**Direction Notice Use – Policy and Procedure**

**Directions under the *Plant Diseases Act 2002* (the Act)**

|  |
| --- |
| **Purpose**  Outlines the policy and procedure for the preparation and issuing a direction under the *Plants Diseases Act 2002* (PDA). |

|  |  |  |
| --- | --- | --- |
| **Approved by**  **Date of Approval**  **Commencement** | Stephen Hughes  1 July 2014  1 July 2014 | |
| **Review** | Annually or on Legislative Change Including the Making of Declarations | Due: [*insert due date for review*] |
| **Location** | [U:\All\_ACTGOV\LDCC\BIOSECURITY\Biosecurity Directions Forms and Procedures\Plant Diseases Act 2002](file:///U:/All_ACTGOV/LDCC/BIOSECURITY/Biosecurity%20Directions%20Forms%20and%20Procedures/Plant%20Diseases%20Act%202002) | |
| **Implementation Officer** | Manager Compliance and Licencing/ Director-General/ Inspectors | |
| **Relevant Documents:** | BIOSECURITY FORM PDA-01 Direction to Seize  BIOSECURITY FORM PDA-02 Direction to Disinfect  BIOSECURITY FORM PDA-03 Direction to Destroy or Treat  BIOSECURITY FORM PDA-04 Direction to inspector to take another stated action  BIOSECURITY FORM PDA-05 Direction to another person to take a stated action  BIOSECURITY FORM PDA-06 Acknowledgment of consent to enter premises  BIOSECURITY FORM PDA-07 Receipt for things seized  National Phylloxera Management Protocol Version 4 2009  Official Notebook Procedure and Policy  Gathering Managing and Handling Evidence Policy and Procedure  INSERT NAME OF RELEVANT PLANT DISEASE PROCEDURE […] | |
| **Relevant Legislation:** | *Plant Diseases Act 2002*  *ACT Civil and Administrative Tribunal Act 2008*  *Legislation Act* *2001*  *Plant Diseases (Phylloxera) Prohibition*  *2011 (No 1)*  *Plant Diseases (Inspectors) Appointment*  *2014 (No 1)* | |

**Acronyms**

|  |  |
| --- | --- |
| ACAT | ACT Civil and Administrative Tribunal |
| DG | Director-General |
| PDA | *Plant Diseases Act 2002* |

**Relevant Definitions**

|  |  |
| --- | --- |
| Disallowable instrument | A statutory instrument that is declared to be a disallowable instrument. The disallowable instrument for the PDA can be found here: <http://www.legislation.act.gov.au/a/2002-42/di.asp> (Plant Diseases (Phylloxera) Prohibition  2011 (No 1). |
| Disease | For the PDA, "disease" means anything declared by the Minister to be a disease, or, any of the following that causes an abnormal or unhealthy condition in plants:   1. an organism of the vegetable kingdom; 2. a virus; 3. a mycoplasma organism.   A disease declaration is a disallowable instrument. |
| Give | When required to ‘give’ a form, the *Legislation Act 2001* provides instruction on how this must be done. |
| Insect | For the PDA, "insect" means,   1. a form of animal life, within the biological classification Insecta, having a segmented body and paired jointed appendages (including, for example, an ant, bee, beetle, bug, butterfly, earwig, flea, fly, gnat, grasshopper, leaf-hopper, louse, locust, scale insect, termite or thrip); or 2. a form of animal life, within the biological classification Arachnida (including, for example, a spider, mite or tick); or 3. a member of another animal species declared by the Minister.   An insect declaration is a disallowable instrument. |
| Inspector | An inspector is appointed by the DG and is made by notifiable instrument which can be found here: <http://www.legislation.act.gov.au/ni/2014-115/current/pdf/2014-115.pdf> |
| Notifiable instrument | A statutory instrument that is declared to be a notifiable instrument. |
| Pest | For the PDA, "pest" means—   1. an organism of the animal kingdom that feeds on or is injurious to plants; or 2. a pest declared by the Minister   A pest declaration is a disallowable instrument. |
| Plant | A member, or part of a member, of the plant kingdom. |
| Premises | Includes a building of any description, or a part of a building, a vehicle, and land (whether built on or not). |

**Introduction**

The *Plant Diseases Act 2005 (“*thePDA”) allows for direction notices to be given relating to a disease or pest as defined in sections 5 and 7 of the PDA. At present there are no declarations made by the Minister under sections 5(2) and 7(2) and accordingly you must have regard to the sections 5(1)(a) or section 7(1)(a) which provide:

**For Diseases**

***Disease*** means:

(a) any of the following that causes an abnormal or unhealthy

condition in plants:

(i) an organism of the vegetable kingdom;

(ii) a virus;

(iii) a mycoplasma organism.

**For Pests**

**Pest** means:

(a) an organism of the animal kingdom that feeds on or is injurious

to plants.

Direction notices place an obligation on the recipient to manage and control diseases and/ or pests affecting plants 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:

* PDA-01 Direction to Seize
* PDA-02 Direction to Disinfect
* PDA-03 Direction to Destroy or Treat
* PDA-04 Direction to inspector to take another stated action
* PDA-05 Direction to another person to take a stated action

The PDA also requires certain procedures to be followed, which may require the following documentation to be completed and given:

* PDA-06 Acknowledgment of consent to enter premises
* PDA-07 Receipt for things seized

These forms are located at [U:\All\_ACTGOV\LDCC\BIOSECURITY\Biosecurity Directions Forms and Procedures\Plant Diseases Act 2002](file:///U:/All_ACTGOV/LDCC/BIOSECURITY/Biosecurity%20Directions%20Forms%20and%20Procedures/Plant%20Diseases%20Act%202002)

**PROCEDURE**

**1. Ensure an appropriately authorised person is completing the form**

A direction notice (*Direction to Seize, Direction to Disinfect, Direction to Destroy or Treat, Direction to inspector to take another stated action* or a *Direction to another person to take a stated action)* must be completed by the ***Minister or a Delegate of the Minister***.

* ***Who is a Delegate of the Minister?***

The Minister may delegate the exercise of all or part of their functions under the PDA to a public servant. A delegation must be made, or evidenced, by writing signed by the appointer.

Where a person prepares or gives a direction notice in his/ her capacity as a Delegate, there **must** be a current instrument of delegation in place. A Delegate of the Minister may not subdelegate the function for which they were appointed – so when preparing/ giving notices, ensure the name and signature on the notice is that of the Delegate, and ensure that doing so is within the scope of the Delegate’s functions.

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

**2. Completing forms**

When preparing a direction notice you must ensure that what is required by the direction is necessary or desirable to prevent a disease or pest becoming established, or spreading, in the ACT.

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

You **MUST** have regard to the definition of Disease and Pest outlined in section 5 and section 7 of the PDA. If a declaration has not been made, directions under section 13 cannot be given unless the disease or pest falls within section 5(1)(a) or section 7(1)(a) of the PDA.

When completing the forms, you must ensure:

* The direction is necessary or desirable to prevent a disease or pest becoming established, or spreading, in the ACT.
* The requirements of the direction are clear, mandatory, unambiguous, and sufficient to control any biosecurity risk.
* Include appropriate methods of destruction, treatment or other action. Guidance can be taken from the National Phylloxera Management Protocol Latest Version.
* Full and correct names and addresses (of persons, premises, land etc.) are used.
* The common name of the disease or pest is recorded with the scientific name in brackets.
* When referring to land, accurately describe the land, ensuring that the description can only apply to the area of land of interest (residential address, block and section, volume and folio, the building name etc.).
* Where an asterisk appears (\*), delete words that are not applicable.
* The person making the direction (the Minister or Delegate of the Minister) must sign and date the direction.
* Ensure that the *Acknowledgment of consent to enter premises PDA-06 or Receipt for things seized PDA-07* is completed as required.

**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 over 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, but the *Acknowledgment of consent to enter premises* and *Receipt for things seized* forms must be given by the inspector.

The rules for service are extracted below.

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

1. by giving it to the individual; or
2. by sending it by prepaid post, addressed to the individual, to a home or business address of the individual; or
3. by faxing it to a fax number of the individual; or
4. by emailing it to an email address of the individual; or
5. by 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. by giving it to an executive officer of the corporation; or
2. by 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. by faxing it to a fax number of the corporation; or
4. by emailing it to an email address of the corporation; or
5. by 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 29 of the PDA provides for a ***specific manner*** in which to give a *Receipt for things seized*. For this form, the inspector must give the receipt to the occupier of the premises. If this is not practicable, the inspector 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.

***What to give***

Give the recipient a copy of the form you have just completed. The original completed and signed form must be retained.

**4. After giving the form**

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

The original completed form must be entered into the exhibit register as evidence, and must not be amended or altered in any way.

***Inspection and Investigation***

It is an offence for the recipient of a direction, to *intentionally* contravene a direction under section 13(4) of the PDA (refer to forms).

To ensure compliance with a direction, an inspector must attend the premises at the expiry of the direction to assess compliance.

If the inspection reveals a contravention of a direction, or any other contravention of the PDA has been or is being committed, an investigation must be undertaken.

**Prohibition of Introduction of Plant, Insect, Disease or Pest**

Section 8 of the PDA provides for the Minister to prohibit by declaration the introduction into or transport within or through the ACT of a plant, insect, disease or pest or anything that the Minister believes on reasonable grounds may contain a plant, insect, disease or pest.

The only prohibition currently in force is the Plant Diseases (Phylloxera) Prohibition 2011 (No 1).

Section 9 of the PDA states that it is an offence for intentionally contravening a prohibition (1000 penalty points).

Where directions have been or may be issued under section 13 of the PDA in relation to Phylloxera, the inspector or investigating official should consider whether there may have been a contravention of Plant Diseases (Phylloxera) Prohibition 2011 (No 1) which is found at <http://www.legislation.act.gov.au/a/2002-42/di.asp>.

A contravention of section 9 may occur regardless of whether a direction under section 13 was given.

**Further Information**

Enquiries regarding this procedure should be directed to Stephen Hughes Biosecurity Manager Ph 62072508