



Biological Control Act 1984

No. 139 of 1984

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Biological Control Act 1984

No. 139 of 1984

An Act to make provision for the biological control of pests in the Australian Capital Territory, and for related purposes

[Assented to 25 October 1984]

[Date of commencement 22 November 1984]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Biological Control Act 1984*.

Interpretation

2. (1) In this Act, unless the contrary intention appears—
“agent application” means an application under section 22;
“agent recommendation” means a recommendation to the Authority by the Council that organisms of a particular kind should be declared to be agent organisms for the purposes of this Act;
“agent organisms” means organisms in respect of which there is in force a declaration by the Authority, under section 29, 30, 31 or 34, that the organisms are agent organisms for the purposes of this Act;

“Authority” means the Commonwealth Biological Control Authority established by section 8;

“Commonwealth Minister” or “the Minister” means the Minister for the time being administering this Act;

“control”, in relation to organisms, includes—

- (a) reduce the number of those organisms;
- (b) prevent an increase in the number of those organisms;
- (c) reduce the activity or appetite of some or all of those organisms; and
- (d) modify the behaviour or characteristics of some or all of those organisms;

“Council” means the body known as the Australian Agricultural Council;

“kind”, in relation to live organisms, means species, sub-species or variety;

“organism” means—

- (a) an organism (whether alive or dead and whether or not indigenous to Australia) other than man; 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 within the meaning of the preceding paragraphs;

“person” includes an organization;

“prescribed live organisms” means live organisms other than live vaccines or resistant cultivars;

“relevant State law” means a law of a State declared by the Authority under section 9 to be a relevant State law for the purposes of this Act;

“State” includes the Northern Territory;

“target application” means an application under section 13;

“target recommendation” means a recommendation to the Authority by the Council that organisms of a particular kind should be declared to be target organisms for the purposes of this Act;

“target organisms” means organisms in respect of which there is in force a declaration by the Authority, under section 20, 30, 31 or 34, that the organisms are target organisms for the purposes of this Act;

“Territory” does not include the Northern Territory.

(2) For the purposes of this Act, the Jervis Bay Territory shall be taken to be part of the Australian Capital Territory.

(3) For the purposes of this Act, organisms of a particular kind shall be taken to cause harm if the control of those organisms would be for the public benefit.

(4) For the purposes of this Act, organisms of a particular kind shall be taken to cause harm in the Australian Capital Territory if they cause harm in a part or parts only of that Territory.

(5) A reference in this Act to a recommendation by the Council that organisms of a particular kind should be declared to be agent organisms for the purposes of this Act includes a reference to a recommendation that organisms of a particular kind should be so declared if organisms to which a target recommendation applies are declared to be target organisms for the purposes of this Act.

(6) In this Act—

- (a) a reference to a Minister of a State shall, except in relation to the Northern Territory, be read as a reference to a Minister of the Crown of the State; and
- (b) a reference to a Minister of a State shall, in relation to the Northern Territory, be read as a reference to a person holding an office referred to in section 34 of the *Northern Territory (Self-Government) Act 1978*.

Biological control

3. For the purposes of this Act, organisms of a particular kind shall be taken to be controllable by biological means if, and only if, those organisms can be controlled by the release of live organisms of another kind.

Extension of Act to external Territories

4. (1) The Minister may, by notice published in the *Gazette*, declare that this Act extends to—

- (a) the Territory of Cocos (Keeling) Islands;
- (b) the Territory of Christmas Island;
- (c) the Coral Sea Islands Territory; or
- (d) the Territory of Ashmore and Cartier Islands.

(2) Where a declaration under sub-section (1) is in force in relation to a Territory, this Act has effect, in relation to that Territory, as if the references in this Act, other than in this section, to the Australian Capital Territory were references to that Territory.

Saving of other laws

5. (1) This Act shall be read and construed as being in addition to, and not in derogation of or in substitution for—

- (a) any other law of the Commonwealth, whether passed or made before or after the commencement of this Act; or
- (b) if this Act extends to an external Territory, any law of that Territory, whether passed or made before or after the commencement of this Act.

(2) Without limiting the generality of sub-section (1), this Act shall not be read or construed as authorizing or permitting the doing of any act in contravention of—

- (a) the *Quarantine Act 1908*; or
- (b) the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*.

Act to bind Crown

6. (1) This Act binds the Crown in right of the Commonwealth, of each of the States and of Norfolk Island.

(2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State or of Norfolk Island liable to be prosecuted for an offence.

Act not limited to agricultural pests

7. The fact that certain powers 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 be regarded as causing harm for the purposes of this Act are kinds that are harmful by reason of their effect on agriculture.

Commonwealth Biological Control Authority

8. (1) For the purposes of this Act, a Commonwealth Biological Control Authority is established by this section.

(2) From the commencement of this Act until 1 April 1985 the Authority shall be constituted by the Commonwealth Minister.

(3) Before 1 April in each year, the Commonwealth Minister, after consultation with the Council, shall, in writing, designate either the Commonwealth Minister, or the Minister of a State who is administering a relevant State law, as the Authority for the year commencing on that day and, subject to sub-section (4), during that year, the Authority shall be constituted by the Minister so designated.

(4) If, during a year for which a Minister of a State is designated as the Authority, there ceases to be a law of that State that is a relevant State law, the Authority shall cease to be constituted by that Minister and the Authority shall, for the balance of that year, be constituted by the Commonwealth Minister.

(5) Where—

- (a) the Authority is constituted by the Commonwealth Minister; and
- (b) another Minister of the Commonwealth is for the time being acting for and on behalf of the Commonwealth Minister,

a reference in this Act, other than in this section, to the Authority shall be read as including a reference to that other Minister.

(6) Where—

- (a) the Authority is constituted by a Minister of a State; and
- (b) another Minister of that State is for the time being acting for and on behalf of the first-mentioned Minister,

a reference in this Act, other than in this section, to the Authority shall be read as including a reference to that other Minister.

Relevant State laws

9. Where a law of a State—

- (a) provides for the control by biological means of organisms causing harm in the State;
- (b) establishes an authority having similar powers and functions to those of the Authority; and
- (c) contains provisions by virtue of which the authority so established and the Authority are constituted at all times by the same person,

the Authority may, by notice published in the *Gazette*, declare that law to be a relevant State law for the purposes of this Act.

Delegation

10. (1) The Authority may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Authority, delegate to an officer of the Department any of the powers of the Authority under this Act, other than—

- (a) the powers of the Authority under section 9, 19, 20, 28, 29, 30, 31, 33, 34, 38 or 53; or
- (b) this power of delegation.

(2) A power so delegated, 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 power by the Authority.

Operation of Industries Assistance Commission Act

11. Without limiting the generality of paragraph 4 (2) (a) of the *Industries Assistance Commission Act 1973*, for the purposes of that Act—

- (a) a declaration that organisms of a particular kind that have an adverse effect on the carrying on by a person of a business or activity are target organisms for the purposes of this Act; or
- (b) a declaration that organisms of another kind the release of which could control the population of organisms of the first-mentioned kind are agent organisms for the purposes of this Act,

shall be taken to be assistance by way of the doing of an act that would assist that person to carry on that business or activity.

PART II—TARGET ORGANISMS

Target organisms

12. (1) Subject to and in accordance with this Part, organisms of a particular kind may be declared to be target organisms for the purposes of this Act.

(2) Action for the declaration of target organisms in accordance with this Part may be commenced by—

- (a) a recommendation to the Authority by the Council; or
- (b) an application under section 13.

Target application

13. (1) Where a person considers that organisms of a particular kind are causing harm in the Australian Capital Territory and are, or are likely to be, controllable by biological means, the person may make an application to the Authority for a declaration that organisms of that kind are target organisms for the purposes of this Act.

(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 organisms of a particular kind shall set out—

- (a) particulars identifying the organisms;
- (b) particulars of the reasons why the organisms are considered to be causing harm in the Australian Capital Territory;
- (c) reasons why the applicant considers that the organisms are, or are likely to be, controllable by biological means; and
- (d) such other particulars (if any) as are prescribed.

Withdrawal of target application

14. (1) A person who has made a target application may withdraw that application at any time before the application is referred to the Council under sub-section 15 (1).

(2) The withdrawal of a target application is to 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.

Referral of target application to Council

15. (1) Subject to sub-section (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 organisms of a particular kind if—

- (a) other action to have them declared to be target organisms is being, or has been, taken under this Act; or

- (b) action to have them declared to be organisms that may be controlled by biological means is being, or has been, taken under a relevant State law.

Notice of rejection of target application

16. (1) If the Council, after considering a target application referred to it by the Authority, informs the Authority that it does not recommend that the organisms to which the application relates should be target organisms, the Authority shall cause to be given, in such manner as the Authority considers appropriate, to the person who made the target application and to the persons (if any) who made a later target application in respect of those organisms notice in writing stating that the Council does not recommend that those organisms should be target organisms.

- (2) A notice under sub-section (1) shall—
 - (a) if reasons have been given by the Council for not recommending that organisms to which the notice relates should be target organisms—set out those reasons; and
 - (b) if there are circumstances in which, in the opinion of the Authority, a target application in relation to those organisms might result in a recommendation by the Council that those organisms should be target organisms—specify those circumstances.

Notice of proposed target organisms

17. (1) Where the Council has recommended to the Authority that organisms of a particular kind should be target organisms the Authority shall publish in the *Gazette* and in such newspapers or journals as the Authority considers appropriate a notice that the Authority is contemplating declaring those organisms to be target organisms.

(2) Without limiting the generality of sub-section (1), a notice under that sub-section shall be published in each State and the Australian Capital Territory by being published in at least one newspaper circulating generally in that State or Territory.

(3) A notice under sub-section (1) in relation to organisms of a particular kind shall—

- (a) set out particulars identifying the organisms;
- (b) set out brief particulars of the reasons why the organisms are believed to be causing harm in the Australian Capital Territory;
- (c) set out brief particulars of the benefits (if any) resulting from the absence of biological control of the population of the organisms;
- (d) state that the Council has recommended that the organisms should be declared to be target organisms;
- (e) where the recommendation of the Council followed a target application in relation to the organisms—inform the public that copies of the target application can be perused at a place specified in the notice; and

- (f) invite any persons who object to, or support, the organisms being declared to be target organisms to submit written particulars of the grounds for that objection or support, as the case may be, 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 sub-section (1) in relation to a target application, the Authority shall cause copies of the application to be available for perusal at the place specified in the notice in accordance with paragraph (3) (e).

Consideration of submissions relating to target organisms

18. The Authority shall consider any submissions in response to an invitation referred to in paragraph 17 (3) (f).

Inquiries relating to target organisms

19. (1) Where the Authority, after—

- (a) complying with sections 17 and 18 in respect of a target recommendation;
- (b) consulting the members of the Council regarding 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 a State); and
- (d) considering any reports relating to the recommendation made by any 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) where the Authority considers it appropriate to do so, arrange for the Minister who administers the *Industries Assistance Commission Act 1973* to refer the recommendation to the Industries Assistance Commission for inquiry and report; or
- (g) where the Authority considers it appropriate to do so, arrange for the Minister who administers the *Environment Protection (Impact of Proposals) Act 1974* to direct that an inquiry be conducted under that Act in respect of the recommendation.

(2) Where the Authority takes action under paragraph (1) (e), (f) or (g) for an inquiry in relation to a target recommendation, the Authority shall not take any further action under this Act in relation to that recommendation

unless and until the Authority has considered the report made as the result of that inquiry.

Declaration of target organisms

20. (1) Where the Authority, after—

- (a) complying with the preceding provisions of this Part in relation to a target recommendation; and
- (b) considering all reports and other matters relating to that recommendation that the Authority considers it appropriate to consider,

is satisfied—

- (c) that organisms of the kind to which the recommendation relates are causing harm in the Australian Capital Territory;
- (d) that organisms of that kind are, or that there is a probability that organisms of that kind are likely to be, controllable by biological means; and
- (e) that—
 - (i) the control throughout Australia of organisms of that kind would not cause any significant harm to any person or to the environment; or
 - (ii) any harm caused to persons or to the environment by the control throughout Australia of organisms of that kind would be significantly less than the harm caused, or likely to be caused, by failure to control organisms of that kind throughout Australia,

the Authority shall, by notice published in the *Gazette*, declare organisms of that kind to be target organisms for the purposes of this Act.

(2) In paragraph (1) (e), “Australia” includes the external Territories (if any) in respect of which a declaration under sub-section (1) is in force.

PART III—AGENT ORGANISMS

Agent organisms

21. (1) Subject to and in accordance with this Part, prescribed live organisms of a particular kind may be declared to be agent organisms for the purposes of this Act.

(2) Action for the declaration of agent organisms in accordance with this Part may be commenced by—

- (a) a recommendation made to the Authority by the Council; or
- (b) an application under section 22.

Agent application

22. (1) Where a person considers that the release of prescribed live organisms of a particular kind would result in the control of—

- (a) target organisms of a particular kind or kinds; or
- (b) organisms to which a target recommendation applies or target recommendations apply,

(whether or not the organisms referred to in paragraph (a) or (b) can be controlled by existing agent organisms) the person may make an application to the Authority for a declaration that the first-mentioned organisms are agent organisms for the purposes of this Act.

(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 organisms of a particular kind shall set out—

- (a) particulars identifying the organisms;
- (b) particulars of the possible ways in which the applicant considers that the release of the organisms could control the relevant population of target organisms; and
- (c) such other particulars (if any) as are prescribed.

Withdrawal of agent application

23. (1) A person who has made an agent application may withdraw that application at any time before the application is referred to the Council under sub-section 24 (1).

(2) The withdrawal of an agent application is to 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.

Referral of agent application to Council

24. (1) Subject to sub-section (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 organisms of a particular kind if—

- (a) other action to have them declared to be agent organisms is being, or has been, taken under this Act; or

- (b) action to have them declared to be organisms that may be released to control the population of other organisms is being, or has been, taken under a relevant State law.

Notice of rejection of agent application

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

- (2) A notice under sub-section (1) shall—
 - (a) if reasons have been given by the Council for not recommending that organisms to which the notice relates should be agent organisms—set out those reasons; and
 - (b) if there are circumstances in which, in the opinion of the Authority, an agent application in relation to those organisms might result in a recommendation by the Council that those organisms should be agent organisms—specify those circumstances.

Notice of proposed agent organisms

26. (1) Where the Council has recommended to the Authority that prescribed live organisms of a particular kind should be agent organisms, the Authority shall publish in the *Gazette*, and may publish in such newspapers or journals as the Authority thinks appropriate, a notice that the Authority is contemplating declaring those organisms to be agent organisms.

- (2) A notice under sub-section (1) in relation to organisms of a particular kind (in this sub-section referred to as the “relevant organisms”) shall—
 - (a) set out particulars identifying the relevant organisms;
 - (b) specify the organisms which it is intended to control by the release of the relevant organisms;
 - (c) set out brief particulars of the manner in which the relevant organisms would control the organisms specified in the notice in accordance with paragraph (b);
 - (d) state that the Council has recommended that the relevant organisms should be declared to be agent organisms;
 - (e) where the recommendation of the Council followed an agent application in relation to the organisms—inform the public that copies of the agent application can be perused at a place specified in the notice; and
 - (f) invite any persons who object to, or support, the relevant organisms being declared to be agent organisms to submit written particulars of the grounds for that objection or support, as the case may be, 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 sub-section (1) in relation to an agent application, the Authority shall cause copies of the application to be available for perusal at the place specified in the notice in accordance with paragraph (2) (e).

(4) Where the Council has recommended to the Authority that 2 or more kinds of organisms should be agent organisms for the purpose of the control of the same population of particular organisms, a notice under sub-section (1) relating to one of those kinds may be combined with a notice under that sub-section relating to the other kind.

Consideration of submissions relating to agent organisms

27. The Authority shall consider any submissions in response to an invitation referred to in paragraph 26 (2) (f).

Inquiries relating to agent organisms

28. (1) Where the Authority, after—

- (a) complying with sections 26 and 27 in respect of an agent recommendation;
- (b) consulting the members of the Council regarding 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 a State); and
- (d) considering any reports relating to the recommendation made by any 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 organisms 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, the Authority may—

- (e) direct that an inquiry under Part VII be conducted in respect of the recommendation;
- (f) where the Authority considers it appropriate to do so, arrange for the Minister who administers the *Industries Assistance Commission Act 1973* to refer the recommendation to the Industries Assistance Commission for inquiry and report; or
- (g) where the Authority considers it appropriate to do so, arrange for the Minister who administers the *Environment Protection (Impact of Proposals) Act 1974* to direct that an inquiry be conducted under that Act in respect of the recommendation.

(2) An inquiry by virtue of paragraph (1) (e), (f) or (g) in respect of an agent recommendation that recommends that organisms of a particular kind should be declared to be agent organisms if organisms to which a target recommendation applies are declared to be target organisms and an inquiry by virtue of paragraph 19 (1) (e), (f) or (g), as the case may be, in respect of that target recommendation may be conducted as if they were one inquiry.

(3) Where the Authority takes action under paragraph (1) (e), (f) or (g) for an inquiry in relation to an agent recommendation, the Authority shall not take any further action under this Act in relation to that recommendation unless and until the Authority has considered the report made as the result of that inquiry.

Declaration of agent organisms

29. (1) Where the Authority, after—

- (a) complying with the preceding provisions of this Part in relation to an agent recommendation; and
- (b) considering all reports and other matters relating to that recommendation that the Authority considers it appropriate to consider,

is satisfied—

- (c) that the release of organisms of the kind to which the recommendation relates (in this sub-section referred to as the “relevant organisms”) could result in the control of target organisms of a particular kind or kinds in the Australian Capital Territory; and
- (d) that—
 - (i) the release of the relevant organisms would not cause any significant harm to any person or to the environment, other than the harm (if any) resulting from the control throughout Australia of target organisms of that kind or those kinds; or
 - (ii) any harm caused to persons or to the environment by the release of the relevant organisms, other than the harm (if any) resulting from the control throughout Australia of target organisms of that kind or those kinds, would be significantly less than—
 - (A) the harm caused, or likely to be caused, by failure to control target organisms of that kind or those kinds throughout Australia; and
 - (B) where target organisms of that kind or those kinds can be controlled by the release of other organisms or otherwise than by biological means—the harm (if any) caused, or likely to be caused, by controlling target organisms of that kind or those kinds throughout Australia by the release of those other organisms or by those other means,

the Authority shall, by notice published in the *Gazette*, declare the relevant organisms to be agent organisms for the purposes of this Act.

(2) A notice under sub-section (1) declaring organisms of a particular kind to be agent organisms may set out conditions under which those organisms may be released, which conditions may be or include—

- (a) conditions specifying the persons who may release those organisms; or
- (b) conditions specifying the circumstances in which those organisms may be released.

(3) In paragraph (1) (d), “Australia” has the same meaning as it has in paragraph 20 (1) (e).

PART IV—SPECIAL DECLARATIONS OF TARGET ORGANISMS AND AGENT ORGANISMS

Emergency declarations

30. (1) If the Authority is satisfied—

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

the Authority shall, by notice published in the *Gazette*, declare—

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

(2) A notice under sub-section (1) declaring organisms of a particular kind to be agent organisms may set out particulars of the conditions under which those organisms may be released, which conditions may be or include—

- (a) conditions specifying the persons who may release those organisms; or
- (b) conditions specifying the circumstances in which those organisms may be released.

Declarations of existing released organisms

31. (1) If the Authority is satisfied that—

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

the Authority may, by notice published in the *Gazette*, declare—

- (c) organisms of the second-mentioned kind to be target organisms for the purposes of this Act; and
- (d) organisms of the first-mentioned kind to be agent organisms for the purposes of this Act.

(2) A notice under sub-section (1) declaring organisms of a particular kind to be agent organisms may set out conditions under which the organisms may be released, which conditions may be or include—

- (a) conditions specifying the persons who may release those organisms; or
- (b) conditions specifying the circumstances in which those organisms may be released.

Notice of proposed declaration under section 31

32. (1) Where the Authority is contemplating making a declaration under section 31, the Authority may publish in the *Gazette* and in such newspapers or journals as the Authority considers appropriate a notice that the Authority is contemplating making that declaration.

(2) A notice under sub-section (1) shall—

- (a) set out particulars identifying the organisms that the Authority is contemplating declaring to be target organisms;
- (b) set out particulars identifying the organisms that the Authority is contemplating declaring to be agent organisms;
- (c) identify the occasions known to the Authority on which the organisms referred to in paragraph (b) were released; and
- (d) invite any persons who object to, or support, the declaration being made to submit written particulars of the grounds for that objection or support, as the case may be, to the Authority within 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 sub-section (1) in relation to a contemplated declaration, the Authority shall not make that declaration unless and until the Authority has considered any submissions in

response to an invitation referred to in paragraph (2) (d) in relation to the declaration.

Inquiries relating to declarations under section 31

33. (1) Where the Authority—

- (a) is contemplating making a declaration under section 31; and
- (b) after—

- (i) consulting the members of the Council regarding 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 a State); and
- (iii) considering any reports made by any 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 organisms 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,

the Authority may—

- (c) direct that an inquiry under Part VII be conducted in respect of the contemplated declaration;
- (d) where the Authority considers it appropriate to do so, arrange for the Minister who administers the *Industries Assistance Commission Act 1973* to refer the contemplated declaration to the Industries Assistance Commission for inquiry and report; or
- (e) where the Authority considers it appropriate to do so, arrange for the Minister who administers the *Environment Protection (Impact of Proposals) Act 1974* to direct that an inquiry be conducted under that Act in respect of the contemplated declaration.

(2) Where the Authority takes action under paragraph (1) (c), (d) or (e) for an inquiry in relation to a contemplated declaration, the Authority shall not make that declaration unless and until the Authority has considered the report made as the result of the inquiry.

Declaration of organisms declared under relevant State law

34. (1) Where organisms of a particular kind are organisms that for the purposes of a relevant State law may be controlled by biological means, the Authority may, by notice published in the *Gazette*, declare those organisms to be target organisms for the purposes of this Act.

(2) Where—

- (a) prescribed live organisms of a particular kind are organisms that for the purposes of a relevant State law may be released to control other organisms; and
- (b) those other organisms are target organisms,

the Authority shall, by notice published in the *Gazette*, declare those first-mentioned organisms to be agent organisms for the purposes of this Act.

(3) A notice under sub-section (2) declaring organisms of a particular kind to be agent organisms may set out conditions under which the organisms may be released, which conditions may be or include—

- (a) conditions specifying the persons who may release those organisms; or
- (b) conditions specifying the circumstances in which those organisms may be released.

PART V—RELEASE OF AGENT ORGANISMS

Release of agent organisms

35. (1) Subject to sub-section (2), agent organisms may be released in the Australian Capital Territory.

(2) Where a notice under section 29, 30, 31 or 34 declaring organisms to be agent organisms specified conditions under which the organisms may be released, those organisms shall not be released otherwise than in accordance with those conditions.

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

36. (1) Subject to sub-section (3), no action or other proceeding shall be instituted or continued in any court—

- (a) to prevent the release of agent organisms in accordance with section 35;
- (b) to recover damages in respect of any loss incurred, or any damage suffered, in a Territory by reason of the release of agent organisms in accordance with that section; or
- (c) to recover damages in respect of any loss incurred, or any damage suffered, in a State by reason of the release of agent organisms in accordance with that section.

(2) If, at the time at which organisms of a particular kind were declared under section 29, 30, 31 or 34 to be agent organisms, there was in force an order of a court relating to the release of organisms 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 organisms of that kind in the Australian Capital Territory in accordance with section 35; or
- (b) doing anything to assist or further the release of organisms of that kind in that Territory in accordance with section 35.

(3) Nothing in sub-section (1) prevents the institution or continuation in any court of an action or other proceeding to recover damages in respect of any

loss incurred, or any damage suffered, by reason of the release of agent organisms of a particular kind in accordance with section 35 where—

- (a) the loss incurred or the damage suffered was the result of the release having had a significant effect on other organisms;
- (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 organisms of that kind to be agent organisms, 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 STATE LAWS

Legal proceedings not to be instituted

37. (1) Subject to sub-section (4), no action or other proceeding shall be instituted or continued in any court to recover damages in respect of any loss incurred, or any damage suffered, in a Territory by reason of the release of organisms in accordance with a relevant State law.

(2) Subject to sub-section (4), no action or other proceeding shall be instituted or continued in any court of a Territory—

- (a) to prevent the release of organisms in accordance with a relevant State law; or
- (b) to recover damages in respect of any loss incurred, or any damage suffered, in a State by reason of the release of organisms in accordance with a relevant State law.

(3) If, at the time at which prescribed live organisms of a particular kind became organisms that could be released in accordance with a relevant State law, there was in force an order of a court relating to the release of organisms of that kind, no action or other proceeding shall be instituted or continued in any court of a Territory in respect of that order in so far as the order purports to restrict a person from—

- (a) releasing organisms of that kind in accordance with that law; or
- (b) doing anything to assist or further the release of organisms of that kind in accordance with that law.

(4) Nothing in sub-section (1) or (2) prevents the institution or continuation in any court of an action or other proceeding to recover damages in respect of any loss incurred, or any damage suffered, by reason of the release of organisms of a particular kind in accordance with a relevant State law where—

- (a) the loss incurred or the damage suffered was the result of the release having had a significant effect on other organisms;

- (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 by virtue of which organisms of that kind became organisms that could be released in accordance with the relevant State 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

Commissions of inquiry

38. (1) Where, in accordance with paragraph 19 (1) (e), 28 (1) (e) or 33 (1) (c), the Authority directs that an inquiry be conducted under this Part, the Authority shall, after consulting the members of 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 organisms of the kind to which the inquiry relates to be target organisms or agent organisms, as the case requires;
- (b) such relevant matters approved by the Council as the Authority, by notice in writing given to the Commissioner or to the Commissioner presiding at the inquiry, as the case requires, directs, which may be or include the following matter, namely, whether assistance should be given to any persons if a declaration is made in respect of those organisms; and
- (c) any other relevant matters 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 sub-section (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 as the 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 matters in respect of which directions have been given under paragraph 41 (2) (b) or matters the publication of which is excepted from sub-section 41 (5).

(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 Commonwealth, in or in relation to the conduct of an inquiry.

Remuneration of Commissioners

39. (1) A Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) A Commissioner shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Notice of inquiries

40. Before a Commission commences an inquiry, the Commission shall give reasonable notice, by advertisement published in the *Gazette* and in such newspapers or journals as it thinks necessary, 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.

Procedure at inquiries

41. (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 or affirmation.

(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 any other reason, the Commission 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 the Commission or of matters contained in documents lodged with the Commission.

(3) A Commission may, if it thinks fit, permit a person appearing as a witness before the Commission to give evidence by tendering, and verifying by oath or affirmation, a written statement.

(4) Where a Commission considers that the attendance of a person as a witness before the Commission would cause serious hardship to a person, the Commission may permit the person to give evidence by sending to the Commission a written statement, verified in such manner as the Commission allows.

(5) Where evidence is given to a Commission by a written statement in accordance with sub-section (3) or (4), the Commission shall make available to the public in such manner as the Commission 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.

- (6) Subject to this section and the regulations—
- (a) the procedure to be followed at an inquiry by a Commission is within the discretion of the Commission; and
 - (b) a Commission is not bound by the rules of evidence.

Power to summon witnesses

42. A Commissioner may, by writing signed by the Commissioner, 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.

Failure of witness to attend

43. 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 or herself from day to day unless excused or released from further attendance by or on behalf of the Commission.

Penalty: \$1,000 or imprisonment for 6 months, or both.

Power to administer oath or affirmation

44. A Commissioner may administer an oath or affirmation to a person appearing as a witness before the Commission.

Refusal to be sworn or to answer questions

45. A person appearing as a witness at an inquiry by a Commission shall not, without reasonable excuse—

- (a) refuse or fail to be sworn or to make an affirmation; or
- (b) refuse or fail to answer a question that the person is required to answer by the Commissioner 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.

Penalty: \$1,000 or imprisonment for 6 months, or both.

Protection of Commissioners and witnesses

46. (1) A Commissioner has, in the performance of the duties of a Commissioner, the same protection and immunity as a Justice of the High Court.

(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 High Court.

False or misleading evidence

47. (1) A person shall not, at a hearing before a Commission, give evidence that is to the knowledge of the person false or misleading in a material particular.

(2) An offence against sub-section (1) is an indictable offence and, subject to this section, is punishable, upon conviction, by imprisonment for a period not exceeding 2 years or by a fine not exceeding \$5,000, or both.

(3) Notwithstanding that an offence against sub-section (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(4) Where, in accordance with sub-section (3), a court of summary jurisdiction convicts a person of an offence against sub-section (1), the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding one year, or both.

Contempt of Commission

48. (1) 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.

Penalty: \$2,000 or imprisonment for one year, or both.

(2) An offence against sub-section (1) is punishable on summary conviction.

Powers of Commission in relation to documents produced

49. (1) A Commissioner, or a person assisting a Commission and authorized by a Commissioner to do so, may inspect any 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.

Allowances to witnesses

50. A witness summoned under this Act to appear at an inquiry by a Commission is entitled to be paid by the Commonwealth such allowances for the witness's travelling and other expenses as are prescribed.

Witness not to be prejudiced

51. (1) A person shall not—

- (a) use violence to or inflict injury on;
- (b) cause or procure violence, damage, loss or disadvantage to; or
- (c) cause or procure the punishment of,

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 any evidence given by the last-mentioned person before a Commission.

Penalty: \$2,000 or imprisonment for one year, or both.

(2) Without limiting the generality of sub-section (1), an employer shall not—

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

Penalty:

- (a) if the offender is a natural person—\$2,000 or imprisonment for one year, or both; or
- (b) if the offender is a body corporate—\$10,000.

(3) In any proceedings arising out of sub-section (2)—

- (a) if it is established that the employee was dismissed from, or prejudiced in, his or her employment and that, before he or she was so dismissed or prejudiced, he or she appeared as a witness, or gave any evidence, at an inquiry by a Commission—the burden lies on the employer of proving that the employee was not dismissed or prejudiced by reason that he or she so appeared as a witness or gave evidence; or
- (b) if it is established that the employee was dismissed, or threatened with dismissal, from his or her employment, or was prejudiced, or threatened with prejudice, in his or her employment and that, before he or she was so dismissed, threatened with dismissal, prejudiced or threatened with prejudice, he or she 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 or she proposed so to appear as a witness or to give evidence.

PART VIII—MISCELLANEOUS

Act not to render other controls illegal

52. Subject to sub-section 35 (2), nothing in this Act shall be taken to render unlawful any release of organisms for the purpose of the biological control of other organisms if the release of the first-mentioned organisms would, but for this Act, be lawful.

Revocation of declarations

53. (1) The Authority may, by notice published in the *Gazette*, revoke any declaration made under this Act.

(2) Where—

- (a) the Authority revokes a declaration declaring organisms of a kind to be target organisms; and
- (b) by reason of that revocation there would be no target organisms for the purpose of controlling which organisms of a kind have been declared to be agent organisms,

the Authority shall revoke the declaration declaring those last-mentioned organisms to be agent organisms.

Declarations continue in operation

54. Where a declaration in relation to agent organisms is in force, those organisms may be released in accordance with section 35 notwithstanding the length of the period of time that has elapsed since the last release of those organisms took place.

Service of documents on Authority

55. Where a person is entitled by this Act to make an application to the Authority or to submit particulars to the Authority, the person shall do so by causing the application or particulars to be lodged at the principal office of the Department in Canberra.

Application for review

56. (1) Application may be made to the Administrative Appeals Tribunal for review of—

- (a) a decision of the Authority for the purposes of section 19 not to hold an inquiry;
- (b) a decision of the Authority for the purposes of section 20, being a decision that is inconsistent with a finding or recommendation of a Commission referred to in Part VII, the Industries Assistance Commission, or a commission referred to in the *Environment Protection (Impact of Proposals) Act 1974*;
- (c) a decision of the Authority under section 26 not to publish a notice in any newspaper or journal;
- (d) a decision of the Authority for the purposes of section 28 not to hold an inquiry;

- (e) a decision of the Authority 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, the Industries Assistance Commission, or a commission referred to in the *Environment Protection (Impact of Proposals) Act 1974*;
- (f) a decision of the Authority for the purposes of section 30;
- (g) a decision of the Authority for the purposes of section 31, being a decision that is inconsistent with a finding or recommendation of a Commission referred to in Part VII, the Industries Assistance Commission, or a commission referred to in the *Environment Protection (Impact of Proposals) Act 1974*;
- (h) a decision of the Authority for the purposes of section 33 not to hold an inquiry; or
- (j) a decision of the Authority under section 53 to revoke a declaration.

(2) In sub-section (1), “decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Regulations

57. The Governor-General may make regulations, not inconsistent with this Act, prescribing all 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.