**Direction Notice Use – Policy and Procedure**

**Directions under the *Animal Diseases Act 2005* (the ADA)**

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| **Purpose**  Outlines the policy and procedure for preparing and issuing a direction under the *Animal Diseases Act 2005* (ADA). |

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| **Approved by**  **Date of Approval**  **Commencement** | [*Insert person*]  [*insert date of approval*]  [*insert date of commencement*] | |
| **Review** | Annually or on Legislative Change | Due: [*insert due date for review*] |
| **Location** | TAMS Intranet | |
| **Implementation Officer** | Chief Veterinary Officer/ Authorised Person | |
| **Relevant Documents:** | BIOSECURITY FORMS ADA-01 to ADA-20 [INSERT LOCATION]  Official Notebook Procedure and Policy  Gathering Managing and Handling Evidence Policy and Procedure | |
| **Relevant Legislation Disallowable and Notifiable Instruments:** | *Animal Diseases Act 2005*  *ACT Civil and Administrative Tribunal Act 2008*  *Legislation Act* *2001*  *Animal Diseases (Authorised People)*  *Appointment 2013 (No 1)and 2014 (No 1)*  *Animal Diseases (Exotic Diseases)*  *Declaration 2011 (No 1)*  *Animal Diseases (Endemic Diseases)*  *Declaration 2011 (No 1)*  *Animal Welfare Act and Relevant Codes of Practice* | |

**Acronyms**

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| ACAT | ACT Civil and Administrative Tribunal |
| ADA | *Animal Diseases Act 2005* |
| CVO | Chief Veterinary Officer |
| DG | Director-General |

**Relevant Definitions**

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| Animal | under the ADA, animal includes -   1. a vertebrate and an invertebrate; and 2. an egg, embryo, ovum or sperm, or other product, of an animal from which another animal could be produced; and 3. a dead animal;   but does not include a human being. |
| Authorised person | Means an authorised person under section 64. |
| Chief Veterinary Officer | Means the Chief Veterinary Officer appointed under section 7. |
| Disallowable instrument | A statutory instrument that is declared to be a disallowable instrument. Disallowable instruments for the ADA can be found here: <http://www.legislation.act.gov.au/a/2005-18/di.asp> |
| Disease | for part 6 (Enforcement)—see section 63. |
| Endemic disease | Means a disease declared under section 16 to be an endemic disease. The relevant declaration of endemic diseases can be found here: <http://www.legislation.act.gov.au/di/2011-297/current/pdf/2011-297.pdf> |
| Exotic disease | means a disease declared under section 12 to be an exotic disease. The relevant declaration of exotic diseases can be found here: <http://www.legislation.act.gov.au/di/2011-296/current/pdf/2011-296.pdf> |
| Give | When required to ‘give’ (serve) a form, the *Legislation Act 2001* provides instruction on how this must be done. |
| Notifiable instrument | A statutory instrument that is declared to be a notifiable instrument. Notifiable instruments for the ADA can be found here: <http://www.legislation.act.gov.au/a/2005-18/ni.asp> |
| Occupier | of premises, for part 6 (Enforcement)—see section 63. |
| Premises | includes land or a structure or vehicle and any part of an area of land or a structure or vehicle. |

**Introduction**

The *Animal Diseases Act 2005 (“*theADA”) allows for direction notices to be given to prevent or control the spread of diseases declared under the ADA. This policy and procedure provides guidance on how to exercise these powers to control any biosecurity risk. This policy and procedure must be read in accordance with any specific procedures regarding the control of exotic or endemic diseases.

A decision to issue a direction notice or notices will be made where it is necessary to protect the health and welfare of people and animals and to protect markets relating to animals and animal products.[[1]](#footnote-1)

Direction notices place an obligation on the recipient to prevent or control the spread of an exotic or endemic disease in a manner set out in the notice. In order to give a direction, the correct form to which the direction relates is to be completed from the list below.

In some cases more than one type of direction notice may be issued to control the biosecurity risk.

Directions to control exotic diseases:

* ADA-01 Direction to Seize: Control of spread of exotic disease
* ADA-02 Direction to owner or person in charge to decontaminate or prevent contamination/ infection to control spread of exotic disease
* ADA-03 Direction to owner or person in charge of animal to inoculate/ produce immunity/ treat animal/ protect its welfare to control spread of exotic disease
* ADA-04 Direction to authorised person or anyone else to take action to control spread of exotic disease
* ADA-05 Direction to owner or person in charge to keep animal/s at stated premises to control spread of exotic disease
* ADA-06 Direction to destroy infected animal/ animal product or other thing to control spread of exotic disease
* ADA-07 Direction to remove refuse from quarantine area to control spread of exotic disease

Directions to control endemic diseases:

* ADA-08 Direction to Seize: Control of spread of endemic disease
* ADA-09 Direction to decontaminate the premises, product or thing and/ or prevent the spread of contamination of endemic disease
* ADA-10 Direction to owner or person in charge of animal to inoculate/ produce immunity/ treat animal/ protect its welfare to control spread of endemic disease
* ADA-11 Direction to authorised officer or anyone else to take action to control spread of an endemic disease
* ADA-12 Direction to owner or person in charge to keep animal/s at stated premises to control spread of endemic disease
* ADA-13 Direction to destroy infected animal/ animal product or other thing to control spread of endemic disease

Other directions:

* ADA-16 Directions to person keeping honeybees to comply with the regulation
* ADA-19 Directions to owner of stock to travel the stock to stated premises
* ADA-20 Directions to owner of stock to hold the stock at stated premises

The ADA also provides for ministers to authorise certain activities within a quarantine area. In order to authorise such an activity, the following form needs to be completed:

* ADA-14 Minister’s authorisation for activity movements in quarantine area

In some circumstances the giving of a direction notice also requires certain procedures to be followed, which may require the following documentation to be given:

* ADA-15 Acknowledgment of consent to enter premises
* ADA-17 Receipt for things seized
* ADA-18 Reviewable Decision Notice

For authorised persons refer to <http://www.legislation.act.gov.au/ni/2013-532/current/pdf/2013-532.pdf> and <http://www.legislation.act.gov.au/ni/2014-105/current/pdf/2014-105.pdf> and section 64 of the ADA.

All forms listed above are located on the TAMS [INSERT LOCATION].

**PROCEDURE**

**1. Prior to giving form**

***Ensure an appropriately authorised person is completing the direction notice***

A direction notice must be completed by the ***CVO or a Delegate of the CVO***. The CVO may delegate the exercise of all or part of their functions under the ADA to a person specified in section 8 of the ADA. Some direction notices may be made by an authorised person.

The Minister may delegate the exercise of all or part of their functions under the ADA to any person. The Ministers authorisation must be completed by the ***Minister or a Delegate of the Minister***.

**Important information: Delegations**

A delegation must be made, or evidenced, by writing signed by the appointer.

Where a person prepares a direction notice in his/ her capacity as a Delegate, there **must** be a current instrument of delegation in place. A Delegate of the CVO may not sub-delegate the function for which they were appointed. Therefore, when preparing notices, ensure the name and signature on the notice is that of the Delegate.

For further information on the powers and requirements of delegation, see Part 19.4 *Legislation Act 2001*.

You must check and ensure that the appropriate delegation is in force.

**2. Completing forms**

When preparing a direction notice you must ensure that the requirements of the direction are necessary or desirable to prevent a disease becoming established, or spreading, in the ACT.

***Matters to consider when completing forms***

When completing the forms, you must ensure:

* The stated action to be taken is clear, mandatory, unambiguous, and sufficient to control any biosecurity risk.
* Full and correct names are used.
* The name of the endemic or exotic disease is recorded using the exact name stated in the relevant disallowable instrument. Refer to the relevant declarations (for exotic diseases, see <http://www.legislation.act.gov.au/di/2011-296/current/pdf/2011-296.pdf>, and for endemic diseases see <http://www.legislation.act.gov.au/di/2011-297/current/pdf/2011-297.pdf>).
* When referring to land or premises, accurately describe the land or premises (residential address, block and section, volume and folio, the building name etc.).
* Where an asterisk appears (\*), delete words or phrases that are not applicable.
* The giving of a direction notice is subject to the maker having reasonable grounds as specified in the ADA. For example, a direction made under section 14 (1) is subject to section 14 (2) which states that the CVO may only be given where the CVO has reasonable grounds for believing that it is necessary to give the direction to prevent the control or spread of an endemic or exotic disease. The maker of the notice must carefully turn his or her mind to whether reasonable grounds exist.
* Refer to any procedures or policies regarding the specific disease when completing the requirements under the direction.
* Include where relevant a date and/ or time by which the direction must be complied with.
* Give the direction to the appropriate entity and ensure that the method of service is recorded in your official notebook. (see below under “3. Giving of Form” for further guidance)
* All directions must be consistent with the *Animal Welfare Act 1992* and any relevant disallowable instruments relating to animal welfare codes of practice.
* Read each direction notice to determine whether a Reviewable Notice Decision must be given.
* The person making the direction must sign and date the direction.
* Where a power of seizure is exercised give the receipt to the person from whom the thing was seized as soon as practicable after seizing. If for any reason this is not practicable, the authorised person must leave the receipt, secured conspicuously, at the place of seizure. Record details in your official notebook, including an image of the conspicuously placed seizure receipt.

**You must give effect to any procedural requirements under the enabling provision when preparing and giving a Direction Notice.**

**3. Giving the form**

***Recipient of the form***

Refer to the relevant form to ensure the recipient of the form is correct.

***How to give the form (service)***

The *Legislation Act 2001* sets out how a document must be given (served). In most cases service will involve physically handing the form to the recipient. This must be recorded in your official notebook. A person other than the maker of the direction notice may give (serve) the direction.

The rules for service are extracted below.

If the recipient is an **individual**, the direction notice may be given (served) by:

1. giving it to the individual; or
2. sending it by prepaid post, addressed to the individual, to a home or business address of the individual; or
3. faxing it to a fax number of the individual; or
4. emailing it to an email address of the individual; or
5. leaving it, addressed to the individual, at a home or business address of the individual with someone who appears to be at least 16 years old and to live or be employed at the address.

If the recipient is a **corporation,** thedirection notice may be given (served) by:

1. giving it to an executive officer of the corporation; or
2. sending it by prepaid post, addressed to the corporation (or an executive officer of the corporation), to the address of any of its registered offices or any other business address of the corporation; or
3. faxing it to a fax number of the corporation; or
4. emailing it to an email address of the corporation; or
5. leaving it, addressed to the corporation (or an executive officer of the corporation), at the address of any of the corporation's registered offices, or any other business address of the corporation, with someone who appears to be at least 16 years old and to be employed at the address

Note that section 79 of the ADA provides for a ***specific manner*** in which to give a *ADA-18 Receipt for things seized.* For this form, the authorised person must, as soon as practicable, give the receipt to the occupier of the premises. If this is not practicable, the authorised person must leave the receipt, secured conspicuously at the place of seizure. This must be recorded in your official notebook and images must be taken of the conspicuously secured receipt.

Give the recipient a copy of the form you have just completed and record this in your notebook. You should always ask the person to read the notice and ask and record in your notebook in direct speech as follows.

*I Said: Do you understand the requirements of the direction notice?*

*He Said:*

*I Said: Do you understand that it is an offence to fail to comply with the notice?*

*He Said:*

**4. After giving the form**

***Handling and management of the completed form***

The original completed form must be entered into the exhibit register held and controlled by the CVO, and must not be amended or altered in any way. A working copy of the notice should be retained.

***Inspection and Investigation***

To ensure compliance with a direction, an inspector must attend the premises at the expiry of the direction to assess compliance. In some cases an inspection may be required during the period of the direction notice.

Where there is a prima facie contravention of a direction, or any other contravention of the ADA has been or is being committed, an investigation must be undertaken.

**Applying for compensation for destroyed animals**

***Section 28***

The owner of the animal or thing destroyed pursuant to *ADA-13 Direction to destroy infected animal/ animal product or other thing to control spread of endemic disease* has the right to apply in writing to the Director-General for compensation, if the animal or thing was infected with a compensable endemic disease.

The Minister may declare an endemic disease to be compensable under section 16 of the Act. Declarations can be found at: <http://www.legislation.act.gov.au/di/2011-297/default.asp>.

An application for compensation must be made within 90 days after the day of the destruction of the animal or animal product, or such other period as the Director-General allows. On receipt of the application for compensation, the Director-General will decide an amount of compensation (not more than the market value of the destroyed animal or animal product) payable to the owner of the animal or animal product.

***Sections 30 and 31***

If an animal, premises of other thing has been destroyed under *ADA-06 Direction to destroy infected animal/ animal product or other thing to control spread of exotic disease,* the owner may apply to the director-general for compensation.

If an animal has died and a veterinary surgeon has certified that the death was caused by an exotic disease the owner of the animal may apply to the director-general for compensation.

An application for compensation must be made within 90 days after the animal, premises of other thing is destroyed (section 30) or 90 days after the day the animal dies (section 31) or such other period as the Director-General allows. On receipt of the application for compensation, the Director-General will decide an amount of compensation (not more than the market value of the animal, destroyed animal, premises or other thing) payable to the owner of the animal, premises or other thing.

References to section 28, 30 and 31 are outlined in the direction notice.

**Reviewable Decision Notice**

The following decisions to give directions under the Act are reviewable decisions:

* *ADA-09 Direction to decontaminate the premises, product or thing and/ or prevent the spread of contamination of endemic disease*
* *ADA-10 Direction to owner or person in charge of animal to inoculate/ produce immunity/ treat animal/ protect its welfare to control spread of endemic disease*
* *ADA-11 Direction to authorised officer or anyone else to take action to control spread of an endemic disease*
* *ADA-12 Direction to owner or person in charge to keep animal/s at stated premises to control spread of endemic disease*

This means that the person to whom the direction was given, as well as any other person whose interests are affected by the decision may apply to ACAT for a review of the decision.

If any of the directions (listed above) are issued, an *ADA-18 Reviewable Decision Notice* must to be given to the person to whom the direction was given, and reasonable steps must also be taken to give an *ADA-18 Reviewable Decision Notice* to any other person whose interests are affected by the decision. The giving of the *Reviewable Decision Notice* must berecorded in your official notebook.

**Further Information**

Enquiries regarding this procedure should be directed to CVO or the Manager of Compliance and Licencing.

1. See section 3 Objects of Act. [↑](#footnote-ref-1)