



New South Wales

Biosecurity Amendment Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to make provision with respect to fees paid for the preparation of biosecurity certificates,
- (b) to provide for corporations to be accredited as biosecurity certifiers and appointed as biosecurity auditors,
- (c) to ensure that the issue of a biosecurity certificate by a biosecurity certifier, or the conduct of a biosecurity audit by a biosecurity auditor, will be carried out only by an appropriately qualified individual who is the biosecurity certifier or biosecurity auditor or who is an identified individual,
- (d) to permit mandatory grounds for the suspension or cancellation of accreditation as a biosecurity certifier, or appointment as a biosecurity auditor, to be prescribed by regulations under the *Biosecurity Act 2015* (the **Principal Act**),
- (e) to ensure that the accreditation of biosecurity certifiers and the appointment of biosecurity auditors by an accreditation authority will be carried out only by individuals notified to the Secretary of the Department of Industry, Skills and Regional Development (the **Secretary**),
- (f) to permit the Secretary to issue evidentiary certificates to facilitate proof of matters relating to the National Livestock Identification System,
- (g) to provide for the Secretary to make an order that permits an activity that would otherwise be prohibited by a mandatory measure or by a regulatory measure implemented in relation to a biosecurity zone.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Biosecurity Act 2015 No 24

Schedule 1 [1] inserts a definition of *identified individual* with respect to a function of a biosecurity certifier or a biosecurity auditor. An identified individual with respect to the function is an individual who is notified to the *responsible accreditation authority* (generally being the accreditation authority that accredited the biosecurity certifier or appointed the biosecurity auditor) as an individual who is to carry out the function for the biosecurity certifier or biosecurity auditor.

Schedule 1 [2] permits an authorised officer to charge a fee for preparing a biosecurity certificate. The fee is to be determined by the regulations. The fee for the preparation of any other biosecurity certificate is to be the fee agreed between the biosecurity certifier and the person seeking the biosecurity certificate.

Schedule 1 [3] provides that an offence of providing false or misleading information to a biosecurity certifier extends to providing such information to a person who is an identified individual with respect to the issuing of biosecurity certificates by a biosecurity certifier.

Schedule 1 [4] permits a person to issue, alter or amend a biosecurity certificate if the person is an identified individual with respect to the issuing of biosecurity certificates by a biosecurity certifier.

Schedule 1 [5] provides that an accreditation policy required to be adopted by an accreditation authority may make provision for or with respect to the qualifications, skills, knowledge and experience required with respect to the issue of biosecurity certificates by biosecurity certifiers accredited by the accreditation authority and the suitability of individuals to carry out the function of issuing biosecurity certificates for biosecurity certifiers.

Schedule 1 [6] and [7] make provision for corporations to be accredited as biosecurity certifiers by omitting references to “his or her”.

Schedule 1 [8] and [9] provide that an accreditation authority can refuse to grant accreditation, or refuse to grant renewal of accreditation, as a biosecurity certifier to an applicant 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 suitable individuals who are appropriately qualified.

Schedule 1 [10] makes it a condition of accreditation as a biosecurity certifier that the issue of biosecurity certificates by the biosecurity certifier will be carried out only by an individual who is appropriately qualified and who is the biosecurity certifier or an identified individual with respect to the issue of biosecurity certificates by the biosecurity certifier.

Schedule 1 [11] provides that grounds for the suspension or cancellation of accreditation as a biosecurity certifier includes the responsible accreditation authority not being satisfied that the biosecurity certifier can ensure that the issue of biosecurity certificates by the biosecurity certifier will be carried out only by suitable individuals who are appropriately qualified.

Schedule 1 [12] provides that the regulations under the Principal Act may prescribe circumstances in which it is mandatory for a responsible accreditation authority to suspend the accreditation of a biosecurity certifier.

Schedule 1 [13] provides that the regulations under the Principal Act may prescribe circumstances in which it is mandatory for a responsible accreditation authority to cancel the accreditation of a biosecurity certifier.

Schedule 1 [14] makes the offence of contravening a condition of accreditation as a biosecurity certifier an executive liability offence which means that both the corporation and directors of the corporation may be guilty of the offence.

Schedule 1 [17], [24] and [25] make provision for corporations to be appointed as biosecurity auditors by omitting references to “his or her”.

Schedule 1 [20] provides that the power of a biosecurity auditor to enter premises for the purpose of exercising the biosecurity auditor’s functions as a biosecurity auditor extends to a person who is an identified individual with respect to any function of a biosecurity auditor.

Schedule 1 [21] provides that an offence of obstructing a biosecurity auditor extends to obstruction of an identified individual with respect to any function of a biosecurity auditor.

Schedule 1 [22] provides that an offence of providing false or misleading information to a biosecurity auditor extends to providing such information to a person who is an identified individual with respect to the conduct of biosecurity audits by a biosecurity auditor.

Schedule 1 [23] provides that an appointment policy required to be adopted by an accreditation authority may make provision for or with respect to the qualifications, skills, knowledge and experience required with respect to the conduct of biosecurity audits by biosecurity auditors appointed by the accreditation authority and the suitability of individuals to carry out the function of conducting biosecurity audits for biosecurity auditors.

Schedule 1 [26] and [27] provide that an accreditation authority can refuse to grant appointment, or refuse to grant renewal of appointment, as a biosecurity auditor to an applicant 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 suitable individuals who are appropriately qualified.

Schedule 1 [28] makes it 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 who is appropriately qualified and who is the biosecurity auditor or an identified individual with respect to the conduct of biosecurity audits by the biosecurity auditor.

Schedule 1 [29] provides that grounds for the suspension or cancellation of appointment as a biosecurity auditor includes the responsible accreditation authority not being satisfied that the biosecurity auditor can ensure that the conduct of biosecurity audits by the biosecurity auditor will be carried out only by suitable individuals who are appropriately qualified.

Schedule 1 [30] provides that the regulations under the Principal Act may prescribe circumstances in which it is mandatory for a responsible accreditation authority to suspend the appointment of a biosecurity auditor.

Schedule 1 [31] provides that the regulations under the Principal Act may prescribe circumstances in which it is mandatory for a responsible accreditation authority to cancel the appointment of a biosecurity auditor.

Schedule 1 [32] makes the offence of contravening a condition of appointment as a biosecurity auditor an executive liability offence which means that both the corporation and directors of the corporation may be guilty of the offence.

Schedule 1 [33] makes it a condition of the approval of an accreditation authority that the exercise of functions by the accreditation authority (such as the accreditation of biosecurity certifiers) will be carried out only by individuals notified to the Secretary.

Schedule 1 [34] permits the Secretary to issue a certificate in relation to codes issued as part of the National Livestock Identification System which is admissible in any legal proceedings and is evidence of the matters stated in the certificate.

Schedule 1 [35] permits the Secretary to make an order that permits an activity that would otherwise be prohibited by a mandatory measure or by a regulatory measure implemented in relation to a biosecurity zone. The order is to be published on the NSW legislation website and

may be published as part of a regulation under the Principal Act (but does not form part of that regulation). The provisions of the *Interpretation Act 1987* that require notice of the making of a statutory rule to be laid before each House of Parliament and that permit a statutory rule to be disallowed apply to the order in the same way as those provisions apply to a statutory rule.

Schedule 1 [15], [16], [18] and [19] update terminology consequential on other amendments set out in Schedule 1.



New South Wales

Biosecurity Amendment Bill 2017

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New South Wales

Biosecurity Amendment Bill 2017

No. , 2017

A Bill for

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

1 Name of Act

2

This Act is the *Biosecurity Amendment Act 2017*.

3

2 Commencement

4

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

5

Schedule 1	Amendment of Biosecurity Act 2015 No 24	1
[1] Section 7 General definitions		2
Insert in alphabetical order:		3
<i>identified individual</i> , 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.		4 5 6 7
[2] Section 184A		8
Insert after section 184:		9
184A Fee for biosecurity certificate		10
(1) An authorised officer who prepares a biosecurity certificate may charge the person seeking the biosecurity certificate a fee for preparing the certificate.		11 12
(2) The fee charged is to be an amount provided for by, or calculated in accordance with, the regulations.		13 14
(3) The fee is, for the purposes of this Act:		15
(a) a recoverable amount that is payable to the Secretary, and		16
(b) recoverable from the person seeking the biosecurity certificate.		17
Note. See Part 20, which provides for the recovery of recoverable amounts.		18
(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.		19 20 21
[3] Section 187 Provision of false or misleading information to biosecurity certifier		22
Omit section 187 (5). Insert instead:		23
(5) In this section:		24
<i>biosecurity certifier</i> includes an identified individual with respect to the issuing of biosecurity certificates by a biosecurity certifier.		25 26
[4] Section 190 Issue or alteration of biosecurity certificate by unauthorised person		27
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).		28 29 30
[5] Section 192 Accreditation policy		31
Omit section 192 (2) (a). Insert instead:		32
(a) the qualifications, skills, knowledge and experience required with respect to the issue of biosecurity certificates by biosecurity certifiers accredited by the accreditation authority,		33 34 35
(a1) the suitability of individuals to carry out the function of issuing biosecurity certificates for biosecurity certifiers accredited by the accreditation authority,		36 37 38
[6] Section 193 Effect of accreditation		39
Omit section 193 (1). Insert instead:		40
(1) Accreditation as a biosecurity certifier authorises the biosecurity certifier to issue biosecurity certificates.		41 42

[7] Section 193 (4)	1
Omit the subsection. Insert instead:	2
(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.	3 4 5
[8] Section 197 Grant or refusal of accreditation	6
Omit section 197 (2) (b). Insert instead:	7
(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	8 9 10 11 12
[9] Section 201 Grant or refusal of renewal application	13
Omit section 201 (2) (b). Insert instead:	14
(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	15 16 17 18 19
[10] Section 204A	20
Insert after section 204:	21
204A Condition that work be carried out only by individuals	22
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:	23 24 25
(a) with the qualifications, skills, knowledge and experience required by the responsible accreditation authority's accreditation policy, and	26 27
(b) who is the biosecurity certifier or who is an identified individual with respect to the issuing of biosecurity certificates for the biosecurity certifier.	28 29 30
[11] Section 205 Grounds for suspension or cancellation of accreditation	31
Omit section 205 (1) (b). Insert instead:	32
(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,	33 34 35 36 37
[12] Section 206 Suspension of accreditation	38
Insert after section 206 (1):	39
(1A) The regulations may prescribe circumstances in which it is mandatory for the responsible accreditation authority to suspend the accreditation of a biosecurity certifier.	40 41 42

(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.	1 2 3
[13]	Section 208 Cancellation of accreditation	4
	Insert after section 208 (1):	5
(1A)	The regulations may prescribe circumstances in which it is mandatory for the responsible accreditation authority to cancel the accreditation of a biosecurity certifier.	6 7 8
(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.	9 10 11
[14]	Section 211 Offence of contravening conditions of accreditation	12
	Insert after section 211 (2):	13
(2A)	An offence against this section is an executive liability offence.	14
[15]	Sections 214, 215, 218, 219 (1)–(3), 224, 225 (1)–(3), 226 (1) (c) and (2), 228 (3) and 235 (2) (a)	15 16
	Omit “carried out” wherever occurring. Insert instead “conducted”.	17
[16]	Sections 220, 228 and 393 (1) (u)	18
	Omit “carry out” wherever occurring. Insert instead “conduct”.	19
[17]	Sections 221, 229 and 241 (2)	20
	Omit “his or her” wherever occurring. Insert instead “the biosecurity auditor’s”.	21
[18]	Sections 222 (1) and 230 (1)	22
	Omit “carrying out” wherever occurring. Insert instead “conduct”.	23
[19]	Section 232 General functions	24
	Omit “carrying out” from section 232 (a). Insert instead “conducting”.	25
[20]	Section 233 Entry to premises	26
	Insert after section 233 (3):	27
(4)	In this section: <i>biosecurity auditor</i> includes an individual who is an identified individual with respect to any function of a biosecurity auditor.	28 29 30
[21]	Section 237 Obstruction of biosecurity auditor	31
	Insert after section 237 (4):	32
(5)	In this section: <i>biosecurity auditor</i> includes an individual who is an identified individual with respect to any function of a biosecurity auditor.	33 34 35

[22] Section 238 Provision of false or misleading information to biosecurity auditor	1
Omit section 238 (3). Insert instead:	2
(3) In this section:	3
<i>biosecurity auditor</i> includes an individual who is an identified individual with respect to the conduct of biosecurity audits by a biosecurity auditor.	4 5
[23] Section 240 Appointment policy	6
Omit section 240 (2) (a). Insert instead:	7
(a) the qualifications, skills, knowledge and experience required with respect to the conduct of biosecurity audits by biosecurity auditors appointed by the accreditation authority,	8 9 10
(a1) the suitability of individuals to carry out the function of conducting biosecurity audits for biosecurity auditors appointed by the accreditation authority,	11 12 13
[24] Section 241 Effect of appointment	14
Omit section 241 (1). Insert instead:	15
(1) Appointment as a biosecurity auditor authorises the biosecurity auditor to conduct biosecurity audits.	16 17
[25] Section 241 (4)	18
Omit the subsection. Insert instead:	19
(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.	20 21 22
[26] Section 245 Grant or refusal of appointment	23
Omit section 245 (2) (b). Insert instead:	24
(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	25 26 27 28 29
[27] Section 249 Grant or refusal of renewal application	30
Omit section 249 (2) (b). Insert instead:	31
(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	32 33 34 35 36
[28] Section 250A	37
Insert after section 250:	38
250A Condition that work be carried out only by individuals	39
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:	40 41 42

	(a) with the qualifications, skills, knowledge and experience required by the responsible accreditation authority's appointment policy, and	1 2
	(b) who is the biosecurity auditor or an identified individual with respect to the conduct of biosecurity audits by the biosecurity auditor.	3 4
[29]	Section 251 Grounds for suspension or cancellation of appointment	5
	Omit section 251 (1) (b). Insert instead:	6
	(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,	7 8 9 10 11
[30]	Section 252 Suspension of appointment	12
	Insert after section 252 (1):	13
	(1A) The regulations may prescribe circumstances in which it is mandatory for the responsible accreditation authority to suspend the appointment of a biosecurity auditor.	14 15 16
	(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.	17 18 19
[31]	Section 254 Cancellation of appointment	20
	Insert after section 254 (1):	21
	(1A) The regulations may prescribe circumstances in which it is mandatory for the responsible accreditation authority to cancel the appointment of a biosecurity auditor.	22 23 24
	(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.	25 26 27
[32]	Section 257 Offence of contravening conditions of appointment	28
	Insert after section 257 (2):	29
	(2A) An offence against this section is an executive liability offence.	30
[33]	Section 269A	31
	Insert after section 269:	32
269A	Condition that work be carried out only by individuals notified to Secretary	33
	(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.	34 35 36 37
	(2) Notification to the Secretary is not required if the individual carrying out the function is the accreditation authority.	38 39

[34] Section 393 Evidentiary certificates	1
Insert after section 393 (1) (v):	2
(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.	3 4 5 6
[35] Section 404A	7
Insert after section 404:	8
404A Biosecurity order—permitted activities	9
(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.	10 11 12
(2) An order may:	13
(a) apply generally or be limited in its application by reference to specified exceptions or factors, or	14 15
(b) apply differently according to different factors of a specified kind, or	16
(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,	17 18
or may do any combination of those things.	19
(3) An order may be published as part of any regulation under this Act but does not form part of that regulation.	20 21
(4) Sections 40 and 41 of the <i>Interpretation Act 1987</i> apply to an order in the same way as those sections apply to a statutory rule.	22 23
(5) An order under this section may be referred to as a biosecurity order (permitted activities).	24 25