

Serial 33
Biological Control Amendment Bill 2017
Mr Vowles

A Bill for an Act to amend the *Biological Control Act*

NORTHERN TERRITORY OF AUSTRALIA

BIOLOGICAL CONTROL AMENDMENT ACT 2017

Act No. [] of 2017

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2017

An Act to amend the *Biological Control Act*

[Assented to [] 2017]
[Second reading [] 2017]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Biological Control Amendment Act 2017*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the *Biological Control Act*.

4 Part I heading replaced

Part I, heading

omit, insert

Part 1 Preliminary matters

5 Section 3 amended

(1) Section 3(1), definitions *Council* and *prescribed live organism*

omit

(2) Section 3(1)

insert (in alphabetical order)

Council means:

- (a) subject to paragraph (b), the Agriculture and Resource Management Council of Australia and New Zealand, whether known by that name or any other name; or
- (b) if another body is prescribed by the regulations for the purposes of this definition – that other body.

prescribed organism means an organism, other than a live vaccine or resistant cultivar, that is:

- (a) a live organism; or
- (b) a virus or sub-viral agent.

(3) Section 3(1), definition **kind**, after "organism,"

insert

virus or sub-viral agent,

(4) Section 3(1), definition **organism**, paragraph (b)

omit

(a).

insert

(a); or

(5) Section 3(1), definition **organism**, after paragraph (b)

insert

(c) a virus or a sub-viral agent.

(6) Section 3(1), at the end

insert

Note for subsection (1)

The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

6 Section 4 amended

(1) Section 4

omit

shall be

insert

is

(2) Section 4

omit

live

insert

prescribed

7 Section 9A inserted

After section 9, in Part 1

insert

9A Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 9A

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

8 Part II heading amended

Part II, heading

omit

Part II

insert

Part 2

9 Part III heading amended

Part III, heading

omit

Part III

insert

Part 3

10 Section 19 amended

Section 19(1)

omit

live

11 Section 20 amended

(1) Section 20(1)

omit

Where

insert

If

(2) Section 20(1)

omit

live

(3) Section 20(1)(b)

omit

apply,

insert

apply;

-
- (4) Section 20(1)
omit
referred to
insert
mentioned
- (5) Section 20(2) and (3)
omit
shall
insert
must
- (6) Section 20(2)(b)
omit
authorized
insert
authorised
- (7) Section 20(3)(a), at the end
insert
and

12 Section 24 amended

- (1) Section 24(1), (3) and (4)
omit
Where
insert
If

-
- (2) Section 24(1)
omit
live
- (3) Section 24(1) and (2)
omit
shall
insert
must
- (4) Section 24(2)(a) to (d), at the end
insert
and
- (5) Section 24(2)(e)
omit
where
insert
if
- (6) Section 24(3)
omit
shall cause
insert
must make
- (7) Section 24(3)
omit
to be

13 Part IV heading amended

Part IV, heading

omit

Part IV

insert

Part 4

14 Section 28 amended

(1) Section 28(1)(a)(i), at the end

insert

or

(2) Section 28(1)(a)(iii), at the end

insert

and

(3) Section 28(1)(b)

omit

live

(4) Section 28(1)(c)

omit

effects,

insert

effects;

(5) Section 28(1) and (2)

omit

shall

insert

must

(6) Section 28(1)
omit
notice in the *Gazette*
insert
Gazette notice

(7) Section 28(1)(d)
omit
where
insert
if

15 Section 29 amended

(1) Section 29(1)
omit
Where
insert
If

(2) Section 29(1)(a)
omit
live

(3) Section 29(1)(b)
omit
organism,
insert
organism;

-
- (4) Section 29(1)
omit
notice in the *Gazette*
insert
Gazette notice
- (5) Section 29(1)(d)
omit
organism,
insert
organism;
- (6) Section 29(2)
omit
shall
insert
must

16 Section 32 amended

- (1) Section 32(1) and (2)
omit
Where
insert
If
- (2) Section 32(1)
omit
notice in the *Gazette*
insert
Gazette notice

(3) Section 32(2)(a)

omit

live

(4) Section 32(2)(b)

omit

organism,

insert

organism;

(5) Section 32(2)

omit

shall, by notice in the *Gazette*

insert

must, by *Gazette* notice

17 Part V heading amended

Part V, heading

omit

Part V

insert

Part 5

18 Part VI heading amended

Part VI, heading

omit

Part VI

insert

Part 6

19 Section 35 amended

(1) Section 35(1), (2) and (3)

omit

shall

insert

is to

(2) Section 35(3)

omit

Where

insert

If

(3) Section 35(3)

omit

live

(4) Section 35(4)

omit

where

insert

if

(5) Section 35(4)(a), at the end

insert

and

20 Part VII heading amended

Part VII, heading

omit

Part VII

insert

Part 7

21 Sections 41 and 43 replaced

Sections 41 and 43

repeal, insert

41 Failure of witness to attend

- (1) A person commits an offence if:
- (a) the person has been served with a summons to appear as a witness at an inquiry by a Commission; and
 - (b) the person intentionally fails to do any of the following:
 - (i) attend as required by the summons;
 - (ii) appear and report from day-to-day unless excused, or released from further attendance by, or on behalf of, the Commission.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

- (2) A person commits an offence if:
- (a) the person has been served with a summons to produce evidentiary material; and
 - (b) the person intentionally does not comply with the summons.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

- (3) Strict liability applies to subsections (1)(a) and (2)(a).
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant has a reasonable excuse.

43 Refusal to take oath or to answer questions

- (1) A person who appears as a witness at an inquiry by a Commission commits an offence if the person intentionally:
- (a) refuses or fails to take an oath when required by the Commission to do so; or

-
- (b) refuses or fails to answer a question that the person is required to answer by the Commissioner conducting or presiding at the inquiry; or
 - (c) refuses or fails to produce a document that the person was required to produce by a summons served on the person.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

22 Sections 45 and 46 replaced

Sections 45 and 46

repeal, insert

45 False or misleading evidence

A person commits an offence if:

- (a) the person intentionally gives evidence at a hearing before a Commission; and
- (b) the evidence is false or misleading in a material particular and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

46 Obstructing or hindering Commission

A person commits an offence if:

- (a) the person knows:
 - (i) a Commission is conducting an inquiry; or
 - (ii) a Commissioner is acting in an official capacity; and
- (b) the person intentionally:
 - (i) obstructs or hinders the Commission or Commissioner; or
 - (ii) disrupts a hearing before the Commission.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

23 Section 49 replaced

Section 49

repeal, insert

49 Witness not to be prejudiced

(1) A person commits an offence if:

(a) the person intentionally:

- (i) uses violence against, or inflicts injury on, a person; or
- (ii) causes violence, damage, or loss to a person; or
- (iii) causes material disadvantage to a person; and

(b) the person engages in conduct mentioned in paragraph (a) because the other person:

- (i) appeared, or intended to appear, as a witness at an inquiry by a Commission; or
- (ii) gave evidence, or intended to give evidence, before a Commission.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(2) Without limiting subsection (1), an employer commits an offence if:

(a) the employer intentionally:

- (i) terminates an employee from employment; or
- (ii) threatens to terminate an employee from employment; or
- (iii) prejudices an employee in employment; or
- (iv) threatens to prejudice an employee in employment; and

(b) the employer's conduct mentioned in paragraph (a) is related to the employee:

- (i) appearing as a witness at an inquiry by a Commission; or
- (ii) intending to appear as a witness at an inquiry by a Commission; or

-
- (iii) having given evidence before a Commission; or
 - (iv) intending to give evidence before a Commission.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (3) In any prosecution of subsection (2), the employer bears a legal burden of proof that the termination, threat or prejudice is not related to any of the circumstances mentioned in subsection (2)(b)(i) to (iv).

24 Part VIII heading replaced

Part VIII, heading

omit, insert

Part 8 Miscellaneous matters

25 Part 9 inserted

After section 56

insert

Part 9 Transitional matters for Biological Control Amendment Act 2017

57 Existing declarations continue

- (1) An existing declaration continues in effect and may be dealt with on and from the commencement despite the amendments made by the *Biological Control Amendment Act 2017*.
- (2) An existing declaration that refers to a prescribed live organism for the purposes of a relevant law is taken to refer to a prescribed organism on and from the commencement.
- (3) In this section:

commencement means the commencement of section 2 of the *Biological Control Amendment Act 2017*.

existing declaration means a declaration made by the Northern Territory Biological Control Authority under sections 5 and 32(1) and (2) of the *Biological Control Act* and in effect immediately before the commencement.

26 Repeal of Act

This Act is repealed on the day after it commences.