

BIOSECURITY BILL 2014

Bill introduced on motion by Ms Katrina Hodgkinson, read a first time and printed.

Second Reading

Ms KATRINA HODGKINSON (Burrinjuck—Minister for Primary Industries) [4.08 p.m.]: I move:

That this bill be now read a second time.

The biosecurity status of New South Wales is the envy of the world, and it is crucial that we maintain this status to protect our primary industries sector from pests, diseases and weeds. The Biosecurity Bill 2014 is a single piece of modern legislation that will give New South Wales the essential tools and powers to manage pests, diseases, weeds and contaminants and minimise biosecurity threats to the New South Wales economy, environment and community. It will ensure we can respond efficiently and flexibly to biosecurity risks, regardless of whether it is an emergency or an ongoing management issue. I have spoken on many occasions about the seriousness of biosecurity risks not only within this State but across our nation.

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A major biosecurity event can have far-reaching implications, from on the farm to the entire nation's economy, through trade restrictions and implications. For example, the infestation of red imported fire ant in south-eastern Queensland has severely impacted on trade in fodder and nursery products from the infested area. Left uncontrolled, it can result in major impacts on people's lives and recreational pursuits. It has cost the Australian and State governments more than \$400 million in eradication costs to date and has the potential to cost the Australian economy \$8.5 billion over 70 years if not controlled.

Closer to home, last year an outbreak of the highly pathogenic H7 avian influenza on two farms in the Central West led to the destruction of half a million layer hens. And who can forget the equine influenza outbreak in 2007 and 2008, which temporarily shut down the racing industry and did terrible things for pony clubs and show societies? These biosecurity outbreaks are serious and have far-reaching implications, which is why it is crucial we have a legislative framework in place that is modern and responsive. In 2013 I released the NSW Biosecurity Strategy, which outlined a clear vision for a more streamlined, effective and integrated biosecurity system. The strategy is underpinned by the recognition that biosecurity is a shared responsibility. This means that everyone has a responsibility to protect our economy, environment and our communities from the harmful impacts of plant and animal pests and diseases, weeds and contaminants.

This bill supports the nationally agreed principle that biosecurity is indeed a shared responsibility between governments, industries and individuals. While government is not solely responsible for biosecurity, it does have some specific responsibilities such as providing the legislative framework that I am presenting today. The primary objective of the bill is to provide modern legislation to better manage biosecurity risks in New South Wales. It provides a framework for the prevention, elimination, minimisation and management of biosecurity risks. The bill adopts a risk-based

approach for biosecurity. People and organisations with biosecurity duties, including government, will be expected to evaluate biosecurity risks posed and to develop appropriate solutions to address those risks.

Science and intelligence will continue to be used to identify, assess and prioritise risks. Pests, weeds and diseases do not recognise jurisdictional boundaries or fences. It is therefore crucial that we adopt a tenure-neutral approach to management and have legislation that is compatible with neighbouring jurisdictions. We also need to be working together at a regional level to achieve shared outcomes as efficiently and effectively as possible. These principles form the cornerstone of this bill. As part of the extensive industry and community consultation process on the framework for this bill, stakeholders identified that biosecurity is fundamentally important because it is the biggest threat to agriculture, it can result in a loss of competitive edge, active management is required to protect our natural environment, current legislation can result in business and government being buried in red tape and it is a protection against irreversible damage.

Stakeholders also noted that industry codes of practice are the most effective process to manage risk and encourage innovation supported by government regulation to enforce compliance. This bill responds to all those points. The passage of this bill will pave the way for the repeal, either in whole or in part, of 10 full Acts and sections of four other Acts with a single Act that has the flexibility to effectively respond to all biosecurity situations. This will equate to the repeal of over 570 years worth of legislation, significantly reducing the red tape impact on our farmers. Authorised officer powers will be consistent across the biosecurity spectrum and government, industry and the community can work in partnership to determine priorities and management responses. Our world-class biosecurity system will be strengthened and our State cemented as a leader in biosecurity.

The bill provides modern tools that will minimise response delays and ensure responsibilities are clear during an emergency. It will help New South Wales maintain its enviable market access and reputation for high-quality, safe and disease-free food and fibre. The bill will importantly complement the New South Wales Government's Local Land Services reform, which has brought together the State's agricultural production advice, biosecurity, natural resource management and emergency management into a single customer-focused organisation. Working closely with the Department of Primary Industries, Local Land Services is accountable for delivering services to protect industries from pests and disease and help communities respond to emergencies. Local Land Services and its associated planning activities will reflect national priorities in relation to biosecurity and emergency management, such as the National Livestock Identification System [NLIS] and the Intergovernmental Agreement on Biosecurity.

Where appropriate, this bill will provide statutory support to underpin actions required under regional plans, for example, obligations outlined in any adopted regional strategic plans for widespread weeds. These regional plans must be approved by the Minister for Primary Industries and, where there are natural resource management components in the plans, the concurrence of the Minister for the Environment is required. When we came to government we said we would make New South Wales number one again. This Biosecurity Amendment Bill delivers on goal 28 of our 10-year plan to achieve that—the need to ensure that New South Wales is ready to deal with major emergencies and natural disasters. A priority action under this goal is to develop nationally

consistent plant and animal biosecurity legislation and implement it by 2015.

Following the successful passage of this bill, a further bill will be brought to this place at a later date that will provide for the repeal or partial repeal of the current relevant Acts and the enactment of any necessary savings, transitional and consequential provisions. This bill has been brought forward so there is no delay in progressing the development of the subordinate legislation with stakeholders and thus the commencement of this important reform. For biosecurity management to be effective and timely, it is important that everyone accepts responsibility and actively participates. The bill defines key concepts such as biosecurity matter, carriers and biosecurity impact. The bill includes a biosecurity duty that requires any person who deals with biosecurity matter or a carrier and who knows, or ought reasonably to know, the biosecurity risk posed or likely to be posed, to ensure that as far as reasonably practicable, the biosecurity risk is prevented, eliminated or minimised.

The bill provides clear guidance on what is meant by "as far as reasonably practicable". In practical terms what this means is, for example, a person should not allow weeds to spread to a neighbouring property. However, if certain weeds are endemic and widespread, there is little risk that the weeds would have an adverse impact on surrounding properties so a person's duty to prevent or minimise the risk is proportionate to the impact. This could mean that the person would not have to do anything or just control the weed along his or her boundary. However, if a particular weed has been determined to be a priority for a region, the occupier should comply with the management arrangements that are in place to eradicate or suppress the spread of that weed. Where a property has signposted instructions on how to comply with a quality assurance program that it is a part of, or certain sanitary steps are required to be performed prior to entry, or if certain areas are off limits to unauthorised entries, any person entering that property or area will be on notice about the biosecurity risks. If that person deals with biosecurity matter on the property and fails to take all reasonably practicable measures to discharge the general biosecurity duty in relation to that dealing, that person may be liable to prosecution.

The bill provides for mandatory measures to be included in regulation with regard to particular biosecurity matter. For example, this could include things such as how to manage a certain weed, restrictions on swill feeding of pigs, the type of information that must be captured and provided in relation to the movement of stock or how agricultural machinery should be cleaned before leaving a particular area. Industry standards may also be developed that provide clear direction on how a product should be treated before it is sent to market or how enclosures should be constructed if non-indigenous animals are kept or where a vehicle may be parked overnight if it is carrying bees.

The bill does not require prescriptive lists before action can be taken to respond to a risk. The bill provides the tools to allow a biosecurity response to be mounted regardless of whether something is included on a list. Rather than this list-based approach, the response will be dictated by the level of risk posed. This means that preventative or mitigation action can be taken immediately reducing the risk of spread and impact in that initial critical period. Longer-term management controls can also be implemented regardless of whether the matter in question is on a list. This will result in less confusion for stakeholders and improved administrative and operational efficiencies. There will, however, be a list of prohibited matter included in a schedule to the Act that can be amended by regulation. This list will include biosecurity matter that is prohibited in the whole of the State and

also biosecurity matter that is prohibited in only part of the State.

Prohibited matter is matter that we do not have or do not want in New South Wales or in a part of the State because it will result in a significant adverse impact on the economy, environment or community, for example, foot and mouth disease, parthenium weed and highly pathogenic avian influenza. Matter that we know is here but only presents occasionally, such as anthrax and tick fever, is also listed as prohibited matter, as it can have a significant adverse impact on the economy, environment or community, and active programs are in place to eradicate every new outbreak of these problem pests and diseases. Owners, occupiers and persons in charge of premises or things where prohibited matter is present or suspected to be present will have to notify the Department of Primary Industries immediately.

This notification obligation will also apply to professionals who are consulted about the prohibited matter. These people will also have a duty to ensure that the biosecurity risk is prevented, eliminated or minimised, although this duty will usually be discharged in consultation with the Department of Primary Industries. The bill also provides that it is an offence for any person to deal with prohibited matter. There was some discussion about whether a permitted list would be a more efficient way to manage biosecurity matter. Consistent with the Government's response to the weeds review, we believe the tools prescribed in this bill are a much more effective and efficient way to manage risk. Just because something is not on the prohibited matter list does not mean it can necessarily be imported into New South Wales.

There are other tools that can be used to prevent or limit its entry. The bill contains a number of tools for managing biosecurity risks. I will start with emergencies. Strong and decisive action is required immediately and it is appropriate that government lead such a response. If such action was not taken, highly pathogenic and contagious diseases like avian influenza or mad cow disease could quickly spread and cripple industries, with devastating impacts on the environment and economy. The bill provides that the Secretary of Trade and Investment may make an emergency order if satisfied or if it is reasonably suspected that there is a current, suspected or imminent biosecurity risk that may have a significant biosecurity impact.

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Also, if an authorised officer reasonably suspects that an emergency is happening or is imminent, he or she will be able to activate some limited emergency powers until an emergency order is made by the secretary. A Hendra outbreak is a classic example of where these powers may be exercised. Hendra virus is zoonotic and often fatal to humans. Accordingly, if an infection was suspected in a horse, measures to restrict access by humans to infected or at-risk animals would immediately be necessary. As first responders to an emergency, these powers are considered appropriate. Training and governance arrangements will be implemented to ensure these powers are used as intended. The secretary may make an emergency order for up to six months, with the first objective being to isolate an affected or potentially affected area, limit the spread of the emergency biosecurity matter and, ultimately, eradicate it.

Similar to what occurred when we had that dreadful outbreak of equine influenza in 2007, the emergency order will allow for zones to be established so that less stringent rules can apply where appropriate. Emergency permits may also be issued to allow for restricted movement into and out of

the area if considered appropriate. These measures will allow the experts to get on with the job of eradicating the risk while minimising the disruption to business and the community as much as possible. The second tool that can be activated to allow a rapid response where a biosecurity risk or impact is identified, or in those instances where short-term management of a biosecurity risk or impact is required, is a control order.

The primary aim of a control order is to eradicate the biosecurity matter, although an order may also be made for preventative or interim measures. A control order can apply to the whole of the State or to parts of it. The order will be issued for a period considered necessary to achieve an outcome but no longer than five years. Five years is considered appropriate as some plant species have varying germination periods due to physiological differences and environmental factors. Success cannot be measured until that cycle is complete. A control order can be extended if necessary. For example, parthenium weed can drop 25,000 seeds per plant every four weeks if left unhindered. It could be up to seven years before that seed bank could be considered exhausted. Chilean needle grass seed typically remains viable for four years. If we stop management action too early the program may lose momentum and compromise the end goal of eradication.

Biosecurity zones may be made to manage, reduce or eradicate a biosecurity risk or impact over an extended period. A biosecurity zone can also apply to the whole of the State or to part of it. The actions and limitations that may be required within a zone are similar to those for a control order. The main difference between a biosecurity zone and a control order is that biosecurity zones are primarily for long-term management of particular biosecurity matter, and that they are made by regulation and therefore subject to the Subordinate Legislation Act 1989. A biosecurity zone could be used to manage Queensland fruit fly, an endemic pest in much of eastern Australia that can seriously impact market access.

While Queensland fruit fly is not a regulated pest in the majority of New South Wales, it is regulated in the Greater Sunraysia Pest Free Area in south-western New South Wales and north-western Victoria, where there is large-scale production of citrus, table grapes and stone fruit destined for interstate and export markets. These three industries have agreed to partner with the New South Wales and Victorian governments to fund an ongoing program to control fruit flies so that export market access opportunities can be maximised. A biosecurity zone could restrict the movement of potential carriers of Queensland fruit fly, provide for an ongoing monitoring program to determine whether infestations of Queensland fruit fly have occurred, and authorise treatment of those infestations.

Another important tool in this bill is the ability to issue permits for appropriate actions that would otherwise be contrary to the Act. For example, in relation to dealing with prohibited matter, or a dealing that would otherwise contravene an order, regulation or condition imposed under the bill, a permit may be issued. A permit may be issued either to an individual or to a group of people. Approval to grant a permit will be commensurate with the situation and level of risk, and will include appropriate conditions. In addition to control orders and biosecurity zones, where the mandatory requirements for mitigation and management of specific biosecurity risks are specified, the bill provides for the adoption of regulatory standards.

These standards could include industry codes of practice that provide details on how to identify hazards and manage risks in relation to particular biosecurity matter—for example, hygiene measures for dealing with sick or dead birds or cattle, or hygiene practices that must be followed on poultry farms and in piggeries. In some instances compliance with these regulatory standards may be sufficient to discharge a person's general biosecurity duty; however, in other cases they may specify that they are minimum standards and that further risk measures may be required. As happened in the development of the framework for this bill, biosecurity zones and other regulations will be developed in consultation with relevant stakeholders, including relevant levels of government, community, industry and professional associations.

As always, any regulations made under this bill will also be subject to parliamentary scrutiny. The Department of Primary Industries will continue to implement a risk-based approach to compliance and enforcement in line with the quality regulatory services initiative. Authorised officers will continue to play a crucial role in promoting biosecurity as a shared responsibility, identifying risks and assisting people in the discharge of their biosecurity duties and other obligations under this bill. Powers of authorised officers in this bill are consistent with those available under current legislation. There has been no softening of these powers and there are clear limitations prescribed as to when powers can be exercised. Authorised officers will continue to have balanced and flexible enforcement tools available, which range from undertakings, directions and orders to penalty infringement notices.

Offences in the bill reflect the high risk and impact of someone not doing the right thing, including executive liability offences, and are based on two categories or tiers. A category 1 offence is one that is committed intentionally or recklessly and attracts a higher penalty than a category 2 offence, which is a strict liability offence. Authorised officers may be appointed by the Secretary to NSW Trade and Investment and, in the case of weeds, by a local control authority consistent with current arrangements under the Noxious Weeds Act 1993. Registering people who deal with certain biosecurity matter such as bees or non-indigenous animals, provides an opportunity to better manage the risk imposed by those animals through stronger tracing capacity, advisory opportunities and the ability to notify about relevant developments in a timely manner.

Registration provisions are available under some of our current legislation. This bill will consolidate the best sections of those requirements and ensure that they can be applied to a variety of biosecurity matters or dealings as appropriate. The bill includes a provision that may be issued via condition of registration, if appropriate, to require a registered person or entity to take out and maintain a policy of insurance, or evidence of alternative arrangements, to ensure continuity of care for a registered animal in cases where the registered person is no longer able to provide that care. The bill also makes provision for dealings with biosecurity matter that will be prohibited. These are set out in schedule 3 to the bill and include dealing with a non-indigenous animal that is currently classified under the Non-Indigenous Animals Act as a category 1a or 1b animal. While new registrations with respect to these animals will be prohibited, it is proposed that the second bill I referred to earlier will include appropriate transitional provisions to enable persons who currently have a licence to keep a category 2 and category 3a animal.

The bill will also allow for recognition of registrations in other jurisdictions—for example, short-term keeping of bees that are registered in Victoria, or if an animal needs to be brought into New South Wales for veterinary care. This can be accommodated either via an exemption or the issue of a permit. The bill also includes a regulation-making power that will ensure that New South Wales can continue to recognise existing schemes such as the National Livestock Identification Scheme [NLIS], property identification codes and registers and for additional schemes to be implemented in the future if identification and tracing schemes are required for other biosecurity matter or carriers of biosecurity matter.

Other sections of the bill outline interstate certification assurance and audits. They also outline the fact that New South Wales is a signatory to the Intergovernmental Agreement on Biosecurity that was developed to improve the national biosecurity system by identifying the roles and responsibilities of governments. It outlines the priority areas for collaboration to minimise the impact of pests and disease on Australia's economy, environment and the community. All those things are taken into consideration. Local Control Authorities also play a crucial role in weed management and their functions are reflected in this bill. It is appropriate that they continue to participate in regional planning activities.

It is appropriate that those stakeholders who create or propagate risk or market failure should contribute to the cost of minimising those risks. The bill therefore provides for the recovery of administrative costs and other amounts. The biosecurity strategy includes a threat decision tree that provides guidance on when government should be involved in a situation and who should pay. This process will be used to ensure that costs are efficiently and equitably allocated. A new Biosecurity Act will expand the scope of our existing legislation to include protection of the economy, environment and community, consistent with our national commitments. The bill will deliver a responsive and consistent statutory framework which will promote economic growth, productivity and competitiveness in line with the goals of NSW 2021 and the NSW Biosecurity Strategy.

Importantly, the bill facilitates shared responsibility and takes a risk-based approach using a responsive regulatory model, which is more likely to achieve long-term biosecurity outcomes by creating positive social norms around biosecurity engagement and compliance. This bill has been a mammoth undertaking. I take this opportunity to acknowledge the work and tireless dedication of people such as Dianna Watkins and Andrew Sanger, two very fine public servants within the Department of Primary Industries. I also acknowledge staff from the Department of Trade and Investment, Regional Infrastructure and Services and the Department of Primary Industries, including Susan Alchin and Jessica Bommer, who are seated in the gallery today. Time precludes me from going into the detail of every section of this bill, but if members have any questions about any aspect I invite them to approach my office. I commend the bill to the House.

Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a future day.

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