

40TH PARLIAMENT



**Report 7**  
**JOINT STANDING COMMITTEE ON DELEGATED  
LEGISLATION**

*Biosecurity and Agriculture Management Act 2007 Notice  
Under Section 130(1)*

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Presented by  
Ms Emily Hamilton MLA (Chair)  
and  
Hon Robin Chapple MLC (Deputy Chair)  
March 2018

## **Joint Standing Committee on Delegated Legislation**

### **Members as at the time of this inquiry:**

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Hon Robin Chapple MLC (Deputy Chair)

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Ms Elizabeth Mettam MLA

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## EXECUTIVE SUMMARY

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- 1 Section 130 of the *Biosecurity and Agriculture Management Act 2007* (Act) authorises the Minister for Agriculture and Food (Minister) to determine a rate chargeable on specified land, or classes of land, for each financial year for the purposes of the Declared Pest Account. This rate is set by gazetting a notice of the Minister's rate determination. Such a notice was published in the *Government Gazette* on 27 June 2017 (Notice).
- 2 The Joint Standing Committee on Delegated Legislation (Committee) is of the view that the Minister, before gazetting the Notice, did not consult affected landowners individually, as required by section 131 of the Act and regulation 4(2)(b) of the *Biosecurity and Agriculture Management (Declared Pest Account) Regulations 2014*. Accordingly, the Notice was made invalidly.
- 3 The Notice offends the Committee's Term of Reference 10.6(a) because it is not 'within power' of its enabling Act.

### Recommendations

**Findings and recommendations are grouped as they appear in the text at the page number indicated:**

#### RECOMMENDATION 1

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The Committee recommends that *Biosecurity and Agriculture Management Act 2007 Notice Under Section 130(1)* be disallowed.



## 1 Reference and procedure

- 1.1 The *Biosecurity and Agriculture Management Act 2007 Notice Under Section 130(1)* (Notice) was published in the *Government Gazette* on 27 June 2017. Upon that gazettal, the Notice stood referred to the Joint Standing Committee on Delegated Legislation (Committee).<sup>1</sup> On 16 August 2017, the Notice was tabled in the Parliament and became subject to disallowance.

## 2 The Notice

- 2.1 Section 130 of the *Biosecurity and Agriculture Management Act 2007* (Act) authorises the responsible Minister<sup>2</sup> (Minister) to determine a rate chargeable on specified land, or classes of land, for each financial year. This rate is set by gazetting a notice of the Minister's determination. The rate is charged for the purposes of the Declared Pest Account.<sup>3</sup> The funds collected are matched by an amount taken from the Consolidated Account to be used for purposes related to the control of declared pests in the areas in which the rates have been collected.<sup>4</sup>
- 2.2 Pursuant to section 170 of the Act, the funds are paid out of the Declared Pest Account to recognised biosecurity groups<sup>5</sup> (RBGs). The explanatory memorandum advised that, each year, the responsible department<sup>6</sup> (Department) approves operational plans submitted by these groups for the control and eradication of wild dogs, feral pigs, feral camels and declared pest plants. These operational plans are used to calculate the rates.<sup>7</sup>
- 2.3 The Notice specified the following areas of land for the purposes of the 2017–18 rates determination:
- a) Specified area (a) is land held under pastoral lease in the local government districts of Carnarvon, Exmouth, Greater Geraldton, Murchison, Upper Gascoyne, Northampton and Shark Bay.
  - b) Specified area (b) is land held under pastoral lease in the local government districts of Coolgardie, Dundas, Kalgoorlie-Boulder, Laverton, Leonora, Menzies, Ngaanyatjarraku, Sandstone, Wiluna and Yilgarn.
  - c) Specified area (c) is land held under pastoral lease in the local government districts of Broome, Derby-West Kimberley, Wyndham-East Kimberley and Halls Creek.

<sup>1</sup> Committee Term of Reference 10.5: *Standing Orders of the Legislative Council* Schedule 1, clause 10.5.

<sup>2</sup> Currently, the Minister for Agriculture and Food.

<sup>3</sup> Refer to Appendix 1 for a reproduction of sections 130 and 131 of the Act.

<sup>4</sup> Notice, *Explanatory Memorandum*, Legislative Council, p 1.

<sup>5</sup> Recognised under the Act s 169. There are currently six RBGs: the Carnarvon Rangelands Biosecurity Association, Goldfields Nullarbor Rangelands Biosecurity Association, Kimberley Rangelands Biosecurity Association, Meekatharra Rangelands Biosecurity Association, Pilbara Regional Biosecurity Group and Eastern Wheatbelt Biosecurity Group: Department of Primary Industries and Regional Development, 5 January 2018, Government of Western Australia, Perth, viewed 30 January 2018, <<https://www.agric.wa.gov.au/bam/recognised-biosecurity-group-reports>>; and Hon Alannah MacTiernan MLC, Minister for Agriculture and Food, Letter, 2 November 2017, p 2.

<sup>6</sup> Currently, the Department of Primary Industries and Regional Development, formed by an amalgamation of the Departments of Agriculture and Food, Regional Development and Fisheries, and Regional Development Commissions on 1 July 2017.

<sup>7</sup> Notice, *Explanatory Memorandum*, Legislative Council, p 1.

- d) Specified area (d) is land held under pastoral lease in the local government districts of Cue, Meekatharra, Mount Magnet, Mount Marshall, Perenjori and Yalgoo.
- e) Specified area (e) is land held under pastoral lease in the local government districts of Ashburton, East Pilbara, Karratha and Port Hedland.
- f) Specified area (f) is land identified:  
as rural freehold in a valuation roll maintained under the Valuation of Land Act 1978, in the area within a 15km radius from the south-west corner of Bibbwarra Road and North West Coastal Highway in the Shire of Carnarvon, with a minimum rates amount payable of \$200.
- g) Specified area (g) is land in the local government districts of Kondinin, Kulin, Lake Grace, Merredin, Mount Marshall, Mukinbudin, Narembeen, Nungarin, Trayning, Westonia and Ylgarn that is:
  - i. identified as rural freehold in a valuation roll maintained under the Valuation of Land Act 1978; and
  - ii. no less than 20 hectares in area in the following hectare ranges as follows—

<b>Hectare ranges</b>	<b>Flat rate (fixed sum)</b>
	\$
20–1000	30
>1,000–2,000	45
>2,000–5,000	140
>5,000–10,000	250
>10,000–15,000	400
>15,000	600

- 2.4 On average, the rates set for specified areas (a) to (f) in 2017–18 increased by three per cent from the 2016–17 rates, but with wide variations, as is shown in Table 1 below. The Committee noted that the method of calculating the rate for specified area (g) has changed: in 2016–17, the rate calculation was based on the unimproved value of the land; in 2017–18, the rate calculation was based on the size of the land.

Table 1: Details of declared pest rates for 2017–18

Type of Fee	Date Last Updated Increase/Decrease	Old Fee (\$) 2016/17	New Fee (\$) 2017/18	Increase/ Decrease (%)
Rate for the area specified in paragraph (a) of the notice	1 July 2016	5.124 cents in the dollar on the unimproved value of the land	5.10 cents in the dollar on the unimproved value of the land	-0.47%
Rate for the area specified in paragraph (b) of the notice	1 July 2016	5.170 cents in the dollar on the unimproved value of the land	5.19 cents in the dollar on the unimproved value of the land.	0.38%
Rate for the area specified in paragraph (c) of the notice	1 July 2016	1.097 cents in the dollar on the unimproved value of the land	1.07 cents in the dollar on the unimproved value of the land	-2.46%
Rate for the area specified in paragraph (d) of the notice	1 July 2016	4.584 cents in the dollar on the unimproved value of the land	4.79 cents in the dollar on the unimproved value of the land	4.49%
Rate for the area specified in paragraph (e) of the notice	1 July 2016	1.850 cents in the dollar on the unimproved value of the land	2.16 cents in the dollar on the unimproved value of the land	16.75%
Rate for the area specified in paragraph (f) of the notice	1 July 2016	0.271 cents in the dollar on the unimproved value of the land	0.271 cents in the dollar on the unimproved value of the land	0%
Rate for the area specified in paragraph (g) of the notice	1 July 2016	0.021 cents in the dollar on the unimproved value of the land	Flat rate (flat sum) - differential flat rate applied on hectare ranges	-

[Source: Notice, *Explanatory Memorandum*, Legislative Council, p 2.]

- 2.5 The Department explained that there were two reasons for the marked increase in the rate for area (e) above:
- There was a realignment of the shire boundaries between Carnarvon and Ashburton which resulted in the Pilbara Regional Biosecurity Group ceding two stations to the Carnarvon Rangelands Biosecurity Group.
  - Two pastoral leases were surrendered to the Crown.<sup>8</sup>

### 3 Statutory procedure for making the Notice

- 3.1 Section 131 of the Act<sup>9</sup> requires the Minister to undertake a level of consultation that is set out in regulation 4 of the *Biosecurity and Agriculture Management (Declared Pest Account) Regulations 2014*, which reads as follows:

<sup>8</sup> Barney Dzowa, Manager Recognised Biosecurity Group Systems, Invasive Species, Department of Primary Industries and Regional Development, email, 9 August 2017.

<sup>9</sup> Refer to Appendix 1 for a reproduction of sections 130 and 131 of the Act.

(1) In this regulation —

**affected land**, in relation to a proposal to determine a rate under section 130 of the Act, means the land or the class of land in respect of which it is proposed to determine the rate;

**relevant newspaper**, in relation to a proposal to determine a rate under section 130 of the Act, means a newspaper circulating generally in the area in which the affected land is situated.

(2) Not less than one month before determining a rate chargeable on land under section 130 of the Act, the Minister must —

(a) publish a notice in a relevant newspaper —

- (i) identifying the affected land; and
- (ii) stating the rate that the Minister proposes to determine; and
- (iii) inviting submissions from interested persons regarding the proposed determination;

and

(b) in so far as is reasonably practicable, send by post a copy of the notice to each owner of affected land. (underlining added)

3.2 According to the Explanatory Memorandum supplied to the Committee, the following consultation was undertaken for the 2017–18 rates determination:<sup>10</sup>

- Rates were advertised in nine regional newspapers, the West Australian and the Countryman.
- Letters from the department's Executive Director of Biosecurity and Regulation were sent to RBG chairmen informing of the process and reason for consultation. The presidents of Pastoralists and Graziers Association, WA Farmers and Vegetable WA were also sent a letter informing of the process.
- Landowners were provided 20 business days to respond.
- Nine submissions or enquiries were received from affected landholders; The majority supported the determination of the rate.

3.3 There was no indication that copies of the Notice had been sent by post to each owner of affected land. When the Committee's staff queried whether the consultation requirements of regulation 4(2)(b) had been met, the Department confirmed that a direct, individualised mail-out did not occur for 2017–18.

## 4 Scrutiny of the Notice

4.1 The Committee first scrutinised the Notice at its meeting on 11 September 2017, during which the Committee resolved to write to the Minister regarding the consultation requirements for making the Notice. More specifically, the Committee inquired whether regulation 4(2)(b) had been satisfied in this instance.

4.2 The phrase 'reasonably practicable' has been well considered by the courts. In *Slivak v Lurgi (Australia) Pty Ltd* (2001) 205 CLR 304, Justice Gaudron stated that:

<sup>10</sup> Notice, *Explanatory Memorandum*, Legislative Council, p 1.

the question whether a measure is or is not reasonably practicable is one which requires no more than the making of a value judgment in light of all the facts. ... three general propositions are to be discerned from the decided cases:

- the phrase "reasonably practicable" means something narrower than "physically possible" or "feasible";
- what is "reasonably practicable" is to be judged on the basis of what is known at the relevant time;
- to determine what is "reasonable practicable" it is necessary to balance the likelihood of the risk occurring against the cost, time and trouble necessary to avert that risk.<sup>11</sup>

- 4.3 In this context, the risk is that not every affected landowner is consulted and provided with an opportunity to comment on the proposed rate for their specified area. This risk would be minimised if the Minister conducted a direct, individualised mail-out pursuant to regulation 4(2)(b), in addition to the newspaper notices.
- 4.4 To determine whether the mail-out will be 'reasonably practicable', the likelihood of the risk that affected landowners are not consulted individually must be balanced against the '*cost, time and trouble necessary*' to conduct that mail-out.
- 4.5 The Committee's preliminary view was that it would have been reasonably practicable to write to each landowner directly and the Department should have carried out the consultation exercise, as envisaged by regulation 4(2), in full. The Committee's reasons for this view were as follows:
- Current word-processing and mail merging software could have been used to ensure that the production of the letters to each landowner would not be overly onerous or time-consuming.
  - The expense of posting 3000 letters is small in comparison to the importance of ensuring that those people who will be affected by a rate determination are consulted individually prior to the determination. The rates will potentially have a significant financial impact upon the affected landowners and, accordingly, these landowners should be properly apprised of the intended rate determination and the associated process for providing a submission to the Minister. The regulations contemplate that this should be achieved through both general and, where reasonably practicable, individual notifications of the proposed rates.
  - Given that the affected lands are in regional and/or remote areas, the Committee was not convinced that the consultation actions which were taken would have been sufficient to properly notify the affected landowners. Individually posted letters would have been the most reliable method of notifying those landowners.
- 4.6 As the consultation requirements in regulation 4(2) are pre-conditions to the making of a rate determination, the Committee's preliminary view was that the Notice had not been made validly—it was potentially void and of no effect. Accordingly, the Notice may have breached the Committee's Term of Reference 10.6(a) for not being 'within power'.
- 4.7 In response, the Minister advised that a direct, individualised mail-out 'could have been effected'.<sup>12</sup> That advice is sufficient to confirm to the Committee that the mail-out was reasonably practicable in this instance.

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<sup>11</sup> *Slivak v Lurgi (Australia) Pty Ltd* (2001) 205 CLR 304, pp 322–3.

<sup>12</sup> Hon Alannah MacTiernan MLC, Minister for Agriculture and Food, Letter, 2 November 2017, p 2.

- 4.8 Instead of addressing the Committee's question about whether regulation 4(2)(b) had been satisfied on this occasion, the Minister contended that the affected landowners had been consulted extensively about the Notice using other means:
- it is unlikely that writing to each landholder, as required by regulation 4(2)(b), would add further value to the process and may be viewed as an unnecessary expense ...
- because of the extensive consultation previously undertaken by the RBGs, ... a mail out ... would have been of little, or no, practical effect given the level of consultation already undertaken with pastoral lease holders.<sup>13</sup>
- 4.9 In her letter dated 2 November 2017 (Appendix 2), the Minister details the consultation activities which are undertaken by RBGs on a yearly basis. In summary, the RBGs engage with landholders, farmers and industry in their local areas to prioritise the management of declared pests, and to develop pest control plans and budgets. That information is then used by the RBGs to advise the Minister on the declared pest rates which will be required for each financial year.<sup>14</sup>
- 4.10 The Minister asserted that the success of the RBGs' local level consultation can be demonstrated by the low number of submissions received by her office when the proposed declared pest rates are published in relevant newspapers pursuant to regulation 4(2)(a).<sup>15</sup> The Committee does not consider this issue relevant.
- 4.11 The Minister explained that the levels of response from affected landowners to direct, individualised mail-outs pursuant to regulation 4(2)(b) are low, while the level of engagement with the RBGs is increasing. In 2014–15, the level of response to a mail-out was so low that no mail-out has occurred since.<sup>16</sup> The fact that at least one mail-out has occurred in the past suggests to the Committee that these mail-outs can be reasonably practicable.
- 4.12 The anticipated level of response to a mail-out is an irrelevant consideration when determining whether the process will be reasonably practicable in the circumstances. Put another way, a low level of response does not equate to the mail-out process being reasonably impracticable.
- 4.13 The Minister formed the view that the mail-out was unnecessary in this instance. However, that consideration:
- is not the same as determining whether it was reasonably practicable to conduct the mail-out in the circumstances
  - is a matter of policy and does not come within the Committee's remit.
- 4.14 The Minister also appears to have decided that, in general, the mail-out process is unnecessary. As such, the Minister intends to approve an amendment to regulation 4(2) of the *Biosecurity and Agriculture Management (Declared Pest Account) Regulations 2014* to remove the requirement for direct, individualised mail-outs of notices of rates determinations.<sup>17</sup>

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<sup>13</sup> ibid.

<sup>14</sup> ibid., pp 1–2.

<sup>15</sup> ibid., p 2.

<sup>16</sup> ibid.

<sup>17</sup> ibid., p 3.

## **5 Conclusion**

- 5.1 After considering the Minister's response, the Committee endorsed its preliminary view that the Notice is void by reason of non-compliance with regulation 4(2) of the *Biosecurity and Agriculture Management (Declared Pest Account) Regulations 2014* and, in turn, section 131 of the Act.
- 5.2 The requirement to post a copy of a notice is triggered if, in the circumstances, it is reasonably practicable to do so. The relevant question in deciding whether or not to post a notice to each affected landowner is whether it is reasonably practicable to undertake that activity, not whether there have already been other methods of consultation (extensive or otherwise). In the Committee's opinion, it was reasonably practicable for the Minister to send the Notice to each affected landowner in this instance, and the requirement under regulation 4(2)(b) was triggered.
- 5.3 Being in breach of the Act, the Notice offends the Committee's Term of Reference 10.6(a), which states that:

In its consideration of an instrument, the Committee is to inquire whether the instrument—

is within power;

- 5.4 The Committee therefore recommends to the Parliament that the Notice be disallowed. Strictly speaking, an instrument of delegated legislation which is made invalidly is void and of no effect, and cannot be disallowed. With this in mind, the disallowance which is recommended by the Committee may be viewed as unnecessary. However, there are a number of benefits in recommending the disallowance of invalid delegated legislation, including ensuring they are removed from the public record, thereby reducing the risk of public misinformation.

## **6 Recommendation**

- 6.1 The Committee makes the following recommendation:

### **RECOMMENDATION 1**

The Committee recommends that *Biosecurity and Agriculture Management Act 2007 Notice Under Section 130(1)* be disallowed.



Ms Emily Hamilton MLA

**Chair**

## APPENDIX 1

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### BIOSECURITY AND AGRICULTURE MANAGEMENT ACT 2007, SECTIONS 130 AND 131

*Biosecurity and Agriculture Management Act 2007*

**Part 6** Financial provisions  
**Division 1** Declared Pest Account  
**s. 129**

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#### Part 6 — Financial provisions

##### Division 1 — Declared Pest Account

###### Subdivision 1 — General

###### 129. Terms used

In this Division —

**Commissioner** has the meaning given to that term by the *Taxation Administration Act 2003*;

**operating account** means an agency special purpose account established and maintained under the *Financial Management Act 2006* section 16;

**owner** has the meaning given to that term in the *Land Tax Assessment Act 2002*, and includes a person taken to be an owner of land under section 8 of that Act;

**rate** means a rate determined in relation to land under section 130(1);

**rate determination** means a determination under section 130(1);

**rates amount** means an amount payable by way of rates under this Division.

###### Subdivision 2 — Rates imposed on land

###### 130. Determination of rate

- (1) The Minister may, by notice published in the *Gazette*, determine a rate that is chargeable for a financial year on land in a prescribed area.
- (2) The rate is for the purposes of the Declared Pest Account.
- (3) A rate determination must specify the land or the class of land on which the rate is chargeable.
- (4) Different rates may be determined in respect of different land and different classes of land.

- (5) The Minister may, in the exercise of the power under subsection (1), exempt land from the application of the rate.
- (6) To the extent (if any) that a rate is not a tax imposed by the *Biosecurity and Agriculture Management Rates and Charges Act 2007*, this Act imposes the rate.
- (7) The *Interpretation Act 1984* section 42 applies to a rate determination as if the determination were a regulation.

**131. Procedure for making rate determination**

Before determining a rate chargeable on land, the Minister must consult in accordance with the regulations with the owners of the land, and other prescribed persons (if any).

**132. Minimum and maximum rates**

- (1) The Minister may determine a flat rate, or an ad valorem rate, chargeable on land.
- (2) A flat rate must not exceed the prescribed amount.
- (3) The rates amount payable in relation to a financial year when calculated by applying the ad valorem rate to the amount equal to the unimproved value of the land must not exceed —
  - (a) in the case of land held under a pastoral lease, an amount equal to 10% of the unimproved value of the land according to the valuation in force under the *Valuation of Land Act 1978* at midnight on 30 June in the previous financial year; and
  - (b) in any other case, an amount equal to 2% of the unimproved value of the land according to the valuation in force under the *Valuation of Land Act 1978* at midnight on 30 June in the previous financial year.
- (4) The Minister may determine the minimum rates amount payable and the maximum rates amount payable, irrespective of the amount payable when calculated by applying the ad valorem rate.

## APPENDIX 2

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### LETTER FROM MINISTER FOR AGRICULTURE AND FOOD



**Hon Alannah MacTiernan MLC**  
**Minister for Regional Development; Agriculture and Food;**  
**Minister Assisting the Minister for State Development; Jobs and Trade**

Our ref: 64-02468/4  
Your ref: A631569 & 4015/12 SB/DW

Hon Emily Hamilton MLA  
Chair  
Joint Standing Committee on Delegated Legislation  
[delleg@parliament.wa.gov.au](mailto:delleg@parliament.wa.gov.au)

Dear Ms Hamilton

**BIOSECURITY AND AGRICULTURE MANAGEMENT ACT 2007 NOTICE UNDER SECTION 130(1)**

Thank you for your letter dated 13 September 2017 regarding the notice under section 130(1) of the *Biosecurity and Agriculture Management Act 2007* (BAM Act), and the preliminary view of the Joint Standing Committee on Delegated Legislation that consultation requirements may not have been met.

The process of determining a declared pest rate combines two separate but complimentary activities split between the Minister [represented by the Department of Primary Industries and Regional Development (DPIRD)] and Recognised Biosecurity Groups (RBGs).

RBGs initiate the consultation process at their local level by engaging landholders, farmers and industry to identify priority declared pests, and develop a pest control plan and budget. This is done annually with the groups carrying out engagement and consultation activities throughout the year. For example in April 2017, the Eastern Wheatbelt Biosecurity Group (EWBG) wrote to 1,795 landholders on a range of issues including the proposed rate. The EWBG reported that a very low level of response was received.

Following this consultation at the local level, the RBGs recommend to the Minister the rate required to raise sufficient funds to support their annual programs to control declared pests in their areas of operation.

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RBGs undertake ongoing community engagement activities across the year to consult, inform and collaborate with landholders, farmers and interested parties. These activities include:

- Seeking input on preparation and approval of the annual budget and the rate to be determined.
- Seeking feedback on the annual pest control plan and performance of the control activities.
- Organising community and industry operational events.
- Identifying priority declared pests and control measures with community.

In addition, over the last three years significant resources have been invested to provide RBGs with training and skills to effectively consult with landholders and to develop community engagement capacity.

The Ministerial consultation, required under regulation 4 of the Biosecurity and Agriculture Management (Declared Pest Account) Regulations 2014, is the second part of the extensive consultation and follows recommendations made by RBGs for the determination of a rate to raise funds to support their control activities. This consultation period provides another opportunity for landholders and interested parties to comment on the recommendation made to the Minister by RBGs. The proposed determination is published as required by regulation 4(2)(a).

The success of the extensive and effective local level consultation by RBGs is demonstrated by the low number of submissions made to the Minister when the proposed rates are publicised. For instance:

- No submissions have been received from landholders in the rangelands over the last three years.
- The declared pest rate was extended to 11 shires in the Eastern Wheatbelt region in the 2016/17 financial year and 99 percent of all landholders have subsequently paid the rate.

In this context, it is unlikely that writing to each landholder, as required by regulation 4(2)(b), would add further value to the process and may be viewed as an unnecessary expense. Landholders are actively involved in the development of the control activities and budgeting process at the local level. In preparation for the determination of a rate in the five pastoral RBGs for the 2014/15 financial year, a letter was sent to all pastoral lease holders. There was a low level of response. No mail out on behalf of the Minister has occurred since that time, as the level of engagement by and with RBGs has continued to increase.

As indicated in email correspondence from DPIRD to the Committee, the department formed the view that because of the extensive consultation previously undertaken by the RBGs, direct postal communication was not considered necessary, i.e. a mail out could have been effected, but it would have been of little, or no, practical effect given the level of consultation already undertaken with pastoral lease holders. However, I appreciate the Committee's point of view in relation to this matter.

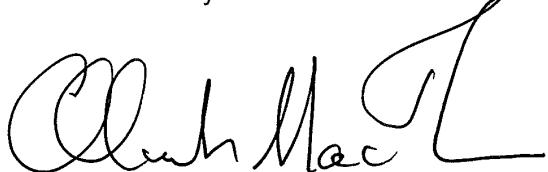
Given the above, and the department's recent practice, it is my intention to approve an amendment to regulation 4(2) of the Biosecurity and Agriculture Management (Declared Pest Account) Regulations 2014 to remove this unnecessary consultative requirement for future pest rate determinations.

The RBG framework supported by the pest rate is an invaluable tool in managing a range of declared pests such as wild dogs. Without it, many farming enterprises would be significantly impacted by these pests.

If the rates are not available there will be no funds for the RBGs to complete their operations this year and the impacts of declared pests will increase.

Thank you for raising this matter with me.

Yours sincerely

A handwritten signature in black ink, appearing to read "Alannah MacTiernan".

**HON ALANNAH MACTIERNAN MLC  
MINISTER FOR REGIONAL DEVELOPMENT; AGRICULTURE AND FOOD;  
MINISTER ASSISTING THE MINISTER FOR STATE DEVELOPMENT,  
JOBS AND TRADE**

02 NOV 2017

## **Joint Standing Committee on Delegated Legislation**

### **Date first appointed:**

15 June 2017

### **Terms of Reference:**

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

#### **'10. Joint Standing Committee on Delegated Legislation**

- 10.1 A *Joint Standing Committee on Delegated Legislation* is established.
- 10.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chair must be a Member of the Committee who supports the Government.
- 10.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 10.4
  - (a) A report of the Committee is to be presented to each House by a member of each House appointed for the purpose by the Committee.
  - (b) Where a notice of motion to disallow an instrument has been given in either House pursuant to recommendation of the Committee, the Committee shall present a report to both Houses in relation to that instrument prior to the House's consideration of that notice of motion. If the Committee is unable to report a majority position in regards to the instrument, the Committee shall report the contrary arguments.
- 10.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 10.6 In its consideration of an instrument, the Committee is to inquire whether the instrument -
  - (a) is within power;
  - (b) has no unintended effect on any person's existing rights or interests;
  - (c) provides an effective mechanism for the review of administrative decisions; and
  - (d) contains only matter that is appropriate for subsidiary legislation.
- 10.7 It is also a function of the Committee to inquire into and report on -
  - (a) any proposed or existing template, *pro forma* or model local law;
  - (b) any systemic issue identified in 2 or more instruments of subsidiary legislation; and
  - (c) the statutory and administrative procedures for the making of subsidiary legislation generally, but not so as to inquire into any specific proposed instrument of subsidiary legislation that has yet to be published.
- 10.8 In this order-
  - "instrument" means -
    - (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
    - (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;
  - "subsidiary legislation" has the meaning given to it by section 5 of the *Interpretation Act 1984*.



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