

Biological Control Act 1985 No 199

[1985-199]



New South Wales

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Biological Control Act 1985 No 199



New South Wales

An Act to make provision for the biological control of pests in New South Wales, and for related purposes.

WHEREAS:

- (1) It is generally acknowledged that in the interests of the Australian economy and for the general protection of the Australian environment it is necessary to implement a Scheme for biological control of pests in the States and Territories of Australia—
- (2) The implementation of such a Scheme requires uniform legislation throughout Australia and for that legislation to be administered on a uniform basis—
- (3) The Commonwealth, the other States and the Northern Territory have enacted, or are taking action to provide for the introduction of, the necessary legislation—

BE it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows—

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Biological Control Act 1985*.

2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

agent application means an application under section 20.

agent organisms means organisms in respect of which there is in force a declaration by the Authority, under section 27, 28, 29 or 32, that the organisms are agent organisms for the purposes of this Act.

agent recommendation means a recommendation to the Authority by the Council that organisms of a particular kind should be declared to be agent organisms for the purposes of this Act.

Australia includes the external Territories (if any) in respect of which a declaration under section 4 (1) of the Commonwealth Act is in force.

Authority means the New South Wales Biological Control Authority established by section 8.

Commonwealth Act means the *Biological Control Act 1984* of the Commonwealth.

control, in relation to organisms, includes—

- (a) reduce the number of those organisms,
- (b) prevent an increase in the number of those organisms,
- (c) reduce the activity or appetite of some or all of those organisms, and
- (d) modify the behaviour or characteristics of some or all of those organisms.

Council means the Agriculture Ministers' Forum or, if that body ceases to exist—

- (a) any body that replaces that body and has as its members Ministers of Australian (or Australian and New Zealand) jurisdictions with portfolio responsibility for primary industries, or
- (b) if the Minister, by order published in the Gazette, prescribes a body that has as its members Ministers of Australian (or Australian and New Zealand) jurisdictions with portfolio responsibility for primary industries—that prescribed body.

Department means Regional NSW.

kind, in relation to organisms, means species, sub-species or variety.

organism means—

- (a) an organism (whether alive or dead and whether or not indigenous to Australia) other than a human, or
- (b) a virus or a sub-viral agent (whether alive or dead and whether or not indigenous to Australia), or
- (c) a part of, or matter discharged from, an organism within the meaning of paragraph (a) or (b).

organization includes—

- (a) a body corporate,
- (b) an association or other body of persons, and
- (c) an association that consists of 2 or more organizations referred to in paragraphs (a) and (b).

person includes an organization.

prescribed organisms means organisms that are—

- (a) live organisms, or
 - (b) viruses or sub-viral agents,
- other than live vaccines or resistant cultivars.

relevant law means a law declared by the Authority under section 5 to be a relevant law for the purposes of this Act.

State includes the Northern Territory.

target application means an application under section 11.

target organisms means organisms in respect of which there is in force a declaration by the Authority, under section 18, 28, 29 or 32, that the organisms are target organisms for the purposes of this Act.

target recommendation means a recommendation to the Authority by the Council that organisms of a particular kind should be declared to be target organisms for the purposes of this Act.

Territory does not include the Northern Territory.

- (2) For the purposes of this Act, organisms of a particular kind shall be taken to cause harm if the control of those organisms would be for the public benefit.
- (3) For the purposes of this Act, organisms of a particular kind shall be taken to cause harm in the State if they cause harm in a part or parts only of the State.
- (4) For the purposes of this Act—
 - (a) a recommendation or decision of, or an approval by, the Council has effect whether or not it was made or given while the Council was in session,
 - (b) a recommendation of the Council shall be taken to be unanimous if, and only if, the recommendation is a recommendation of all the members of the Council,

- (c) an approval by the Council shall be taken to be unanimous if, and only if, the approval is an approval by all the members of the Council, and
 - (d) where a person is authorised to act as a member of the Council in place of another person, then, while the firstmentioned person is so acting, the firstmentioned person is to be taken to be a member of the Council and the other person is not to be taken to be a member of the Council.
- (5) A reference in this Act to a recommendation by the Council that organisms of a particular kind should be declared to be agent organisms for the purposes of this Act includes a reference to a recommendation that organisms of a particular kind should be so declared if organisms to which a target recommendation applies are declared to be target organisms for the purposes of this Act.
- (6) In this Act, a reference to—
- (a) a function includes a reference to a power, authority and duty, and
 - (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

4 Biological control

For the purposes of this Act, organisms of a particular kind shall be taken to be controllable by biological means if, and only if, those organisms can be controlled by the release of prescribed organisms of another kind.

5 Relevant laws

- (1) Where a law of the Commonwealth or of a State other than New South Wales—
- (a) provides for the control by biological means of organisms causing harm, and
 - (b) establishes an authority having similar functions to those of the Authority,
- the Authority may, by notice published in the Gazette, declare that law to be a relevant law for the purposes of this Act.

Editorial note—

For relevant laws see the Historical notes at the end of this Act.

- (2) A declaration shall not be made under subsection (1) in respect of a law unless the Minister administering that law consents in writing to the declaration being made.
- (3) A declaration made under subsection (1) shall cease to have effect in respect of a law if that law ceases to be a law described in subsection (1) (a) and (b).

6 Act to bind Crown

- (1) This Act binds the Crown not only in right of New South Wales but also, so far as the

legislative power of Parliament permits, the Crown in all its other capacities.

- (2) Nothing in this Act renders the Crown in right of New South Wales or in any other capacity liable to be prosecuted for an offence.

7 Act not limited to agricultural pests

The fact that certain functions of the Authority under this Act cannot be exercised except on the recommendation of the Council does not imply that the only kinds of organisms that may for the purposes of this Act be regarded as causing harm are kinds that are harmful by reason of their effect on agriculture.

8 New South Wales Biological Control Authority

- (1) For the purposes of this Act, a New South Wales Biological Control Authority is established by this section.
- (2) The Authority shall be the Minister of the Crown of the State of New South Wales who is for the time being—
 - (a) a member of the Council, and
 - (b) the Minister administering this Act.

9 Delegation

- (1) The Authority may delegate to an officer of the Department the exercise of any of the functions of the Authority under this Act, other than—
 - (a) the exercise of the functions of the Authority under section 17, 18, 26, 27, 28, 29, 31, 32, 36 or 51, or
 - (b) this power of delegation.
- (2) A delegation under this section—
 - (a) shall be in writing,
 - (b) may be general or limited, and
 - (c) may be revoked, wholly or partly, by the Authority.
- (3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.
- (4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Authority.
- (5) A delegation under this section does not prevent the exercise of a function by the Authority.

- (6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

Part 2 Target organisms

10 Target organisms

- (1) Subject to and in accordance with this Part, organisms of a particular kind may be declared to be target organisms for the purposes of this Act.
- (2) Action for the declaration of target organisms in accordance with this Part may be commenced by—
- (a) a unanimous recommendation being made to the Authority by the Council, or
 - (b) an application being made under section 11.

11 Target application

- (1) Where a person considers that organisms of a particular kind are causing harm in the State and are, or are likely to be, controllable by biological means, the person may make an application to the Authority for a declaration that organisms of that kind are target organisms for the purposes of this Act.
- (2) A target application shall be in writing signed—
- (a) in the case of an application by a natural person—by the applicant, or
 - (b) in any other case—by a natural person authorized by the applicant to do so.
- (3) A target application in relation to organisms of a particular kind shall set out—
- (a) particulars identifying the organisms,
 - (b) particulars of the reasons why the organisms are considered to be causing harm in the State,
 - (c) particulars of the reasons why the applicant considers that the organisms are, or are likely to be, controllable by biological means, and
 - (d) such other particulars (if any) as are prescribed.

12 Withdrawal of target application

- (1) A person who has made a target application may withdraw that application at any time before the application is referred to the Council under section 13 (1).
- (2) The withdrawal of a target application shall be effected by the making of a request for withdrawal to the Authority in writing signed—

- (a) in the case of an application by a natural person—by the person who signed the application or by the legal personal representative of that person, or
- (b) in any other case—by the person who signed the application or by a person authorized by the applicant to sign the request.

13 Referral of target application to Council

- (1) Subject to subsection (2), where a target application is received by the Authority, the Authority shall refer the application to the Council for its consideration.
- (2) The Authority is not required to refer to the Council a target application in respect of organisms of a particular kind if—
 - (a) other action to have them declared to be target organisms is being, or has been, taken under this Act, or
 - (b) action to have them declared to be organisms that may be controlled by biological means is being, or has been, taken under a relevant law.

14 Notice of rejection of target application

- (1) If the Council, after considering a target application referred to it by the Authority, informs the Authority that it does not recommend that the organisms to which the application relates should be target organisms, the Authority shall cause to be given, in such manner as the Authority considers appropriate, to the person who made the target application and to the persons (if any) who made a later target application in respect of those organisms notice in writing stating that the Council does not recommend that those organisms should be target organisms.
- (2) A notice under subsection (1) shall—
 - (a) if reasons have been given by the Council for not recommending that organisms to which the notice relates should be target organisms—set out those reasons, and
 - (b) if there are circumstances in which, in the opinion of the Authority, a target application in relation to those organisms might result in a recommendation by the Council that those organisms should be target organisms—specify those circumstances.

15 Notice of proposed target organisms

- (1) Where the Council has unanimously recommended to the Authority that organisms of a particular kind should be target organisms, the Authority shall publish in the Gazette (and, if the Council has so recommended, in the Commonwealth Gazette) and in such newspapers or journals as the Authority considers appropriate a notice that the Authority is contemplating declaring those organisms to be target organisms.

- (2) Without limiting the generality of subsection (1), a notice under that subsection shall be published in at least one newspaper circulating generally in New South Wales and in each other State and the Australian Capital Territory.
- (3) A notice under subsection (1) in relation to organisms of a particular kind shall—
 - (a) set out particulars identifying the organisms,
 - (b) set out brief particulars of the reasons why the organisms are believed to be causing harm in the State,
 - (c) set out brief particulars of the benefits (if any) resulting from the absence of biological control of the population of the organisms,
 - (d) state that the Council has unanimously recommended that the organisms should be declared to be target organisms,
 - (e) where the recommendation of the Council followed a target application in relation to the organisms—inform the public that copies of the target application can be perused at a place specified in the notice, and
 - (f) invite any persons who object to, or support, the organisms being declared to be target organisms to submit written particulars of the grounds for that objection or support, as the case may be, to the Authority within the period of 6 weeks after the date of the publication of the notice in the Gazette, or within such further period as the Authority (either before or after the expiration of that period) allows.
- (4) Where the Authority publishes a notice under subsection (1) in relation to a target application, the Authority shall cause copies of the application to be available for perusal at a place specified in the notice in accordance with subsection (3) (e).

16 Consideration of submissions relating to target organisms

The Authority shall consider any submissions in response to an invitation referred to in section 15 (3) (f).

17 Inquiries relating to target organisms

- (1) Where the Authority, after—
 - (a) complying with sections 15 and 16 in respect of a target recommendation,
 - (b) consulting the Council regarding the appropriateness of action under this section in respect of that recommendation,
 - (c) considering the nature of, the proceedings in and the findings of, any inquiry that the Authority considers relevant to the recommendation (which may be an inquiry conducted on behalf of another State or the Commonwealth), and

(d) considering any reports relating to the recommendation made by any person or authority competent to do so that the Authority considers relevant,

considers that there is evidence that a person or the environment would be adversely affected by the control of organisms of the kind to which the recommendation relates but an adequate investigation or inquiry into the effect of such control has not been held, the Authority may—

(e) direct that an inquiry under Part 7 be conducted in respect of the recommendation,

(f) request the Minister administering the Commonwealth Act to arrange for the Minister who administers the *Industries Assistance Commission Act 1973* of the Commonwealth to refer the recommendation to the Industries Assistance Commission for inquiry and report,

(g) arrange for a Minister who administers any New South Wales legislation relating to the protection of the environment to cause an inquiry to be conducted under that legislation in respect of the recommendation, or

(h) request the Biological Control Authority for another State or a Territory to arrange for a Minister who administers any legislation of that State or Territory relating to the protection of the environment to cause an inquiry to be conducted under that legislation in respect of the recommendation.

(2) Action shall not be taken under subsection (1) (e), (f), (g) or (h) in respect of a target recommendation unless the Council, upon being consulted in accordance with subsection (1) (b), has unanimously recommended that the action be taken.

(3) Where the Authority takes action under subsection (1) (e), (f), (g) or (h) for an inquiry in relation to a target recommendation, the Authority shall not take any further action under this Act in relation to that recommendation unless and until the Authority has considered the report made as the result of that inquiry.

18 Declaration of target organisms

(1) Where the Authority, after—

(a) complying with the preceding provisions of this Part in relation to a target recommendation,

(b) considering all reports and other matters relating to that recommendation that the Authority considers it appropriate to consider, and

(c) consulting the Council regarding the appropriateness of action under this section in respect of that recommendation,

is satisfied—

- (d) that organisms of the kind to which the recommendation relates are causing harm in New South Wales,
- (e) that organisms of that kind are, or that there is a probability that organisms of that kind are likely to be, controllable by biological means, and
- (f) that—
 - (i) the control throughout Australia of organisms of that kind would not cause any significant harm to any person or to the environment, or
 - (ii) any harm caused to persons or to the environment by the control throughout Australia of organisms of that kind would be significantly less than the harm caused, or likely to be caused, by failure to control organisms of that kind throughout Australia,

the Authority, subject to subsection (2), shall, by notice published in the Gazette (and, if the Council has so recommended, in the Commonwealth Gazette), declare organisms of that kind to be target organisms for the purposes of this Act.

- (2) The Authority shall not make a declaration under subsection (1) in respect of a target recommendation unless the Council, upon being consulted in accordance with subsection (1) (c), has unanimously recommended that the declaration be made.

Part 3 Agent organisms

19 Agent organisms

- (1) Subject to and in accordance with this Part, prescribed organisms of a particular kind may be declared to be agent organisms for the purposes of this Act.
- (2) Action for the declaration of agent organisms in accordance with this Part may be commenced by—
 - (a) a unanimous recommendation being made to the Authority by the Council, or
 - (b) an application being made under section 20.

20 Agent application

- (1) Where a person considers that the release of prescribed organisms of a particular kind would result in the control of—
 - (a) target organisms of a particular kind or kinds, or
 - (b) organisms to which a target recommendation applies or target recommendations apply,(whether or not the organisms referred to in paragraph (a) or (b) can be controlled by

existing agent organisms) the person may make an application to the Authority for a declaration that the firstmentioned organisms are agent organisms for the purposes of this Act.

- (2) An agent application shall be in writing signed—
 - (a) in the case of an application by a natural person—by the applicant, or
 - (b) in any other case—by a natural person authorized by the applicant to do so.
- (3) An agent application in relation to organisms of a particular kind shall set out—
 - (a) particulars identifying the organisms,
 - (b) particulars of the possible ways in which the applicant considers that the release of the organisms could control the relevant population of target organisms, and
 - (c) such other particulars (if any) as are prescribed.

21 Withdrawal of agent application

- (1) A person who has made an agent application may withdraw that application at any time before the application is referred to the Council under section 22 (1).
- (2) The withdrawal of an agent application shall be effected by the making of a request for withdrawal to the Authority in writing signed—
 - (a) in the case of an application by a natural person—by the person who signed the application or by the legal personal representative of that person, or
 - (b) in any other case—by the person who signed the application or by a person authorized by the applicant to sign the request.

22 Referral of agent application to Council

- (1) Subject to subsection (2), where an agent application is received by the Authority, the Authority shall refer the application to the Council for its consideration.
- (2) The Authority is not required to refer to the Council an agent application in respect of organisms of a particular kind if—
 - (a) other action to have them declared to be agent organisms is being, or has been, taken under this Act, or
 - (b) action to have them declared to be organisms that may be released to control the population of other organisms is being, or has been, taken under a relevant law.

23 Notice of rejection of agent application

- (1) If the Council, after considering an agent application referred to it by the Authority,

informs the Authority that it does not recommend that the organisms to which the application relates should be agent organisms, the Authority shall cause to be given, in such manner as the Authority considers appropriate, to the person who made the agent application and to the persons (if any) who made a later agent application in respect of those organisms notice in writing that the Council does not recommend that those organisms should be agent organisms.

(2) A notice under subsection (1) shall—

- (a) if reasons have been given by the Council for not recommending that organisms to which the notice relates should be agent organisms—set out those reasons, and
- (b) if there are circumstances in which, in the opinion of the Authority, an agent application in relation to those organisms might result in a recommendation by the Council that those organisms should be agent organisms—specify those circumstances.

24 Notice of proposed agent organisms

(1) Where the Council has unanimously recommended to the Authority that prescribed organisms of a particular kind should be agent organisms, the Authority shall publish in the Gazette (and, if the Council has so recommended, in the Commonwealth Gazette), and may publish in such newspapers or journals as the Authority thinks appropriate, a notice that the Authority is contemplating declaring those organisms to be agent organisms.

(2) A notice under subsection (1) in relation to organisms of a particular kind (in this subsection referred to as the **relevant organisms**) shall—

- (a) set out particulars identifying the relevant organisms,
- (b) specify the organisms which it is intended to control by the release of the relevant organisms,
- (c) set out brief particulars of the manner in which the relevant organisms would control the organisms specified in the notice in accordance with paragraph (b),
- (d) state that the Council has unanimously recommended that the relevant organisms should be declared to be agent organisms,
- (e) where the recommendation of the Council followed an agent application in relation to the organisms—inform the public that copies of the agent application can be perused at a place specified in the notice, and
- (f) invite any persons who object to, or support, the relevant organisms being declared to be agent organisms to submit written particulars of the grounds for that objection or support, as the case may be, to the Authority within the period of 6 weeks after the date of the publication of the notice in the Gazette, or within

such further period as the Authority (either before or after the expiration of that period) allows.

- (3) Where the Authority publishes a notice under subsection (1) in relation to an agent application, the Authority shall cause copies of the application to be available for perusal at the place specified in the notice in accordance with subsection (2) (e).
- (4) Where the Council has recommended to the Authority that 2 or more kinds of organisms should be agent organisms for the purpose of the control of the same population of particular organisms, a notice under subsection (1) relating to one of those kinds may be combined with a notice under that subsection relating to the other kind or kinds.

25 Consideration of submissions relating to agent organisms

The Authority shall consider any submissions in response to an invitation referred to in section 24 (2) (f).

26 Inquiries relating to agent organisms

- (1) Where the Authority, after—
 - (a) complying with sections 24 and 25 in respect of an agent recommendation,
 - (b) consulting the Council regarding the appropriateness of action under this section in respect of that recommendation,
 - (c) considering the nature of, the proceedings in and the findings of, any inquiry that the Authority considers relevant to the recommendation (which may be an inquiry under Part 7 in respect of a target recommendation or an inquiry conducted on behalf of another State or the Commonwealth), and
 - (d) considering any reports relating to the recommendation made by any person or authority competent to do so that the Authority considers relevant,

considers that there is evidence that a person or the environment would be adversely affected by the release of organisms of the kind to which the recommendation relates but an adequate investigation or inquiry into the effect of such a release has not been held, the Authority may—

- (e) direct that an inquiry under Part 7 be conducted in respect of the recommendation,
- (f) request the Minister administering the Commonwealth Act to arrange for the Minister who administers the *Industries Assistance Commission Act 1973* of the Commonwealth to refer the recommendation to the Industries Assistance Commission for inquiry and report,

- (g) arrange for a Minister who administers any New South Wales legislation relating to the protection of the environment to cause an inquiry to be conducted under that legislation in respect of the recommendation, or
 - (h) request the Biological Control Authority for another State or a Territory to arrange for a Minister who administers any legislation of that State or Territory relating to the protection of the environment to cause an inquiry to be conducted under that legislation in respect of the recommendation.
- (2) Action shall not be taken under subsection (1) (e), (f), (g) or (h) in respect of an agent recommendation unless the Council, upon being consulted in accordance with subsection (1) (b), has unanimously recommended that the action be taken.
 - (3) An inquiry by virtue of subsection (1) in respect of an agent recommendation that recommends that organisms of a particular kind should be declared to be agent organisms if organisms to which a target recommendation applies are declared to be target organisms and an inquiry by virtue of section 17 (1) in respect of the target recommendation may be conducted as if they were one inquiry.
 - (4) Where the Authority takes action under subsection (1) (e), (f), (g) or (h) for an inquiry in relation to an agent recommendation, the Authority shall not take any further action under this Act in relation to that recommendation unless and until the Authority has considered the report made as the result of that inquiry.

27 Declaration of agent organisms

- (1) Where the Authority, after—
 - (a) complying with the preceding provisions of this Part in relation to an agent recommendation,
 - (b) considering all reports and other matters relating to that recommendation that the Authority considers it appropriate to consider, and
 - (c) consulting the Council regarding the appropriateness of action under this section in respect of that recommendation,is satisfied—
 - (d) that the release of organisms of the kind to which the recommendation relates (in this subsection referred to as the **relevant organisms**) could result in the control of target organisms of a particular kind or kinds in the State,
 - (e) that—
 - (i) the release of the relevant organisms would not cause any significant harm to any person or to the environment, other than the harm (if any) resulting from the control throughout Australia of target organisms of that kind or those

kinds, or

- (ii) any harm caused to persons or to the environment by the release of the relevant organisms, other than the harm (if any) resulting from the control throughout Australia of target organisms of that kind or those kinds, would be significantly less than—
 - (A) the harm caused, or likely to be caused, by failure to control target organisms of that kind or those kinds throughout Australia, and
 - (B) where target organisms of that kind or those kinds can be controlled by the release of other organisms or otherwise than by biological means—the harm (if any) caused, or likely to be caused, by controlling target organisms of that kind or those kinds throughout Australia by the release of those other organisms or by those other means,

the Authority, subject to subsection (2), shall, by notice published in the Gazette (and, if the Council has so recommended, in the Commonwealth Gazette), declare the relevant organisms to be agent organisms for the purposes of this Act.

- (2) The Authority shall not make a declaration under subsection (1) in respect of an agent recommendation unless the Council, upon being consulted in accordance with subsection (1) (c), has unanimously recommended that the declaration be made.
- (3) A notice under subsection (1) declaring organisms of a particular kind to be agent organisms may set out conditions under which those organisms may be released, which conditions may be or include—
 - (a) conditions specifying the persons who may release those organisms, or
 - (b) conditions specifying the circumstances in which those organisms may be released.

Part 4 Special declarations of target organisms and agent organisms

28 Emergency declarations

- (1) If the Authority is satisfied—
 - (a) that an emergency exists because organisms of a particular kind (whether or not they are target organisms)—
 - (i) are having, or are likely to have, a serious effect on the health of humans, animals or plants in the State,
 - (ii) are causing, or are likely to cause, harm in the State so as to result in significant damage to the economy, or
 - (iii) are causing, or are likely to cause, significant damage to the environment in

the State,

- (b) that the release of prescribed organisms that are not agent organisms would control the firstmentioned organisms, and
- (c) the release of the organisms of the secondmentioned kind would not have any significant adverse effects,

the Authority, subject to subsection (2), shall, by notice published in the Gazette (and, if the Council has so recommended, in the Commonwealth Gazette), declare—

- (d) where the organisms of the firstmentioned kind are not target organisms, the organisms of the firstmentioned kind to be target organisms for the purposes of this Act, and
- (e) organisms of the secondmentioned kind to be agent organisms for the purposes of this Act.

(2) The Authority shall not make a declaration under subsection (1) in respect of an organism unless—

- (a) the Authority has first consulted the Council regarding the appropriateness of action under this section in respect of that organism, and
- (b) the Council has unanimously recommended that the declaration be made.

(3) A notice under subsection (1) declaring organisms of a particular kind to be agent organisms may set out particulars of the conditions under which those organisms may be released, which conditions may be or include—

- (a) conditions specifying the persons who may release those organisms, or
- (b) conditions specifying the circumstances in which those organisms may be released.

29 Declarations of existing released organisms

(1) If the Authority is satisfied that—

- (a) before the commencement of this Act, prescribed organisms of a particular kind were released in New South Wales for the purpose of the control, by biological means, of organisms of another kind in the State, and
- (b) if this Act had been in force before the release of the firstmentioned organisms, it is probable that action would have been taken under this Act that would have resulted in the organisms of the secondmentioned kind being declared to be target organisms and the organisms of the firstmentioned kind being declared to be agent organisms,

the Authority, subject to subsection (2), may, by notice published in the Gazette (and, if the Council has so recommended, in the Commonwealth Gazette), declare—

(c) organisms of the secondmentioned kind to be target organisms for the purposes of this Act, and

(d) organisms of the firstmentioned kind to be agent organisms for the purposes of this Act.

(2) The Authority shall not make a declaration under subsection (1) in respect of an organism unless—

(a) the Authority has first consulted the Council regarding the appropriateness of action under this section in respect of that organism, and

(b) the Council has unanimously recommended that the declaration be made.

(3) A notice under subsection (1) declaring organisms of a particular kind to be agent organisms may set out conditions under which the organisms may be released, which conditions may be or include—

(a) conditions specifying the persons who may release those organisms, or

(b) conditions specifying the circumstances in which those organisms may be released.

30 Notice of proposed declaration under section 29

(1) Where the Authority is contemplating making a declaration under section 29, the Authority may, subject to subsection (2), publish in the Gazette and in such newspapers or journals as the Authority considers appropriate a notice that the Authority is contemplating making that declaration.

(2) The Authority shall not publish a notice under subsection (1) in respect of an organism unless—

(a) the Authority has first consulted the Council regarding the appropriateness of action under this section in respect of that organism, and

(b) the Council has unanimously recommended that the notice be published.

(3) A notice under subsection (1) shall—

(a) set out particulars identifying the organisms that the Authority is contemplating declaring to be target organisms,

(b) set out particulars identifying the organisms that the Authority is contemplating declaring to be agent organisms,

(c) identify the occasions known to the Authority on which the organisms referred to

in paragraph (b) were released, and

(d) invite any persons who object to, or support, the declaration being made to submit written particulars of the grounds for that objection or support, as the case may be, to the Authority within 6 weeks after the date of the publication of the notice in the Gazette, or within such further period as the Authority (either before or after the expiration of that period) allows.

(4) Where the Authority publishes a notice under subsection (1) in relation to a contemplated declaration, the Authority shall not make the declaration unless and until the Authority has considered any submissions in response to an invitation referred to in subsection (3) (d) in relation to the declaration.

31 Inquiries relating to declarations under section 29

(1) Where the Authority—

(a) is contemplating making a declaration under section 29, and

(b) after—

(i) consulting the Council regarding the appropriateness of action under this section in respect of the contemplated declaration,

(ii) considering the nature of, the proceedings in and the findings of, any inquiry that the Authority considers relevant (which may be an inquiry conducted on behalf of another State or the Commonwealth), and

(iii) considering any reports made by any person or authority competent to do so that the Authority considers relevant,

considers that there is evidence that a person or the environment would be adversely affected by the release of organisms of the kind to which the declaration would relate but an adequate investigation or inquiry into the effect of such a release has not been held,

the Authority may—

(c) direct that an inquiry under Part 7 be conducted in respect of the contemplated declaration,

(d) request the Minister administering the Commonwealth Act to arrange for the Minister who administers the *Industries Assistance Commission Act 1973* of the Commonwealth to refer the contemplated declaration to the Industries Assistance Commission for inquiry and report,

(e) arrange for a Minister who administers any New South Wales legislation relating to the protection of the environment to cause an inquiry to be conducted under that

legislation in respect of the contemplated declaration, or

(f) request the Biological Control Authority for another State or a Territory to arrange for a Minister who administers any legislation of that State or Territory relating to the protection of the environment to cause an inquiry to be conducted under that legislation in respect of the contemplated declaration.

(2) Action shall not be taken under subsection (1) (c), (d), (e) or (f) in respect of a contemplated declaration unless the Council, upon being consulted in accordance with subsection (1) (b) (i), has unanimously recommended that the action be taken.

(3) Where the Authority takes action under subsection (1) (c), (d), (e) or (f) for an inquiry in respect of a contemplated declaration, the Authority shall not make that declaration unless and until the Authority has considered the report made as the result of the inquiry.

32 Declaration of organisms declared under a relevant law

(1) Where organisms of a particular kind are organisms that for the purposes of a relevant law may be controlled by biological means, the Authority may, by notice published in the Gazette, declare those organisms to be target organisms for the purposes of this Act.

Editorial note—

For target organisms under this subsection see the Historical notes at the end of this Act.

(2) Where—

(a) prescribed organisms of a particular kind are organisms that for the purposes of a relevant law may be released to control other organisms, and

(b) those other organisms are target organisms,

the Authority shall, by notice published in the Gazette, declare those firstmentioned organisms to be agent organisms for the purposes of this Act.

Editorial note—

For agent organisms under this subsection see the Historical notes at the end of this Act.

(3) A notice under subsection (2) declaring organisms of a particular kind to be agent organisms may set out conditions under which the organisms may be released, which conditions may be or include—

(a) conditions specifying the persons who may release those organisms, or

(b) conditions specifying the circumstances in which those organisms may be released.

Part 5 Release of agent organisms

33 Release of agent organisms

- (1) Subject to subsection (2), agent organisms may be released in the State.
- (2) Where a notice under section 27, 28, 29 or 32 declaring organisms to be agent organisms specifies conditions under which the organisms may be released, those organisms shall not be released otherwise than in accordance with those conditions.

34 No legal proceedings to be instituted in respect of release of agent organisms in the State

- (1) Subject to subsection (3), no action or other proceeding shall be instituted or continued in any court—
 - (a) to prevent the release of agent organisms in accordance with section 33, or
 - (b) to recover damages in respect of any loss incurred, or any damage suffered, in a State or a Territory by reason of the release of agent organisms in accordance with that section.
- (2) If, at the time at which organisms of a particular kind were declared under section 27, 28, 29 or 32 to be agent organisms, there was in force an order of a court relating to the release of organisms of that kind, no action or other proceeding shall be instituted or continued in any court in respect of that order in so far as the order purports to prohibit a person from—
 - (a) releasing organisms of that kind in the State in accordance with section 33, or
 - (b) doing anything to assist or further the release of organisms of that kind in the State in accordance with section 33.
- (3) Nothing in subsection (1) prevents the institution or continuation in any court of an action or other proceeding to recover damages in respect of any loss incurred, or any damage suffered, by reason of the release of agent organisms of a particular kind in accordance with section 33 where—
 - (a) the loss incurred or the damage suffered was the result of the release having had a significant effect on other organisms (not being organisms which the release was intended to control),
 - (b) at the time of the release, the persons in Australia having a reputation for special knowledge of the biology of organisms of that kind knew, or had reasonable grounds to expect, that such a release could have such an effect, and
 - (c) in making the declaration declaring organisms of that kind to be agent organisms, the Authority did not take into account (whether because of the state of scientific

knowledge or otherwise) the factor that such a release could have such an effect.

Part 6 Biological control under laws of another State or the Commonwealth

35 No legal proceedings to be instituted in respect of release of agent organisms under a relevant law

- (1) Subject to subsection (4), no action or other proceeding shall be instituted or continued in any court to recover damages in respect of any loss incurred, or any damage suffered, in the State by reason of the release of organisms in accordance with a relevant law.
- (2) Subject to subsection (4), no action or other proceeding shall be instituted or continued in any court—
 - (a) to prevent the release of organisms in accordance with a relevant law, or
 - (b) to recover damages in respect of any loss incurred, or any damage suffered, in another State or a Territory by reason of the release of organisms in accordance with a relevant law.
- (3) If, at the time at which prescribed organisms of a particular kind became organisms that could be released in accordance with a relevant law, there was in force an order of a court relating to the release of organisms of that kind, no action or other proceeding shall be instituted or continued in any court in respect of that order in so far as the order purports to restrict a person from—
 - (a) releasing organisms of that kind in accordance with that law, or
 - (b) doing anything to assist or further the release of organisms of that kind in accordance with that law.
- (4) Nothing in subsection (1) or (2) prevents the institution or continuation in any court of an action or other proceeding to recover damages in respect of any loss incurred, or any damage suffered, by reason of the release of organisms of a particular kind in accordance with a relevant law where—
 - (a) the loss incurred or the damage suffered was the result of the release having had a significant effect on other organisms (not being organisms which the release was intended to control),
 - (b) at the time of the release, the persons in Australia having a reputation for special knowledge of the biology of organisms of that kind knew, or had reasonable grounds to expect, that such a release could have such an effect, and
 - (c) in making the declaration by virtue of which organisms of that kind became organisms that could be released in accordance with the relevant law, the

authority established by that law did not take into account (whether because of the state of scientific knowledge or otherwise) the factor that such a release could have such an effect.

Part 7 Inquiries

36 Commissions of inquiry

- (1) Where, in accordance with section 17 (1), 26 (1) or 31 (1), the Authority directs that an inquiry be conducted under this Part, the Authority shall, after consulting the Council and having regard to any unanimous recommendation made by the Council, appoint a Commissioner or Commissioners to be a Commission to conduct that inquiry and may appoint a person or persons to advise the Commission.
- (2) Where there is more than one Commissioner, the Authority shall appoint one of the Commissioners to preside at the inquiry.
- (3) A Commission established to conduct an inquiry shall inquire into—
 - (a) such matters as it considers necessary to ascertain, from the broad community viewpoint, the overall benefits and disadvantages of declaring organisms of the kind to which the inquiry relates to be target organisms or agent organisms, as the case requires,
 - (b) such relevant matters unanimously approved by the Council as the Authority, by notice in writing given to the Commissioner or to the Commissioner presiding at the inquiry, as the case requires, directs, which may be or include the following matter, namely, whether assistance should be given to any persons if a declaration is made in respect of those organisms, and
 - (c) any other relevant matters that the Commission considers it should inquire into.
- (4) The Commission shall report its findings and recommendations to the Authority and shall, after so reporting but subject to subsection (6), make public those findings and recommendations.
- (5) When the Authority appoints a Commissioner or Commissioners to be a Commission, the Authority may nominate a day on which the Commission is to report its findings and recommendations to the Authority and, where the Authority nominates a day, the Commission shall report its findings and recommendations to the Authority on or before that day or such later day as the Authority (before the nominated day) allows.
- (6) The Commission shall not make public any evidence or matters in respect of which directions have been given under section 39 (2) (b) or matters the publication of which is not allowed under section 39 (6).
- (7) Subject to this Act, a Commission is not subject to directions by the Authority, or

otherwise by or on behalf of the Government of New South Wales, in or in relation to the conduct of an inquiry.

37 Remuneration of Commissioners

A Commissioner shall be paid such remuneration and allowances as may be prescribed.

38 Notice of inquiries

Before a Commission commences an inquiry, the Commission shall give reasonable notice, by advertisement published in the Gazette (and, if the Council has so recommended, in the Commonwealth Gazette) and in such newspapers or journals as it thinks necessary, of its intention to hold the inquiry, the subject of the inquiry and the time and place at which the inquiry is to be commenced.

39 Procedure at inquiries

- (1) Subject to this section, an inquiry by a Commission shall be held in public and evidence in the inquiry shall be taken in public on oath or affirmation.
- (2) Where a Commission is satisfied that it is desirable to do so in the public interest by reason of the confidential nature of any evidence or matter or for any other reason, the Commission may—
 - (a) direct that an inquiry or a part of an inquiry shall take place in private and give directions as to the persons who may be present, or
 - (b) give directions prohibiting or restricting the publication of evidence given before the Commission or of matters contained in documents lodged with the Commission.
- (3) A Commission may hold an inquiry or part of an inquiry outside New South Wales.
- (4) A Commission may, if it thinks fit, permit a person appearing as a witness before the Commission to give evidence by tendering, and verifying by oath or affirmation, a written statement.
- (5) Where a Commission considers that the attendance of a person as a witness before the Commission would cause serious hardship to a person, the Commission may permit the person to give evidence by sending to the Commission a written statement, verified in such manner as the Commission allows.
- (6) Where evidence is given to a Commission by a written statement in accordance with subsection (4) or (5), the Commission shall make available to the public in such manner as the Commission thinks fit the contents of the statement other than any matter the publication of which, in the opinion of the Commission, would be contrary to the public interest by reason of its confidential nature or for any other reason.

(7) Subject to this section and the regulations—

- (a) the procedure to be followed at an inquiry by a Commission is within the discretion of the Commission, and
- (b) a Commission is not bound by the rules of evidence.

40 Power to summon witnesses

A Commissioner may, by writing signed by the Commissioner, summon a person to appear before the Commission at a time and place specified in the summons to give evidence and produce such books and documents (if any) as are referred to in the summons.

41 Failure of witness to attend

A person served with a summons to appear as a witness at an inquiry by a Commission shall not, without reasonable excuse—

- (a) fail to attend as required by the summons, or
- (b) fail to appear and report himself or herself from day to day unless excused or released from further attendance by or on behalf of the Commission.

Maximum penalty—10 penalty units or imprisonment for 6 months, or both.

42 Power to administer oath or affirmation

A Commissioner may administer an oath to or take an affirmation of a person appearing as a witness before the Commission.

43 Refusal to be sworn or to answer questions

A person appearing as a witness at an inquiry by a Commission shall not, without reasonable excuse—

- (a) refuse or fail to be sworn or to make an affirmation,
- (b) refuse or fail to answer a question that the person is required to answer by the Commissioner conducting or presiding at the inquiry, or
- (c) refuse or fail to produce a document that the person was required to produce by a summons under this Act served on the person.

Maximum penalty—10 penalty units or imprisonment for 6 months, or both.

44 Protection of Commissioners and witnesses

- (1) A Commissioner has, in the performance of the duties of a Commissioner, the same protection and immunity as a Judge of the Supreme Court.

- (2) Subject to this Act, a person appearing before a Commission as a witness at an inquiry has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the Supreme Court.

45 False or misleading evidence

- (1) A person shall not, at a hearing before a Commission, give evidence that is to the knowledge of the person false or misleading in a material particular.
- (2) An offence against subsection (1) is an indictable offence and, subject to this section, is punishable, upon conviction, by imprisonment for a period not exceeding 2 years or by a fine not exceeding 50 penalty units, or both.
- (3) Notwithstanding that an offence against subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (4) Where, in accordance with subsection (3), a court of summary jurisdiction convicts a person of an offence against subsection (1), the penalty that the court may impose is a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 1 year, or both.

46 Contempt of Commission

- (1) A person shall not—
 - (a) obstruct or hinder a Commission or a Commissioner in the conduct of an inquiry, or
 - (b) disrupt a hearing before a Commission.

Maximum penalty—20 penalty units or imprisonment for 1 year, or both.
- (2) An offence against subsection (1) is punishable on summary conviction.

47 Powers of Commission in relation to documents produced

- (1) A Commissioner, or a person assisting a Commission and authorized by a Commissioner to do so, may inspect any books or documents furnished to the Commission for the purposes of the performance of its functions under this Act or produced at an inquiry and may make copies of, or take extracts from, those books or documents.
- (2) Books or documents so furnished may be retained by the Commission for such reasonable period as the Commission thinks fit.

48 Allowances to witnesses

A witness summoned under this Act to appear at an inquiry by a Commission is entitled to be paid such allowances for the witness's travelling and other expenses as are prescribed.

49 Witness not to be prejudiced

(1) A person shall not—

- (a) use violence against or inflict injury on,
- (b) cause or procure violence, damage, loss or disadvantage to, or
- (c) cause or procure the punishment of,

a person for or on account of the lastmentioned person having appeared, or being about to appear, as a witness at an inquiry by a Commission or for or on account of any evidence given by the lastmentioned person before a Commission.

Maximum penalty—20 penalty units or imprisonment for 1 year, or both.

(2) Without limiting the generality of subsection (1), an employer shall not—

- (a) dismiss an employee from his or her employment, or prejudice an employee in his or her employment, by reason that the employee has appeared as a witness, or has given any evidence, at an inquiry by a Commission, or
- (b) dismiss, or threaten to dismiss, an employee from his or her employment or prejudice, or threaten to prejudice, an employee in his or her employment, by reason that the employee proposes to appear as a witness or to give evidence at an inquiry by a Commission.

Maximum penalty—100 penalty units in the case of a corporation and 20 penalty units or imprisonment for 1 year, or both, in any other case.

(3) In any proceedings arising out of subsection (2)—

- (a) if it is established that the employee was dismissed from, or prejudiced in, his or her employment and that, before he or she was so dismissed or prejudiced, he or she appeared as a witness, or gave any evidence, at an inquiry by a Commission—the burden lies on the employer of proving that the employee was not so dismissed or prejudiced by reason that he or she so appeared as a witness or gave evidence, or
- (b) if it is established that the employee was dismissed, or threatened with dismissal, from his or her employment, or was prejudiced, or threatened with prejudice, in his or her employment and that, before he or she was so dismissed, threatened with dismissal, prejudiced or threatened with prejudice, he or she proposed to appear as a witness, or to give evidence, at an inquiry by a Commission—the burden lies

on the employer of proving that the employee was not so dismissed, threatened with dismissal, prejudiced or threatened with prejudice by reason that he or she proposed so to appear as a witness or to give evidence.

Part 8 Miscellaneous

50 Act not to render other controls illegal

Subject to section 33 (2), nothing in this Act shall be taken to render unlawful any release of organisms for the purpose of the biological control of other organisms if the release of the firstmentioned organisms would, but for this Act, be lawful.

51 Revocation of declarations

(1) The Authority may, by notice published in the Gazette, revoke a declaration made under this Act where the Council has unanimously approved of that action being taken.

(2) Where—

(a) the Authority revokes a declaration declaring organisms of a kind to be target organisms, and

(b) by reason of that revocation there would be no target organisms for the purpose of controlling which organisms of a kind have been declared to be agent organisms,

the Authority shall revoke the declaration declaring those lastmentioned organisms to be agent organisms.

52 Declarations continue in operation

Where a declaration in relation to agent organisms is in force, those organisms may be released in accordance with section 33 notwithstanding the length of the period of time that has elapsed since the last release of those organisms took place.

53 Service of documents on Authority

Where a person is entitled by this Act to make an application to the Authority or to submit particulars to the Authority, the person shall do so by causing the application or particulars to be lodged at the head office of the Department.

54 Appeals to Land and Environment Court

(1) Any person whose interests are affected by—

(a) a decision of the Authority for the purposes of section 17 not to hold an inquiry,

(b) a decision of the Authority for the purposes of section 18, being a decision that is

inconsistent with a finding or recommendation of a Commission referred to in Part 7,

- (c) a decision of the Authority under section 24 not to publish a notice in any newspaper or journal,
 - (d) a decision of the Authority for the purposes of section 26 not to hold an inquiry,
 - (e) a decision of the Authority for the purposes of section 27, being a decision that is inconsistent with a finding or recommendation of a Commission referred to in Part 7,
 - (f) a decision of the Authority for the purposes of section 28,
 - (g) a decision of the Authority for the purposes of section 29, being a decision that is inconsistent with a finding or recommendation of a Commission referred to in Part 7,
 - (h) a decision of the Authority for the purposes of section 31 not to hold an inquiry, or
 - (i) a decision of the Authority under section 51 to revoke a declaration,
- may appeal to the Land and Environment Court against the decision.

- (2) In subsection (1), **decision** has the same meaning as in the [Administrative Appeals Tribunal Act 1975](#) of the Commonwealth.
- (3) The Land and Environment Court shall hear and dispose of an appeal made to it under subsection (1).

55 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without affecting the generality of subsection (1), the Governor may make regulations, not inconsistent with this Act, prescribing procedures for the initiation and processing of proposals to obtain declarations under this Act.