



New South Wales

Stock Medicines Amendment Act 2004 No 89

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Stock Medicines Act 1989 No 182	2
4 Consequential amendment of Acts	2
Schedule 1 Amendment of Stock Medicines Act 1989	3
Schedule 2 Consequential amendment of Acts	19



New South Wales

Stock Medicines Amendment Act 2004 No 89

Act No 89, 2004

An Act to amend the *Stock Medicines Act 1989* to make further provision for the regulation of stock medicines in relation to food producing species, to remove obsolete provisions and to make other amendments in connection with national competition policy reform; and for other purposes. [Assented to 30 November 2004]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Stock Medicines Amendment Act 2004*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsections (2) and (3).
- (2) Schedule 2.2 commences on the day on which the *Veterinary Surgeons Act 1986* is repealed.
- (3) Schedule 2.3 commences on the date of assent to this Act.

3 Amendment of Stock Medicines Act 1989 No 182

The *Stock Medicines Act 1989* is amended as set out in Schedule 1.

4 Consequential amendment of Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of Stock Medicines Act 1989

(Section 3)

[1] Section 2A

Insert after section 2:

2A Primary objects of Act

The primary objects of this Act are as follows:

- (a) to protect human health by intervening early in the agricultural production process, in particular, to ensure that illegal or unsafe levels of chemical residues do not transfer to the human food chain by their excessive presence in food producing animals,
- (b) to facilitate international trade by supporting initiatives to ensure that livestock and meat products destined for export markets comply with the chemical residue requirements of international trading partners,
- (c) to protect the welfare of animals treated with stock medicines.

[2] Section 3 Definitions

Omit the definitions of *Board*, *clearance authority*, *food producing species*, *registration periods* and *stock medicine order* from section 3 (1).

[3] Section 3 (1)

Insert in alphabetical order:

food producing species means stock that produces food for human consumption or is used as food for human beings, and includes:

- (a) any buffalo, cattle, deer, fish (other than ornamental fish), goat, kangaroo, pig, poultry, rabbit, sheep, bee, crustacean or mollusc, or
- (b) any other type or species of stock prescribed by the regulations for the purposes of this definition.

Note. The definition of *food producing species* is modelled on the definition in the Agvet Code.

major food producing species means:

- (a) cattle, sheep, pigs or chickens, or
- (b) any other type or species of stock prescribed by the regulations for the purposes of this definition.

registered stock medicine means a stock medicine that has registration, or listed registration, under the Agvet Code.

[4] Section 3 (1), definition of “prescribe”

Omit the definition. Insert instead:

prescribe, in relation to a stock medicine, means the giving by a veterinary surgeon of a written instruction to a person for the supply to that person of the stock medicine (or the supply of stock food treated with the stock medicine):

- (a) by a pharmacist, or
- (b) by a person licensed or authorised under the *Poisons and Therapeutic Goods Act 1966* to supply a restricted substance that is a stock medicine.

[5] Section 3 (3)

Omit the subsection. Insert instead:

- (3) Notes included in this Act do not form part of this Act.

[6] Section 4 Clearance authority for registration of stock medicines

Omit the section.

[7] Part 2 Registration of stock medicines

Omit the Part.

[8] Section 34 Stock medicines orders

Omit the section.

[9] Section 35 Effect of stock medicines order

Omit the section.

[10] Part 4 Stock Medicines Board

Omit the Part.

[11] Section 36A

Insert before section 37:

36A Interpretation of Part

- (1) In this Part, *use instructions*, in relation to a stock medicine, means the instructions that:

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- (a) are on the label attached to the package in which the stock medicine is contained and are required or permitted by or under the Agvet Code to be on the label when sold, and
 - (b) relate to the use of the stock medicine on stock or the way in which stock, or any product from stock, is to be dealt with after the administration of the stock medicine.

Note. Products from stock would include, for example, milk, wool, honey and eggs.

- (2) Without limiting subsection (1), **use instructions** include the following matter appearing on the label attached to the package of a stock medicine:
 - (a) any instructions, directions, recommendations or indications as to the dosage rate for, and method and timing of administration of, the stock medicine,
 - (b) the type of stock on which the stock medicine is intended to be used or should not be used,
 - (c) any withholding period,
 - (d) any precautions and contraindications,
 - (e) any instructions, directions or recommendations appearing under the heading “Restraint” or “Restraints”.
- (3) In this Part, **relevant withholding period**, in relation to a stock medicine, means:
 - (a) the withholding period (if any) specified under section 39D by the veterinary surgeon who prescribed or supplied the stock medicine for the treatment of the stock, or
 - (b) if paragraph (a) does not apply, the withholding period specified in the use instructions.
- (4) In this Part:
 - (a) a reference to a label attached to a package includes a reference to writing appearing on the package, and
 - (b) a reference (however expressed) to the use of a stock medicine on stock, or the treatment of stock with a stock medicine, includes a reference to the administration to stock of stock food treated with a stock medicine, and
 - (c) a reference (however expressed) to using a stock medicine in a manner contrary to the use instructions includes a reference to dealing with stock on which the stock medicine has been used in a manner contrary to the use

instructions and includes, in particular, not observing the withholding period or varying the withholding period in relation to the stock medicine.

[12] Section 37 Possession of unregistered stock medicines

Omit section 37 (2).

[13] Sections 38, 39, 39A–39F and 40

Omit sections 38–40. Insert instead:

38 Use of unregistered stock medicines

- (1) A person must not use an unregistered stock medicine on stock that is a member of a food producing species.

Maximum penalty: 200 penalty units or, for an offence by a corporation, 400 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that the defendant was authorised by section 39A or 39B to use the unregistered stock medicine concerned.

39 Use of registered stock medicine contrary to use instructions

- (1) A person must not use a registered stock medicine in a manner that is contrary to the use instructions.

Maximum penalty: 200 penalty units or, for an offence by a corporation, 400 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that the defendant was authorised by section 39A or 39B to use the registered stock medicine in the manner concerned.

- (3) It is a defence to a prosecution for an offence against subsection (1) that:

(a) there were instructions for the use of the stock medicine on the label attached to the package of the stock medicine at the time of the commission of the offence, and

(b) the person, at that time, did not know, and did not have reasonable grounds for suspecting, that those instructions were not (either wholly or partially) the use instructions.

- (4) It is not a defence to a prosecution for an offence against subsection (1) that the defendant failed to read the use instructions for the stock medicine concerned.

39A Authorisations for veterinary surgeons

- (1) A veterinary surgeon is authorised to use an unregistered stock medicine if the use occurs:
 - (a) in the course of the practice of the veterinary surgeon's profession and for the purpose of dealing with an animal or animals under his or her care, and
 - (b) in the exempt circumstances set out in subsection (3).
- (2) A veterinary surgeon is authorised to use a registered stock medicine in a manner contrary to the use instructions if the use occurs:
 - (a) in the course of the practice of the veterinary surgeon's profession and for the purpose of dealing with an animal or animals under his or her care, and
 - (b) in the case of any of the following uses of the stock medicine, in the exempt circumstances set out in subsection (3):
 - (i) the administration of the stock medicine by injection if any use instruction indicates that the stock medicine is for oral or topical application,
 - (ii) the use of the stock medicine in a manner contrary to any use instruction that is included under a heading "Restraint" or "Restraints",
 - (iii) the use of the stock medicine on stock of a major food producing species if the use instructions do not indicate, in some manner, that the stock medicine is intended for use on stock of some type of major food producing species,
 - (iv) the use of the stock medicine on stock of a food producing species if the use instructions indicate, in some manner, that the stock medicine is intended for use on stock that is not of a food producing species and if the use instructions also indicate, in some manner, that the stock medicine is not for use on stock of a food producing species.
- (3) For the purposes of subsections (1) and (2) (b), the following are exempt circumstances in relation to the use of a stock medicine:
 - (a) the use of a stock medicine in the treatment of an individual animal of a food producing species (whether or not from a group of stock) where no other animal from the same property is being treated, at or about that time, with that stock medicine,

- (b) the use of a stock medicine in accordance with a permit,
 - (c) the use of a stock medicine in compliance with an order in force under section 46.
- (4) An authorisation referred to in this section operates for the purpose of section 38 or 39 only and does not affect any requirement to comply with any other provision of this Act or any other Act or law.

39B Authorisations for persons other than veterinary surgeons

- (1) This section applies to persons who are not veterinary surgeons.
- (2) A person to whom this section applies is authorised to use an unregistered stock medicine, or to use a registered stock medicine in a manner contrary to the use instructions, if the use:
 - (a) is in accordance with written instructions from a veterinary surgeon, or
 - (b) is in accordance with a permit, or
 - (c) is in compliance with an order in force under section 46.
- (3) Without limiting subsection (2), a person to whom this section applies is authorised to use a registered stock medicine in a manner contrary to the use instructions if:
 - (a) the stock medicine is used on stock of a food producing species (other than a major food producing species), and
 - (b) the use instructions indicate that the stock medicine may be used on stock of some type of major food producing species, and
 - (c) the person administers the stock medicine at, or at less than, the dosage rate and using the method and timing of administration indicated in the use instructions, and
 - (d) the person complies with any contraindications and withholding period indicated in the use instructions, and
 - (e) the person complies with any use instructions that are included under a heading “Restraint” or “Restraints”.
- (4) An authorisation referred to in this section operates for the purpose of section 38 or 39 only and does not affect any requirement to comply with any other provision of this Act or any other Act or law.

39C Prescription or supply of stock medicine by veterinary surgeon

- (1) A veterinary surgeon must not prescribe or supply a stock medicine for use by a person on stock unless the veterinary surgeon is authorised by this Act to use the stock medicine on that stock.
- (2) A veterinary surgeon must not prescribe or supply a stock medicine for use in a manner contrary to the use instructions unless the veterinary surgeon is authorised by this Act to use the stock medicine on that stock in that manner.
- (3) A veterinary surgeon must not prescribe or supply an unregistered stock medicine for use on stock (other than stock of a food producing species) unless the stock medicine:
 - (a) is a registered human pharmaceutical, or
 - (b) has been compounded by the veterinary surgeon or by a pharmacist on the prescription of the veterinary surgeon.

Maximum penalty: 100 penalty units.

39D Instructions to be provided by veterinary surgeons

- (1) A veterinary surgeon must comply with the requirements of this section if the veterinary surgeon:
 - (a) prescribes or supplies an unregistered stock medicine for use on stock of a food producing species, or uses an unregistered stock medicine on such stock, or
 - (b) prescribes or supplies a registered stock medicine for use on stock of a food producing species in a manner contrary to the use instructions, or uses a registered stock medicine on such stock in such a manner, or
 - (c) prescribes or supplies a restricted substance within the meaning of the *Poisons and Therapeutic Goods Act 1966* for use on stock of a major food producing species, or uses a restricted substance on such stock.
- Maximum penalty: 200 penalty units.
- (2) Each time the veterinary surgeon prescribes, supplies or uses the stock medicine, the veterinary surgeon must:
 - (a) give to the person for or to whom the stock medicine is prescribed or supplied, or on whose behalf it is used, and to the person who is authorised to supply the stock medicine (where relevant), written instructions for its use, and

- (b) explain to the person for or to whom the stock medicine is prescribed or supplied, or on whose behalf it is used, any of the written instructions that the veterinary surgeon intends will override any use instruction for the stock medicine.
- (3) The written instructions for use are to be signed and dated by the veterinary surgeon and are to include the veterinary surgeon's name and business address and the following matters:
 - (a) details to identify the particular stock on which the stock medicine is to be used or has been used,
 - (b) the name of the owner of the stock or the person in charge of the stock,
 - (c) particulars to identify the stock medicine,
 - (d) the name of the active constituent of the stock medicine,
 - (e) the type of stock for which the stock medicine is intended,
 - (f) the withholding period (including that there is no withholding period if the veterinary surgeon considers none is required),
 - (g) the dosage rate,
 - (h) the frequency of treatment,
 - (i) the length of treatment,
 - (j) the manner of administration,
 - (k) such other matters as may be prescribed by the regulations for the purposes of this subsection.
- (4) Despite subsection (3), the written instructions for use of a registered stock medicine in a manner contrary to the use instructions need only include such of the matters set out in that subsection as are different to the use instructions.

39E Records to be kept by veterinary surgeons

A veterinary surgeon must keep a record, in accordance with the regulations, of the following:

- (a) the prescription or supply of any unregistered stock medicine for use on stock of a food producing species and the use by the veterinary surgeon of any unregistered stock medicine on any such stock,
- (b) the prescription or supply of any registered stock medicine for use on stock of a major food producing species in a manner contrary to the use instructions and the use by the

veterinary surgeon of any registered stock medicine on any such stock in such a manner,

- (c) the prescription or supply of any restricted substance within the meaning of the *Poisons and Therapeutic Goods Act 1966* for use on stock of a major food producing species and the use by the veterinary surgeon of a restricted substance on any such stock.

Maximum penalty: 100 penalty units.

39F Instructions to be provided by others who use stock medicines

A person (other than a veterinary surgeon) who uses a stock medicine on stock of a food producing species and who is not an employee of the owner of the stock or the person in charge of the stock must ensure that the owner or person in charge of the stock is given written instructions that:

- (a) indicate how the stock on which the stock medicine was used can be identified, and
- (b) include the use instructions for the stock medicine or, if they have been varied by the written instructions of a veterinary surgeon, those written instructions.

Maximum penalty: 100 penalty units or, for an offence by a corporation, 200 penalty units.

40 Variation of use instructions by veterinary surgeon

- (1) This section applies to the following actions of a veterinary surgeon:
 - (a) the use by the veterinary surgeon of an unregistered stock medicine on stock of a food producing species,
 - (b) the giving of instructions for the use of an unregistered stock medicine on stock of a food producing species,
 - (c) the use by the veterinary surgeon of a registered stock medicine on stock of a major food producing species in a manner contrary to the use instructions,
 - (d) the giving of instructions for the use of a registered stock medicine on stock of a major food producing species in a manner contrary to the use instructions.
- (2) A veterinary surgeon must not take any action to which this section applies if it is reasonably likely that the action will result in stock or products from stock:

- (a) where there is no relevant withholding period for the stock medicine concerned, containing any chemical residue at a level that contravenes the Food Standards Code, or
- (b) where there is a relevant withholding period for the stock medicine concerned, containing, at or after the expiry of that period, any chemical residue at a level that contravenes the Food Standards Code.

Maximum penalty: 200 penalty units.

- (3) In this section, *Food Standards Code* has the same meaning as in the *Food Act 2003*.

[14] Section 40A Buyer of stock to be informed of withholding period

Omit section 40A (1). Insert instead:

- (1) An owner of stock of a food producing species must, if the stock has been treated with a stock medicine and there is a relevant withholding period for the stock medicine that has not expired, ensure that any person with whom the owner has made arrangements to sell the stock is informed:
 - (a) that the stock has been so treated, and
 - (b) when the relevant withholding period will expire.

Maximum penalty: 200 penalty units or, for an offence by a corporation, 400 penalty units.

- (1A) The person in charge of the stock (in a case where the person in charge is not the owner) must, if the stock has been treated with a stock medicine and there is a relevant withholding period for the stock medicine that has not expired, inform any person with whom the person in charge has made arrangements to sell the stock on behalf of the owner:

- (a) that the stock has been so treated, and
- (b) when the relevant withholding period will expire.

Maximum penalty: 200 penalty units or, for an offence by a corporation, 400 penalty units.

[15] Section 40A (4)

Omit the subsection.

[16] Section 40B Breach of specified withholding period

Omit section 40B (1). Insert instead:

- (1) If stock of a food producing species has been treated with a stock medicine, a person must not cause or permit:

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- (a) the slaughter of the stock for human consumption, or
 - (b) the harvest of the wool, fibre, milk or eggs of the stock for human consumption, or
 - (c) the release of the honey of the stock for human consumption,
- before the relevant withholding period has expired.
Maximum penalty: 200 penalty units or, for an offence by a corporation, 400 penalty units.

[17] Section 40B (2) (a)

Omit section 40B (2) (a) and (b). Insert instead:

- (a) the person was not aware that the stock had been treated with a stock medicine, or

[18] Section 41 Offences relating to sale of stock medicines

Omit “section 44” from section 41 (1) (d).

Insert instead “the Agvet Code”.

[19] Section 41A

Insert after section 41:

41A Stock medicines to be dealt with in accordance with notices under Agvet Code

If a person who has a stock medicine in his or her possession or custody is aware of a notice under section 55 of the Agvet Code that requires a person to deal with the stock medicine in a particular way, the person must deal with the stock medicine in accordance with the instructions contained in the notice.

Maximum penalty: 100 penalty units or, for an offence by a corporation, 200 penalty units.

[20] Section 42 Defence to certain prosecutions

Omit section 42 (2).

[21] Section 43 Offences relating to advertising

Omit the section.

[22] Section 44 Certain particulars to be on packages of stock medicines

Omit the section.

[23] Section 45 Certain matter prohibited in relation to stock medicines

Omit the section.

[24] Section 46 Supply and use bans and recall orders

Omit section 46 (1). Insert instead:

- (1) The Director-General may make an order under this section if the Director-General believes on reasonable grounds that the administration or application of a stock medicine or a stock medicine of a particular class:
 - (a) is likely to endanger the health of the public, consumers of food or produce derived from stock or persons administering or applying the stock medicine, or
 - (b) is likely to cause undue hazard to the environment, or
 - (c) is likely to make stock ill, or
 - (d) is likely to have an adverse effect on trade, or the promotion of trade, in stock or a product derived from stock, or
 - (e) is likely to impede the control or eradication of diseases or pests affecting stock, or
 - (f) is likely to impede the control or reduction of populations of pests, including bacterial organisms, that are resistant to stock medicines, or
 - (g) is inappropriate in a particular area because of local climatic or soil conditions.

[25] Section 46 (2)

Insert at the end of section 46 (2) (c):

, or

- (d) provide for exemptions from the operation of the order.

[26] Section 46 (3)

Omit section 46 (3) and (4). Insert instead:

- (3) An order under this section:
 - (a) is to be published in the Gazette and in some other manner that, in the opinion of the Director-General, is most likely to bring it to the attention of the persons who will be affected by it, and

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- (b) if it applies to a named person (whether or not it also applies in any respect generally or to a specified class of persons) is to be served on the named person, and
 - (c) may relate to a registered stock medicine or an unregistered stock medicine.

[27] Section 46 (6)

Omit the subsection. Insert instead:

- (6) A person must not, without reasonable excuse, contravene an order under this section.
Maximum penalty: 200 penalty units or, for an offence by a corporation, 400 penalty units.

[28] Section 48 Authorisation of inspectors

Insert at the end of the section:

- (2) An authorisation under this section may be given unconditionally or subject to conditions specified in the relevant order.

[29] Section 49 Authorisation of analysts

Insert after section 49 (1):

- (1A) An authorisation under this section may be given unconditionally or subject to conditions specified in the relevant order.

[30] Section 50 Powers of inspectors

Omit section 50 (1) (b1). Insert instead:

- (b1) require the production of any record or document required to be kept under this Act, the regulations or a permit, order or authority in force under this Act,
- (b2) examine any such records or documents, make copies of them or any part of them and, for that purpose, take away and retain them or any part of them for such time as may be reasonably necessary,

[31] Section 50 (1) (e)

Omit “section 32, 34 or 46”. Insert instead “this Act”.

[32] Section 60 Proceedings for offences

Omit “50 penalty units” from section 60 (2). Insert instead “100 penalty units”.

[33] Section 60 (5) and (6)

Omit the subsections.

[34] Section 60A

Insert after section 60:

60A Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

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- (9) In this section, *authorised officer* means a person authorised in writing by the Director-General as an authorised officer for the purposes of this section and includes a police officer.

[35] Section 61 Certificate of registration or non-registration

Omit the section.

[36] Section 63 Refund of fees

Omit the section.

[37] Section 65 Regulations

Omit section 65 (2) (e).

[38] Section 67 Repeal of regulations and form

Omit the section.

[39] Schedule 1 Provisions relating to Stock Medicines Board

Omit the Schedule.

[40] Schedule 2, heading

Omit “and transitional”.

Insert instead “, transitional and other”.

[41] Schedule 2, clause 2 (1)

Insert at the end of the subclause:

Stock Medicines Amendment Act 2004

[42] Schedule 2, Parts 2, 3 and 4

Omit the Parts.

[43] Schedule 2, Part 5

Insert in appropriate order:

**Part 5 Provisions consequent on enactment of
Stock Medicines Amendment Act 2004**

17 Stock Medicines Board

- (1) The Stock Medicines Board established under Part 4 of this Act before its repeal by the *Stock Medicines Amendment Act 2004* is dissolved.

- (2) The persons holding office as members of the Stock Medicines Board immediately before the commencement of this clause:
- (a) cease to hold office as such on that commencement, and
 - (b) are not entitled to any compensation for ceasing to hold office because of the operation of this clause.

18 Repeal of orders

On the repeal of section 34 by the *Stock Medicines Amendment Act 2004*, any order made under that section and in force is revoked.

19 Proceedings for offences

The amendment of section 60 by the *Stock Medicines Amendment Act 2004* extends to offences committed before the commencement of the amendment but does not affect any proceedings commenced before that commencement and not finally determined at that commencement.

Schedule 2 Consequential amendment of Acts

(Section 4)

2.1 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order of names of Acts:

Stock Medicines Act 1989, section 60A

2.2 Stock Medicines Act 1989 No 182

[1] Section 3 Definitions

Omit “veterinary surgeon” from the definition of *prescribe* in section 3 (1).

Insert instead “veterinary practitioner”.

[2] Section 3 (1)

Omit the definition of *veterinary surgeon*. Insert instead:

veterinary practitioner has the same meaning as in the *Veterinary Practice Act 2003*.

[3] Sections 6A (1) and 39B (1)

Omit “veterinary surgeons” wherever occurring.

Insert instead “veterinary practitioners”.

[4] Sections 6A (2) and (4), 36A (3) (a), 37 (1), 39A (1) and (2), 39B (2), 39C, 39D (1)–(3), 39E, 39F, 40 and 41 (2)

Omit “veterinary surgeon” wherever occurring.

Insert instead “veterinary practitioner”.

[5] Section 6A (4)

Omit “*veterinary surgeon*”. Insert instead “*veterinary practitioner*”.

[6] Sections 39A (1) (a) and (2) (a) and 39D (3)

Omit “veterinary surgeon’s” wherever occurring.

Insert instead “veterinary practitioner’s”.

2.3 Veterinary Practice Act 2003 No 87

Schedule 3 Amendment of other Acts and Regulations

Omit Schedule 3.26 and 3.27.

[Second reading speech made in—
Legislative Assembly on 16 September 2004
Legislative Council on 17 November 2004]

BY AUTHORITY