



Full Day Hansard Transcript (Legislative Council, 12 August 2015, Proof)

Proof

Extract from NSW Legislative Council Hansard and Papers Wednesday, 12 August 2015 (Proof).

BIOSECURITY BILL 2015

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Niall Blair.

< 21 >

Second Reading

The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water) [3.39 p.m.]: I move:

That this bill be now read a second time.

The Biosecurity Bill 2015 is a significant piece of modern legislation that will provide New South Wales with the essential tools and powers to manage pests, diseases, weeds and contaminants that threaten the New South Wales economy, environment and community. The bill has been thoughtfully developed over a number of years and provides a sound, flexible framework to efficiently respond to biosecurity risks regardless of whether it is an emergency or a longer term management issue. In 2013 the New South Wales Government released the New South Wales biosecurity strategy, which is based on the principle that biosecurity is everyone's responsibility. A major biosecurity event can have far-reaching implications from on-farm losses through to impacts on the entire nation's economy through market access and trade restrictions.

The equine influenza outbreak in 2007 did not only impact horse owners. A major cascading effect was felt as horseracing was cancelled across New South Wales. Small businesses from café owners and milliners to taxi drivers were all affected. The avian influenza outbreak in Young last year had a devastating effect. In addition to the direct impacts on the two businesses where it was detected, trade was disrupted and consumers inconvenienced as egg supply was limited, especially during the lead-up to Christmas. While it is likely the disease first entered the free range flock through contact with wild birds, as it is a highly contagious disease and can be transferred in equipment or clothes, good on-farm biosecurity practices are critical to prevent further spread.

The bill supports the nationally agreed principle that biosecurity is a shared responsibility between governments, industries and individuals. We all need to take action to mitigate and manage biosecurity risks. Pests, weeds and diseases do not recognise jurisdictional boundaries or fences. Therefore, it is crucial that we adopt a tenure-neutral approach to biosecurity risk management and have legislation that is compatible with our neighbours. We also need to be working together at a regional level to achieve shared outcomes as efficiently and effectively as possible. These principles are the cornerstone of the bill. The bill will repeal, either in whole or in part, 14 pieces of existing legislation. These Acts will be replaced with a single Act that has flexibility to respond effectively to all biosecurity situations. This equates to the repeal of more than 570 years of old legislation.

Our world-class biosecurity system will be strengthened and our State cemented as a leader in biosecurity. The bill will help New South Wales maintain its enviable market access and reputation for high-quality, safe and disease-free food and fibre. The bill has defined key concepts such as biosecurity matter, carriers and biosecurity impact. It includes a biosecurity duty that requires any person who deals with biosecurity matter or a carrier who knows, or should reasonably 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, this means that, for example, where a property has been signposted advising of any sanitary applications or other actions that must be taken before entry, any person entering that property will be on notice about what they need to do to discharge their biosecurity duty and may be prosecuted under the Act if they fail to do so. Let me be clear. Compliance action will be taken in relation to the biosecurity risk that has arisen or may arise due to a person not complying with the biosecurity requirements of that property, regardless of the purpose of that entry. Another example of where the biosecurity duty comes into play could be in relation to weeds. If a particular weed has been determined to be a priority for a region by, for example, either the State or regional weeds committee, the occupier of a property within that region will be required to comply with the regulatory management arrangements that are in place to eradicate or suppress the spread of that weed.

However, certain weeds are endemic and widespread, and there is little risk that the weeds would have an adverse impact on surrounding property, 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 they may just need to control the weed along their boundary to minimise the risk of it spreading to the adjoining property. The bill does not require prescriptive lists before action can be taken to respond to a biosecurity risk. The tools prescribed in the bill are flexible enough to allow a biosecurity response to be mounted, regardless of whether something is included on a list or the subject of another legal instrument. This means that preventative or mitigation action can be taken immediately, reducing the risk of spread and impact in the initial critical period.

Longer term management controls can also be implemented, regardless of whether the biosecurity matter in question is on a list. This will result in less confusion for stakeholders and improved administrative and operational efficiencies. The bill does, however, include a prohibited matter list as a schedule to the Act that can be amended by regulation. Prohibited matter is matter that we 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 the highly pathogenic avian influenza. Matter that only presents occasionally, such as anthrax and cattle tick, is also listed as prohibited matter as it can have a significant adverse effect on the economy, environment or community, and active programs are in place to eradicate every new outbreak or infestation of these problem pests and diseases.

Before something is included on the prohibited matter list, consideration of the potential risk and type of management arrangements that may be required will occur. It is an offence for any person to deal with prohibited matter. As I said, the bill has been a long time in the making, and for good reason. In October 2014 the Biosecurity Bill 2014 was introduced into the New South Wales Parliament. That bill was only the first stage of a two-stage process that did not include the savings, transitional and consequential amendments. Unfortunately, despite broad support for the bill, it did not complete its journey by the end of the Parliament's sitting period. We have used the past 10 months to seek further internal and external stakeholder input on issues raised during 2014 resulting in some minor improvement amendments. The bill I present now is the complete and final bill incorporating the savings, transitional and consequential amendments.

Initial consultation with key stakeholders began in 2013, then we released the proposed framework for a New South Wales biosecurity Act for public consultation in 2014. To ensure that key industry stakeholders maintain an ongoing proactive role in the development of the new biosecurity legislation and to give greater transparency to the process, we have committed to, and are in the process of, establishing an independent skills-based biosecurity advisory committee. The establishment of this committee also makes up part of the historic memorandum of understanding that the New South Wales Liberal-Nationals signed with New South Wales Farmers. While on New South Wales Farmers, I must thank them for their input and support for this bill, which, like us, they recognise is critical to the future of our State's \$12 billion primary industry sector.

The committee will be tasked with assisting with the development, implementation and operation of the new biosecurity legislation. It will provide a central point to obtain advice on stakeholder engagement and consultation and provide an opportunity for independent consideration of the proposed regulatory approach for future management of biosecurity matter in New South Wales. The committee will be encouraged to engage and consult broadly to ensure that the views of all stakeholders are taken into consideration as we roll out this important legislation. It is important, however, that the tools used to manage biosecurity matter are proportionate to the risk and applied at the most effective point in the recycle.

The committee will be independently chaired and include representatives from the Department of Primary Industries, Office of Environmental and Heritage, Local Land Services, the Game and Pest management advisory board, New South Wales Farmers and the Nature Conservation Council, which will represent environmental groups at this stage. These representatives will collectively have knowledge and skills in the areas of biosecurity, science, economics, community education and engagement.

< 22 >

I turn now to how this bill will enable us to respond in emergencies. In such instances, 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/or contagious diseases such as avian influenza or mad cow disease could quickly spread and cripple industries with devastating impacts on the environment and economy. This bill includes two tools that can be activated depending on the severity of the situation. The Secretary of the Department of Industry may make an emergency order if he is satisfied or reasonably suspects that there is a current or imminent biosecurity risk that may have a significant biosecurity impact. Also, if an authorised officer reasonably suspects that an emergency is occurring 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. If an infection was suspected in a horse, since the virus is zoonotic and often fatal to humans, measures to restrict access by humans to infected or at-risk animals would be immediately necessary. As first responders to an emergency, I would like to assure members that appropriate training and governance arrangements will be implemented to ensure that

these powers are used as intended. An emergency order can be made for up to six months. The first objective is to isolate an affected or potentially affected area or biosecurity matter, limit the spread of the emergency biosecurity matter and ultimately eradicate it. This is similar to what occurred when we had that dreadful outbreak of equine influenza that I referred to earlier. The emergency order will allow for zones to be established so that less stringent rules can apply where appropriate.

The emergency powers will also allow for the destruction of animals for welfare reasons. This may be necessary where we have an ongoing biosecurity outbreak such as African swine fever. The pigs will need to be isolated for a period. During a protracted response, piglets may be born resulting in too many animals for the available space or issues may arise where markets just cannot accept the product regardless of whether it is infected or not. 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 whilst minimising the disruption to business and the community as much as possible.

A control order is another tool that can be activated when swift action is required in response to a biosecurity risk or when transitioning from an emergency situation where longer-term management is required but eradication is still considered feasible. A control order can apply to the whole or parts of the State. The order may be issued to eradicate or may be for preventative or interim measures. The order will be issued for the length of time 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. We cannot measure the success until that cycle is complete. If this bill had commenced, management of the red imported fire ant response currently underway at Port Botany would have transitioned from an emergency order to a control order. Initial treatment of the infestation has occurred but we need to continue surveillance action for a period just to be sure we have eradicated the infestation. If management action stops too early, the program may lose momentum and compromise the end goal or eradication.

Biosecurity zones may be made to manage, reduce or eradicate a biosecurity risk or impact over an extended period of time. The actions and limitations that may be required within a zone are similar to those for a control order and can apply to the whole or part of the State. The main difference between a biosecurity zone and a control order is that biosecurity zones are primarily for long-term management of a particular biosecurity matter, and that they are made by regulation and therefore subject to the Subordinate Legislation Act. 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. Biosecurity zones and mandatory measures 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. We 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 the bill. Powers of authorised officers in this bill reflect those that are currently available under current legislation. There has been no softening of these powers and there are clear limitations prescribed in the bill when powers can be exercised. Authorised officers will continue to have balanced and flexible enforcement tools available, which range from accepting undertakings or directions 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 one offence is an offence that is committed intentionally or recklessly and attracts a higher penalty—up to \$1.1 million for individuals or three years in jail—than a category two offence, which is a strict liability offence and can attract penalties up to \$220,000 for individuals.

Authorised officers will have the power to enter land and to carry out surveillance or monitoring work. The bill provides instances when these activities can occur and that surveillance and monitoring of people is not permitted. Authorised officers may be appointed by the Secretary and, in the case of authorised officers with specific responsibilities in relation to weeds, by a local control authority consistent with current arrangements under the Noxious Weeds Act. Registration is an important way to manage high-risk species. It allows for more efficient dissemination of advisory material, enhanced tracing capability and the ability to notify about relevant developments in a timely manner. Registration is not new. For example, beekeepers and persons who keep certain non-indigenous animals are currently required to be registered.

Registration provisions are included in this bill as it is an important way of tracing biosecurity matter and persons who are in control of that matter should there be a risk or biosecurity event. For example, if an authorised officer finds a beehive in a State forest infected with a disease, it is important to be able to contact the owner so appropriate action can be taken to mitigate the spread of that disease. Where a thing such as a beehive is seized, and after making reasonable inquiries and efforts the owner cannot be found, the bill provides the power to sell or destroy that thing. Sometime in the future it may be appropriate to register people who keep or acquire a certain type of plant material such as for high-risk nurseries or, due to the increased risk of avian influenza outbreaks, it may be appropriate to register people or businesses who keep a threshold number of birds.

If a person can no longer care for a registered animal, it is not appropriate that government absorb that cost. Additionally, we do not want to create a situation where the health of the animal may be compromised due to lack of care. As such this 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. 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 Regulation as a category 1a or 1b animal. Examples of a category 1a animal include the Brazilian giant tortoise and the blue monkey. An example of a category 1b animal is the red-billed quelea, which is quite a pretty red-beaked bird that is found in Sub-Saharan Africa. Outside its normal environment it can form flocks of thousands of birds and cause millions of dollars of damage to the grain industry—similar to locust plagues.

Prohibited dealings also include dealing with a non-Indigenous animal that is currently classified as a category 2 or 3a animal, unless that dealing is for permitted exhibition or research purposes. Examples of category 2 and 3a non-Indigenous animals are tigers, lions, crab-eating macaques and black-handed spider monkeys, northern palm squirrels and the rhesus macaques. While new registrations with respect to these animals will be prohibited, transitional provisions within this bill will enable persons who currently have a licence to keep a category 2 and 3a animal.

< 23>

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 New South Wales can continue to recognise existing schemes such as the National Livestock Identification System, 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.

It is important that New South Wales continues to demonstrate products produced in New South Wales are free of diseases and pests. This State currently participates in the national Interstate Certification Assurance [ICA] Scheme, or ICA for horticulture. The bill provides a legislative base for this scheme whereby certificates are issued to certify plant health before product is transported interstate. The certificates provide information that a product is free from certain pest and diseases or it has been treated in a particular manner in accordance with trade requirements—tomatoes being transported to South Australia are a good example. Each ICA arrangement is based on documented operational procedures developed by the Department of Primary Industries in conjunction with industry and interstate quarantine authorities.

Businesses can be accredited to self-certify meaning government regulatory officers do not have to supervise the treatment of product and then certify that the product is free from pest or disease. The Government undertakes an auditing role instead. This type of scheme promotes shared responsibility between industry and government and reduces red tape and costs for all concerned. The bill also provides for the appointment of accreditation authorities and auditors to ensure good governance and compliance with the proposed legislation. Audits provide an opportunity to take a strategic and risk-based approach to compliance activity and market access, and provide an incentive for people to do the right thing. If someone is doing the right thing, the frequency at which they are audited will be lower than for those who are found to be consistently in breach of requirements. Fewer audits will result in cost savings to business and allow government to focus on priority areas.

New South Wales is a signatory to the Inter-Governmental Agreement on Biosecurity [IGAB], which was developed to improve the national biosecurity system by identifying the roles and responsibilities of governments. This bill is supported by three national response agreements to threats to animals, plants and the environment. The bill is consistent with promoting national collaboration, risk-based management, increasing efficiency and decreasing regulation, and shared responsibility between government, industry and the community. It outlines the priority areas for collaboration to minimise the impact of pests and disease on Australia's economy, environment and the community.

Sitting under IGAB are a number of deeds that outline actions and cost-sharing arrangements between jurisdictions and industries that are signatories to those deeds, should an emergency of national importance arise. This bill supports these arrangements, including arrangements in relation to compensation. It also provides a more consistent and equitable statutory compensation scheme for emergency situations that will apply across the biosecurity spectrum. The scheme does not preclude the payment of more generous compensation as agreed at a national level under industry and government cost-sharing arrangements. However, the circumstances where compensation may be paid are limited—for example, compensation may not be payable if the person contributed to the spread of the biosecurity matter that caused the emergency.

Local control authorities have played an important role in weed management and their functions are reflected in

this bill. It is appropriate that they continue to participate in regional planning activities. The Local Land Services Act 2013 provides a statutory process for committees to be established at the regional level to assist with regional planning. Issue-specific committees can also be formed with representatives from government, industry and the committee as required. Actions identified under these regional plans can be given effect under this bill through the creation of biosecurity zones or control orders for higher priority actions, and through the general biosecurity duty for matters where the risk is considered less but the matter is still of interest at the regional level.

While local control authorities may appoint only authorised officers in respect of weed management, a broader power rests with the Secretary of the Department of Industry, whereby these officers can be authorised to assist with, for example, emergencies or where a local control authority wishes to participate in pest management such as to control wild dogs or cane toads. Any such additional authorisation will be done in consultation with the relevant local control authority.

It is appropriate that those stakeholders who create or propagate risk or market failure 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 costs are efficiently and equitably allocated. In closing, I reiterate that the 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. This bill will strengthen the Government's regulatory framework for managing biosecurity activities and risks to the economy, environment and community. I thank everyone who has worked on the preparation of this bill. I particularly thank Bruce Christie and Di Watkins for their hard work and diligence in assisting to bring this legislation before the House. I commend this bill to the House.