

2003

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

ANIMAL AND PLANT DISEASES AMENDMENT BILL 2003

EXPLANATORY STATEMENT

Circulated by authority of

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EXPLANATORY STATEMENT

Outline

This Bill effects amendments to the *Animal Diseases Act 1993* and the *Plant Diseases Act 2002*. Some of the amendments address an issue with these two Acts that arose out of a national foot and mouth simulation held in 2002 (known as Operation Minotaur). The balance address issues in the *Plant Diseases Act 2002* arising out of the *Criminal Code 2002*.

The Operation Minotaur issues relate to the commencement of declarations of quarantine and importation restriction that can be made under these Acts. These declarations are disallowable instruments that in the normal course of events, commence the day after they are notified. This will usually mean that there is at least 12 hours delay between a quarantine declaration being signed and its coming into effect, and more usually over 24 hours delay. With many diseases (such as foot and mouth disease, and some viral plant diseases) every hour of delay means significantly greater risk of spread of the disease. It is therefore greatly desirable to minimise the time between the recognition that a quarantine is required and when it comes into effect. The amendments proposed by this Bill allow these declarations (and some related declarations) to commence immediately if there is need for that arising from the risk posed by the disease or pest. If this is done, there is a requirement to advertise notice of the declaration on television and radio.

The offences in the *Plant Diseases Act 2002* have been amended to ensure compliance with the *Criminal Code 2002*.

Revenue/Cost Implications

There is no additional cost involved in the Bill as all infrastructure is in place under existing arrangements.

Formal Clauses

Part 1- Preliminary

Clauses 1 and 2 are formal requirements. They deal with the short title of the Bill, and the commencement provisions.

Part 2 – Animal Diseases Act 1993

Clause 3 identifies the Act being amended by this Part.

Clause 4 inserts provisions into section 12 that alter the time at which the declaration of an exotic disease under that section commences. Under section 73 of the *Legislation Act 2001*, a disallowable instrument commences on the day after it is notified. This provision allows the Minister to specify an earlier time for commencement of the declaration if the Minister is satisfied that the earlier commencement is necessary to prevent a disease becoming established or spreading in the ACT. The Minister cannot make the declaration retrospective in operation. The

provisions place an obligation on the Minister to take steps to advertise the making of the declaration on TV or radio if he or she makes the declaration begin earlier.

Clause 5 does the same in relation to a declaration of an exotic disease quarantine area under section 14 of the *Animal Diseases Act 1993*.

Clause 6 does the same in relation to a declaration of an importation restriction under section 15 of the *Animal Diseases Act 1993*.

Clause 7 does the same in relation to a declaration of stock and endemic stock diseases under section 21 of the *Animal Diseases Act 1993*.

Clause 8 does the same in relation to a declaration of an endemic disease quarantine area under section 23 of the *Animal Diseases Act 1993*.

Part 3 – Plant Diseases Act 1993

Clause 9 identifies that this Part amends the *Plant Diseases Act 2002*.

Clause 10 inserts section 4A, which states that the Criminal Code applies to the Act.

Clause 11 inserts provisions into section 5 that alter the time at which the declaration of a disease under that section commences. Under section 73 of the *Legislation Act 2001*, a notifiable instrument commences on the day after it is notified. This provision allows the Minister to specify an earlier time for commencement of the declaration if the Minister is satisfied that the earlier commencement is necessary to prevent a disease or pest becoming established or spreading in the ACT. The Minister cannot make the declaration retrospective in operation. The provisions place an obligation on the Minister to take steps to advertise the making of the declaration on TV or radio if he makes the declaration begin earlier.

It should be noted that the definition of disease in section 5 is (intentionally) very broad, and it is not expected that in the usual course of events that it would be necessary to use this declaration power. However, it is possible that there will be circumstances where a declaration might be necessary to remove doubt, and further possible that this might be necessary in an emergency situation. Accordingly, this provision is being amended to allow for early commencement of such a declaration.

Clause 12 inserts provisions allowing for the early commencement of the declaration of pest under section 7 of the Act. Like the declaration under section 5, it is unlikely that this would be used, but this amendment is made against the possibility it might be necessary.

Clause 13 makes similar provision allowing for early commencement in relation to the power to prohibit the introduction of plants, diseases, insects or pests in section 8 of the Act.

New subsections 8, 9 and 10 modify the existing offence in section 8. The high penalty specified in the existing provision is to be reserved for an intentional breach of the provision (as per new subsection 8), and a significantly lower penalty is

specified in new subsection 9 for a breach of a prohibition where there is no need to prove a fault element (that is, the offence is of strict liability). This is done on the basis that the heavy penalty is appropriate for cases where a person deliberately puts the prevention or containment of a disease or pest at risk, but in lesser cases (like where there is inadvertent or accidental breach of a prohibition) there should be a lesser penalty. The penalty is still at a relatively high level as the danger to the plant industry and potentially the food supply can still be great. The offence is strict liability because of this high level of danger and to motivate people to take great care.

The declaration of a prohibition of this nature would generally be accompanied by signage at entry points to the ACT and enforcement activity to prevent breach appropriate to the risk posed by the prohibited thing.

Clause 14 makes similar amendments to section 10 as those made to section 8. Provision is made for early commencement of the disallowable quarantine declaration in new subsections 5, 6 and 7.

New subsections 8, 9 and 10 modify the existing offence. Again, the high penalty is reserved for intentional breach of a quarantine declaration, while a lesser penalty applies to the strict liability offence. Once again, the penalty is relatively high for the strict offence because of the economic and health risks associated with breach of a quarantine declaration. It is appropriate to use a strict liability offence in these circumstances because of these risks.

Clause 15 amends the offence in section 11 to make it an offence of intention (only). This is appropriate where the offence is a breach of an undertaking by the person who will be the offender, which in most circumstances will only be possible to breach intentionally.

Clause 16 amends section 12 in the same way that section 10 is amended. Provision is made to allow for early commencement of an declaration of an importation restriction, and the offence is modified to make the main offence an offence of intention, while a lesser strict liability offence is introduced.

Clause 17 substitutes a new section 13. This replaces the existing power to direct owners to destroy or treat a plant or thing on their premises with a more general power to give directions necessary for the containment or prevention of a disease or pest outbreak. The provision is modelled on section 16 of the *Animal Diseases Act 1993* and it allows directions to be given to support the making of a quarantine declaration, particularly in the period between the disease or pest being detected and the formal quarantine declaration being made. Of particular importance is the proposed ability to restrict movement of potentially infected material off the property, which is essential for the control of many diseases, especially viral diseases.

**CLAUSE 18 CLARIFIES THAT THE OFFENCE IN SECTION 16 IS A
STRICT LIABILITY OFFENCE. IT SHOULD BE
NOTED THAT THE PROSECUTION WOULD
NEVERTHELESS HAVE TO PROVE THAT THE**

DEFENDANT HAD REASONABLE GROUNDS FOR BELIEVING THAT THERE IS A NOTIFIABLE DISEASE OR PEST ON THE PREMISES. THIS OFFENCE IS STRICT LIABILITY BECAUSE OF THE POTENTIALLY HIGH RISKS ASSOCIATED WITH FAILURE TO REPORT THE INCIDENCE OF A PLANT DISEASE OR PEST.

This amendment also removes the provision allowing for reasonable excuse to this offence. Part 2.3 of the Criminal Code 2002 provides for an extensive series of defences that will be available to defendants in prosecution under this offence, including mental impairment, intoxication, mistake of fact, intervening conduct or event, emergency and duress. These defences provide an adequate range of defences for this offence, and there is no need to explicitly provide for reasonable excuse.

Clause 19 clarifies that the offence in section 20 for failure to return an identity card is a strict liability offence. It is important that persons with identity cards return them when they cease being an inspector as they can be subject to significant misuse.

Clause 20 clarifies that the offence under section 26 of failing to comply with requirement made by an inspector under section 26(1) is an offence of intention only.

Like the amendment to section 16 in clause 18, this amendment removes the provision allowing for reasonable excuse to this offence. The reason for doing this is the same as for the amendment in clause 18.

Clause 21 clarifies that the offence under section 27 for failure to provide a name and address when required to do so is a strict liability offence. This offence is an important part of the scheme for investigation of offences under this Act, and it is important that those who refuse to cooperate with inspectors be penalised for doing so. The mischief that this provision seeks to address exists regardless of what the person is thinking in relation to it. Further, the penalty for this offence is small. It is therefore appropriate that this offence be one of strict liability.

Like the amendment to section 16 in clause 18, this amendment removes the provision allowing for reasonable excuse to this offence. The reason for doing this is the same as for the amendment in clause 18.

Clause 22 clarifies the offence under section 28 of interfering with goods to which access has been restricted without Ministerial approval, by making it an offence of intention only.

Clause 23 substitutes new sections 32 to 34.

Sections 32 and 33 are about providing false and misleading information and documents. The new sections allow for knowledge or recklessness about the information or documents being false or misleading.

New section 34 clarifies that the offence of obstructing or hindering an inspector is a strict liability offence, which is appropriate because of the effect this can have on

administration of the Act and controlling the incidence and spread of plant diseases and pests.

Like the amendment to section 16 in clause 18 ,the amendment to section 34 removes the provision allowing for reasonable excuse to this offence. The reason for doing this is the same as for the amendment in clause 18.