

# Biological Control Bill

## EXPLANATORY MEMORANDUM

### PART 1—PRELIMINARY

*Clause 1* sets out the purpose of the Bill which is to make provision for the biological control of pests in Victoria.

*Clause 2* provides that the Act will come into operation on a day to be proclaimed.

*Clause 3* contains definitions of terms used in the Bill. Definitions of particular significance are dealt with as they arise in this Explanatory Memorandum.

*Clause 4* provides that organisms of a particular kind are to be regarded as being controllable by biological means only if they can be controlled by the release of live organisms of another kind.

*Clause 5* enables the Victorian Biological Control Authority to declare similar legislation of the Commonwealth or another State to be a "relevant law", provided that the Minister administering that law gives consent in writing.

*Clause 6* provides that the Act binds the Crown.

*Clause 7* provides that although various functions of the Authority can only be exercised on the recommendation of the Australian Agricultural Council this does not mean that the only organisms that may be regarded as causing harm are those that are harmful because of their effects on agriculture.

*Clause 8* establishes a Victorian Biological Control Authority. The Authority is to be the Victorian Minister who is a member of the Australian Agricultural Council (namely, the Minister for Agriculture and Rural Affairs).

*Clause 9* empowers the Authority to delegate functions to an officer of the Department administered by the Minister, except the functions conferred by clause 17, 18, 26, 27, 28, 29, 31, 32, 36 or 51. The usual machinery provisions relating to delegations are included.

### PART 2—TARGET ORGANISMS

*Clause 10* provides that organisms of a particular kind may be declared to be target organisms for the purposes of the Act. This action can be commenced by a unanimous recommendation of the Council (i.e., the Australian Agricultural Council) or by an application made to the Authority under clause 11.

*Clause 11* enables a person to apply to the Authority for the declaration of organisms of a kind that are causing harm in the State and are controllable by biological means. The application is to set out the reasons why the organisms are considered to be causing harm in the State and the reasons why the applicant considers that the organisms are controllable by biological means.

*Clause 12* enables a target application to be withdrawn by the applicant at any time before it is referred to the Council.

*Clause 13* requires a target application received by the Authority to be referred to the Council, unless other action to have the organism declared is being taken under the Act or under a relevant law.

*Clause 14* provides that where the Council does not recommend that the organisms be declared as target organisms, the Authority is to notify the applicant, setting out any reasons that may have been given by the Council. Where there are circumstances that might result in a favourable recommendation being made, the Authority is to state those circumstances.

Clause 15 requires that where the Council unanimously recommends that an organism should be declared as a target organism, the Authority is to publish notices to the effect that a declaration is being contemplated. Notice is to be published in the *Government Gazette*, in the *Commonwealth Government Gazette* if the Council has so recommended, and in such newspapers or journals as the Authority considers appropriate. Publication in at least one newspaper in Victoria, in each other State and in the Australian Capital Territory is mandatory.

Details to be included in the notice are specified in the Bill and six weeks are to be allowed to submit written comments in support or objection.

Copies of the application are to be made available for perusal at a place specified in the notice.

Clause 16 requires the Authority to consider all submissions received in response to the notice published under clause 15.

Clause 17 provides that where the Authority has complied with clauses 15 and 16; has consulted the Council; has considered any other relevant reports; and then comes to the conclusion that a person or the environment would be adversely affected by the control of the particular organisms, but an adequate investigation or inquiry has not been held, the Authority may—

- (a) direct that an inquiry be held under Part 7 of the Bill;
- (b) seek to have an inquiry held by the Industries Assistance Commission;
- (c) arrange for an inquiry to be held under the Victorian legislation relating to the protection of the environment; or
- (d) seek to have an inquiry held under the environment protection legislation of any other State or Territory.

Action is not to be taken under paragraphs (a) to (d) above unless the Council is consulted and unanimously agrees. Where an inquiry is to be held, the Authority is not to take any further action until it has considered the report made as a result of the inquiry.

Clause 18 provides that where the Authority has complied with the preceding provisions; has considered all the relevant reports; has consulted the Council and is satisfied—

- (a) that the relevant organisms are causing harm in Victoria and are controllable by biological means; and
- (b) that control throughout Australia of those organisms would not cause any significant harm to any person or to the environment (or any harm so caused would be significantly less than the harm caused by failure to control the organism)—

the Authority is to declare the organism to be a target organism. Declaration is to be made by publication of a notice in the *Government Gazette* (and in the *Commonwealth Government Gazette* if the Council has so recommended).

The Authority is not to make a declaration unless the Council is consulted and unanimously recommends that the declaration be made.

### **PART 3—AGENT ORGANISMS**

Clause 19 is similar to clause 10 (which relates to the declaration of target organisms). However, an agent organism is required to be a “prescribed live organism” which is defined as a live organism other than a live vaccine or a resistant cultivar.

Clause 20 enables a person to apply to the Authority for the declaration of a prescribed live organism as an agent organism if the person considers that the release of that organism

would result in the control of particular target organisms. The application is to identify the organism and to set out ways in which the release of the organism is expected to control the target organisms.

*Clause 21* enables an agent application to be withdrawn by the applicant at any time before it is referred to the Council.

*Clause 22* provides that any agent application received by the Authority is to be referred to the Council, unless other action to have the organism declared is being taken under the Act or under a relevant law.

*Clause 23* provides that where the Council does not recommend that the organism be declared as an agent organism the Authority is to notify the applicant, setting out any reasons that may have been given by the Council. Where there are any circumstances that might result in a favourable recommendation being made, the Authority is to state the circumstances.

*Clause 24* provides that where the Council unanimously recommends that an organism should be declared as an agent organism, the Authority is to publish notices to the effect that a declaration is being contemplated. Notice is to be published in the *Government Gazette*, and in the *Commonwealth Government Gazette* if the Council has so recommended. Notice may be published in such newspapers or journals as the Authority considers appropriate. Details to be included in the notice are specified in the Bill and six weeks are to be allowed to submit written comments in support or objection. Copies of the application are to be made available for perusal at a place specified in the notice.

Where the Council has recommended that two or more agent organisms should be declared to control the same target organism the required notices may be combined in one advertisement.

*Clause 25* requires the Authority to consider all submissions received in response to a notice published under clause 24.

*Clause 26* provides that where the Authority has complied with clauses 24 and 25; has consulted the Council; has considered the findings of any relevant inquiry; has considered any other relevant reports; and then comes to the conclusion that a person or the environment would be adversely affected by the release of the particular agent organism but an adequate investigation or inquiry has not been held, the Authority may—

- (a) direct that an inquiry be held under Part 7 of the Bill;
- (b) seek to have an inquiry held by the Industries Assistance Commission;
- (c) arrange for an inquiry to be held under Victorian legislation relating to the protection of the environment; or
- (d) seek to have an inquiry held under the environment protection legislation of any other State or Territory.

Action is not to be taken under paragraphs (a) to (d) above unless the Council is consulted and unanimously agrees.

An inquiry relating to an agent recommendation may be conducted at the same time as an inquiry relating to a target recommendation.

Where an inquiry is to be held, the Authority is not to take any further action until it has considered the report made as a result of the inquiry.

*Clause 27* provides that where the Authority has complied with the preceding provisions; has considered all the relevant reports; has consulted the Council and is satisfied—

- (a) that release of the agent organism could control the proposed target organism; and

- (b) (i) the release of the proposed agent organism would not cause any significant harm to any person or to the environment (other than the harm, if any, resulting from control throughout Australia of the proposed target); or
- (ii) any harm so caused would be significantly less than the harm caused by failure to control the proposed target and (where the target can be controlled by other organisms or otherwise than by biological means) the harm caused through controlling the target by those other means—

the Authority is to declare the organism to be an agent organism. Declaration is to be made by publication of a notice in the *Government Gazette* (and in the *Commonwealth Government Gazette* if the Council has so recommended).

The Authority is not to make a declaration unless the Council is consulted and unanimously recommends that the declaration be made.

The notice may specify the persons who may release the organism, and the conditions under which the organism may be released.

#### **PART 4—SPECIAL DECLARATIONS OF TARGET ORGANISMS AND AGENT ORGANISMS**

*Clause 28* provides that if the Authority is satisfied that an emergency exists because particular organisms are having a serious effect on the health of humans, animals or plants, or are causing significant damage to the economy or the environment; that the release of prescribed live organisms (that are not already agent organisms) would control the first-named organisms and the release would not have any significant adverse effects, the Authority is to declare the particular organisms to be target organisms for the purposes of the Act and the relevant prescribed live organisms to be agents for the purposes of the Act.

The declaration is to be made by notice published in the *Government Gazette*, and in the *Commonwealth Government Gazette* if the Council has so recommended.

The Authority is not to make a declaration unless the Council has been consulted and unanimously recommends that the declaration be made.

The notice may specify the persons authorized to release the organisms and the conditions under which they may be released.

*Clause 29* provides that if the Authority is satisfied that, before the commencement of the Act, an agent organism was released to control a target organism, and it is probable that if the Act had been in force, those organisms would have been declared to be agents and targets respectively, the Authority may so declare them for the purposes of the Act.

The declaration is to be made by notice published in the *Government Gazette*, and in the *Commonwelath Gazette* if the Council has so recommended.

The Authority is not to make a declaration unless the Council has been consulted and unanimously recommends that the declaration be made.

The notice may specify the persons authorized to release the organisms and the conditions under which they may be released.

*Clause 30* provides that where the Authority is contemplating making a declaration under clause 29, and the Council unanimously recommends that a notice be published regarding such a declaration, the Authority may publish a notice to the effect that a declaration is being contemplated in the *Government Gazette* and in such newspapers and journals as the Authority considers appropriate.

Details to be included in the notice are specified in the Bill and six weeks are to be allowed to submit written comments in support or objection. All submissions are to be considered before a declaration is made.

*Clause 31* provides that where the Authority is contemplating a declaration under section 29; has consulted the Council; has considered the findings of any relevant inquiry; has considered any other relevant reports; and then comes to the conclusion that a person or the environment would be adversely affected by the release of the relevant organisms but an adequate investigation or inquiry has not been held, the Authority may proceed as set out in clause 17.

*Clause 32* provides that where an organism has been declared to be a target organism under a relevant law, the Authority may also declare it to be a target organism for the purposes of this Act.

Where an organism has been declared to be an agent organism under a relevant law, the Authority shall declare that organism to be an agent organism for the purposes of this Act. The notice making the declaration may specify the persons authorized to release the organism and the conditions under which it may be released.

## **PART 5—RELEASE OF AGENT ORGANISMS**

*Clause 33* provides that agent organisms may be released under the Act in Victoria, and if conditions have been specified, the release must comply with the conditions.

*Clause 34* provides that subject to sub-clause (3), no action or other proceeding can be instituted or continued in any court to prevent the release of an agent organism in accordance with clause 33, or to recover damages for any loss or damage suffered as a result of the release of an agent organism in accordance with the clause.

If there was a court order in force when an agent organism was declared under clause 27, 28, 29 or 32, no action or other proceeding can be instituted or continued in any court in respect of that order, insofar as the order purports to prohibit a person from releasing or helping to release the organism in accordance with clause 33.

*Sub-clause (3)* provides that court action to recover damages may be instituted or continued where the loss or damage was the result of the release having had a significant effect on an organism other than the target; that the “experts” had reasonable grounds to expect such an effect; and in making the declaration, the Authority did not take this into account.

## **PART 6—BIOLOGICAL CONTROL UNDER LAWS OF ANOTHER STATE OR THE COMMONWEALTH**

*Clause 35* provides that subject to sub-clause (4), no action or other proceeding can be instituted or continued in any court to recover damages in respect of any loss incurred in Victoria arising from the release of an organism in accordance with a relevant law.

Subject to sub-clause (4), no action or other proceeding can be instituted or continued in any court to prevent the release of organisms in accordance with a relevant law or to recover damages arising from losses incurred or damage suffered in another State by virtue of the release of an organism in accordance with a relevant law.

If there was a court order in force when a prescribed live organism became an agent organism in accordance with a relevant law, no action or other proceeding can be instituted or continued in any court in respect of that order, insofar as the order purports to prohibit a person from releasing or helping to release the organism.

Sub-clause (4) allows an action to proceed under circumstances similar to those set out in clause 34 (3).

## PART 7—INQUIRIES

*Clause 36* provides that where the Authority directs under clause 17, 26 or 31 that an inquiry is to be held under this Part, the Authority shall, after consulting the Council (and having regard to any unanimous recommendation made by the Council) appoint a Commission of Inquiry.

The Commission is to inquire into the overall benefits and disadvantages of declaring the relevant organisms to be agent or target organisms as the case requires; and into such relevant matters as the Council unanimously approves which may include the question of whether assistance should be given to any persons if a declaration is made.

The Commission is to report to the Authority and to make its findings public (subject to sub-clause (6)).

*Sub-clause (6)* provides that the Commission is not to make public any matters in connexion with clauses 39 (2) (b) or 39 (6).

*Clause 37* provides that Commissioners are to be paid prescribed remuneration and allowances.

*Clause 38* requires the Commission to give reasonable notice by advertisement of its intention to hold an inquiry.

*Clause 39* provides that inquiries are to be held in public, and evidence is to be taken on oath or affirmation. The Commission may direct that an inquiry or part of the inquiry is to take place in private, and may prohibit or restrict the publication of evidence. An inquiry may be held outside Victoria.

A witness may give evidence by means of a written statement, verified by oath or affirmation. Where personal attendance may cause serious hardship, the Commission may permit evidence to be given by means of a written statement; the content is to be made available to the public in such manner as the Commission thinks fit, except where publication would be contrary to the public interest.

The procedure to be followed by the Commission is at the discretion of the Commission, and the Commission is not bound by the rules of evidence.

*Clause 40* empowers a Commissioner to summon persons, books and documents.

*Clause 41* provides that failure to attend without reasonable excuse after having been served with a summons renders the person concerned liable to a penalty of 10 penalty units or imprisonment for six months or both.

*Clause 42* empowers a Commissioner to administer an oath or take an affirmation.

*Clause 43* provides that a refusal to be sworn or to make an affirmation, a refusal or failure to answer questions, or a refusal to produce documents renders the person concerned liable to a penalty of 10 penalty units or imprisonment for six months or both.

*Clause 44* provides that a Commissioner has the same protection and immunity as a Judge of the Supreme Court. Witnesses have the same protection and are subject to the same liabilities as witnesses in proceedings in the Supreme Court.

*Clause 45* provides that a person is not to give false or misleading evidence. Penalty: 50 penalty units or two years imprisonment or both.

Proceedings in respect of an offence may be heard in a court of summary jurisdiction if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent. In such cases, the penalty is 20 penalty units or imprisonment for one year or both.

*Clause 46* provides that a person is not to obstruct the Commission or disrupt a hearing. Penalty: 20 penalty units or imprisonment for one year or both.

*Clause 47* empowers a Commissioner or an authorized person to inspect documents and take copies of books or documents.

*Clause 48* entitles witnesses to be paid such allowances as are prescribed.

*Clause 49* provides that a person is not to use violence against nor punish a witness. Penalty: 20 penalty units or imprisonment for one year, or both.

An employer is not to dismiss an employee or prejudice a person in his or her employment by reason of giving evidence to the Commission. Penalty: 100 penalty units in the case of a corporation, and 20 penalty units or imprisonment for one year or both in any other case.

Provisions are included relating to the burden of proof in certain proceedings arising out of this clause.

## **PART 8—MISCELLANEOUS**

*Clause 50* provides that subject to clause 33 (2), nothing in the Act is to be taken to render the release of organisms unlawful if the release would have been lawful but for the Act.

*Clause 51* empowers the Authority to revoke a declaration where the Council has unanimously approved of that action being taken.

Where the Authority revokes a declaration of target organisms and there are no other target organisms for the relevant agent, the declaration of the agent organism is also to be revoked.

*Clause 52* provides that where there is an existing declaration regarding agent organisms, those organisms may be released in accordance with clause 33 regardless of the time that has elapsed since the last release.

*Clause 53* provides that documents that are to be forwarded to the Authority are to be lodged at the head office of the Department administered by the Minister.

*Clause 54* provides a right of appeal to the Administrative Appeals Tribunal against the following decisions of the Authority:

1. A decision not to hold an inquiry (clause 17).
2. A decision that is inconsistent with a recommendation of a Commission of Inquiry (clause 18).
3. A decision not to publish a notice (clause 24).
4. A decision not to hold an inquiry (clause 26).
5. A decision that is inconsistent with a recommendation of a Commission of Inquiry (clause 27).
6. A decision for the purposes of clause 28.
7. A decision that is inconsistent with a recommendation of a Commission of Inquiry (clause 29).
8. A decision not to hold an inquiry (clause 31).
9. A decision to revoke a declaration (clause 51).

*Clause 55* sets out the regulation-making powers.

