

**PRIMARY INDUSTRIES LEGISLATION AMENDMENT (BIOSECURITY) BILL
2012**

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Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Ports) [2.58 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Primary Industries Legislation Amendment (Biosecurity) Bill 2012 aims to improve New South Wales capability to respond to a biosecurity emergency. The bill will amend four Acts—the Animal Diseases (Emergency Outbreaks) Act 1991, the Plant Diseases Act 1924, the Fisheries Management Act 1994, and the Noxious Weeds Act 1993. The bill is concerned with addressing two areas. Firstly, it will address gaps and limitations in our legislation that may prevent an effective response to a biosecurity emergency; and, secondly, it will improve New South Wales's compliance with the four national biosecurity agreements to which we are signatory. The bill is important because it will provide a framework for better protecting not only our primary industries but also our natural environment and our lifestyle.

Before I set out the provisions of the bill, I remind the House of the significant threat that pests, weeds and animal and plant diseases pose to the New South Wales economy, to the environment and to the general community. Due to Australia's geographic location, we remain free from many harmful pests, weeds and diseases that affect other parts of the world. This provides significant economic, environmental and social benefits. Serious animal diseases such as foot and mouth disease and rabies are not present in Australia. New South Wales is also free from many pests and diseases that plague other States, such as red imported fire ants in Queensland, European house borer in Western Australia and chestnut blight in Victoria. However, we certainly cannot afford to be complacent.

The risk and threats to New South Wales's biosecurity status are becoming more complex. A changing climate, globalisation of trade and travel and population increases are putting pressure on natural ecosystems and driving competition for resources. In early 2011 New South Wales became a signatory to the Intergovernmental Agreement on Biosecurity [IGAB]. The goal of this agreement is to minimise the impact of pests, weeds and diseases on the Australian economy, environment and community. The agreement sets out the goals, priorities, roles and responsibilities of jurisdictions in relation to biosecurity management.

The agreement is supported by two response agreements and one response deed—for animal diseases, plant pests and diseases, and the environment. These agreements set out how responses to biosecurity emergencies will be managed and how costs will be shared between government and industry groups that are signatories. As a signatory, New South Wales has an obligation to ensure it has the appropriate legislation and systems in place to respond to emergency biosecurity incidents. Reviews of New South Wales biosecurity-related legislation, the equine influenza outbreak in 2007 and the recent outbreaks of Hendra virus and myrtle rust have revealed a number of limitations and gaps in our legislation.

Limitations and gaps can mean longer response times and costs and greater risks to New South Wales. The bill seeks to address these gaps and limitations in the immediate term and to ensure that our systems are better aligned nationally. In the longer term, the Government is

looking to develop more streamlined and integrated biosecurity legislation and a new biosecurity strategy for New South Wales. However, this is a long-term project, and the amendments proposed in this bill are necessary to ensure that we can respond appropriately to an emergency biosecurity incident.

The provisions in this bill can be divided into four categories—those that relate to pests and diseases of animals, plants, fish and the threats posed by noxious weeds. I will now outline the amendments in relation to each of the four Acts, beginning with the Animal Disease Emergency (Outbreaks) Act 1991. The first proposed amendment will broaden the scope and objectives of the Animal Diseases (Emergency Outbreaks) Act 1991 to apply to the control of emergency animal pests as well as animal diseases.

"Emergency animal pests" are defined in the bill as animals that are not indigenous to a particular area and that are declared by the Minister to be an emergency animal pest. An example of an emergency animal pest that may be declared is the red imported fire ant, which is currently found in Brisbane. They severely damage the environment, they are a threat to agriculture and tourism, and they certainly threaten people's outdoor lifestyle because of their bite or sting. Being able to declare emergency animal pests will greatly assist the capability of New South Wales to respond to animal pests that may have an impact on the environment, community and business activity as well as primary production.

The bill will introduce a new part to the Act that includes a mechanism to deal with emergency outbreaks of animal pests. The new part contains a duty to notify; powers to declare and regulate infested places, restricted areas and control areas; and provisions relating to permits to enter and exit these areas. The new part does not introduce new eradication, control and management tools. These tools already exist in the Act in relation to animal diseases and are common to biosecurity legislation in general. This part will make these powers available in respect to outbreaks of emergency animal pests. To make sure all relevant powers in the Act are available to respond to such outbreaks, existing provisions relating to importation orders, destruction orders, quarantine orders and disinfection orders will be extended so that they also apply to emergency animal pests.

Provisions in the Act dealing with inspectors' powers will also be extended with respect to emergency animal pests, including powers relating to seizure and impounding, collecting verbal and documentary information, search and entry and requiring assistance. There will be a new offence with a maximum penalty of \$110,000 or two years' imprisonment for the intentional or reckless release of an emergency animal pest. This is consistent with the Act's approach to the possession or administration of animal disease agents. Part 6 of the Act that relates to the Emergency Animal Diseases Compensation and Eradication Fund will be amended to also apply to emergency animal pests.

The bill will also amend the powers for the destruction of animals. Currently, the Act contains broad powers that allow domestic animals—such as cattle and pets—to be destroyed during an emergency disease outbreak. However, the Act only provides for the destruction of wild and feral animals in limited circumstances, that is, when an area restriction order or control order is in place. If we have an outbreak of foot and mouth disease animals that may be infected or could become infected may need to be destroyed. This could include feral pigs and deer. It is important that there is a clear power for this to occur. Therefore, the Act will be amended to provide the Minister with the power to order the destruction of wild and feral animals if they are infected or reasonably suspected of being infected or they are in a declared area and the Minister considers it is reasonably necessary to do so to prevent the spread of a disease.

The Act will also include a provision that the Minister must consult with the Minister responsible for the administration of the National Parks and Wildlife Act if the destruction of native animals is proposed. The bill will make a series of changes to the Act to extend the application of certain provisions to anything that could be infected with an emergency animal disease or infested with an emergency animal pest. Currently the provisions relating to animal diseases specifically refer to a disease affecting "animals, animal products, fodder, fittings, soil and vehicles". However, animal pests may infest many other things, for example, structures or equipment. These amendments will provide maximum flexibility for the control measures that may be needed in response to animal disease or pest emergencies.

The bill includes other amendments that are aimed at improving the effectiveness of the Act. The bill provides the Minister with the power to authorise inspectors to take specified measures in a restricted area or a control area for the purpose of controlling or preventing the spread of an emergency animal disease or an emergency animal pest. The Act will be amended to allow the director general, instead of the Minister, to determine the means by which a general permit may be granted. A permit may, for example, be issued to allow a person to enter or leave an infected place or a restricted area. This will allow the issue of permits to happen more quickly and provide for greater efficiency and less red tape.

Inspectors' powers will be extended to allow them to take photographs and videos when exercising their search and entry powers under section 45 of the Act. These modern technologies are an objective and effective way to document animal pest and disease-related matters. Inspectors will also be able to exercise their functions in areas that have been declared to be a control area within the preceding two years. This power already exists under section 45 in relation to areas that have been quarantined or declared to be an infected place or a restricted area. This will provide consistency in the Act. Finally, the bill proposes to allow the director general to delegate his or her functions under the Act. This will reduce red tape and unnecessary bureaucracy.

The final amendment I will refer to in relation to the Animal Diseases (Emergency Outbreaks) Act 1991 is informed by the recent Hendra virus outbreaks in New South Wales. The Hendra virus is a potentially deadly disease. Since June 2011 the virus has caused the death of 10 horses on eight properties in New South Wales. The virus can also be transferred to humans. To help prevent the spread of the Hendra virus between horses on the same property horses need to be separated. If the owners refuse or cannot separate the horses, inspectors need the power to move the horses within the property. The Act currently does not include this power. Therefore, the Act will be amended to give inspectors the power, in a quarantine order, to restrict the movement of any animal onto, within or out of the quarantined property.

I will now turn to those provisions of the bill that address plant pests and diseases and proposed changes to the Plant Diseases Act 1924. First, the Act will be amended to define and recognise emergency plant pests and emergency plant diseases. The Minister will have the power to declare, by order, an emergency plant pest or an emergency plant disease. This declaration will allow for the use of certain strong powers in urgent situations. One of these powers is the destruction and disposal of plants, or the covering of plants or other property if the Minister believes this is necessary to eradicate or prevent the spread of an emergency disease or emergency pest. Currently the Act only provides for infected plants to be destroyed, not plants or other property that may be a source of infection.

For contagious plant diseases such as citrus canker or fire blight the ability to destroy or

dispose of plants and property that may not yet be infected will allow a buffer zone to be created, effectively isolating the disease and preventing its spread. This power will be available only if the Minister believes that taking such action is necessary to eradicate or prevent the spread of an emergency disease or emergency pest. This is an established best practice response tool. Another power that will be made available to combat emergency plant pests and diseases relates to control orders. Currently the Minister may, by a control order, authorise inspectors to enter specified land or premises to carry out work for the prevention or control of a pest or disease.

However, individuals must first be provided with notice of the proposed work and an opportunity to object to those works. Following these amendments to the Act, if a control order is made by the Minister that relates to an emergency plant pest or disease, an individual will not be able to object to the director general about the actions authorised in the control order. This amendment will ensure that actions to control emergency plant pests and diseases can be taken quickly so as to minimise the opportunity for such serious pests and diseases to spread. The bill also allows the Minister to declare, by order, that a plant emergency exists or is imminent and that it is necessary to take emergency actions to eradicate or prevent the spread of the disease or pest during a specified period, known as the emergency period.

If such a plant emergency is declared a court will be prevented from granting an interim injunction that would have the effect of preventing, restricting or deferring emergency action being taken during the emergency period. This power may be used, for example, if fire blight was found in an area of New South Wales. Fast action would be needed to prevent it from spreading because fire blight spreads by wind. Without fast and unimpeded action the disease will spread. This amendment will not prevent a court from making a permanent injunction or a final order in proceedings at any time. Emergencies are only declared when there is a serious risk to health, property or business activity. It is therefore crucial that preventative or other management action is not delayed by a court order in the initial stages.

Secondly, this bill will amend the Plant Diseases Act 1924 to improve the control and eradication of plant pests or diseases. Preventive measures—such as spraying crops—reduce the chance of a plant pest or disease entering, spreading or establishing in New South Wales. These measures are often applied to plants that are not yet infected but are at risk of infection. The Plant Diseases Act 1924 provides for treating a disease or preventing its spread. It does not explicitly provide for the implementation of preventive measures, such as spraying uninfected crops. Consequently, the bill defines the word "treat" to incorporate preventive measures, and amends the Act so that the Minister may order the treatment of uninfected plants for the purpose of preventing the spread, eradicating or lessening the risk of the pest or disease establishing.

The Act also will be amended so that such an order, as well as the declaration of a quarantine area and notification of special regulations for quarantine areas, may be published urgently in a newspaper, on radio or television, or on a government website. The order will still have to be published in the *Government Gazette* as soon as practicable. During the equine influenza outbreak in 2007 the New South Wales Department of Primary Industries website generated up to 8,000 visits a day. The internet and social media are technologies that should be used in urgent situations as a fast and effective way of informing the public. Allowing these notifications in the Plant Diseases Act 1924 to be published through modern media will ensure that the implementation of response measures is not delayed as a result of the gazettal process.

For greater efficiency the bill will allow an inspector to accept an undertaking from a

landowner to take steps to deal with a plant pest or disease. Currently only the Minister can accept an undertaking from a landowner or occupier to undertake specific measures in relation to plant pests and diseases instead of declaring a quarantine area. Providing inspectors with this power will result in operational efficiencies and reduced red tape. It is consistent also with provisions in the Stock Diseases Act 1923. On another issue, the Emergency Plant Pest Response Deed requires New South Wales to take all reasonable steps to ensure that individuals advise the Government within 24 hours of becoming aware of a plant pest or disease.

The Plant Diseases Act 1924 requires the occupier of land to report the presence of a notifiable plant pest or disease within 24 hours. Agronomists, for example, who may be called on to identify a plant pest and disease, are not required to notify under the Act. To satisfy national commitments and to compel more people to report the Act will be amended to apply to any person who is in possession or control of, or who has been consulted in relation to, a plant or plant product or soil that he or she suspects is infected with a notifiable pest or disease. The bill includes amendments to improve surveillance capabilities. Currently the power to enter property to inspect plants is limited. Powers of inspection will be expanded to allow an inspector to enter any land, premises, vehicle or vessel to conduct surveillance if there is reasonable cause for suspicion that a pest or disease may be present at or likely to spread to that land, premise, vehicle or vessel.

The power to conduct surveillance will be subject to existing requirements of the Act that ensure an inspector's powers of entry are only exercised reasonably and in appropriate circumstances. Inspectors will continue to be prohibited from entering any part of a premise that is used for residential purposes. The Act will be amended also to allow inspectors who enter premises to take photographs or videos. These technologies are critical for objectively documenting plant pest and disease matters, and for collecting evidence. The bill will also expand the power of an inspector to ask questions and collect information. Currently inspectors are restricted to questioning only fruit and plant vendors. As well, they cannot compel people to provide them with documentary information that may assist an investigation.

The ability of inspectors to ask questions and collect information is essential for tracking the movement of potential plant pests or diseases. Collecting documentary information from nurseries greatly aided our capability to trace myrtle rust in the initial response stages of the outbreak in 2010. However, nurseries were not compelled to provide the department with this information. Section 18 of the Plant Diseases Act will be amended to provide inspectors with the power to question any person and require documentary information that an inspector reasonably believes may provide information relevant to the control, including spread or eradication, of a plant pest or disease. The bill will remove the privilege against self-incrimination in relation to requirements to provide information and answer questions by inspectors. However, any such answers or information will not be admissible as evidence against the person in criminal proceedings.

Finally, the bill includes some amendments to the Act aimed at improving both administrative and operational efficiencies. The bill will extend the life of control orders from six to 12 months and increase the quarantine period from 21 to 40 days or such period as may be determined by the director general. This will increase operational flexibility and efficiency. The bill makes it clear that the provision in the Act that prohibits payment of compensation for things done by inspectors and others does not prevent compensation being paid under an agreement entered into by the State. For example, the Emergency Plant Pest Response Deed states that the owner of a crop or property that is damaged or destroyed as a

result of implementing an approved response plan may be eligible for reimbursement payments. This amendment will clarify that those payments can be made if the industry is a signatory to the deed, or if the National Emergency Plant Pest Management Group agrees that compensation should be paid.

The final group of amendments to the Plant Diseases Act concerns the Governor's power to declare a pest or disease. Currently the Governor can declare anything to be a pest for the purpose of the Act. However, the Governor can only declare an organism to be a disease if, in effect, the organism falls within the definition of "disease" in the Act. If an organism does not fall within that definition there is no capability to declare it to be a disease for the purposes of the Act. This means that necessary powers would not be available to control an outbreak of such a disease. As well, the Act currently requires the Governor to make such a declaration, which can be a time-consuming process. Therefore, the bill will enable the Minister rather than the Governor, to declare anything to be a disease. To ensure that declarations come into effect without delay the Act will include a special provision that allows the order to be effective upon signing. However, publication of the order will still be required within 14 days.

I now turn to amendments to the Fisheries Management Act 1994 that relate to fish and marine vegetation. The powers in the Act for dealing with noxious fish and marine vegetation are inconsistent with the powers for dealing with diseases of fish and marine vegetation. For example, the Minister can declare a quarantine area in relation to a declared disease but cannot declare a quarantine area because of the presence or suspected presence of noxious fish or noxious marine vegetation. Quarantine areas are an important tool for managing biosecurity risks. Noxious fish and marine vegetation can cause serious devastation to a marine environment. The bill therefore will amend the Act so that a quarantine area can also be declared because of the presence or suspected presence of a noxious fish or noxious marine vegetation.

To improve the responsiveness of the Act quarantine orders will be able to be published through more immediate media in urgent situations, such as on television, the department's website or radio, instead of solely in the gazette. In addition, the existing quarantine provisions that relate to declared diseases only provide for certain areas to be declared a quarantine area. This is problematic where diseased or noxious fish are present in the hull of a moving boat. For example, if New South Wales authorities believe that the hull of a boat contains Asian date mussels, they would not be able, under the Fisheries Management Act 1994, to quarantine the boat until it was stationary.

If the boat is allowed to dock the mussels may establish in the area, smother bottom-dwelling communities and affect the ecological balance in the area. The bill will allow the boat to be quarantined if it carries diseased or noxious fish and marine vegetation. This will provide the Minister with the power to direct the movement of the boat, and order the destruction of diseased or noxious fish and marine vegetation at an appropriate location. The bill also allows for maximum flexibility in the types of movement controls that can be used to prevent the spread of a diseased or noxious fish and marine vegetation. At the moment, fish and marine vegetation can be moved within the quarantine area, for example, from boat to boat. This gives pests and/or diseases the chance to spread.

The Act will be amended to allow a quarantine order to prohibit or restrict the movement of fish or marine vegetation into, within or out of a quarantine area. An offence will be created for the intentional or reckless release of live noxious fish or live noxious marine vegetation. This is already an offence in respect of diseased fish or marine vegetation. Penalties will be

made consistent. The maximum penalties for the sale of live noxious fish or marine vegetation will be increased to \$55,000 for corporations and \$11,000 for individuals. This is the same as the maximum penalties for the sale of diseased fish and marine vegetation. The bill will provide for regulations to be made with respect to eliminating or preventing the spread of noxious fish and marine vegetation.

These regulations may provide for the destruction of noxious fish or marine vegetation, the examination and testing of fish and vegetation taken from a quarantine area or the making of notification requirements with respect to noxious fish or noxious marine vegetation. These amendments will help New South Wales to achieve the outcomes sought by the national strategy "A Strategic Approach to the Management of Ornamental Fish in Australia". Similar provisions are found in key biosecurity legislation in New South Wales with respect to land-based animal and plant pest and disease management. It is appropriate that such regulations can be made under the Fisheries Management Act 1994. Finally, the bill will make it clear that Fisheries officers have the power to take photographs and videos when conducting a search. These modern technologies are an objective and defensible way of documenting inspections. This is a sensible amendment.

I turn now to noxious weeds and amendments to the Noxious Weeds Act 1993. Emergency weed control orders and quarantine orders are two tools for declaring areas infested under the Noxious Weeds Act 1993. Several amendments are proposed to these provisions to improve our ability to control and eradicate weeds in certain situations, particularly in emergencies. The bill will extend the period for which orders are valid, because the existing periods are too short to ensure that all necessary control actions can be completed. The term of an emergency weed control order will be extended from a maximum of three months to a maximum of 12 months. The term of a quarantine order will be amended from six months to a maximum of 12 months. At the moment control and quarantine orders are only effective when they are published in the gazette. This can be a lengthy process and is not the fastest way to communicate a message to stakeholders.

The bill will amend the publishing requirements and in urgent situations will allow orders to be published through media such as the department's website, television and radio. The orders will commence once they are published. The bill also provides the Minister with the power to declare land to be a quarantine area if the Minister thinks that class 1 or class 2 noxious weeds are reasonably likely to spread to the land. This amendment will allow for a buffer zone to be created for those plants that could pose a serious threat to primary production or the environment. Buffer zones are a management tool to isolate and stop the spread of pests. They are effective in managing weeds that could pose a serious threat to primary production or the environment, or are likely, by their sale or movement within New South Wales, to spread in New South Wales or to other jurisdictions.

A further amendment concerns requirements to report a notifiable weed under the Noxious Weeds Act. The Act currently requires the occupier of land to report to an authority within three days of becoming aware that the notifiable weed is on the land. In order to better meet the State's reporting requirements set out in the national biosecurity agreements and compel more people to report the Act will be amended to require any person who, in a professional capacity, becomes aware or suspects a plant is a noxious weed to report its presence within 24 hours. This is consistent with the Plant Diseases Act and Animal Diseases (Emergency Outbreaks) Act. The National Environmental Biosecurity Response Agreement states:

Agency staff should be empowered to inspect, test, treat, and disinfect any animal, plant, land, water or item.

At the moment the Act only allows inspectors to remove or destroy noxious weed material. Removal and destruction can be unnecessarily severe measures. As well, the Act does not allow action to be taken against suspected noxious weed material. The bill will allow inspectors to test, treat, disinfest or otherwise deal with noxious weed material, suspected noxious weed material and anything that may contain noxious weed material. Finally, the bill will introduce a new provision that allows the Minister to declare, by order, that a weed emergency exists or is imminent, and that it is necessary to take emergency actions during a specified period, known as the emergency period.

If such a weed emergency is declared a court will be prevented from taking any action that will have the effect of preventing, restricting or deferring any emergency action during the emergency period. This amendment will not prevent a court from making a permanent injunction or a final order. This provision means that New South Wales will meet the requirement of the national agreements that jurisdictions have in place, arrangements that allow for fast and effective action against an emergency noxious weed incursion. The provisions in this bill will commence on assent, with the exception of the amendments to the Animal Diseases (Emergency Outbreaks) Act included in schedule 1.

It is not possible for those provisions to commence straightaway because some of them require regulations in order to become operational. As New South Wales is a signatory to four national agreements, it has an obligation to ensure it has the appropriate legislation and systems in place to respond to emergency biosecurity incidents. The national agreements were subject to significant industry consultation prior to their commencement. The bill proposes sensible amendments that will provide a consistent approach to animal and plant pests and diseases, and weeds; provide for more efficient and effective operational and administrative arrangements; and greatly improve the capability of New South Wales to respond to emergency pests, weeds and diseases that affect the economy, the environment and our community. I commend the bill to the House.