

Exotic Diseases of Animals Amendment Bill 2008

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Exotic Diseases of Animals Act 1991* as follows:

- (a) to replace the concept of “exotic disease” with that of “emergency animal disease” to reflect the fact that the animal diseases that need to be dealt with by way of the emergency powers under the Act are not necessarily exotic (or non-endemic) diseases,
- (b) to modify and enhance the measures that may be taken under the Act for controlling, eradicating and preventing the spread of emergency animal diseases,
- (c) to extend the existing requirement for veterinary practitioners to notify an inspector under the Act if an animal or animal product is infected with an emergency animal disease so that the requirement applies to certain other animal diseases,
- (d) to modify the grounds on which compensation is payable to the owner of an animal that has died of an emergency animal disease,
- (e) to enable offences under the Act to be dealt with summarily and to enable penalty notices to be issued for certain offences,
- (f) to make other amendments of a minor or administrative nature or that are consequential on the other amendments made by the proposed Act.

The Bill also amends other Acts (as set out in Schedule 2):

- (a) to extend the limitation period for commencing proceedings for offences under certain primary industry legislation, and
- (b) to enable fees to be charged for the provision of services under certain primary industry legislation, and
- (c) to make other amendments of a minor or consequential nature.

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Exotic Diseases of Animals Act 1991* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after the proposed Act has 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 Exotic Diseases of Animals Act 1991

Emergency animal diseases

Schedule 1 [5] provides for a new term to describe the animal diseases to which the Act applies, namely **emergency animal disease**, so as to reflect the nature of the diseases concerned. Some of these diseases may not necessarily be exotic or non-endemic but are diseases in respect of which the emergency powers under the Act need to be exercised. The Minister will, as is currently the case, be able to declare animal diseases to be emergency animal diseases by order published in the Gazette.

Schedule 1 [1] replaces the term “exotic disease” throughout the Act with the new term and **Schedule 1 [2]** changes the name of the Act to reflect the wider operation of the Act. **Schedule 1 [49] and [50]** also change the name of the Fund established under the Act to reflect the change in terminology. **Schedule 1 [7], [51], [52], [60] and [71]** are consequential amendments.

Duty to notify

At present under section 7 (b) of the Act, a veterinary practitioner must notify an inspector if the practitioner suspects that an animal (or animal product) is infected with an exotic disease (which will now become a requirement relating to an emergency animal disease). **Schedule 1 [6]** extends this requirement to notify so that it also applies when the practitioner suspects that an animal or product is infected with a disease that is not an emergency animal disease but which the practitioner suspects is a new or emerging disease, or is not an endemic disease, or does not usually occur in the animal being examined.

Measures for controlling, eradicating and preventing the spread of emergency animal diseases

Schedule 1 [8] provides that a declaration by the Minister of an infected place or an infected vehicle must identify the classes or descriptions of animals and other things affected by the declaration. **Schedule 1 [9]** is a consequential amendment.

Schedule 1 [10], [11], [13], [18], [22], [30], [31] and [36] will enable action to be taken under the Act in respect of contaminated soil. At present under the Act, the power to prohibit and restrict the movement of things is limited to animals, animal products, fodder, fittings and vehicles.

Schedule 1 [12] restates, as a consequence of other amendments made by the proposed Act, a provision that requires movements in and out of infected places to be made only through points specified in a notice issued by an inspector.

Schedule 1 [16] provides that an area restriction order made by the Minister under section 20 of the Act may direct all or any specified persons or class of persons within a restricted area to take certain measures specified in the order (at present, such an order may only be made in relation to the owners or persons in charge of animals and things within a restricted area).

Schedule 1 [19] provides that the declaration by the Minister of a control area under section 21 of the Act must only identify the boundaries of the control area and not the classes or descriptions of animals or animal products that are affected by the declaration.

Schedule 1 [20] provides for control orders under section 22 of the Act to be made by the Minister instead of being made by an inspector at the direction of the Minister. At present, a control order can prohibit, regulate or control certain activities and movements in the control area to which it relates and require persons to take certain measures.

Schedule 1 [23] is a consequential amendment.

Schedule 1 [21] provides that the operation of a control order is not restricted to specified animals or animal products but can apply to all animals or animal products in the control area to which the order relates.

Schedule 1 [24] and [26] provide for the issuing of permits authorising any activity that is the subject of a control order. **Schedule 1 [27]** provides that a permit can, without limiting the basis on which permits are granted, be granted generally so that it applies to a specified class of persons.

Schedule 1 [28] provides that an inspector may vary or revoke a general permit by a notice published on the Department of Primary Industries' website.

Schedule 1 [32] and [33] enable the Minister to order the destruction of any domestic animal in a declared area (ie, an area declared under Part 3 of the Act to be an infected place, restricted area or control area) if it is necessary to do so to prevent the spread of an emergency animal disease. Because the measure is designed to create a buffer zone between an infected area and non-infected areas, the Minister may order the destruction of an animal even though it is not infected by an emergency animal disease. The owner of any such animal may be compensated under Part 7 of the Act.

Schedule 1 [34] is a consequential amendment.

Schedule 1 [35] makes it clear that a quarantine order under section 35 of the Act may apply to any part of any premises or place. **Schedule 1 [37]** requires a quarantine order to identify the classes or descriptions of the animals or other things to which the order relates.

Schedule 1 [38] provides that a disinfection order under section 39 of the Act may apply to persons leaving as well as entering any premises, place or vehicle.

Schedule 1 [43] makes it clear that the power of inspectors under section 45 of the Act (eg such as the power to enter and search premises) may be exercised in relation to premises that have been the subject of a declaration of a restricted area within the previous 2 years.

Compensation of owners

At present under Part 7 of the Act, the owner of any domestic animal or property that has been destroyed under the Act, or that has died of an exotic disease, may claim compensation for that loss.

Schedule 1 [55] modifies the grounds on which compensation is payable to the owner of an animal that has died of an emergency animal disease (as opposed to being destroyed under the Act for the purposes of controlling, eradicating or preventing the spread of such a disease) by creating 2 classes of "compensable disease". In order to be compensated in relation to a "class A compensable disease", the owner is required (as is currently the case under section 55 of the Act) to notify the Director-General or an inspector of the death of the animal and the Chief Veterinary Officer also needs to certify that the animal has died of the compensable disease. In the case of a "class B compensable disease", the same requirements apply but there must be no unreasonable delay in reporting the death of the animal and the CVO must certify that the destruction of the animal would have been required had it not died. The amendments do not affect the existing arrangements for compensating owners when an animal (or any property) is destroyed in accordance with the Act.

Schedule 1 [53], [54] and [56] are consequential amendments.

Miscellaneous amendments

Schedule 1 [3], [4], [17], [29], [39]–[42], [44]–[48], [57], [58], [63], [66] and [70] are minor amendments that standardise certain terms and expressions in the Act for the purposes of consistency.

Schedule 1 [14], [15] and [25] provide for certain notices and orders under Part 3 of the Act to be published on the Department of Primary Industries' website as an alternative to being published in a local newspaper. Any existing requirement for such orders to be published in the Gazette is not affected.

Schedule 1 [59] enables the regulations to prescribe fees that may be charged for services provided under the Act, such as permits to move into, within or out of declared areas. A fee cannot be charged in respect of the movement of persons, animals or other things within the same property.

Schedule 1 [61] makes it an offence to make a false or misleading statement when applying for a permit or other authorisation under the Act or when complying with a requirement to provide information.

Schedule 1 [62] provides for the offences under the Act to be dealt with summarily before the Local Court or the Supreme Court. The limitation period for commencing proceedings will be 2 years and the maximum monetary penalty that the Local Court may impose will be \$11,000. The amendment also enables certain offences under the Act or the regulations to be dealt with by way of penalty notice.

Schedule 1 [64] and [65] provide that the protection given under section 76 of the Act in relation to disease control programs under the Act applies not only in relation to outbreaks in New South Wales but also to outbreaks occurring elsewhere in Australia.

Schedule 1 [67] removes an obsolete savings provision.

Schedule 1 [68] and [69] insert savings and transitional provisions (including the power to make regulations of a savings or transitional nature) consequent on the enactment of the proposed Act. In particular, any animal disease that is currently declared by Ministerial order under the Act to be an exotic disease is taken to be an emergency animal disease for the purposes of the Act.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Agricultural Livestock (Disease Control Funding) Act 1998* to update the definition of **disease** in that Act to reflect the changes made to the *Exotic Diseases of Animals Act 1991* in Schedule 1.

Schedule 2.2 [1] and [2] amend the *Apiaries Act 1985* to enable a fee to be charged for the issuing of a certificate of registration as a beekeeper under that Act and for the issuing of a fresh certificate on the renewal of registration.

Schedule 2.2 [3] and [4] extend the limitation period for commencing proceedings for offences under the Act and the regulations to 2 years.

Schedule 2.2 [5] removes an obsolete provision relating to the payment of fees into the Consolidated Fund (which is already required under the *Constitution Act 1902* and is subject to the operation of working accounts under section 13A of the *Public Finance and Audit Act 1983*).

Schedule 2.3 amends the *Exhibited Animals Protection Act 1986* to extend the limitation period for commencing proceedings for offences under the Act and the regulations to 2 years.

Schedule 2.4 amends the *Fines Act 1996* as a consequence of the amendment made by **Schedule 1 [62]** to the proposed Act.

Schedule 2.5 amends the *Non-Indigenous Animals Act 1987* to extend the limitation period for commencing proceedings for offences under the Act and the regulations to 2 years.

Schedule 2.6 amends the *Noxious Weeds Act 1993* to extend the limitation period for commencing proceedings for offences under the Act and the regulations to 2 years.

Schedule 2.7 [1] amends the *Plant Diseases Act 1924* to extend the limitation period for commencing proceedings for offences under the Act and the regulations to 2 years.

Schedule 2.7 [2] will enable the regulations to prescribe fees that may be charged for the provision of services under the Act.

Schedule 2.8 [1] amends the *Stock Diseases Act 1923* to extend the limitation period for commencing proceedings for offences under the Act and the regulations to 2 years.

Schedule 2.8 [2] will enable the regulations to prescribe fees that may be charged for the provision of services under the Act.