

2009

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

ANIMAL DISEASES AMENDMENT BILL 2009

REVISED EXPLANATORY STATEMENT

**Circulated by authority by
Mr Jon Stanhope MLA
Minister for Territory and Municipal Services**

ANIMAL DISEASES AMENDMENT BILL 2009

Note This Revised Explanatory Statement has been prepared in response to the report into the Bill by the Standing Committee on Justice and Community Safety (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee) in its Scrutiny Report to the Assembly dated 30 March 2009.

Overview

This Bill amends the *Animal Diseases Act 2005* (the principal Act) to clarify the operation of aspects of that Act and to facilitate the management of future outbreaks of animal diseases in the Territory.

Following the conclusion of the Equine Influenza outbreak and the quarantine declared to control that disease in 2007, the Department of Territory and Municipal Services reviewed procedures undertaken during the outbreak. That review concluded that while the principal Act contained sufficient legislative basis for the actions taken to manage the outbreak, its operation could be clarified in a number of areas to provide greater certainty and to simplify steps that may need to be taken to manage future animal disease outbreaks.

The emergency management of animal diseases in Australia is dealt with under various cross-jurisdictional response plans agreed to by the Commonwealth, States and Territories, under the umbrella of the Emergency Animal Disease Response Agreement. The amendments contained in this Bill also assist in implementing aspects of the response plans.

As at the time of presentation of this Explanatory Statement, the agreed response plans for a range of exotic and endemic diseases can be viewed at the Animal Health Australia web site at:

http://www.animalhealthaustralia.com.au/programs/eadp/ausvetplan_home.cfm

In summary, the amendments to the principal Act contained in this Bill:

- clarify the objects of the principal Act;
- change the title of the Director of Veterinary Hygiene to “Chief Veterinary Officer” in line with other jurisdictions;
- allow for the effective secondment of public servants from other jurisdictions during animal disease outbreaks;
- clarify the power to issue directions under the principal Act;
- clarify that “restrictions” associated with quarantines can also include a system of authorisations to relax restrictions on a case-by-case basis;
- clarify the times at which vehicles may be inspected; and
- clarify the legal basis for sharing information across jurisdictions.

The Bill also makes minor changes to the regulation-making power of the principal Act in anticipation of possible changes to international and interstate animal vendor certification arrangements.

Financial Implications

There are no financial implications arising from this Bill.

Notes on Clauses

Clause 1 Name of Act

This clause is a formal provision setting out the name of the proposed Act.

Clause 2 Commencement

This clause explains that the proposed Act will commence 7 days after notification on the ACT Legislation Register. This small delay in commencement will allow for the republication on the register of the *Animal Diseases Act 2005*, as amended by the proposed Act.

Clause 3 Legislation amended

This clause is a formal provision to identify that the legislation to be amended by the proposed Act is the *Animal Diseases Act 2005* (the principal Act).

Clause 4 Section 3

This clause amends section 3 of the principal Act to clarify its objects, which are intended to protect the health and welfare of both humans and animals, as well as protect animal related industries. The objects clause has also been amended to clarify that the prevention and control of animal diseases includes the detection of such diseases.

Clause 5 Part 2

This clause substantially replicates the current Part 2 of the principal Act, except in two areas.

First, the title of the “Director of Veterinary Hygiene” is replaced with “Chief Veterinary Officer”, to better reflect the function of the office and to bring the title of this office into line with its interstate counterparts. Other amendments included in this Bill amend other references to the Director in the principal Act, which are discussed elsewhere in this explanatory statement.

In the interests of brevity, this explanatory statement uses the new term “Chief Veterinary Officer” rather than old term “Director of Veterinary Hygiene” when discussing proposed clarifications to the powers and functions of that office.

Secondly, the clause will permit the Chief Veterinary Officer to delegate powers not only to ACT public servants and the police (as is currently the case), but also to public servants from other Australian jurisdictions, provided those public servants are employed in agencies that are responsible for the detection, prevention and control of animal diseases. This amendment is intended to ensure that adequate numbers of personnel are available to manage an outbreak of an animal disease in the ACT and will facilitate the secondment of public servants from other jurisdictions to fight a disease outbreak in the ACT, in the event that is required. This amendment complements the amendment in clause 18.

Clause 6 Directions to control spread of exotic disease section 14(1)(b)

This clause clarifies that the Chief Veterinary Officer can issue directions to people not only to decontaminate their premises, products or things in relation to exotic diseases, but also to prevent them from contaminating or infecting anything else.

Currently, the power to require someone to prevent contamination or infection (for example by requiring a farmer to move their animals away from the farm's boundaries, or to temporarily keep their animals stabled) is drawn from section 14(1)(d). Given the importance of this power, it was considered preferable to clearly set the power out in section 14(1)(b), rather than rely on the catch-all power in section 14(1)(d). As such, it does not represent an extension of the Chief Veterinary Officer's existing powers.

Clause 7 Section 14(2)

This clause amends existing section 14(2) of the principal Act to reflect the change in title of the Director of Veterinary Hygiene to Chief Veterinary Officer.

**Clause 8 Directions to control spread of endemic disease
section 18(1)(b)**

This clause is similar in effect to clause 6 discussed above, except that section 18 deals with endemic diseases, rather than exotic diseases.

Clause 9 Section 18(2)

This clause amends existing section 18(2) of the principal Act to reflect the change in title of the Director of Veterinary Hygiene to Chief Veterinary Officer.

**Clause 10 Exotic disease quarantine area
section 19(1)**

This clause clarifies that either the entire ACT or areas within the Territory can be declared quarantine areas for an exotic disease. The size of a quarantine area can be dependent upon the severity of the impact of the disease, the speed with which it can spread and the difficulty in detecting or eradicating it. At present, quarantine areas are established in accordance with the Territory's commitments under the interstate Emergency Animal Disease Response Agreement and agreed interstate response plans for particular diseases.

**Clause 11 Endemic disease quarantine area
section 20(1)**

This clause is similar in effect to clause 10 discussed above, except that section 20 deals with endemic diseases, rather than exotic diseases.

**Clause 12 Offence—contravening restriction in quarantine
declaration
section 22 (2)**

This clause amends section 22 of the principal Act as a consequence of the amendments contained in clause 13 below. A person will no longer commit an offence of failing to comply with a quarantine movement restriction if they are doing so in accordance with an authorisation issued under section 24A and they have complied with any conditions imposed by that authorisation.

Clause 13 New section 24A to 24C

Quarantine declarations do not necessarily require a total ban on movement or activities within a quarantine area. The severity of restrictions in an area will generally depend on whether the particular disease has been detected in that area and if not, the proximity of the disease to that area. In areas at risk of infection, but not actually infected, it is unreasonable to expect the community to cease all movement and activities. However it is reasonable to expect that some conditions be placed on activities within the area, both to minimise the spread of the disease and,

should the disease actually spread, to be able to find possibly infected animals. Australia's agreed animal disease response plans are based on this multi-layered approach.

This clause therefore inserts new sections 24A to 24C into the principal Act. The intention of these new sections is to provide a means of relaxing restrictions on movement imposed under a quarantine declaration made under section 21 through the making of authorisations. An authorisation must only be for a stated activity, in a stated area, with the activity and area set out in the authorisation. Authorisations cannot run for longer than one year. Nor can they run for longer than the quarantine declaration to which they relate.

New section 24A will permit the Minister to include conditions on movement in an authorisation, together with conditions on the conduct of the stated activity covered by the authorisation.

A failure to comply with authorisation conditions is an offence under new section 24B. As a failure to comply with an authorisation condition potentially has the same impact as a breach of a quarantine restriction, the new penalty is the same as that imposed by existing section 22; namely, a maximum penalty of 50 penalty units and imprisonment for 6 months, or both.

It is anticipated that conditional authorisations issued under new section 24A may also require authorisation holders to retain records of their activities for a period of up to one year after a quarantine declaration is lifted. The purpose of this provision is in case a disease (particularly a disease with a long incubation period or one that can lie dormant for some months) that was thought to have been brought under control flares up again after the quarantine has been lifted. Inspection of such records will be an important means of tracing possibly infected animals.

New section 24C therefore establishes a new offence of failing to keep records required under an authorisation for at least 1 year after the day the authorisation expires, if the person was required to do so under an authorisation issued under section 24A. The maximum penalty for the offence is 20 penalty units.

Clause 14 **Removal of refuse from quarantine area
section 25(2)**

This clause amends existing section 25(2) of the principal Act to reflect the change in title of the Director of Veterinary Hygiene to Chief Veterinary Officer.

Clause 15 **Destruction of infected animals etc—endemic disease
section 27(2)**

This clause amends existing section 27(2) of the principal Act to reflect the change in title of the Director of Veterinary Hygiene to Chief Veterinary Officer.

Clause 16 **Destruction of infected animals etc—exotic disease
section 29(2)**

This clause amends existing section 29(2) of the principal Act to reflect the change in title of the Director of Veterinary Hygiene to Chief Veterinary Officer.

Clause 17 Selling, disposing of or abandoning infected animals
section 35(2)(e)(ii)

This clause amends existing section 35(2)(e)(ii) of the principal Act to reflect the change in title of the Director of Veterinary Hygiene to Chief Veterinary Officer.

Clause 18 Appointment of authorised people
section 64(1)

This clause will permit the Chief Executive of the department administering the principal Act to appoint not only ACT public servants as authorised people, but also public servants from other Australian jurisdictions, provided those public servants are employed in agencies that are responsible for the detection, prevention and control of animal diseases.

This amendment is intended to ensure that adequate numbers of personnel are available to manage an outbreak of an animal disease in the ACT and will facilitate the secondment of public servants from other jurisdictions to fight a disease outbreak in the ACT, in the event that is required.

Clause 19 Power to enter premises
section 66(8)

This clause amends the current power to inspect vehicles contained in section 66 of the principal Act by clarifying that a vehicle (including a trailer) can be entered for inspection at any time it is in use on a public road.

Often a vehicle can be inspected from outside (therefore without entering the vehicle), however it is sometimes necessary to enter the vehicle; particularly with larger vehicles such as horse floats or large trucks. In addition to sick animals, potentially contaminated products or soil may only be detectable upon closer inspection.

Section 66(4) of the principal Act already permits an authorised person to stop and detain a vehicle for the purpose of finding out if an animal, animal product or other thing in the vehicle is infected. Section 66(5) also permits an authorised person to direct that a vehicle be moved to another place.

“Premises” is defined in the principal Act’s dictionary to include vehicles. Existing section 66(1) of the principal Act sets out the times at which premises may be entered. Entry of premises (and therefore vehicles) may be conducted:

- at any time with the consent of the owner – see section 66(1)(c);
- in accordance with a search warrant – see section 66(1)(d); or
- at any time if the circumstances are so serious and urgent that immediate entry to the premises is necessary – see section 66(1)(e).

An authorised person is also permitted to enter premises:

- “at any reasonable time” if the authorised person reasonably suspects that an animal, animal product or thing is infected with a disease, or if they reasonably suspects that entry is required to prevent or control the spread of disease – see section 66(1)(a); or
- “at any reasonable time” if the public are permitted to use the premises, or if they are open to the public – see section 66(1)(b).

Section 66(8) defines “at any reasonable time” for the purposes of section 66(1)(a) to include “during normal business hours” and for the purposes of section 66(1)(b) to

include “when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money).” The definition of “at any reasonable time” in section 66(8) is not exhaustive and it is arguable that “at any reasonable time” includes any time when the vehicle is in use on a public road. However, this level of uncertainty in legislation intended to deal with emergencies is undesirable. The proposed amendment is intended to remove that uncertainty.

The government considers that the amendment does not unduly infringe individuals’ right not to have their privacy interfered with unlawfully or arbitrarily, as set out in section 12(a) of the *Human Rights Act 2004*.

Section 66(2) will continue to apply, so that an authorised person will not be able to enter a section of a vehicle used solely for residential purposes. In addition, an authorised officer must also, in relation to an exercise of the power in section 66(1)(a), continue to first form a suspicion that the vehicle contains an infected animal, animal product or thing, or that entry is necessary to prevent the spread of disease before they can enter. Thus the exercise of the power is not arbitrary.

Further, there is an important difference between vehicles and other premises, which justifies a different approach with respect to entry into vehicles. “Premises”, as that word is normally used, are static, whereas vehicles in use on public roads are the principal means by which infected animals or contaminated things can be moved into or out of a quarantine zone. There is a risk that vehicles could contain infectious material and, wittingly or unwittingly, the driver or occupants could be spreading the disease. Therefore it is reasonable for authorised people to have the power to enter a vehicle in use on a public road, provided they suspect that the vehicle contains an infected animal, animal product or thing, or that entry is necessary to prevent the spread of disease.

Clause 20 New section 87A

This clause inserts a new section 87A into the principal Act. In large scale animal disease outbreaks, involving multiple jurisdictions, it is possible that information, including personal information about the owners of possibly infected animals, may need to be shared between those jurisdictions. The use and dissemination of personal information is regulated by the *Privacy Act 1988* (Cwlth), in particular by Information Privacy Principle 11. Among other things, that principle permits the dissemination of personal information if authorised by law. New section 87A is intended to provide that authority. The information can only be passed to agencies involved in the administration of animal disease legislation elsewhere in Australia.

**Clause 21 Regulation-making power
section 90(2)(o)**

Section 90(2) of the principal Act sets out the various matters that can be addressed in regulations. As currently drafted, the principal Act permits the making of regulations to require declarations from sellers of animals that deal with the health of animals or chemicals or biological products used on them. This clause and clause 22 broaden the range of vendor declarations that can be made under regulations in recognition that animal diseases and their prevention may be caused not only by the use or non-use of chemicals or biological products, but also by the adoption or non-adoption of farming practices, including disease management, genetic modification or breeding.

Clause 22 New section 90(4)

This clause adds a new definition for the purposes of section 90(2)(o) to clarify that the phrase “farming practices” includes disease management, genetic modification or breeding practices. The purpose of this amendment is discussed above in clause 21.

Clause 23 Dictionary, note 2

This clause amends the second note at the beginning of the dictionary to the principal Act, by adding a new dot point, cross referencing to the definition of “state” contained in the *Legislation Act 2001*.

Clause 24 Dictionary, new definitions

This clause inserts a new definition of “agency” in relation to Commonwealth and State agencies and “chief veterinary officer” in the dictionary to the principal Act.

Clause 25 Dictionary, definition of *director*

This clause deletes the definition of Director (ie the Director of Veterinary Hygiene) from the dictionary to principal Act, as that title is replaced by “Chief Veterinary Officer”.

Clause 26 Further amendments, mentions of director

This clause replaces “director” (ie the Director of Veterinary Hygiene) from other provisions of the principal Act, as listed.