

Stock (Seller Liability and Declarations) (Amendment) Bill

EXPLANATORY MEMORANDUM

- Clause 1 states the purpose of the Bill.
- Clause 2 states the commencement provision.
- Clause 3 defines the **Stock (Seller Liability and Declarations) Act 1993** as the Principal Act.
- Clause 4 is one of a number of clauses which extends the operation of the Principal Act to livestock products, such as milk, wool and honey, in addition to livestock. The clause incorporates declarations as to livestock products as a purpose of the Principal Act.
- Clause 5 Paragraph (a) of clause 5 inserts definitions of "exempt agreement", "livestock product" and "Secretary" for the purposes of the Principal Act;
- Paragraph (b) and (c) respectively extend the definitions of "relevant condition" and "relevant disease" to permit declarations under Part 2 of the Act to be made:
- in relation to *classes of stock* of a prescribed species rather than only in relation to all stock of a prescribed species; and
 - in respect of livestock products.
- Clause 6 substitutes a new section 4 which extends the current power of the Governor in Council to declare species of stock to be a species to which the Act applies, to include declarations of livestock products to which the Act will apply.
- Clause 7 amends the heading of Part 2 of the Act to include a reference to livestock products. Part 2 relates to conditions of sale.
- Clause 8 Section 5 of the Act provides that it is a special condition of every contract for the sale of prescribed stock that the stock is free of every relevant condition or relevant disease. This condition cannot be excluded.
- Sub-clause (1) of clause 8 amends section 5 of the Act:

- to allow this provision not to apply to "exempt agreements". This power is required where the existence in prescribed stock of certain conditions or diseases is only a problem in some instances, such as when the stock is being sold for processing into food as opposed to when they are being sold for dispatch from one property to another; and
- to extend the operation of the section to agreements for the sale of prescribed livestock products.

Sub-clause (2) of clause 8 amends section 6 of the Act, which provides for the consequences that flow from breach of a special condition provided for in section 5, to extend its operation to livestock products.

Sub-clause (3) of clause 8 amends section 6 of the Act to provide that the certificate which is required to be obtained under that section to confirm the existence of a relevant condition or disease must contain the prescribed information.

Sub-clause (4) of clause 8 amends section 6(2) and (3) of the Act to incorporate appropriate references to livestock products.

Sub-clause (5) of clause 8 amends section 6 of the Act to ensure that it does not apply to a sale of stock or livestock products under an "exempt agreement".

Sub-clause (6) of clause 8 amends section 7 of the Act, which deals with determining ownership of stock which has been sold with a relevant condition or disease, to extend its operation to livestock products.

Sub-clause (7) of clause 8 amends section 8 of the Act, which deals with allowing a buyer to renounce ownership where stock purchased is confirmed to have a relevant condition or disease, to extend its operation to livestock products.

Sub-clause (8) of clause 8 amends section 9 of the Act, which deals with the consequences that flow from breach of a special condition provided for in section 5 where the carcass has been wholly or partially condemned or downgraded, to ensure that it does not apply to a sale of stock under an "exempt agreement".

Clause 9 amends the heading of Part 3 of the Act to include a reference to livestock products. Part 3 relates to declarations by sellers as to quality.

Clause 10 Section 11 of the Act allows sellers intending to sell stock to make ongoing declarations about whether the stock have a certain condition or characteristic described in the regulations.

Sub-clauses (1) and (2) of clause 10 together amend section 11 to:

- extend its application to livestock products; and
- provide that the declaration must contain prescribed information; and
- increase the penalty for non-compliance with the declaration.

Section 12 of the Act allows sellers intending to sell stock to make one-off declarations about whether the stock have a certain condition or characteristic described in the regulations.

Sub-clauses (3) and (4) of clause 10 together amend section 12 to:

- extend its application to livestock products; and
- provide that the declaration must contain prescribed information; and
- increase the penalty for non-compliance with the declaration.

Sub-clause (5) of clause 10 amends section 13 of the Act, which deals with the consequences which flow from breaching an ongoing or one-off declaration, to extend its application to livestock products.

Clause 11 amends sections 14, which relates to withdrawal of an ongoing declaration, to incorporate references to livestock products.

Clause 12 inserts a new provision into the Act. The new section 18A allows sellers of stock to make a declaration that relates to the treatment, feed, husbandry or pasturing of that stock. The declaration is required to be in the form of a declaration specified by the Secretary, by notice in the Government Gazette, to be a declaration for the purpose of this section.

The provision provides for appropriate persons to keep copies of the declaration and imposes a penalty for failing to do so.

The provision also imposes a penalty for making a false declaration.

Clause 13 amends various provisions of the Act to incorporate appropriate references to livestock products, reflecting the extension of the application of the Act to livestock products.

Clause 14 Sub-clause (1) of clause 14 amends the general regulation making power of the Act.

Paragraphs (a), (b), (g), (h) and (j) incorporate appropriate references to livestock products, reflecting the extension of the application of the Act to livestock products.

Paragraph (c) provides the power to prescribe information to be included in certificates under section 6, as provided for by the amendment to section 6 by clause 8 of this Bill.

Paragraphs (d) and (i) correct incorrect references.

Paragraph (e) provides the power to exempt agreements or classes of agreements from the provisions of Part 2 of the Act, as provided for by the amendment to section 5 by clause 8 of this Bill.

Paragraph (f) provides the power to prescribe information to be included in ongoing and one-off declarations, as provided for by the amendment to sections 11 and 12 by clause 10 of this Bill.

Paragraph (a) of sub-clause (2) of clause 14 repeals paragraph (a) of section 38(2). This provision states that damages prescribed to be payable from a seller to a buyer in certain circumstances where stock sold was found to be in a prescribed condition or have a prescribed disease or characteristic, are not to exceed the amount for which the stock was sold.

This provision is inappropriate as the damages should also reflect the cost of testing, and other costs incidental to confirmation of the presence of the condition, disease or characteristic.

Paragraph (a) also incorporates appropriate references to livestock products.

Paragraph (b) of sub-clause (2) repeals provisions which refers to the power of either House of Parliament to disallow a regulation made under the Act. The provision makes inappropriate references to the now repealed **Subordinate Legislation Act 1962** and is unnecessary because the **Subordinate Legislation Act 1994** otherwise provides for disallowance of regulations.