

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

Pest Plants and Animals Bill 2005

EXPLANATORY STATEMENT

Circulated with the authority of
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Minister for the Environment

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This Explanatory Statement relates to the *Pest Plants and Animals Bill 2005* (the Bill) as introduced into the Legislative Assembly.

Overview of the Bill

Pest plants and animals harm the natural environment and have a significant economic impact on natural resource management and agricultural activities. The extent of pest plant and animal infestation in the ACT, and the potential for the introduction of new invasive species is of growing concern.

The purpose of the Bill is to protect the ACT's land and aquatic resources from threats from pest plants and pest animals and to promote a strategic and sustainable approach to pest management.

The Bill establishes a system for declarations of pest plants and pest animals. These declarations may indicate the approach to the management of the pest. For example, a declaration that a plant is a pest plant may state whether that pest plant should be suppressed or contained. A pest plant or pest animal declaration may also declare the pest to be notifiable in which case an occupier of premises must notify the Chief Executive of its presence.

The Bill provides for the development of management plans for declared pest plants and pest animals that set out how the threat will be managed. Directions may be issued to the occupier of premises to eradicate or control pest plants or pest animals consistent with the management plan. Contravention of a pest management direction is established as an offence and where a person has not undertaken something required by a direction, an authorised person may do so at the reasonable cost of the occupier.

The Bill also prohibits the supply of certain pest plants or pest animals, or material contaminated with certain declared pest plants or pest animals. These pest plants or pest animals are declared as prohibited. Furthermore the Bill establishes offences for activities, such as the use of vehicles and machinery contaminated with a prohibited pest plant or animal or the disposal of prohibited pest plants or animals or things contaminated with prohibited pest plants or animals, which would result, or be likely to result, in the spread of prohibited pest plants or pest animals.

This Bill proposes to repeal and replace Part 6, Division 3 of the *Land (Planning and Environment) Act 1991*.

Provision of strict liability to a specific element of the offence

The Bill includes a number of offences where strict liability applies to a specific element of the offence or to the offence. Section 23 of the Criminal Code provides that if a law that creates an offence provides for strict liability, there are no fault elements for the physical elements of the offence. Essentially, this means that conduct alone is sufficient to make the defendant culpable.

However, if strict liability applies, the defence of mistake of fact is available where the person considered whether or not facts existed and was under a mistaken but reasonable belief about the facts.

Offences incorporating strict liability elements are carefully considered when developing legislation and generally arise in a regulatory context where for reasons such as public safety or protection of the public revenue, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties. In particular, where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded. The rationale is that people engaged in the conduct of for example a business of supplying plants, as opposed to members of the general public who purchase plants from a commercial supplier, can be expected to be aware of their duties and obligations. The provisions are drafted so that, if a particular set of circumstances exists, a specified person is guilty of an offence. Unless some knowledge or intention ought be required to commit a particular offence (in which case a specific defence is provided), the defendant's frame of mind at the time is irrelevant.

Revenue/Cost Implications

The legislation will be implemented within existing financial resources.

Summary on Clauses

Part 1- Preliminary

Clauses 1 Name of Act

Provides that this Act is the *Pest Plants and Animals Act 2005*.

Clause 2 Commencement

Provides that this Act commences on a day fixed by the Minister by written notice.

Clause 3 Objects

Provides the objects of the Act. The primary objects stated in this clause are: to protect the ACT's land and aquatic resources from threats from pest plants and animals; to promote a strategic and sustainable approach to pest management; to identify pest plants and animals; and to manage pest plants and animals.

Clause 4 Dictionary

Provides that there is a dictionary at the end of the Act that is part of the Act.

Clause 5 Notes

Provides that the notes included within the Bill are explanatory and do not form part of the Act.

Clause 6 Offences against Act – application of Criminal Code etc

Provides that this Bill is subject to other legislation, including the Criminal Code and Legislation Act.

Part 2 – Pest Plants

Clause 7 Declaration of pest plant

Empowers the Minister to declare a plant to be a pest plant. A declaration may also declare a pest plant to be a notifiable and/or prohibited pest plant, and whether the pest plant must be suppressed or contained. A declaration is a disallowable instrument.

Clause 8 Pest plant management plan

Provides for the preparation of a pest plant management plan. A pest plant management plan is a notifiable instrument.

Clause 9 Notification of notifiable pest plant

Provides that a person commits an offence if the person does not notify the chief executive, within 2 working days, about the presence of a notifiable pest plant on their premises. This offence carries an element of recklessness and a maximum penalty of 20 penalty units.

Clause 10 Commercial supply of prohibited pest plant

Provides that a person commits an offence, if in the conduct of a business supplying plants, supplies a prohibited pest plant to someone else. This is a strict liability offence with a maximum penalty of 50 penalty units. This section does not apply if the supply is to an entity prescribed by regulation or under a permit.

Clause 11 Reckless supply of prohibited pest plant

Provides that a person commits an offence if the person supplies a prohibited pest plant or something contaminated with a prohibited pest plant, which would result or be likely to result in the spread of prohibited pest plants of that kind. This offence carries an element of recklessness and a maximum penalty of 50 penalty units.

Clause 12 Reckless use of vehicle or machinery

Provides that a person commits an offence if the person uses a vehicle or machinery which has on or in it, a prohibited pest plant or something contaminated by a prohibited pest plant, where it would result, or be likely to result, in the spread of the prohibited pest plants of that kind. This offence carries an element of recklessness and a maximum of 50 penalty units.

Clause 13 Permits to supply prohibited pest plant

Provides for the chief executive to issue a written permit for the supply of a prohibited pest plant, if the supply will not result in the spread of prohibited pest plants of that kind in a way that would endanger the environment or agriculture. Clause 48 states that issuing or refusing to issue a permit is a reviewable decision.

Clause 14 Reckless disposal of prohibited pest plant etc

Provides that a person commits an offence if the person disposes a prohibited pest plant or something contaminated by a prohibited pest plant, where it would result, or be likely to result, in the spread of prohibited pest plants of that kind. This offence carries an element of recklessness and a maximum penalty of 50 penalty units.

Part 3 – Pest animals

Clause 15 Declaration of pest animal

Empowers the Minister to declare an animal to be a pest animal. A declaration may also declare a pest animal to be a notifiable and/or prohibited pest animal. A declaration is a disallowable instrument.

Clause 16 Pest animal management plan

Provides for the preparation of a pest animal management plan. A pest animal management plan is a notifiable instrument.

Clause 17 Notification of notifiable pest animal

Provides that a person commits an offence if the person does not notify the chief executive, within 2 working days, about the presence of a notifiable pest animal on their premises. This offence carries an element of recklessness and a maximum penalty of 20 penalty units.

Clause 18 Commercial supply of prohibited pest animal

Provides that a person commits an offence, if in the conduct of a business supplying animals, supplies a prohibited pest animal to someone else. This is a strict liability offence with a maximum penalty of 50 penalty units. This section does not apply if the supply is to an entity prescribed by regulation or under a permit.

Clause 19 Reckless supply of prohibited pest animal etc

Provides that a person commits an offence if the person supplies a prohibited pest animal or something contaminated with a prohibited pest animal, which would result or be likely to result in the spread of prohibited pest animals of that kind. This offence carries an element of recklessness and a maximum penalty of 50 penalty units.

Clause 20 Reckless use of vehicle or machinery

Provides that a person commits an offence if the person uses a vehicle or machinery which has on or in it, a prohibited pest animal or something contaminated by a prohibited pest animal, where it would result, or be likely to result, in the spread of the prohibited pest animals of that kind. This offence carries an element of recklessness and a maximum penalty of 50 penalty units.

Clause 21 Keeping prohibited pest animal

Provides that a person commits an offence if the person keeps a prohibited pest animal where the keeping is likely to result in the spread of prohibited pest animals of that kind. This offence carries an element of recklessness and a maximum penalty of 50 penalty units.

Clause 22 Permit to supply prohibited pest animal

Provides for the chief executive to issue a written permit to supply a prohibited pest animal, if the supply would not result in the spread of prohibited pest animals of that kind in a way that would endanger the environment or agriculture. Clause 48 states that issuing or refusing to issue a permit is a reviewable decision.

Clause 23 Reckless disposal of prohibited pest animals etc

Provides that a person commits an offence if the person disposes a prohibited pest animal or something contaminated by a prohibited pest animal, where it would result, or be likely to result, in the spread of prohibited pest animals of that kind. This offence carries an element of recklessness and a maximum of 50 penalty units.

Part 4 – Pest management directions

Clause 24 Pest management direction by chief executive

Provides for the chief executive to give a direction to a person to do or not do something in relation to a pest plant or pest animal at their premises, if satisfied that a pest plant or pest animal is at the premises, and there has not been compliance with the relevant pest management plan. The direction must be consistent with the pest management plan for that pest plant or pest animal. Clause 48 states that giving a direction is a reviewable decision.

Clause 25 Service of pest management direction

Defines how a pest management direction may be given to the occupier of the premises.

Clause 26 Contravention of pest management direction – offence

Provides that a person commits an offence if the person engages in conduct that contravenes a requirement of a pest management direction. Maximum penalty is 50 penalty units.

Clause 27 Contravention of pest management direction – action by authorised person

This clause provides that if a person does not comply with a pest management direction requiring the occupier to do something an authorised person may, with any reasonable and necessary force, enter premises which the direction relates and do anything the occupier was required to do under the direction that was not done. The Territory may recover reasonable costs from the occupier for undertaking such work. The chief executive must endeavour to give written notice specifying certain information to the occupier at least 2 working days before any work by the authorised person begins. The occupier may waive the right to all or part of the minimum notice period.

Part 5 – Enforcement

Division 5.1 General

Clause 28 Definition for Part 5

Defines the terms *connected*, *occupier* and *offence* for the purpose of Part 5 of the Bill.

Division 5.2 Authorised People

Clause 29 Appointment of authorised people

Empowers the chief executive to appoint a public servant to be an authorised person for this Act.

Clause 30 Identity cards

Requires authorised persons to have identity cards.

Division 5.3 Powers of Authorised People

Clause 31 Power to enter premises

Empowers an authorised officer to enter premises at any reasonable time that are open to the public or at any reasonable time, enter premises if the authorised person suspects, on reasonable grounds, that a notifiable pest plant, prohibited pest plant, something contaminated by a prohibited pest plant, a notifiable pest animal, a prohibited pest animal or something contaminated by a prohibited pest animal may be at the premises. It does not include authorisation to enter part of the premises that are being used only for residential purposes. An authorised officer may also enter premises with the occupier's consent or with a search warrant.

Clause 32 Production of identity card

Provides that an authorised person may only remain on premises if they produce an identity card when asked to do so.

Clause 33 Consent to entry

Establishes the procedure required for an authorised person to obtain consent to entry, and the requirement for giving acknowledgement of that consent.

Clause 34 General powers on entry to premises

Defines the general powers of an authorised person who enters premises.

Clause 35 Power to require name and address

Empowers an authorised person to require a person to state their name and address in relation to suspicion of committing an offence under this Bill.

Clause 36 Power to seize things

Empowers an authorised officer to seize anything that is connected to an offence and makes it an offence to interfere with a seized thing.

Division 5.4 – Search warrants

Clause 37 Warrants generally

Empowers an authorised person to apply to a magistrate for a search warrant with regard to an offence under this Bill and establishes the process and requirements for the provision of a warrant.

Clause 38 Warrants – application made other than in person

Empowers an authorised person to apply by phone, fax, radio or other form of communication to a magistrate for a search warrant in urgent or otherwise special circumstances and establishes the process and requirements for the provision of a warrant.

Clause 39 Search warrants – announcement before entry

Requires an authorised person to announce that they are entering the premises under a search warrant.

Clause 40 Details of search warrant to be given to the occupier etc

Requires an authorised person to provide the occupier, or someone else representing the occupier, with details of the search warrant.

Clause 41 Occupier entitled to be present during search etc

Entitles the occupier to be present and observe whilst a search is being conducted. However, a person is not entitled to observe if to do so will impede the search or the person is under arrest and allowing the person to observe would interfere with the objectives of the search .

Division 5.5 – Return and forfeiture of things seized

Clause 42 Receipt for things seized

Requires that an authorised person provide a receipt for any things seized and describes what the receipt must include.

Clause 43 Moving things to another place for examination or processing under a search warrant

Empowers an authorised person to move a thing found under a search warrant to another place for examination.

Clause 44 Access to things seized

Entitles who would otherwise be able to inspect a thing seized, to inspect or copy (if a document) of the thing seized.

Clause 45 Return of things seized

Requires things seized to be returned to its owner or reasonable compensation paid by the Territory if an infringement notice is not served within 90 days and a prosecution is not begun within 90 days or a prosecution is unsuccessful, an infringement notice is withdrawn and a prosecution has not begun or the offence is not proven. This does not apply to notifiable pest plants or pest animals, prohibited pest plants or pest animals, or things contaminated with prohibited pest plants or pest animals.

Division 5.6 – Miscellaneous

Clause 46 Damage etc to be minimised

Requires that damage or inconvenience incurred by an authorised person in their duties under this Bill be minimised and duly rectified.

Clause 47 Compensation for exercise of enforcement powers

Provides for a person to claim compensation for any loss or expense suffered due to the exercise of a function under this Part of the Bill.

Part 6 – Review of decisions

Clause 48 Reviewable decisions

Provides that section 13, section 22 and section 24 are reviewable decisions.

Clause 49 Review of decisions

Provides for applications to be made to Administrative Appeals Tribunal for the review of reviewable decisions.

Part 7 - General

Clause 50 Determination of fees

Provides that the Minister may in writing determine fees for this Act.

Clause 51 Approved forms

Provides that the Minister may in writing approve forms for the Act. An approved form is a notifiable instrument.

Clause 52 Regulation-making power

Empowers the Executive to make regulations for this Bill.

Clause 53 Review of Act

Provides that the Act be reviewed after 5 years of operation.

Part 8 – Transitional

Clause 54 Transitional regulations

Provides for regulations to prescribe transitional matters necessary or convenient for the enactment of this Act.

Clause 55 Expiry of Part 8

Provides that this part expires 2 years after the day it commences.

Part 9 – Consequential Amendments

Clause 56 Legislation amended – Schedule 1

Provides for this Bill to amend legislation mentioned in schedule 1.

Schedule 1 sets out the legislation to be amended by this Bill. This includes amendments to the *Land (Planning and Environment) Act 1991*, *Land Titles Act 1925*, *Nature Conservation Act 1980* and *Tree Protection Act 2005*.

The Dictionary sets out the definitions for this Act.