

# NORTHERN TERRITORY OF AUSTRALIA

## BIOLOGICAL CONTROL ACT

As in force at 1 May 2016

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 May 2016

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## BIOLOGICAL CONTROL ACT

**An Act make provision for the biological control of pests in the Northern Territory, and for related purposes**

### **Part I Preliminary**

#### **1 Short title**

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

#### **2 Commencement**

- (1) Sections 1 and 2 shall come into operation on the day on which the Administrator's assent to this Act is declared.
- (2) The remaining provisions of this Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### **3 Interpretation**

- (1) In this Act, unless the contrary intention appears:

***agent application*** means an application under section 20.

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

***agent recommendation*** means a recommendation to the Authority by the Council that an organism of a particular kind should be declared to be an agent organism.

***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 Northern Territory Biological Control Authority established by section 8.

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

**control**, in relation to an organism, includes:

- (a) reduce the numbers of that organism;
- (b) prevent an increase in the numbers of that organism;
- (c) reduce the activity or appetite of the population or part of the population of that organism; and
- (d) modify the behaviour or characteristics of the population or part of the population of that organism.

**Council** means the body known as the Agriculture Resource Management Council of Australia and New Zealand.

**kind**, in relation to a live organism, 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 part of, or matter discharged from, an organism within the meaning of paragraph (a).

**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 live organism** means a live organism other than a live vaccine or resistant cultivar.

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

**target application** means an application under section 11.

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

**target recommendation** means a recommendation to the Authority by the Council that an organism of a particular kind should be declared to be a target organism.

- (2) For the purposes of this Act, an organism of a particular kind shall be taken to cause harm if the control of the organism would be for the public benefit.
- (3) For the purposes of this Act, an organism of a particular kind shall be taken to cause harm in the Territory if it causes harm in a part or parts only of the Territory.
- (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 authorized to act as a member of the Council in place of another person, then, while the first-mentioned person is so acting, the first-mentioned 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 an organism of a particular kind should be declared to be an agent organism includes a reference to a recommendation that an organism of a particular kind should be so declared if an organism to which a target recommendation applies is declared to be a target organism.
- (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, an organism of a particular kind shall be taken to be controllable by biological means if, and only if, the organism can be controlled by the release of a live organism of another kind.

**5 Relevant laws**

(1) Where a law of the Commonwealth or of a State of the Commonwealth:

- (a) provides for the control by biological means of an organism causing harm; and
- (b) establishes an authority having similar functions to those of the Authority,

the Authority may, by notice in the *Gazette*, declare that law to be a relevant law for the purposes 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 that subsection.

**6 Act to bind Crown**

(1) This Act binds the Crown not only in right of the Northern Territory but also, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

(2) Nothing in this Act renders the Crown in right of the Northern Territory 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                      Northern Territory Biological Control Authority**

- (1) There is established by this section an authority by the name of the Northern Territory Biological Control Authority.
- (2) The Authority shall consist of the Minister who is for the time being a member of the Council.

**9                      Delegation**

- (1) The Authority may, by instrument in writing, delegate to an officer of the Department primarily responsible under the Minister for the administration of this Act the exercise of any of its functions under this Act, other than:
  - (a) the exercise of its functions under section 17, 18, 26, 27, 28, 29, 31, 32, 36 or 51; or
  - (b) this power of delegation.
- (2) A function delegated under this section, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Authority.
- (3) A delegation under this section does not prevent the exercise of a function by the Authority.
- (4) An instrument purporting to have been signed by a person in the capacity of delegate of the Authority shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument duly executed by the Authority and shall, unless the contrary is proved, be deemed to be an instrument signed by a delegate of the Authority.

**Part II                      Target organism**

**10                      Target organism**

- (1) Subject to and in accordance with this Part, an organism of a particular kind may be declared to be a target organism for the purposes of this Act.
- (2) Action for the declaration of a target organism 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 an organism of a particular kind is causing harm in the Northern Territory and is, or is likely to be, controllable by biological means, he may make an application to the Authority for a declaration that an organism of that kind is a target organism.
- (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 an organism of a particular kind shall set out:
  - (a) particulars identifying the organism;
  - (b) particulars of the reasons why the organism is considered to be causing harm in the Northern Territory;
  - (c) particulars of the reasons why the applicant considers that the organism is, or is 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 under section 13(1) to the Council.
- (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 an organism of a particular kind if:
  - (a) other action to have it declared to be a target organism is being, or has been, taken under this Act; or
  - (b) action to have it declared to be an organism 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) Where the Council, after considering a target application referred to it by the Authority, informs the Authority that it does not recommend that the organism to which the application relates should be a target organism, the Authority shall cause to be given, in such manner as the Authority thinks fit, to the person who made the target application and to the persons (if any) who made a later target application in respect of the organism notice in writing that the Council does not recommend that the organism should be a target organism.
- (2) A notice under subsection (1) shall:
  - (a) where reasons have been given by the Council for not recommending that the organism to which the notice relates should be a target organism – set out those reasons; and
  - (b) where there are circumstances in which, in the opinion of the Authority, a target application in relation to that organism might result in a recommendation by the Council that the organism should be a target organism – specify those circumstances.

**15 Notice of proposed target organism**

- (1) Where the Council has unanimously recommended to the Authority that an organism of a particular kind should be a target organism, 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 thinks fit, a notice that the Authority is contemplating declaring that organism to be a target organism.

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- (2) Without limiting the generality of subsection (1), a notice under that subsection shall be published in at least one newspaper circulating generally in the Northern Territory and in each other State of the Commonwealth and the Australian Capital Territory.
- (3) A notice under subsection (1) in relation to an organism of a particular kind shall:
- (a) set out particulars identifying the organism;
  - (b) set out brief particulars of the reasons why the organism is believed to be causing harm in the Northern Territory;
  - (c) set out brief particulars of the benefits (if any) resulting from the absence of biological control of the population of the organism;
  - (d) state that the Council has unanimously recommended that the organism should be declared to be a target organism;
  - (e) where the recommendation of the Council followed a target application in relation to the organism – inform the public that copies of the target application can be perused at a place specified in the notice; and
  - (f) invite all persons who object to, or support, the organism being declared to be a target organism to submit written particulars of the grounds for that objection or support 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, it 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 organism**

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

## **17 Inquiries relating to target organism**

- (1) Where the Authority, after:
- (a) complying with sections 15 and 16 in respect of a target recommendation;

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- (b) consulting the Council about 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 the Commonwealth or a State of the Commonwealth); and
  - (d) considering all reports relating to the recommendation made by a 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 VII be conducted in respect of the recommendation;
  - (f) request the Minister administering the Commonwealth Act to arrange for the Minister administering 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 administering any Act relating to the protection of the environment to cause an inquiry to be conducted under that Act in respect of the recommendation; or
  - (h) request the Biological Control Authority for a State or another Territory of the Commonwealth to arrange for a minister administering 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, on 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, it shall not take any further action under this Act in relation to that recommendation unless and until it has considered the report made as the result of that inquiry.

**18 Declaration of target organism**

(1) Where the Authority, after:

- (a) complying with this Part in relation to a target recommendation;
- (b) considering all reports and other matters relating to that recommendation that it 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 an organism of the kind to which the recommendation relates is causing harm in the Northern Territory;
- (e) that an organism of that kind is, or that there is a probability that an organism of that kind is likely to be, controllable by biological means; and
- (f) that:
  - (i) the control throughout Australia of an organism of that kind would not cause significant harm to a person or to the environment; or
  - (ii) any harm caused to a person or to the environment by the control throughout Australia of an organism of that kind would be significantly less than the harm caused, or likely to be caused, by failure to control an organism of that kind throughout Australia,

the Authority, subject to subsection (2), shall, by notice in the *Gazette* (and, if the Council has so recommended, in the *Commonwealth Gazette*), declare that an organism of that kind be a target organism 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, on being consulted in accordance with subsection (1)(c), has unanimously recommended that the declaration be made.

**Part III                      Agent organism****19                      Agent organism**

- (1) Subject to and in accordance with this Part, a prescribed live organism of a particular kind may be declared to be an agent organism for the purposes of this Act.
- (2) Action for the declaration of an agent organism 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 a prescribed live organism of a particular kind would result in the control of:
  - (a) a target organism of a particular kind or target organisms of particular kinds; or
  - (b) an organism to which a target recommendation applies or target recommendations apply,(whether or not the organism or organisms referred to in paragraph (a) or (b) can be controlled by an existing agent organism) the person may make an application to the Authority for a declaration that the first-mentioned organism is an agent organism.
- (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 an organism of a particular kind shall set out:
  - (a) particulars identifying the organism;
  - (b) particulars of the possible ways in which the applicant considers that the release of the organism could control the relevant population of target organism; 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 under section 22(1) to the Council.
- (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 an organism of a particular kind if:
  - (a) other action to have it declared to be an agent organism is being, or has been, taken under this Act; or
  - (b) action to have it declared to be an organism that may be released to control the population of another organism is being, or has been, taken under a relevant law.

## **23 Notice of rejection of agent application**

- (1) Where the Council, after considering an agent application referred to it by the Authority, informs the Authority that it does not recommend that the organism to which the application relates should be an agent organism, the Authority shall cause to be given, in such manner as the Authority thinks fit, to the person who made the agent application and to the persons (if any) who made a later agent application in respect of the organism, notice in writing that the Council does not recommend that that organism should be an agent organism.

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

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

## **24 Notice of proposed agent organism**

- (1) Where the Council has unanimously recommended to the Authority that a prescribed live organism of a particular kind should be an agent organism, 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 thinks fit, a notice that the Authority is contemplating declaring that organism to be an agent organism.
- (2) A notice under subsection (1) in relation to an organism of a particular kind (in this subsection referred to as the **relevant organism**) shall:
  - (a) set out particulars identifying the relevant organism;
  - (b) specify the organism which it is intended to control by the release of the relevant organism;
  - (c) set out brief particulars of the manner in which the relevant organism would control the organism specified in the notice in accordance with paragraph (b);
  - (d) state that the Council has unanimously recommended that the relevant organism should be declared to be an agent organism;
  - (e) where the recommendation of the Council followed an agent application in relation to the organism – inform the public that copies of the agent application can be perused at a place specified in the notice; and
  - (f) invite all persons who object to, or support, the relevant organism being declared to be an agent organism to submit written particulars of the grounds for that objection or support 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, it 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 organism should be agent organisms for the purpose of the control of the same population of a particular organism, 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 organism**

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

## **26 Inquiries relating to agent organism**

- (1) Where the Authority, after:
  - (a) complying with sections 24 and 25 in respect of an agent recommendation;
  - (b) consulting the Council about 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 VII in respect of a target recommendation or an inquiry conducted on behalf of the Commonwealth or a State of the Commonwealth); and
  - (d) considering all reports relating to the recommendation made by a 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 an organism 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, it may:

- (e) direct that an inquiry under Part VII be conducted in respect of the recommendation;



- (f) request the Minister administering the Commonwealth Act to arrange for the Minister administering 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 administering any Act relating to the protection of the environment to cause an inquiry to be conducted under that Act in respect of the recommendation; or
  - (h) request the Biological Control Authority for a State or another Territory of the Commonwealth to arrange for a minister administering 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, on 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 an organism of a particular kind should be declared to be an agent organism if an organism to which a target recommendation applies is declared to be a target organism, 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, it shall not take any further action under this Act in relation to that recommendation unless and until it has considered the report made as the result of that inquiry.

## **27 Declaration of agent organism**

- (1) Where the Authority, after:
- (a) complying with this Part in relation to an agent recommendation;
  - (b) considering all reports and other matters relating to that recommendation that it 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 an organism of the kind to which the recommendation relates (in this subsection referred to as the **relevant organism**) could result in the control of a target organism of a particular kind or target organisms of particular kinds in the Northern Territory;
- (e) that:
  - (i) the release of the relevant organism would not cause significant harm to a person or to the environment, other than the harm (if any) resulting from the control throughout Australia of a target organism of that kind or target organisms of those kinds; or
  - (ii) any harm caused to a person or to the environment by the release of the relevant organism, other than the harm (if any) resulting from the control throughout Australia of a target organism of that kind or target organisms of those kinds, would be significantly less than:
    - (A) the harm caused, or likely to be caused, by failure to control a target organism of that kind or target organisms of those kinds throughout Australia; and
    - (B) where a target organism of that kind or target organisms of those kinds can be controlled by the release of another organism or otherwise than by biological means – the harm (if any) caused, or likely to be caused, by controlling a target organism of that kind or target organisms of those kinds throughout Australia by the release of that other organism or by those other means,

the Authority, subject to subsection (2), shall, by notice in the *Gazette* (and, if the Council has so recommended, in the *Commonwealth Gazette*), declare the relevant organism to be an agent organism 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, on being consulted in accordance with subsection (1)(c), has unanimously recommended that the declaration be made.

- (3) A notice under subsection (1) declaring an organism of a particular kind to be an agent organism may set out conditions under which that organism may be released, which conditions may be or include conditions specifying:
- (a) the persons who may release that organism; or
  - (b) the circumstances in which that organism may be released.

## **Part IV                      Special declarations of target organism and agent organism**

### **28                      Emergency declarations**

- (1) If the Authority is satisfied:
- (a) that an emergency exists because an organism of a particular kind (whether or not it is a target organism) is:
    - (i) having, or is likely to have, a serious effect on the health of humans, animals or plants in the Northern Territory;
    - (ii) causing, or is likely to cause, harm in the Northern Territory so as to result in significant damage to the economy; or
    - (iii) causing, or is likely to cause, significant damage to the environment in the Northern Territory;
  - (b) that the release of a prescribed live organism that is not an agent organism would control the first-mentioned organism; and
  - (c) the release of the organism of the second-mentioned kind would not have any significant adverse effects,

it shall, subject to subsection (2), by notice in the *Gazette* (and, if the Council has so recommended, in the *Commonwealth Gazette*), declare:

- (d) where the organism of the first-mentioned kind is not a target organism, the organism of the first-mentioned kind to be a target organism for the purposes of this Act; and
- (e) an organism of the second-mentioned kind to be an agent organism for the purposes of this Act.

- (2) The Authority shall not make a declaration under subsection (1) in respect of an organism unless:
  - (a) it has first consulted the Council about 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 an organism of a particular kind to be an agent organism may set out particulars of the conditions under which the organism may be released, which conditions may be or include conditions specifying:
  - (a) the persons who may release the organism; or
  - (b) the circumstances in which the organism may be released.

## **29 Declarations of existing released organism**

- (1) Where the Authority is satisfied that:
  - (a) before the commencement of this Act, a prescribed live organism of a particular kind was released in the Northern Territory for the purpose of the control, by biological means, of an organism of another kind in the Northern Territory; and
  - (b) if this Act had been in force before the release of the first-mentioned organism, it is probable that action would have been taken under this Act that would have resulted in the organism of the second-mentioned kind being declared to be a target organism and the organism of the first-mentioned kind being declared to be an agent organism,

it may, subject to subsection (2), by notice in the *Gazette* (and, if the Council has so recommended, in the *Commonwealth Gazette*), declare:

- (c) the organism of the second-mentioned kind to be a target organism; and
- (d) the organism of the first-mentioned kind to be an agent organism,

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 about 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 an organism of a particular kind to be an agent organism may set out conditions under which the organism may be released, which conditions may be or include:
  - (a) conditions specifying the persons who may release the organism; or
  - (b) conditions specifying the circumstances in which the organism may be released.

### **30 Notice of proposed declaration under section 29**

- (1) Where the Authority is contemplating making a declaration under section 29, it may, subject to subsection (2), publish in the *Gazette* and in such newspapers or journals as it thinks fit a notice that it 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 about 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 organism that the Authority is contemplating declaring to be the target organism;
  - (b) set out particulars identifying the organism that the Authority is contemplating declaring to be the agent organism;
  - (c) identify the occasions known to the Authority on which the organism referred to in paragraph (b) was released; and

- (d) invite all persons who object to, or support, the declaration being made to submit written particulars of the grounds for that objection or support 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 contemplated declaration, it shall not make the declaration unless and until it has considered all 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 about 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 the Commonwealth or a State of the Commonwealth); and
    - (iii) considering all reports made by persons or authorities 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 an organism 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,

it may:

  - (c) direct that an inquiry under Part VII be conducted in respect of the contemplated declaration;
  - (d) request the Minister administering the Commonwealth Act to arrange for the Minister administering 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 administering any Act relating to the protection of the environment to cause an inquiry to be conducted under that Act in respect of the contemplated declaration; or
  - (f) request the Biological Control Authority for a State or another Territory of the Commonwealth to arrange for a minister administering 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, on 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, it shall not make that declaration unless and until it has considered the report made as the result of the inquiry.

## **32 Declaration of organism declared under relevant law**

- (1) Where an organism of a particular kind is an organism that for the purposes of a relevant law may be controlled by biological means, the Authority may, by notice in the *Gazette*, declare that organism to be a target organism for the purposes of this Act.
- (2) Where:
  - (a) a prescribed live organism of a particular kind is an organism that for the purposes of a relevant law may be released to control another organism; and
  - (b) that other organism is a target organism,the Authority shall, by notice in the *Gazette*, declare that first-mentioned organism to be an agent organism for the purposes of this Act.
- (3) A notice under subsection (2) declaring an organism of a particular kind to be an agent organism may set out conditions under which the organism may be released, which conditions may be or include:
  - (a) conditions specifying the persons who may release the organism; or
  - (b) conditions specifying the circumstances in which the organism may be released.

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## **Part V                      Release of agent organism**

### **33                      Release of agent organism**

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

### **34                      No legal proceedings to be instituted in respect of release of agent organism in Territory**

- (1) Subject to subsection (3), no action or other proceeding shall be instituted or continued in a court:
  - (a) to prevent the release of an agent organism in accordance with section 33; or
  - (b) to recover damages in respect of any loss incurred, or any damage suffered, in the Northern Territory or a State or another Territory of the Commonwealth by reason of the release of an agent organism in accordance with that section.
- (2) Where at the time at which an organism of a particular kind was declared under section 27, 28, 29 or 32 to be an agent organism, there was in force an order of a court relating to the release of an organism 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; or
  - (b) doing anything to assist or further the release of,  
  
an organism of that kind in the Northern Territory in accordance with section 33.
- (3) Nothing in subsection (1) prevents the institution or continuation in a court of an action or other proceeding to recover damages in respect of a loss incurred, or damage suffered, by reason of the release of an agent organism 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 another organism (not being an organism 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 the organism of that kind to be an agent organism, 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 VI                      Biological control under laws of a State or the Commonwealth**

### **35                      No legal proceeding to be instituted in respect of release of agent organism under relevant law**

- (1) Subject to subsection (4), no action or other proceeding shall be instituted or continued in a court to recover damages in respect of a loss incurred, or damage suffered, in the Northern Territory by reason of the release of an organism in accordance with a relevant law.
- (2) Subject to subsection (4), no action or other proceeding shall be instituted or continued in a court:
  - (a) to prevent the release of an organism in accordance with a relevant law; or
  - (b) to recover damages in respect of a loss incurred, or damage suffered, in a State or another Territory of the Commonwealth by reason of the release of an organism in accordance with a relevant law.
- (3) Where, at the time at which a prescribed live organism of a particular kind became an organism that could be released in accordance with a relevant law, there was in force an order of a court relating to the release of an organism of that kind, no action or other proceeding shall be instituted or continued in a court in respect of that order in so far as the order purports to restrict a person from:
  - (a) releasing an organism of that kind in accordance with that law; or
  - (b) doing anything to assist or further the release of an organism of that kind in accordance with that law.

- (4) Nothing in subsection (1) or (2) prevents the institution or continuation in a court of an action or other proceeding to recover damages in respect of a loss incurred, or damage suffered, by reason of the release of an organism 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 another organism (not being an organism 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 an effect; and
  - (c) in making the declaration by virtue of which the organism of that kind became an organism 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 VII           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, it shall, after consulting the Council and having regard to the unanimous recommendations (if any) 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 an organism of the kind to which the inquiry relates to be a target organism or agent organism, 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,

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as the case requires, directs, which may be or include whether assistance should be given to a person if a declaration is made in respect of those organisms; and

- (c) any other relevant matter 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 matter in respect of which directions have been given under section 39(2)(b) or matter 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 the Northern Territory, in or in relation to the conduct of an inquiry.

### **37 Remuneration of Commissioners**

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

### **38 Notice of inquiries**

Before a Commission commences an inquiry, it shall give reasonable notice, by advertisement in the *Gazette* (and, if the Council has so recommended, in the *Commonwealth Gazette*) and in such newspapers or journals as it thinks fit, 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.

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- (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 other reason, it 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 it or of matters contained in documents lodged with it.
- (3) A Commission may hold an inquiry or part of an inquiry outside the Territory.
- (4) A Commission may, if it thinks fit, permit a person appearing as a witness before it to give evidence by tendering, and verifying by oath, a written statement.
- (5) Where a Commission considers that the attendance of a person as a witness before it would cause serious hardship to a person, it may permit the person to give evidence by sending to it a written statement, verified in such manner as it 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 it 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 its discretion; and
  - (b) a Commission is not bound by the rules of evidence.

#### **40 Power to summon witnesses**

A Commissioner may, by writing signed by him, 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 from day to day, unless excused or released from further attendance by the Commission or a Commissioner.

Maximum penalty: 8 penalty units or imprisonment for 6 months.

**43 Refusal to take oath 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 take an oath when required by the Commission to do so; or
- (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 him.

Maximum penalty: 8 penalty units or imprisonment for 6 months.

**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 Supreme Court Judge.
- (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.

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**45 False or misleading evidence**

A person who, at a hearing before a Commission, gives evidence that is to his knowledge false or misleading in a material particular is guilty of an offence.

Maximum penalty: 40 penalty units or imprisonment for 2 years.

**46 Contempt of Commission**

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: 17 penalty units or imprisonment for 12 months.

**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 all 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,

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

Maximum penalty: 17 penalty units or imprisonment for 12 months.

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

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

Maximum penalty: In the case of a natural person – 17 penalty units or imprisonment for 12 months.

In the case of a body corporate – 85 penalty units.

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

- (a) where it is established that the employee was dismissed from, or prejudiced in, his employment and that, before he was so dismissed or prejudiced, he appeared as a witness, or gave 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 so appeared as a witness or gave evidence; or
- (b) where it is established that the employee was dismissed, or threatened with dismissal, from his employment, or was prejudiced, or threatened with prejudice, in his employment and that, before he was so dismissed, threatened with dismissal, prejudiced or threatened with prejudice, he 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 proposed so to appear as a witness or to give evidence.

**Part VIII                      Miscellaneous****50                      Act not to render other controls illegal**

Subject to section 33(2), nothing in this Act shall be taken to render unlawful the release of an organism for the purpose of the biological control of another organism if the release of the first-mentioned organism would, but for this Act, be lawful.

**51                      Revocation of declarations**

(1) The Authority may, by notice 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 an organism of a kind to be a target organism; and
- (b) because of that revocation there would be no target organism for the purpose of controlling which organism of a kind has been declared to be an agent organism,

the Authority shall revoke the declaration declaring that last-mentioned organism to be an agent organism.

**52                      Declarations continue in operation**

Where a declaration in relation to an agent organism is in force, that organism may be released in accordance with section 33 notwithstanding the length of the period of time that has elapsed since the last release of that organism 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 it, the person shall do so by causing the application or particulars to be lodged at the head office of the department primarily responsible to the Minister for the administration of this Act.

**54                      Application for review**

(1) Where the Regulations prescribe a court, tribunal, person or body for the purposes of this section, application may be made to that court, tribunal, person or body for review of a decision of the Authority:

- (a) for the purposes of section 17 not to hold an inquiry;



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- (b) for the purposes of section 18, being a decision that is inconsistent with a finding or recommendation of a Commission referred to in Part VII;
  - (c) under section 24 not to publish a notice in any newspaper or journal;
  - (d) for the purposes of section 26 not to hold an inquiry;
  - (e) for the purposes of section 27, being a decision that is inconsistent with a finding or recommendation of a Commission referred to in Part VII;
  - (f) for the purposes of section 28;
  - (g) for the purposes of section 29, being a decision that is inconsistent with a finding or recommendation of a Commission referred to in Part VII;
  - (h) for the purposes of section 31 not to hold an inquiry; or
  - (j) under section 51 to revoke a declaration.
- (2) In subsection (1), **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975* of the Commonwealth.

## **55 Powers of reviewing authority**

- (1) In this section, **reviewing authority** means the court, tribunal, person or body (if any) prescribed for the purposes of section 54.
- (2) In proceedings under section 54, the reviewing authority has power, in addition to any other power, to review a decision that has been made by the Authority, and to decide a matter in relation to the making of a decision that could have been or could be decided by the Authority, and a decision of the reviewing authority under this section has the same effect as a decision of the Authority.

## **56 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without affecting the generality of subsection (1), the Administrator may make regulations:
  - (a) relating to the review of decisions of the Authority; or
  - (b) prescribing procedures for the initiation and processing of proposals to obtain declarations under this Act.

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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 2 LIST OF LEGISLATION

***Biological Control Act 1986 (Act No. 44, 1986)***

Assent date	21 October 1986
Commenced	17 December 1986 ( <i>Gaz</i> G50, 17 December 1986, p 6)

***Statute Law Revision Act 1987 (Act No. 9, 1987)***

Assent date	27 May 1987
Commenced	27 May 1987

***Statute Law Revision Act 1995 (Act No. 14, 1995)***

Assent date	23 June 1995
Commenced	23 June 1995

***Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)***

Assent date	18 November 2010
Commenced	1 March 2011 (s 2, s 2 <i>Oaths, Affidavits and Declarations Act 2010</i> (Act No. 39, 2010) and <i>Gaz</i> G7, 16 February 2011, p 4)

***Penalties Amendment (Children and Families, Health and Primary Industry, Fisheries and Resources) Act 2011 (Act No. 28, 2011)***

Assent date	31 August 2011
Commenced	21 September 2011 ( <i>Gaz</i> G38, 21 September 2011, p 4)

***Local Court (Related Amendments) Act 2016 (Act No. 8, 2016)***

Assent date	6 April 2016
Commenced	1 May 2016 (s 2, s 2 <i>Local Court (Repeals and Related Amendments) Act 2016</i> (Act No. 9, 2016) and <i>Gaz</i> S34, 29 April 2016)

**3 LIST OF AMENDMENTS**

s 3	amd No. 14, 1995, s 12
s 9	amd No. 9, 1987, s 2
s 41	amd No. 28, 2011, s 5
s 42	rep No. 40, 2010, s 8
s 43	amd No. 40, 2010, s 9; No. 28, 2011, s 5
s 44	amd No. 8, 2016, s 45
s 45	amd No. 28, 2011, s 5; No. 8, 2016, s 45
s 46	amd No. 28, 2011, s 5
s 49	amd No. 28, 2011, s 5