

Passed by both Houses



New South Wales

Exotic Diseases of Animals Amendment Bill 2008

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2008

Clerk of the Parliaments



New South Wales

Exotic Diseases of Animals Amendment Bill 2008

Act No , 2008

An Act to amend the *Exotic Diseases of Animals Act 1991* to make further provision with respect to the detection, containment and eradication of certain animal diseases; to make amendments with respect to proceedings under other primary industry legislation; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Exotic Diseases of Animals Amendment Act 2008*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Exotic Diseases of Animals Act 1991 No 73

The *Exotic Diseases of Animals Act 1991* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Exotic Diseases of Animals Act 1991

(Section 3)

[1] The whole Act (except where otherwise amended by this Schedule)

Omit “exotic disease” wherever occurring.

Insert instead “emergency animal disease”.

[2] Section 1

Omit the section. Insert instead:

1 Name of Act

This Act is the *Animal Diseases (Emergency Outbreaks) Act 1991*.

[3] Sections 5 (1), 6 (1) and (3) and 75 (1)

Omit “power” wherever occurring. Insert instead “function”.

[4] Section 5 (3)

Omit “other power”. Insert instead “other function”.

[5] Section 6A

Omit the section. Insert instead:

6A Meaning of “emergency animal disease”

(1) For the purposes of this Act, *emergency animal disease* means any of the following:

- (a) bovine spongiform encephalopathy,
- (b) foot and mouth disease,
- (c) rabies,
- (d) any other animal disease declared by the Minister, by order in writing, to be an emergency animal disease for the purposes of this Act.

(2) An order by the Minister under this section:

- (a) comes into force on the date that it is signed, and
- (b) must be published in the Gazette within 14 days after that date.

- (3) An order which has not been so published within 14 days after it was made is taken (unless it has already been revoked) to have been revoked at the end of that 14-day period.

[6] Section 7 Duty to notify

Insert at the end of the section:

- (2) Without limiting any requirement under subsection (1), a veterinary practitioner must, as soon as possible after becoming aware of or suspecting that an animal or animal product the practitioner is examining (or in respect of which the practitioner has been consulted) is infected with a disease (other than an emergency animal disease) that the practitioner suspects:
- (a) is a new or emerging disease, or
 - (b) is not endemic to this State, or
 - (c) does not usually occur in the species of animal (or in the kind of animal product) that the practitioner is examining or in respect of which the practitioner has been consulted,
- report the fact to an inspector by the quickest means of communication available to the veterinary practitioner.
- Maximum penalty: 200 penalty units.

[7] Section 9 Possession or administration of animal disease agents

Omit “exotic” wherever occurring. Insert instead “animal”.

[8] Section 11A

Insert after section 11:

11A Extent of declaration

A declaration under section 10 or 11 must identify the classes or descriptions of animals, animal products, fodder, fittings, soil or vehicles that are affected by the declaration.

[9] Section 12 Permit for entry or exit

Omit section 12 (1) (c). Insert instead:

- (c) brings, moves or takes, or allows any person to bring, move or take, any animal, animal product, fodder, fitting or soil to which the relevant declaration applies into, within or out of any such premises, place, area or vehicle, or

[10] Sections 12 (2), 16 (2), 31 and 45 (1) (g) and (h)

Insert “, soil” after “fitting” wherever occurring.

[11] Sections 12 (2) (b) and 28 (1)

Omit “or fittings” wherever occurring. Insert instead “, fittings or soil”.

[12] Section 13

Omit the section. Insert instead:

13 Entry and exit points

- (1) Any movement of:
 - (a) any vehicle affected by the relevant declaration into or out of an infected place, or
 - (b) any animal, animal product, fodder, fittings or soil affected by the relevant declaration into or out of an infected place or infected vehicle, or
 - (c) any person into or out of any such infected place or infected vehicle,
must be made only through a point or points specified in a notice issued by an inspector to the person in charge, or in apparent control, of the infected place or infected vehicle.
- (2) The inspector may cause the notice to be published in a local newspaper or on the Department’s internet website, or both.
- (3) A person who knows or has reason to believe any premises, place or area to be an infected place or that a vehicle is an infected vehicle and who, in contravention of this section:
 - (a) goes into or out of the infected place or infected vehicle, or
 - (b) moves any other person into or out of the infected place or infected vehicle, or
 - (c) moves any animal, animal product, fodder, fitting, soil or vehicle affected by the relevant declaration into or out of the infected place or infected vehicle,
is guilty of an offence.
Maximum penalty: 400 penalty units or imprisonment for 12 months, or both.

[13] Sections 15 (2), 16 (1) and 18 (2)

Insert “, soil” after “fittings” wherever occurring.

[14] Section 18 Entry and exit points

Omit section 18 (1). Insert instead:

- (1) Any movement of any animal, animal product, fodder, fittings, soil or vehicle affected by the relevant declaration into or out of a restricted area must be made only through a point or points specified in a notice issued by an inspector and published in a local newspaper or on the Department's internet website, or both.

[15] Section 19 Notice of order constituting restricted area

Omit section 19 (1). Insert instead:

- (1) Notice of an order declaring any premises, place or area to be a restricted area must be published:
 - (a) in the Gazette, and
 - (b) in a local newspaper or on the Department's internet website, or both.

[16] Section 20 Area restriction order

Omit section 20 (1). Insert instead:

- (1) The Minister may, by order published in the Gazette (an *area restriction order*), direct all or any specified persons or class of persons within a restricted area to take measures specified in the order for the purpose of controlling, eradicating or preventing the spread of an emergency animal disease.
- (1A) An area restriction order must also be published in a local newspaper or on the Department's internet website, or both.

[17] Sections 20 (2) (b) and 45 (1) (f)

Omit “, vaccination” wherever occurring.

[18] Section 20 (2) (c)

Insert “(including soil)” after “things”.

[19] Section 21 Declaration of control area

Omit “and the classes or descriptions of animals or animal products that are affected by it” from section 21 (2).

[20] Section 22 Control orders

Omit “When directed by the Minister to do so, an inspector” from section 22 (1).

Insert instead “The Minister”.

[21] Section 22 (1) (a) (ii)–(v)

Omit “specified” wherever occurring. Insert instead “all or any specified”.

[22] Section 22 (1) (a) (v)

Insert “, or any soil,” after “products”.

[23] Section 22 (1) (b)

Omit “or inspector”.

[24] Section 22 (2A)

Insert after section 22 (2):

- (2A) A person does not commit an offence under subsection (2) of contravening a control order if the act constituting the contravention is authorised by a permit granted to the person.

[25] Section 23 Notice of order constituting control area

Omit section 23 (1). Insert instead:

- (1) Notice of an order declaring any premises, place or area to be a control area must be published:
- (a) in the Gazette, and
 - (b) in a local newspaper or on the Department’s internet website, or both.

[26] Section 24 Permits

Omit section 24 (1). Insert instead:

- (1) An inspector may grant a permit authorising:
- (a) the entry to or exit from, or movement within, an infected place, infected vehicle or restricted area, or
 - (b) the carrying out of any activity that is the subject of a control order.

[27] Section 24 (2A)

Insert after section 24 (2):

- (2A) Without limiting the basis on which permits may be granted, a permit may be granted on a general basis so that it applies to a specified class of persons. Any such general permit may be granted by such means as may be approved by the Minister.

[28] Section 24 (3)

Insert “In the case of a permit that has been granted on a general basis to a specified class of persons, notice of the revocation or variation may be published on the Department’s internet website.” after “the permit.”.

[29] Sections 27 (Other functions and liabilities not affected), 67 and 77 (2)

Omit “powers” wherever occurring. Insert instead “functions”.

[30] Section 28 Entry of animals etc from outside State

Omit “fittings or” from section 28 (2). Insert instead “fittings, soil or”.

[31] Section 28 (2)

Insert “or to that soil” after “and vehicles”.

[32] Section 32 Destruction of animals, premises and other property

Insert at the end of section 32 (1) (b):

, or

- (c) any domestic animal that is in a declared area, but only if the Minister is satisfied that it is reasonably necessary to do so in order to prevent the spread of an emergency animal disease.

[33] Section 32 (3)

Insert after section 32 (2):

- (3) For the purposes of subsection (1) (c), it does not matter whether the domestic animal is infected with an emergency animal disease or not.

[34] Section 33 Notice of destruction order

Omit “affected”.

[35] Section 35 Quarantine of places and vehicles

Insert “, or part of any premises or place,” after “any premises, place or vehicle” in section 35 (1).

[36] Sections 35 (1), 38A (3), 39 (1) (a) (ii), 41 and 45 (1) (e)

Omit “or fitting” wherever occurring. Insert instead “, fitting or soil”.

[37] Section 35 (1A)

Insert after section 35 (1):

- (1A) A quarantine order must identify the classes or descriptions of animals, animal products, fodder, fittings or soil to which the order relates.

[38] Section 39 Disinfection of places and vehicles

Insert “or leaving” after “entering” in section 39 (1) (b).

[39] Section 43 Verbal and documentary information

Omit “preventing, controlling or eradicating” from section 43 (1).

Insert instead “controlling, eradicating or preventing the spread of”.

[40] Section 43 (1) (a)

Omit “prevention, control or eradication of the disease”.

Insert instead “control or eradication of the disease or the prevention of the spread of the disease”.

[41] Section 45 Search and entry and other powers

Omit “power or” from section 45 (1).

[42] Sections 45 (1) (e) and (i) and 46 (2) (e)

Omit “, vaccinate” wherever occurring.

[43] Section 45 (2)

Omit “or a declaration of an infected place”.

Insert instead “, a declaration of an infected place or a declaration of a restricted area”.

[44] Section 46 Requiring assistance

Omit “powers or performing the inspector’s” from section 46 (1).

[45] Section 46 (2) (a)

Omit “vaccinate”. Insert instead “treat”.

[46] Section 47 Request for assistance

Omit “powers or the performance of the inspector’s”.

[47] Sections 47 and 50 (a)

Omit “powers or in the performance of the inspector’s” wherever occurring.

[48] Section 48 Search warrant

Omit “powers or performing the inspector’s” from section 48 (2).

[49] Part 6, heading

Omit “**The Exotic**”. Insert instead “**Emergency Animal**”.

[50] Section 51 Establishment of the Fund

Omit “Exotic Diseases”. Insert instead “Emergency Animal Diseases”.

[51] Section 51

Omit “specific exotic diseases”.

Insert instead “specific emergency animal diseases”.

[52] Section 52 Payments to the Fund

Omit “the prevention, control and eradication of any exotic diseases” from section 52 (a).

Insert instead “controlling, eradicating and preventing the spread of emergency animal diseases”.

[53] Section 54 Declaration of compensable diseases

Omit section 54 (1). Insert instead:

- (1) The Minister may, by order published in the Gazette:
 - (a) declare an emergency animal disease to be a disease to which this Part applies, and
 - (b) declare any such disease to be a *class A compensable disease* or a *class B compensable disease* for the purposes of this Part.

[54] Section 54 (3)

Insert after section 54 (2):

- (3) In this Part:
 - authorised inspector* means an inspector who is authorised by the Chief Veterinary Officer for the purposes of this Part.
 - property* means any premises, animal products, fodder, fittings and vehicles.

[55] Section 55

Omit the section. Insert instead:

55 Compensation payable to owners of animals and property

- (1) Compensation is payable under this Part:
 - (a) to the owner of any domestic animal or property that has been destroyed in accordance with this Act for the purpose of controlling, eradicating or preventing the spread of an emergency animal disease to which this Part applies, and
 - (b) to the owner of any domestic animal that:
 - (i) has been reported to the Director-General or an inspector as being affected by, or as having died of, an emergency animal disease to which this Part applies, and
 - (ii) is certified by an authorised inspector as having died of a class A compensable disease, and
 - (c) to the owner of any domestic animal that:
 - (i) has been reported to the Director-General or an inspector as having died of an emergency animal disease to which this Part applies, and
 - (ii) is certified by an authorised inspector as having died of a class B compensable disease.
- (2) However, compensation is payable to the owner of a domestic animal under subsection (1) (c) only if:
 - (a) the Director-General is satisfied there has been no unreasonable delay in reporting the death of the animal, and
 - (b) the Chief Veterinary Officer certifies that the destruction of the animal would have been required under this Act had the animal not died.

[56] Section 59 Settlement

Omit “inspector approved by the Chief Veterinary Officer” from section 59 (1).

Insert instead “authorised inspector”.

[57] Section 66 Appointment of Chief Veterinary Officer

Omit “powers and perform the” from section 66 (2).

[58] Section 68 Appointment of inspectors

Omit “and performance by that person or those persons of the powers and functions of an inspector under this Act or of such of those powers and”.

Insert instead “by that person or those persons of the functions of an inspector under this Act or of such of those”.

[59] Section 69A

Insert after section 69:

69A Fees for services

- (1) A fee of such amount as may be prescribed by the regulations may be charged for any service provided under this Act or the regulations, including for the following:
 - (a) the granting of permits (other than a permit authorising the movement of any person, animal or other thing from one part of a property to another part of the same property),
 - (b) the granting of authorities by the Chief Veterinary Officer under section 9 (2),
 - (c) the issuing of certificates by the Chief Veterinary Officer or an inspector for the purposes of Part 7.
- (2) Any such fee payable under this section may be recovered by the Crown as a debt in a court of competent jurisdiction.
- (3) The regulations may make provision for or with respect to the payment of fees under this section, including the waiver or refund of any such fee or the payment of a fee by instalments.

[60] Section 70 Reasonable suspicion of infection

Omit section 70 (1). Insert instead:

- (1) For the purposes of this Act, an animal, place or thing may reasonably be suspected of being infected with an emergency animal disease if there is reason to think that an animal disease agent is present in or on the animal, place or thing.

[61] Section 70A

Insert after section 70:

70A False or misleading statements

A person must not:

- (a) in any application for a permit or other authorisation under this Act or the regulations, or

(b) in complying with any requirement to provide information to a person engaged in the administration of this Act, make any statement that the person knows, or could reasonably be expected to know, is false or misleading in a material respect.
Maximum penalty: 200 penalty units or imprisonment for 6 months, or both.

Note. Making a false claim for compensation under Part 7 of this Act is also an offence—see section 65.

[62] Sections 71 and 71A

Omit section 71. Insert instead:

71 Proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations are to be dealt with summarily:
 - (a) before the Local Court, or
 - (b) before the Supreme Court in its summary jurisdiction.
- (2) Any such proceedings must be commenced not later than 2 years from when the offence was alleged to have been committed.
- (3) If proceedings are brought in the Local Court, the maximum monetary penalty that the Court may impose for the offence is 100 penalty units or the maximum monetary penalty provided for the offence by this Act or the regulations, whichever is the lesser.

71A 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 under 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) However, subsection (7) does not authorise the amount of a penalty prescribed under this section for any offence to exceed 10 penalty units.
- (9) 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.
- (10) In this section, *authorised officer* means:
 - (a) a police officer, or
 - (b) a person of a class prescribed by the regulations as a class of person who may issue penalty notices under this section.

[63] Sections 75 (2) and 76 (4)

Omit “power or authority” wherever occurring. Insert instead “function”.

[64] Section 76 Protection of control programs

Omit section 76 (1). Insert instead:

- (1) The Minister may by order in writing certify that:
 - (a) an outbreak of an emergency animal disease exists in any part of New South Wales, or
 - (b) an outbreak of an emergency animal disease exists in any other part of Australia and it is necessary or expedient to take action or to make any declaration or authorisation under this Act to prevent, or reduce the risk of, the spread of the disease to New South Wales.

[65] Section 76 (2)

Omit “an exotic disease”.

Insert instead “an emergency animal disease whether in New South Wales or any other part of Australia (as referred to in an order under subsection (1) (b))”.

[66] Section 78 Regulations

Omit “powers and” from section 78 (2) (b).

[67] Section 79 Amendment of Stock Diseases Act 1923 No 34

Omit the section.

[68] Section 81

Omit the section. Insert instead:

81 Savings and transitional provisions

Schedule 1 has effect.

[69] Schedule 1

Insert after section 82:

Schedule 1 Savings and transitional provisions

(Section 81)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Exotic Diseases of Animals Amendment Act 2008

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of Exotic Diseases of Animals Amendment Act 2008

2 Definition

In this Part:

amending Act means the *Exotic Diseases of Animals Amendment Act 2008*.

3 Saving of declared exotic diseases

Any disease that, immediately before the commencement of the amending Act, was declared to be an exotic disease for the purposes of this Act is taken to be an emergency animal disease declared by order under section 6A (as substituted by the amending Act).

4 References to exotic diseases

A reference in any Act (other than this Act) or in any instrument made under any Act to an exotic disease within the meaning of this Act is to be construed as a reference to an emergency animal disease.

5 Existing orders under Part 7

Any order made under section 54 and in force immediately before the commencement of the amending Act is taken to be an order in force under that section (as amended by the amending Act).

6 Continuity of Fund

The Emergency Animal Diseases Compensation and Eradication Fund is a continuation of the Exotic Diseases Compensation and Eradication Fund operating under this Act immediately before the commencement of the amending Act.

7 General savings provision

- (1) Subject to the regulations, anything done under or for the purposes of a provision of this Act that had effect immediately before the provision was amended by the amending Act is taken

to have been done under or for the purposes of this Act as so amended.

- (2) Without limiting subclause (1), any authority, permit, certificate or appointment in force under a provision of this Act immediately before the amendment of the provision by the amending Act is taken to be an authority, permit, certificate or appointment in force under this Act as so amended.

[70] Dictionary

Insert in alphabetical order:

exercise a function includes perform a duty.

function includes a power, authority or duty.

treatment means any procedure for curing, or for the alleviation, control or prevention of, an emergency animal disease, and includes vaccination.

[71] Dictionary

Omit the definitions of *exotic disease*, *exotic disease agent* and *Fund*.

Insert instead in alphabetical order:

animal disease agent means any prion, virus, rickettsia, bacterium, protozoon, fungus, helminth, arthropod, insect or other pathogen or organism that is capable of causing an emergency animal disease.

emergency animal disease—see section 6A.

Fund means the Emergency Animal Diseases Compensation and Eradication Fund established under this Act.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Agricultural Livestock (Disease Control Funding) Act 1998 No 139

Section 3 Definitions

Omit “any exotic disease within the meaning of the *Exotic Diseases of Animals Act 1991*” from the definition of *disease*.

Insert instead “any emergency animal disease within the meaning of the *Animal Diseases (Emergency Outbreaks) Act 1991*”.

2.2 Apiaries Act 1985 No 16

[1] Section 8 Grant or refusal of application for registration

Insert “, on payment of such fee as may be prescribed by the regulations,” after “issuing to the applicant” in section 8 (3) (a).

[2] Section 11 Renewal of registration

Insert “, on payment of such fee as may be prescribed by the regulations,” after “issue to the applicant” in section 11 (6) (b).

[3] Section 42 General provisions with respect to offences

Insert “or the regulations” after “this Act” in section 42 (1).

[4] Section 42 (1A)

Insert after section 42 (1):

- (1A) Any such proceedings must be commenced not later than 2 years from when the offence was alleged to have been committed.

[5] Section 49 Fees etc to be paid into Consolidated Fund

Omit the section.

2.3 Exhibited Animals Protection Act 1986 No 123

Section 46 Proceedings for offences

Insert at the end of the section:

- (2) Any such proceedings must be commenced not later than 2 years from when the offence was alleged to have been committed.

2.4 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order of Acts:

Animal Diseases (Emergency Outbreaks) Act 1991, section 71A

2.5 Non-Indigenous Animals Act 1987 No 166

[1] Section 27 Proceedings for offences

Insert “or the regulations” after “this Act”.

[2] Section 27 (2)

Insert at the end of the section:

- (2) Any such proceedings must be commenced not later than 2 years from when the offence was alleged to have been committed.

2.6 Noxious Weeds Act 1993 No 11

Section 61 Proceedings for offences

Insert at the end of the section:

- (2) Any such proceedings must be commenced not later than 2 years from when the offence was alleged to have been committed.

2.7 Plant Diseases Act 1924 No 38

[1] Section 26 Offences

Insert after section 26 (2A):

- (2B) Any such proceedings must be commenced not later than 2 years from when the offence was alleged to have been committed.

[2] Section 28 Regulations

Insert at the end of section 28 (1) (f) (iv):

and

- (v) for any other service (including the granting of any other type of certificate) provided under this Act or the regulations,

2.8 Stock Diseases Act 1923 No 34

[1] Section 20L Proceedings for offences

Insert after section 20L (1):

- (1A) Any such proceedings must be commenced not later than 2 years from when the offence was alleged to have been committed.

[2] Section 23 Regulations

Insert after section 23 (1) (k):

- (k1) prescribe the payment of fees for any other service provided under this Act or the regulations,