

AGRICULTURE AND RELATED RESOURCES PROTECTION AMENDMENT BILL 2010

EXPLANATORY MEMORANDUM

This is a Bill for an Act –

- to amend the *Agriculture and Related Resources Protection Act 1976*;
- to amend the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007*,

and for related purposes.

The amendments to the *Agriculture and Related Resources Protection Act 1976* (ARRPA) are made for the principal purpose of transferring the functions conferred on the Agriculture Protection Board (APB) to the Minister or the Director General of the department principally assisting the Minister with the administration of the Act.

The APB is established under the *Agriculture Protection Board Act 1950* and has functions under the ARRPA in relation to declared plants and animals and the control of these declared plants and animals (weeds and invasive animal species) for the protection of agriculture and related resources.

Since the 1990s all the operational work of the APB has been undertaken by the department and the Board itself has been earmarked for abolition, with the ARRPA being one of a number of Acts that will be repealed when the *Biosecurity and Agriculture Management Act 2007* (BAM Act) is fully operational.

The only reason the APB remains in existence is to fulfil the function of declaring animals and plants. Under the BAM Act declarations of organisms as declared pests will be a function of the Minister. Pending the full implementation of the BAM Act, therefore, these amendments to the ARRPA will simplify matters and avoid duplication.

The Bill also makes a number of amendments that have been identified as necessary to improve the operation of the Act. These include the increase of various penalties which have not been increased for more than 20 years.

The Bill concludes with consequential amendments to other Acts, including the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007*. These are changes that have been identified as necessary to enable that Act to operate as intended, particularly in light of the interim changes to the relevant Acts that are made by this Bill.

Part 1 – Preliminary

Clauses 1 and 2, the short title and the Commencement provision are self explanatory and standard.

Part 2 – Agriculture and Related Resources Protection Act 1976 amended

Clause 3 – Act amended

This simply states that this Part amends the ARRPA.

Clause 4 – Section 4 amended

This deletes section 4(2) of the Act which provided that the Act is to be construed in conjunction with the *Agriculture Protection Board Act 1950*. This will be no longer necessary because that Act will be repealed by proclamation of the relevant section of the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* once this Bill is enacted and proclaimed.

Clause 5 – Section 6 deleted

Section 6 repealed the predecessors of the ARRPA, the *Destructive Birds and Animals Act 1893*, the *Noxious Weeds Act 1950* and the *Vermin Act 1918*; it has no further job to do it and so will be deleted.

Clause 6 – Section 7 amended

Sub-clause (1) deletes definitions of those terms that will no longer be required or will be altered in the amended Act.

Sub-clause (2) inserts the new or alternative definitions that are required.

Sub-clause (3) amends those definitions that will remain but need to be altered slightly.

Clause 7 – Sections 8 and 9 deleted

Section 8 is deleted because it provides that “subject to the Minister this Act is to be administered by the Protection Board”.

Section 9 provides for the appointment of a Chief Agriculture Protection Officer (Chief Officer) and deputies. These statutory offices are not being continued because there is no need for them and hasn't been since the department assumed responsibilities for the operational activities of the Board. Relevant references throughout the amended Act will be to the Director General.

Clause 8 – Section 10 replaced

Section 10 of the Act provides for the delegation of the powers and functions of the Board to the Chief Officer. This will be replaced by a section 10 providing for the delegation of powers from the Minister to the Director General and a section 11A providing for the delegation of powers of the Director General to another officer of the department.

Clause 9 – Section 11 amended

Section 11 provides for “authorised persons” – persons authorised to do certain things under the Act for the prevention of the introduction and spread of declared plants and animals. These persons will be authorised by the Director General instead of the Chairman of the Protection Board or the Chief Officer.

Clause 10 – Section 12 deleted

Section 12 (2) provides for the Board's expenses in the administration of the Act to be charged to the Agriculture Protection Board Account referred to in the Agriculture Protection Board Act. This Act is to be repealed so this provision is deleted as is subsection (1) which provided for the expenses of the Minister in connection with the administration of the Act to be paid out of moneys from time to time appropriated by Parliament, which goes without saying.

Clause 11 – Part III deleted

This clause deletes that part of the Act that provided for the constitution of zones and regions and zone control authorities and regional advisory committees. The

committees have not operated for some time and the authorities are not required in the absence of the Protection Board.

Clause 12 – Section 37 replaced

Clause 37 requires the Protection Board to publish, annually in the Gazette, a list of all the currently declared plants or animals. This will be replaced with a requirement to maintain a list on or accessible through the department's website and make copies available for inspection. The annual publication of the list in the Gazette was unnecessary as the department, or the department's website, is where people go for information about declared plants and animals.

Clause 13 – Section 41 amended

Section 41 relates to agreements with government departments for the supply of materials for control work. A new subsection is inserted to allow this to include poisons. This will replace a provision currently found in the APB Act.

Clause 14 – Section 42 amended

Increases the penalty for a local government that fails to comply with its obligation to control declared plants and animals on its land.

Clause 15 – Section 44 amended

Increases the penalty for a local government that fails to comply with a direction in a notice served on it under section 43.

Clause 16 – Section 45 amended

Section 45 provides for the APB to carry out the requirements of a section 43 notice where the local government fails to and to recover the expense by court action if necessary. With the amendment the ability to sue for these costs will rest with the Director General on behalf of the State.

Clause 17 – Section 46 amended

Provision for agreements with local government – the same amendment as made by clause 13 to section 41.

Clause 18 – Section 49 amended

Increases the penalty for an occupier of private land who fails to comply with the obligation to control declared plants and animals on its land.

Clause 19 – Section 51 amended

Increases the penalty for an occupier or occupier of private land who fails to comply with a direction in a notice served under section 50.

Clause 20 – Section 52 amended

As in the amendment to section 45, allows the Director General to sue for the expenses incurred in control work that was not carried out by an owner or occupier as required by a section 50 notice.

Clause 21 – Section 54 amended

This section provides for the apportionment of expenses of control work between and owner and occupier or successive owners and occupiers of private land whether the work was performed by the owner or occupier or by an inspector or authorised person when that the owner/occupier had failed to comply with a notice. The section currently refers to the work being carried out by the Protection Board but will be amended to refer to an inspector or authorised person.

Clause 22 – Section 55 amended

Section 55(1) allows the Protection Board to enter into agreements with an owner or occupier of private land for the supply of appliances and services for the control of declared plants and animals. Under clause 55(2) the reference to the Protection Board becomes a reference to the Director General.

Clause 22 inserts a provision allowing the Director General to supply poison under section 55(1) despite anything in the Poisons Act. This provision will take the place of an equivalent provision currently found in the *Agriculture Protection Board Act 1950* which will be repealed.

Clause 23 – Section 56 amended

Section 56 allows the Protection Board to delegate to a local authority the powers of the Board or of inspectors or authorised persons in relation to land within the district of a local authority in relation to owners or occupiers of that land.

This provision is amended to refer to the delegation of the powers of the Director General so the requirement of delegation “by written authorisation under seal”, which was applicable to the Protection Board becomes simply a delegation in writing.

Clause 24 – Heading to Part V Division 5 amended

This heading will now simply refer to “Operational work” not “Operational work by the Protection Board”.

Clause 25 – Section 58 amended

Section 58(1) provides that the Protection Board may carry out operational work on various types of land – public, private, held under pastoral lease, under the control of a local authority. It specifies where the money for this work can come from – appropriated for the purpose or in the case of pastoral lease land from money in the Declared Plants and Animals Control Account collected as rates under section 60 or in a particular zone under section 61.

In line with the other relevant amendments to the Act, and in particular to sections 60 and 61 and the reference to the Declared Pest Account under the BAM Act in place of the Control Account, appropriate provisions are inserted in place of section 58(1).

Clause 26 – Section 59 amended

Section 59 provides that the provisions of section 58 are in addition to any other provisions conferring power to control declared plants and animals. The reference to the Protection Board is no longer appropriate and the reference to an inspector or authorised person is unnecessary.

Clause 27 – Section 60 amended

These amendments remove the Protection Board from the imposition of rates in pastoral areas for the control of declared plants and animals and change the applicable date to the commencement of these amendments.

Clause 28 – Section 61 deleted

Section 61 allows the imposition of additional rates, not matched by funds from the consolidated account to be imposed in particular zones. As this section has never been used and zones will no longer operate the section is to be deleted.

Clause 29 – Section 62 amended

Section 62 provides for the calculation of the unimproved value of the land to which a rate is imposed. This is amended simply to remove reference to section 61, which is deleted by clause 28.

Clause 30 – Section 63 amended

Similarly, section 63, which governs the assessment, payment and recovery of rates, is amended to delete references to the deleted section 61 and to the Protection Board.

Clause 31 – Section 64 amended

Again, reference to section 61 deleted from the provision for postponement of payment of rates payable by pensioners.

Clause 32 – Section 65 amended

Section 65 sets up the Declared Plants and Animals Control Account to which the rates are credited. The replacement for this account is the Declared Pest Account established under the Biosecurity and Agriculture Management Act 2007 (BAM Act). Section 65 is amended to provide for rates to be credited to this account. Subsection (4) is replaced by two new subsections (4) and (5) for convenience in effecting the required changes to the account name, and the references to the Protection Board and the deleted section 61.

Clause 33 – Section 72 amended

This increases the penalty for introduction of prohibited material (declared plants and associated soil, packing, vegetable matter) in line with the penalties under the BAM Act.

Clause 34 – Section 74 amended

This increases the penalty for failure to give notice of introduction of restricted animals and other things that pose a risk of introducing declared plants. Subsection (2) is restructured for clarity and consistency with modern drafting form.

Clause 35 – Section 75 amended

Section 75 requires examination of risk animals and material. There are a number of different offences associated with failure to comply with this section and (for clarity and consistency with modern drafting) penalties have been inserted at each relevant subsection rather than at the end.

Clause 36 – Section 77 amended

Increases the penalty for introduction of category A1 declared animals and removes reference to the Protection Board.

Clause 37 – Section 78 amended

Increases the penalty for failure to comply with restrictions on the introduction of declared animals of category A4.

Clause 38 – Section 79 amended

Increases penalties for failure to comply with requirements to deliver a declared animal into the custody of an inspector or authorised person and for removal.

Clause 39 – Section 80 amended

Increases the penalty for keeping a declared animal of category A3.

Clause 40 – Section 81 amended

Increases the penalty for failure to comply with restrictions on keeping declared animals of category A6.

Clause 41 – Section 83 amended

Increases the penalty for allowing or preventing the liberation or escape of a declared animal.

Clause 42 – Section 83A amended

Deletes subsections from section 83A (protection from agricultural chemicals) that are not used or required.

Clause 43 – Section 94A amended

Replaces reference to “Chief Officer” (which office will no longer exist) with reference to “Director General”.

Clause 44 – Sections 95 and 96 replaced

This replaces provisions for judicial notice of signatures and authentication of documents with provisions with appropriate references to the officers involved.

Clause 45 – Section 97 amended

Section 97 contains evidentiary provisions. Here also the section is amended to include references to the Minister and Director General rather than the Protection Board and the Chief Officer.

Clause 46 – Section 98 replaced

Section 98, which authorises institution of prosecutions, is replaced by a shorter, more straightforward provision saying all that is required.

Clause 47 – Section 99 amended

This amendment simply replaces “Protection Board” with “Minister” in the provision for variation or cancellation of declarations.

Clause 48 – Section 103 replaced

This is a succinct re-drafting of the over-arching regulation-making power with references to the Protection Board and its functions removed.

Clause 49 – Section 104 amended

This clause removes paragraphs relating to, and references to, the Protection Board from the provision listing general matters in relation to which regulations may be made.

Clause 50 – Section 105 amended

Amendments to the provision for regulations relating to declared plants and animals to take account of the Department and its officers replacing the Protection Board.

Clause 51 – Section 106 amended

Similarly, amendments required to the provision for regulations relating to fencing.

Clause 52 – Section 108 replaced

This increases the maximum penalty that may be prescribed for a breach of regulation and includes a fine for each separate and further offence as contemplated by the *Interpretation Act 1984* section 71.

Clause 53 – Part X deleted

This clause deletes the part of the Act that provided savings and transitional provisions for use when the *Agriculture and Related Resources Protection Act 1976* was enacted to replace the *Destructive Birds and Animals Act 1893*, the *Noxious Weeds Act 1950* and the *Vermin Act 1918*. These provisions are all spent and should therefore be removed.

Clause 54 – Part XI inserted

This clause inserts the savings and transitional provisions that are required in relation to the amendments made by this Bill.

For the purpose of the operation of these savings and transitional provisions the **new section 120** defines the “commencement day” – the day on which the amendments made by this Bill come into operation.

The **new sections 121, 122, 123** ensure that certificates, approvals, authorisations and declarations made and in effect before the commencement day continue to have effect as if done by the Director General or the Minister.

The **new section 124** relates to the rating provisions. In relation to a rate payable for a financial year commencing before these amendments take effect these provisions apply as they did before the amendments except that references to the Protection Board are taken to be references to the Minister and the rates recovered after the amendments take effect are to be paid into the Declared Pest Account – where the funds in the Declared Plants and Animals Control Fund are to be transferred under the new section 125.

The **new section 125** transfers the funds in the Declared Plants and Animals Control Fund (the former account) to the Declared Pest Account under the *Biosecurity and Agriculture Management Act 2007* (BAM Act). The funds will then be available for payment of any liabilities of the former account arising before the closure day and for the purposes set out in section 138 of the BAM Act. This will allow section 138 to be proclaimed so that, in due course funds will be available to recognised biosecurity groups under the BAM Act – and see clause 68 for amendments to section 138 to allow the use of the Declared pest Account for the purposes of the ARRPA

The **new sections 126, 127 and 128** allow management programmes, notices and permissions and authorities made before the commencement day to operate after that day as if given to or by the Director General as will apply under the amendments.

The **new clause 129** allows transitional regulations to be made if there is not sufficient provision in Part XI to deal with “transitional matter” and sets out some standard rules to apply in relation to any such regulations.

Clause 55 – Various references to “Protection Board” amended

This clause uses tables to change references to the “Protection Board” to references to the “Minister” or the “Director General”, as the case requires, in various sections in which this is the only amendment made.

Clause 56 – Various penalties amended

This clause uses a table to increase the penalties provided for offences against various provisions of the Act.

Part 3 – Amendments to *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007*

Clause 57 – Act amended

This states that the amendments in this part are to the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* (BAM (RCP) Act).

Clause 58 – Section 2 amended

This clause deletes the provision requiring certificates as to the employment of Agriculture Protection Board (APB) employees prior to the repeal of the *Agriculture Protection Board Act 1950* by section 34 of the BAM (RCP) Act.

Clause 59 – Section 30A inserted

This clause inserts a new provision into the consequential amendments that will be made when the *Agriculture and Related Resources Protection Act 1976* (ARRPA) is repealed. These are amendments to the *Firearms Act 1973* to remove reference to the ARRPA Act in the provisions authorising the use of silencers in shooting declared pests.

Clause 60 – Section 30 amended

Section 30 (and sections 31, 32 and 33) of the BAM (RCP) Act contain savings and transitional provisions that will take effect when the ARRPA is repealed in due course by proclamation of section 27 of the BAM (RCP) Act. Amendments need to be made to these provisions to take account of the amendments that are now being made to the ARRPA.

In this clause, which contains the definitions applicable to these savings and transitional provisions, the definition of “former account” is deleted because the provision in which it appears (sections 32 and 33 are to be deleted).

Clause 61 – Sections 32 and 33 deleted

Sections 32 and 33 of the BAM (RCP) Act provided for the transfer of funds from the “former account” (the Declared Plants and Animals Control Account under ARRPA) to the Declared Pest Account under the BAM Act once the ARRPA was repealed and provides for a reference in any instrument or document to the former account to be read as a reference to the Declare Pest Account. These matters are now to be dealt with under the ARRPA itself so these provisions are no longer required

Clause 62 – Section 37 deleted

Section 37 of the BAM (RCP) Act contained amendments to the *Firearms Act 1973* to take effect on the repeal of the *Agriculture Protection Board Act 1950* (APB Act). As amendments to this Act are required now, as a result of the amendments to the ARRPA made by this Bill (see clause 69), they will not be required to be made when the APB Act is repealed and so are deleted.

Clause 63 – Section 38 deleted

This clause deletes amendments that would be made to the Plant Pests and Diseases (Eradication Funds) Act 1974 that would have been made when the APB Act is repealed. These have been replaced by amendments to that Act made by this Bill (see clause 70).

Clause 64 – Section 58 amended

This makes certain changes to the provisions that will apply on the repeal of the Cattle Industry Compensation Act 1965 under the BAM (RCP) Act. These changes were identified as necessary to allow the funds from the Cattle Industry Compensation Account to continue to be used as intended when the BAM Act prescribed account for the cattle industry is operating.

Clause 65 – Section 92 deleted

This clause deletes amendments that were to have been made to the Plant Pests and Diseases (Eradication Funds) Act 1974 as a consequence of the BAM Act. Appropriate amendments to this Act are instead made by clause 70.

Clause 66 – Section 93 amended

This deletes amendments to the Poisons Act 1964 which are replaced by clause 71 of this Bill.

Part 4 – Amendments to other Acts

Clause 67 – *Aerial Spraying Control Act 1966* amended

This deletes a reference to the Agriculture Protection Board.

Clause 68 - *Biosecurity and Agriculture Management Act 2007* amended

Amends section 138 to allow for appropriate use of the funds in the Declared Pest Account taking account of the amendments made by this Bill.

Clause 69 – *Firearms Act 1973* amended

Amendments to the provisions authorising the use of silencers for the shooting of birds that are declared animals under ARRPA are required to take account of the amendments made to that Act by this Bill.

Clause 70 – *Plant Pests and Diseases (Eradication Funds) Act 1974* amended

Consequential amendments to this Act are required to take account of the amendments made by this Bill and the foreshadowed repeal of the *Agriculture Protection Board Act 1950*.

Clause 71 – *Poisons Act 1964* amended

Amendment required to section 32(c) of this Act to take account of the amendments to this Act and the repeal of the *Agriculture Protection Board Act 1950*.