Commencement: 6 April 1998

CHAPTER 239

PLANT PROTECTION

Act 14 of 1997

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PLANT PROTECTION

An Act to provide for the exclusion and effective management of plant pests and to facilitate exports of plant produce and to provide for matters connected therewith.

1. Interpretation

In this Act, unless the context otherwise requires –

"approved" means approved by the Director;

"contaminate" means bearing soil or any other material which it is reasonable to expect might contain plant pests;

"craft" includes any conveyance used or capable of being used for carrying goods or people by air, or sea, and any shipping container;

"Director" means the Director for the time being responsible for the Department of Livestock and Quarantine;

"goods" means any kind of moveable property;

"master" means the person for the time being in charge of a craft;

"the Minister" means the Minister for the time being responsible for Agriculture, Quarantine, Forestry and Fisheries;

"natural resources" means –

(a) organisms of all kinds;

(b) the air, water, and soil in or on which any organism lives or may live;

(c) landscape and land form; and

(d) system of interacting living organisms and their environment;

"officer" means any person appointed under section 9 of this Act;

"occupier" in relation to any land, means the person having use of or in physical occupation of the land, and includes any agent, employee, or other person acting or apparently acting in the general management or control of the land;

"owner" in relation to goods, includes any agent, importer, exporter, employee, or other person acting or apparently acting for the owner;

"plant material" means any goods that are wholly or partly derived from a member of the plant kingdom or its excretions or secretions;

"plant pest" means any organism, including any pathogen which is known or suspected or liable to be directly or indirectly harmful to plants or beneficial organisms, and includes any noxious plant or weed and any product of any pest;

"plant produce" means any plant material intended for export or sale;

"Principal Plant Protection Officer" means the person appointed under section 9(1) of this Act;

"quarantine" includes any requirement or action by any officer whereby normal transactions in plant material or other goods are regulated or otherwise affected for the purpose of managing the risks of introduction, establishment, or spread within Vanuatu of quarantine pests;

"quarantine facility" means any place approved for the purpose of holding plant material in quarantine;

"quarantine pest" means a plant pest known or suspected of being capable of causing a significant harm to natural resources and which is either not yet present in Vanuatu, or is of limited distribution and subject to active control measures;

"quarantine release" means the official ending of quarantine by an officer;

"requirement" means anything imposed under this Act or any Regulations or Ministerial Order made under this Act;

"risk" means anything which by reason of its nature, condition, or origin may expose Vanuatu's natural resources to potential harm from quarantine pests;

"risk goods" means any goods which present a risk;

"treatment" means the application of any approved method or combination of methods that reduces to an approved extent the risk of introduction or spread of any quarantine pest which is suspected to be present in the place or goods being treated;

"unauthorized introductions" means any plant material, quarantine pest or other goods that have been imported into Vanuatu otherwise than in accordance with requirements and includes any progeny or products thereof.

2. Quarantine on entry

(1) For the purpose of assessing and managing the risks of introduction into or spread within Vanuatu of quarantine pests, all craft and goods entering Vanuatu shall be subject to quarantine until granted quarantine release.

(2) While in quarantine any craft and goods may be subject to any requirements.

3. Quarantine standards

The Minister, on the advice of the Director in consultation with the Principal Plant Protection Officer, for the purpose of managing the risks associated with importation of goods, and having regard to the particular risks posed by various goods, their place of origin, and their mode of transport to Vanuatu, may make Orders providing for any or all of the following matters:

(a) prohibiting or exempting specified categories of goods;

(b) applying particular restrictions or conditions to specified categories of goods.

4. Management of plant pests

(1) The Minister, on the advice of the Director in consultation with the Principal Plant Protection Officer, for the purpose of eradicating or otherwise managing any plant pests within Vanuatu, may make Orders in respect of the pests specified in each case, providing for:

(a) the carrying out of surveys to determine the pest's presence and distribution;

(b) the carrying out of a specified past management programme the description of which shall be contained within the Order and shall include:

(i) the name of the targeted pest and the reasons for managing it;

(ii) the areas in which management activities will be carried out;

(iii) the duration of the programme;

(iv) the objectives of the programme and the tactics and technical methods to be applied in implementing it;

(v) the responsibilities of those affected by the programme and how they will be notified of actions affecting them;

(vi) the name of the person or agency responsible for implementing the programme; and

(vii) how the costs of implementing the plan are to be met.

(2) Where, under any Ministerial Order made under subsection (1), any person is properly notified that he is required to take some specified action and he has not complied within the time allowed for by the notice, or, if no time was specified, within a reasonable time, the person or agency responsible for implementing the plan may arrange for the action to be taken by some other means, and may recover the costs and expenses reasonably incurred as a debt due from the person to whom the notification was given.

5. Control of plant produce exports

(1) The Minister, on the advice of the Director in consultation with the Principal Plant Protection Officer, for the purpose of providing certification or other assurances to the appropriate authorities in any foreign country that any specified plant produce is safe, true to label, true to official export certificate, and meets any specified requirements the importing country may have imposed, and protecting the international trading reputation of Vanuatu, may make Orders:

(a) specifying the general quality standards to be met by any specified plant produce;

(b) specifying the requirements to be met by specified plant produce intended for export to specified destination;

(c) requiring as a prior condition of export of specified produce to specified destinations, that the exporter concerned be registered with the Director.

(3) The Director may at any time revoke or suspend an exporter's registration made consequential to an Order under subsection (1)(b) where he is satisfied, on obtaining the advice of the Principal Plant Protection Officer, that the exporter has not been complying with the requirements of the relevant Ministerial Order.

6. Movement controls

(1) The Minister, on the advice of the Director in consultation with the Principal Plant Protection Officer, for the purposes of preventing the spread of any plant pest from where it is, or enabling the continuing certification of exports of plant produce, may make Orders providing for:

(a) the application of specified restrictions, prohibitions, conditions or other controls to the movement into, within, or from the controlled place or area of specified plant materials, goods, pests, or conveyances;

(b) the treatment of any specified plant material, goods or conveyance, within or prior to entering or leaving the controlled place or area;

(c) the eradication or other management of any plant pest within the controlled place or area.

(2) Such controls shall be appropriate either or both to the biological characteristics of the produce at risk and of the pest concerned, and to the import requirements of any foreign country.

7. Emergency order

(1) The Minister, on the advice of the Director in consultation with the principal Plant Protection Officer for the purpose of managing an unexpected and serious outbreak

of a quarantine pest in any area of Vanuatu, may make an Order declaring that area to be in quarantine for a period not exceeding six months.

(2) An order made under subsection (1) may empower the Minister to take whatever measures he deems necessary to make the quarantine effective and to bring the outbreak under control.

8. Codes of practice

(1) For the purpose of facilitating movement of craft, goods and people without significantly reducing the effectiveness of the requirements, codes of practice may be used.

(2) Any person may register with the Department the desire to make use of a code of practice.

(3) Provided that he is satisfied that the risks associated with the activity can be managed by means of a code of practice, the Principal Plant Protection Officer shall recommend the approval by the Director of that code which may be published.

(4) Any provision of an approved code of practice which appears to a court to be relevant to any allegation that a requirement has been contravened shall be admissible in evidence in the proceedings and if it is proved that there was at any material time a failure to observe such relevant provision of the code, the matter shall be taken as proved unless the court is satisfied that the requirement was complied with by some means other than observance of the code.

9. Appointments

(1) The Public Service Commission shall appoint a Principal Plant Protection Officer for the purpose of ensuring the proper implementation and administration of this Act.

(2) For the purposes of this Act, the Public Service Commission shall further appoint:

(a) sufficient Quarantine Officers; and

(b) may from time to time appoint authorized officers with specified duties and powers for the purpose of section 5, 6, 7 and 8 of this Act.

10. Delegations

(1) The Minister, the Director or the Principal Plant Protection Officer may delegate in writing to any officer any of his functions, powers or duties under this Act except.

(a) this power of delegation;

(b) the power of the Minister to make Orders under this Act; and

(2) Any delegation made under this section may be made on such terms and conditions as the person delegating the power thinks fit, and may be revoked at any time by notice in writing to the delegate.

11. Assistance by other departments

For the purposes of this Act, and upon application being made by the Director to the Head of any Government Department, it shall be the duty of that Department to assist the Department of Agriculture and Horticulture in the way requested by the Director.

12. Assistant to other Ministers

(1) Any minister, other than the Minister, whose responsibilities are either affected by the presence or potential introduction of a plant pest, or include the giving of assurances to other Governments in respect of export plant produce, may apply in writing for the Minister's authority to use the provisions of this Act for the purposes of meeting that other minister's responsibilities.

(2) The Minister shall not refuse an application under subsection (1) without first consulting the applicant minister and without giving his reasons in writing.

13. Powers relating to craft

(1) For the purpose of this Act, an officer may board any craft and –

(a) enter, open and inspect any part of the craft and its contents;

(b) inspect any plant material and goods therein;

(c) require that any goods presenting a risk be kept on board in a secure place and under the seal;

(d) direct the master to cease discharging or unloading garbage, waste, cleaning water or ballast; and

(e) if he is of the opinion that anything on the craft presents a risk –

(i) prohibit the landing of any goods;

(ii) direct the master to take the craft to an insolated place;

(iii) arrange treatment of the craft and its contents; and

(iv) restrict operations on the craft until treatment is complete.

14. General inspection powers

For the purposes of this Act, any officer may –

(a) enter and search any place or conveyance;

(b) detain, open search, inspect, sample and test any goods (including postal mail and packages transported by courier services)

(c) take samples and test any contaminant or suspected plant pest;

(d) require information to be provided in any form and from any source, and examine and take copies of any documentation or other records; and

(e) hold any goods suspected of presenting a risk whether in a quarantine facility or elsewhere and treat at the owner's expense until such time as the Principal Plant Protection Officer is satisfied that the suspected risk has been acceptably managed or is not present;

(f) dispose at the owner's expense any goods which, in the opinion of the Principal Plant Protection Officer, present an unacceptable risk or cannot be effectively treated;

(g) treat any place where contaminated, diseased, or pest affected goods are, or have been;

(h) enter any place and there carry out any actions authorized under a Ministerial Order made under section 5,6,7 and 8 of this Act;

(i) hold, inspect, and treat any plant produce intended fro export: and

(j) withhold or detain the export of any plant produce until he is satisfied that it meets with the terms and conditions of the importing country, is acceptably safe and wholesome, and complies with any Ministerial Offer made under section 6 of this Act

15. Power of disposal

In addition to any other powers under this Act, the Principal Plant Protection Officer shall have Power to destroy or otherwise dispose of as he sees fit, any goods where there are reasonable grounds to believe that:

(a) the goods harbour a quarantine pest; or

(b) a consignment of the goods or a part thereof is so damaged as to be unsuitable for human consumption.

16. Powers after quarantine release

(1) Notwithstanding the fact that quarantine release may already have been granted, where the Principal Plant Protection Officer is of the opinion that a suspected quarantine pest may be present, and the proposed action is approved, he may:

(a) isolate any place, craft, conveyance, or goods and arrange for the treatment of the place or thing concerned and its contents;

(b) seize, place in quarantine, and treat any plant material which has already been released from quarantine and any progeny or products of the original importation.

(2) The Minister may approve the payment of compensation for any direct and immediate losses suffered by any person as a consequence of actions taken under subsection (1).

17. Unlawful importation

(1) On the authority of the Director, the Principal Plant Protection Officer may, without compensation, and at the expense of the owner of the goods, order the seizure of any unauthorized introduction, and its subsequent treatment and disposal in any manner he deems appropriate.

(2) Where the Principal Plant Protection Officer has reason to believe that the decision to grant quarantine release to any goods was based on false or misleading information provided by the importer, he may take action under subsection (1) as though the goods were an unauthorized introduction

18. Use of powers

In exercising his powers under this Act an officer shall Act in accordance with requirements and with any relevant instructions issued by the Director.

19. Unclaimed or abandoned goods

(1) Where any goods in quarantine are eligible for quarantine release, and have not been collected by the owner or importer after a reasonable period of time, the Principal Plant Protection officer may dispose of the goods in any way he considers appropriate.

(2) Where any craft or goods have been apparently abandoned and the Principal Plant Protection Officer has reasonable grounds for suspecting that quarantine pests may be present in or on the craft or goods, he may seize the craft and goods and place them in quarantine.

(3) Provided that before taking action under subsection (1) or (2), the Principal Plant Protection Officer shall first take all reasonable steps to contact the owner of the craft or goods and warn him of the intended action.

(4) In the event of goods referred to in subsection (1) being sold, the proceeds shall be used first to defray any quarantine costs incurred, and the balance shall accrue to the Public Fund as provided for by the Public Finance and Economic Management Act [Cap. 244].

20. Regulations

The Minister may make regulations for the purpose of carrying the provisions of this Act into effect and in particular for:

(a) requiring that matters of craft comply with prescribed conditions while within Vanuatu;

(b) prescribing conditions for the importation of goods including the documentation to be provided;

(c) requiring the information to be given by persons arriving in Vanuatu from overseas;

(d) regulating the performance of quarantine and the procedures for quarantine release;

(e) approving quarantine facilities and regulating their conduct and operation;

(f) prescribing the presentation, inspection, treatment, documentation and certification of plant produce intended for export;

(g) prohibiting or restricting the export of any plants or plant material or plant produce;

(h) prescribing the imposition of an amount of bonds to be paid for the purpose of securing due compliance with the requirements specified in relation to the bond; and

(i) generally, all or any purposes of this Act.

21. Cost recovery

(1) The Director may recover costs of administering the requirements and performing the functions, powers and duties provided under this Act by such methods as he believes on reasonable grounds to be the most suitable and equitable in the circumstances including any one or more of the following methods:

(a) fixed charges;

(b) charges fixed on an hourly or other unit basis;

(c) estimated charges paid before the provision of the service or performance of the function followed by reconciliation and an appropriate payment or refund;

(d) actual and reasonable charges;

(e) refundable or non-refundable deposits to be paid before provision of the service or performance of the function;

(f) charges imposed on users of services or third parties: and

(g) liens on property in possession of the Government.

(2) The Minister may make regulations for the purpose of recovering costs incurred under this Act and the regulations and in particular for prescribing:

(a) the matters in respect of which costs are to be recovered;

(b) the costs to be recovered;

(c) the amount of those costs or the methods by which they are to be assessed; and

(d) the persons liable to payment of the costs and the circumstances in which payments are to be made.

(3) The Minister, in making any Order under this Act, may as part of the Order specify the costs to be recovered, the persons liable to meet the costs, and the method of recovery of those costs.

(4) Where any person requires an officer to carry out an inspection or treatment outside normal office hours, the additional expenses arising from the officer's work shall be borne by that person.

(5) If any person, by failing to comply with requirements causes an officer to incur an expense that would not otherwise have been incurred, the full amount of that expense shall be recoverable from that person.

22. Offences

Every person commits an offence who:

(a) contravenes any requirement or fails to observe and perform any duty or obligation a requirement may place on him;

(b) imports any goods presenting a risk or a potential risk, or exports any plant produce, otherwise than in accordance with requirements;

(c) knowingly receives any unauthorized import;

(d) without reasonably excuse, fails to comply with a reasonable direction or request from an officer;

(e) withholds relevant information, or provides an officer with false or misleading information;

(f) threatens, assaults, obstructs, or hinders any officer in the exercise or performance of his functions, powers, or duties; and

(g) removes any seized good from the control of an officer.

23. Penalties

Any person found guilty of an offence under this Act shall be liable to a fine not exceeding VT one million and imprisonment for a period not exceeding three years.

24. Administration

(1) The Director may from time to time determine the content and design of the forms, notices, records and other documents to be used for the purposes of the Act.

(2) Every determination made by the Director under this section shall be published in the Gazette prior to its being used.

25. Compensation

No person shall be eligible for the payment of compensation by the Government in recompense for losses incurred as a result of any action taken under the requirements except to the extent that compensation is specifically provided for in any particular provision, regulation, or Ministerial Order.

26. Liability

No action shall be brought against any officer in respect of anything done or omitted to be done by him in good faith in the execution or purported executions of his powers and duties under this Act.

27. Relationships with other Acts

(1) Nothing in this Act shall be construed to limit the provisions of the Animal Quarantine and Importation Act, the Customs Act, the Ports Act, the Civil Aviation Act, or the Post Office Act except to the extent that the prevention of goods presenting risks from entering Vanuatu shall have precedence over all matters save the safety of craft.

(2) The implementation of any power, duty, or requirement which is at variance with the provisions of the International Trade (Flora and Fauna) Act [Cap. 210] or the Convention on Biological Diversity (Ratification) Act [Cap. 217] shall require the prior agreement of the Minister responsible for the Act in each case.

28. Repeals and amendments

(1) The following are hereby repealed:

(a) The Rhinoceros Beetle (Prevention) Act [Cap. 28].

(b) The Import of Plants Act [Cap. 34].

(c) The Prevention of Spread of Noxious Weeds Act [Cap. 44].

(2) Section 22 of the Animal Importation and Quarantine Act [Cap. 201] is hereby amended as follows:

(a) in paragraph (f), delete the word “plants”; and

(b) in paragraph (j), delete the words “plants”.