

Apiaries Amendment Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Apiaries Act 1985* (***the Act***), including amendments that:

- (a) abolish the office of registrar of beekeepers and provide for the functions of the registrar to be exercised by the Director-General (***the Director-General***) of the Department of Primary Industries (***the Department***), and
- (b) provide for the relocation or forfeiture of beehives in certain circumstances, and
- (c) allow certain persons (including inspectors under the Act, police officers and local council employees acting in their capacity as such) to inspect, and take copies from, the register of beekeepers free of charge, and
- (d) repeal a provision restricting the introduction of bees into New South Wales (while retaining a provision that permits the Minister to prohibit the importation of bees into New South Wales), and
- (e) confer on inspectors under the Act a power to require certain persons on premises on which activities connected with beekeeping are being carried on to produce to the inspector any records or documents under the person's control that relate to beekeeping, and a power to make copies of, or take extracts from, the records and documents so produced, and
- (f) provide for the exclusion of personal liability of certain persons executing the Act, and
- (g) transfer certain matter from the regulations to the Act, and
- (h) are consequential or savings and transitional amendments.

The Bill also makes consequential amendments to the *Apiaries Regulation 2005* (***the Regulation***) and the *Rural Lands Protection Act 1998*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Apiaries Act 1985* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Apiaries Regulation 2005* set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendment to the *Rural Lands Protection Act 1998* set out in Schedule 3.

Clause 6 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Apiaries Act 1985

Schedule 1 [1] omits all references to the registrar of beekeepers (except in provisions amended elsewhere in the Schedule) and replaces them with references to the Director-General. This is in consequence of **Schedule 1 [6]**, which repeals section 4 of the Act (which requires there to be a registrar of beekeepers).

Schedule 1 [2]–[4] amend section 3 (Definitions) of the Act. **Schedule 1 [2]** amends the definition of *apiary product* so as to include queen candy within the meaning of that term. **Schedule 1 [3]** omits the definitions of *brand* and *registrar*. **Schedule 1 [4]** inserts definitions of *direct* and *queen candy* for the purposes of the Act. **Schedule 1 [15]** makes an amendment in consequence of the insertion of the definition of *direct*.

Schedule 1 [5] inserts proposed subsection (6) in section 3 of the Act. The proposed subsection makes it clear that notes included in the Act do not form part of the Act.

Schedule 1 [7] omits a requirement that certain particulars be “prescribed”. The proposed amendment makes provision in the Act itself for the particulars of an applicant for registration as a beekeeper that are to be entered in the register of beekeepers once registration is granted.

Schedule 1 [8], [12], [13] and [28] change the terminology relating to the identification of beehives so as to refer to identifying matter being “displayed”, rather than “branded”, on beehives.

Schedule 1 [10] repeals and re-enacts section 13 (1) and (2) of the Act. Section 13 provides for the keeping of a register of beekeepers. As re-enacted, the subsections require the register to be kept by the Director-General in such form as he or she considers appropriate (rather than to be kept by the registrar in such form as the Minister approves or directs).

Schedule 1 [11] inserts proposed subsections (8) and (9) in section 13. Proposed section 13 (8) provides that the requirement that a fee be paid for inspection and copying of the register of beekeepers does not apply to an *authorised officer* (as defined in proposed section 13 (9)) acting in his or her capacity as such.

Schedule 1 [14] inserts proposed section 15A (Forfeiture of beehives in certain cases) in the Act. The proposed section provides for the seizure of beehives and their forfeiture to the Crown. It sets out the action that must be taken before an unidentified beehive on private land, or an identified beehive on public land, is forfeited, but provides for the immediate forfeiture of unidentified beehives on public land.

Schedule 1 [16] inserts proposed subsections (6A) and (6B) in section 18 of the Act (which is concerned with the Director-General’s power to restrict beekeeping on certain premises). Proposed subsection (6A) provides that the occupier of premises in respect of which the Director-General has made an order prohibiting the keeping of bees, or the keeping of more than a specified number of beehives, is taken not to have contravened the order if the occupier satisfies the Director-General that the occupier does not own any beehives on the premises and has not given permission for the beehives (or beehives in excess of the number specified in the order) to be kept on the premises. Proposed subsection (6B) provides that the occupier must provide the Director-General or an inspector with such information as the occupier may have as to the identity and residential address of the owner of the beehives.

Schedule 1 [17] inserts proposed subsection (9) in section 18 of the Act. The proposed subsection makes it an offence for the occupier of premises to grant permission to any person to keep bees, or to keep a number of beehives, on the premises contrary to an order in force under section 18.

Schedule 1 [18] inserts proposed section 18A (Power of inspectors to relocate beehives in emergency) in the Act. The proposed section provides that an inspector may relocate beehives from one premises to another (and request the Director-General to make an order under section 18 with respect to the premises from which the beehives were removed) if the inspector believes on reasonable grounds that the keeping of the bees on the premises is such a danger to public health or public safety as to warrant the removal.

Schedule 1 [19] omits section 25 (Restriction on introduction of bees into New South Wales) from the Act. There remains a power under section 26 of the Act for the Minister, from time to time, to prohibit, either absolutely or subject to specified exceptions, the importation of bees and associated matter.

Schedule 1 [9] and [21] make consequential amendments.

Schedule 1 [20] inserts proposed section 32A (Determination of compensation) in the Act to make explicit the fact that the question of whether compensation is payable under Part 5 of the Act to a

particular owner of bees, beehives or appliances (and, if so, the amount of the compensation and associated matters) is to be determined by the Director-General. At present, that function of the Director-General is merely implied—see section 35 (1) (h) of the Act.

Schedule 1 [22] inserts a note to section 35 (Applications for review) to explain in general terms the effect that an application under that section (to the Administrative Decisions Tribunal) has on the operation of the decision in respect of which the review is sought.

Schedule 1 [23] inserts proposed subsection (1B) in section 38 of the Act. The proposed subsection confers additional powers on inspectors under the Act. The proposed new powers are a power to require certain persons on premises on which activities connected with beekeeping are being carried on to produce to the inspector any records or documents under the person's control that relate to beekeeping, and a power to make copies of, or take extracts from, the records or documents so produced.

Schedule 1 [24] amends section 38 (10) so as to provide that a person who fails to comply with the proposed requirement to produce records or documents is to be taken to be guilty of the offence of intentionally obstructing or hindering an inspector under section 40 of the Act.

Schedule 1 [25] amends section 39 (Power to require name and place of residence and location of beehives) of the Act so as to empower an inspector who finds a person committing an offence against the Act (or suspects on reasonable grounds that the person has committed or attempted to commit such an offence) to require the person to specify, as well as the person's name and address, the location of all apiaries in which bees are kept by or on behalf of the person.

Schedule 1 [26] makes an amendment by way of statute law revision.

Schedule 1 [27] inserts proposed section 46A (Exclusion of personal liability) in the Act. The proposed section confers exclusion from personal liability on certain persons in respect of things done or omitted to be done in good faith for the purposes of executing the Act.

Schedule 1 [29] amends Schedule 5 (Savings and transitional provisions) to the Act so as to permit the making of savings and transitional regulations in consequence of the amendments made by the proposed Act.

Schedule 1 [30] makes a consequential amendment.

Schedule 1 [31] inserts savings and transitional provisions consequent on the amendments replacing the registrar of beekeepers with the Director-General.

Schedule 2 Amendment of Apiaries Regulation 2005

Schedule 2 [1] repeals the definition of *queen candy* in clause 3 (Definitions) of the Regulation. The definition is proposed to be inserted in the Act by Schedule 1 [4].

Schedule 2 [2] repeals clauses 4 (Queen candy) and 12 (Prescribed officers). Clause 4 is proposed to be incorporated in the Act by Schedule 1 [2]. Clause 12 prescribes officers for the purposes of section 25 of the Act. That section is proposed to be repealed by Schedule 1 [19].

Schedule 2 [3] repeals clause 7 (1) of the Regulation in consequence of the amendment proposed to be made to section 8 (3) (a) of the Act by Schedule 1 [7]. Clause 7 (1) prescribes particulars for the purposes of section 8 (3) (a).

Schedule 2 [4] repeals clause 10 (2) of the Regulation, which prescribes a requirement for the purposes of section 15 (2) of the Act, relating to the identification of beehives. A similar requirement is proposed to be incorporated in the Act by Schedule 1 [13].

Schedule 3 Amendment of Rural Lands Protection Act 1998

Schedule 3 amends section 125 (4) of the *Rural Lands Protection Act 1998* so as to include in that subsection references to sections 15A and 18A of the *Apiaries Act 1985* (which are proposed to be inserted in the latter Act by Schedule 1 [14] and [18], respectively). The proposed amendment will ensure

that section 125 (which empowers rural land protection boards to impound bees and beehives in certain circumstances) will not limit or affect the powers of inspectors under section 15A or 18A of the *Apiaries Act 1985*.