

## BIOLOGICAL CONTROL BILL 1985

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### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The Land and Environment Court (Biological Control) Amendment Bill 1985 is cognate with this Bill.

This Bill complements, and is substantially the same as, the Commonwealth Biological Control Act 1984. The objects of the Bill are—

- (a) to provide an opportunity for equitably assessing proposed biological control activities and to ensure that they are, in relation to all parts of Australia, in the public interest by—
  - (i) requiring the unanimous approval of all Ministers comprising the Australian Agricultural Council to any biological control programme to be conducted under the proposed Act;
  - (ii) publishing proposals with a view to obtaining public comment;
  - (iii) where appropriate, ordering public inquiries to investigate and report on the implications of proposals; and
  - (iv) providing for review of administrative decisions;
- (b) to authorise the release of biological control agents and to ensure that, where biological control activities are approved in terms of the proposed Act, they are not subject to actions for damages or legal proceedings intended to prevent the activities from being undertaken;
- (c) to authorise existing biological control programmes (which may, in some cases, be subject to the assessment procedures applying to new proposals);
- (d) to provide for action to be taken in the event of emergencies developing which could be prevented by immediate implementation of biological control; and
- (e) to provide a nexus with the complementary Commonwealth legislation, and legislation to be enacted in the other States and the Northern Territory, to ensure that the administration and legal status of biological control has a uniform basis throughout Australia.

The Bill contains the following provisions:

### PART I—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day appointed by the Governor-in-Council.

Clause 3 (1) is an interpretation provision and includes the following definitions:

“agent application” refers to an application to have a biological control agent, such as an insect or a fungus, approved in terms of the proposed Act;

“agent recommendation” refers to the stage of decision making when the Australian Agricultural Council decides that there is sufficient merit in an agent application to proceed further in terms of the proposed Act;

“agent organisms” refers to agents, such as insects, fungi, etc., which are capable of exerting control over a target, such as a weed or an animal pest;

“control” is interpreted to cover all characteristics of the biological control process. Thus, numbers of weeds or pests may be reduced directly or indirectly (for example by reducing activity or fertility or by directly causing death) or by limiting their further growth;

“organism” excludes man, but includes dead organisms and matter discharged from organisms so as to accommodate biological control programmes such as the dung beetle programme. Although biological control programmes are characteristically successfully applied only to exotic target organisms, reference to indigenous organisms is included to cater for the possibility of control of domestic pests, such as the sheep blow-fly, becoming available;

“State” includes the Northern Territory;

“target application” has the same significance as “agent application”, except that target applications refer to targets such as weeds and animal pests;

“target recommendation” refers to a decision by the Council concerning the merits of a target application;

“target organisms” refers to weeds, pests and the like.

Clause 3 (2) introduces the principle that organisms shall be taken to cause harm if the control of those organisms would be for the public benefit.

Clause 3 (3) provides that an organism need not cause harm throughout the whole of the State for its control to come within the ambit of the proposed Act.

Clause 3 (4)–(6) are machinery provisions.

Clause 4 provides that biological control is confined to the control of organisms by living organisms of another kind, that is, natural competition within species and chemical control are not interpreted as biological control.

Clause 5 enables the declaration of Commonwealth or other State biological control laws (with the consent of the Ministers administering those laws) as "relevant laws" for the purposes of reciprocal provisions in the proposed Act.

Clause 6 provides that the proposed Act will bind the Crown.

Clause 7 ensures that proposals for biological control programmes other than those concerned with agriculture may be conducted under the proposed Act.

Clause 8 constitutes the Minister for Agriculture as the New South Wales Biological Control Authority.

Clause 9 allows the Authority to delegate certain of its functions to officers of the Department of Agriculture.

## PART II—TARGET ORGANISMS

Clause 10 provides that, subject to following the procedures set out in the Part, organisms may be declared to be target organisms, either at the initiation of the Council or on application made to the Authority.

Clause 11 provides that a person who considers an organism (e.g., a weed or pest) to be harmful may make a written application to the Authority requesting that the organism be declared a target organism. The application needs to provide sufficient information to enable the organism to be identified and to indicate why biological control is being suggested.

Clause 12 provides for the withdrawal of target applications at any time before they are referred to the Council.

Clause 13 requires the Authority to refer target applications to the Council except where other action is already being taken to obtain a declaration.

Clause 14 requires the Authority to notify an applicant of the Council's rejection of a target application and the reasons therefor.

Clause 15 provides that, where the Council unanimously recommends that an organism should be a target organism, notice of the proposal is to be published Australia wide. The purpose of advertising is to provide members of the public with an opportunity to give their views on the proposal to the Authority. The notices must provide certain information intended to make the issues clear and invite persons to make written submissions objecting to or supporting the proposal within 6 weeks, or longer if the Authority allows.

Clause 16 requires the Authority to consider submissions made in relation to a proposal to declare an organism as a target organism.

Clause 17 requires the Authority, after complying with the foregoing provisions, to consult the Council and consider other relevant material. If it is considered that persons or the environment may be adversely affected if the target organism were declared, a public inquiry may, subject to the unanimous approval of the Council, be ordered. The inquiry may be held by a Commission appointed under the proposed Act or by some other body established under an Act relating to environmental or economic matters. Where an inquiry is held, no further action can be taken under the proposed Act until a report as a result of the inquiry is made.

Clause 18 requires the Authority, after complying with the provisions of the Part and consulting the Council, to decide whether the target organism should be declared as such (thereby providing a basis to have relevant agent organisms considered in terms of Part III of the proposed Act). In making a decision concerning a declaration, the Authority must be satisfied that the target organism is capable of being controlled biologically and that it is causing harm. Furthermore, the authority must be satisfied that biological control of the target organism will be for the public benefit in as much as it will not cause any significant harm to any person or the environment, or if it does cause harm, the harm would be significantly less than if the target were not controlled by biological means. A declaration cannot be made without the unanimous approval of the Council. If a declaration is made, it must be published in the Gazette.

### PART III—AGENT ORGANISMS

Clauses 19–23 are essentially the same, in relation to agent organisms, as clauses 10–14 in relation to target organisms. However, an agent application can be made concerning only a target organism that has been declared, or is being considered, in terms of the proposed Act.

Clause 24 relates to the giving of notices of proposals to declare agent organisms and is essentially the same as clause 15 which applies to target organisms. However, there is a discretion as to whether an agent organism proposal should be published in newspapers, etc. Once a target organism has been declared, it is deemed to be in the public interest to control that organism by means of an agent organism and further advertisement may cause unnecessary costs and delays. The discretion to proceed with advertisement and, if appropriate, public inquiry remains available for those cases where the agent organism may possess properties on which public opinion should be sought.

Clauses 25 and 26 are essentially the same as clauses 16 and 17 which apply to target organisms but provision is made for the holding of inquiries concerning target organisms and the relevant agent organisms simultaneously where this is administratively convenient.

Clause 27 relates to the declaration of agent organisms and is basically the same as clause 18 (declaration of target organisms). In addition to the requirements applicable to target organisms, the Authority must be satisfied that biological control by the relevant agent organism would cause significantly less harm than if control were to be effected by other means, be they biological or otherwise. The Authority may attach conditions to the release of an agent organism, including, for example, conditions for ensuring that the physical release of the agents is conducted with due care by appropriate persons in specified areas, or for monitoring environmental effects of the release.

### PART IV—SPECIAL DECLARATIONS OF TARGET ORGANISMS

Clause 28 allows the Authority to make emergency declarations of target and agent organisms where the Authority is satisfied that an emergency exists because of the serious effects of an organism on the health of humans, animals or plants, the significant harm being caused to the economy or the significant damage being caused to the environment. The Authority must also be satisfied that the release of the agent organism would not have any significant adverse effects. The Council must be consulted and give its unanimous approval before an emergency declaration is made.

Clause 29 allows the Authority to declare organisms released before the commencement of the proposed Act, and the relevant target organisms, to be agent organisms and target organisms, respectively, for the purposes of the proposed Act. This action can be taken only if the Authority is satisfied that it is probable that the declarations could have been made had the proposed Act been in force before the release and the Council has unanimously approved of the declarations being made. The effect is to prevent litigation in the future in respect of such a release.

Clauses 30 and 31 make, in relation to proposed declarations of existing organisms under proposed clause 29, essentially the same provisions as to advertisement and the holding of inquiries as apply to the declaration of new target organisms and agent organisms. Subject to any recommendations of the Council, the powers are discretionary.

Clause 32 provides for the declaration in New South Wales of target and agent organisms which have been declared under the Commonwealth law or under other States' laws.

#### PART V—RELEASE OF AGENT ORGANISMS

Clause 33 authorises the release of declared agent organisms.

Clause 34 bars the institution or continuation of legal proceedings to prevent the release of declared agent organisms or to recover damages in respect of the release of declared agent organisms within the State. Actions for damages will, however, be available where the effects could have been, but were not, predicted at the time of release.

#### PART VI—BIOLOGICAL CONTROL UNDER LAWS OF ANOTHER STATE OR THE COMMONWEALTH

Clause 35 contains similar provisions to those in clause 34 but relates to the barring of actions in New South Wales courts in respect of the release of agent organisms in other States, or in Territories, under reciprocal legislation.

#### PART VII—INQUIRIES

Clause 36 provides for the appointment of Commissions to hold inquiries under the proposed Act and sets out the matters to be inquired into and provisions applicable to reports of inquiries. The Authority must consult the Council before appointing a Commission. A Commission is not subject to direction by the Authority or the Government.

Clause 37 enables the remuneration and allowances of Commissioners to be prescribed by regulation.

Clause 38 requires notice of inquiries to be advertised.

Clause 39 sets out the procedures relating to the holding of inquiries. Inquiries will be public unless the Commission otherwise directs.

Clause 40 gives a Commissioner power to summon witnesses.

Clause 41 provides a penalty where a witness fails to attend an inquiry.

Clause 42 empowers a Commissioner to administer an oath or take an affirmation.

Clause 43 provides a penalty for failure to take an oath or make an affirmation or for refusing or failing to answer questions, etc.

Clause 44 gives a Commissioner the same protections as apply to a Judge of the Supreme Court and gives to witnesses the same protections, and imposes on them the same liabilities, as apply to witnesses in proceedings before the Supreme Court.

Clause 45 provides penalties for the giving of false or misleading evidence.

Clause 46 provides a penalty for obstructing, hindering or disrupting an inquiry.

Clause 47 gives a Commissioner power to inspect, copy, etc., books or documents produced at an inquiry.

Clause 48 provides for the prescription of witnesses' travelling and other expenses.

Clause 49 provides penalties for any acts which may prejudice a witness before an inquiry (including the dismissal or threat of dismissal of an employee who has given, or proposes to give, evidence at an inquiry).

#### PART VIII—MISCELLANEOUS

Clause 50 provides that the proposed Act does not render illegal biological control programmes not carried out under the proposed Act. However, any biological control activity that is not considered and approved under the proposed Act remains open to common law actions.

Clause 51 provides that the Authority may, where the Council unanimously approves, revoke a declaration.

Clause 52 provides that agent organisms may continue to be released while a declaration remains in force.

Clause 53 provides for the service of documents on the Authority.

Clause 54 provides for appeals to the Land and Environment Court against a number of specified decisions of the Authority under the proposed Act.

Clause 55 empowers the making of regulations under the proposed Act.

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# BIOLOGICAL CONTROL BILL 1985

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## NEW SOUTH WALES

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