

SOUTH AUSTRALIAN GOVERNMENT

**REVIEW OF THE
ANIMAL AND PLANT CONTROL (AGRICULTURAL
PROTECTION AND OTHER PURPOSES) ACT, 1986**

GREEN PAPER

SEPTEMBER 1995

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FOREWORD

In 1987 the then Government introduced a process of legislative review designed to remove or streamline regulations which impede the State's economic development or are a burden on efficiency. The process was later extended to Acts which establish statutory authorities.

While the present Government has added certain refinements to the review process, it supports the principles set by its predecessor. In particular, the Government believes that industry and public opinion on the amendment or repeal of Acts should be sought by means of Green Papers.

This Green Paper on the review of the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* summarises the history and purpose of the Act and the implementation of animal and plant control in South Australia under the provisions of the Act.

The Paper also summarises the cost benefits of animal and plant control. The benefits emanate from the protection of agriculture, the environment and public health from vertebrate animals and plants. Recent estimates of the benefit/cost ratios for some vertebrate pest control programs have ranged from 22:1 to in excess of 300:1, for example.

The current Act establishes a system having a central Commission which provides administrative, technical and research support to control boards which implement animal and plant control programs required under the Act. Control boards are closely linked with local government, giving the system a strong local community base.

The legislation requires landowners to control proclaimed animals and plants on their properties and adjoining roadsides, and provides control boards with a support and regulatory system which ensures responsive and successful control programs in their areas.

The legislation also provides for the control of the entry, movement and keeping of exotic animals based on their pest potential.

Considerable consultation occurred with Commission and board members and staff during the preparation of this Green Paper which allowed for both landowner and technical considerations.

The outcomes from these consultations are given in Section 7, Assessment of Current Situation.

The proposed amendments in the Green Paper are not intended to repeal the Act or markedly change the provisions of animal and plant control in South Australia, but they are intended to improve the efficiency of the administration of the Act, to facilitate and encourage landowners to control proclaimed animals and plants, to encourage the integration of animal and plant control with other land management activities, and to maintain the strong regulatory support for control boards to apply the provisions of the Act.

The protection of agriculture, the environment and public safety from pest animals and plants is a major issue in South Australia.

I invite submissions on the contents of the Green Paper for consideration as part of the legislative review. Written comments should be forwarded by 15 December, 1995 to:

The Presiding Officer
Animal and Plant Control Commission
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ADELAIDE 5001



Dale Baker
MINISTER FOR PRIMARY INDUSTRIES
MINISTER FOR MINES AND ENERGY

1. INTRODUCTION

1.1 Aim of Green Paper

This Green Paper invites public comment on the future need for and nature of the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act, 1986*.

As indicated in the Minister's foreword to this Green Paper, the present Government substantially supports the review principles initiated by its predecessor in 1987. Using the *Subordinate Legislation Act 1978*, the principles aim to promote the economic development of South Australia by -

- eliminating unwarranted restrictions to competition, innovation and development.
- reducing the costs of delays imposed by unnecessary controls on the private sector.
- cutting the costs of regulation to government by the repeal of obsolete laws, rationalising areas of overlap in regulation and streamlining the administration of remaining controls.

Later the Government gave an undertaking that the legislation establishing statutory authorities would undergo similar review with a continued commitment to public and industry involvement in the review process.

In such cases the questions requiring assessment are -

- whether the purposes for which the statutory authority was established are relevant or desirable today.
- whether the statutory authority and the functions it performs provide the most effective, efficient and economic system for achieving the purposes for which the statutory authority was established.
- whether the structure of the statutory authority is appropriate to the functions it performs.
- whether the work or functions of the statutory authority duplicate or overlap in any respect the work or functions of another authority, agency, body or person; and
- whether the cost to the State of maintaining the statutory authority is warranted.

Although Green Papers are designed to prompt industry and public involvement in a review, their findings do not bind the Government to a particular course of action.

1.2 Process of the Review

This Green Paper has been developed from the comments made by members and staff of the Commission and control boards at a series of meetings held across the State. Attendees at the meetings contributed in an open forum to the identification of the strengths, weaknesses, opportunities and threats of the current Animal and Plant Control Act.

A total of seven meetings were attended by about 190 people closely involved in the administration and implementation of the requirements of the Act.

An assessment of the current situation of the Act emanating from these meetings is given in Section 6 of the Paper; the proposed revisions to the Act, given in Section 7 are based on the outcomes of the meetings.

The attendees were also given the opportunity to comment on a Discussion Paper which was the basis for this Green Paper. Comments were received from 24 control boards and several individuals.

A major outcome of the meetings was the unanimous view that the current Act should be improved through revisions, rather than be repealed and a completely different structure be set up to facilitate animal and plant control in South Australia.

2. HISTORY OF THE ANIMAL AND PLANT CONTROL ACT

Legislation for the control of declared or proclaimed plants and animals were some of the earliest legislation proclaimed in the colony of South Australia. For example the Legislative Council considered legislation to compel land occupiers to control Scotch thistle in October 1851, three months after the legislature was formed. As a result, the *Thistle Act* of 1852 was proclaimed. In 1862 the relevant legislation provided for notices to be issued to compel destruction of declared weeds on occupied land and half of adjoining roadsides. Local government became responsible for enforcing the law at this time. Subsequent legislation led to the appointment of authorised weeds officers. The *Pest Plants Act 1975* introduced a statutory body to develop appropriate policy State-wide and also introduced the concept of "community pest plants" to protect the community from non-agricultural weeds.

Similarly, the early *Rabbit Destruction Act* of 1875 obliged farmers and graziers to control rabbits, with this control being supervised by district councils in those parts of the State covered by local government. Later legislation gave the South Australian Government the ability to employ rabbit control groups to control rabbits on the properties of uncooperative land managers on a cost-recovery basis. The *Vertebrate Pests Act 1975* provided adequate funds for scientific investigation of vertebrate pest problems, along with a State-wide statutory framework and statutory body to set appropriate policy, and a strong system of local government control so that these policies were relevant to local needs and conditions.

In August 1986 the Animal and Plant Control Bill was first considered by Parliament and assented to in December 1986. It was proclaimed fully operative on 1 July 1987 (some parts of the Act were proclaimed operative on 5 March 1987 to allow the new Commission to be appointed before the Act became fully operational).

The Animal and Plant Control Act replaces the *Pest Plants Act, 1975* and the *Vertebrate Pests Act, 1975* and provides for an integrated, effective system of animal and plant control under a single authority, the Animal and Plant Control Commission.

3. PURPOSE OF THE ANIMAL AND PLANT CONTROL ACT

The purpose of the Animal and Plant Control Act is "to provide for the control of animals and plants for the protection of agriculture and the environment and for the safety of the public; to repeal the *Vertebrate Pests Act, 1975*, and the *Pest Plants Act, 1975*, and for other purposes".

This Act does not have a list of objects, however, the Corporate Plan of the Animal and Plant Control Commission (henceforth referred to as the Commission), released in 1990 and updated in 1992, contains a set of goals which are relevant to this Discussion Paper.

The Commission's Corporate Goals are to:

Protect and maintain the actual and potential productivity of agricultural resources.

Protect and maintain the value and integrity of natural and constructed environments from deleterious plants and animals for the benefit of the entire community.

Increase the contribution of agricultural and natural environments to economic and social well-being by decreasing the overall long-term costs in protecting these environments.

Provide adequate protection of the public from harmful plants and animals.

Ensure that control methods are consistent with adequate environmental protection.

Promote an understanding and awareness of the contribution to economic and social well-being which derives from ensuring protection from threatening plants and animals.

The Act provides a means to integrate the protection of agricultural production and environmental quality. Such protection is an integral component of land and natural resource management, which is fundamental to our well-being and which is attracting increasing community interest and support.

4. IMPLEMENTATION OF ANIMAL AND PLANT CONTROL

The provisions of the Act are implemented through the activities of the Animal and Plant Control Commission (mainly State-wide policy, research and technical) and local Animal and Plant Control Boards (mainly local policy and control programs) (henceforth referred to as control boards)

4.1 Animal and Plant Control Commission

The Commission is responsible for ensuring that the provisions of the Act are applied throughout the State.

The functions of the Commission are to:

- make recommendations in relation to the establishment of control boards;
- make recommendations in relation to the classes of animals and plants to which this Act should apply;
- make recommendations in relation to the making of regulations under this Act;
- determine applications for permits for movement or sale of specified plants, or movement, keeping and sale of specified animals.

- conduct and direct research into the control of animals and plants to which this Act applies or may apply;
- collate and maintain a record of the species, population density and distribution, within the State, of animals and plants to which this Act applies or may apply;
- develop, implement and advise on co-ordinated programs for the destruction or control of animals and plants that are required to be destroyed or controlled in pursuance of this Act;
- carry out measures for the destruction or control of animals and plants on unalienated Crown lands that are required to be destroyed or controlled in pursuance of this Act;
- consult and co-operate with the Minister for the Environment and Natural Resources and the Department of Environment and Natural Resources in the implementation of any programs devised by that Department with the approval of that Minister for the control of native animals;
- consult and co-operate with the Minister for the Environment and Natural Resources and the Department of Environment and Natural Resources in the control of animals and plants for the protection of native animals and plants;
- ensure that the provisions of this Act are carried out and enforced and to perform such other functions as are assigned to the Commission by this Act or the Minister.

The Commission is comprised of seven members, each appointed by the Governor. Six members are nominated by the Minister for Primary Industries - one public servant with appropriate knowledge of agriculture, two chosen from a panel nominated by the Local Government Association of South Australia and not less than four primary producers. One member is nominated by the Minister for the Environment and Natural Resources.

The Commission has staff, employed by Primary Industries, South Australia, who are involved in administrative, research, advisory and regulatory activities.

The State Government provides funds through 'The Animal and Plant Control Commission Fund' to finance the Commission's activities.

The Commission reports annually to the Minister for Primary Industries on its audited accounts and activities.

4.2 Animal and Plant Control Boards

Each local government body (municipalities and district councils) must participate in the control board system, either in single council or multi-council control boards. There are currently 30 multi-council boards and 32 single council boards, including urban councils with the power, duties and functions of a control board.

Each control board is responsible for ensuring that the provisions of the Act are applied in the area of the board.

The functions of a control board are to -

- ensure that the provisions of this Act are carried out and enforced within the area of the control board;

- co-operate with the Commission, other control boards and any prescribed control body in the development and implementation of co-ordinated programs for the destruction or control of animals and plants that are required to be destroyed or controlled in pursuance of this Act;
- carry out inspections within the area of the control board in order to determine whether the provisions of this Act are being complied with;
- collate and maintain records of the species, population density and distribution within the area of the control board of animals and plants that are required to be destroyed or controlled in pursuance of this Act;
- discharge the duties and obligations imposed on the control board by or under this Act;
- perform other functions necessary or incidental to the foregoing.

The number of members in each control board is negotiated between member council(s) and the Commission, and the members are appointed by the member council(s). Each control board has a secretary and local authorised officer(s).

Authorised officers have extensive powers under the Act to assist them carry out their duties and functions and enforce the provisions of the Act where necessary.

Each control Board receives funds for administering the Act from:

- constituent council(s) (maximum 4% of rural rate revenue plus 1% of urban rate revenue).
- subsidies and grants paid by the Commission (includes a statutory subsidy of 50¢ for each council \$).
- investments.
- penalties paid to the board under the Act.
- borrowings.

Control boards may also carry out contract control work for local landowners or other control boards and agencies on a full cost recovery basis.

4.3 Landowners

Landowners throughout the State are primarily responsible and bound under the Act for animal and plant control on their own land. This responsibility involves both private landowners and the Crown, through State government departments managing land. The Commission is responsible for animal and plant control on unoccupied Crown land and funds control on roadsides adjoining Crown lands, including railways. The Act does not have jurisdiction over land owned by the Commonwealth Government.

In effect, most landowners meet their obligation to control pest animals and plants on their own land because it is in their own economic and resource management interests to do so.

The roles of the Commission and control boards are to ensure that appropriate and cost-effective control methods are available to landowners. However, in some circumstances a significant proportion of the benefit from control may be to the wider community, either in terms of neighbouring landowners or in terms of general community interest. In such cases, the community through the control board becomes involved in encouraging and if necessary enforcing control in the community's interest. The Commission is currently responsible for enforcing control of proclaimed pest animals while control boards are responsible for enforcing control of proclaimed pest plants. In the latter case the Commission acts as a review agent.

5. COSTS AND BENEFITS OF ANIMAL AND PLANT CONTROL

The following payments were made from the Animal and Plant Control Commission Fund for the calendar year 1994:

Salaries and related expenses	\$1.1 million
Operating expenses (including Members sitting fees and allowances)	\$0.3 million
Control Boards and Prescribed Control Bodies	
Subsidies (Statutory)	\$1.0 million
Special Grants	\$0.8 million
Control Work on unoccupied Crown lands and roadsides adjoining Crown lands	\$0.4 million
Total payments	\$3.6 million

Additional funds come from industry and government trust funds for research programs (totalling \$0.3 million p.a. in 1994), and Local Government contributions to control boards (totalling \$2.0 million p.a. in 1994).

The benefits from animal and plant control arise from the efforts of the Commission and its staff, the efforts of control boards and, most importantly, the efforts of landowners throughout the State. Unfortunately, data are not available to estimate landowners' total annual expenditure on proclaimed animal and plant control.

A review of the Department of Primary Industries in 1992 recognised the significant role of the Commission's activities in resource protection. Such benefits can not all be readily measured in dollar terms, eg the economic value of protecting native flora and fauna. However, the community is placing increasing value on conservation and biodiversity.

Estimates of the annual benefits from the control of vertebrate pests and plants attributed to Commission programs in agriculture are:

Pest	Current annual benefit (\$m)
Rabbits	62
Dingoes ^a	9.4
Other vertebrate pests	1.4
Pest plants	25.6
Exotic animals ^b	72.8
Exotic disease ^c	0.5
Total	171.7

^aBenefit accrued from both APCC and Dog Fence Board activities

^bThe current annual benefit for prevention of new exotic animals establishing.

^cThe proportion of the notional cost attributable to feral animals of insurance against the entry into Australia of an exotic animal disease

Local government's financial contribution to control boards is estimated to provide an additional estimated annual benefit of \$13m from proclaimed plant control.

These estimates of the value of Commission programs clearly justify Commission's activities, independent of additional major benefits afforded by the protection of natural resources from vertebrate pests and plants in South Australia.

6. RELATED LEGISLATION

Other areas of resource management are covered by the following Acts;

- * *Dog Fence Act, 1946;*
- * *Soil Conservation and Land Care Act, 1989;*
- * *Water Resources Act, 1990;*
- * *Pastoral Land Management and Conservation Act, 1989;*
- * *Native Vegetation Act, 1991;*
- * *Coast Protection Act, 1972;*
- * *National Parks and Wildlife Act, 1972;*
- * *Catchment Water Management Act, 1995;*
- * *Dog and Cat Management Act, 1995;*
- * *Seeds Act, 1979*

The Commission is bound by the provisions in the *Prevention of Cruelty to Animals Act 1985* with programs controlling proclaimed animals.

The Commission is involved in non-legislative measures to encourage close co-operation in the administration of these Acts. For example, the Commission works closely with the Dog Fence Board on controlling dingoes along the dog fence, both in terms of research to improve the efficiency of dingo control and in joint control programs. The Commission and Soil Conservation Council hold joint meetings and encourage local animal and plant control boards and soil conservation boards to be involved in common projects locally, particularly in district planning. A number of people are currently secretaries or members of both their local animal and plant control board and soil conservation board.

The Commission is currently discussing ways that the requirements of the Animal and Plant Control Act and the Native Vegetation Act can be administered in common areas, eg the control of rabbits in roadside vegetation.

The South Australian Natural Resources Council is currently reviewing strategies to facilitate integrated natural resource management in the State; outcomes from this review should further encourage close cooperation in the administration of the above Acts.

The current review of the Animal and Plant Control Act is being carried out at the same time as a review of the *Soil Conservation and Land Care Act, 1989*. The two reviews were planned for the same time to provide an opportunity to link areas of common interest between animal and plant control and soil conservation.

7. ASSESSMENT OF CURRENT ACT AND ITS REVISION

The following comments on the current Act and its revision have mainly arisen from the outcomes of the meetings described in Section 1.2.

7.1 Strengths

The object of the Act to provide for the protection of agriculture, the environment and public safety was strongly supported and the implementation of the provisions of the Act was considered to be effective. The Act was considered to be more effective than comparable legislation in other States.

Furthermore the Commission has Executive Powers which are essential to respond quickly to emergency situations which can occur with new outbreaks of exotic animals and plants.

The current system of a Commission and control boards, each operating autonomously, was also strongly supported because it is community-based. It was agreed that the aims of the Act were suitable, especially that the responsibility for the control of animals and plant pests rests with landowners, whether they be private or the State government.

The operations of control boards were seen to be well supported by the regulatory power of the Act; by funding linked to State and local government sources; by employment of qualified authorised officers and secretaries; and by the Commission which provided support with research, policy, technical information and training. The Commission was also seen to be an impartial agency which could help resolve conflicts between control boards and landowners.

Another strong attribute of the current system was considered to be the flexibility in operations afforded to control boards so that they can develop policy and control strategies to accommodate local issues.

7.2 Weaknesses

The main weaknesses perceived in the current Act relate to the implementation of control programs and include:

- differences in the provisions for animals and plants. For example, landowners are responsible for carrying out the control of proclaimed animals on roadsides. Control boards are responsible for the control of proclaimed plants on roadsides, but must recover the cost of any control from adjoining landowners. Control boards are also responsible for the enforcement of proclaimed plant control. However, the Commission is responsible for the enforcement of proclaimed animal control. (The differences between the administration of the control of animals and plants are a carry-over from the amalgamation of the *Vertebrate Pests Act, 1975* and the *Pest Plants Act, 1975*.)
- different policies on the control of animals and plants amongst boards. Such differences can make the enforcement of control difficult in the case of landowners adjoining a different board which may have a completely different policy with respect to a given pest species.
- the current perception that the Act is biased towards regulation rather than facilitation. Current expressions within the Act eg. authorised officers, proclaimed animals and plants, were not considered to support a facilitatory ethos. However, it was also considered that the regulatory power of the Act is most important, but only when it is required.
- conflict between pest control and conservation of native vegetation, particularly with the control of rabbits along roadsides.
- lack of control of movement of machinery, soil, produce and livestock within and amongst regions. The movement of such commodities can contribute greatly to the spread of unwanted plant species.
- lack of formal provisions to inform potential buyers of land of the proclaimed animal and plant status of properties and their responsibilities with such pests.

Other perceived weaknesses related to administrative issues which can hinder the efficiency of the operations of the Commission and control boards. These weaknesses include:

- the selection, term of office and duties of control board members. There is strong consideration that control board members should be elected for their skills and commitment to animal and plant control, and not necessarily be local government councillors. A term of two years a member, in line with local government elections, is suggested.

- the roles of control board members, secretaries and authorised officers are not clearly defined in the Act. Clear roles are required to provide a stable organisational structure within control boards and to determine the conditions of employment of the officers.
- financial provisions and related matters. Some control boards consider that the financial year in the Act should be changed from the current calendar year to the standard financial year, while equally, others considered that it should remain as the calendar year. There is concern that the formula used by the Commission to determine authorised officer content and funding levels for control boards is not appropriate and should be clearly defined. There is some consideration that the level of funding should be based on performance. Control boards are critical of the problems associated with the recovery of debts and the effect that they have on their cash flow, particularly when the debt is against the land and can not be recovered until the sale of the land.

The selection, training and career structure of authorised officers were identified as weaknesses. There is a general feeling that the professional status of authorised officers could be increased with training, competency standards and minimum qualifications for initial employment. However, it is also considered that the limited career opportunity for authorised officers could temper this development.

The Act is considered to lack sensitivity for community considerations which probably reflects the previously mentioned weakness that the Act is perceived to be regulatory rather than facilitatory. There is also consideration by some people that the Act is incompatible with other related legislation in South Australia and interstate.

7.3 Opportunities

The opportunities, together with the weaknesses, provide an insight into the provisions of the Act which could be revised to improve the efficiency of the Act. The review and expected revision of the Act is seen as a great opportunity to promote and publicise to government and the community the need for animal and plant control and the Commission/control board system.

Similar to the weaknesses, the opportunities reflect the need to integrate the Act and its administration with other land management activities. Changes may include broadening the objects of the Act to facilitate this integration, eg. involvement in other land management issues and exotic animal disease preparedness programs. There also should be a change in the philosophy (intent) of the Act from regulatory to facilitatory, eg. by including facilitatory activities in the functions of the Commission, control boards and authorised officers and by changing the name of the Act and the name of the authorised officers.

The review of the Act is also seen to offer the opportunity to address a number of administrative issues, including:

- clear definition of the objects of the Act;
- clear definition of terms, eg. "suitably qualified person"
- consistency of provisions for animal and plant control;
- consistency of policy amongst control boards;
- the Local Government Association of SA to elect its own representatives on the Commission;
- specifying the term for control board members;

- chair of control board meetings to only have a deliberate vote and not a casting vote;
- specifying a more stringent time for the submission of control board annual reports to the Commission and the requirements of details in the reports;
- control board annual reports to be tabled in Parliament, together with the Commission annual report;
- a statement of all of the responsibilities of landowners with proclaimed animal and plant control in one section in the Act;
- the deletion of mention of dingo scalps;
- a revision of penalties by introducing expiation fees, replacing some fines with community service orders, and changing penalties to divisional fines;
- better control of exotic animals;
- better control of the spread of plant seeds in machinery and produce and on livestock;
- provision for control buffer zones on properties for specified proclaimed animals and plants;
- roadsides to include one metre inside the fence-line of properties;
- provision for the owner or manager of a business to be responsible for the sale of proclaimed plants and animals;
- revision of provisions on the timing of payment of contributions by member councils to control boards. Payments are currently made twice a year, rather than as a single payment currently specified in the Act;
- clarifying responsibilities for the control of proclaimed animals and plants on unfenced roads and waterways;
- clear definition of 'pecuniary liability', and ability to recover any debt by the distraint of property and chattels.

7.4 Threats

Virtually all of the perceived threats to the successful administration of the Act are external to the Act, per se, and relate to the economic situation, changes in political direction, environmental lobby and board policies becoming irrelevant to landowners' needs.

A threat which does relate to the revision of the Act is a loss of regulatory power; such power is essential to support a facilitatory approach to animal and plant control. Another threat (also identified as a weakness) to effective animal and plant control is different control policies amongst control boards for the same pest species.

8. PROPOSED REVISIONS TO THE ANIMAL AND PLANT CONTROL ACT

8.1 General Comments

In response to the Government questions requiring assessment of legislation establishing statutory bodies discussed in the Introduction (Section 1.1) of this paper, the outcomes from the meetings and the economic and environmental benefits from animal and plant control strongly demonstrate that:

- legislation to support the control of proclaimed animals and plants is still highly relevant.
- the functions of the Commission and control boards allow for efficient control of proclaimed animals and plants, especially if they are integrated with other land management practices.

- the organisational structure comprising of a Commission and control boards is appropriate. The strength of this structure relates to the boards having community ownership and to them having policy, technical, research and administrative support from a central Commission.
- the functions of the Commission and control boards do not duplicate the work or functions of another authority, agency or body, or person but should be integrated with the functions and activities of other land management agencies and groups, eg. other programs in Primary Industries, South Australia; Department of Environment and Natural Resources; the Soil Conservation Council and boards; Landcare; local government.
- the cost to the State of maintaining the Commission and control boards is warranted. The costs of the Commission and the financial benefits of its activities to agriculture given in Section 4 clearly demonstrate the high economic returns from the activities. These figures do not include the intractable value that the activities provide for the protection of the environment and public safety.

Recent estimates of the benefit/cost ratios for specific Commission projects with vertebrate pests ranged from 22:1 for mice, foxes and feral pigs to 311:1 for exotic animals (Departmental Review, November 1992).

Data are not available to estimate the total annual expenditure on control of proclaimed animal and plants by landowners, however, the level of expenditure would far exceed the total level of expenditure by the State government (through the Commission) and local government (through the control boards).

For these reasons, rather than repeal the Act or radically change the provisions for animal and plant control, the proposed changes to the Act are intended to improve the administration of animal and plant control with the current structure; facilitate efficient animal and plant control; integrate animal and plant control with other land management practices.

The proposed changes do not lessen in any way the regulatory strength of the Act for control boards administering the Act.

This Green Paper only refers to proposed changes to the Act; the intent of any provisions not mentioned in this paper will not be changed.

8.2 Proposed General Revisions

8.2.1 General Issues

Current Act: statements on gender balance, conflict of interest, requirements for details in control board annual reports and divisional fines are not present.

Proposed Amendment: inclusion of statements on gender balance in the membership of the Commission; conflict of interest for members of the Commission; requirement for improved accountability by control boards through their annual reports; divisional fines.

8.2.2 Name of the Act

Current Act: *Animal and Plant Control (Agricultural Protection and Other Purposes) Act, 1986.*

Proposed Amendment: comments are sought on changing of the above name of the Act to confer a facilitatory ethos which compliments other land management activities, rather than a regulatory (control) ethos. A suggested name is "Pest Animal and Plant Management Act".

8.2.3 Duties of Landowners

Current Act: duties of landowners are referred to in various sections of the Act, but the full range of duties are not given in a clear and concise statement.

Proposed Amendment: the incorporation of a statement, similar to that proposed for Section 8 of the *Soil Conservation and Landcare Act 1989*, in a new PART outlining the Objects and Duties required by the legislation (refer 8.3.1 below).

Landowners have a duty-of-care for the management of land regardless of its use by them. Duty-of-care with respect to degradation by vertebrate pests and plants includes a need to:

- identify existing and potential animal and/or plant problems,
- determine the cause and severity of the problems,
- plan and implement control programs, and
- evaluate the effectiveness of any control programs and implement further control as required.

The duties of landowners also to be included in the statement are currently those duties described in the following sections of the Animal and Plant Control Act:

- **Section 4** binds the Crown;
- **Section 47** requires an owner to destroy or control all animals on land and the adjoining halfwidth of a road. This includes the implementation of prescribed measures;
- **Sections 46 & 56** require an owner to notify of the presence of animals or plants proclaimed in prescribed categories;
- **Section 57** with certain exceptions requires an owner to destroy or control all proclaimed plants on land;
- **Section 59** imposes a duty on a board to destroy or control all proclaimed plants on road reserves in its area; adjoining landowners may be required to reimburse the board's costs under **Section 60**;

plus a statement to encourage landowners to develop animal and/or plant management plans or to include animal and plant control strategies in their property management plans.

8.2.4 Buffer Zones

Current Act: does not include the concept of buffer zones to facilitate animal and plant control.

Proposed Amendment: inclusion of the concept of buffer zones for the control of animals and plants.

Such a provision will allow control boards the option of exempting the control of specified proclaimed animals or plants in a defined part of the area proclaimed for that class of animals or plants. Control boards would be able to consider social, economic and biological factors, for example, which could contribute to the strategic long-term control of the animal or plant. Property management planning could also be an important part of making a decision on the use of buffer zones.

8.2.5 Consistency Between Animal and Plant Control Act and Soil Conservation and Land Care Act

Current Act: not consistent with and does not have links with the *Soil Conservation and Land Care Act, 1989*.

Proposed Amendment: the Act will be re-written together with the *Soil Conservation and Land Care Act, 1989* to provide consistency in the Acts.

Consistency of format and landowner duty-of-care between the Acts should assist their use by control boards and other land managers. It will, enable also close co-operation and common decision-making on related land management issues between both the Commission and the Soil Conservation Council, animal and plant control boards and soil conservation boards. Such co-operation could occur during the preparation of district plans and three-year action plans required under the *Soil Conservation and Land Care Act, 1989*, and in the planning and implementation of Commission regional control strategies, for example.

8.3 Proposed Specific Revisions

8.3.1 Objects and Duties of the Act

Current Act: objects and duties of Act are not included.

Proposed Amendment: a new PART to be included after current PART I to include Objects and Duties of the Act.

For example, the objects will be based on the Commission's Corporate Goals (see Section 3 of this Green Paper) and include a strong community commitment. The Duties will summarise the duties of landowners, boards and the Commission at the beginning of the Act and be consistent with the *Soil Conservation and Land Care Act, 1989*.

8.3.2 Interpretation

Current Act: 'pest management plans' and 'costs and expenses' are not fully explained.

Proposed Amendment: include definition of 'pest management plans' (see 8.2.4 above) and fully-explain all likely 'costs and expenses' (see Sections 48(7), (8), (9) and 58(5), (6), (7) in the Act).

The latter explanation is necessary to ensure that all costs and expenses incurred in a prosecution are recovered.

Current Act: "control" means (i) destroy the plants and (ii) reduce and inhibit the propagation of plants as far as reasonably achievable.

Proposed Amendment: add (iii) to prevent the spread of plants.

The quarantine provision in **Section 53** can be used to prevent the spread of plants, but is an extreme measure. The proposed amendment to the interpretation provides flexibility for a control board to negotiate with a landowner, as necessary.

8.3.3 Members of the Commission

Current Act: one of the members of the Commission shall be appointed by the Governor to be the Presiding Officer of the Commission.

Proposed Amendment: **Subsection 7(5)** - include of a phrase to allow the Commission to appoint its own Presiding Officer from its membership, other than a public-servant member, or to allow the Minister to appoint the Presiding Officer, if the majority of members are unable to agree.

Preclusion of a public service employee from being Presiding Officer would closely link the Commission with landowners and the community.

8.3.4 Terms and Conditions

Current Act: each Commission member has a deputy member.

Proposed Amendment: **Subsection 8(3)** - change from 'deputy of a member' to 'deputy of one or more members'.

Such a change could provide for fewer deputies who would have a greater opportunity to be involved in Commission meetings and business than currently occurs. One scenario could be to have one deputy for each of the public servant members, one deputy for the two local government nominees and one deputy for the three ministerial nominees.

8.3.5 Functions of the Commission

Current Act: no links between the Commission and other land management activities or agencies.

Proposed Amendment: a new function of the Commission, based on **Section 13(g)**, will be placed at the top of the list and will clearly define the Commission's role in encouraging and assisting landowner, other land managers and community involvement in co-ordinated land management programs for the destruction or control of proclaimed animals and plants.

Current Act: co-ordinated programs for the destruction or control of animals and plants only refer to proclaimed animals and plants and do not include animals and plants that may become proclaimed pests.

Proposed Amendment: **Subsection 13(g)** - expand to include animals and plants that may become required to be destroyed or controlled.

The proposed amendment allows the Commission to actively prevent potential animal and plant pests from reaching proclaimed status.

Current Act: does not provide for consistent financial and operational reporting by control boards.

Proposed Amendment: a new function of the Commission, related to the determination of policies that govern the administration of the Act throughout the State, is required to ensure effective financial and operational reporting.

Such reporting enables the Commission and control boards to justify their expenditure to the government and the community.

8.3.6 Establishment of Animal and Plant Control Boards

Current Act: requires minor amendments concerning the setting up of boards, now that the control board system is well established.

Proposed Amendment: **Subsection 15(5)(b)** - delete 'endeavour to'.

Control boards are an effective means to enable the provisions of the Act to be carried out and enforced in local government areas.

8.3.7 Appointment of Members to a Control Board

Current Act: members of control boards are appointed by local government.

Proposed Amendment: **Subsection 17(1)** - include a provision that councils shall call for nominations from residents, including members of the Council, for membership of control boards, and make the required number of appointments from the nominees.

This provision provides an open opportunity for both councillors and other residents, with skills, experience and commitment in animal and plant control to become members of control boards. The appointment of members to a control board will still remain at the discretion of the constituent council(s).

The phrase, 'to provide relevant skills and knowledge of animal and plant control', will be included in **Subsection 17(1)**.

Current Act: the length of term for members of control boards is 12 months.

Proposed Amendment: **Subsection 17(3)** - change from 'a term of 12 months' to 'a term of 2 years' to bring appointments of members in line with local government elections.

Such a change may provide an opportunity for councils to call, at the time of elections, for nominations for membership of the control board from residents or landowners who have skills and experience in animal and plant control.

8.3.8 Presiding Officer of a Control Board

Current Act: the responsibilities of Presiding Officers of control boards are not given.

Proposed Amendment: inclusion of a summary of the functions and responsibilities of the Presiding Officer of a control board.

The Presiding Officer is directly responsible for the management of a control board and its employees, and, with members' approval, may delegate any powers to other members or employees.

8.3.9 Secretaries of a Control Board

Current Act: responsibilities of Secretaries of control boards are not given.

Proposed Amendment: **Section 22** - include 'that the Secretary's functions are those financial and administrative functions and duties delegated by the Presiding Officer or by the control board'.

8.3.10 Functions of a Control Board

Current Act: no links between control boards and other land management activities or agencies.

Proposed Amendment: similar to functions of the Commission (Section 8.3.5 above), a new function of control boards, based on **Subsection 24(b)**, will be placed at the top of the list and will clearly define a board's role in encouraging and assisting landowner, other land managers and community involvement in co-ordinated programs for the destruction or control of proclaimed animals and plants.

Part of implementing this function would be the development of regional animal and plant management plans.

Current Act: no reference to other land management groups.

Proposed Amendment: include 'other land management groups' with 'the Commission, other control boards and any prescribed control body' in **Subsection 24(b)**.

Current Act: co-ordinated programs for the destruction or control of animals and plants only refer to proclaimed animals and plants and do not include animals and plants that may become proclaimed pests.

Proposed Amendment: **Subsection 24(b)** - the current provision for 'co-ordinated programs for the destruction or control of animals and plants that are required to be destroyed or controlled in pursuance of this Act' will be expanded to include animal and plants that may become required to be destroyed or controlled.

The proposed amendments to **Subsection 24** will align control board activities better with regional and property management plans under the *Soil Conservation and Land Care Act, 1989*.

The proposed amendments for **Section 24** attempt to encourage the development of regional animal and plant management plans by control boards in consultation with other land managers. The changes also encourage control boards' participation, together with other agencies, in land management and in preventing potential animal and plant pests from reaching proclaimed status.

8.3.11 Local Authorised Officers

Current Act: does not stipulate competency standards for the appointment of local authorised officers.

Proposed Amendment: **Subsection 26(1)** - include a statement that appointees should meet competency standards set by the Commission.

Comments are sought on a change in name for local authorised officers. A suggested name is Local Adviser, Animal and Plant Control.

8.3.12 Functions of Local Authorised Officers

Current Act: does not promote local authorised officers' role in encouraging and facilitating animal and plant control and in integrating it with other land management activities - it only gives the powers of an authorised officer.

Proposed Amendment: inclusion of a new clause on the functions of authorised officers which will clearly define authorised officers' role in encouraging and facilitating landowner, other land managers and community involvement in animal and plant control, similar to proposed additional functions for the Commission and control boards (refer Sections 8.3.5 and 8.3.10 above respectively).

Functions of authorised officers included in Section 4.7 of the Animal and Plant Control Manual will be considered for this part of the Act, together with the need for authorised officers to integrate animal and plant control with other land management activities.

8.3.13 Powers of Authorised Officers

Current Act: does not have powers for state and local authorised officers which conform with other Acts involved in the control of the entry, movement and keeping of animals.

Proposed Amendment: include provisions similar to provisions in the *National Parks and Wildlife Act, 1972* and the *Environmental Protection Act, 1993*, which relate to the powers of authorised officers.

Specific powers are necessary for authorised officers involved in the control of exotic animals which are an extreme threat to agriculture, the environment and public safety.

8.3.14 Animal and Plant Control Commission Fund

Current Act: inconsistency in wording in Section 29(5) and Section 30(6).

Proposed Amendment: Subsection 29(5) - change to 'The fund shall be applied by the Commission',

This change provides consistency in wording with Section 30(6).

8.3.15 Dingo Control Fund

Current Act: includes provision for the payment of rewards for the destruction of dingoes.

Proposed Amendment: Section 30 - delete Subsections 6(a), (7) and (8).

The payment of rewards for the destruction of dingoes is not considered to be an effective method for the control of dingoes. Funds are better placed supporting other control activities rather than paying rewards for scalps, for example.

8.3.16 Board Funds

Current Act: each control board must administer its own funds.

Proposed Amendment: **Subsection 35(1)** - include 'except for urban councils having the powers of a board' after 'Each control board'.

The animal and plant control budget for urban councils is usually small and should not necessitate the added cost of administering a separate fund. The other provisions in **Section 35** will still apply for urban councils.

Current Act: does not differentiate clearly between expenditure by control boards on administrative and cost-recovery activities.

Proposed Amendment: **Subsection 35(4)** - include 'subject to direction by the Commission' after 'its fund'.

The addition of this phrase complies with the Auditor-General's recommendations and provides assurance that Commission subsidies and grants paid to control boards are used for administering the Act and not for supporting commercial control operations carried out by some control boards, as allowed by **Section 67**.

Current Act: does not include a provision for control boards to seek external funding for control programs.

Proposed Amendment: include a provision to allow control boards to seek external funds for programs within the scope of the Act for the benefit of the community.

8.3.17 Contributions by Councils to Board Funds

Current Act: constituent council(s) pay their contribution to control boards not later than thirty-first day of May each year.

Proposed Amendment: **Subsection 36(7)** - change 'not later than the thirty-first day of May' to 'not later than the twenty eighth day of February or may pay into Board's funds in two equal parts, one not later than the twenty-eighth day of February and the other not later than the thirty-first day of August'.

The proposed changes for the time of payment into board funds by constituent councils reconciles the Act with current practices.

Current Act: Councils are required to notify the Commission of the payments to control boards.

Proposed Amendment: **Subsection 36(7)** - change the current requirement for 'a council to notify the Commission in writing of the payment to a control board' to the proposed requirement that the control board notify the Commission in writing on receipt of the council payment.

This change should provide a more robust system than the current system. Many councils are tardy in informing the Commission when they have made a payment. By contrast, it is in the control board's interest to inform the Commission when a payment has been received so that the Commission's contribution can be forwarded to the control board as soon as possible.

8.3.18 Commission to Pay Subsidies

Current Act: does not reconcile with the proposed changes to **Subsection 36(7)** above (refer 8.3.17).

Proposed Amendment: **Subsection 37(2)** - change to read 'the subsidy under **Subsection 37(1)** shall be paid by the Commission, depending on the level of payment by constituent council(s) and as soon as possible, but within six weeks, on advice from the control board of payment by the council(s)'.

This change brings the statutory and subsidy payments by the Commission to control boards into line with the proposed changes given in Section 8.3.17 above.

8.3.19 Accounts

Current Act: does not describe the type of accounts or qualification of auditors for the financial affairs of control boards.

Proposed Amendment: **Subsection 38(a)** - add the phrase 'as determined by the Commission' after 'financial affairs'.

Subsection 38(b) - insert 'with qualifications as determined by the Commission' after 'auditor'.

These changes are proposed to comply with the Auditor-General's recommendations to improve the consistency of financial management amongst control boards. Such consistency will lead to acceptable levels of accountability and to similar financial reporting methods amongst boards which will improve the efficiencies of the Commission's management and budgeting.

8.3.20 Annual Report and Audited Accounts to be Furnished to Commission

Current Act: does not give a definitive time for the submission of control boards' annual reports and audited accounts to the Commission, or directions for the format of the report.

Proposed Amendment: **Section 39** - replace 'as soon as practicable after the thirty-first day of December each year' with 'by the thirtieth day of April each year' and add 'in a form determined by the Commission' at the end of the section.

Current Act: does not have a requirement for annual reports and audited accounts of control boards to be submitted to Parliament.

Proposed Amendment: **Section 39** - add a new subsection that the Commission will submit the control board reports to the Minister by the thirty-first day of May each year, and the Minister will, within 12 sitting days after receipt of the reports and the audited accounts, table copies of the reports and accounts in each house of Parliament.

These changes to **Section 39** are proposed to ensure a high level of accountability of control boards with the government which will justify past and future government funding for animal and plant control. The inclusion of the phrase, 'in a form determined by the Commission', is to facilitate the presentation of consistent and succinct reports which will have positive impact with the Minister and the government.

8.3.21 Enforcing the Owner's Duty to Destroy or Control Animals

Current Act: different provisions apply to the control of proclaimed animals and proclaimed plants.

Proposed Amendment: **Section 48** - delete all of **Section 48** and replace with the wording in **Section 58** or with other appropriate wording without changing the intent. Allowance for the reference to animals in **Section 48** and not plants as in **Section 58** would be required if **Section 58** wording is used.

This change is suggested to minimise the differences in the provisions applying to the control of animals and plants, respectively. The option for authorised officers to issue a warning notice (**Section 48(1)**) prior to issuing a final notice (**Section 48(3)**) will be maintained.

8.3.22 Movement of Plants or Produce or Goods Carrying Such Plants

Current Act: does not provide for control of movement of plants in produce, goods etc, unless there is direct proof of their presence.

Proposed Amendment: **Subsection 52(2)(b)** - insert 'or deemed to be carrying' after carrying.

Direct proof that an animal, plant, soil, vehicle, farming implement or other produce or goods are carrying a plant of that class is not always available. For example, livestock grazing an area with viable seed of a plant, in a Class to which **Section 52** applies, within the past 14 days could be deemed, by regulation, to be carrying viable seeds of the plant unless proven to the contrary.

This provision is proposed to increase control boards' ability to reduce the spread of proclaimed plant species.

8.3.23 Offence to Scatter Proclaimed Plants

Current Act: does not have any control over the wanton or irresponsible spread of proclaimed plants.

Proposed Amendment: include a new Section under 'Control of Plants' to control the wanton or irresponsible scattering or depositing of proclaimed plants in a control area for that class of plants.

The provisions in the Section would be similar to those provisions in **Section 44 (1), (2), (3) and (4)**, related to an offence to release animals.

This proposed addition supports the proper management of proclaimed plants.

8.3.24 Sale of Plants or Produce or Goods Carrying Such Plants

Current Act: does not provide for control over the sale of proclaimed plants, unless there is direct proof of the presence of proclaimed plants.

Proposed Amendment: **Subsection 54(2)** - insert 'or deemed to be carrying' after carrying. See comments in Section 8.3.22 above.

8.3.25 Statutory Charge

Current Act: any pecuniary liability incurred by virtue of the Act shall be a charge on the land but may not be recognised by a liquidator.

Proposed Amendment: **Section 71(a)** - include **Section 42** of the *Soil Conservation and Land Care Act 1989* to rank the priority of any charges under this Act before all other charges and mortgages.