

Plant Diseases (Phylloxera) Prohibition 2011 (No 1)

Disallowable Instrument DI2011—15

made under the

Plant Diseases Act 2002, section 8 (Prohibition of introduction etc of plants, insects, diseases and pests)

EXPLANATORY STATEMENT

The *Plant Diseases Act 2002* (the Act) is an Act for the control of diseases and pests affecting plants. The purpose of the Act is to protect the ACT's land resources from threats from diseases and pests. The Act promotes a strategic approach to plant disease and pest management.

Section 8 of the Act authorises the Minister to prohibit the introduction into, or transport within or through, the ACT of—

- (a) a plant, insect, disease or pest; or
- (b) anything that the Minister believes on reasonable grounds may contain a plant, insect, disease or pest;

if the Minister believes on reasonable grounds that the introduction or transport of the plant, insect, disease or pest is likely to increase the risk of a disease or pest becoming established, or spreading, in the ACT.

This disallowable instrument prohibits the introduction into, or transport within or through, the ACT of phylloxera.

Phylloxera is an insect pest that affects grapevines and grapevine material. It survives only on *Vitis* genus vines (grapevines and ornamental vines). As such, its spread can have an impact on the viticultural industry. Given the spread of phylloxera, it is understood that the ACT's vineyards have already voluntarily implemented procedures to manage its threat.

All of Australia's grapegrowing regions have been classified into zones under a National Phylloxera Management Protocol (the Protocol) developed by the National Vine Health Steering Committee (NVHSC). The ACT is in the Phylloxera Exclusion Zone (PEZ). This zone is an area recognised by the NVHSC as being free of phylloxera. The Protocol identifies the risk vectors that are required to be managed when moving wine grapes, grapevine material or samples, vineyard equipment and vehicles to prevent phylloxera

entering vineyards. The declaration is required to assist the maintenance of the Territory's PEZ status.

A permit may be obtained from the chief executive under section 6 to move prohibited items in or through the ACT subject to conditions. The conditions are specified in schedules 1 to 3 according to whether the items that are being moved are from a Phylloxera Infected Zone (PIZ), a Phylloxera Risk Zone (PRZ) or a PEZ. When issuing a permit, the chief executive must have regard to the Protocol and may not issue a permit if it will have an impact on the Territory's status as a PEZ.

The potential exists for some of the procedures in the Protocol to interfere with an individual's right to enter, leave and move freely within the ACT, protected by section 13 of the *Human Rights Act 2004*. The preventative measures outlined in the Protocol are specific to the management of phylloxera. The measures have been agreed to at the national level and are aimed at securing a legitimate aim – preventing the spread of phylloxera in the ACT. The measures to be taken are reasonably proportionate and will assist in safeguarding Australia's grape growing and winemaking industries.

The *Plant Diseases (Phylloxera) Prohibition 2011 (No 1)* revokes and replaces the *Plant Diseases (Phylloxera) Prohibition 2010 (No 1)*, which was notified on 30 September 2010. The prohibition is being remade to ensure that Australian Standard 4454 referred to in schedules 1 and 2 of the original disallowable instrument are effective in their application to this prohibition. Under section 47 of the *Legislation Act 2001* there is a requirement that when provision is made to apply a standard that standard is taken to be a notifiable instrument. However, Australian Standards are copyrighted material, which makes it necessary to displace the operation of section 47(5) of the *Legislation Act*. Section 47(7) of the *Legislation Act* authorises a disallowable instrument to provide that the requirements of section 47(5) of the *Act* do not apply to the relevant instrument.