

TASMANIA

ANIMAL HEALTH AMENDMENT BILL 2003

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ANIMAL HEALTH AMENDMENT BILL 2003

(Brought in by the Minister for Primary Industries, Water and Environment, the Honourable Bryan Alexander Green)

A BILL FOR

An Act to amend the *Animal Health Act 1995*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

Short title

1. This Act may be cited as the *Animal Health Amendment Act 2003*.

Commencement

2. This Act commences on the day on which this Act receives the Royal Assent.

Principal Act

3. In this Act, the *Animal Health Act 1995** is referred to as the Principal Act.

*No. 85 of 1995

Section 3 amended (Interpretation)**4. Section 3 of the Principal Act is amended as follows:**

- (a) by omitting “materials or disease agents” from the definition of “conveyance” in subsection (1) and substituting “materials, disease agents or other things”;
- (b) by inserting the following definition after the definition of “destroy” in subsection (1):

“diagnostic reagent” means a substance that is administered to an animal to aid in the diagnosis of a disease in the animal;

- (c) by omitting “agent;” from paragraph (d) of the definition of “disease agent” in subsection (1) and substituting “agent –”;
- (d) by inserting the following after paragraph (d) in the definition of “disease agent” in subsection (1):

“but does not include a diagnostic reagent or a vaccine unless declared under paragraph (d);”
- (e) by omitting “State or a Territory” from paragraph (a) of the definition of “import” in subsection (1) and substituting “State, a Territory or elsewhere”;
- (f) by omitting “State or a Territory” from paragraph (b) of the definition of “import” in subsection (1) and substituting “State, a Territory or elsewhere”;
- (g) by omitting “agent;” from paragraph (c) of the definition of “List A disease agent” in subsection (1) and substituting “agent –”;

- (h) by inserting the following after paragraph (c) in the definition of “List A disease agent” in subsection (1):

“but does not include a diagnostic reagent or a vaccine unless declared under paragraph (c);”

- (i) by omitting “agent;” from paragraph (c) of the definition of “List B disease agent” in subsection (1) and substituting “agent –”;

- (j) by inserting the following after paragraph (c) in the definition of “List B disease agent” in subsection (1):

“but does not include a diagnostic reagent or a vaccine unless declared under paragraph (c);”

- (k) by omitting “charge,” twice occurring from paragraph (e) of the definition of “owner” in subsection (1) and substituting “charge or possession,”;

- (l) by inserting the following subsection after subsection (9):

(9A) A notice made under this section takes effect on –

- (a) the day on which the notice is published in the *Gazette*; or
- (b) a later day specified in the notice, if any.

Section 30A inserted

5. After section 30 of the Principal Act, the following section is inserted in Part 5:

Duty in respect of mortality or morbidity rates

30A. A person who knows or has reason to suspect that the prescribed morbidity rate or prescribed mortality rate has been exceeded must notify an inspector of that fact as soon as possible.

Penalty: Fine not exceeding 50 penalty units.

Section 31 amended (Declaration of infected place)

6. Section 31 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

(1) An inspector may declare a place or conveyance to be an infected place if the inspector –

- (a) knows or suspects on reasonable grounds that a List A disease is present in that place or conveyance; or
- (b) knows or suspects on reasonable grounds that a new disease or an unknown disease is present in that place or conveyance and considers it necessary to make the declaration for the purpose of controlling the disease; or
- (c) knows or suspects on reasonable grounds that a disease, other than a List A disease, new disease or unknown disease, is present in that place or conveyance and considers it necessary to make the declaration for the purpose of controlling the disease.

Section 32 amended (Restrictions on movement into, within and from infected place)

7. Section 32(2) of the Principal Act is amended by omitting paragraphs (d) and (e) and substituting the following paragraphs:

- (d) allow any of the following to enter, remain in, move within or leave the infected place or a specified part of the infected place:
 - (i) an animal;
 - (ii) an animal material;
 - (iii) an animal or animal material of a specified class;
 - (iv) any other thing;
- (e) move, or allow any other person to move, any of the following into, within or out of the infected place:
 - (i) an animal;
 - (ii) an animal material;
 - (iii) an animal or animal material of a specified class;
 - (iv) any other thing.

Section 36 amended (Restrictions on movement into, within and from restricted area)

8. Section 36 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

(1) A declaration of a restricted area is to specify –

- (a) the classes of animals, animal materials, conveyances or other things that must not be moved into, within or out of the restricted area or must not be so moved except as authorised by, and in accordance with any conditions specified in, the declaration; and
- (b) the classes of persons who may not enter, move within or leave the restricted area or may not enter, move within or leave the restricted area except as authorised by, and in accordance with any conditions specified in, the declaration.

Section 37 amended (Permits for movement into, within and from restricted area)

9. Section 37 of the Principal Act is amended as follows:

- (a) by inserting “person,” after “material,”;
- (b) by omitting “and” second occurring and substituting “or”.

Section 39 amended (Declaration of control area)

10. Section 39 of the Principal Act is amended as follows:

- (a) by inserting “present in Tasmania, another State or a Territory, whether the disease is a known disease or an unknown disease” after “disease” in subsection (1)(a);

- (b) by inserting “persons,” after “materials,” in subsection (2)(a).

Section 40 amended (Restrictions on activities in, and movement into, within and from control area)

11. Section 40(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “materials or classes of animals or animal materials” and substituting “materials, classes of animals or animal materials, or other things”;
- (b) by omitting from paragraph (d) “materials or classes of animals or animal materials” and substituting “materials, classes of animals or animal materials, conveyances or other things”;
- (c) by omitting from paragraph (e) “materials or classes of animals or animal materials” and substituting “materials, classes of animals or animal materials, or other things”;
- (d) by omitting from paragraph (f) “materials or classes of animals or animal materials” and substituting “materials, classes of animals or animal materials, or other things”;
- (e) by omitting from paragraph (g) “materials or classes of animals or animal materials” and substituting “materials, classes of animals or animal materials, conveyances or other things”;
- (f) by omitting paragraph (h) and substituting the following paragraphs:

- (h) the movement of specified persons, animals, animal materials, classes of persons, animals or animal materials, conveyances or other things into, within or out of the control area; and
- (j) the cleaning or disinfecting of persons, animals, animal materials, clothing, conveyances or other things that may enter, remain in, move within or leave the control area.

Section 40A inserted

12. After section 40 of the Principal Act, the following section is inserted in Division 3:

Permits for movement into, within or from control area

40A. (1) An inspector may issue a permit authorising the movement of specified persons, animals, animal materials, classes of persons, animals or animal materials, conveyances or other things into, within or out of a control area.

(2) A permit is subject to any conditions specified in it.

Section 41 amended (Offences relating to control area)

13. Section 41(1) of the Principal Act is amended by inserting “except as authorised by, and in accordance with

any conditions specified in, a permit issued under section 40A” after “section 40”.

Section 51 amended (Offence to expose an animal to List B disease)

14. Section 51 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

(2) Subsection (1) does not apply to –

- (a) exposure to a disease in the form of a veterinary chemical product registered under the Agvet Code of Tasmania; or
- (b) exposure to a disease by the administration of a vaccine, or a diagnostic reagent, for a List B disease.

Sections 51A and 51B inserted

15. After section 51 of the Principal Act, the following sections are inserted in Division 6:

Offence to possess or administer List A or List B vaccine or diagnostic reagent without permit

51A. (1) A person must not possess a vaccine, or a diagnostic reagent, for a List A disease except as authorised by a permit issued under subsection (3).

Penalty: Fine not exceeding 100 penalty units.

(2) A person must not administer a vaccine, or a diagnostic reagent, for a List A disease or a List B disease to an animal or group of animals except as

authorised by a permit issued under section 51B by the Chief Veterinary Officer –

- (a) in writing; or
- (b) by notice published in the *Gazette*.

Penalty: In the case of –

- (a) a List A disease, a fine not exceeding 100 penalty units; or
- (b) a List B disease, a fine not exceeding 50 penalty units.

(3) With the written permission of the Minister, the Chief Veterinary Officer may issue a permit authorising a person to be in possession of a vaccine, or a diagnostic reagent, for a List A disease.

Permit for administration of vaccine or diagnostic reagent for List A or List B disease

51B. (1) With the approval of the Minister, the Chief Veterinary Officer may issue –

- (a) a special permit to administer a vaccine, or a diagnostic reagent, for a List A disease; or
- (b) a general permit to administer a vaccine, or a diagnostic reagent, for a List A disease.

(2) The approval of the Minister under subsection (1) –

- (a) must be in writing provided to the Chief Veterinary Officer; and

- (b) may be general or may relate only to a permit, or class of permit, specified in the approval; and
- (c) is subject to any conditions determined by the Minister and specified in the approval.

(3) The Chief Veterinary Officer may issue –

- (a) a special permit to administer a vaccine, or a diagnostic reagent, for a List B disease; or
- (b) a general permit to administer a vaccine, or a diagnostic reagent, for a List B disease.

(4) A special permit authorises the person to whom it is issued to administer a vaccine, or a diagnostic reagent, for the List A disease or List B disease specified in the permit.

(5) A general permit –

- (a) is issued by publishing it in the *Gazette*; and
- (b) authorises the administration of a vaccine, or a diagnostic reagent, for the List A disease or List B disease specified in the permit.

(6) A special permit and a general permit for the administration of a vaccine, or a diagnostic reagent, for a List A disease must be in accordance with the Minister's approval and any conditions specified in that approval.

Section 53 amended (Prohibition, &c., on feeding certain fodder to animal)

16. The penalty under section 53(4) of the Principal Act is amended by omitting “50” and substituting “100”.

Section 54 amended (Offence to feed swill to pigs)

17. Section 54(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “swill.” and substituting “swill; or”;
- (b) by inserting the following paragraph after paragraph (b):
 - (c) supply swill for a purpose specified in paragraph (a) or (b).

Section 56 substituted

18. Section 56 of the Principal Act is repealed and the following section is substituted:

Permission to expose animal, &c., to List A disease

56. (1) With the written permission of the Minister, the Chief Veterinary Officer may issue a permit authorising a person to do any one or more of the following:

- (a) expose an animal, animal material or class of animal or animal material to a List A disease;

- (b) be in possession of a List A disease agent;
- (c) administer a List A disease agent to an animal, animal material or class of animal or animal material.

(2) This section does not apply to a vaccine, or a diagnostic reagent, for a List A disease.

Section 64 amended (General powers of inspector)

19. Section 64 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (c) in subsection (1):
 - (ca) to enter and remain in a residence if the inspector has reasonable grounds for suspecting that a List A disease agent or an animal, animal material or other thing infected with a List A disease is present in that residence;
- (b) by inserting the following paragraphs after paragraph (n) in subsection (2):
 - (na) to take an animal, animal material or disease agent to any place the inspector considers appropriate;
 - (nb) to restrict the use of any animal, animal material or disease agent;
- (c) by omitting from subsection (3) “soil and water” and substituting “soil, water and other thing”;

- (d) by omitting from subsection (3)(a) “land or water” and substituting “land, soil, water or other thing”;
- (e) by omitting from subsection (3)(b) “conveyance or building” and substituting “conveyance, building or other thing”;
- (f) by omitting from subsection (3)(c) “land or water” and substituting “land, water or other thing”;
- (g) by omitting from subsection (3)(d) “soil or water” and substituting “soil, water or other thing”;
- (h) by omitting from subsection (3)(e) “soil or water” and substituting “soil, water or other thing”;
- (i) by inserting the following paragraph after paragraph (e) in subsection (3):
 - (ea) to take a conveyance, soil, water or other thing to any place the inspector considers appropriate;
- (j) by omitting from subsection (3)(f) “land or water” and substituting “soil, land, water or other thing”;
- (k) by inserting the following paragraph after paragraph (f) in subsection (3):
 - (fa) to restrict the use of the conveyance, building, land, soil, water or other thing;
- (l) by omitting from subsection (3)(h) “soil or water” and substituting “soil, water or other thing”.

Section 65 amended (Destroying or ordering destruction of animals, buildings, &c.)

20. Section 65 of the Principal Act is amended by inserting after subsection (1) the following subsection:

(1A) The Chief Veterinary Officer or an inspector who has the written approval of the Chief Veterinary Officer may –

- (a) destroy, or cause to be destroyed, any animal, or animal material from an animal, that has been vaccinated with a vaccine for a List A disease; or
- (b) direct the owner of any animal, or animal material from an animal, that has been vaccinated with a vaccine for a List A disease to destroy it or cause it to be destroyed as specified in the direction.

Section 66 amended (Giving directions)

21. Section 66(3) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (d) “land and water” and substituting “any animal, animal material, disease agent, conveyance, building, land, soil, water or other thing”;
- (b) by inserting the following paragraph after paragraph (d):
 - (da) requiring an animal, animal material, disease agent or other thing to be taken to any place the inspector considers appropriate;

Section 69 amended (Requiring keeping of records)

22. Section 69 of the Principal Act is amended by omitting “products,” and substituting “products or fodder,”.

Section 75 amended (Identification of certain inspectors)

23. Section 75(2) of the Principal Act is amended by omitting “section (1)” and substituting “subsection (1)”.

Section 84 amended (Who is entitled to compensation)

24. Section 84(1)(a) of the Principal Act is amended by omitting “State and the Commonwealth” and substituting “State, the Commonwealth and industry”.

Section 86 amended (Amount of compensation)

25. Section 86(1) of the Principal Act is amended by omitting “State and the Commonwealth” and substituting “State, the Commonwealth and industry”.

Section 91A inserted

26. After section 91 of the Principal Act, the following section is inserted in Part 9:

Appeal to Magistrates Court (Administrative Appeals Division)

91A. (1) A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of any of the following decisions under this Part:

- (a) the refusal to pay compensation in respect of the death or destruction of an animal or other property;
- (b) the determination of the amount of any such compensation that is payable.

Part 9A inserted

27. After section 91 of the Principal Act, the following Part is inserted:

PART 9A – INFRINGEMENT NOTICES**Service of infringement notice**

91B. The Chief Veterinary Officer may serve an infringement notice on a person, other than a person who has not attained the age of 16 years, if the Chief Veterinary Officer is of the opinion that the person has committed a prescribed offence.

Form of infringement notice

91C. An infringement notice –

- (a) may not relate to more than 3 offences; and
- (b) is to be in a form approved by the Chief Veterinary Officer; and
- (c) is to specify –
 - (i) the offence to which it relates; and
 - (ii) the person alleged to have committed the offence; and

- (iii) the prescribed penalty and prescribed special penalty for that offence; and
 - (iv) the total amount payable; and
 - (v) the place at which the penalty must be paid; and
 - (vi) any other prescribed details; and
- (d) is to state that the person on whom it is served may disregard the notice but that, on doing so, he or she may be prosecuted for the offence to which the notice relates.

Acceptance of infringement notice

91D. A person may accept an infringement notice –

- (a) by paying the total amount payable within 21 days after being served with the notice; or
- (b) within 21 days after being served with the notice, by lodging at the place specified in the notice a written undertaking to pay the amount payable.

Extension of acceptance period

91E. If an infringement notice is not accepted before the period referred to in section 91D expires, a clerk of petty sessions may allow one further period of 14 days, commencing on that expiry, for the acceptance of the notice.

Payment

91F. (1) If a person undertakes under section 91D(b) to pay any amount payable under an infringement notice, a clerk of petty sessions may determine the period, not exceeding 60 days from the day on which the notice was served, within which the amount is to be paid.

(2) A person may make representations to a clerk of petty sessions in respect of the person's ability to pay the amount.

(3) A clerk of petty sessions is to take the person's representations into account before determining the period within which the amount is to be paid.

(4) If a person fails to pay any amount in accordance with an undertaking, the same proceedings may be taken against the person in respect of the amount remaining outstanding as if it were a penalty imposed on the person on summary conviction.

Payment to Consolidated Fund

91G. Any payments made in respect of an infringement notice are payable into the Consolidated Fund.

Effect of acceptance

91H. (1) The acceptance of an infringement notice is not an admission of liability in any civil proceedings.

(2) Proceedings against a person for an offence to which an infringement notice that has not been withdrawn relates must not be brought –

- (a) if the person accepts the infringement notice; or
- (b) within –
 - (i) 28 days after the notice was served if the person has not been allowed a further period under section 91E; or
 - (ii) 42 days after the notice was served if the person has been allowed a further period under section 91E.

Withdrawal of infringement notice

91I. (1) The Chief Veterinary Officer may withdraw an infringement notice served on a person if the Chief Veterinary Officer is of the opinion that –

- (a) the infringement notice should not have been served; or
- (b) the person should be proceeded against for the offence to which the notice relates.

(2) An infringement notice may be withdrawn whether or not it has been accepted.

(3) An infringement notice is withdrawn by serving on the person who was served with the infringement notice a notice stating that the infringement notice has been withdrawn.

(4) A clerk of petty sessions must repay to a person any amount paid by that person in respect of an infringement notice that is withdrawn.

Certain evidence not admissible

91J. Evidence of the service, acceptance or withdrawal of an infringement notice is not admissible in any proceedings for the offence to which the notice relates unless it is alleged that the proceedings have been taken in contravention of section 91H(2).

Delegation

91K. The clerk of petty sessions may delegate any of his or her functions or powers under this Part, other than this power of delegation.

Section 102A inserted

28. After section 102 of the Principal Act, the following section is inserted in Part 10:

Identification of place or land

102A. A place or land may be identified in any document made under this Act –

- (a) by reference to a municipal area; or
- (b) by reference to a street address; or
- (c) by reference to the entry relating to the land in a valuation roll prepared under the *Valuation of Land Act 2001*; or

- (d) by reference to a plan registered in the Central Plan Register; or
- (e) by any other means.

Section 105 amended (Regulations)

29. Section 105 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (a) in subsection (2):
 - (ab) provide for or regulate the possession, keeping and management of animals, animal materials or other things; and
- (b) by inserting the following paragraph after paragraph (c) in subsection (2):
 - (ca) provide for the making of a declaration by any person or class of person in relation to the health or disease status of any animal, animal material, class of animal or animal material or other thing; and
- (c) by inserting the following paragraphs after paragraph (d) in subsection (2):
 - (da) require animals, or animals of a class, to be vaccinated for diseases specified in the regulations; and
 - (db) provide for or regulate the introduction into Tasmania, possession and use of testing kits for List A diseases; and

- (d) by omitting from subsection (4)(b) “5” first occurring and substituting “100”;
- (e) by omitting from subsection (4)(b) “0.5” and substituting “10”.

Consequential amendments

30. The legislation specified in Schedule 1 is amended as specified in that Schedule.

SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Section 30

Criminal Code Act 1924**1. Section 287B is amended as follows:**

- (a) by omitting from subsection (2)(b) “animal” and substituting “animal, animal material or class of animal or animal material”;
- (b) by omitting from subsection (2)(c) “animal” and substituting “animal, animal material or class of animal or animal material”;
- (c) by inserting the following subsection after subsection (2):

(2A) A person who knowingly or recklessly exposes an animal, animal material or class of animal or animal material to a List A disease is guilty of a crime.

Charge: Exposure to a List A disease.

- (d) by omitting from subsection (3) “Subsections (1) and (2)” and substituting “Subsections (1), (2) and (2A)”;
- (e) by inserting in subsection (3)(a) “or expose an animal or animal material to a List A disease” after “agent”.