**ANIMAL AND PLANT CONTROL (AGRICULTURAL PROTECTION AND OTHER PURPOSES) BILL 1986**

**House of Assembly, 26 August 1986, pages 604-8**

Second reading

**The Hon. M.K. MAYES (Minister of Agriculture)** obtained leave and introduced a Bill for an Act to provide for the control of animals and plants for the protection of agriculture and the environment and for the safety of the public; to repeal the Vertebrate Pests Act 1975, and the Pest Plants Act 1975; and for other purposes. Read a first time.

The Hon. M.K. MAYES: I move:

*That this Bill be now read a second time.*

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The objects of this Bill are to repeal the Vertebrate Pests Act 1975 and the Pest Plants Act 1975 and to replace them with a single Act which provides for an integrated and thus more effective system of animal and plant control under a single authority, the Animal and Plant Control Commission.

The Vertebrate Pests Act 1975 was proclaimed in 1975 and operated initially under the control of the Minister of Lands. The Pest Plants Act 1975 proclaimed in 1976, operates under the Minister of Agriculture. In 1977 the operation of the Vertebrate Pests Act 1975 was transferred to the control of the Minister of Agriculture, thus opening the way for the setting up of a single control authority for both animals and plants under one piece of legislation.

The two existing Acts are similar in concept, and generally compatible in their operation. Both Acts place the primary responsibility for the control of proclaimed animals and plants on landholders, with administration through local government.

The Bill provides for this arrangement to continue. Local government will remain as the provider of the basic structure for animal and plant control, in partnership with the State Government, and local operations will, in the main, be administered by boards comprising groups of councils.

The Government intends that, in rural areas, multiple council boards will provide the main control mechanism.

The transition provisions of the Bill provide for all existing single council and multiple council boards to become joint control boards with the same membership structure as before and for the new boards to accept the rights, liabilities and property of those pest plant and vertebrate pest control boards.

Single councils may operate outside the board system in predominantly urban areas. In rural areas the remaining councils which have never joined boards may become single council boards, or join multiple council boards, providing the proposed arrangement will enable the provisions of the Act to be carried out effectively. In effect, this will mean that councils employing more than one full-time authorised officer may become single council boards.

At the local level all current procedures for both animal and plant control will be maintained.

Under the present Acts there are different arrangements for financing animal control and plant control. The Bill provides for a single finance system based on a payment by councils of up to 4 per cent of rural rate revenue and up to 1 per cent of urban rate revenue.

The Government’s statutory subsidy to boards will remain at 50 cents to each dollar paid by councils and the system of ‘support subsidy’ for those councils with specific disabilities discovered under the present legislation will be retained. The Government’s present overall contribution through statutory subsidy and support subsidy is in excess of one dollar for each dollar paid by councils.

The Bill extends the responsibilities of the previous Acts in order to control the entry, movement and keeping of all vertebrate species except fish and protected native animals. Thus the Bill gives the effect to the Australia-wide agreement for a uniform approach to the control of exotic species. The classification system adopted also means that for the first time, feral animals will be able to be proclaimed as pests.

While the legislation will involve the commission in the control of many more species of animals than previously, most of these will be confined to zoos and the responsibilities of control boards will be mainly confined to those animals traditionally regarded as vertebrate pests.

The provisions of the Bill are as follows:

Part I comprising clauses 1 to 4 deals with preliminary matters.

Clauses 1 and 2 are formal.

Clause 3—attention of honourable members is drawn to the following definitions:

‘animal’ is defined as a live vertebrate animal of any species including the eggs or semen of such an animal, but does not include a fish:

 ‘control’ is defined to include the destruction of animals and plants and the reduction of animals and plants to an extent reasonably achievable:

 ‘control board’ means an animal and plant control board established under the Act and includes a council vested with the powers, duties and functions of a control board:

 ‘plant’ means vegetation of any species including the seeds and any part of any such vegetation, but does not include native plants or vegetation except where reference is made to native plants or vegetation.

Clause 4 provides that the measure is to bind the Crown. Part II, comprising clauses 5 to 39, deals with the administration of the measure. Division I, comprising clauses 5 to 14, deals with the Animal and Plant Control Commission.

Clause 5 provides for the establishment of the Animal and Plant Control commission. The Commission is a body corporate with the usual capacities of a body corporate.

Clause 6 provides that the Commission is responsible, subject to the control and directions of the Minister, for the administration and enforcement of the measure.

Clause 7 provides that the Commission shall consist of seven members appointed by the Governor, of whom one shall be an employee of the Public Service, nominated by the Minister for Environment and Planning. The remaining six shall be nominated by the Minister and one shall be an employee of the Public Service who has, in the opinion of the Minister, appropriate knowledge of agriculture, two shall be persons chosen by the Minister from a panel nominated by the executive committee of the Local Government Association, being persons who have, in the opinion of the Minister, appropriate experience in agriculture and matters of animal and plant control, and not less than four shall be primary producers.

Clause 8 provides that a member shall be appointed for a term not exceeding three years, on such conditions as the Governor determines and that a member is eligible for reappointment at the end of the term. A member may be removed from office for the usual reasons including breach of, or non-compliance with, the conditions of the member’s appointment.

Clause 9 sets out the procedure to be followed at meetings of the commission.

Clause 10 provides that an act or proceeding of the commission is not invalid by reason of a vacancy in its membership or a defect in the appointment of a member.

Clause 11 provides that the commission may delegate, by instrument in writing, any of its powers, duties or functions to a member of the commission, an employee of the Public Service or member of the commission’s staff, or a committee. Any such delegation may be subdelegated if the instrument of delegation so provides.

Clause 12 provides for the appointment of staff to the commission, including an Executive Officer.

Clause 13 sets out the functions of the commission—

 *(a)* to make recommendations in relation to the establishment of control boards;

 *(b)* to make recommendations in relation to the classes of animals and plants to which the measure should apply;

 *(c)* to make recommendations in relation to the making of regulations under the measure;

 *(d)* to determine applications for permits under Parts III and IV and the conditions of such permits;

 *(e)* to conduct and direct research;

 *(f)* to collate and maintain a record of species, population density and distribution;

 *(g)* to develop, implement and advise on coordinated programs for the destruction or control of animals and plants;

 *(h)* to carry out measures for the destruction and control of animals and plants on unalienated Crown lands;

 *(i)* to consult and cooperate with the Minister for Environment and Planning and the Department of Environment and Planning in relation to the control of native animals;

 *(j)* to consult and cooperate with the Minister for Environment and Planning and the Department of Environment and Planning in the control of animals and plants for the protection of native animals and plants; and

 *(k)* to carry out and enforce the provisions of the measure.

For the purpose of performing its functions the commission may acquire, hold, deal with and dispose of real property, enter any contract and acquire or incur any other rights or liabilities.

Subclause (3) provides that regulations may provide for the establishment of advisory committees to assist the commission in the performance of its functions in relation to particular matters.

Clause 14 provides that the commission may exercise the powers, duties and functions of a control board in any area of the State that is not within the area of a control board.

Division II, comprising clauses 15 to 24, deals with the establishing of animal and plant control boards.

Clause 15 provides that the Governor may by proclamation, on the recommendation of the commission, establish control boards. A control board may be established in relation to the area of a single council or the combined area of two or more councils or where the area of the council is urban the council for the area will have the powers, duties and functions of a control board. The commission shall in making recommendations consult with councils likely to be affected by a proclamation under this provision.

Clause 16 provides that a control board is to be a body corporate with the usual capacities of a body corporate.

Clause 17 provides for the appointment of members, by a constituent council, to a control board for a term of 12 months. The number of members for each board shall be the number fixed by proclamation under clause 15. A member must reside in the area of the appointing council.

Clause 18 provides that a deputy of a member of a control board may be appointed.

Clause 19 provides for the removal from office of a member of a control board for the usual reasons.

Clause 20 sets out the procedure to be followed at meetings of a control board.

Clause 21 provides that a presiding officer shall be elected from among the members of a control board at the first meeting of the control board.

Clause 22 provides that a control board shall appoint a secretary.

Clause 23 provides that a control board may, with the approval of the commission, by instrument in writing, delegate any of its powers, duties or functions.

Clause 24 sets out the functions of a control board—

 *(a)* to ensure the provisions of the measure are carried out and enforced;

 *(b)* to cooperate with the commission, other control boards and any prescribed control body in the development and implementation of coordinated programs for the destruction and control of animals and plants to which the measure applies;

 *(c)* to carry out inspections within its area to determine if the measure is being complied with;

 *(d)* to collate and maintain records of the species, population density and distribution of animals and plants within the area;

 *(e)* to discharge duties and obligations imposed on a board under the measure and to perform other incidental matters.

Division III, comprising clauses 25 to 27, deals with authorised officers and their powers.

Clause 25 provides for the appointment by the Minister, subject to such conditions as the Minister thinks fit, of State authorised officers.

Clause 26 provides that the commission may require a control board to appoint one or more local authorised officers, to operate in the area of the board, unless otherwise directed by the commission.

 *(a)* enter and inspect any land, premises, vehicle or place where the authorised officer reasonably suspects that there is any animal or plant likely to afford evidence of an offence or where necessary for the purpose of determining whether a provision of the measure is being complied with;

 *(b)* break into, or open anything in or on the land, premises, vehicle or place;

 *(c)* seize and remove any animals that are required to be destroyed or controlled and take any measures for their destruction or control;

 *(d)* require a person suspected of committing or about to commit an offence to state their name and address;

 *(e)* require a person reasonably suspected of having knowledge relating to the administration of the measure to answer questions in relation to those matters;

 *(f)* require a person who has custody of a plant or animal in contravention of the measure to deliver it up;

 *(g)* require a person to produce records or documents relating to any matter dealt with under the measure;

 *(h)* inspect and take copies of records produced;

 *(i)* remove and examine or test any animal, plant, vehicle, equipment, etc., for the purpose of determining whether the measure has been complied with;

 *(j)* seize and remove any animal, plant, vehicle, equipment, etc., where the authorised officer reasonably suspects an offence has been committed and the thing so seized affords evidence of the offence;

 *(k)* require a person holding or required to hold a permit to produce it.

An authorised officer cannot exercise the powers conferred under paragraphs *(a)* or *(b)* in relation to a dwelling house except on the authority of a warrant issued by a justice.

Division IV, comprising clauses 28 to 39, sets out the financial provisions.

Clause 28 provides that the moneys required for the purposes of the measure shall be paid out of moneys appropriated by Parliament for those purposes.

Clause 29 provides for an Animal and Plant Control Commission Fund which is to consist of—

 *(a)* moneys provided by Parliament;

 *(b)* moneys in the fund kept by the former commission;

 *(c)* any income paid into the fund under subclause (4);

 *(d)* moneys borrowed by the commission;

 *(e)* all other moneys that are required or authorised by law to be paid into the fund.

Moneys in the fund that are not for the time being required for the purposes of the measure may be invested by the Treasurer.

Subclause (4) provides that income from moneys invested by the Treasurer may be paid into the fund or into the Consolidated Account.

Clause 30 provides for the continued existence of the Dingo Control Fund established under the Vertebrate Pests Act 1975.

Clause 31 provides for the imposition of a rate on certain land holdings for the purpose of dingo control. The provision corresponds in substance to section 19 of the Vertebrate Pests Act 1975.

Clause 32 provides that the commission may borrow money from the Treasurer, or with the consent of the Treasurer, from any other person in order to carry out its functions under the measure. Any liability so incurred is guaranteed by the Treasurer.

Clause 33 provides that the commission shall cause proper accounts to be kept and audited at least once in every year.

Clause 34 provides that the commission shall make a yearly report, within three months of the last year, to the Minister and the Minister shall, within 12 sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

Clause 35 provides that each control board shall establish and administer a fund which will consist of—

 *(a)* contributions received from constituent councils;

 *(b)* subsidies and grants paid by the commission;

 *(c)* income from investment of fund moneys;

 *(d)* penalties paid to the board under the measure;

 *(e)* moneys borrowed by the board; and

 *(f)* all other moneys that are required or authorised by law to be paid into the fund.

Moneys paid into the fund which are not for the time being required may, with the consent of the commission, be invested in investments authorised by law. A control board may, with the consent of the commission, borrow money from such sources as the commission approves.

Clause 36 provides that, on the basis of an estimate of expenditure received from each control board, the commission shall determine, having regard to any representations made by the constituent council, the amount each council is required to contribute to the board’s fund in respect of the following year.

The contribution made by a council shall comprise not more than 4 per cent of the rural rate revenue and 1 per cent of the urban rate revenue for the council area in any financial year.

Any constituent council failing to pay its contribution may have it deducted, by the Minister, from any subsidy or Government grant due to the council.

Clause 37 provides that the commission shall pay a yearly subsidy to a control board at the rate of 50 cents for every dollar contributed by the constituent council or councils.

Clause 38 provides that each control board shall cause proper accounts to be kept and appoint an auditor to audit the accounts.

Clause 39 provides that each control board shall, at the end of each year, submit a report, together with the audited accounts of the board, to the commission.

Part III, comprising clauses 40 to 50, deals with the control of animals.

Clause 40 provides that the Governor may. by proclamation. on the recommendation of the commission, declare a specified provision of Part III applies to a specified class of animals. The Governor may declare that the proclamation relates to the whole or part of the State and/or that a prohibition contained in the proclamation is an absolute prohibition.

Any proclamation made under this clause with respect to native animals must be in accordance with a plan of management approved by the Minister for Environment and Planning.

Clause 41 provides that, subject to the measure, it is an offence for a person to bring an animal of a class to which this clause applies, or cause or permit such an animal to be brought, into a control area for that class of animal.

Clause 42 provides that, subject to the measure, it is an offence for a person to keep animals of a class to which this clause applies, or have an animal of that class in the person’s possession or control, within the control area for that class of animal.

Clause 43 provides that, subject to the measure, it is an offence for a person to sell an animal of a class to which this clause applies.

Clause 44 provides that it is an offence for an animal of a class to which this clause applies to be released, or be caused or permitted to be released, in a control area for that class of animal.

It is a defence to a charge of an offence under this clause if the defendant proves that the release was not the result of a wilful or negligent act or omission on the defendant’s part.

Any costs or expenses incurred by the commission in capturing or destroying a released animal may be recovered from the person causing the animal’s release.

Clause 45 provides that the commission may issue, subject to conditions specified by the commission, permits to engage in any of the activities otherwise prohibited by clauses 41, 42 or 43 unless the proclamation contains an absolute prohibition in relation to any of the activities. An amount may be required, by any person seeking a permit, as security for compliance with the conditions of the permit.

A person has a right of appeal to the Minister for a review of a decision of the commission relating to a permit and the Minister on appeal may confirm, vary or set aside the decision.

Clause 46 provides that the owner of land is to notify the control board in the owner’s area. or. if there is no control board the commission, of the presence of animals of a class to which this clause applies. A control board is likewise required to notify the commission.

Clause 47 provides at subclause (1) that an owner of land has a duty to destroy all animals of a class to which the subclause applies. Subclause (2) imposes a duty to control all animals of a class to which the subclause applies. Subclause (3) imposes a duty to take prescribed measures for the control of animals to which the subclause applies.

Clause 48 provides that an owner may be required to discharge the owner’s duty under clause 47 within four days of receipt of a notice issued by a State authorised officer. Such notice is reviewable by the Minister. If the requirements of the notice are not carried out by the owner of the land subclause (7) empowers the commission to carry out the measures required by the notice and recover the costs incurred in so doing from the land owner.

Clause 49 provides that a duty can only be imposed on an owner under clause 47 in relation to native animals by a State authorised officer acting in accordance with a plan of management approved by the Minister for Environment and Planning.

Clause 50 provides for a procedure under which the owner of any land bounded by and inside the dog fence established under the Dog Fence Act 1946 may lay poison and set traps on adjoining land immediately outside the dog fence in order to destroy or control animals that are liable to be destroyed or controlled under the measure.

Part IV comprises clauses 51 to 60 and deals with the control of plants.

Clause 51 provides that the Governor may. by proclamation, on the recommendation of the commission, declare that a specified provision of Part IV shall apply to a specified class of plants and, in addition, where appropriate, declare that the proclamation is to apply to the class of plants in the whole of the State or a specified area of the State and/or that a prohibition contained in the proclamation is an absolute prohibition.

Clause 52 provides that, subject to the measure, it is an offence for a person to bring a plant of a class to which this clause applies, or cause or permit a plant of that class to be brought into the control area for that class of plants. Subclause (2) provides that, subject to the measure, it is an offence to transport or move on a public road, within the control area for the class of plants to which this clause is proclaimed to apply, any plants of that class or any produce or goods carrying such plants.

Subclause (3) provides that it is a defence to a charge of an offence under subclause (2) if—

 *(a)* a person acted in accordance with a written approval given by an authorised officer; or

 *(b)* the offence did not occur as a result of a wilful or negligent act or omission on the defendant’s part.

Clause 53 provides that the commission may, by notice published in the *Gazette,* control the movement of any animals, plants or soil or any other specified thing from one specified part of the State to another in order to prevent the spread of any plant that is required to be destroyed or controlled under the measure.

Clause 54 provides that, subject to the measure, it is an offence for a person to sell a plant of a class to which this clause applies. Subclause (2) provides that subject to the measure it is an offence for a person to sell any produce or goods carrying such a plant. Subclause (3) provides that it is a defence to an offence under subclause (2) if the defendant proves—

 *(a)* that the defendant acted in accordance with a written approval given by an authorised officer; or

 *(b)* the offence did not occur as a result of a wilful or negligent act or omission on the defendant’s part.

Clause 55 empowers the commission to issue, subject to conditions specified by the commission, a permit authorising the sale or movement of plants.

Clause 56 requires the owner of land within the control area for a class of plants to notify the control board for the area, or, if there is no control board the commission, of the presence of any such plant on the land.

Subclause (2) requires a control board to notify the commission of the presence of any such plant in its area.

Clause 57 provides, at subclause (1), that the owner of land within a control area for a class of plants to which the subclause applies must destroy all plants of that class.

Subclause (2) provides that the owner of land must keep controlled all plants on the owner’s land of a class to which the subclause applies.

Clause 58 provides that an authorised officer may issue a notice requiring the owner of land to discharge the duty imposed on the owner under clause 57. The terms of

a notice are reviewable by the commission and the commission has power to carry out the requirements of the notice and recover such costs as are incurred, from the owner, where the owner does not comply with the notice.

Clause 59 imposes a duty on control boards to destroy or control certain plants on road reserves within the area of the board. The commission is empowered by subclause (2) to require a control board to discharge that duty.

Clause 60 empowers a control board to recover the costs of control measures taken on a road reserve from the owners of the lands adjoining the road reserve.

Part V comprises the remaining clauses of the Bill and deals with miscellaneous matters.

Clause 61 empowers the Governor, on the recommendation of the commission, to exempt by regulation, persons, animals or plants of a class specified in the regulations from any of the provisions of the measure.

Clause 62 provides that it shall be an offence if a person interferes with an animal-proof fence unless authorised to do so by the owner of the land on which the fence is situated.

Clause 63 provides that a person shall not leave open any gate in an animal-proof fence except for so long as is reasonably necessary for passage through the opening or unless authorised to do so by the owner of the land on which the fence is situated.

Clause 64 provides that a person shall be guilty of an offence if, in carrying out measures for the destruction or control of animals or plants, the person—

 *(a)* unnecessarily damages or destroys native trees or shrubs:

 *(b)* does not keep to a minimum the destruction of native vegetation;

 and

 *(c)* in the ease of measures taken on road reserves does not keep to a minimum the destruction of vegetation not otherwise required to be destroyed under the measure.

Clause 65 empowers a member of the commission, a control board, an authorised officer or a person authorised in writing by the commission to enter and inspect land for the purpose of conducting a survey of. or research into, the control of animals or plants or investigating any matter relating to the administration of this measure.

Clause 66 provides that a control board shall permit the Executive Officer of the commission or a State authorised officer to assist and advise the board in the discharge of its duties and obligations under this measure and carry out any instruction given by that person with the approval of the commission.

Clause 67 provides that a control board may enter into an agreement with the owner of any land within its area for the destruction or control of any animals or plants that the person is required to destroy or control.

Clause 68 empowers the commission to require a control board to cause inspections to be made of land within its area to determine whether provisions of the measure are being complied with and to furnish information of a specified kind relating to the population density and distribution of animals and plants of specified classes within its area.

Clause 69 provides that a control board may apply to the Minister for a review of any direction, instruction, decision or order given or made by, or with the approval of, the commission in respect of the board.

Clause 70 protects persons engaged in the administration of the measure from personal liability for acts done in good faith in the exercise or discharge, or purported exercise or discharge, of powers, duties or functions under the measure.

Clause 71 provides that, where a pecuniary liability attaches to the owner of any land under this measure, the liability is to be a charge on the land and may be enforced by action in a court of competent jurisdiction as a debt due jointly and severally from all the owners of the land, including subsequent owners of the land.

Clause 72 provides that a control board is to be paid any penalty recovered on the complaint of the board or a person appointed or employed by the board.

Clause 73 provides evidentiary assistance for the purpose of establishing in proceedings under the Fences Act 1975 that a fence is an animal-proof fence and that such a fence is adequate and appropriate in the circumstances.

Clause 74 facilitates proof of certain matters in proceedings for offences against the measure.

Clause 75 provides that offences under the measure are to be disposed of summarily and a prosecution for an offence is to be commenced within one year from the date of the alleged offence.

Clause 76 provides for the service of notices and documents.

Clause 77 provides for the making of regulations.

Schedule 1 provides for the repeal of the Pest Plants Act 1975 and the Vertebrate Pests Act 1975.

Schedule 2 contains necessary transitional provisions. The real and personal property and rights and liabilities of the former authority and the former commission become property of and rights and liabilities of the Animal and Plant Control Commission.

Control boards are to be established for the same areas in relation to which pest plant control boards have been established under the Pest Plants Act 1975.

All real and personal property, rights and liabilities, members and employees of the former pest plant control boards and vertebrate pest control boards become personal property, rights and liabilities, members and employees of the animal and plant control boards established under this measure. The existing and accruing rights of employees remain in force.

Mr GUNNsecured the adjournment of the debate.