

2015

**LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

ANIMAL DISEASES (BEEKEEPING) AMENDMENT BILL 2015

EXPLANATORY STATEMENT

**Presented by
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Introduction

This explanatory statement relates to the Animal Diseases (Beekeeping) Amendment Bill 2015 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not intended to be, a comprehensive description of the Bill. What is written about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Purpose of the Bill

The primary policy objective which forms the basis of this Bill is the fast and effective location of beekeepers and their hives in the ACT specifically in the event of a biosecurity incident. It is also an important part of informed decision making on disease control and eradication.

A new Part 5A will be added to the *Animal Diseases Act 2005* to provide for the registration of beekeepers in the ACT where a beekeeper's hives are always located in the ACT. It is not the intention to capture beekeepers that are registered in New South Wales.

It is also not the intention of the legislation to capture beekeepers that move their hives in and out of the jurisdiction as part of a commercial enterprise. The Australian honey industry considers commercial enterprises as those businesses with over 50 hives. The Territory does not have commercial beekeeping enterprises¹ nor the agricultural industry to support such enterprises.

Commercial beekeeping as part of the agricultural industry is regulated under primary industry and agricultural legislation in other jurisdictions including NSW. It is appropriate that such enterprises continue to meet the standards and obligations imposed by agricultural and primary industry agencies in their principal jurisdiction of operation. It is not necessary nor a requirement of the bill for a beekeeper that is operating in multiple jurisdictions to register in the ACT as long as they can show NSW registration.

Human Rights Considerations

The proposed amendments engage the following rights under the *Human Rights Act 2004* (HRA):

- privacy and reputation (section 12);
- rights in criminal proceedings (presumption of innocence until proven guilty) section 22(1).

¹ There is a number of small honey producing businesses with hives exclusively located in Canberra. These businesses own less than 50 hives each and are not considered 'commercial enterprises' for the purposes of this discussion. The location of hives exclusively in the Territory will require ACT registration.

Section 28 of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- the nature of the right affected;
- the importance of the purpose of the limitation;
- the nature and extent of the limitation;
- the relationship between the limitation and its purpose; and
- any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

Privacy and reputation

The Bill engages the right to privacy under section 12 of the HRA. Section 12 provides:

Everyone has the right-

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

The right to privacy and reputation is limited and supported by the Bill.

The right is supported through the creation of a scheme to allow for measures that will protect the Territory and the broader Australian national interest in relation to agriculture and the economy against the harm of a bee biosecurity risk. It does this by creating a registration scheme which will allow for the efficient and effective identification of beekeepers and their hives in the Territory in the event of an incident and particularly in the event of an emergency response to an incident. It is also an important part of informed decision making on disease control and eradication.

The scheme requires applicants to disclose personal information and therefore limits the right to privacy and reputation.

The nature of the right affected (section 28 (2) (a))

The new part 5A to the *Animal Diseases Act 2005* allows the director-general to collect and record information and make this information available to others. This engages section 12 of the HRA.

Section 12 of the HRA gives effect to article 17 of the ICCPR and protects individuals from unlawful and arbitrary interference with privacy relating to their family, home or correspondence. An interference that is lawful may still be arbitrary if it is unreasonable or unjustified in all the circumstances of the case. The concept of arbitrariness requires that any interference with privacy, even when provided for by law, should be reasonable in the particular circumstances.

The right to privacy is a fundamental right that encompasses the idea that individuals should have a separate area of autonomous development, dignity and freedom from arbitrary, unreasonable or oppressive government interference.

The importance of the purpose of the limitation (section 28 (2) (b))

A discussion on the broad purposes of this Bill is included above.

Without contact details of beekeepers, the director-general or others involved in biosecurity management could not manage a bee biosecurity incident effectively. Unlike other animals and stock which can be secured and quarantined, the free movement of bees requires quick action to stop a parasite or pathogen from spreading including into populations of wild bees and native bee species. In the case of a national incident, the Territory's ability to report and plan is currently restricted as there is no record of beekeepers or hive location in the ACT and this will limit informed decision making on disease control and eradication.

Nature and extent of the limitation (section 28 (2) (c))

The provision has been drafted narrowly to ensure that it is reasonable, proportionate and necessary to achieve the policy objective of the Bill. The purpose is to identify beekeepers and thus the register only requires this information.

Other information which may be necessary in the event of a biosecurity incident or in the management of an incident is collected and held by the beekeeper. These records include records about movement of hives; lost or stolen hives; destroyed hives; and, the sale or disposal of hives. Such records are not required by Government except in the circumstances of a biosecurity incident or event. In such circumstances the Bill allows records to be requested by an authorised person. Authorised officers have general powers under the Animal Diseases Act which are compatible with human rights and provide checks and balances such as a requirement to show an identity card.

The use and disclosure of the information will be notified to beekeepers consistent with *Information Privacy Act 2014* and Territory Privacy Principles when information is collected including on registration.

Relationship between the limitation and its purpose (section 28 (2) (d))

The purpose of the provision is to provide the director-general with a power to obtain information and keep this information in a register. As highlighted above the provision has been drafted narrowly to ensure that it is reasonable, proportionate and necessary to achieve the policy objective of the Bill. The collection and secure storage of records will comply with the *Information Privacy Act 2014*.

Any less restrictive means reasonably available to achieve the purpose (section 28 (2) (e))

In light of the very real risk of a bee biosecurity event, the amendments do not unreasonably or unnecessarily infringe on human rights protecting privacy and reputation. The collection of information contributes to Australia's ability to nationally manage a bee biosecurity incident.

Rights in criminal proceedings (presumption of innocence until proven guilty); section 22(1)

New Section 62B (2) provides a statutory defence to a prosecution under 62B (1). The defence reverses the burden of proof which raises questions of the presumption of innocence. The raising of a statutory defence to a prosecution is not necessarily inconsistent with the right of a presumption of innocence particularly where the defence is based on identifiable facts which in effect excuse the committing of an offence.

Consistent with the ACT *Guide for Framing Offences* the following minimum requirements are addressed:

Clear identification of a reverse onus provision

The provision explicitly identifies the reverse burden of proof and distinguishes the burden as an evidential burden rather than a legal burden. This is provided for in section 58 of the *Criminal Code 2002*.

Compelling and demonstrable policy justification for reversing the onus of proof as to why the defendant should bear the onus of proof instead of the prosecution

The purpose of Part 5A is to set up a registration system that in effect integrates with other jurisdictions in providing national coverage and a national system of traceability of beekeepers and hives. There is no general policy requirement that a beekeeper be registered in dual jurisdictions. If a defendant is able to prove they are registered in NSW as a beekeeper and that they are complying with the display of registration numbers then the policy imperative of part 5A is ultimately met.

It is reasonable to place the onus on the defendant to prove the evidentiary basis for the defence. The defendant has within their capacity the ability to establish the defence without this being an onerous or difficult task.

In addition, the onus placed on the defendant removes from consideration the prosecution's need to make inquiries which in itself could be seen as impacting on the privacy and reputation of the plaintiff as protected by section 12 of the HRA.

Set out the reason why it is justifiable under 28 of HRA

The reverse onus is imposed in pursuance of a legitimate aim and is proportionate to the achievement of that aim². The reverse onus does not unjustifiably infringe on the presumption of innocence or go beyond what is reasonable. Nor is it arbitrary as the defendant is not detrimentally affected by the reversal.

In the circumstances this is the least restrictive means available to achieve the purpose of the legislation.

² *Salabiaku v France* 10519/83 [1988] ECHR 19 (7 October 1988)

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DETAIL

Part 1 – Preliminary

Clause 1 – Name of Act

This clause provides that the name of the Act is the Animal Diseases (Beekeeping) Amendment Act 2015.

Clause 2 – Commencement

This clause provides for the commencement of the Act. The Act commences on a day fixed by the Minister by written notice. Section 79 of the Legislation Act 2001 provides that if a provision of the Act has not commenced within six months of the Act's notification day, the provision automatically commences on the first day after that period.

Clause 3 – Legislation amended

This clause identifies that the bill amends the *Animal Diseases Act 2005*. It also notes consequential amendments to the Animal Diseases Regulation 2006 and *Domestic Animals Act 2000*. The consequential amendments have the affect of repealing the 'Domestic Animals (Beekeeping) Code of Practice 2014 (No1)' (DI2014-291) issued under the *Domestic Animals Act 2000*.

PART 2 – ANIMAL DISEASES ACT 2005

Clause 4 – New part 5A

This clause introduces a new part 5A Beekeepers to the *Animal Diseases Act 2005*.

The new part introduces a registration regime for beekeeping in the Territory. The primary policy objective of this is to be able to identify and locate hives in the ACT in the event of a bee biosecurity emergency.

Under new section 62A definitions are provided for new part 5A. The definitions include that of a beekeeper which means a person who owns beehives in which bees are kept. This is distinct from a person who merely has beehives agisted or kept by a beekeeper on that person's property.

New part 5A of the Animal Diseases Act will includes the following provisions:

Section 62B Beekeepers to be registered

This is an offence provision which provides that it is an offence if a person is a beekeeper with beehives that are always located in the ACT and the beekeeper is not registered. The offence carries 5 penalty units. Other jurisdictions typically have a higher penalty given the commercial nature of beekeeping. Generally, beekeepers in the ACT can be characterised as urban backyard keepers in circumstances where hives are not moved around and thus are always located in the ACT. In these circumstances it was not viewed appropriate or necessary for a higher penalty.

The suspension, cancellation or non renewal of registration is central in seeking compliance with other duties and obligations placed on beekeepers and covered by the new part.

The registration scheme in effect links to a national system of hive identification. Underpinning the 'national scheme' is recognition that beekeepers should be registered in the jurisdiction in which they predominantly produce rather than a need for multiply registration.

It is not intended that registration will be required where hives are moved into the Territory as part of commercial operations that predominantly operate in New South Wales where a person is registered in NSW. Commercial beekeepers are considered under national codes as beekeepers with over 50 hives.

Subsection 62B (2) of the offence provides that it is a defence to a prosecution if a person can prove they are a registered beekeeper in NSW and have NSW brood box numbers on their hives. The burden of proof lies with the defendant to present supporting evidence of this fact. This is reasonable given that the defendant has within their capacity the ability to establish the defence.

Section 62C Application for registration

This provision provides that a beekeeper may apply to the director-general to be registered as a beekeeper or to renew registration. An application must be in writing and include the applicants name, address, email address and phone number and any other information which is prescribed by regulation.

Within 30 days of receiving an application the director-general must register or renew registration or refuse to do so. Decisions to refuse to register or renew the registration of a beekeeper are reviewable decisions as provided for in amendments under clause 7 of the Bill.

Under subsection (5) the start and end dates for a beekeeper's registration are determined. Registration is current for a period of three years.

Section 62D Grounds for deciding an application

The section provides that the director-general must be satisfied that an applicant beekeeper will comply with the requirements of the Act. This includes any codes issued under the Act under new section 62G. The provision also provides that the director-general can refuse to register a beekeeper if the applicant has committed an offence under the Act or a corresponding law of a State. This supports a system of national biosecurity management.

Section 62E Beekeeper must update details

This provides that a registered beekeeper is under an obligation to keep their details current in the register if the details change.

62F Beekeeper must keep records

This section provides the details of records that must be kept by a beekeeper. These records can, in the event of a biosecurity incident, be used to track the movement of hives and may inform decision making on disease control and eradication. These are also records that must

be kept by beekeepers in other jurisdictions and to this extent reflect a nationally consistent response to bee biosecurity.

Records include movement of hives; lost or stolen hives; destroyed hives; and, the sale or disposal of hives. Records must be kept by the beekeeper for three years.

Section 62G Beekeeper must display registration number

This provision brings the Territory into line with other Australian jurisdictions where the identification, via numbering systems, of brood boxes is mandatory. A brood box is defined under section 62G as the bottom box of an active beehive. In combination, Australia's jurisdictional legislation has the effect of a national system of registration and 'stock identification' in relation to apiaries. The purpose of this is twofold: firstly, to track the movement of brood boxes (including cross jurisdictional) so that disease outbreaks can be traced and biosecurity incidents managed; and secondly, in tracing items in the case of theft. While the legal requirement across Australia is to number the brood box, it is an industry standard that other components of hives are identified by the beekeepers registration number.

There is no offence provision in relation to this requirement however it is intended that non-compliance is linked to registration (See section 62J cancellation of registration). It is anticipated that as a first step, a direction would be issued under amended section 73(1) (see clause 5) for the labelling of brood boxes in such a situation.

Section 62H Beekeeping code of practice

This section provides that the Minister may approve a code of practice setting out the duties of owners, carers and keepers of bees. An approved code of practice is a disallowable instrument. Currently, provision for a code of practice is provided under the *Domestic Animals Act 2000*. It is appropriate that the power to make a code for bees is more properly located with the beekeeping registration requirement particularly as bees are not domestic animals and nationally, are considered stock.

Section 62I Suspension of registration

The director-general may suspend a registered beekeeper's registration if the beekeeper breaches the code of practice; fails to keep hive records; or fails to comply with an order or a direction given by the director-general or an authorised person under the Act. A beekeeper that becomes registered as a beekeeper in NSW can also have their registration suspended. This is to ensure that it is clear under which jurisdiction the beekeeper operates.

Decisions under 62I(1) suspension of registration, is a reviewable decision as provided for in amendments under clause 7 of this Bill.

Section 62J Cancellation of registration

This section provides that registration can be cancelled by the director-general on a range of grounds including failure to keep records; comply with directions; if the beekeeper dies; or if the beekeeper commits an offence under the Act or a corresponding law. It is also a ground for cancellation of registration if the beekeeper is a corporation and is under external administration under the *Corporations Act 2001* (Cwlth).

A corresponding law is a law of a state or territory about the registration of bees and bee biosecurity and disease.

Decisions under 62J(1) cancellation of registration, is a reviewable decision as provided for in amendments under clause 7 of the Bill.

Section 62K Register of beekeepers

This section provides for the keeping of a register of registered beekeepers. The register must include the registration number of each registered beekeeper; contact information; and include any other information prescribed by regulation. The register must be made available to an authorised person and in the event of a biosecurity risk involving bees any other person the director-general is satisfied requires access to the register as a response to the risk.

Clause 5 – Additional powers for honey bees section 73(1)

Section 73(1) relates to the power of an authorised person to direct a person keeping bees to comply with the regulations made under the Act. This clause substitutes 73(1) to provide that directions can be made in relation to the Act and not merely the regulations.

Clause 6 – Dictionary, new definitions

This clause inserts definitions into the Dictionary for beekeeper, corresponding law and hive records.

PART 3 – ANIMAL DISEASES REGULATION 2000

Clause 7 – Sch, new items 12A, 12B and 12C

This clause inserts into schedule 1 of the regulations additional reviewable decisions being the refusal to register a beekeeper (62C (3)); suspension of registration 62I; and, cancellation of registration (62J(1)).

PART 4 – DOMESTIC ANIMALS ACT 2000

Clause 8 – Domestic Animals Act 2000 section 143(1), examples

This clause removes bees from the list of examples of domestic animals in section 143(1) of the *Domestic Animals Act 2000*.

Clause 9 – Repeal of *Domestic Animals (Beekeeping) Code of Practice 2014 (No1)*

This clause repeals the beekeeping code as issued under section 143 of the *Domestic Animals Act 2000*. It is a consequential amendment which reflects the new provisions for a code of practice for beekeeping under the Animal Diseases Act. It is intended that the existing code will be reissued under the new provisions of the Animal Diseases Act contained in this Bill (section 62H).