

1993

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE
ASSEMBLY**

ANIMAL DISEASES BILL 1993

EXPLANATORY MEMORANDUM

**Circulated by authority of the Minister for the
Environment, Land and Planning**

Bill Wood MLA

ANIMAL DISEASES BILL 1993

EXPLANATORY MEMORANDUM

Outline

The Animal Diseases Bill 1993 repeals the Stock Diseases Act 1933 and provides for control of both endemic and exotic animal diseases.

The Bill specifies stringent provisions to permit the control of an exotic animal disease emergency.

The Bill brings the ACT into line with the States and the Northern Territory in the control of exotic animal diseases. An outbreak of an exotic animal disease could be both socially disruptive and economically debilitating.

A Commonwealth requirement for participation in the Commonwealth/States Territories Cost Sharing Agreement will be met with enactment of this legislation.

Financial Implications

In the event of an outbreak of an exotic animal disease the financial implications will be met through a cost sharing arrangement between the Commonwealth and States/Territories.

The Animal Diseases Bill 1993 consists of seven Parts.

PART I - PRELIMINARY

Part 1 consists of 4 clauses and deals with machinery matters. Clause 1 specifies the short title of the Bill. Clause 2 identifies the mechanism by which provisions of the Bill may be commenced. Clause 3 provides that the Acts specified in the Schedule shall be repealed. Clause 4 is an interpretation provision that defines certain terms for the purpose of the Bill.

PART II - ADMINISTRATION

Part II consists of seven clauses and deals with the appointment of the Director of Veterinary Hygiene and the appointment of inspectors.

Clause 5 - Director of Veterinary Hygiene

Clause 5 specifies that the Minister may appoint a public servant to be the Director of Veterinary Hygiene. Clause 5 provides that if the person appointed to be Director ceases to be a public servant then that person ceases to be the Director.

Clause 6 - Acting Director

Clause 6 enables the Minister to appoint a public servant to act as Director. Clause 6 provides that the appointment shall not exceed 12 months and if the person appointed ceases to be a public servant then the appointment shall be terminated.

Clause 7 - Delegation

Clause 7 enables the Director to delegate any of her or his powers or functions to a public servant.

Clause 8 - Appointment of Inspectors

Clause 8 empowers the Minister to appoint a person to be an inspector.

Clause 9 - Performance of Inspector : Functions

Clause 9 specifies that the Director of Veterinary Hygiene shall have, and may exercise, the power of an inspector.

Clause 10 - Identity Cards

Clause 10 imposes a duty on the Minister to issue an identity card to the Director of Veterinary Hygiene and to each inspector. The identity card is to include the name of the holder of the card and a recent photograph.

Clause 11 - Return of Identity Card

Clause 11 creates an offence by specifying that a person who has been issued with an identity card shall return the identity card when that person ceases to be eligible to hold the card. A fee of \$100 may be imposed.

PART III - EXOTIC DISEASES OF ANIMALS

Part III consists of nine clauses and specifies procedures for dealing with an outbreak of exotic diseases of animals.

Clause 12 - Declaration of Exotic Diseases

Clause 12 empowers the Minister to declare any disease to be an exotic disease. Any such declaration shall be a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989.

Clause 13 - Notification of Diseases

Clause 13 deals with the notification of an exotic disease.

Subclause 13(1) imposes a duty on a person who has reasonable grounds for believing that an animal is infected with an exotic disease to notify the Minister.

Subclause 13(2) imposes a duty on the Director, or an inspector, to notify the Minister where there is reasonable grounds for believing that an animal is infected with an exotic disease.

Subclause 13(3) imposes a duty on a person who owns or who is in charge of an animal to keep separate that animal where that person has reasonable grounds for believing that animal is infected with an exotic disease.

Subclause 13(4) specifies that a person who without reasonable excuse contravenes subsection (1) or (3) shall be guilty of an offence punishable with a fine of \$5,000 or imprisonment for six months.

Clause 14 - Exotic Disease Quarantine Area

Clause 14 empowers the Minister to declare a specified area of land to be an exotic disease quarantine area. The clause specifies the data that is to be included in the declaration and imposes a duty on the Minister to publish a declaration in the Gazette and in a daily newspaper. A declaration is to be a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989.

Clause 15 - Importation Restrictions

Clause 15 enables the Minister to impose, by declaration, a restriction on the importation of animals from a specific area where such a restriction is necessary to prevent the spread of an exotic disease. Clause 15 specifies the detail that is to

be included in the declaration and the declaration is to be published in the Gazette and in a daily newspaper. Clause 15 also provides that a declaration is a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989.

Clause 16 - Ministerial Direction

Clause 16 empowers the Minister to give certain directions to control the spread of an exotic disease.

Subclause 16(1) specifies that where the Minister believes on reasonable grounds that it is necessary to control the spread of an exotic disease then the Minister may direct:

- (a) an inspector to seize an animal, animal product, a vehicle or a thing;
- (b) the owner or person in charge of premises, an animal product, or a thing to disinfect the premises, product or thing;
- (c) the owner or person in charge of an animal to inoculate the animal or take other specified action relating to immunity; or
- (d) an inspector or a specified person to take such other action as the Minister considers necessary.

Subclause 16(2) creates an offence of contravening a direction and imposes a fine of \$5,000 or imprisonment for six months.

Clause 17 - Destruction of Animals and Other Property

Clause 17 empowers the Minister to direct the destruction of animals, animal products, crop, pasture, a premises other than a dwelling where the Minister believes on reasonable grounds

that destruction is necessary to control the spread of an exotic disease. Such a direction is to be given to the owner or person in charge of the animal or thing. Clause 17 also creates an offence of contravening any such a direction and a penalty of a fine of \$5,000 or imprisonment for six months may be attracted.

Clause 18 - Compensation for Animals or Property Destroyed

Clause 18 specifies a procedure for the owner of an animal whose death was caused by an exotic disease, or the owner of any property that was destroyed pursuant to an order under section 17, to apply for compensation. Clause 18 specifies that the Minister shall determine the quantum of compensation according to market value. Any decision by the Minister in relation to compensation is reviewable by the Administrative Appeals Tribunal.

Clause 19 - Removal of Refuse

Clause 19 deals with the removal of refuse. The clause enables the Minister to give directions about the removal of specified refuse. Clause 19 creates an offence of contravening a direction and imposes a fine of \$5,000 or imprisonment for six months. Clause 19 also empowers the Minister to direct an inspector to remove refuse where a person has contravened a direction of the Minister and the costs incurred by an inspector shall be a debt payable to the Territory.

Clause 20 - Court Proceeding

Clause 20 provides that a direction under Part III of the Bill shall not be challenged or called into question by a Court.

PART IV - ENDEMIC DISEASES OF STOCK

Part IV consists of two Divisions and deals with endemic diseases of stock and the provision of stock tags. Division 1

has eight clauses and Division 2 has 14 clauses.

Clause 21 - Declaration of Stock and Endemic Stock Diseases

Clause 21 empowers the Minister to declare any animal to be stock for the purposes of the Bill; a disease to be an endemic stock disease for the purposes of the Bill and any endemic stock disease to be a disease for which compensation may be paid for stock destroyed. Any such declaration is to be a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989.

Clause 22 - Notification of Diseases

Clause 22 imposes an obligation on a person to notify the Minister of an outbreak of an endemic stock disease.

Subclause 22(1) provides that a person who has reasonable grounds for believing that stock is infected with an endemic stock disease shall notify the Minister.

Subclause 22(2) specifies that where the Director of Veterinary Hygiene or an inspector has reasonable grounds that stock is infected with an endemic stock disease then he or she shall notify the Minister in writing.

Subclause 22(3) imposes a duty on a person who owns or is in charge of stock to separate that stock where the person has reasonable grounds for believing that the stock is infected with an endemic stock disease.

Subclause 22(4) creates an offence of contravening subclauses (1) or (3) and imposes a fine of \$5,000.

Clause 23 - Endemic Stock Disease Quarantine Area

Clause 23 empowers the Minister to declare an area an endemic stock disease quarantine area if he or she has reasonable grounds for believing that an animal is infected and the

declaration is necessary to prevent the spread of an endemic stock disease. Clause 23 specifies the detail that must be included in a declaration and that the declaration is to be a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989.

Clause 24 - Ministerial Direction

Clause 24 empowers the Minister to give certain directions to control the spread of an endemic stock disease.

Subclause 24 (1) specifies that where the Minister believes on reasonable grounds that it is necessary to control the spread of an exotic disease then the Minister may direct:

- (a) an inspector to seize an animal, animal product, a vehicle or a thing;
- (b) the owner or person in charge of premises, an animal product, or a thing to disinfect the premises, product or thing;
- (c) the owner or person in charge of an animal to inoculate the animal or take other specified action relating to immunity; or
- (d) an inspector or a specified person to take such other action as the Minister considers necessary.

Subclause 24(2) creates an offence of contravening a direction and imposes a fine of \$5,000 or imprisonment for six months. The making of a direction may be subject to review by the Administrative Appeals Tribunal.

Clause 25 - Detaining Infected Stock

Clause 25 empowers an inspector to direct the owner or person in charge of stock to detain the stock on specified premises

if the inspector has reasonable grounds for believing that the stock is infected with an endemic stock disease. A contravention of such a direction may attract a fine of \$5,000.

Clause 26 - Restriction on Stock Movements

Clause 26 creates an offence of causing stock to enter or leave an endemic stock disease quarantine area or an area specified in a direction except with the written consent of the Minister and imposes a fine of \$5,000. A refusal by the Minister to give consent may be reviewed by the Administrative Appeals Tribunal.

Clause 27 - Destruction of Infected Stock

Clause 27 empowers the Minister to direct the destruction of infected stock or thing. Clause 27 also creates an offence of contravening a direction and imposes a fine of \$5,000 or imprisonment for six months.

Clause 28 - Compensation for Stock Destroyed

Clause 28 provides for a person to apply for compensation in respect of infected stock destroyed pursuant to the Minister. The Bill provides for review by the Administrative Appeals Tribunal of the quantum of compensation.

Division 2 deals with stock tags

Clause 29 - Certain Stock to be Tagged

Clause 29 prohibits a person from moving defined stock to or from an abattoir or a saleyard without each beast being tagged with a stock tag. A fine of \$1000 may be imposed for a breach of the clause.

Clause 30 - Defined Stock

Clause 30 enables the Minister to declare certain stock to be defined stock. The declaration is to be a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989.

Clause 31 - Register

Clause 31 specifies that the Director of Veterinary Hygiene shall establish and maintain a register of tag members.

Clause 32 - Applications

Clause 32 provides that the owner of defined stock may apply for a stock tag number.

Clause 33 - Allocation of Tag Numbers

Clause 33 provides that the Director of Veterinary Hygiene shall allocate a stock tag number to the owner of defined stock. A refusal by the Director to allocate a number may be reviewed by the Administrative Appeals Tribunal.

Clause 34 - Approval Manufacturers

Clause 34 provides that the Director of Veterinary Hygiene may declare a manufacturer to be an approved manufacturer of stock tags.

Clause 35 - Manufacture and Issue of Tags

Clause 35 prohibits:

- (a) an approved manufacturer from issuing a stock tag unless the issue is authorised by the Director of Veterinary Hygiene; and
- (b) a person other than an approved manufacturer from

making a stock tag.

Clause 35 also provides that a fine of \$1000 may be imposed for a contravention of the clause.

Clause 36 - Tagging Defined Stock

Clause 36 prohibits a person from tagging defined stock with approved stock tags otherwise than in accordance with a declaration made by the Minister. Such a declaration is to be a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989. A fine of \$1000 may be imposed.

Clause 37 - Alteration of Tags

Clause 37 prohibits a person from altering an approved tag and imposes a fine of \$1000.

Clause 38 - Tags to remain with Carcass

Clause 38 provides that the manager or person in charge of an abattoir shall ensure that a stock tag shall accompany a carcass until the final inspection of the carcass by a person authorised under the Meat Act 1931. A fine of \$1000 may be imposed for a contravention of this clause.

Clause 39 - Records of Untagged Stock

Clause 39 imposes a duty on the manager or person in charge of an abattoir to keep a record of defined stock, delivered to the abattoir for slaughter, that is not tagged in accordance with clause 36. The record shall be in a form approved by the Director of Veterinary Hygiene. A fine of \$2,000 may be imposed for failing to keep a record.

Clause 40 - Emergency Tags

Clause 40 enables the Director to issue emergency tags.

Clause 41 - Cancellation of Tag Numbers

Clause 41 empowers the Director of Veterinary Hygiene to cancel a tag number that is no longer required. A decision by the Director to cancel a tag number may be reviewed by the Administrative Appeals Tribunal.

Clause 42 - Evidentiary Certificates

Clause 42 provides that a certificate by the Director of Veterinary Hygiene stating that a person has or has not been allocated a tag is evidence of the matter so stated for use in relation to an offence of failing to tag stock.

PART V - ENFORCEMENT

Part V consists of three Divisions and deals with enforcement.

Division 1 deals with preliminary matters in relation to Part V.

Clause 43 - Interpretation

Clause 43 defines the term disease for the purpose of Part V to mean both an exotic disease or an endemic stock disease.

Division 2 deals with Powers of Inspection.

Clause 44 - Entry to Premises

Clause 44 deals with the power of an inspector to enter a premises:

- (a) other than a dwelling - at any reasonable time;
- (b) with the consent of the occupier;
- (c) pursuant to a search warrant; or

- (d) if the inspector believes, on reasonable grounds, that the circumstances are of such seriousness and urgency as to require immediate entry without the authority of a warrant.

Clause 44 contains the usual safeguards as to the production of an identity card.

Clause 45 - Consent to Entry

Clause 45 provides that before seeking consent to enter a premises an inspector shall produce her or his identity card and inform the occupier that consent may be refused. Where consent is obtained the inspector is obliged to ask for written acknowledgment of the request for consent and that consent was voluntarily given.

Clause 46 - Search Warrants

Clause 46 enables an inspector to obtain a search warrant from a Magistrate. Clause 46 specifies the information that the inspector must provide and what must be stated in the warrant.

Clause 47 - Inspector's Powers

Clause 47 specifies the powers that an inspector may exercise where the inspector has entered premises in accordance with clause 44. Clause 47 creates an offence of contravening a direction of an inspector or of failing to provide information, documents or records requested by the inspector and imposes a fine of \$5,000 or imprisonment for six months.

Clause 48 - Inspectors Powers - Travelling Stock

Clause 48 specifies the powers of an inspector in relation to travelling stock. Clause 48 provides that an inspector may detain travelling stock or direct the owner, or person in charge, to move stock or to hold stock on a specified premises. Clause 48 also creates an offence of contravening a

direction of an inspector and a fine of \$5,000 may be imposed. A refusal by the Minister to give consent to a request for stock to enter or leave specified premises may be reviewed by the Administrative Appeals Tribunal.

Clause 49 - Public Notices

Clause 49 gives the Minister a discretion to display notices within or near an endemic stock disease quarantine area or an exotic disease quarantine area. Clause 49 also creates an offence of damaging, interference with or reviling such a notice and imposes a fine of \$1,000. A refusal by the Minister to consent to the removal of a notice may be reviewed by the Administrative Appeals Tribunal.

Clause 50 - Non-Compliance with Directions and Cost Recovery

Clause 50 enables recovery of costs incurred as a result of action taken by an inspector because of a contravention of a direction of an inspector.

Division 3 consists of nine clauses and specifies certain offences.

Clause 51 - Contravention of Restrictions

Clause 51 creates an offence of contravening a restriction imposed by a declaration under clauses 14; 15 or 23 and imposes a penalty of a fine of \$5,000 or imprisonment for six months.

Clause 52 - Obstruction of Inspectors

Clause 52 creates an offence of hindrance or obstructing an inspector in the execution of her or his duty and imposes a penalty of a fine of \$5000 or imprisonment for six months.

Clause 53 - Self-Incrimination

Clause 53 specifies that a person is not excused from making available documents or records, furnishing information or answering questions on the grounds of self-incrimination. However, clause 53 also specifies that documents or information obtained shall not be admissible in evidence against the person in criminal proceedings other than proceedings for an offence against the Bill relating to the refusal or failure to produce any document, record or information or the furnishing of any document, record, information or answer that is false or misleading.

Clause 54 - Spreading Disease

Clause 54 creates an offence by prohibiting a person from knowingly communicating a disease or a disease agent to any animal. Penalty of a fine of \$5,000 or imprisonment for six months may be incurred. Clause 54 also defines the term "disease agent".

Clause 55 - Use of Vaccines

Clause 55 prohibits a person from using on any stock:

- (a) a virus, vaccine or other biological product containing living organisms; or
- (b) for the purposes of diagnosis, a biological product which does not contain living organisms

except with the approval of the Minister. A penalty of a fine of \$5,000 or imprisonment for six months may be imposed. A refusal by the Minister to give consent may be reviewed by the Administrative Appeals Tribunal.

Clause 56 - Abandoning Infected Animals or Carcasses

Clause 56 prohibits the owner, or person in charge, of an

infected animal from abandoning that animal or permitting that animal to stray, or leaving a carcass of an animal on or adjacent to a public road or in or adjacent to a creek or waterhole. A penalty of a fine of \$5,000 may be imposed.

Clause 57 - Selling Infected Animals

Clause 57 prohibits a person from selling or offering for sale or purchase an infected animal except with the written consent of the Minister. A penalty of a fine of \$5,000 for imprisonment for six months may be incurred. A refusal by the Minister to give consent may be reviewed by the Administrative Appeals Tribunal.

Clause 58 - Interference with Structures

Clause 58 prohibits a person, except with the written consent of the Minister, from damaging or interfering with a gate, fence or other structure being used to contain animals for the purposes of the Bill. A penalty of a fine of \$500 may be incurred. A refusal by the Minister to give consent may be reviewed by the Administrative Appeals Tribunal.

Clause 59 - Corporations - Penalties

Clause 59 specifies that where a body corporate is convicted of an offence then the penalty that may be imposed is a fine not exceeding 5 times the maximum amount specified for the particular offence.

PART VI - MISCELLANEOUS

Part VI consists of five clauses and deals with miscellaneous matters.

Clause 60 - Certificate of Freedom from Disease

Clause 60 provides a mechanism for the owner or occupier of a premises to obtain a certificate from the Minister that the

premises are not infected with a specified exotic disease or endemic stock disease. Any certificate granted by the Minister may be used as evidence in any proceedings under the Bill. A refusal to give a certificate may be reviewed by the Administrative Appeals Tribunal.

Clause 61 - Review of Decisions

Clause 61 specifies those provisions that may be reviewed by the Administrative Appeals Tribunal.

Clause 62 - Notification of Decisions

Clause 62 specifies that where the Minister has made a decision that attracts review by the Administrative Appeals Tribunal then notice of the decision must be given to the person in respect of whom the decision was made.

Clause 63 - Determination of Fees

Clause 63 empowers the Minister to determine fees for the purposes of the Bill.

Clause 64 - Regulations

Clause 64 provides that the Executive may make regulations and specifies that the regulations may prescribe penalties not exceeding \$1000 for offences against the regulations.

PART VII - TRANSITIONAL

Part VII consists of 14 clauses and deals with transitional matters.

Clause 65 - Interpretation

Clause 65 is an interpretation provision.

Clause 66 - Stock

Clause 66 provides for the continuing operation of a declaration under paragraph 4(1)(b) of the Stock Diseases Act 1933 specifying stock.

Clause 67 - Appointment of Director and Inspector

Clause 67 provides for the continuing operation of the appointment of the Director of Veterinary Hygiene and Inspectors.

Clause 68 - Director for the Destruction of Stock

Clause 68 provides that an order made under the Stock Diseases Act 1933 made but not executed before the commencement of the Bill shall continue in force and section 8 of the Stock Diseases Act 1933 shall continue to apply to such an order.

Clause 69 - Compensation for Stock

Clause 69 provides that subsection 8(3) of the Stock Diseases Act 1933 shall continue to apply where stock have been destroyed under subsection 8(1) of that Act and agreement had not been needed about the quantum of compensation.

Clause 70 - Declaration of Defined Stock

Clause 70 provides for the continuing operation of a declaration under section 11B of the Stock Diseases Act 1933 relating to defined stock.

Clause 71 - Continuing Register

Clause 71 provides for the continuation of the register of tag numbers.

Clause 72 - Application for a Stock Tag Number

Clause 72 provides that an application for the allocation of a tag number made but not determined before the commencement of the Bill shall be taken to be an application under the Bill.

Clause 73 - Stock Tag Numbers

Clause 73 provides that a tag number allocated by virtue of the operation of the Stock Diseases Act 1933 shall be taken to be a tag number allocated under the Bill.

Clause 74 - Manufacturers

Clause 74 provides that a declaration under the Stock Diseases Act 1933 relating to an approved manufacturer of tags shall be taken to be a declaration under the Bill.

Clause 75 - Authority to Issue Tags

Clause 75 provides that an authorisation under the Stock Diseases Act 1933 to issue a tag shall be taken to be an authorisation under the Bill.

Clause 76 - Manner of Tagging Defined Stock

Clause 76 provides that a declaration under the Stock Diseases Act 1933 as to how defined stock are to be defined is to be taken to be a declaration under the Bill.

Clause 77 - Cancellations of Tag Numbers

Clause 77 provides for the continuing operation of a notice under the Stock Diseases Act 1933 relating to the cancellation of tag numbers.

Clause 78 - Evidentiary Certificates

Clause 78 provides for the continuing operation of an evidentiary certificate.