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BIOLOGICAL CONTROL BILL 1984

Date Introduced: 6 June 1984
House: House of Representatives
Presented by: Hon. J. Kerin, M.P., Minister for Primary Industry

Short Digest of Bill

Purpose

To authorise the release of Biological Control organisms into the ACT and Australian external territories, and to ensure that, once the requirements of the Bill are satisfied, release of such organisms cannot be prevented by recourse to the Courts.

Background

The release of organisms into the Australian environment to control populations of pest species is not covered by any Commonwealth Act. The Quarantine Act 1908 and the Wildlife Protection (Regulation of Exports and Imports) Act 1982 regulate the importation of any plant or animal into Australia. The safety and environmental, health and agricultural effects of these organisms are assessed under these Acts. Once an organism has been approved for importation under these Acts there are no restrictions on its release (except designated under the Acts). However, individuals or companies can appeal to the courts to halt the introduction of the organism, or seek damages, if they can prove they would suffer from such a measure. This was the case when the CSIRO decision to release three species of insect to control Echium plantagineum (Paterson's Curse) was blocked by an injunction granted by the South Australian Supreme Court to two graziers and two beekeepers on the grounds that Echium plantagineum was an important basis of their livelihood.

The present legislation was drafted specifically to override the objections of the beekeepers and graziers, and to remove their avenue of redress to the court so that the insect species attacking Paterson's Curse could be released. The Australian Agricultural Council (AAC) had previously agreed, unanimously, that the CSIRO should proceed with release of the insects on the basis that this would result in net public benefit. The AAC noted that net public
benefit could not be used as an argument against an injunction.

There were attempts by the CSIRO and the plaintiffs in the case to negotiate an inquiry. This failed because of lack of agreement on the membership of the inquiry.

The AAC was concerned about the future of biological control programs and endorsed the preparation of complementary Commonwealth and State legislation to prevent court action to halt such programs. The present legislation is applicable to the ACT and certain Australian external territories, while complementary State legislation is being prepared in order to cover the States and the Northern Territory.

The legislation provides for the nomination and advertisement of target organisms which would be the subject of control, and for a public inquiry process where necessary. Similar provision will be made for biological control agent organisms as well as authority for their release.

There is also provision for an appeal to the Administrative Appeals Tribunal against certain of the decisions made under this legislation.

While State legislation has not yet been released, departmental sources indicate that the Commonwealth Act and State Acts will, most probably, all be invoked for any program. Assessment and appeal procedures, however, would be carried out under the Commonwealth Act. An agreement is being prepared which will be signed by all Federal, State and Territory ministers, similar to that which was the basis for the co-operative companies and securities scheme. Such an agreement would have no legal status.

Not all biological control programs, whether for agricultural pest or other target organisms, are required to come under the scrutiny of this legislation. The intention is to provide an opportunity to prevent court action. The advertisement, assessment and appeal provisions are included primarily to justify the removal of individual recourse to the court.

The primary aim of the Bill is to justify the control of an organism by biological means - not to determine the specific means of biological control. When an appropriate biological control agent is selected, the Act prevents legal action halting the agent's release.
Main Provisions

Clause 2(3): Includes a circular argument by stating that organisms will be taken to cause harm if their control would be in the public benefit. This is the sole reference to public benefit in the legislation. There is no definition of public benefit as to whether it will be based solely on economic benefit, or on such other benefits as environmental, social and aesthetic.

Clause 4: This extends the coverage of this legislation from the ACT to several other external territories. However, it does not include Norfolk Island, Heard Island or MacDonald Island. The omission of Norfolk Island may be a drafting error.

Clause 8: This will establish a Commonwealth Biological Control Authority which will be constituted by the Commonwealth Minister responsible for administering the legislation (in this case Primary Industry). There is provision for the Commonwealth Minister to designate a State Minister as the Authority after April 1985. However, since the Authority and its operation are being funded by the Commonwealth, it is possible that the Commonwealth Minister will remain as the Authority.

Clause 9: This provides the linkage with complementary State legislation.

Clause 12: An organism can be declared a target organism and, therefore, subject to control by an agent organism. Action for such declaration can be on recommendation by the AAC, or by application of a person.

Clause 13: This enables a person, who considers an organism is causing harm in the ACT, to apply to the Authority for the declaration of that organism as a target organism and subject to a biological control program.

Clause 15: An application of a target organism is normally referred by the Authority to the AAC for assessment and recommendation. The Authority is required to refer applications to the AAC except where organisms are being considered under clauses 30 and 31, or where they have been considered under complementary State law.

Clause 16: If the AAC, after considering the target application, decides to recommend against its declaration as a target organism, the Authority must send a notice with the reasons for rejection to the person who made the target application. No appeals are possible on the rejection (clause 56).
Clause 17: If the AAC recommends to the Authority that organisms should be declared target organisms, the Authority must publish a notice in the Gazette and major newspapers in all states, giving particulars of the proposal to declare a target organism, and call for public comment within six weeks.

Clause 18: The Authority must consider public comment on the proposal to declare the target organism.

Clause 19: The Authority may decide, after considering all relevant information and finding that control of the organism will adversely affect a person or the environment to an unknown level, to direct an inquiry. This may be by the Industries Assistance Commission, under the provisions of the Environment Protection (Impact of Proposals) Act 1974, or under the Act itself. The type of inquiry directed would probably depend upon the type of problem being assessed, e.g. economic or environmental. But there is no reason to believe that an inquiry under Part VII of the Bill would not be adequate in all cases. A decision not to have an inquiry is subject to appeal to the Administrative Appeals Tribunal (AAT) (clause 56).

Clause 20: The Authority, after complying with the provisions of the preceding clause and considering all information, reports and recommendations, can declare an organism to be a target organism if it decides that the organism is causing harm in the ACT and its control would cause significantly less harm than that caused by the organism.

Clause 21: Clauses 21-29 are similar to clauses 12-20, except that they are the procedures for assessing whether an organism should be declared an agent organism which could be used to control a target organism.

Clause 26: This differs from clause 17 in that while it requires the Authority to publish a notice of proposed agent organisms in the Gazette, it has a discretion in relation to publication in the major newspapers of all states and territories. The explanatory memorandum claims that the public would have little further interest in the organism provided its release did not contravene other laws such as the Quarantine Act 1908. The memorandum further claims that lay persons lack expertise in assessing the potential hazards of release of such organisms in the Australian environment and, therefore, virtually no public comment would be forthcoming from the advertisement. This is debatable because there is abundant expertise and interest in universities, consulting firms and the volunteer conservation movement in Australia.
Clause 30: This clause allows the Authority to make an emergency declaration so that an organism can be released under specific conditions in order to control another organism which is causing or likely to cause significant damage to the health, economy and environment of the ACT. There are no provisions for review by the AAC, public comment or inquiry since the clause provides for emergencies. While there is an appeal on such a decision to the AAT once an organism is released, it may be too late to retrieve the organisms if the AAT reverses the decision. There is little justification for this clause since biological control is a slow process and not designed to deal with "emergencies". The example of such an emergency, cited in the Second Reading Speech, is the outbreak of Lucerne aphid. However in such a situation it may be that other control measures, e.g., chemical sprays would be more efficient and effective. It takes many years to test and evaluate a control organism. How could an emergency be dealt with during this time? This clause could be viewed as a means of avoiding both litigation and proper public scrutiny.

Clause 31: Where a biological control program is already in operation at the commencement of the Act and organisms are being released, this clause allows these target and agent organisms to be declared without having to be fully scrutinised under the legislation. The Act will give these programs the same immunity from civil action. Declarations under this section can be appealed to the AAT.

Clauses 32-33: These enable the Authority to gather public comment and have public inquiries on a proposed declaration made under clause 31.

Clause 34: This allows for the automatic declaration of target and agent organisms which were already declared as such under complementary State legislation.

Clause 35: This permits release of species which have been declared to be agent organisms in accordance with the provisions of the Bill.

Clause 36: This removes the right of persons to initiate legal proceedings to halt release of organisms or to recover damages from the release of such organisms in a State or Territory where such organisms have been declared agent organisms and released in the ACT under this legislation.

Clause 37: This prevents court action being taken to halt the release of a declared agent organism or to
collect damages arising from such release where the release takes place under complementary State legislation.

Clauses 38-51: These clauses establish and govern the activities of any inquiry directed under this legislation.

Clause 53: Declaration of target or agent organisms may be revoked under this clause. This decision is liable to appeal to the AAT. The explanatory memorandum suggests this would come about when organisms had come to be regarded as undesirable.

Clause 54: This provision ensures that there is no doubt that the release of an agent organism can occur at any time after its declaration as an agent organism.

Clause 56: This allows for application to be made to the AAT to review certain decisions made by the Authority under this legislation.

For further information, if required, contact:

Science, Technology and Environment Group

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