

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 24 May 1994

LAW REFORM (MISCELLANEOUS PROVISIONS) BILL

Proposed Amendment

Hon. J. H. FALLOON, in Committee, to move the following amendment:

New clauses 11A to 11G: To insert, after *clause 11*, the following heading and clauses:

Biosecurity

11A. Sections to be read with Biosecurity Act 1993—

This section and the next 6 succeeding sections shall be read together with and deemed part of the Biosecurity Act 1993* (in those sections referred to as the principal Act).

*1993, No. 95

Amendment: 1993, No. 129

11B. Powers of regional councils—(1) Section 13 of the principal Act is hereby amended by repealing paragraph (e).

(2) The said section 13 is hereby further amended by inserting, after paragraph (f), the following paragraph:

“(ff) Where the council has, under section 100 of this Act, agreed or arranged that steps to bring an organism under control should be taken by some person or persons other than the council, to meet (in part or in whole) the costs to that person or those persons of the taking of those steps.”

(3) The said section 13 is hereby further amended by adding, as subsection (2), the following subsection:

“(2) Subject to sections 97 to 99 of this Act, every regional council has all the powers of a territorial authority under section 14 of this Act; and every reference in that section to a territorial authority (or territorial authorities) shall be read as including a reference to a regional council (or regional councils).”

11C. Powers of territorial authorities—Section 14 of the principal Act is hereby amended by repealing paragraph (d), and substituting the following paragraphs:

“(d) If, and only if,—

“(i) A pest management strategy provides for certain actions to be taken; but does not expressly provide for them to be taken by territorial authorities, territorial authorities of a class or

description to which the authority belongs, or the authority; and

“(ii) The management agency for the strategy agrees with the authority that the authority will take those actions and the agency will meet the authority’s costs in doing so,—

to take those actions:

“(da) To the extent only that any national pest management strategy provides for—

“(i) Territorial authorities; or

“(ii) Territorial authorities of a class or description to which the authority belongs; or

“(iii) The authority,—

to make contributions towards the costs of the implementation of that strategy, to make such contributions (from the authority’s general funds or from any fund dedicated for the purpose):

“(db) To make and levy rates under the Rating Powers Act 1988 for the purpose of making any contributions that the authority is empowered by paragraph (da) of this section to make.”.

11d. Rating powers of regional councils in relation to national pest management strategies—The principal Act is hereby amended by inserting, after section 99, the following section:

“99A. Nothing in—

“(a) Sections 97 to 99 of this Act; or

“(b) Sections 34A to 34C of the Rating Powers Act 1988;

“(c) Section 11F of the Law Reform (Miscellaneous Provisions) Act 1994,—

limits or affects the powers of any regional council under the Rating Powers Act 1988 to make and levy rates for the purpose of exercising any of the powers conferred on it by this Act in relation to national pest management strategies, or for the purpose of exercising any of the powers conferred on it by section 13 (1) (ff) or section 100 of this Act.”

11e. Transitional control of agricultural pests—Section 179 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) The provisions of the Agricultural Pest Destruction Act 1967 and the Rating Powers Act 1988 continued in effect by subsection (1) of this section shall have effect in relation to—

“(a) Possums; and

“(b) Organisms belonging to a class or description of organism for the time being declared by the Director-General by notice in the *Gazette* to be vectors of tuberculosis for the purposes of this section,—

as if they are pests (within the meaning of that Act) not only by virtue of the effect that they have or may have by virtue of their inherent nature, but also by virtue of the fact that they act or may act as vectors for tuberculosis.”

11f. Disease control operations of Animal Health Board—Until the close of the 30th day of June 1996, every regional council has power,—

- (a) By agreement with the Director-General, to undertake all or any part of the implementation of any disease control programme under the Animals Act 1967:
- (b) To fund, directly or indirectly, the implementation of any such programme:
- (c) To levy money under the Rating Powers Act 1988 accordingly.

11c. Validations—For the avoidance of doubt,—

- (a) The actions of every regional council and pest destruction board before the commencement of this Act are hereby deemed to have been as valid and effectual as if every declaration under section 3 (1) (b) of the Agricultural Pests Destruction Act 1967 that possums are pests of local importance in respect of its district (or any part of its district) had effect that possums are pests of local importance not only by virtue of the effect that they have or may have on plants, but also by virtue of the fact that they act or may act as vectors for tuberculosis; and
- (b) The actions of every regional council and pest destruction board before the commencement of this Act are hereby deemed to have been as valid and effectual as if it had always had the powers referred to in section 11F of this Act (in the case of actions taken before the commencement of section 208 of the Rating Powers Act 1988, as if the reference in paragraph (c) of the said section 11F to that Act is a reference to the Agricultural Pests Destruction Act 1967).

Clause 86: To omit from line 25 on page 31 the expression “2”, and substitute the expression “3”.

Proposed clause 88A: To insert, after clause 88, the following clause:

88A. Land Settlement Promotion and Land Acquisition Act 1952 not to apply—(1) The principal Act is hereby amended by adding the following section:

“8. Nothing in the Land Settlement Promotion and Land Acquisition Act 1952 shall apply with respect to any contract or agreement—

“(a) For the grant, sale, or transfer of any forestry right; or

“(b) For the grant of any option to purchase or otherwise acquire any forestry right.”

(2) Subject to subsection (3) of this section, every contract or agreement of a kind referred to in section 8 of the principal Act (as added by subsection (1) of this section), that was entered into before the 15th day of April 1994, is hereby deemed to be, and always to have been, as valid and effectual as it would have been if the said section 8 had been in force at the time the contract or agreement was entered into.

(3) Nothing in subsection (2) of this section affects any order or determination made by any Court or tribunal before the 15th day of April 1994 or any proceedings commenced, but not finally determined, before that date; and such proceedings shall be dealt with and finally determined as if this section had not been enacted.

(4) Regulation 4 of the Land Settlement Promotion and Land Acquisition Regulations 1968 (as substituted by regulation 2 of the Land Settlement Promotion and Land Acquisition

Regulations 1968, Amendment No. 5) is hereby consequentially amended by revoking subclause (5).

EXPLANATORY NOTE

The amendments set out in this Supplementary Order Paper have 2 effects. First, they insert into the Law Reform (Miscellaneous Provisions) Bill new *clauses 11A to 11G*.

Clause 11A provides that the clauses are to be read with the Biosecurity Act 1993 ("the principal Act").

Clause 11B amends section 13 of the principal Act to give every regional council all the powers under section 14 of the principal Act of a territorial authority, and the power to have contractors undertake small-scale pest management on its behalf.

Clause 11C amends section 14 of the principal Act to give territorial authorities (and, by virtue of the amendment to be effected by *clause 11B*, regional councils) express power to assist in the implementation of national pest management strategies, and to contribute financially to the implementation of national pest management strategies and levy rates for the purpose.

Clause 11D inserts into the principal act a new *section 99A*, which provides that certain express provisions in the principal Act and the Rating Powers Act 1988 do not limit the general powers of regional councils to levy rates for the purpose of implementing national pest management strategies or paying for the small-scale control of pests.

Clause 11E gives regional councils power to act against possums, and other organisms for the time being declared to be vectors of tuberculosis for the purposes of the clause, for the purpose of controlling tuberculosis, as well as on the basis of the direct damage that they may cause.

Clause 11F gives regional councils express power to participate in, and help fund, disease control programmes under the Animals Act 1967, and the power to levy rates for the purpose.

Clause 11G effects 2 validations. *Paragraph (a)* validates the actions of regional councils and the former pest destruction boards in acting against possums with the motive of controlling disease when (arguably) they should not have done so. *Paragraph (b)* validates the actions of regional councils and the former pest destruction boards in implementing disease control programmes (whether directly or by providing funding) when there appears to have been no express statutory power for them to do so.

Secondly, they insert a new *clause 88A*.

Clause 88A adds to the Forestry Rights Registration Act 1983 a new section 8.

Subsection (1) exempts from the coverage of the Land Settlement Promotion and Land Acquisition Act 1952 transactions that transfer or confer an option to purchase a forestry right and replaces an exemption presently contained in regulation 4 of the Land Settlement Promotion and Land Acquisition Regulations 1968.

Subsection (2) validates transactions that were entered into before 15 April 1994 (being the date on which the exemption contained in the regulations came into force) to the extent that they did not comply with the Land Settlement Promotion and Land Acquisition Act 1952. There is some doubt as to whether that Act has ever applied to such transactions and until recently there seems to have been a generally held assumption that the Act did not apply in such cases. In many cases, persons transferring forestry rights either assumed that the Act did not apply or were advised by the Land Valuation Tribunal that the Act did not apply.

Subsection (3) provides *subclause (2)* does not affect any decisions or orders made by any Court or tribunal before 15 April 1994 or any proceedings that were pending on that date.

Subsection (4) effects a consequential revocation.