

1984

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

BIOLOGICAL CONTROL BILL 1984

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
representing the Minister for Primary Industry
Senator the Hon. Peter Walsh)

OUTLINE

The Biological Control Bill 1984 has the following main purposes:

- (1) to provide an opportunity for equitably assessing proposed biological control activities to ensure that they are in the public interest, by
 - . publishing proposals with a view to obtaining public comment
 - . where appropriate, ordering public inquiries to investigate and report on the implications of proposals
 - . providing for review of administrative decisions.
- (2) to authorise the release of biological control agents and to ensure that where biological control activities are approved in terms of the Bill, they are not subject to legal proceedings intended to prevent the activities from being undertaken
 - . other than actions for damages which may be taken in specified circumstances
- (3) to authorise existing biological control programs
 - . which may nevertheless in some cases be subject to the assessment procedures applying to new proposals.
- (4) to provide for action to be taken in the event of emergencies developing which could be prevented by immediate implementation of biological control
- (5) to provide a nexus with complementary legislation in the States and the Northern Territory to ensure that the administration and legal status of biological control has a uniform basis throughout Australia.

BIOLOGICAL CONTROL BILL 1984

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1: Short Title

1. Biological Control is defined in Clause 3 (see item 23).

Clause 2: Interpretation

Sub-Clause 2(1)

2. "agent application" refers to an application to have a biological control agent, such as insects, rusts or fungi, approved in terms of this Bill.
3. "agent recommendation" refers to the stage of decision making when Council decides that there is sufficient merit in an agent application to proceed further in terms of the Bill.
4. "agent organisms" refers to agents, such as insects, rust, fungi, etc, which are capable of exerting control over a target, such as a weed.
5. "Authority". The Commonwealth Biological Control Authority is the Commonwealth Minister for Primary Industry. (see item 28)
6. "control" is interpreted to cover all characteristics of the biological control process. Thus, numbers of weeds or pests may be reduced directly or indirectly (for example by reducing behaviour or fertility or by directly causing death) or by limiting their further growth.
7. "Council". The Australian Agricultural Council (AAC) which has a number of important functions in terms of this Bill, consists of the Minister responsible for agriculture in each State and the Northern Territory and the Commonwealth Minister for Primary Industry, who is the Chairman.
8. "kind" includes species, sub-species and any lower taxonomic orders.
9. "organism" The interpretation of organisms excludes man for obvious reasons. The inclusion of dead organisms and matter discharged from organisms is intended to accommodate biological control programs such as the dung beetle program. Although biological control programs are characteristically successfully applied only to exotic target organisms, reference to indigenous organisms is included to cater for the possibility of control of domestic pests such as the sheep blow-fly becoming available.

10. "organization" is taken to refer to all kinds of organizations.

11. "person" includes an organization in recognition of the existence of single person organizations.

12. "prescribed live organisms" excludes live vaccines and resistant cultivars. In both cases, the effect is limited to an individual and to a limited area. That is, they do not possess the characteristic of biological control to have an effect beyond the point of application and are therefore not relevant to the Bill.

13. "relevant State law" refers to the complementary State legislation referred to under Clause 34.

14. "State", for the sake of convenience, includes the Northern Territory. The purpose is to differentiate between Commonwealth legislation and other complementary legislation.

15. "target application" has the same significance as 'agent application' referred to under item 2, except that target applications refer to targets such as weeds and animal pests.

16. "target recommendation" refers to a decision by Council concerning the merits of a target application.

17. "target organisms" refers to weeds, pests and the like.

18. "Territory" refers to Commonwealth Territories, to avoid confusion with the Northern Territory.

Sub-Clause 2(2)

19. Grouping Jervis Bay with the ACT is a standard provision.

Sub-Clause 2(3)

20. A major concern of the Bill is to provide a means for establishing whether or not a proposed biological control program is for the public benefit. The many provisions for public input to decision making and for public inquiry and review that are contained in the Bill are directed at achieving this end. This Clause introduces the principle that if biological control of an organism is for the public benefit, then the organism being controlled is causing harm.

Sub-Clause 2(4)

21. An organism need not cause harm throughout a Territory (or a State, in the relevant State law) for its control to be in the public benefit.

3.

Sub-Clause 2(5)

22. This is an omnibus provision to provide that evaluation of agent applications can proceed simultaneously with evaluation of target applications.

Clause 3: Biological Control

23. Biological control for the purposes of this Bill is confined to the control of living organisms or the non-living products of organisms by other living organisms. That is, natural competition within species (by selected cultivars for example) and chemical control are not interpreted as biological control.

Clause 4: Extension of Act to external Territories

24. In order to ensure that there are no loopholes through which biological control agents could be introduced without observing the Bill, it is desirable that offshore Territories also be subject to the Act.

Clause 5: Saving of other laws

25. This Clause ensures that the Quarantine Act, the Wildlife Protection Act and other relevant Commonwealth legislation is not affected by this Bill. This Bill seeks only to superimpose provision for equitable public decision making on existing arrangements.

Clause 6: Act to bind Crown

26. Standard provision

Clause 7: Act not limited to agricultural pests

27. Control of weeds and pests that harm human health or the environment can be considered in terms of this Bill. Although AAC is primarily concerned with weeds and pests of agriculture, it can consider, or refer for comment to other relevant bodies such as the Australian Environment Council or the Council of Nature Conservation Ministers, proposals for biological control programs that are not primarily concerned with agriculture.

Clause 8: Commonwealth Biological Control Authority.

28. The Biological Control Authority is a convenient means of establishing a legal entity for the purposes of this Bill and through which various administrative procedures may be routed. This Clause establishes a Commonwealth Biological Control Authority which will be the Commonwealth Minister for Primary Industry from the commencement of the Act until 1 April 1985. Complementary legislation will establish a Biological Control Authority in each of the States. At the first AAC meeting of each year the Commonwealth Minister, in consultation with other State Ministers, shall designate the Commonwealth Minister, or

one of the State Ministers, as the Biological Control Authority for the Commonwealth and all the States. The Act vests a number of decision making powers in the Authority, most of which require agreement by the AAC and are subject to one or another form of review.

Clause 9: Relevant State Laws

29. It is convenient to refer to the complementary State legislation as a 'relevant State law' for the purpose of taking actions provided for in this Bill.

Clause 10: Delegation

30. Delegation will enable administration of certain routine matters, such as the handling of target or agent applications, to be handled by Departmental officers on behalf of the Authority. The delegation of executive or decision-making powers is excluded.

Clause 11: Operation of Industries Assistance Commission Act.

31. It is possible to order public inquiries concerning proposed biological control programs, and one option is that such inquiries be held in terms of the IAC Act (Clauses 19 and 28 of the Bill refer). Biological control, once established, can reduce or eliminate the need to apply chemical or other forms of control of weeds or pests. The nature of biological control is that the control agent spreads to wherever the target weed or pest may live and there is no means of excluding this benefit or of equitably charging for it. It is therefore a means of providing assistance and the purpose of this Section is to make it clear that this can be regarded as assistance in terms of the IAC Act.

PART II - TARGET ORGANISMS

Clause 12: Target Organisms

32. This Part of the Bill concerns procedures for determining whether or not a target organism is causing harm and should therefore be declared as a target in terms of this Act; that is, whether control of the target is deemed to be in the public interest. Where this is the case, the next step is to seek to have relevant agent organisms declared, that is for the program itself to proceed (see Part III of the Bill). The process may be initiated by Council itself, or by one of its relevant sub-committees concerned with biological control. This is the most common practice at present. Members of the public may initiate action in terms of Clause 13.

Clause 13: Target Application

33. If a person considers a weed or pest to be harmful, a written application may be made to the Authority requesting that the organism be declared as a target. The application

needs to provide sufficient information to enable the organism to be identified, to indicate why biological control is being suggested and to mention the perceived problems and any benefits of the organism. The purpose of requiring some detail is to ensure, as much as can reasonably be expected, that the proposal is not frivolous or poorly conceived.

Clause 14: Withdrawal of target application

34. An application can be withdrawn. This is a simple precaution to ensure that where an applicant has a change of mind, that the lengthy process of public decision making is not irrevocably set in motion. This provision also alludes to the fact that the Bill does not oblige all proposals to be submitted for consideration in terms of this Bill. However, any proposed biological control activity that is not considered and approved in terms of this Bill, remains open to common law actions. Nevertheless, there may be cases where a person or organization can meet all the other requirements, such as observing Quarantine Act provisions, and is certain that the proposed activity would never create a conflict of interest or the risk of litigation. In these cases, the person may judge that it is not necessary to proceed through the time-consuming provisions of this Bill. Should this decision be made after an application had been submitted (but, in terms of Clause 14, before it had reached Council), then the application can be withdrawn.

Clause 15: Referral of target application to Council.

35. The Authority must refer applications to Council, unless the matter to which the application refers is one that has been dealt with already in terms of this Bill or a relevant State law. This latter provision does not preclude the forwarding of such applications completely, as an application may present new information on a matter which would justify re-examination.

Clause 16: Notice of rejection of target application.

36. If Council does not consider that a proposal should proceed towards declaration, the Authority will inform the applicant, giving any reasons for the rejection and specifying any circumstances which could alter the decision.

Clause 17: Notice of proposed target organisms

37. If an application is not rejected, the proposal must be published as a notice in the Gazette and in newspapers or journals circulating in each State. The purpose of advertising the notice is to provide members of the public with an opportunity to provide their views on the proposal to the Authority. The notices must provide certain information intended to make the issues clear and to direct interested persons to sources of further information on the proposal. Responses must be made within 6 weeks, or longer if the Authority allows.

Clause 18: Consideration of submissions relating to target organisms

38. The Authority is obliged to consider all the responses to notices published in terms of Clause 17.

Clause 19: Inquiries relating to target organisms

39. After complying with the foregoing provisions, the Authority will consult with members of Council and consider other relevant material. If it is considered that persons or the environment may be adversely affected if the target organism was declared, a public enquiry may be ordered. The Authority may elect to hold the inquiry in one of the three forms indicated in the Bill. The alternatives reflect the varying social, economic and environmental implications of biological control. Until an enquiry makes its report, no further action can be taken in terms of this Bill.

Clause 20: Declaration of target organisms

40. After meeting all the other requirements of the Bill, the Authority is required to decide whether the target organism should be declared as such, thereby effectively providing a basis to have relevant agent organisms considered in terms of the Bill (see Part III). In making a decision concerning a declaration, the Authority must be satisfied that the target organism is capable of being controlled biologically and that it is causing harm. Furthermore, the Authority must be satisfied that biological control of the target organism will be for the public benefit in as much that it will not cause any significant harm to any person or the environment, or that if it does cause such harm that this would be significantly less than if the target was not controlled by biological means. If a declaration is then made, it must be published in the Gazette.

PART III - AGENT ORGANISMS

Clause 21: Agent Organisms

41. The provisions of this Clause are the same as those applying to target organisms under Clause 12 (see item 32).

Clause 22: Agent Application

42. The provisions of this Clause are essentially the same as those applying to target applications under Clause 13 (see item 33). An agent application can only be made concerning a target organism that has been declared, or is being considered, in terms of the Act. The agent is, in effect, the control program and if it were possible to declare the agent without having declared the target, then the purpose of this Bill would be largely thwarted.

Clause 23: Withdrawal of agent application

43. The provisions of this Clause are the same as those applying to target applications under Clause 14 (see item 34).

Clause 24: Referral of agent application to AAC

44. The provisions of this Clause are the same as those applying to the referral of target applications to AAC under Clause 15 (see item 35).

Clause 25: Notice of rejection of agent application.

45. The provisions of this Clause are the same as those applying to a failure to make a recommendation in respect of target organisms under Clause 16 (see item 36).

Clause 26: Notice of proposed agent organisms

46. While the provisions of this Clause are essentially the same as those applying under Clause 17 (see item 37), it differs in one significant respect. There is an obligation to publish in newspapers or journals a notice concerning proposed target organisms, but there is a discretion as to whether this is done for agent organisms. However, in both cases there is an obligation to publish in the Gazette. The reason for a discretion concerning advertisement of agent organisms is that, once a target has been declared, it is deemed to be in the public interest to control that target by means of an agent organism. Provided the organism is acceptable under relevant Acts such as the Quarantine Act (see item 25), the public would be expected to have little further interest in the matter. Furthermore, while laypersons are capable of evaluating and expressing their attitude towards the control of a plant or animal pest, most would lack the expertise to evaluate agents on entomological or parasitological grounds. Advertisements would therefore probably obtain no response but would represent further administrative costs and delays. However, the discretion to proceed with advertisement and, if appropriate, public enquiry remains available for those cases where the agent organism may possess properties on which public opinion should be sought.

Clause 27: Consideration of submissions relating to target organisms

47. The Authority is required to consider responses to any notice which may be published in terms of Clause 26.

Clause 28: Inquiries relating to agent organisms

48. The provisions of this Clause are essentially the same as those applying to inquiries relating to target organisms in terms of Clause 19 (see item 39). This Section includes reference to the possibility of holding inquiries concerning target organisms and the relevant agent organisms

simultaneously. Identification of a target usually precedes research and development of agent organisms but where this is not the case, it would be administratively convenient and cost-effective to consider both matters at the same inquiry.

Clause 29: Declaration of target organisms

49. The basis on which a declaration is made, that is, acting in the public benefit to release an agent that causes no significant harm or significantly less harm than if it were not released, is the same as that applying to declaration of target organisms. In addition, the Authority must also be satisfied that biological control by the relevant agent would cause significantly less harm than if control were to be effected by other means, be they biological or otherwise. The Authority may attach conditions to the release of the organism, which could for example relate to ensuring that the physical release of the agents was conducted with due care by appropriate persons in specified areas, or that monitoring of environmental effects should be undertaken.

PART IV - SPECIAL DECLARATIONS OF TARGET ORGANISMS

Clause 30: Emergency declarations

50. This Clause provides criteria concerning an emergency. These include the Authority being satisfied that an emergency exists in terms of serious effects on the health of humans, animals or plants; significant harm to the economy; and significant damage to the environment. The purpose in providing for emergencies, rare though they are, is that observations of the normal requirements concerning public comment and enquiry would preclude effective provision of biological control measures in these cases.

Clause 31: Declarations of existing released organisms

51. The Bill effectively authorises all existing biological control programs, as if they had been declared in terms of the Bill. Existing programs, such as myxomatosis, are characteristically difficult or impossible to stop so that this provision essentially reflects the status quo. Furthermore, in the absence of any previous litigation surrounding a program, there is an implicit view that these are acceptable to the public. Nevertheless, the Authority may revoke declarations, including declarations under this Section, in terms of Clause 53 of the Bill.

Clause 32: Notice of proposed declaration under Section 31

52. The Bill does not require that every declaration under Clause 31 should be published in the Gazette. However, where some development concerning an existing biological control activity raises an issue, such as the discovery of a new agent organism, this Clause provides the opportunity for Gazettal, advertisement, possible public inquiry and declaration on the

same basis as in Parts II and III of the Bill. This ensures that developments concerning existing programs are not necessarily excluded from the Bill.

Clause 33: Inquiries relating to declarations under Clause 31

53. Where an inquiry is ordered to consider an existing program, the options, terms and conditions are the same as those applying to target and agent organisms (see Clauses 19 and 28).

Clause 34: Declaration of target and agent organisms under relevant State laws

54. This Clause, an equivalent version of which will appear in the complementary State legislation, ensures that where the provisions of the Bill are fulfilled and target and agent organisms are declared to enable release of the agent, then every other State can take the same steps under its relevant law if the Authority provides for this in the Gazette. That is, there is no need to duplicate the advertisement and public hearing of the Bill in each State.

PART V - RELEASE OF AGENT ORGANISMS

Clause 35: Release of agent organisms

55. The Bill provides that agent organisms may be released in a Territory where a declaration to this effect has been made in terms of the Bill. The same provision will be included in each State's complementary legislation. All conditions applying to the release must be observed. This is a fundamental provision of the Bill. It is one which has not previously been available and the absence of such a provision in any existing legislation provided the opportunity to institute common law action, such has occurred with Echium. This provision clearly reduces the right to instigate common law actions and it is for this reason that the Bill includes comprehensive provisions for public comment, public inquiry and review of administrative decisions.

Clause 36: No legal proceedings to be instituted in respect of release of agent organisms

56. This Clause stipulates that no legal action can be taken to stop release of agent organisms and that legal action to recover damages applies only to cases where incidental damage to other organisms was foreseen but was not taken into account, or where such damage could reasonably have been foreseen. The question of assistance for those who might be adversely affected by a biological control program is covered in Clause 38(3). Provided actions on a biological control program are taken in terms of the Bill prior court orders shall not prevent these actions from being taken. These actions would be matters such as the release of agent organisms or assisting others in doing so.

PART VI - BIOLOGICAL CONTROL UNDER STATE LAWS

Clause 37: Legal proceedings not to be instituted

57. The provisions of this Clause are the same as for Clause 36 (see item 56) except that it refers to legal actions which may or may not be taken in a court of a Territory, concerning existing court orders or actions taken under a relevant State law.

PART VII - INQUIRIES

Clauses 38 to 51: Commission of Inquiry

58. In ordering inquiries concerning target or agent organisms (see item 39, 48 and 53) the Authority may elect to order an inquiry according to the terms of this Part of the Bill. Clause 38 Sub Clause 1 provides that the Authority consult AAC before appointing a Commission. Clause 38 Sub Clause 3 provides guidelines for the terms of reference of an inquiry including the question of assistance to those who may be adversely affected by a particular biological control program should it proceed. The other provisions relate to the holding and conduct of inquiries by Government and are standard provisions.

PART VIII - MISCELLANEOUS

Clause 52: Act not to render other control illegal

59. This standard provision is amplified by Clause 5 (see item 25)

Clause 53: Revocation of declarations

60. If it is necessary to revoke declarations, in the event that it becomes clear that this is desirable, it is possible to do so. This provision should further reinforce the existing measures that are designed to ensure that only safe and appropriate biological control programs are able to proceed. This provision is likely to apply to existing targets and agents which, whether or not they were originally introduced as a biological control program, come to be regarded as undesirable.

Clause 54: Declarations to continue in operation

61. This provision ensures that it is not necessary to invoke the provisions of the Bill where further releases are made of an agent that has already been declared in terms of the Bill.

Clause 55: Service of documents on Authority.

62. The Commonwealth Department of Primary Industry will receive all applications and will make information available as required by the Bill.

Clause 56: Application for review

63. Provision for review by the Administrative Appeals Tribunal applies to a number of decisions which the Authority may take. In essence, these decisions are those which have the potential to reduce the opportunity for those opposing declaration of a target or agent to fully express their case. These decisions include whether or not to hold an enquiry; whether to follow the recommendation of a public inquiry concerning declaration of a target or agent organism; whether to advertise a notice of a proposed agent organism; declaration of existing released organisms; and revocation of declarations. In all these cases, it is practical and proper for the Authority to have a discretion, but it is clear that it is also in the public interest for these decisions to be reviewable.

Clause 57: Regulations

64. In the event that regulations are required, for example those relating to conditions of release of an agent organism, this may be done in terms of the Bill.

