

Authorised Version No. 001
Plant Biosecurity Regulations 2016

S.R. No. 53/2016

Authorised Version as at
1 June 2016

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Plant Biosecurity Regulations 2016

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Part 1—Preliminary

1 Objectives

The objectives of these Regulations are—

- (a) to require possession of an assurance certificate, a plant health certificate or a plant health declaration in certain circumstances and to provide exemptions from this requirement; and
- (b) to prescribe particulars for assurance certificates, plant health certificates and plant health declarations in certain circumstances; and
- (c) to require the presentation of prescribed material, certificates or declarations in certain circumstances; and
- (d) to prescribe the manner of attaching a warning to seized or detained packages, plants or plant products; and
- (e) to prescribe plants for the purposes of the **Plant Biosecurity Act 2010**; and
- (f) to specify activities for which inspectors can impose fees and charges; and
- (g) to prescribe offences under that Act which may be enforced by infringement notices and penalties for infringement notices; and

(h) to prescribe other matters for the purposes of that Act.

2 Authorising provision

These Regulations are made under section 141 of the **Plant Biosecurity Act 2010**.

3 Commencement

These Regulations come into operation on 1 June 2016.

4 Revocations

The following Regulations are **revoked**—

- (a) Plant Biosecurity Regulations 2012¹;
- (b) Plant Biosecurity Amendment Regulations 2015²;
- (c) Plant Biosecurity Further Amendment Regulations 2015³.

5 Definitions

In these Regulations—

area freedom certificate means a certificate issued by an officer of a department responsible for agriculture in another State or Territory that contains the details required under regulation 8(3);

department responsible for agriculture in another State or Territory includes a department in another State or Territory administering a corresponding law;

grape phylloxera means the pest *Daktulosphaira vitifoliae* (Fitch);

phylloxera exclusion zone means any part of another State or Territory that has been identified under a corresponding law for the purpose of preventing the entry of grape

phylloxera into that part of the State or Territory;

plant or plant product of the genus Vitis includes grapevines, potted vines, cuttings, rootlings, leaves, stems, grapes for table use or wine-making and plant samples of the genus *Vitis* taken for diagnostic purposes;

potato cyst nematode means the pest *Globodera rostochiensis* (Wollenweber) (Skarbilovich);

root vegetable includes beetroot, carrot, parsnip, potato, radish, rutabaga, swede, sweet potato and turnip;

the Act means the **Plant Biosecurity Act 2010**.

Part 2—Plant pest and disease control

6 Prescribed materials

For the purposes of Division 1 of Part 2 of the Act, the following materials are prescribed materials—

- (a) any plant or plant product of the genus *Vitis*;
- (b) used agricultural equipment used for the culture, harvesting, packing or processing of any plant or plant product of the genus *Vitis*;
- (c) a used package which contains, is known to have contained, or is reasonably suspected of containing or having contained, any plant or plant product of the genus *Vitis*;
- (d) earth material, including samples of soil for diagnostic purposes, that originates from a property on which any plant or plant product of the genus *Vitis* is grown;
- (e) root vegetables, bulbs, nursery plants or seedlings that have been grown in soil or in a soil-free medium in contact with soil;
- (f) used agricultural equipment used for the culture, harvesting, packing or processing of root vegetables, bulbs, nursery plants or seedlings described in paragraph (e);
- (g) a used package which contains, is known to have contained, or is reasonably suspected of containing or having contained, any root vegetables, bulbs, nursery plants or seedlings described in paragraph (e);
- (h) earth material in which root vegetables, bulbs, nursery plants or seedlings described in paragraph (e) have been grown, including samples of soil for diagnostic purposes;

- (i) a host to an exotic pest or disease in relation to which a restricted area order is declared under section 32 of the Act.

7 Prescribed States and Territories

For the purposes of section 8(1) of the Act—

- (a) New South Wales, Queensland, Tasmania, South Australia and Western Australia are prescribed States; and
- (b) the Northern Territory and the Australian Capital Territory are prescribed Territories.

8 Requirement to possess certificate or declaration with prescribed materials

- (1) For the purposes of section 8(1C) of the Act, a person must comply with paragraph (a) of that subsection in respect of all prescribed material, unless—
 - (a) the prescribed material is specified in subregulation (2); or
 - (b) regulation 9 applies to the person.
- (2) For the purposes of subregulation (1)(a), the following prescribed materials are specified—
 - (a) material prescribed under regulation 6(a) or (d) that originates from a phylloxera exclusion zone;
 - (b) material prescribed under regulation 6(b) that is from a phylloxera exclusion zone;
 - (c) material prescribed under regulation 6(c) from a phylloxera exclusion zone;
 - (d) material prescribed under regulation 6(a), (b), (c) or (d) that originates from an area for which an area freedom certificate has been issued in relation to grape phylloxera;

- (e) material prescribed under regulation 6(e), (f), (g) or (h) that originates from an area for which an area freedom certificate has been issued in relation to potato cyst nematode;
 - (f) a plant in tissue culture.
- (3) An area freedom certificate must include the following details—
- (a) the name of the pest or disease in relation to which the certificate is issued;
 - (b) a description of the area of the prescribed State or Territory or part thereof in which that pest or disease is known not to occur;
 - (c) the signature of the officer who issued the certificate and the officer's position;
 - (d) the name of the department responsible for agriculture in another State or Territory that issued the certificate.

9 Requirement to present prescribed material for inspection, examination and treatment

For the purposes of section 8(1C) of the Act, a person must comply with paragraph (b) of that section if the prescribed material in the person's possession is not specified in regulation 8(2) and the person—

- (a) is not in possession of an assurance certificate, a plant health certificate or a plant health declaration for the prescribed material; or
- (b) is in possession of an assurance certificate for the prescribed material which does not comply with section 11 of the Act; or
- (c) is in possession of a plant health certificate for the prescribed material which does not comply with section 12 of the Act; or

(d) is in possession of a plant health declaration for the prescribed material which does not comply with section 13 of the Act.

10 Requirement to present certificate or declaration for inspection

A person who is required under regulation 9(b), (c) or (d) to present any prescribed material for inspection, examination or treatment must also present for inspection any assurance certificate, plant health certificate or plant health declaration that accompanies the prescribed material.

Penalty: 5 penalty units.

11 Prescribed place for inspection, examination and treatment

For the purposes of section 8(1C)(b) of the Act, a prescribed place is the Melbourne Wholesale Fruit, Vegetable and Flower Market at Cooper Street, Epping.

12 Prescribed particulars for certificates and declarations

For the purposes of sections 11(b), 12(b) and 13(b) of the Act, the prescribed particulars for an assurance certificate, a plant health certificate or a plant health declaration are details that identify the prescribed material to which the certificate or declaration relates.

Part 3—Property identification codes

13 Prescribed plants

For the purposes of section 15 of the Act, the plants listed in Schedule 1 are prescribed.

Part 4—Marking and identification

14 Prescribed fruit and vegetables for marking locality

For the purposes of section 46(3)(b) of the Act, the fruit and vegetables listed in Schedule 2 are prescribed.

15 Warnings

- (1) For the purposes of section 83 of the Act, the prescribed manner of attaching a warning is to attach a label in the form set out in Schedule 3 to the package, plants or plant products.
- (2) If a warning is attached to a package, plants or plant products in the prescribed manner, a person must not—
 - (a) detach the warning or cause or permit it to be detached without the written consent of the inspector or inspection agent who attached it to the package, plants or plant products; or
 - (b) deface or obscure the warning or permit it to be defaced or obscured.

Penalty: 10 penalty units.

Part 5—Fees and charges

16 Fees and charges

- (1) An inspector may impose fees and charges at the amounts or rates fixed by the Minister under section 55 of the Act for—
 - (a) inspecting any plant, plant product, packages or equipment; and
 - (b) inspecting land including inspecting any plant growing on the land; and
 - (c) supervising the treatment of any plant, plant product, used package, used equipment or earth material; and
 - (d) supervising the destruction or disposal of any plant, plant product, plant refuse, used package, used equipment or earth material.
- (2) The owner or the person apparently in charge of the consignment of any plant, plant product, used package, used equipment, earth material or land referred to in subregulation (1) must pay the relevant fee or charge referred to in that subregulation.
- (3) An inspector may impose fees and charges at the amounts or rates determined by the Minister under section 55 of the Act for the preparation of a compliance agreement for the purposes of section 47 of the Act.
- (4) An inspector may impose fees and charges at the amounts or rates determined by the Minister under section 55 of the Act to ensure the compliance agreement referred to in subregulation (3) is complied with.
- (5) The person requesting the preparation of a compliance agreement must pay the fees and charges referred to in subregulation (3).

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Part 5—Fees and charges

- (6) A party to a compliance agreement made under section 47 of the Act, other than the Crown, must pay the fees and charges referred to in subregulation (4).

Part 6—Infringement notices

17 Prescribed offences and penalties

- (1) For the purposes of section 119(1) of the Act, the offences referred to in Column 1 of the table in Schedule 4 are offences for which an infringement notice may be served.
- (2) For the purposes of section 119(2) of the Act, the prescribed infringement penalty for an offence for which an infringement notice may be served is the penalty specified in Column 2 of the table in Schedule 4 in respect of that offence.

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Schedule 1—Prescribed plants

Schedule 1—Prescribed plants

Regulation 13

Chestnuts (where the growing area contains not less than
20 chestnut plants)

Grapevines (where the growing area is not less than 0.5 hectares)

Schedule 2—Prescribed fruit and vegetables

Regulation 14

Abiu
Acerola
Achachairu
Apple
Apricot
Avocado
Babaco
Banana
Black Sapote
Blackberry
Blueberry
Boysenberry
Brazil Cherry
Breadfruit
Caimito (Star Apple)
Cape Gooseberry
Capsicum
Carambola (Starfruit)
Cashew Apple
Casimiro (White Sapote)
Cherimoya
Cherry
Chilli
Choko
Citron
Cocoa Berry
Coffee Berry
Cumquat

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Schedule 2—Prescribed fruit and vegetables

Custard Apple
Date
Durian
Eggplant
Feijoa
Fig
Goji Berry
Granadilla
Grape
Grapefruit
Grumichama
Guava
Hog Plum
Jaboticaba
Jackfruit
Jew Plum
Jujube
Kiwifruit
Lemon
Lime
Loganberry
Longan
Loquat
Lychee
Mandarin
Mango
Mangosteen
Medlar
Miracle Fruit
Monstera
Mulberry

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Schedule 2—Prescribed fruit and vegetables

Nashi
Nectarine
Olive
Orange
Passionfruit
Pawpaw
Peach
Peacharine
Pear
Pepino
Persimmon
Plum
Plumcot
Pomegranate
Prickly Pear
Pummelo
Quince
Rambutan
Raspberry
Rollinia
Santol
Sapodilla
Soursop
Strawberry
Sweetsop (Sugar Apple)
Tamarillo
Tangelo
Tomato
Wax Jambu (Rose Apple)

Schedule 3—Warning

Regulation 15(1)

WARNING
STOP SALE

The packages, plants or plant products to which this warning is attached do not comply with the **Plant Biosecurity Act 2010**. It is an offence for any person selling or removing them to detach this warning without the written consent of an inspector or to deface or obscure this warning.

Items	Quantity
Name of Inspector	
Signature of Inspector	
Date	Time

Schedule 4—Infringement offences and infringement penalties

Regulation 17

In this Schedule—

relevant prescribed material means material prescribed under regulation 6(a), (b), (d), (e), (f), (h) or (i) other than prescribed material specified in regulation 8(2).

<i>Item</i>	<i>Column 1 Offence</i>	<i>Column 2 Infringement Penalty</i>
1	Section 8(1) if the offence involves relevant prescribed material	2 penalty units in the case of a natural person 10 penalty units in the case of a body corporate
2	Section 8(1A) if the offence involves relevant prescribed material	2 penalty units in the case of a natural person 10 penalty units in the case of a body corporate
3	Section 8(1B) if the offence involves relevant prescribed material	2 penalty units in the case of a natural person 10 penalty units in the case of a body corporate
4	Section 9(1) if the offence involves relevant prescribed material	2 penalty units in the case of a natural person 10 penalty units in the case of a body corporate
5	Section 10(1) if the offence involves relevant prescribed material	5 penalty units
6	Section 15(1)	2 penalty units
7	Section 15(5)	1 penalty unit
8	Section 20(2)	2 penalty units

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Schedule 4—Infringement offences and infringement penalties

<i>Item</i>	<i>Column 1 Offence</i>	<i>Column 2 Infringement Penalty</i>
9	Section 20(3)	2 penalty units in the case of a natural person 10 penalty units in the case of a body corporate
10	Section 25(2)	5 penalty units in the case of a natural person 25 penalty units in the case of a body corporate
11	Section 25(3)	5 penalty units in the case of a natural person 25 penalty units in the case of a body corporate
12	Section 25(4)	5 penalty units in the case of a natural person 25 penalty units in the case of a body corporate
13	Section 26(5)	2 penalty units in the case of a natural person 10 penalty units in the case of a body corporate
14	Section 27(2)	5 penalty units in the case of a natural person 25 penalty units in the case of a body corporate
15	Section 30(5)	5 penalty units in the case of a natural person 25 penalty units in the case of a body corporate
16	Section 33(3)	2 penalty units in the case of a natural person 10 penalty units in the case of a body corporate
17	Section 35(4)	5 penalty units
18	Section 38(2)	2 penalty units in the case of a natural person 10 penalty units in the case of a body corporate

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Schedule 4—Infringement offences and infringement penalties

<i>Item</i>	<i>Column 1 Offence</i>	<i>Column 2 Infringement Penalty</i>
19	Section 43(4)	5 penalty units
20	Section 45(1)	3 penalty units
21	Section 45(4)	5 penalty units
22	Section 46(1)	5 penalty units
23	Section 98	5 penalty units
24	Section 104(5)	5 penalty units
25	Section 111(2)	3 penalty units
26	Regulation 15(2)	1 penalty unit

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The Plant Biosecurity Regulations 2016, S.R. No. 53/2016 were made on 31 May 2016 by the Governor in Council under section 141 of the **Plant Biosecurity Act 2010**, No. 60/2010 and came into operation on 1 June 2016: regulation 3.

The Plant Biosecurity Regulations 2016 will sunset 10 years after the day of making on 31 May 2026 (see section 5 of the **Subordinate Legislation Act 1994**).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided regulation, rule or clause of a Schedule is amended by the insertion of one or more subregulations, subrules or subclauses the original regulation, rule or clause becomes subregulation, subrule or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original regulation, rule or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any heading inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. This includes headings to Parts, Divisions or Subdivisions in a Schedule; Orders; Parts into which an Order is divided; clauses; regulations; rules; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A)(2B).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any examples, diagrams or notes inserted in a Statutory Rule which was made before

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1 January 2001, by a Statutory Rule made on or after 1 January 2001, form part of that Statutory Rule. See section 36(3A).

- **Punctuation**

All punctuation included in a Statutory Rule which is made on or after 1 January 2001 forms part of that Statutory Rule. Any punctuation inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. See section 36(3B).

- **Provision numbers**

All provision numbers included in a Statutory Rule form part of that Statutory Rule, whether inserted in the Statutory Rule before, on or after 1 January 2001. Provision numbers include regulation numbers, rule numbers, subregulation numbers, subrule numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of a Statutory Rule is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of a Statutory Rule. See section 36(3)(3D)(3E).

2 Table of Amendments

There are no amendments made to the Plant Biosecurity Regulations 2016 by statutory rules, subordinate instruments and Acts.

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

¹ Reg. 4: S.R. No. 49/2012 as amended by S.R. Nos 23/2015 and 80/2015.

² Reg. 4: S.R. No. 23/2015.

³ Reg. 4: S.R. No. 80/2015.