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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**BIOLOGICAL CONTROL AMENDMENT BILL 2016**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture and Water Resources  
the Hon. Barnaby Joyce MP)

# **BIOLOGICAL CONTROL AMENDMENT BILL 2016**

## **GENERAL OUTLINE**

The Biological Control Amendment Bill 2016 (the Bill) makes legislative amendments required to support national programmes for the biological control of damaging pests and weeds. The Bill clarifies the definition of an organism under the *Biological Control Act 1984* (the Act) to reflect the use of viruses and sub-viral agents as agent organisms and target organisms for biological control activities. This is consistent with the requirements of national biological control programmes for pests and weeds that impact agricultural production and the environment, and with the original intent of the Act. Viruses are known to be effective agents for biological control, and have been used successfully in Australia to control wild rabbit populations and mitigate associated economic and environmental impacts. For example, the combined effect of myxoma virus (myxomatosis) and calicivirus (rabbit haemorrhagic disease virus), released in Australia in 1950 and 1996 respectively, limits wild rabbit populations to about 15 per cent of their potential numbers.

The classification of viruses as organisms and as living entities is a matter of ongoing scientific debate. In light of this debate, the Bill clarifies the definition of an organism for the purpose of the Act, and omits the term 'live', to remove any ambiguity. The Bill provides strengthened legislative authority for future biological control programmes where scientific consensus recommends the use of viruses or sub-viral agents as agent or target organisms. By removing any doubt about the status of viruses under the Act, the Bill provides greater certainty for stakeholders who deliver and/or benefit from biological control programmes, including government agencies, researchers, farmers, land managers and the community.

The Act only applies in relation to the Australian Capital Territory (including Jervis Bay Territory). The Act is supported by 'mirror' biological control legislation in all states and the Northern Territory. The Bill makes a provision to ensure that the minor amendments made to the Act do not impact the validity of 'relevant state law' declarations previously made under the Act to support the mirror legislation scheme.

## **Background**

The *Biological Control Act 1984* provides a legislative framework for biological control activities in the Australian Capital Territory. The Act is used to assess and authorise biological control activities (including the release of biological control agents) and to ensure that biological control activities are not subject to legal proceedings intended to prevent the activities from being undertaken. The Act provides an opportunity for assessing proposed biological control activities to ensure they are in the public interest by publishing proposals, seeking public comment, and, where appropriate, ordering public inquiries to investigate and report on the implications of proposals.

Biological control is an important tool for managing invasive pests and weeds that impact on agriculture and the environment through the use of the pest's 'natural enemies'. Biological control agents include insects, fungi, bacteria and viruses that specifically target pest species.

## **Consultation**

There is broad community support for the use of biological control agents as part of an integrated approach to managing pest animals and weeds.

The Department of Agriculture and Water Resources has consulted the Office of the Australian Chief Veterinary Officer and the Office of the Australian Chief Plant Protection Officer, and they support the proposed approach.

The Department of Agriculture and Water Resources has consulted state and territory government agencies responsible for complementary or ‘mirror’ biological control legislation about the proposed amendment. These agencies have indicated that they will consider similar amendments once the Commonwealth Bill has been passed. The Department of the Environment was also consulted.

## **Financial Impact Statement**

There is no financial impact associated with this Bill.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Biological Control Amendment Bill 2016**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Bill**

The Biological Control Amendment Bill 2016 (the Bill) amends the definition of an organism under the *Biological Control Act 1984* (the Act) to reflect the use of viruses and sub-viral agents as agent organisms or target organisms under the Act. By clarifying the definition of an organism for the purpose of the Act, the Bill will support national biological control programmes for the control of pests and weeds that impact on agriculture and the environment.

The definition of an organism and the status of viruses as living entities are matters of ongoing scientific debate and as such, the Bill clarifies the definition of an organism for the purpose of the Act and omits the term ‘live’, to remove any ambiguity. The Bill provides strengthened legislative authority for future biological control programmes where scientific consensus recommends the use of viruses or sub-viral agents as agent or target organisms. By removing any doubt about the status of viruses under the Act, the Bill provides greater certainty for stakeholders who deliver and/or benefit from biological control programmes, including government agencies, researchers, farmers and land managers and the community.

The Act only applies in relation to the Australian Capital Territory (including Jervis Bay Territory). The Act is supported by ‘mirror’ biological control legislation in all states and the Northern Territory. The Bill makes a provision to ensure that the minor amendments made to the Act do not impact the validity of ‘relevant state law’ declarations previously made under the Act to support the mirror legislation scheme.

#### **Human rights implications**

This Bill does not engage any of the applicable rights or freedoms.

The Act provides for the declaration of agent and target organisms for biological control activities. The definition of an organism under the Act explicitly excludes humans.

#### **Conclusion**

This Bill is compatible with human rights as it does not raise any human rights issues.

**The Hon. Barnaby Joyce MP, Minister for Agriculture and Water Resources**

## **BIOLOGICAL CONTROL AMENDMENT BILL 2016**

### **NOTES ON ITEMS**

#### **Clause 1: Short Title**

Clause 1 is a formal provision specifying that the short title of the Act may be cited as the *Biological Control Amendment Act 2016*.

#### **Clause 2: Commencement**

Clause 2 provides for the commencement of the Act.

Sections 1–3 commence on the day that the Act receives Royal Assent. Schedule 1 will commence on a day to be fixed by Proclamation, following consultation with the states and the Northern Territory about timing for equivalent amendments to mirror biological control legislation. The successful operation of the mirror law scheme is dependent on national consistency.

#### **Clause 3: Schedules**

Clause 3 provides that legislation specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned and that any other item in a Schedule to this Act has effect according to its terms.

### **Schedule 1 – Amendments**

#### ***Biological Control Act 1984***

##### **Item 1 Subsection 2(1) (definition of *kind*)**

This item provides for *kind* to relate to viruses and sub-viral agents in addition to live organisms, taking account of ongoing scientific debate about whether a virus is a living entity. This clarification supports declarations of viruses (or sub-viral agents) of a particular kind as agent organisms under Part III and Part IV of the Act, or as target organisms under Part II and Part IV of the Act.

##### **Item 2 Subsection 2(1) (at the end of the definition of *organism*)**

This item clarifies the definition of an organism for the purpose of the Act by specifically including viruses or sub-viral agents. The definition of an organism is a matter of ongoing scientific debate, therefore clarification is provided to support future declarations of viruses (or sub-viral agents) as agent organisms under Part III and Part IV of the Act, or as target organisms under Part II and Part IV of Act.

##### **Item 3 Subsection 2(1) (definition of *prescribed live organisms*)**

This item repeals existing sub-section 2(1) (definition of *prescribed live organisms*) to support the addition of a new subsection under item 3, which replaces *prescribed live organisms* with *prescribed organisms*.

#### **Item 4            Subsection 2(1)**

This item replaces the definition of *prescribed live organisms*, which is repealed under item 2, with the new definition of *prescribed organisms*. Viruses and sub-viral agents are specifically mentioned in addition to ‘live organisms’ because the status of viruses as living entities is a matter for ongoing scientific debate. This item supports the declaration of viruses and sub-viral agents as agent organisms under Part III and Part IV of the Act. Consistent with the original definition of *prescribed live organisms* under the Act, live vaccines and resistant cultivars are excluded, as 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 Act.

#### **Item 5            Section 3**

This item provides that biological control for the purposes of the Act is confined to the control of *organisms* of a particular kind by *prescribed organisms* of another kind, which includes viruses and sub-viral agents. The status of viruses as living entities is a matter of ongoing scientific debate, so ‘live’ is omitted from this section to remove ambiguity about the use of viruses (and sub-viral agents) in biological control programmes. This item does not alter the original understanding of section 3 whereby natural competition within species (by selected cultivars, for example) and chemical control are not interpreted as biological control.

#### **Item 6            Subsections 21(1), 22(1) and 26(1)**

This item removes ‘live’ from references to *prescribed live organisms* in Part III. The term *prescribed organisms* is defined under subsection 2(1) by item 3, and replaces the term *prescribed live organisms*, which is repealed by item 2.

#### **Item 7            Paragraphs 30(1)(b), 31(1)(a) and 34(2)(1)**

This item removes ‘live’ from references to *prescribed live organisms* in Part IV. The term *prescribed organisms* is defined under subsection 2(1) by item 3, and replaces the term *prescribed live organisms*, which is repealed by item 2.

#### **Item 8            Subsection 37(3)**

This item removes ‘live’ from the reference to *prescribed live organisms* in Part VI. The term *prescribed organisms* is defined under subsection 2(1) by item 3, and replaces the term *prescribed live organisms*, which is repealed by item 2.

#### **Item 9 Declarations of relevant State laws**

This item provides that existing declarations that have been validly made under section 9 of the Act are not intended to be impacted by the amendments made by items 1–8, and will continue in effect after commencement of this Act. The Authority will also manage existing declarations made under section 9 (for example, amend, revoke and/or remake), in consultation with the Minister of the State administering the law to which the declaration relates.