the claim, prosecution notice or document.

114. Proof of exemptions

In any proceedings under this Act the onus of proving that —

(a) at the time of the alleged offence a person was exempted from a provision of this Act; or

(b) anything was done or omitted to be done with lawful excuse or authority or reasonable excuse; or

(c) a person, organism or thing was not in the State,

lies upon the person making that assertion.

115. Evidence of place of offence

In any proceedings under this Act an allegation in the prosecution notice —

(a) that an area or place is, or was during a specified period, within an area described in a declaration, notice or advertisement published under this Act; or

(b) that a person, conveyance or other thing referred to in the prosecution notice was in a specified area or place; or

(c) that an act occurred in a specified area or place,

is, in the absence of evidence to the contrary, proof that the area or place was within that described area or that the person, conveyance or thing was in, or that the act occurred in, that specified area or place, as the case requires.

116. Evidence of seller or packer of container

In any proceedings for an offence under this Act an allegation in the prosecution notice that a person whose name is marked on the outside or inside of any container, or on the label of a container, as the seller or packer of the container, is the seller or packer of the container is, in the absence of evidence to the contrary, taken to be proved.

117. Evidence of purpose or intent

(1) In any proceedings for an offence under this Act an allegation in the prosecution notice —

(a) that an act occurred for a specified purpose; or

(b) that anything was done with a specified intent or knowledge,

is, on proof of the act occurring or the thing being done and in the absence of evidence to the contrary, taken to be proved.

(2) In any proceedings for an offence under this Act an allegation in the prosecution notice of the following matters is, in the absence of evidence to the contrary, taken to be proved —

(a) that a specified thing is or was intended or prepared for supply or has been supplied;

(b) that the supply or intended supply of a specified thing was to a specified market.

118. Evidence of authorisation and enforcement matters

(1) In proceedings for an offence under this Act, an allegation in the prosecution notice of any of the following matters is, in the absence of evidence to the contrary, taken to be proved —

(a) that the prosecutor is authorised to commence the prosecution;

(b) that at a specified time a specified person was an inspector or a person assisting an inspector under section 91;

(c) that at a specified time a specified person was or was not authorised to do a specified thing under an authorisation;

(d) that at a specified time a specified person was or was not the holder of an authorisation;

(e) that at a specified time a place, conveyance or other thing was or was not the subject of an authorisation or exemption under this Act;

(f) that at a specified time a specified person was or was not the subject of an authorisation or exemption under this Act;

(g) that at a specified time an authorisation or exemption was cancelled, suspended or for any other reason of no effect;

(h) that at a specified time an authorisation or exemption was subject to any specified condition;

(i) that at a specified time a person held a specified office;

(j) that at a specified time a specified amount of costs, charges or expenses was lawfully incurred for the purposes of this Act;

(k) that at a specified time a prescribed fee had not been paid;

(l) that at a specified time a specified thing was seized under this Act;

(m) that at a specified time a person was or was not a veterinary surgeon or a pharmaceutical chemist.

(2) In proceedings for an offence under this Act a notice, authorisation or exemption, issued under this Act, including the conditions applying to any such thing, may be proved by tendering a copy of it certified by the Director General to be a true copy of the original.

119. Evidence of scientific matters

(1) In this section —

"approved analyst" means an analyst, or an analyst in a class of analyst, approved by the Director General to carry out analysis for the purposes of this Act or specified provisions of this Act.

(2) In any proceedings for an offence under this Act, a report by an approved analyst is, in the absence of evidence to the contrary, proof of —

(a) the identity of the thing analysed; and

(b) the result of the analysis; and

(c) the matters stated in the report; and

(d) the fact that the prescribed method, if any, for carrying out the analysis has been followed by the analyst in making the analysis.

(3) In any proceedings for an offence under this Act, a report by an approved analyst that contains a statement that the sample was taken under this Act is, in the absence of evidence to the contrary, proof of the fact that —

(a) the sample was taken in the manner prescribed, if any; and

(b) the sample was taken from the material identified in the report as the material sampled.

(4) Where in any proceedings brought under this Act or otherwise proof is given of the contents of any sample analysed under this Act and that the sample was taken in accordance with the regulations, the sample is to be taken to be representative of the material sampled.

120. Evidence of type or class of organism or thing

In proceedings for an offence under this Act, an allegation in the prosecution notice of any of the following matters is, in the absence of evidence to the contrary, taken to be proved —

(a) that an organism is of a particular kind;

(b) that a thing is a potential carrier;

(c) that at a specified time a specified organism was a permitted organism;

(d) that at a specified time a specified organism was a prohibited organism;

(e) that at a specified time a specified organism was an unlisted organism;

(f) that at a specified time a specified organism was a declared pest for a specified area;

(g) that at a specified time a specified organism was a declared pest of a specified category;

(h) that a substance is or is not a chemical product of a particular kind;

(i) that a substance is or is not an animal feed of a particular kind or intended as an ingredient of an animal feed;

(j) that a substance is or is not a fertiliser;

(k) that a specified maximum residue limit was the relevant maximum residue limit.

121. Documentary and signed evidence

(1) In proceedings for an offence under this Act, production of a copy of —

(a) a code or other document that has been adopted by the regulations; or

(b) a code of practice; or

(c) a declaration made under section 11, 12 or 22(2),

certified by the Director General as a true copy as at any date or during any period is proof of the contents of the code, document or declaration as at that date or during that period.

(2) In the absence of evidence to the contrary, it is to be presumed that a document purporting to have been signed by the Minister, the Director General, an inspector or an approved analyst (as defined in section 119(1)) was signed by a person who at the time was the Minister, the Director General, an inspector or an approved analyst, as the case may be.

(3) In the absence of evidence to the contrary, it is to be presumed that a document purporting to have been signed by a delegate of

the Minister or the Director General was signed by a person who at the time was such a delegate and was authorised to sign it.

122. Evidence of documents and service

(1) In proceedings under this Act in which a document issued to a party has to be proved —

(a) the party is to be taken to have received notice to produce the document; and

(b) the document may be proved by the production of a copy of the original document, certified by a person authorised to issue the original as a true copy of the original; and

(c) due service of the document may be proved by the certification of the person authorised to issue the original document that the original was given on the date specified in the certificate.

(2) The validity of any document or of its due service is not affected by any error, misdescription or irregularity which does not mislead or which is not likely to mislead.

123. Evidence of ownership or occupancy

(1) In proceedings under 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 the owner of land; or

(b) evidence by the certificate of —

(i) the Registrar of Deeds and Transfers, 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; or

(ii) the chief executive officer of the department of the Public Service 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; or

(iii) the chief executive officer of the department of the Public Service principally assisting in the administration of the *Conservation and Land Management Act 1984*, that a person is the holder of a permit, licence or lease granted under Part VIII of that Act, or regulations made under that Act, in respect of land,

is, in the absence of evidence to the contrary, proof that such person is the owner or occupier, as the case may be, of the land.

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

(3) An averment in a claim, prosecution notice or other document in proceedings under this Act that a person is or was at a specified time, the owner or occupier of specified land is, in the absence of evidence to the contrary, taken to be proved.

124. Provisions are in addition to the *Evidence Act 1906*

This Division is in addition to and does not affect the operation of the *Evidence Act 1906*.

Division 4 — Modified penalties for certain offences

125. Meaning of terms used in this Division

In this Division —

"alleged offender" means a person suspected of having committed a prescribed offence;

"prescribed offence" means an offence under this Act, or under any regulations or management plan made under this Act, prescribed to be an offence for which an infringement notice may be issued.

126. Infringement notices

(1) An inspector who has reason to believe that a person has committed a prescribed offence may, within 21 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.

(2) An infringement notice must —

(a) be in the prescribed form; and

(b) contain a description of the alleged offence; and

(c) advise that if the alleged offender does not wish to be prosecuted for the alleged offence, the amount of money specified in the notice as the modified penalty for the offence may be paid to the Director General within 28 days after the date of the notice; and

(d) inform the alleged offender how and where the money may be paid.

(3) In an infringement notice the amount specified as the modified penalty for the alleged offence must be the amount that was the prescribed modified penalty for that offence at the time that the alleged offence is believed to have been committed.

(4) The Director General may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

127. Withdrawal of infringement notice

(1) The Director General may withdraw an infringement notice.

(2) To withdraw an infringement notice the Director General must give the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.

(3) An infringement notice may be withdrawn whether or not the modified penalty specified in the notice has been paid.

(4) If an infringement notice is withdrawn after the modified penalty has been paid, the amount paid must be refunded.

128. Effect of payment of modified penalty

(1) If the modified penalty specified in an infringement notice is paid within 28 days or any further time allowed, and the notice has not been withdrawn, the bringing of proceedings and the imposition of penalties are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(2) The payment of an amount as a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

Part 6 — Financial provisions

Division 1 — Declared Pest Account

Subdivision 1 — General

129. Meaning of terms used in this Division

In this Division —

"Commissioner" has the meaning given to that term by the *Taxation Administration Act 2003*;

"operating account" means an agency special purpose account established and maintained under the *Financial Management Act 2006* section 16;

"owner" has the meaning given to that term in the *Land Tax Assessment Act 2002*, and includes a person taken to be an owner of land under section 8 of that Act;

"rate" means a rate determined in relation to land under section 130(1);

"rate determination" means a determination under section 130(1);

"rates amount" means an amount payable by way of rates under this Division.

Subdivision 2 — Rates imposed on land

130. Determination of rate

(1) The Minister may, by notice published in the *Gazette*, determine a rate that is chargeable for a financial year on land in a prescribed area.

(2) The rate is for the purposes of the Declared Pest Account.

(3) A rate determination must specify the land or the class of land on which the rate is chargeable.

(4) Different rates may be determined in respect of different land and different classes of land.

(5) The Minister may, in the exercise of the power under subsection (1), exempt land from the application of the rate.

(6) To the extent (if any) that a rate is not a tax imposed by the *Biosecurity and Agriculture Management Rates and Charges Act 2006*, this Act imposes the rate.

(7) The *Interpretation Act 1984* section 42 applies to a rate determination as if the determination were a regulation.

131. Procedure for making rate determination

Before determining a rate chargeable on land, the Minister must consult in accordance with the regulations with the owners of the land, and other prescribed persons (if any).

132. Minimum and maximum rates

(1) The Minister may determine a flat rate, or an ad valorem rate, chargeable on land.

(2) A flat rate must not exceed the prescribed amount.

(3) The rates amount payable in relation to a financial year when calculated by applying the ad valorem rate to the amount equal to the unimproved value of the land must not exceed —

(a) in the case of land held under a pastoral lease, an amount equal to 10% of the unimproved value of the land according to the valuation in force under the *Valuation of Land Act 1978* at midnight on 30 June in the previous financial year; and

(b) in any other case, an amount equal to 2% of the unimproved value of the land according to the valuation in force under the *Valuation of Land Act 1978* at midnight on 30 June in the previous financial year.

(4) The Minister may determine the minimum rates amount payable and the maximum rates amount payable, irrespective of the amount payable when calculated by applying the ad valorem rate.

133. Rates amounts

(1) If a flat rate is determined in respect of land, the rates amount payable is the amount determined as the rate.

(2) If an ad valorem rate is determined in respect of land, the rates amount payable in relation to a financial year is, subject to section 132(4), the amount calculated by applying the rate to the amount equal to the unimproved value of the land according to the valuation in force under the *Valuation of Land Act 1978* at midnight on 30 June in the previous financial year.

(3) Rates amounts are payable to the Commissioner.

134. Multiple rating

(1) In this section —

"Government agreement" has the meaning given to that term by the *Government Agreements Act 1979*.

(2) If —

(a) under the *Mining Act 1978* or a Government agreement a person holds in respect of land a mining tenement within the meaning given to that term by that Act or agreement; or

(b) in accordance with the *Mining Act 1978* a person holds, occupies, uses or enjoys in respect of land a mining tenement within the meaning given to that term by the *Mining Act 1904*; or

(c) under the *Petroleum Act 1967* a person holds in respect of land a petroleum production licence or exploration permit,

the land the subject of that tenement, licence or permit may be the subject of a rate determination notwithstanding that the land

may be the subject of a rate determination in the hands of the holder of another estate in that land.

135. Application of *Taxation Administration Act 2003* and *Land Tax Assessment Act 2002*

(1) In this section —

"assessment notice" has the meaning given to that term by the *Taxation Administration Act 2003*.

(2) The Commissioner does not have to issue an assessment notice under the *Taxation Administration Act 2003* section 23 if no tax is payable under an exemption under section 130(5).

(3) The *Taxation Administration Act 2003* Part 6 and section 116(1) apply as if the references in that Part and that section to land tax were references to a rates amount.

(4) The *Land Tax Assessment Act 2002* sections 6, 7, 8, 9, 12, 13 and 43 apply as if the references in those sections to —

(a) "land tax" were references to a rates amount; and

(b) "assessment year" were, in relation to a rates amount, a reference to the financial year for which the rates amount is, or is to be assessed; and

(c) "taxable land" were references to land in respect of which a rate is determined; and

(d) "land tax Act" were a reference to —

(i) this Division; or

(ii) the *Biosecurity and Agriculture Management Rates and Charges Act 2005*; or

(iii) the *Taxation Administration Act 2003*, to the extent that it relates to rateable amounts;

and

(e) "this Act" were references to this Division.

136. Postponement of rates payable by pensioners

(1) In this section —

"pensioner" means a person who holds a pensioner concession card;

"pensioner concession card" means a currently valid card, known by that name, issued on behalf of the Commonwealth to the holder or, where a card of another kind is prescribed for the purposes of this definition, that other card.

(2) Subject to subsection (5), a person who is a pensioner may claim to be exempt from liability for the payment of a rates amount in respect of land of which the person is in actual occupation as owner.

(3) On receipt of the claim the Commissioner must postpone the payment of the rates amount 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 amounts under this Division.

(4) Where the payment of a rates amount is postponed under subsection (3), nothing in the *Limitation Act 2005* prevents the Commissioner from recovering any rates amount which but for this subsection the Commissioner would have been prevented from so doing by that Act.

(5) A person is not entitled to be exempt under this section from liability for payment of a rates amount in respect of any land if —

(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.

Subdivision 3 — Establishment and operation of Declared Pest Account

137. Declared Pest Account

(1) An account called the Declared Pest Account must be established —

(a) as an operating account; or

(b) as part of an operating account nominated by the Director General.

(2) The following money must be credited to the Declared Pest Account —

(a) rates collected under Subdivision 2;

(b) unpaid rates recovered by the Commissioner under the *Taxation Administration Act 2003* section 60;

(c) amounts appropriated under section 139 in connection with a rate determination made for the purposes of the Account;

(d) the proceeds of the sale of any capital asset purchased using money from the Account;

(e) any other amounts lawfully received by the Director General for the purposes of the Account.

138. Use of funds in Declared Pest Account

Money may be debited to the Declared Pest Account for the following purposes —

(a) to carry out measures to control declared pests on and in relation to prescribed land in prescribed situations (if any);

(b) to promote public awareness of the measures being taken or required to be taken to control declared pests;

(c) to purchase capital assets required in connection with the purposes mentioned in paragraphs (a) and (b);

(d) the payment of the costs of assessing and collecting rates under Subdivision 2 as determined by the Commissioner;

(e) the credit of amounts under section 139(3).

139. Appropriations against the Consolidated Account

(1) For each financial year for which a rate is determined for the purposes of the Declared Pest Account, an amount equal to the rates amounts collected by the Commissioner under the rate determination is charged to the Consolidated Account, which this subsection appropriates accordingly.

(2) Despite any other law, for the purposes of this section the amount of rates treated as having been collected by the Commissioner in a financial year is to be the amount of the rates which becomes payable in that financial year.

(3) If the Commissioner refunds under the *Taxation Administration Act 2003* section 54 an amount collected by the Commissioner under this Division, an equivalent amount must be credited to the Consolidated Account from the Declared Pest Account.

Division 2 — Industry funding schemes

140. Terms used in this Division

In this Division —

"management committee" means a management committee established by regulations made under section 141(1)(b);

"prescribed account" means an account established by regulations made under section 141(1)(a).

141. Establishment of accounts, management committees and schemes

(1) The Governor may make regulations establishing —

(a) an account for a prescribed sector of agricultural activity; and

(b) a management committee for the account consisting of either or both of the following —

(i) producers from that sector of agricultural activity;

(ii) persons who have a financial interest in that sector of agricultural activity;

and

(c) a scheme requiring or facilitating the payment of contributions to the account.

(2) The regulations may relate to an agricultural activity in the whole of the State or in part of the State.

(3) Before the regulations are made, the Minister must consult with —

(a) each organisation (if any) that is prescribed for the purposes of this section; and

(b) any other association, union or body that in the opinion of the Minister is representative of the interests of producers from the sector of agricultural activity for which the account is to be established; and

(c) such producers from the sector of agricultural activity for which the account is to be established as the Minister thinks fit.

142. Constitution and administration of prescribed accounts

(1) A prescribed account consists of —

(a) contributions paid or collected in accordance with the regulations for the purposes of the prescribed account; and

(b) the proceeds of the sale of any capital assets purchased using money from the prescribed account; and

(c) income of the prescribed account from investment; and

(d) any other money lawfully paid into the prescribed account.

(2) A prescribed account must be —

(a) identified as an account for the purpose for which it is established; and

(b) established —

(i) as an operating account; or

(ii) as part of an operating account nominated by the Director General.

143. Management committee

(1) A management committee must —

(a) advise the Director General on the administration of the prescribed account; and

(b) exercise such other functions (if any) as are conferred on the management committee under the regulations.

(2) The regulations establishing a management committee may make provision as to the constitution and procedures of the management committee.

(3) Except as provided under this Act, a management committee may determine its own procedures.

144. Contributions to account — prescribed scheme

(1) A scheme established by regulations made under section 141(1)(c) may provide for —

(a) producers from the sector of agricultural activity for which the account was established to make contributions to the account in the manner and on the basis prescribed; and

(b) the manner of collection of contributions to the account.

(2) The scheme may provide for the circumstances in which contributions to the account will be refunded.

(3) The scheme may allow for the costs of collecting contributions to be deducted from or paid out of those contributions.

(4) If the regulations provide for the expiry of the regulations on a fixed day, the regulations may make provisions of a savings or transitional nature that are to apply on the expiry of regulations.

145. Application of prescribed account

(1) A prescribed account may be applied for —

(a) any of the following purposes, if that purpose is set out in the regulations establishing the account —

(i) the payment of compensation to any person who has suffered loss, or incurred costs or expenses, of a prescribed kind as a result of an animal, agricultural product or other thing being infected or infested with a declared pest specified by the regulations establishing the account or as a result of actions or measures taken under this Act to control that declared pest;

(ii) the costs and expenses of destroying animals, agricultural products or things under this Act because they are infected or infested with a declared pest prescribed by the regulations establishing the account or as a result of other actions or measures taken under this Act to control that declared pest;

(iii) the costs of programs and other measures approved by the management committee for the control of, or for the advancement and improvement of control measures for, a declared pest prescribed by the regulations establishing the account;

(iv) the purchase of capital assets required in connection with the purposes mentioned in this paragraph;

and

(b) the refund of contributions in prescribed circumstances; and

(c) the payment of any amount required to be paid under section 146(3) and interest on that amount; and

(d) the repayment of an amount charged to the Consolidated Account and used for a purpose prescribed by the regulations establishing the account; and

(e) the costs and expenses of administering the account.

(2) Compensation and costs and expenses must not be paid under subsection (1)(a)(i) or (ii) except to a person who has paid contributions under the scheme in accordance with the regulations.

(3) The amounts of compensation and costs and expenses referred to in subsection (1)(a)(i) and (ii) must be determined in accordance with the regulations.

(4) The amount of costs and expenses payable under subsection (1)(a)(iii) and (e) must be approved by the management committee.

(5) The amount referred to in subsection (1)(d) may be applied as set out in that paragraph even though the amount was charged to the Consolidated Account before the regulations establishing the account were made.

(6) The regulations may exclude a person from receiving compensation and costs and expenses from the prescribed account in any of the following circumstances —

(a) if the person is, according to the regulations, in default;

(b) if the person has been convicted of an offence of failing to comply with a requirement under a written law to report the presence or suspected presence of a prescribed declared pest or to control a prescribed declared pest;

(c) if a like benefit is payable under another prescribed written law;

(d) in other prescribed circumstances.

146. Treasurer may make advances to a prescribed account in event of a deficiency

(1) Where the Treasurer is of the opinion that the money standing to the credit of a prescribed account is not sufficient to meet payments required in accordance with a scheme set out in the regulations, the Treasurer may advance to the prescribed account money sufficient for the time being to make up the deficiency.

(2) The Treasurer may impose conditions on a payment under subsection (1), including conditions on the payment of interest, as the Treasurer considers appropriate.

(3) Money paid under subsection (1) must be repaid to the Treasurer and charged to the relevant prescribed account by the Director General when money is available to the account to make repayment.

(4) Money paid under subsection (1), so long as it is not repaid under subsection (3), is a charge on the relevant prescribed account.

147. Review of regulations

(1) The Minister must carry out a review of the operation and effectiveness of any regulations made for the purposes of establishing a prescribed account as soon as is practicable after —

(a) the fifth anniversary of the day on which the regulations commence, or such earlier day as is prescribed in the regulations; and

(b) every fifth anniversary of that day, or such earlier day as is prescribed in the regulations.

(2) The Minister must prepare a report based on the review and must cause it to be laid before each House of Parliament as soon as is practicable after the report is prepared, and in any event not later than 12 months after the requirement for the review arose.

Division 3 — Modified Penalties Revenue Account

148. Modified Penalties Revenue Account

(1) An account called the Modified Penalties Revenue Account must be established —

(a) as an operating account; or

(b) as part of an operating account of the department nominated by the Director General.

(2) The following must be credited to the Modified Penalties Revenue Account —

(a) money received by the Director General as payment of modified penalties;

(b) any other money received by the Director General in connection with infringement notices given under section 126;

(c) any other money lawfully payable to the account.

149. Use of funds in Modified Penalties Revenue Account

(1) Money may be debited to the Modified Penalties Revenue Account for any or all of the following purposes —

(a) the enforcement of this Act, including the operation of the infringement notice system under Part 5 Division 4;

(b) the training of inspectors;

(c) the cost of measures to control declared pests;

(d) the cost of programs to promote public awareness of the requirements of this Act;

(e) purposes approved by the Minister.

(2) The amount that is to be debited to the Modified Penalties Revenue Account for the purposes referred to in subsection (1)(a), (b), (c) and (d) must be determined annually by the Director General and no other amount may be debited to the account for those purposes.

(3) No amount may be debited to the Modified Penalties Revenue Account for a purpose referred to in subsection (1)(e) except as determined by the Minister.

Part 7 — Administration

Division 1 — The Western Australian Agriculture Authority

150. Western Australian Agriculture Authority

(1) The Western Australian Agriculture Authority is established.

(2) The Authority is a body corporate with perpetual succession.

(3) Proceedings may be taken by or against the Authority in its corporate name.

(4) The Authority is to be governed by the Minister.

(5) The Authority is an agent of the State and has the status, immunities and privileges of the State.

151. Purpose of Western Australian Agriculture Authority

The Authority is established —

(a) to further and promote the best interests of biosecurity and agriculture management; and

(b) to perform such other functions as are conferred on it under this or any other Act.

152. Powers of Authority

(1) In this section —

"acquire" includes taking —

(a) by way of a lease, licence, easement or bailment; or

(b) in any other manner in which an interest in property may be acquired;

"business concern" means a company, a partnership, a trust, a joint venture, or any other business arrangement but does not include a research body;

"dispose of" includes dispose of —

(a) by way of a lease, licence, easement or bailment; or

(b) in any other manner in which an interest in property may be disposed of;

"participate in" includes form, promote, establish, enter into, manage, dissolve, wind-up, and do things incidental to participating in, a business concern;

"property" means property of every kind, whether real or personal, tangible or intangible, corporeal or incorporeal, and any interest in property;

"**research body"** means a body, whether incorporated or not, which —

(a) has its principal office within the Commonwealth; and

(b) has among its principal objects the carrying out of research, investigation, inquiries or studies into biosecurity, agricultural activities or management or related matters within the Commonwealth.

(2) The Authority has all the powers it needs to perform its functions.

(3) The Authority may —

(a) acquire, develop, dispose of, and otherwise deal with, property; and

(b) subject to section 153, participate in any business concern or research body and acquire, hold and dispose of shares, units or other interests in, or relating to, a business concern or research body; and

(c) enter into a contract or arrangement; and

(d) develop and turn to account any technology, software, resource or intellectual property and, for that purpose, apply for, hold, receive, exploit and dispose of any intellectual property; and

(e) use the expertise and resources of the department to provide consultancy, advisory or other services for profit.

(4) In exercising any power under this section the Authority may act in conjunction with —

(a) any person or firm, or public authority; or

(b) any department of the Public Service, or any agency, of the Commonwealth.

153. Treasurer to consider proposals under section 152(3)(b)

(1) Before the Authority exercises any power conferred by section 152(3)(b) in relation to a business concern, the Authority must —

(a) notify the Treasurer of the proposal; and

(b) seek the Treasurer's approval to it,

unless it is of a kind that the Treasurer has determined in writing need not be so notified.

(2) If the Treasurer approves the proposal, the Treasurer may impose requirements to be complied with by the Authority in connection with it.

(3) The Treasurer may also give directions to be complied with generally by the Authority in the exercise of the powers referred to in subsection (1).

154. Intellectual property

(1) Any intellectual property, or right to apply for, hold, receive, exploit or dispose of intellectual property, that the State acquires on or after the day on which this section comes into operation is, by operation of this section, assigned to the Authority.

(2) In subsection (1) —

"intellectual property" means intellectual property —

(a) created in the course of the performance of functions under this Act; or

(b) otherwise created in the course of the performance of functions by a person in that person's capacity as a person employed or engaged in the department.

155. Execution of documents by Authority

(1) The Authority is to have a common seal.

(2) A document is duly executed by the Authority if —

(a) the common seal of the Authority is affixed to it in accordance with subsections (3) and (4); or

(b) it is signed on behalf of the Authority by the Minister; or

(c) it is signed on behalf of the Authority, as authorised under subsection (5), by the Director General or another person.

(3) The common seal of the Authority is not to be affixed to a document except as authorised by the Authority.

(4) The common seal of the Authority is to be affixed to a document in the presence of the Minister, and the Minister is to sign the document to attest that the common seal was so affixed.

(5) The Authority may, by writing under its seal, authorise the Director General or another person to sign documents on behalf of the Authority, either generally or subject to any conditions or restrictions specified in the authorisation.

(6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.

(7) A document executed by the Director General or another person under this section without the common seal of the Authority is not to be regarded as a deed unless it is executed as a deed as authorised under subsection (5).

(8) When a document is produced bearing a seal purporting to be the common seal of the Authority, it is to be presumed that the

seal is the common seal of the Authority until the contrary is shown.

(9) For the purposes of this Act, a facsimile of —

(a) the Authority's seal; or

(b) the signature of the Minister or a person authorised under subsection (5) to execute deeds or other documents,

may be used, and a deed or other document purporting to be endorsed with such a facsimile is, until the contrary is shown, to be regarded as bearing the facsimile under this subsection.

156. Accountability under this Division

Any acts or things done under section 152 or 154 are to be regarded as —

(a) services under the control of the department for the purposes of the *Financial Management Act 2006* section 52; and

(b) operations of the department for the purposes of Part 5 of that Act.

Division 2 — Compiling and publishing essential information

157. Publication of certain declarations

(1) In this section —

"declaration" means a declaration made under section 11, 12 or 22(2).

(2) A declaration is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(3) The *Interpretation Act 1984* sections 43 (other than subsection (6)) and 44 and Part VIII apply to a declaration as if it were subsidiary legislation.

(4) Publication of a declaration must be effected —

(a) by publishing the declaration in the *Gazette*; or

(b) by publishing in the *Gazette* a notice stating that the declaration has been made and that particulars of the declaration may be obtained from the head office of the department and the department's electronic site.

158. Records of status of various organisms

The Director General must establish and maintain the following —

(a) a list of all organisms for which a declaration under section 11 is in force (permitted organisms);

(b) a list of all organisms for which a declaration under section 12 is in force (prohibited organisms);

(c) a list of all organisms for which a declaration under section 22(2) is in force (declared pests), including the areas for which the organisms are declared pests and lists of the categories, if any, to which the organisms are assigned.

159. The department's electronic site

The Director General must establish and maintain an electronic site for the purposes of this Act.

160. Information available on department's electronic site

(1) Particulars of the following must be published on, or accessible through, the department's electronic site —

(a) the lists referred to in section 158;

(b) information about how to apply for an import permit;

(c) any code or subsidiary legislation adopted by regulations under section 190 and any amendments made to it from time to time that have been adopted;

(d) each code of practice issued or approved under section 191;

(e) information prescribed for the purposes of this section (if any).

(2) The Director General may publish other information on the department's electronic site.

161. Availability of published information

The Director General must ensure that all information that is required under this Act to be published on the department's electronic site is available at all reasonable times for perusal, at no cost to a member of the public —

(a) on the department's electronic site; and

(b) at the head office of the department.

Division 3 — Inspectors

162. Appointment of inspectors

(1) In this section —

"criminal record check", in relation to a person, means a document issued by the Police Force of Western Australia, the Australian Federal Police or the police force of another State or a Territory that sets out the criminal convictions (if any) of the person for offences under the law of the State, the Commonwealth or the other State or Territory.

(2) The Director General may, by instrument in writing, appoint a person as an inspector.

(3) An appointment must not be made for a period longer than 5 years, but a person may be reappointed as an inspector for a further term.

(4) The appointment of an inspector may specify that the appointment is subject to conditions or restrictions relating to —

(a) the functions that may be performed by the inspector; or

(b) when, where and in what circumstances the inspector may perform the functions of an inspector.

(5) The Director General may obtain a criminal record check for a person —

(a) before deciding whether or not to appoint or reappoint the person as an inspector; and

(b) at any time while the person's appointment as an inspector is in force.

163. Director General has functions of inspector

The Director General —

(a) has and may perform all of the functions of an inspector; and

(b) when performing those functions, has all the immunities of an inspector.

164. Identification cards

(1) The Director General must issue an identification card containing the prescribed details to each inspector appointed under section 162.

(2) An inspector must —

(a) carry his or her identification card while performing functions under this Act; and

(b) if it is practicable to do so, produce it before exercising a power of an inspector under this Act.

(3) If the holder of an identification card issued under subsection (1) stops being an inspector, the person must return the card to the Director General as soon as is practicable.

(4) A person who contravenes subsection (3) without reasonable excuse, the onus of proving which is on the person, commits an offence.

Penalty: a fine of $400.

Division 4 — Quarantine facilities, inspection points and other places

165. Arrangements for provision of quarantine facilities

The Director General may make arrangements with any public authority or other person for the provision of a secure place that can be used as a quarantine facility.

166. Inspection points

The Director General may, by notice in the *Gazette*, designate a place named or described in the notice as an inspection point for the purposes of this Act.

167. Use of other places

The Director General may make arrangements with any public authority or other person to use the person's place for the purposes of this Act.

Division 5 — Advisory groups and recognised biosecurity groups

168. Advisory groups

(1) The Minister, by instrument signed by the Minister, may appoint persons to constitute an advisory group.

(2) A person is eligible for appointment if the person has a general or specific interest, or expertise, in a matter regulated under this Act.

(3) An advisory group has such advisory functions as are specified in the instrument made under subsection (1).

(4) The Minister may, by instrument signed by the Minister, amend or cancel an instrument made under subsection (1).

169. Recognised biosecurity groups

(1) The Minister, by instrument signed by the Minister, may with the consent of an existing body of persons, recognise the body as a biosecurity group for the purposes of this section.

(2) A body is eligible for recognition if the body is established for a purpose which includes controlling declared pests in a specified area.

(3) The Minister may, by instrument signed by the Minister, amend or cancel an instrument made under subsection (1).

170. Funds available to recognised biosecurity groups

(1) The Minister may, with the consent of a body recognised under section 169, authorise the Director General to transfer money to the body from the Declared Pest Account for a purpose referred to in section 138(a).

(2) The purpose for which money is transferred under subsection (1) must relate to the area for which the rates included in the money were collected under Part 6 Division 1 Subdivision 2.

(3) The Director General must give the body written notice of the transfer specifying —

(a) the purposes for which the money is to be used; and

(b) directions to the body as to —

(i) the use of the money for those purposes; and

(ii) reporting to the Director General on the use of the money;

and

(c) the period within which those purposes are to be accomplished.

(4) The Director General may, by notice in writing, vary the purposes or directions specified in a notice of transfer given

under subsection (3) and may extend the period within which the purposes are to be accomplished.

(5) The body must use the money for the purposes specified in the notice under subsection (3) —

(a) within the specified period, or within any further time allowed by the Director General; and

(b) in accordance with the specified directions.

(6) If a body does not use any or all of the money in accordance with subsection (5) —

(a) the body must pay an amount equal to the amount that was not spent in accordance with that subsection to the Director General within such time as is specified by the Director General; and

(b) the Director General must credit the amount to the Declared Pest Account.

(7) If a body does not comply with subsection (6), an amount equal to the amount that was not spent in accordance with subsection (5) is recoverable from the body in a court of competent jurisdiction as a debt due to the State.

171. Publication of report by recognised biosecurity group

Any report made to the Director General pursuant to directions under section 170 must be published on the department's electronic site.

Division 6 — Service of documents

172. Service on the Director General

A document may be given to the Director General —

(a) by lodging the document at the Director General's office; or

(b) by prepaid post; or

(c) if the regulations authorise service of the document under this paragraph — by faxing a copy of the document to a fax number stated in the regulations; or

(d) if the regulations authorise service of the document under this paragraph — by sending computer data from which the document can be reproduced, in a prescribed format, to a prescribed address for the receipt of electronic mail.

173. Method of service

(1) A document required or authorised to be given under this Act may be given to a person by —

(a) giving it to the person personally; or

(b) leaving it at the person's place of residence or business; or

(c) sending it by prepaid post (including document exchange) addressed to the person —

(i) in accordance with the *Interpretation Act 1984* section 75; or

(ii) at an address appearing on recent correspondence addressed by or on behalf of the person to the Director General or otherwise notified to the Director General or published by the person; or

(iii) at an address shown in the rate book kept by a local government under the *Local Government Act 1995* as the address for the service of rate notices under that Act on that person;

or

(d) faxing it or emailing it to a fax number or email address provided by the person or appearing on recent correspondence addressed by or on behalf of the person to the Director General or otherwise notified to the Director General or published by the person; or

(e) communicating it in some other way agreed with the person.

(2) Where an address for service cannot be discovered under subsection (1), the document may be given by advertising the document at least twice in a newspaper circulating throughout the State, an interval of at least a week being allowed to elapse between the advertisements.

(3) Service under subsection (2) is to be regarded as effective whether the notice comes or does not come to the hands or knowledge of the person for whom it was intended.

174. Alternate methods of service of documents relating to land

(1) If a person to whom it is desired to give a document relating to land is not within the State and has not notified the Director General of an agent authorised to accept documents on behalf of the person, then the document may be given to the owner by —

(a) affixing or displaying it on or over a conspicuous part of the land, and leaving it so affixed or displayed for at least 14 days; and

(b) posting it to the person appearing to be the owner on search made in the Department within the meaning of the *Transfer of Land Act 1893*, the *Land Administration Act 1997* or the *Mining Act 1978*, or the Register of Deeds, as the case may be, addressed to the person at the person's place of residence or business, as disclosed by the search.

(2) An agent of an owner who is absent from the State is to be taken to represent the agent's principal for the purposes of this Act, so far as regards land which —

(a) the agent is authorised to manage or hold possession; or

(b) the rents and profits of which the agent is authorised to collect on behalf of the owner.

(3) Service on a person who is taken to represent an owner under subsection (2) of —

(a) a document required or authorised to be given to the owner under this Act; or

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

is to be regarded as effective service on the owner.

175. Service of notice by publication

(1) Without limiting sections 173 and 174, a pest exclusion notice or a pest control notice may be given by publishing a copy of the notice in the *Gazette* and in a newspaper circulating generally in the area where the land, premises or thing to which the notice relates is situated.

(2) A notice given under subsection (1) must be published not less than one month before the date specified in the notice as the date on or before which the person to whom the notice is given must commence to comply with the notice.

(3) A notice given under subsection (1) —

(a) may be directed to any number of owners or occupiers of land or other persons; and

(b) is to be taken to be given to the owner and occupier of any land specified in the notice, and to the owner and occupier, and any person in control or management, of any premises or any other thing specified in the notice.

176. Service where more than one owner or occupier

(1) If land is owned or occupied by 2 or more owners or occupiers, the owners or occupiers may, by writing to the Director General, nominate the address of one of them, or the address of their agent, as their address for service for the purposes of this Act.

(2) If land is owned or occupied by 2 or more owners or occupiers —

(a) if the owners or occupiers have nominated an address for service under subsection (1), service by the Director General of a document on them may be effected by serving it at that address; and

(b) if no nomination is made under subsection (1), service by the Director General of a document on the owners or the occupiers may be effected by serving it on one owner or one occupier; and

(c) when service is effected in accordance with paragraph (a) or (b), the document is to be taken to have been given to each owner or each occupier, as the case requires.

(3) If an occupier of land, who is not the owner of the land, is given a document under this Act, the occupier must inform the owner of the fact as soon as practicable after being given the document.

Penalty: a fine of $2 000.

(4) Non-service on the owner does not affect the validity of service on the occupier, nor does non-service on the occupier affect the validity of service on the owner.

177. Time of service

(1) Except where a document is sent by post to an address outside of Western Australia, given personally or the contrary is proved, a document is taken to be given on the business day following the day on which the document was sent by post, faxed or emailed to, or left for, the person to whom it was addressed.

(2) A document sent by post to an address within Australia but outside Western Australia is taken to be given on the 5th business day after the day on which the document was sent to the person to whom it is addressed.

(3) A document sent by post to an address outside Australia is taken to be given on the 10th business day after the day on which the document was sent to the person to whom it is addressed.

178. Description of person or land

(1) A document required by this Act 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 the owner or occupier 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.

(2) In a document a description of the land affected by it is sufficient if the description allows of no reasonable doubt as to the land affected, despite the description not particularly defining the land.

179. Documents binding on subsequent owners and occupiers

A document required or authorised under this Act to be given to an owner or occupier is, if the document has been given to an owner or occupier, binding on every subsequent owner or occupier to the same extent as if the document had been served on each subsequent owner or occupier.

180. Non-exclusivity of this Division

The provisions of this Division are in addition to, and do not derogate from, other provisions of an enactment for facilitating the giving of documents.

Division 7 — General

181. Delegation by Minister

(1) The Minister may delegate to the Director General or some other officer of the department 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) Without limiting the things that may be delegated under subsection (1), they include things that are to be done in the course of governing the affairs of the Authority under section 150(4).

(4) If a power or duty is delegated to the Director General, the delegation may expressly authorise the Director General to further delegate the power or duty.

(5) 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 is shown.

(6) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

182. Delegation by Director General

(1) The Director General may delegate to a person 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) If a power or duty is delegated to a chief executive officer, the delegation may expressly authorise the chief executive officer 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 is shown.

(5) Nothing in this section limits the ability of the Director General to perform a function through an officer or agent.

183. Arrangements with corresponding authorities

(1) In this section —

"corresponding administrator" means a person who is responsible for the day to day administration of a corresponding law;

"corresponding law", in relation to a written law of the State, means a law of the Commonwealth, another State or a Territory that corresponds to the written law of the State;

"corresponding Minister" means a Minister of the Crown of the Commonwealth, another State or a Territory to whom the administration of a corresponding law of the Commonwealth, State or Territory is for the time being committed.

(2) The Minister or the Director General may make arrangements with a corresponding Minister or corresponding administrator respectively about any or all of the following —

(a) recognising import and export certificates issued under the regulations or under a corresponding law;

(b) recognising quality assurance schemes approved or established under this Act or a corresponding law;

(c) the use for the purposes of this Act of inspection facilities provided in another State or a Territory;

(d) the use for the purposes of a corresponding law of inspection facilities provided in the State;

(e) the inspection or treatment of a consignment of goods or potential carrier before it is imported;

(f) payment to a corresponding administrator for costs incurred by the administrator for the purposes of this Act.

(3) The Director General may recover from an importer or intending importer, as a debt due, any costs incurred in relation to the inspection of imported goods, or goods intended to be

imported, whether the costs are incurred directly or by way of payment under subsection (2)(f).

184. Information sharing

(1) In this section —

"authorised officer" means an officer designated under subsection (2);

"guidelines" means guidelines issued under subsection (7);

"information sharing agency" means any of the following —

(a) the department principally assisting in the administration of this Act;

(b) the department principally assisting in the administration of the *Health Act 1911*;

(c) the department principally assisting in the administration of the *Animal Welfare Act 2002*;

(d) the department principally assisting in the administration of the *Environmental Protection Act 1986*;

(e) the department principally assisting in the administration of the *Fish Resources Management Act 1994*;

(f) the department principally assisting in the administration of the *Wildlife Conservation Act 1950*;

(g) the department principally assisting in the administration of the *Conservation and Land Management Act 1984*;

(h) the Police Force;

(i) a public authority prescribed for the purposes of this definition;

"officer", in relation to an information sharing agency, means —

(a) an officer or employee in or of the agency; or

(b) if the agency is the Police Force — a member of the Police Force;

"relevant information" means information relevant to the administration or enforcement of this Act.

(2) The Director General may designate an officer of the department as an authorised officer for the purposes of this section.

(3) An officer of the department may, in accordance with the guidelines, disclose relevant information to —

(a) another officer of the department; or

(b) an officer of another information sharing agency.

(4) An authorised officer may, in accordance with the guidelines, request a public authority which or who holds relevant information to disclose the information to the authorised officer.

(5) Information may be disclosed under subsection (3), or in compliance with a request under subsection (4), despite any law of the State relating to secrecy or confidentiality.

(6) If information is disclosed, in good faith, under subsection (3), or in compliance with a request under subsection (4) —

(a) no civil or criminal liability is incurred in respect of the disclosure; and

(b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and

(c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

(7) The Director General must issue guidelines as to the disclosure of information under subsection (3) and the requesting of information under subsection (4).

(8) The regulations may include provisions about —

(a) receiving and storing information disclosed for the purposes of this Act; and

(b) restricting access to such information.

185. Results and other matters may be published

(1) If the Director General thinks it desirable to do so in the public interest, the Director General may publish in any manner the following —

(a) the results of the analysis of any organism, agricultural product, animal feed, fertiliser or other substance or thing under this Act;

(b) a matter prescribed for the purposes of this section.

(2) A publication under subsection (1) may include any or all of the following —

(a) the name and address or place of business of any person to whom the published matter relates;

(b) other particulars and explanation or comment relating to the published matter;

(c) other prescribed particulars.

(3) No liability is incurred by a person —

(a) for a publication under this section; or

(b) for republishing the publication or publishing a fair report or summary of the publication.

186. Compliance statements

(1) The Director General must prepare —

(a) a statement for the period 1 January to 30 June in each year; and

(b) a statement for the period 1 July to 30 December in each year,

on the performance of public authorities that have failed to comply with a pest exclusion notice, section 30(2) or (3) or a pest control notice during that period.

(2) Before preparing a statement the Director General must consult with each public authority whose performance is to be referred to in the statement.

(3) Each statement is to be included in the department's next annual report after the period for which it is prepared.

(4) Each statement is to be given to the Minister not later than 3 months after the end of the period for which it is prepared.

(5) The Minister must cause a copy of the statement to be laid before each House of Parliament, or dealt with under subsection (6), within 14 days after the report is received by the Minister.

(6) If —

(a) at the commencement of the period referred to in subsection (5) a House of Parliament is not sitting; and

(b) the Minister is of the opinion that that House will not sit during that period,

the Minister must transmit a copy of the statement to the Clerk of that House.

(7) A copy of a statement transmitted to the Clerk of a House is to be regarded as having been laid before that House.

(8) The laying of a copy of a direction that is regarded as having occurred under subsection (7) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

187. Immunity from tortious liability

(1) In this section —

"official" means —

(a) the Minister; or

(b) the Authority; or

(c) the Director General; or

(d) an inspector; or

(e) a person employed in the department.

(2) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

(3) An action in tort does not lie against an official for anything that the official has done, in good faith, in the performance or purported performance of a function under this Act.

(4) The protection given by subsection (3) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.

Part 8 — Regulations, codes of practice and local laws

188. Regulations — general power

(1) The Governor may make regulations prescribing all matters that are required or permitted to be prescribed under this Act, or that are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting subsection (1), regulations may provide for, authorise, prescribe, require, prohibit, restrict or otherwise regulate all or any of the matters set out in Schedule 1.

(3) Regulations made under subsection (1) may authorise any matter or thing to be from time to time determined, approved, applied or regulated by the Minister or the Director General.

189. Regulations prescribing high impact organisms

The regulations may prescribe a prohibited organism as a high impact organism only if the Governor is advised by the Minister that —

(a) the organism has the potential to cause severe damage to human beings, animals, agricultural products, other aspects of the environment or economic activities; and

(b) the organism —

(i) is not, to the knowledge of the Minister, present in the State; or

(ii) has been eradicated from the State or is under effective control.

190. Regulations and management plans may adopt codes or legislation and other references

(1) In this section —

"code" means a code, code of practice, standard, rule, specification, administrative procedure, quality assurance scheme or other document, published in or outside

Australia by any public authority or other person, including the Minister or the Director General, that does not by itself have legislative effect in this State;

"subsidiary legislation" includes rules, regulations, instructions, local laws and by-laws.

(2) Regulations and management plans may adopt, either wholly or in part or with modifications and either specifically or by reference —

(a) any code; or

(b) any subsidiary legislation made, determined or issued under any other Act or under any Act of the Commonwealth, another State or a Territory.

(3) If the regulations or management plans adopt a code or subsidiary legislation, it is adopted as existing or in force from time to time unless the regulations prescribe that a particular text is adopted.

191. Codes of practice

(1) The Minister may issue a code of practice for any or all of the following purposes —

(a) controlling declared pests;

(b) keeping declared pests;

(c) carrying out agricultural activities or other related activities so as to minimise the risk of an occurrence or the spread of a declared pest;

(d) the use and management of chemical products;

(e) the import of permitted organisms and prescribed potential carriers;

(f) the supply and use of animal feed and fertilisers.

(2) The Minister may approve a code of practice issued under another written law, or issued by an industry body or other

person, if the code is appropriate for a purpose mentioned in subsection (1).

(3) A code of practice may be approved as existing or in force from time to time or as existing or in force at a particular time.

(4) A code of practice approved under this section may consist of any code, standard, rule, specification or provision relating to a purpose mentioned in subsection (1).

(5) A code of practice issued under this section may incorporate by reference any other code or subsidiary legislation, as those terms are defined in section 190, as existing or in force from time to time or as existing or in force at a particular time.

(6) The Minister may —

(a) amend a code of practice issued under this section; and

(b) approve a revision of the whole or any part of a code of practice approved under this section.

(7) The Minister may cancel a code of practice issued under this section or cancel the approval of a code of practice.

(8) The Director General must publish a notice in the *Gazette* giving details of the issue of a code of practice or any approval or cancellation made under this section.

192. Regulations and codes of practice: consultation

(1) Before regulations are made under this Act, or a code of practice is issued or approved, the Minister must, as far as is appropriate and reasonably practicable to undertake, consult with public authorities, community and producer organisations and other bodies and persons which or who appear to the Minister to be likely to be affected by, or interested in, in a significant way, the regulations or code of practice, as the case requires.

(2) Consultation may be undertaken in any way that the Minister thinks appropriate in the circumstances, having regard to the

number of persons who will be likely to be so affected or interested.

193. Local government may make local laws

(1) In this section —

"pest plant" means a plant that is prescribed by local laws made by a local government under subsection (2)(a) as a pest plant in that district.

(2) Subject to and in accordance with the *Local Government Act 1995* a local government may, in respect of its district, make local laws for any of the following purposes —

(a) prescribing as a pest plant in that district any plant (other than a declared pest for that area) that, in its opinion, is likely to adversely affect the environment of the district, 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 land (other than an owner of land referred to in section 8(1)(d)) within the district to 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 given to the owner or occupier of the land;

(c) if the owner or occupier does not comply with the notice given by the local government, for authorising the local government without payment of compensation to control the pest plants at the expense of the owner or occupier to whom the notice was given, and to recover in a court of competent jurisdiction from the owner or occupier the amount of the expense.

Part 9 — Miscellaneous

194. Review of Act

(1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after every 10th anniversary of its commencement, and in the course of that review the Minister must consider and have regard to —

(a) the adequacy of the penalties imposed under this Act; and

(b) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister must prepare a report based on the review carried out under subsection (1) and, as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.

Schedule 1 — Matters for which regulations may be made

[s. 188(1)]

1. Compliance with a code (as defined in section 190) or a standard prescribed or adopted under the regulations.

2. The issue of instructions, specifications and administrative procedures by the Director General.

3. Without limiting the *Interpretation Act 1984* section 43(8)(d), exemptions from the application of a provision of this Act in a particular case or class of case, and prescribing circumstances in which and conditions subject to which such an exemption applies.

4. Fees and charges payable for services and recovery of expenditure and costs incurred under this Act, and the recovery of unpaid fees and charges.

5. The issue of authorisations by the Director General for the purpose of controlling an activity or thing regulated under this Act.

6. Inspections under this Act and the procedures to be followed by inspectors when carrying out functions under this Act.

7. The import, export, seizure, detention, examination, quarantine, treatment or destruction of organisms, potential carriers, and agricultural products.

8. The establishment and management of inspection points and quarantine facilities.

9. The movement of organisms and potential carriers from one area of the State to another.

10. Categories of declared pests.

11. Measures, whether mechanical, biological, chemical or otherwise, to be taken to control declared pests in the whole or part of the State.

12. The designation of areas where potential carriers of a declared pest must not be cultivated, bred or kept, or may be cultivated, bred or kept subject to conditions or restrictions.

13. The labelling or other identification of, use, disposal, supply, purchase, handling and movement of an organism, agricultural product, animal feed, fertiliser or other thing.

14. With respect to —

(a) the entry of persons, organisms, conveyances, machinery, and other potential carriers into; and

(b) the movement of persons, organisms, conveyances, machinery, and other potential carriers on and from; and

(c) the keeping of organisms, conveyances, machinery, and other potential carriers on; and

(d) the cultivating of; and

(e) the fencing of; and

(f) the use of,

places in or upon which declared pests are, or are suspected to be, present.

15. The keeping, breeding, cultivation and supply of declared pests.

16. The protection of natural enemies of declared pests.

17. The measures to be taken for treating a place or thing infected or infested, or reasonably suspected to be infected or infested, with a declared pest and for treating a potential carrier.

18. The erection and maintenance of barrier fences as a means of controlling animals that are declared pests.

19. The use and management of a place or thing infected or infested, or reasonably suspected to be infected or infested, with a declared pest.

20. The supply, acquisition and use of any apparatus, appliance, thing or substance offered or represented, or which may be offered or represented as suitable for use, to control a declared pest.

21. The keeping, breeding, cultivation and supply of organisms that have the potential to have the adverse effects referred to in section 22(2) if not adequately managed, and the release of those organisms into the environment.

22. The formulation, manufacture, labelling, use, storage, transport, handling, disposal and supply of animal feed, chemical products and fertilisers.

23. The use and management of land in respect of which a residue management notice is in force, and the sale or other disposal of land

in respect of which a residue management notice is in force and in respect of which a land document is registered under section 101(4).

24. The supply, purchase, handling, movement and treatment of agricultural products produced on, or derived from animals or plants produced on, land in respect of which a residue management notice is in force.

25. The use, management, supply, purchase, handling, movement and treatment of agricultural products, animal feeds, fertilisers and other things that are, or are reasonably suspected to be, contaminated.

26. The duties and obligations of veterinary surgeons and other persons in relation to —

(a) the use of chemical products; and

(b) the identification, handling, keeping, supply, purchase, transport and use of animals, agricultural products or animal feed treated, or not treated, with a chemical product; and

(c) the keeping of records and provision of information in relation to that identification, handling, keeping, supply, purchase, transport or use.

27. The qualifications and training of persons who use, store, handle or transport, or advise on the use of, chemical products.

28. The keeping and production of records, the giving of notices, and the making of declarations or returns, in relation to the acquisition, supply, use, storage, handling or transport of chemical products or the giving of advice in relation to those things.

29. The designation of areas where prescribed chemical products are not to be used or are to be used subject to conditions or restrictions.

30. (1) The maximum residue limits of a chemical product or other chemical or prescribed substance permitted in soil, water, animals, agricultural products, animal feed, fertilisers and other substances.

(2) Without limiting subitem (1), a regulation made in relation to a maximum residue limit —

(a) may provide that the maximum residue limit in respect of a chemical product or other substance is nil; and

(b) may provide that where a maximum residue limit in respect of a chemical product or other substance is not prescribed, the

maximum residue limit in respect of that chemical product or other substance is to be taken to be nil; and

(c) may provide for different maximum residue limits applicable in different circumstances or according to different factors.

31. The use in agricultural activities of animal manure, other animal by-products, human excrement, sewage and waste products.

32. Quality assurance schemes and the administration of, and compliance with, those schemes.

33. The grade or quality of agricultural products.

34. The labelling and packaging of agricultural products, animal feed, chemical products, fertilisers, and imported potential carriers, including provisions as to the removal of labels.

35. Warranties, including implied warranties, as to agricultural products, animal feed, chemical products and fertilisers, and the consequences of breaching a warranty.

36. The issue and use of identifiers.

37. The registration of stock or owners of stock.

38. The certification of places used in relation to the artificial breeding of stock.

39. Measures to be taken for the prevention and treatment of nutritional deficiencies in stock or plants where those deficiencies may adversely affect —

(a) the safety or quality of agricultural products derived from that stock or those plants; or

(b) a determination as to whether stock or plants are infected or infested with a declared pest.

40. The provision of financial assurances by persons importing, supplying, keeping, breeding or cultivating organisms.

41. The payment of —

(a) rewards to persons who report finding prohibited or unlisted organisms; and

(b) rewards for destruction of declared pests.

42. The giving of directions by signs or notices.

43. The prevention of interference with experiments conducted by or on behalf of the department on or in relation to declared pests, including —

    (a) prohibiting or regulating entry to a place on which such experiments are being conducted; and

    (b) prohibiting the trapping, catching or killing of animals that are declared pests on any place on which such experiments are being conducted.

44. The seizure, detention, treatment, forfeiture, destruction and disposal of any organism, agricultural product, animal feed, chemical product, fertiliser or other thing —

    (a) under Part 4 Division 4; or

    (b) in respect of which fees or charges have not been paid under this Act.

45. The use of trained animals, and the installation and use of x-ray machines or any other mechanical or electronic devices, and any other means of detecting organisms, potential carriers, agricultural products and animal feed.

46. The identification and certification of organisms, potential carriers and agricultural products.

47. The registration of businesses supplying garden plants or live animals as pets.

48. The analysis of organisms, agricultural products, animal feed, fertilisers and other substances or things for the presence of declared pests or chemical residues, or for any other purpose.

49. Applications to the State Administrative Tribunal —

    (a) for review of discretionary decisions, and conditions imposed on discretionary decisions; and

    (b) to deal with disputes arising under this Act.

50. Recording and keeping information and other documentation, and giving information, documentation and notices.

51. The verification and authentication of information, documentation and notices.

52. Offences for which an infringement notice may be issued under Part 4 Division 4 (but not including any offence for which the penalty includes imprisonment) by setting out the offences or by reference to the provision creating the offence.

53. Modified penalties —

(a) not exceeding 20% of the penalty specified by this Act or the regulations for an offence prescribed under item 52; and

(b) applicable —

(i) in any circumstances in which the offence is committed; or

(ii) if the offence is committed in circumstances prescribed in the regulations.

54. The imposition of fines not exceeding $20 000 for offences under the regulations, with or without a fine for each separate and further offence committed under the *Interpretation Act 1984* section 71 of not more than $500.

Defined Terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined Term	Provision(s)
acquire	152(1)
additive	9(2)
adulterate	59(1)
agent	111(1), 111(3)
agricultural activity	6
agricultural product	6
Agvet Code of Western Australia	6
alleged offender	125
analysis	6
animal	6
animal feed	6, 9(1), 59(1)
animal product	6
application	69(1)
approved analyst	119(1)
assessment notice	135(1)
authorisation	6
authorised officer	184(1)
Authority	6
basic animal feed	9(2)
biosecurity	6
Biosecurity Council	6
breed	6
business concern	152(1)
by-product	9(2)
CALM Act Minister	6
charge amount	6
chemical product	6
code	190(1)
code of practice	6
commercial carrier	20(1)
commercial passenger carrier	19(1)
Commissioner	129
container	6
contaminated	6
control	6
conveyance	6
corresponding administrator	183(1)
corresponding law	183(1)

corresponding Minister....183(1)
criminal record check....162(1)
cultivate....6
declaration....157(1)
declared pest....6
Declared Pest Account....6
department....6
Director General....6
disease....6
dispose of....152(1)
dwelling....63
electronic site....6
employer....112(1), 112(3)
entry warrant....63
environment....6
export....6
fertiliser....6
fish....6
fisheries officer....6
Government agreement....134(1)
guidelines....184(1)
high impact organism....6
identification card....6
identifier....6
import....6
import permit....6
infected....6
infested....6
information sharing agency....184(1)
inspection point....6
inspection purposes....63
inspector....6
intellectual property....154(2)
keep....6
label....6
land....6
land document....101(1)
Land Titles Register....6
management committee....140
management plan....6
manufactured animal feed....9(2)
maximum residue limit....6
Minister for Fisheries....6
Minister for the Environment....6
mobile home....63

Defined Terms

Modified Penalties Revenue Account....6
notified person....84(2)
occupier....6
officer....110(1), 184(1)
official....187(1)
operating account....129
operational work....42(1)
organism....6
owner....6, 129
participate in....152(1)
pearl oyster....6
pensioner....136(1)
pensioner concession card....136(1)
permitted organism....6
pest control notice....6
pest exclusion notice....6
pest keeping notice....6
pest plant....193(1)
place....6, 42(1)
plant....6
potential carrier....6
premises....6
prescribed....6
prescribed account....140
prescribed control measures....30(1)
prescribed offence....125
principal....111(1), 111(3)
private land....8(2)
processed animal feed....9(2)
prohibited organism....6
property....152(1)
public authority....6
public place....65(5)
quality assurance scheme....6
quarantine facility....6
rate....129
rate determination....129
rates amount....129
recallable substance....84(1)
record....6
register....101(1)
relevant information....184(1)
relevant record....66(1)
remote communication....69(1)
research body....152(1)

residue 6
residue management notice 6
security officer ..... 91(1)
specified 113
stock 6
structure 63
subsidiary legislation ..... 190(1)
supply 6
treat 6
unimproved value 6
unlisted organism 6, 14
vehicle 6
veterinary chemical product 6
veterinary surgeon 6
wildlife officer 6