

Passed by both Houses



New South Wales

Biosecurity Amendment Bill 2017

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2017

Clerk of the Parliaments



New South Wales

Biosecurity Amendment Bill 2017

Act No , 2017

An Act to amend the *Biosecurity Act 2015* to make further provision with respect to biosecurity certifiers, biosecurity auditors, accreditation authorities, fees, evidentiary certificates and biosecurity orders.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Biosecurity Amendment Act 2017*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Biosecurity Act 2015 No 24

[1] Section 7 General definitions

Insert in alphabetical order:

identified individual, with respect to a function of a biosecurity certifier or a biosecurity auditor, means an individual who is notified to the responsible accreditation authority as an individual who is to carry out that function for the biosecurity certifier or biosecurity auditor.

[2] Section 184A

Insert after section 184:

184A Fee for biosecurity certificate

- (1) An authorised officer who prepares a biosecurity certificate may charge the person seeking the biosecurity certificate a fee for preparing the certificate.
- (2) The fee charged is to be an amount provided for by, or calculated in accordance with, the regulations.
- (3) The fee is, for the purposes of this Act:
 - (a) a recoverable amount that is payable to the Secretary, and
 - (b) recoverable from the person seeking the biosecurity certificate.

Note. See Part 20, which provides for the recovery of recoverable amounts.
- (4) Except as provided by subsections (1)–(3), the fee for the preparation of a biosecurity certificate is the fee agreed between the biosecurity certifier and the person seeking the biosecurity certificate.

[3] Section 187 Provision of false or misleading information to biosecurity certifier

Omit section 187 (5). Insert instead:

- (5) In this section:

biosecurity certifier includes an identified individual with respect to the issuing of biosecurity certificates by a biosecurity certifier.

[4] Section 190 Issue or alteration of biosecurity certificate by unauthorised person

Insert “, or an identified individual with respect to the issuing of biosecurity certificates by a biosecurity certifier,” after “biosecurity certifier” wherever occurring in section 190 (1) and (2).

[5] Section 192 Accreditation policy

Omit section 192 (2) (a). Insert instead:

- (a) the qualifications, skills, knowledge and experience required with respect to the issue of biosecurity certificates by biosecurity certifiers accredited by the accreditation authority,
- (a1) the suitability of individuals to carry out the function of issuing biosecurity certificates for biosecurity certifiers accredited by the accreditation authority,

[6] Section 193 Effect of accreditation

Omit section 193 (1). Insert instead:

- (1) Accreditation as a biosecurity certifier authorises the biosecurity certifier to issue biosecurity certificates.

[7] Section 193 (4)

Omit the subsection. Insert instead:

- (4) Nothing in this Act authorises or requires a biosecurity certifier to act in contravention of the conditions or limitations of the biosecurity certifier's accreditation as a biosecurity certifier.

[8] Section 197 Grant or refusal of accreditation

Omit section 197 (2) (b). Insert instead:

- (b) if the accreditation authority is not satisfied that the applicant can ensure that the issue of biosecurity certificates by the applicant will be carried out only by individuals who are suitable and have the qualifications, skills, knowledge and experience required by the accreditation authority's accreditation policy, or

[9] Section 201 Grant or refusal of renewal application

Omit section 201 (2) (b). Insert instead:

- (b) if the accreditation authority is not satisfied that the applicant can ensure that the issue of biosecurity certificates by the applicant will be carried out only by individuals who are suitable and have the qualifications, skills, knowledge and experience required by the accreditation authority's accreditation policy, or

[10] Section 204A

Insert after section 204:

204A Condition that work be carried out only by individuals

It is a condition of the accreditation of a biosecurity certifier that the issue of biosecurity certificates by the biosecurity certifier will be carried out only by an individual:

- (a) with the qualifications, skills, knowledge and experience required by the responsible accreditation authority's accreditation policy, and
- (b) who is the biosecurity certifier or who is an identified individual with respect to the issuing of biosecurity certificates for the biosecurity certifier.

[11] Section 205 Grounds for suspension or cancellation of accreditation

Omit section 205 (1) (b). Insert instead:

- (b) the accreditation authority is not satisfied that the biosecurity certifier can ensure that the issue of biosecurity certificates by the biosecurity certifier will be carried out only by individuals who are suitable and have the qualifications, skills, knowledge and experience required by the accreditation authority's accreditation policy,

[12] Section 206 Suspension of accreditation

Insert after section 206 (1):

- (1A) The regulations may prescribe circumstances in which it is mandatory for the responsible accreditation authority to suspend the accreditation of a biosecurity certifier.

- (1B) A responsible accreditation authority must suspend the accreditation of a biosecurity certifier if it is mandatory for the accreditation authority to suspend the accreditation.

[13] Section 208 Cancellation of accreditation

Insert after section 208 (1):

- (1A) The regulations may prescribe circumstances in which it is mandatory for the responsible accreditation authority to cancel the accreditation of a biosecurity certifier.
- (1B) A responsible accreditation authority must cancel the accreditation of a biosecurity certifier if it is mandatory for the accreditation authority to cancel the accreditation.

[14] Section 211 Offence of contravening conditions of accreditation

Insert after section 211 (2):

- (2A) An offence against this section is an executive liability offence.

[15] Sections 214, 215, 218, 219 (1)–(3), 224, 225 (1)–(3), 226 (1) (c) and (2), 228 (3) and 235 (2) (a)

Omit “carried out” wherever occurring. Insert instead “conducted”.

[16] Sections 220, 228 and 393 (1) (u)

Omit “carry out” wherever occurring. Insert instead “conduct”.

[17] Sections 221, 229 and 241 (2)

Omit “his or her” wherever occurring. Insert instead “the biosecurity auditor’s”.

[18] Sections 222 (1) and 230 (1)

Omit “carrying out” wherever occurring. Insert instead “conduct”.

[19] Section 232 General functions

Omit “carrying out” from section 232 (a). Insert instead “conducting”.

[20] Section 233 Entry to premises

Insert after section 233 (3):

- (4) In this section:
biosecurity auditor includes an individual who is an identified individual with respect to any function of a biosecurity auditor.

[21] Section 237 Obstruction of biosecurity auditor

Insert after section 237 (4):

- (5) In this section:
biosecurity auditor includes an individual who is an identified individual with respect to any function of a biosecurity auditor.

[22] Section 238 Provision of false or misleading information to biosecurity auditor

Omit section 238 (3). Insert instead:

(3) In this section:

biosecurity auditor includes an individual who is an identified individual with respect to the conduct of biosecurity audits by a biosecurity auditor.

[23] Section 240 Appointment policy

Omit section 240 (2) (a). Insert instead:

- (a) the qualifications, skills, knowledge and experience required with respect to the conduct of biosecurity audits by biosecurity auditors appointed by the accreditation authority,
- (a1) the suitability of individuals to carry out the function of conducting biosecurity audits for biosecurity auditors appointed by the accreditation authority,

[24] Section 241 Effect of appointment

Omit section 241 (1). Insert instead:

- (1) Appointment as a biosecurity auditor authorises the biosecurity auditor to conduct biosecurity audits.

[25] Section 241 (4)

Omit the subsection. Insert instead:

- (4) Nothing in this Act authorises or requires a biosecurity auditor to act in contravention of the conditions or limitations of the biosecurity auditor's appointment as a biosecurity auditor.

[26] Section 245 Grant or refusal of appointment

Omit section 245 (2) (b). Insert instead:

- (b) if the accreditation authority is not satisfied that the applicant can ensure that the conduct of biosecurity audits by the applicant will be carried out only by individuals who are suitable and have the qualifications, skills, knowledge and experience required by the accreditation authority's appointment policy, or

[27] Section 249 Grant or refusal of renewal application

Omit section 249 (2) (b). Insert instead:

- (b) if the accreditation authority is not satisfied that the applicant can ensure that the conduct of biosecurity audits by the applicant will be carried out only by individuals who are suitable and have the qualifications, skills, knowledge and experience required by the accreditation authority's appointment policy, or

[28] Section 250A

Insert after section 250:

250A Condition that work be carried out only by individuals

It is a condition of appointment as a biosecurity auditor that the conduct of biosecurity audits by the biosecurity auditor will be carried out only by an individual:

- (a) with the qualifications, skills, knowledge and experience required by the responsible accreditation authority's appointment policy, and
- (b) who is the biosecurity auditor or an identified individual with respect to the conduct of biosecurity audits by the biosecurity auditor.

[29] Section 251 Grounds for suspension or cancellation of appointment

Omit section 251 (1) (b). Insert instead:

- (b) the accreditation authority is not satisfied that the biosecurity auditor can ensure that the conduct of biosecurity audits by the biosecurity auditor will be carried out only by individuals who are suitable and have the qualifications, skills, knowledge and experience required by the accreditation authority's appointment policy,

[30] Section 252 Suspension of appointment

Insert after section 252 (1):

- (1A) The regulations may prescribe circumstances in which it is mandatory for the responsible accreditation authority to suspend the appointment of a biosecurity auditor.
- (1B) A responsible accreditation authority must suspend the appointment of a biosecurity auditor if it is mandatory for the accreditation authority to suspend the appointment.

[31] Section 254 Cancellation of appointment

Insert after section 254 (1):

- (1A) The regulations may prescribe circumstances in which it is mandatory for the responsible accreditation authority to cancel the appointment of a biosecurity auditor.
- (1B) A responsible accreditation authority must cancel the appointment of a biosecurity auditor if it is mandatory for the accreditation authority to cancel the appointment.

[32] Section 257 Offence of contravening conditions of appointment

Insert after section 257 (2):

- (2A) An offence against this section is an executive liability offence.

[33] Section 269A

Insert after section 269:

269A Condition that work be carried out only by individuals notified to Secretary

- (1) It is a condition of approval as an accreditation authority that the functions of an accreditation authority will be carried out only by individuals who are notified to the Secretary as individuals who are to carry out those functions for the accreditation authority.
- (2) Notification to the Secretary is not required if the individual carrying out the function is the accreditation authority.

[34] Section 393 Evidentiary certificates

Insert after section 393 (1) (v):

- (w) that a particular code has been issued as part of the National Livestock Identification System in respect of a person, property or animal, the date on which the code was issued and whether the code is active on any particular day.

[35] Section 404A

Insert after section 404:

404A Biosecurity order—permitted activities

- (1) The Secretary may by order published on the NSW legislation website permit an activity that would otherwise be prohibited by a mandatory measure or by a regulatory measure implemented in relation to a biosecurity zone.
- (2) An order may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.
- (3) An order may be published as part of any regulation under this Act but does not form part of that regulation.
- (4) Sections 40 and 41 of the *Interpretation Act 1987* apply to an order in the same way as those sections apply to a statutory rule.
- (5) An order under this section may be referred to as a biosecurity order (permitted activities).