



New South Wales

Primary Industries Legislation Amendment (Biosecurity) Bill 2012

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 *Animal Diseases (Emergency Outbreaks) Act 1991*, the *Fisheries Management Act 1994*, the *Noxious Weeds Act 1993* and the *Plant Diseases Act 1924* as follows:

- (a) to provide for mechanisms to deal with emergency outbreaks of animal pests, such as the declaration of infested places, restricted areas and control areas and accompanying restrictions on movement, and orders relating to control and eradication of animal pests,
- (b) to prohibit interim court orders that might prevent or delay emergency measures in circumstances where there is an emergency outbreak of notifiable weeds or plant diseases or pests,
- (c) to provide for the use of quarantine areas to control the spread of noxious fish and noxious marine vegetation and to make other provision with respect to noxious fish and noxious marine vegetation,
- (d) to enable various orders relating to fish and marine vegetation quarantine areas, noxious weeds and plant diseases and pests to be published urgently in newspapers or on a government website,

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- (e) to require the appropriate authorities to be notified by persons who, while acting in a professional capacity, become aware of the presence of an emergency animal disease or pest or a notifiable weed or a notifiable plant disease or pest,
 - (f) to make other provision with respect to biosecurity measures under those Acts,
 - (g) to enable regulations containing savings or transitional provisions to be made as a consequence of the enactment of the proposed Act.

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 Schedule 1 to the proposed Act on a day or days to be appointed by proclamation and for the rest of the proposed Act to commence on the date of assent to the proposed Act.

Schedule 1 Amendment of Animal Diseases (Emergency Outbreaks) Act 1991 No 73

Emergency animal pest measures

Schedule 1 [1] includes a reference to emergency animal pests in the long title to the Act.

Schedule 1 [2] changes the name of the Act to reflect the fact that it will now cover emergency animal pests as well as emergency animal diseases.

Schedule 1 [3] provides for animals, that are not indigenous to a particular area to be declared as emergency animal pests by an order made by the Minister.

Schedule 1 [72] makes a consequential amendment.

Schedule 1 [23] inserts proposed Part 3A which contains provisions relating to the control of emergency animal pests. The proposed Part contains the following provisions:

- (a) Division 1 (proposed sections 27A and 27B) imposes a duty to notify an inspector of an emergency animal pest or suspected pest on an owner of premises, a person who owns, possesses or controls or is in charge of a suspected emergency animal pest and a person who is consulted in a professional capacity. The Division also makes it an offence to intentionally or recklessly, or to threaten to, release an emergency animal pest.
- (b) Division 2 (proposed sections 27C–27E) provides for the declaration of infested places by the Minister if the Minister reasonably suspects any premises, place or area is infested with an emergency animal pest. The declaration will apply to animal products, fodder, fittings, soil, vehicles or other things identified by the declaration. A permit will be required to cause a vehicle to enter or leave an infested place and to bring or move any thing to which the declaration applies into, within or out of the place. Movement into

or out of an infested place by any person or thing affected by the declaration must be made through specified entry and exit points.

- (c) Division 3 (proposed sections 27F–27J) provides for the declaration of a restricted area by the Minister if the Minister is of the opinion that any premises, place or area is or may become infested with an emergency animal pest. The declaration will apply to animal products, fodder, fittings, soil, vehicles or other things identified by the declaration and will be revoked if notice of the declaration is not published within 14 days. A permit will be required to move things to which the declaration applies into, within or out of a restricted area. Any movement of any such thing into or out of the restricted area must be through specified entry or exit points. The Minister may also make an area restriction order which authorises inspectors, or requires other persons, to take measures to control, eradicate or prevent the spread of an emergency animal pest.
- (d) Division 4 (proposed sections 27K and 27L) provides for the declaration of a control area by the Minister if the Minister thinks it is reasonably necessary for the purpose of preventing the spread of an emergency animal pest. The Minister may also make a control order for the whole or part of a control area. A control order may prohibit, regulate or control the movement of specified things into, out of or within the control area or a specified part of the area or authorise inspectors or require other persons to take specified measures to control, eradicate or prevent the spread of emergency animal pests.
- (e) Division 5 (proposed sections 27M–27P) contains a general provision about the granting of permits, enables an inspector to use reasonable force on a person acting contrary to a requirement of the Part and makes it clear that the proposed Part does not affect the operation of other provisions relating to inspectors or liability for offences.

Schedule 1 [25] enables the Minister to make an importation order prohibiting or imposing conditions on the entry or importation into the State of emergency animal pests, animals, animal products, fodder, fittings, soil, vehicles or other things if the Minister reasonably suspects that any premises, place or area outside the State is infested with an emergency animal pest.

Schedule 1 [32] enables the Minister to make a destruction order requiring the destruction of an emergency animal pest, or any premises (other than a dwelling) or any animal, animal product, fodder, fittings or other thing the Minister reasonably suspects to be infested with an emergency animal pest and which cannot be effectively disinfected. **Schedule 1 [37] and [39]** make consequential amendments.

Schedule 1 [42] enables an inspector to make a quarantine order so as to prohibit or restrict the movement of any suspected emergency animal pest, animal product, fodder, fitting, soil, vehicle or other thing on to, within or out of any premises or place if the inspector reasonably suspects that the premises or place is infested with an emergency animal pest or believes on reasonable grounds that it is necessary to make the order to prevent the spread of the pest.

Schedule 1 [45] provides that a quarantine order relating to an emergency animal pest is to be in force for 40 days or for such shorter or longer period as the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (the *Director-General*) determines. **Schedule 1 [44]** makes a consequential amendment.

Schedule 1 [48] empowers an inspector to make a disinfection order directing the owner or person in charge or control of premises or a place to disinfect the premises or place or things in it or any other person leaving or entering the premises or place to disinfect a vehicle or thing. The inspector may make a disinfection order if the inspector reasonably suspects that the premises or place is infested with an emergency animal pest.

Schedule 1 [50] and [51] enable an inspector to seize and impound a thing if the inspector reasonably suspects it to be infested with an emergency animal pest or if it is in or near a declared area or an area where there are emergency animal pests.

Schedule 1 [52] enables an inspector to destroy any thing seized if of the opinion that it is necessary to do so to avoid risk to life or property in connection with an emergency animal pest.

Schedule 1 [53] confers powers on inspectors to require persons to answer questions, state name and place of residence and produce records or other documents for the purposes of controlling, eradicating or preventing the spread of an emergency animal pest. **Schedule 1 [54]** makes a consequential amendment.

Schedule 1 [57] enables an inspector who is exercising functions to search for, track, mark for identification, test, treat or destroy an emergency animal pest.

Schedule 1 [59] enables an inspector to give a written direction requiring an owner or person in charge or control of any premises, place, area, animal or vehicle, or a person in the premises, place, area or vehicle, to give reasonable assistance to the inspector, if the inspector reasonably suspects that the premises, place, area or vehicle is infested with an emergency animal pest.

Schedule 1 [62] changes the name of a Fund to reflect its application to things done in connection with emergency animal pests. **Schedule 1 [61] and [73]** make consequential amendments.

Schedule 1 [63] requires accounts for specific emergency animal pests to be established within the Emergency Animal Diseases and Pests Compensation and Eradication Fund.

Schedule 1 [64] requires amounts payable to the State by the Commonwealth or any State or Territory for controlling, eradicating and preventing the spread of emergency animal pests to be paid to that Fund.

Schedule 1 [65] enables money to be paid from that Fund for certain expenses connected with emergency animal pests.

Schedule 1 [67] sets out circumstances when an animal, place or thing may reasonably be suspected of being infested with an emergency animal pest.

Schedule 1 [68] extends the existing privative provision relating to emergency animal diseases to emergency animal pests. **Schedule 1 [69]** makes a consequential amendment.

Schedule 1 [71] includes treatment of infestations in the definition of *disinfected*.

Schedule 1 [74] includes procedures relating to the alleviation, control, prevention or eradication of emergency animal pests in the definition of *treatment*.

Emergency animal disease measures

Schedule 1 [4] enables a declaration of an infected place (where a place is or may be infected with an emergency animal disease) to extend to any thing (the *affected thing*) identified in the declaration. Currently, it is limited to animals, animal products, fodder, fittings, soil and vehicles.

Schedule 1 [5] provides that the declaration may only extend to an affected thing if it is or could be infected with an emergency animal disease or could assist the spread of an emergency animal disease.

Schedule 1 [6] extends the requirement for a permit to take something into, within or out of an infected place to an affected thing. **Schedule 1 [7] and [8]** make consequential amendments.

Schedule 1 [9] extends the requirement to take something into or out of an infected place through specified entry and exit points to an affected thing. **Schedule 1 [10]** makes a consequential amendment.

Schedule 1 [11] enables a declaration of a restricted area (where premises, a place or an area within the State is or may be infected with an emergency animal disease) to extend to any thing (an *affected thing*) identified in the declaration. Currently, it is limited to animals, animal products, fodder, fittings, soil and vehicles.

Schedule 1 [12] provides that the declaration may only extend to an affected thing if it is or could be infected with an emergency animal disease or could assist the spread of an emergency animal disease.

Schedule 1 [13] extends the requirement for a permit to take something into, within or out of a restricted area to an affected thing. **Schedule 1 [14]** makes a consequential amendment.

Schedule 1 [15] extends the requirement to take something into or out of a restricted area through specified entry and exit points to an affected thing. **Schedule 1 [16]** makes a consequential amendment.

Schedule 1 [17] enables an area restriction order to authorise inspectors to take measures within a restricted area for the purposes of controlling, eradicating or preventing the spread of an emergency animal disease. **Schedule 1 [18]** makes a consequential amendment.

Schedule 1 [19] makes it clear that a control order may regulate the movement of animals within a specified part of a control area.

Schedule 1 [20] enables a control order to authorise inspectors to take measures within a control area for the purposes of controlling, eradicating or preventing the spread of an emergency animal disease.

Schedule 1 [21] enables permits to be granted to authorise entry to or exit from, or movement within, a control area.

Schedule 1 [24] enables an importation order that prohibits the entry or importation into the State of things to extend to any thing (an *affected thing*) identified in the order. The order is made by the Minister if the Minister reasonably suspects any premises, place or area outside the State to be infected with an emergency animal disease. Currently, it is limited to animals, animal products, fodder, fittings, soil and vehicles. **Schedule 1 [26], [27] and [29]** make consequential amendments.

Schedule 1 [28] provides that the importation order may only extend to an affected thing if it is or could be infected with an emergency animal disease or infested with an emergency animal pest, or could assist the spread of an emergency animal disease or an emergency animal pest.

Schedule 1 [30] enables a destruction order made by the Minister to authorise the destruction of any animal that is infected, or suspected of being infected, with an emergency animal disease. Currently, such an order may be made only in respect of a domestic animal. **Schedule 1 [33], [34] and [38]** make consequential amendments.

Schedule 1 [31] enables a destruction order to authorise the destruction of any thing that the Minister reasonably suspects to be infected with an emergency animal disease and which cannot be effectively disinfected. Currently, this power is limited to animals, animal products, fodder, fittings, soil and vehicles. **Schedule 1 [35]** makes a consequential amendment.

Schedule 1 [40] enables a quarantine order made by an inspector to prohibit or restrict the movement of any thing into or out of any premises, place or vehicle subject to the order if the inspector reasonably suspects the premises, place or vehicle to be infected with an emergency animal disease and that it is necessary to make the order to prevent the spread of such a disease. Currently, this power is limited to animals, animal products, fodder, fittings, soil and vehicles.

Schedule 1 [41] enables a quarantine order to restrict movement within the area to which the order applies.

Schedule 1 [43] provides that a quarantine order may only extend to a thing (other than an animal, animal product, fodder, fitting, soil or vehicle) if it is or could be infected with an emergency animal disease or infested with an emergency animal pest, or could assist the spread of an emergency animal disease or an emergency animal pest.

Schedule 1 [46] enables an undertaking, accepted by an inspector instead of issuing a quarantine order, to apply to things other than animals, animal products, fodder, fittings and soil.

Schedule 1 [47] enables a disinfection order made by an inspector who reasonably suspects an emergency animal disease infection to require any thing within the premises, a place or a vehicle to be disinfected. Currently, this power is limited to

premises, a place or a vehicle and any fodder, fittings or soil within the premises, place or vehicle.

Other amendments

Schedule 1 [22] confers on the Director-General (instead of the Minister) the function of determining the means by which a general permit is to be granted.

Schedule 1 [36] prohibits the Minister from ordering the destruction of protected fauna under a destruction order unless the Minister has first consulted with the Minister administering the *National Parks and Wildlife Act 1974*.

Schedule 1 [49] extends the power of inspectors to seize and impound to things other than animals, animal products, fodder, fittings and soil.

Schedule 1 [55] removes an unnecessary word.

Schedule 1 [56] extends the power of an inspector to inspect, examine, test, disinfect, fumigate or take samples to any thing. Currently, this power is limited to premises, places, areas, fodder, fittings, soil and vehicles. The amendment also enables inspectors to take photographs and make video recordings.

Schedule 1 [58] enables inspectors to exercise functions in places that have been the subject of a declaration of a control area within the preceding 2 years.

Schedule 1 [60] enables an inspector to require a person to disinfect any premises, place or vehicle.

Schedule 1 [66] empowers the Director-General to delegate his or her functions under the Act.

Schedule 1 [70] enables regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Fisheries Management Act 1994 No 38

Schedule 2 [1] enables a boat to be declared a quarantine area in connection with the presence of a declared disease. **Schedule 2 [6] and [7]** make consequential amendments.

Schedule 2 [2] provides for orders declaring quarantine areas in connection with declared diseases to be published urgently in a newspaper, a radio or television broadcast or on a Government website. **Schedule 2 [5]** makes a consequential amendment.

Schedule 2 [3] enables an order declaring a quarantine area in connection with a declared disease to prohibit or restrict the movement of fish or marine vegetation or specified fish or marine vegetation into, within or out of the area.

Schedule 2 [4] corrects a reference to a quarantine area.

Schedule 2 [8] inserts proposed sections 209C and 209D. Proposed section 209C enables the Minister to declare a quarantine area for the purposes of dealing with

noxious fish or noxious marine vegetation. The provisions will be equivalent to those in force in relation to declared diseases (including the amendments made by the proposed Act). Proposed section 209D makes it an offence to intentionally or recklessly release into any waters live noxious fish or live noxious marine vegetation.

Schedule 2 [9] increases the maximum penalty for selling noxious fish or noxious marine vegetation to \$55,000 for a corporation and \$11,000 for an individual.

Schedule 2 [10] enables regulations to be made with respect to eliminating or preventing the spread of noxious fish and noxious marine vegetation, including regulations providing for notifications and destruction of such fish or vegetation.

Schedule 2 [11] makes it clear that the power of fisheries officers to conduct a search includes a power to take photographs and video recordings.

Schedule 2 [12] enables regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.

Schedule 3 Amendment of Noxious Weeds Act 1993 No 11

Schedule 3 [2] increases the maximum term of an emergency weed control order from 3 months to 12 months.

Schedule 3 [3] provides for emergency weed control orders to be published urgently in a newspaper, a radio or television broadcast or on a Government website. **Schedule 3 [1]** makes a consequential amendment.

Schedule 3 [4] reduces the period within which an occupier must notify a local authority of a notifiable weed after becoming aware of the weed from 3 days to 24 hours.

Schedule 3 [5] requires a person who, in a professional capacity, becomes aware or suspects that a notifiable weed is on land to notify the applicable local authority within 24 hours. It will be an offence not to do so.

Schedule 3 [6] enables the Minister to declare land to be a quarantine area if the Minister thinks that Class 1 or 2 noxious weeds (notifiable weeds) are reasonably likely to spread to the land.

Schedule 3 [7] provides for orders declaring quarantine areas to be published urgently in a newspaper or on a Government website.

Schedule 3 [8] extends the maximum period for which such an order is in force from 6 months to 12 months.

Schedule 3 [9] confers on inspectors and authorised officers who enter premises power to test, treat or disinfest any noxious weed material or matter containing suspected noxious weed material.

Schedule 3 [10] confers on inspectors and authorised officers who enter premises power to test, treat or disinfest any box, container, package or receptacle that they reasonably suspect contains any noxious weed material or matter containing suspected noxious weed material.

Schedule 3 [11] prohibits a court from making an interim injunction or any other interim order or giving interim relief if it would have the effect of preventing or deferring the taking of any emergency action during an emergency period relating to a notifiable weed emergency. The Minister may, by order, declare that a notifiable weed emergency exists or is imminent and specify the emergency period for which emergency actions may be taken. The provisions do not prevent a court from making a permanent injunction or a final order in proceedings at any time.

Schedule 3 [12] enables regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.

Schedule 4 Amendment of Plant Diseases Act 1924 No 38

Schedule 4 [2] inserts definitions of *emergency disease*, *emergency pest*, *land* and *treat*.

Schedule 4 [3] includes infested as part of the meaning of the term *infected*.

Schedule 4 [5] makes it clear that the Minister may require measures to be taken under an order made for the purposes of treating, preventing the spread of or eradicating a plant disease or plant pest affecting plants or fruit that are not infected.

Schedule 4 [7] provides for such orders to be published urgently in a newspaper, a radio or television broadcast or on a Government website. **Schedule 4 [4] and [6]** make consequential amendments.

Schedule 4 [8] updates an outdated reference to the Government Gazette.

Schedule 4 [10] provides for declarations of quarantine areas to be published urgently in a newspaper, a radio or television broadcast or on a Government website. **Schedule 4 [9]** makes a consequential amendment.

Schedule 4 [11] enables an inspector to accept an undertaking on behalf of the Minister, as an alternative to a Ministerial declaration of a quarantine area. Currently, only the Minister may accept such an undertaking.

Schedule 4 [14] provides for notifications of special regulations for quarantine areas to be published urgently in a newspaper, a radio or television broadcast or on a Government website. **Schedule 4 [12] and [13]** make consequential amendments.

Schedule 4 [15] requires an inspector or the Director-General to be notified by the owner or occupier of land, a person in possession or control of a plant, plant product or soil or a person consulted in a professional capacity, of the presence or suspected

presence of an emergency disease or emergency pest or other proclaimed diseases or pests (notifiable diseases and pests).

Schedule 4 [16] confers on inspectors powers to enter any land, premises, vehicle or vessel for the purpose of carrying out surveillance work in relation to plants, coverings or things if they reasonably suspect that a disease or pest is present or is likely to spread to that land, premises, vehicle or vessel. **Schedule 4 [17]** makes a consequential amendment.

Schedule 4 [18] enables inspectors who enter premises to take photographs or video recordings.

Schedule 4 [19] enables a control order made by the Minister to authorise an inspector to destroy or dispose of plants or fruit or coverings for plants or fruit or other property, if the Minister believes on reasonable grounds that it is necessary to do so in order to eradicate or prevent the spread of an emergency disease or emergency pest.

Schedule 4 [20] increases the maximum period that a control order may be in force from 6 months to 12 months.

Schedule 4 [21] removes the right to object to things authorised by a control order if the control order relates to an emergency disease or emergency pest.

Schedule 4 [22] and [23] extend the period for which particular land or premises may be quarantined by an inspector from 21 days to 40 days.

Schedule 4 [24] expands the power of inspectors to require persons to answer questions. An inspector will be able to require persons to answer questions relevant to the control or eradication or prevention of the spread of a disease or pest and require records or other documents to be produced.

Schedule 4 [25] makes it an offence, without reasonable excuse, to fail to produce a record or other document at the request of an inspector.

Schedule 4 [26] removes the privilege against self-incrimination in relation to requirements to provide information and answer questions made by inspectors but provides that any such information or answer is not admissible as evidence against the person in criminal proceedings (except in relation to false information or other offences about complying with inspectors' requirements).

Schedule 4 [27] prohibits a court from making an interim injunction or any other interim order or giving interim relief if it would have the effect of preventing or deferring the taking of any emergency action during an emergency period relating to emergency diseases and pests. The Minister may, by order, declare that a plant disease emergency exists involving an emergency disease or emergency pest or is imminent and specify the emergency period for which emergency actions may be taken. The provisions do not prevent a court from making a permanent injunction or a final order in proceedings at any time.