

1991

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

STOCK DISEASES (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

**Circulated by Authority of the Minister for the Environment,
Land and Planning
Bill Wood MLA**

STOCK DISEASES (AMENDMENT) BILL 1991

The Stock Diseases Act 1933 provides for the destruction of diseased stock, payment of compensation to the owner of destroyed diseased stock and isolation of an area of the Territory where diseased stock are located, but does not provide for a system of identification of stock to enable diseased stock, once detected, to be traced back to an originating location.

The Stock Diseases (Amendment) Bill 1991 will provide for a system of tagging of defined stock for identification purposes. This will include mechanisms for tracing the place of origin of stock by requiring the registration of all tags and by empowering an inspector to access records relating to the movement of stock which are kept by producers, transporters and processors of stock. The Bill will allow the Territory to participate in the uniform system of stock tag identification operated elsewhere in Australia which is an essential element in the success of national programs to eradicate diseases in stock such as bovine tuberculosis.

The Bill will have no effect on income or expenditure.

Details of the Bill are included in the attachment.

ATTACHMENT

STOCK DISEASES (AMENDMENT) BILL 1991

Clause 1 provides for the short title of the Bill, once enacted, to be the Stock Diseases (Amendment) Act 1991.

Clause 2 makes provision for the commencement of the Bill.

Clause 3 defines the "Principal Act" to mean the *Stock Diseases Act 1933*.

Clause 4 inserts the heading "PART I - PRELIMINARY" before section 1 of the Principal Act.

Clause 5 provides for the interpretation of terms used in the Bill to be inserted into section 3 of the Principal Act.

Clause 6 inserts the heading "PART II - ADMINISTRATION" before section 4 of the Principal Act.

Clause 7 amends section 4 of the Principal Act, which provides that the Minister may declare any disease, or any animal or bird, to be a disease or to be stock, respectively, for the purposes of the Act.

Subclause 7(1) inserts subsection 4(2) which provides that a declaration made under subsection 4(1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*. This means that the instrument will be of no effect if it fails to satisfy the notification, tabling and retrospectivity requirements under section 10 of the *Subordinate Laws Act 1989* and that it is subject to scrutiny and disallowance by the Legislative Assembly.

Subclause 7(2) provides that the amendment in subclause 7(1) does not apply to a declaration made before the commencement of clause 7.

Clause 8 inserts proposed section 4D into the Principal Act.

Proposed section 4D provides that the Director may by writing delegate any of his or her powers or functions under the *Stock Diseases Act 1933*.

Clause 9 inserts proposed sections 5A and 5B into the Principal Act.

Proposed section 5A provides that the Director of Veterinary Hygiene shall issue an identity card to each inspector appointed under the Act, which shall specify the inspector's name and appointment and shall include a recent photograph of the inspector.

Proposed section 5B provides that the inspector shall not, without reasonable excuse, fail to return his or her identity card to the Director on ceasing to be an inspector. A penalty of \$100 is imposed for failure to do so.

Clause 10 amends section 6 of the Principal Act, which provides for powers of entry onto land or premises, by inserting proposed subsection 6(1A) after subsection 6(1).

Proposed subsection 6(1A) provides that if an inspector is requested to produce his or her identity card by the occupier of land or premises, or by the owner of stock on that land or premises, and he or she fails to do so, then that inspector is not authorised to remain on that land or premises.

Clause 11 inserts the heading "PART III - DISEASED STOCK" before section 7 of the Principal Act.

Clause 12 repeals section 7 of the Principal Act, which requires an owner of stock to give immediate notice to the Director or an inspector of any disease amongst his or her stock, and substitutes a new section 7.

New subsection 7(1) provides that where an owner of stock becomes aware of disease among stock owned by him or her or under his or her charge, custody or control, that owner is required to give written notice of the disease to the Director or an inspector.

New subsection 7(2) provides that an owner of stock shall not, without reasonable excuse, contravene subsection (1) and provides a penalty of \$5,000 for a natural person and \$25,000 for a body corporate.

Clause 13 amends section 9 of the Principal Act, which provides for the powers of an inspector, by inserting proposed paragraph 9(f) which allows an inspector to inspect, take an extract from, or make a copy of, any document or record relating to prescribed stock where the inspector believes on reasonable grounds that it is necessary for the purposes of the Act.

Clause 14 inserts proposed sections 9A and 9B after section 9 in the Principal Act.

Proposed section 9A provides that a person shall not refuse or fail to carry out any lawful order given by an inspector under this Act unless that person has a reasonable excuse, and provides a penalty of \$5,000 for a natural person and \$25,000 for a body corporate for a failure to comply.

Proposed section 9B provides that a person shall not obstruct an inspector in the execution of his or her duty under the Act, without reasonable excuse, and provides a penalty of \$5,000 or imprisonment for 6 months.

Clause 15 amends section 11 of the Principal Act which provides for offences under the Act.

Paragraph 15(a) and 15(b) omit paragraphs 11(g) and 11(h) of the Principal Act which provide that it is an offence to refuse or fail to carry out any order lawfully given by an inspector or to obstruct an inspector in the execution of his or her duty. These offences are now encompassed

in proposed sections 9A and 9B. Proposed paragraph 15(b) also omits paragraph 11(j) which provides that it is an offence to contravene or fail to comply with any provision of the Act. It is current drafting practice that penalties should be tied to individual clauses rather than to provisions such as that in paragraph 11(j).

Paragraph 15(c) increases the penalty under section 11 of the Principal Act from \$1,000, to \$5,000 for a natural person and provides a penalty of \$25,000 for a body corporate.

Clause 16 amends the Principal Act by inserting the heading "PART IV - STOCK TAGS" after section 11 and by inserting proposed sections 11A, 11B, 11C, 11D, 11E, 11F, 11G, 11H, 11J, 11K, 11L, 11M, 11N, 11P, 11Q and 11R.

Proposed section 11A regulates the tagging of stock.

Proposed subsection 11A(1) prohibits a person from travelling or transporting defined stock or causing such stock to be travelled or transported to, or from, an abattoir or a saleyard or any other place for sale unless the stock is tagged with a specified tag. The stock must be tagged with an approved tag unless it is being travelled or transported within the period of 28 days after the sale of that stock. If the latter case applies the stock must be tagged with an approved tag or a tag manufactured by an approved manufacturer and bearing the number allocated to the previous owner or a tag issued to that owner pursuant to proposed section 11M. Proposed subsection 11A(1) also provides a penalty of \$1,000 for a natural person and \$5,000 for a body corporate, for contravention of the subsection.

Clause 5 inserts a definition of 'approved tag' into section 3 of the Principal Act. An approved tag means a tag

- manufactured by an approved manufacturer and bearing the number allocated to the owner of the stock under proposed section 11E; or
- issued to the owner as an emergency tag under proposed section 11M.

Proposed subsection 11A(2) provides that for the purposes of subsection 11A(1), defined stock is to be taken to be tagged if it is tagged with a tag granted or issued under a prescribed law of a State

or another Territory. This means that defined stock passing through the ACT or being brought into the ACT for sale or slaughter, will not be required to be tagged with ACT tags upon crossing the border.

Proposed section 11B provides for the specification of defined stock.

Proposed subsection 11B(1) provides that the Minister may, by notice published in the *Gazette*, declare specified stock to be 'defined stock'.

The Bill applies identification procedures to all defined stock for the purposes of disease control in Australia.

Proposed subsection 11B(2) provides that such a notice takes effect either on the day specified in the notice or on the day it is published in the *Gazette*, whichever is the later.

Proposed subsection 11B(3) provides that such a notice is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*. This means that the instrument will be of no effect if it fails to satisfy the notification, tabling and retrospectivity requirements under section 10 of the *Subordinate Laws Act 1989* and that it is subject to scrutiny and disallowance by the Legislative Assembly.

Proposed section 11C provides for a register of tag numbers.

Proposed subsection 11C(1) provides that the Director shall establish and maintain a register of tag numbers.

Proposed subsection 11C(2) provides that the Director may make any necessary alterations to the register either, of his or her own accord, or at the written request of a stock owner to whom a tag number has been allocated under section 11E.

Proposed section 11D provides for applications for tag numbers.

Proposed subsection 11D(1) provides that a person who is the owner of defined stock may apply to the Director of Veterinary Hygiene for a tag number in respect of that stock.

Proposed subsection 11D(2) provides that an application shall be lodged with the determined fee and shall be in a form approved by the Director.

Proposed subsection 11D(3) provides that where stock is owned by 2 or more persons, the application may be made jointly or by any one of those persons.

Proposed section 11E provides that where the Director is satisfied that the applicant is the owner of the defined stock in relation to which the application was made, the Director shall allocate to the applicant a stock tag number in respect of that stock and shall enter the relevant details in the register. Proposed section 11Q provides a method for review of a decision refusing to issue a tag number.

Proposed section 11F provides that the Director shall publish in the *Gazette* a notice declaring a manufacturer to be an approved manufacturer for the purposes of the Act.

Proposed section 11G provides for the manufacture and issue of tags, and provides a penalty of \$1,000 where the offender is a natural person and \$5,000 where the offender is a body corporate for contravention of the section.

Proposed subsection 11G(1) provides that, unless he or she has a reasonable excuse, an approved manufacturer shall not issue a tag without authorisation in writing from the Director.

Proposed subsection 11G(2) provides that it is an offence for a person to make a tag, without reasonable excuse, unless he or she is an approved manufacturer.

Proposed section 11H provides for the tagging of stock.

Proposed subsection 11H(1) provides that the Minister shall declare, by notice in the *Gazette*, the manner in which approved tags shall be attached to defined stock. The subsection also provides that a person shall not attach approved tags to defined stock in any manner other than that declared by the Minister, unless he or she has a reasonable excuse. There is a penalty of \$1,000 for a natural person and \$5,000 for a body corporate.

Proposed subsection 11H(2) provides that such a declaration is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*. This means that the instrument will be of no effect if it fails to satisfy the notification, tabling and retrospectivity requirements under section 10 of the *Subordinate Laws Act 1989* and that it is subject to scrutiny and disallowance by the Legislative Assembly.

Proposed section 11J provides that a person shall not alter a tag without reasonable excuse and provides for a penalty of \$1,000.

Proposed section 11K provides that tags shall remain with carcasses.

Proposed subsection 11K(1) requires the manager or other person in charge of an abattoir to keep, or cause to be kept, a tag with the carcass from which it was removed until after the final inspection of the carcass on the slaughter floor.

Proposed subsection 11K(2) provides a penalty of a fine not exceeding \$1,000 for contravention of proposed subsection 11K(1) without reasonable excuse.

Proposed section 11L provides for the keeping of records of untagged stock.

Proposed subsection 11L(1) requires the manager or other person in charge of an abattoir to keep a record of prescribed stock delivered for slaughter that are not tagged in the manner prescribed and imposes a penalty of \$1,000 for a failure to do so unless that person has a reasonable excuse.

Proposed subsection 11L(2) provides that a record kept in accordance with proposed subsection 11L(1) shall be in a form approved by the Director.

Proposed section 11M provides for the issue of tags in emergency situations, for example when stock arrive at the saleyards and one or two animals have lost their tags in transit and the owner does not have any extra tags available.

Proposed subsection 11M(1) provides that in the case where defined stock are required to be tagged but tags bearing the number allocated to the owner of the stock are not readily available, the Director shall, on payment of the determined fee, issue the owner with a tag bearing the number allocated under proposed subsection 11M(3).

Proposed subsection 11M(2) provides that the Director shall enter in the register the particulars specified in proposed paragraph 11E(b), in relation to every tag issued under proposed subsection 11M(1).

Proposed subsection 11M(3) provides that the Director may allocate numbers for the purposes of proposed section 11M.

Proposed section 11N provides for the cancellation of tag numbers.

Proposed subsection 11N(1) applies where the Director believes on reasonable grounds that a tag number is no longer required for the purposes of compliance with this Act. The Director may, by notice in writing served on the person to whom the tag number was allocated, require that person to show cause, within 28 days, why that number should not be cancelled.

Proposed subsection 11N(2) provides that where a notice has been served under proposed subsection 11N(1) on a person to whom a tag number has been allocated, and the 28 day period has expired, the Director may cancel the tag number if he or she has taken into account any representation made by that person.

Proposed subsection 11N(3) provides that where the Director cancels a tag number pursuant to proposed section 11N, he or she shall revoke the authority given to an approved manufacturer in relation to that tag number, and shall remove the entry in the register made in respect of that number.

Proposed subsection 11N(4) provides that a revocation of authority under proposed subsection 11N(3) takes effect on the date of cancellation of the tag number.

Proposed section 11P provides that a certificate signed by the Director with respect to a specified tag number, is evidence of the matters stated in the certificate in any proceedings for an offence against proposed

subsections 11A (1). Such a certificate shall state that at a specified time or during a specified period, a specified person had or had not been allocated that tag number.

Proposed section 11Q provides that an applicant for a tag number may apply to the Administrative Appeals Tribunal for a review of a decision of the Director refusing to allocate a tag number under proposed section 11E, or of a decision cancelling a tag number under proposed section 11N.

Proposed section 11R provides for notification of decisions by the Director.

Proposed subsection 11R(1) provides that the Director shall give notice in writing to the applicant within 28 days where he or she makes a decision refusing to allocate a tag number under proposed section 11E or cancelling a tag number under proposed section 11N.

Proposed subsection 11R(2) provides that a notice under proposed subsection 11R(1) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates.

The proposed subsection also provides that, except where subsection 26(11) of that Act applies, the notification should include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of the Act.

Section 26 of the *Administrative Appeals Tribunal Act 1989* provides that where a person is entitled to apply to the Tribunal for a review of a decision, he or she may in writing request the person who made the decision to give him or her a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision. The person who made the decision shall, within 28 days after receiving the request, prepare and give such a statement to that person.

Subsection 26(11) of the *Administrative Appeals Tribunal Act 1989* provides that a person is not entitled to make a request under

section 26 if he or she has already been given a statement of reasons.

Proposed subsection 11R(3) provides that the validity of a decision shall not be affected by a failure to comply with proposed subsection 11R(2).

Clause 17 amends the Principal Act by inserting before section 12, the heading "PART V - MISCELLANEOUS" and proposed section 11S.

Proposed section 11S refers to determined fees.

Proposed subsection 11S(1) provides that the Minister may, by notice published in the *Gazette*, determine fees for the purposes of the Act. Under section 6(12) of the *Subordinate Laws Act 1989*, such a notice is a disallowable instrument which is subject to scrutiny by the Legislative Assembly. The notice would therefore be of no effect if it fails to satisfy the notification, tabling and retrospectivity requirements under the *Subordinate Laws Act 1989*.

Proposed subsection 11S(2) provides that all determined fees shall be paid to the Director.

Clause 18 amends section 12 of the Principal Act by increasing the maximum penalty which can be imposed by the Regulations from \$250 to \$1,000 for a natural person and \$5,000 for a body corporate.

Clause 19 provides that the Principal Act is amended as set out in the Schedule. The Schedule makes amendments to various provisions to express them in gender neutral terms, and amends other provisions to create uniformity of spelling throughout the Act.