

Primary Industries Legislation Amendment (Biosecurity) Act 2012 No 31

[2012-31]



New South Wales

Status Information

Currency of version

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

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Authorisation

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Primary Industries Legislation Amendment (Biosecurity) Act 2012 No 31



New South Wales

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Primary Industries Legislation Amendment (Biosecurity) Act 2012 No 31



New South Wales

An Act to amend the *Animal Diseases (Emergency Outbreaks) Act 1991*, the *Fisheries Management Act 1994*, the *Noxious Weeds Act 1993* and the *Plant Diseases Act 1924* to make further provision with respect to biosecurity; and for other purposes.

1 Name of Act

This Act is the *Primary Industries Legislation Amendment (Biosecurity) Act 2012*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of *Animal Diseases (Emergency Outbreaks) Act 1991 No 73*

[1] Long title

Insert “and certain animal pests” after “other animals”.

[2] Section 1 Name of Act

Insert “and Animal Pests” after “Animal Diseases”.

[3] Section 6B

Insert after section 6A:

6B Meaning of “emergency animal pest”

- (1) For the purposes of this Act, **emergency animal pest** means any animal that is not indigenous to a particular area and is an animal of a kind declared by the Minister, by order in writing, to be an emergency animal pest for the purposes of this Act.

(2) An order by the Minister under this section:

(a) comes into force on the date that it is signed, and

(b) must be published in the Gazette within 14 days after that date.

(3) An order that is not published within 14 days after it is made is taken (unless it has already been revoked) to have been revoked at the end of that 14-day period.

[4] Section 11A Extent of declaration

Omit “or vehicles”. Insert instead “, vehicles or other things”.

[5] Section 11A (2)

Insert at the end of section 11A:

(2) For the purposes of this section, a declaration may identify a class or description of things that are not animals, animal products, fodder, fittings, soil or vehicles as affected by the declaration if those things are or could be infected with an emergency animal disease, or could assist the spread of infection of an emergency animal disease.

[6] Section 12 Permit for entry or exit

Omit “or soil” from section 12 (1) (c). Insert instead “, soil or other thing”.

[7] Section 12 (2)

Omit “or vehicle”. Insert instead “, vehicle or thing”.

[8] Section 12 (2) (b)

Omit “or soil”. Insert instead “, soil or other things”.

[9] Section 13 Entry and exit points

Omit “or soil” from section 13 (1) (b). Insert instead “, soil or other thing”.

[10] Section 13 (3) (c)

Omit “or vehicle”. Insert instead “, vehicle or other thing”.

[11] Section 15 Declaration of restricted areas

Omit “or vehicles” from section 15 (2).

Insert instead “, vehicles or other things”.

[12] Section 15 (3)

Insert after section 15 (2):

- (3) For the purposes of this section, a declaration may identify a class or description of things that are not animals, animal products, fodder, fittings, soil or vehicles as affected by the declaration if those things are or could be infected with an emergency animal disease, or could assist the spread of infection of an emergency animal disease.

[13] Section 16 Permit for entry or exit

Omit “or vehicles” from section 16 (1).

Insert instead “, vehicles or other things”.

[14] Section 16 (2)

Omit “or vehicle”. Insert instead “, vehicle or other thing”.

[15] Section 18 Entry and exit points

Omit “or vehicle” from section 18 (1). Insert instead “, vehicle or other thing”.

[16] Section 18 (2)

Omit “or vehicles”. Insert instead “, vehicle or other thing”.

[17] Section 20 Area restriction order

Insert after section 20 (1):

- (1AA) An area restriction order may also authorise inspectors to take measures specified in the order within the restricted area for the purpose of controlling, eradicating or preventing the spread of an emergency animal disease.

[18] Section 20 (2)

Insert “or authorise” after “require” wherever occurring.

[19] Section 22 Control orders

Insert “or specified part of the control area” after “control area” in section 22 (1) (a) (v).

[20] Section 22 (1A)

Insert after section 22 (1):

(1A) A control order may also authorise inspectors to take measures specified in the order within the control area or a specified part of the control area for the purpose of controlling, eradicating or preventing the spread of an emergency animal disease.

[21] Section 24 Permits

Omit “or restricted area” from section 24 (1) (a).

Insert instead “, restricted area or control area”.

[22] Section 24 (2A)

Omit “Minister”. Insert instead “Director-General”.

[23] Part 3A

Insert after Part 3:

Part 3A Control of emergency animal pests

Division 1 Duties

27A Duty to notify

A person:

- (a) who owns any premises on which the person suspects there is an emergency animal pest, or
- (b) who owns, or is in charge of, or has in his or her possession or control, an animal that the person suspects is an emergency animal pest, or
- (c) who, in a professional capacity, is consulted in relation to an animal that the person suspects is an emergency animal pest, or in relation to land or premises on which the person suspects there is an emergency animal pest,

and who does not, as soon as possible after becoming aware of or suspecting the presence of the emergency animal pest, report it to an inspector by the quickest means of communication available to the person is guilty of an offence.

Maximum penalty: 200 penalty units.

27B Release of emergency animal pests

(1) A person must not:

- (a) intentionally or recklessly, do or cause or permit the doing of an act that is likely to result in the spread of emergency animal pests on any land, or

- (b) threaten to do an act or to cause or permit the doing of an act that is likely to result in the spread of emergency animal pests on any land.

Maximum penalty: 1,000 penalty units or imprisonment for 2 years, or both.

- (2) This section does not apply to a person who has the authority of the Director-General to be in possession of an emergency animal pest and who is acting in accordance with the regulations.

Division 2 Infested places

27C Declaration of infested place

- (1) If the Minister reasonably suspects any premises, place or area within the State to be infested with an emergency animal pest, the Minister may by order declare it to be an infested place.
- (2) The declaration must identify the classes or descriptions of animal products, fodder, fittings, soil, vehicles or other things that are affected by the declaration.
- (3) For the purposes of this section, a declaration may identify a class or description of things that are not animal products, fodder, fittings, soil or vehicles as affected by the declaration if those things are or could be infested with emergency animal pests, or could assist the spread of infestation of emergency animal pests.
- (4) Written notice of the declaration must be given to the owner or person in charge of or in apparent control of the premises, place or area to which the order relates.

27D Permit for entry or exit

- (1) A person (other than an inspector) who:
 - (a) enters or leaves any premises, place or area declared to be an infested place, or
 - (b) causes, permits or assists any other person to enter or leave any such premises, place or area, or
 - (c) brings, moves or takes, or allows any person to bring, move or take, any animal product, fodder, fitting, soil or other thing to which the relevant declaration applies into, within or out of any such premises, place or area, or
 - (d) causes, permits or assists any vehicle to enter or leave any premises, place or area declared to be an infested place,

is guilty of an offence unless the person is authorised to do so by a permit and

the person complies with any conditions set out in the permit.

Maximum penalty: 400 penalty units or imprisonment for 12 months, or both.

- (2) Without limiting the powers of an inspector to attach conditions to a permit, a permit may be issued subject to the condition that the holder of the permit, or the animal product, fodder, fitting, soil, vehicle or other thing to which the permit relates:
- (a) must first be effectively disinfected to the satisfaction of the inspector and in a manner specified by the inspector before leaving or being taken out of the infested place, and
 - (b) must not go or be brought to any other premises or place where any specified animal products, fodder, fittings, soil or other things are located.

27E Entry and exit points

- (1) Any movement of:
- (a) any vehicle affected by the relevant declaration into or out of an infested place, or
 - (b) any animal product, fodder, fittings, soil or other thing affected by the relevant declaration into or out of an infested place, or
 - (c) any person into or out of any such infested place,
- must be made only through a point or points specified in a notice issued by an inspector to the person in charge, or in apparent control, of the infested place.
- (2) The inspector may cause the notice to be published in a local newspaper or on the Department's internet website, or both.
- (3) A person who knows or has reason to believe any premises, place or area to be an infested place and who, in contravention of this section:
- (a) goes into or out of the infested place, or
 - (b) moves any other person into or out of the infested place, or
 - (c) moves any animal product, fodder, fitting, soil, vehicle or other thing affected by the relevant declaration into or out of the infested place,
- is guilty of an offence.

Maximum penalty: 400 penalty units or imprisonment for 12 months, or both.

Division 3 Restricted areas

27F Declaration of restricted area

- (1) If, in the opinion of the Minister, there is a possibility that any premises, place or area within the State may be or become infested with an emergency animal pest, the Minister may by order in writing declare the premises, place or area concerned to be a restricted area.
- (2) The declaration must identify the boundaries of the restricted area and the classes or descriptions of animal products, fodder, fittings, soil, vehicles or other things that are affected by it.
- (3) For the purposes of this section, a declaration may identify a class or description of things that are not animal products, fodder, fittings, soil or vehicles as affected by the declaration if those things are or could be infested with emergency animal pests, or could assist the spread of infestation of emergency animal pests.
- (4) Notice of an order declaring any premises, place or area to be a restricted area must be published:
 - (a) in the Gazette, and
 - (b) in a local newspaper or on the Department's internet website, or both.
- (5) An order of which notice has not been so published within 14 days after it was made is taken (unless it has already been revoked) to have been revoked at the end of that 14-day period.

27G Permit for entry or exit

- (1) A person who causes or permits any animal products, fodder, fittings, soil, vehicles or other things to which the relevant declaration applies to be moved into, within or out of a restricted area is guilty of an offence unless the person is authorised to do so by a permit and the person complies with any condition set out in the permit.

Maximum penalty: 400 penalty units or imprisonment for 12 months, or both.

- (2) Without limiting the powers of an inspector to attach conditions to a permit, a permit referred to in subsection (1) may be issued subject to the condition that the holder of the permit, or the animal product, fodder, fitting, soil, vehicle or other thing to which the permit relates, is effectively disinfected to the satisfaction of the inspector and in a manner specified by the inspector, before leaving or being taken out of the restricted area.

27H Variation of boundaries of restricted areas including parts of roadways

- (1) The boundaries of a restricted area as fixed by the relevant declaration may be varied, in so far as a restricted area includes any part of a roadway, by moving, in a manner appropriate to the new boundary, any sign placed pursuant to this Act as an indicator of the boundaries of the restricted area across the roadway.
- (2) The variation takes effect when the sign is moved to indicate the variation.

27I Entry and exit points

- (1) Any movement of any animal product, fodder, fittings, soil, vehicle or other thing affected by the relevant declaration into or out of a restricted area must be made only through a point or points specified in a notice issued by an inspector and published in a local newspaper or on the Department's internet website, or both.
- (2) A person who knows, or has reason to believe, that any premises, place or area has been constituted a restricted area and who moves any animal product, fodder, fittings, soil, vehicle or other thing affected by the relevant declaration into or out of the premises, place or area in contravention of this section is guilty of an offence.

Maximum penalty: 400 penalty units or imprisonment for 12 months, or both.

27J Area restriction order

- (1) The Minister may, by order published in the Gazette (an **area restriction order**), direct all or any specified persons or class of persons within a restricted area to take measures specified in the order for the purpose of controlling, eradicating or preventing the spread of an emergency animal pest.
- (2) An area restriction order may also authorise inspectors to take measures specified in the order within the restricted area for the purpose of controlling, eradicating or preventing the spread of an emergency animal pest.
- (3) An area restriction order must also be published in a local newspaper or on the Department's internet website, or both.
- (4) An area restriction order takes effect on publication and may do any of the following:
 - (a) require or authorise premises, vehicles or things (including soil) to be disinfected,
 - (b) require or authorise inspectors to take measures specified in the order within the restricted area for the purpose of controlling, eradicating or preventing the spread of an emergency animal pest,

(c) require or authorise other measures to be taken which the Minister considers reasonably necessary in the circumstances.

(5) A person who contravenes an area restriction order is guilty of an offence.

Maximum penalty: 400 penalty units or imprisonment for 12 months, or both.

Division 4 Control areas

27K Declaration of control area

(1) The Minister may by order in writing declare any premises, place or area within the State to be a control area if, in the opinion of the Minister, this is reasonably necessary for the purpose of preventing the spread of an emergency animal pest.

(2) The declaration must identify the boundaries of the control area.

(3) Notice of an order declaring any premises, place or area to be a control area must be published:

(a) in the Gazette, and

(b) in a local newspaper or on the Department's internet website, or both.

(4) An order of which notice has not been so published within 14 days after it was made is taken (unless it has already been revoked) to have been revoked at the end of that 14-day period.

27L Control orders

(1) The Minister may, with respect to the whole or a specified part of a control area, by order in writing (a **control order**):

(a) prohibit, regulate or control the movement of specified animal products, fodder, fittings, soil, vehicles or other things into, out of or within the control area or specified part of the area, or

(b) order all or any specified persons within the control area or specified part of the area to take such measures as the Minister thinks fit to contain or eradicate the emergency animal pests, or

(c) authorise inspectors to take measures specified in the order within the control area or specified part of the area for the purpose of controlling, eradicating or preventing the spread of the emergency animal pests.

(2) A person who contravenes a control order is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for 6 months, or both.

- (3) A person does not commit an offence under subsection (2) of contravening a control order if the act constituting the contravention is authorised by a permit granted to the person.
- (4) An order made in accordance with subsection (1) (b) must specify:
 - (a) the control area or the specified part of a control area to which the order relates, and
 - (b) the persons, or the specified persons, to whom the order applies, and
 - (c) the measures that those persons must take.

Division 5 General

27M Permits

- (1) An inspector may grant a permit authorising:
 - (a) the entry to or exit from, or movement within, an infested place, restricted area or control area, or
 - (b) the carrying out of any activity that is the subject of a control order.
- (2) The permit has effect for the period of time, and subject to any conditions, specified by the inspector in the permit. The inspector may specify such conditions as the inspector thinks fit, having regard to the nature and circumstances of the emergency animal pest and of the place or area to which the permit applies.
- (3) Without limiting the basis on which permits may be granted, a permit may be granted on a general basis so that it applies to a specified class of persons. Any such general permit may be granted by such means as may be approved by the Director-General.
- (4) Any inspector may revoke or vary a permit at any time by notice in writing to the holder of the permit. In the case of a permit that has been granted on a general basis to a specified class of persons, notice of the revocation or variation may be published on the Department's internet website.
- (5) The holder of a permit that has been revoked must, on request by the inspector, immediately deliver the revoked permit to the inspector who revoked it or to a person nominated by that inspector.

Maximum penalty: 5 penalty units.

27N Restraint of persons

An inspector may, if in the inspector's opinion it is necessary to do so, use

reasonable force to restrain a person who is acting contrary to a requirement of this Part from so acting.

27O Interfering with fence or gate in declared area

A person must not break down, damage or leave open a fence, gate or fastening:

- (a) that is used for confining any animal, or regulating or preventing the movement of any animal, and
- (b) that provides access to, or is within, a declared area.

Maximum penalty: 5 penalty units.

27P Other functions and liabilities not affected

Nothing in this Part in any way limits or affects:

- (a) the functions of an inspector under this Act, or
- (b) the liability of any person for an offence under any other provision of this Act.

[24] Section 28 Entry of animals etc from outside State

Omit “or soil” from section 28 (1) wherever occurring.

Insert instead “, soil or other things”.

[25] Section 28 (1A)

Insert after section 28 (1):

- (1A) If the Minister reasonably suspects any premises, place or area outside the State to be infested with an emergency animal pest, the Minister may by order in writing (an **importation order**) absolutely prohibit, or impose conditions on, the entry or importation into the State of emergency animal pests, animals, animal products, fodder, fittings, soil, vehicles or other things identified by the order.

[26] Section 28 (2)

Omit “or vehicles except at places specified in the declaration”.

Insert instead “, vehicles or other things”.

[27] Section 28 (2)

Omit “and vehicles”. Insert instead “, vehicles and other things”.

[28] Section 28 (3)

Insert after section 28 (2):

- (3) For the purposes of this section, an order may identify a class or description of things that are not animals, animal products, fodder, fittings, soil or vehicles if those things are or could be infected with an emergency animal disease or infested with an emergency animal pest, or could assist the spread of infection of an emergency animal disease or the spread of infestation of an emergency animal pest.

[29] Section 31 Contravention of importation order

Omit "or vehicle". Insert instead ", vehicle or other thing".

[30] Section 32 Destruction of animals, premises and other property

Omit "domestic" wherever occurring in section 32 (1) (a) and (c) and (3).

[31] Section 32 (1) (b)

Omit "or vehicle". Insert instead ", vehicle or other thing".

[32] Section 32 (1A)

Insert after section 32 (1):

(1A) The Minister may by order in writing (a **destruction order**) require the destruction of:

- (a) any emergency animal pest, or
- (b) any premises (other than a dwelling) or any animal, animal product, fodder, fittings or other thing which the Minister reasonably suspects to be infested with an emergency animal pest and which cannot be effectively disinfected.

[33] Section 32 (2) (a)

Omit "a domestic animal".

Insert instead "an emergency animal pest or other animal".

[34] Section 32 (2) (b)

Omit "domestic animal".

Insert instead "emergency animal pest or other animal".

[35] Section 32 (2) (c)

Omit “or vehicles” wherever occurring.

Insert instead “, vehicles or other things”.

[36] Section 32 (4)

Insert after section 32 (3):

- (4) The Minister must not order the destruction of an animal that is protected fauna within the meaning of the *National Parks and Wildlife Act 1974* unless the Minister has consulted the Minister administering the *National Parks and Wildlife Act 1974* about the order.

[37] Section 33 Notice of destruction order

Insert “emergency animal pest or other” before “animal”.

[38] Section 34 Enforcement of destruction order

Omit “domestic animal” from section 34 (1).

Insert instead “emergency animal pest or other animal”.

[39] Section 34 (2)

Insert “(if any)” after “person in charge”.

[40] Section 35 Quarantine of places and vehicles

Omit “or soil” wherever occurring. Insert instead “, soil or other thing”.

[41] Section 35 (1) and (2)

Omit “on to or out of” wherever occurring.

Insert instead “on to, within or out of”.

[42] Section 35 (1AA)

Insert after section 35 (1):

- (1AA) An inspector may by order in writing (a **quarantine order**) quarantine and keep secure any premises or place, or part of any premises or place, so as to prohibit or restrict the movement of any suspected emergency animal pest, animal product, fodder, fitting, soil, vehicle or other thing on to, within or out of the premises or place, if the inspector:

- (a) reasonably suspects the premises or place concerned to be infested with an emergency animal pest, and
- (b) believes on reasonable grounds that, in order to prevent the spread of the suspected emergency animal pest, it is necessary to make the order.

[43] Section 35 (1B)

Insert after section 35 (1A):

- (1B) For the purposes of this section, a quarantine order may identify a class or description of things that are not animals, animal products, fodder, fittings, soil or vehicles if those things are or could be infected with an emergency animal disease or infested with an emergency animal pest, or could assist the spread of infection of an emergency animal disease or infestation of an emergency animal pest.

[44] Section 36 Duration of quarantine order

Insert “relating to an emergency animal disease” after “quarantine order”.

[45] Section 36 (2)

Insert at the end of section 36:

- (2) A quarantine order relating to an emergency animal pest is in force only:
 - (a) for a period of 40 days from the giving of notice of the order, or
 - (b) for such shorter or longer period as the Director-General determines.

[46] Section 38A Undertaking in certain cases

Omit “or soil on to or out of” from section 38A (3).

Insert instead “, soil or other thing on to, within or out of”.

[47] Section 39 Disinfection of places and vehicles

Omit “or soil” from section 39 (1) (a) (ii). Insert instead “, soil or other thing”.

[48] Section 39 (1A)

Insert after section 39 (1):

- (1A) An inspector may by order in writing (a **disinfection order**) direct:
 - (a) the owner or person in charge or in apparent control of any premises or place to disinfect the premises or place (along with any fodder, fitting, soil or other thing

within the premises or place and any vehicle within the premises or place), and

(b) any other person entering or leaving any premises or place to disinfect any vehicle or other thing on or about them,

if the inspector reasonably suspects the premises or place is infested with an emergency animal pest.

[49] Section 41 Seizure for unauthorised movements

Omit “or soil”. Insert instead “, soil or other thing”.

[50] Section 41 (b)

Insert “or infested with an emergency animal pest” after “emergency animal disease”.

[51] Section 41 (c)

Insert “or there are emergency animal pests” after “emergency animal disease”.

[52] Section 42 Seized animals and property

Insert “or emergency animal pest” after “emergency animal disease” in section 42 (1).

[53] Section 43 Verbal and documentary information

Insert “or emergency animal pest” after “emergency animal disease” in section 43 (1).

[54] Section 43 (1) (a)

Insert “or pest” after “disease” wherever occurring.

[55] Section 45 Search and entry and other powers

Omit “authorised” from section 45 (1).

[56] Section 45 (1) (h)

Omit the paragraph. Insert instead:

(h) inspect, examine, test, disinfect, fumigate, take samples from or take photographs or video recordings of any premises, place, area, fodder, fitting, soil, vehicle or other thing,

[57] Section 45 (1) (i)

Insert “emergency animal pest or” before “free-living animal”.

[58] Section 45 (2)

Insert “, a declaration of a control area” after “infected place”.

[59] Section 46 Requiring assistance

Insert “or infested with an emergency animal pest” after “emergency animal disease” in section 46 (1) (a).

[60] Section 46 (2) (h)

Insert after section 46 (2) (g):

(h) disinfect any premises, place, area or vehicle.

[61] Part 6, heading

Insert “**and Pests**” after “**Diseases**”.

[62] Section 51 Establishment of the Fund

Insert “and Pests” after “Diseases”.

[63] Section 51

Insert “or emergency animal pests” after “emergency animal diseases”.

[64] Section 52 Payments to the Fund

Insert “or emergency animal pests” after “emergency animal diseases” in section 52 (a).

[65] Section 53 Purposes of the Fund

Insert “or emergency animal pest” after “emergency animal disease” wherever occurring in section 53 (a).

[66] Section 67 Delegation

Insert at the end of the section:

(2) The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) to:

(a) any member of staff of the Department, or

(b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

[67] Section 70AA

Insert after section 70:

70AA Reasonable suspicion of emergency animal pest infestation

- (1) For the purposes of this Act, an animal, place or thing may reasonably be suspected of being infested with an emergency animal pest if there is reason to think:
- (a) that an emergency animal pest is present in or on the animal, place or thing, or
 - (b) that there is present in or on the place or thing a vehicle or thing that has been in or on another place when an emergency animal pest was present in or on that other place.
- (2) This section does not prejudice any other evidence or consideration by which an inspector or other person might reasonably suspect that an animal, place or thing is infested with an emergency animal pest.

[68] Section 76 Protection of control programs

Insert “or an incursion of an emergency animal pest” after “emergency animal disease” wherever occurring in section 76 (1) and (2).

[69] Section 76 (1) (b)

Insert “or pest” after “the disease”.

[70] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Primary Industries Legislation Amendment (Biosecurity) Act 2012

[71] Dictionary, definition of “disinfected”

Insert “or infestation” after “infection”.

[72] Dictionary

Insert in alphabetical order:

emergency animal pest—see section 6B.

[73] Dictionary, definition of “Fund”

Insert “and Pests” after “Diseases”.

[74] Dictionary, definition of “treatment”

Omit the definition. Insert instead:

treatment means any procedure:

- (a) for curing, or for the alleviation, control, prevention or eradication of, an emergency animal disease, and includes vaccination, or
- (b) for the alleviation, control, prevention or eradication of an emergency animal pest.

Schedule 2 Amendment of Fisheries Management Act 1994 No 38

[1] Sections 181 and 183

Insert “or boat” after “area” where firstly occurring in the definition of **quarantine area** in section 181 and in section 183 (1).

[2] Section 183 Minister may declare quarantine area

Omit section 183 (3). Insert instead:

- (3) An order declaring a quarantine area is to be published in the Gazette. However, if the Minister considers the order is required urgently, the order may be published:
 - (a) in a newspaper circulating, or by radio or television broadcast, in the area to which the order applies, or
 - (b) on the Department’s internet website.
- (3A) The order is not required to be so published if served on the owner or occupier of the area or boat concerned.
- (3B) The order commences on the day it is published or served in accordance with this section, or on such later day as may be specified in the order.

[3] Section 183 (4) (a2)

Insert after section 183 (4) (a1):

- (a2) prohibit or restrict the movement of fish or marine vegetation or specified fish or marine vegetation into, within or out of the quarantine area, and

[4] Section 183 (4) (b)

Insert “quarantine” before “area”.

[5] Section 183 (4)

Omit “in the Gazette”. Insert instead “in accordance with this section”.

[6] Section 183 (4A) (b)

Omit “(including any boat) within a quarantine area”.

Insert instead “or boat that is within a quarantine area or the master of any such boat”.

[7] Section 187 Regulations relating to diseased fish and marine vegetation

Insert “or in or on a boat” after “other place” in section 187 (2) (c).

[8] Sections 209C and 209D

Insert after section 209B:

209C Minister may declare quarantine area

- (1) The Minister may, by order, declare any area or boat specified in the order to be a quarantine area because of the presence or suspected presence of noxious fish or noxious marine vegetation.
- (2) An area may be declared a quarantine area if:
 - (a) it is subject to an aquaculture permit, or
 - (b) it is an area of water, or
 - (c) it is an area in the immediate vicinity of an area of water, or
 - (d) it is a pet shop or an aquarium kept for commercial purposes or other place where noxious fish or suspected noxious fish are found that is used for commercial purposes.
- (3) An order declaring a quarantine area is to be published in the Gazette. However, if the Minister considers the order is required urgently, the order may be published:
 - (a) in a newspaper circulating, or by radio or television broadcast, in the area to which the order applies, or
 - (b) on the Department’s internet website.
- (4) The order is not required to be so published if served on the owner or occupier of the area or boat concerned.
- (5) The order commences on the day it is published or served in accordance with this section, or on such later day as may be specified in the order.
- (6) An order declaring a quarantine area may:
 - (a) prohibit the taking of fish or marine vegetation or specified fish or marine

vegetation in or from the quarantine area, and

- (b) prohibit or restrict the movement of fish or marine vegetation or specified fish or marine vegetation into, within or out of the quarantine area, and
- (c) exclude specified provisions of this Division in respect of any fish or marine vegetation, or specified fish or marine vegetation, taken from or deposited in the quarantine area or any part of the quarantine area, and
- (d) require a relevant person to take such action as is specified in the order or directed by a fisheries officer (including the destruction or treatment of fish or marine vegetation cultivated or located in the quarantine area), and
- (e) contain any other provisions authorised by the regulations.

If the order is not published in accordance with this section, the provisions of the order apply only to the persons on whom the order is served.

(7) For the purposes of this section, a **relevant person** means:

- (a) the holder of an aquaculture permit in respect of a quarantine area or part of a quarantine area, or
- (b) the owner or occupier of any land or premises or any boat that is or is within a quarantine area or the master of any such boat.

(8) A person who, without reasonable excuse, contravenes a provision of an order declaring a quarantine area is guilty of an offence.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 500 penalty units.

(9) If a relevant person fails to take any action required by an order declaring a quarantine area, a fisheries officer may enter the quarantine area and take the required action.

(10) Subsection (9) does not authorise a fisheries officer to enter any premises used for residential purposes.

(11) If the fisheries officer takes such action:

- (a) the relevant person is not entitled to any compensation for any loss reasonably caused in taking that action, and
- (b) the Minister may recover from the relevant person the costs of taking that action as a debt in a court of competent jurisdiction.

209D Release of noxious fish or noxious marine vegetation prohibited

- (1) A person must not intentionally or recklessly release into any waters any live noxious fish or live noxious marine vegetation otherwise than under the authority of a permit issued by the Minister for the purposes of this section.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units.

- (2) This section does not apply:

(a) if the fish are released in waters in which they are not noxious fish, or the marine vegetation is released in waters in which it is not noxious marine vegetation, for the purposes of this Division, or

(b) to the immediate return of fish to waters from which they were taken.

- (3) In this section, **release** fish or marine vegetation includes depositing them or permitting them to escape.

[9] Section 210 Sale of noxious fish or noxious marine vegetation prohibited

Omit “100 penalty units or, in any other case, 50 penalty units”.

Insert instead “500 penalty units or, in any other case, 100 penalty units”.

[10] Section 214B

Insert after section 214A:

214B Regulations relating to noxious fish and noxious marine vegetation

- (1) The regulations may make provision for or with respect to eliminating or preventing the spread of noxious fish and noxious marine vegetation.

- (2) In particular, the regulations may make provision for or with respect to the following:

(a) the destruction of noxious fish or noxious marine vegetation,

(b) the examination and testing of fish or marine vegetation taken from or found in a quarantine area,

(c) the notification to the Minister or a fisheries officer of the presence or suspected presence of noxious fish or noxious marine vegetation in an area subject to an aquaculture permit, pet shop, aquarium or other place or in or on a boat.

[11] Section 242 Power of seizure

Insert “and to take photographs and video recordings of the thing” after “inspect the thing” in section 242 (1).

[12] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Primary Industries Legislation Amendment (Biosecurity) Act 2012

Schedule 3 Amendment of Noxious Weeds Act 1993 No 11

[1] Section 10 Emergency weed control orders

Omit “, by order published in the Gazette,” from section 10 (1).

[2] Section 10 (2)

Omit “3 months”. Insert instead “12 months”.

[3] Section 10 (2A)-(2C)

Insert after section 10 (2):

(2A) An emergency weed control order is to be published in the Gazette. However, if the Minister considers the order is required urgently, the order may be published:

- (a) in a newspaper circulating, or by radio or television broadcast, in the area in which the land subject to the order is located, or, if appropriate, in a newspaper circulating throughout the whole State, or
- (b) on the Department’s internet website.

(2B) If an order is published in accordance with subsection (2A) other than in the Gazette, the Minister is to publish the order as soon as practicable in the Gazette.

(2C) The order commences on the day it is first published in accordance with this section, or on such later day as may be specified in the order.

[4] Section 15 Occupiers of land must notify local control authority of notifiable weeds

Omit “3 days”. Insert instead “24 hours”.

[5] Section 16A

Insert after section 16:

16A Duty of other persons to notify local control authority of notifiable weeds

A person who, in a professional capacity, becomes aware or suspects that a plant on land is a notifiable weed must notify the local control authority for the land of that fact within 24 hours of becoming aware or suspecting that the notifiable weed is on the land.

Maximum penalty: 20 penalty units.

[6] Section 34A Minister may declare quarantine area

Insert “or that the Minister considers are reasonably likely to spread to the land” after “the land” in section 34A (1).

[7] Section 34A (5)-(5B)

Omit section 34A (5). Insert instead:

(5) An order declaring land to be a quarantine area must be published in a newspaper circulating in the area in which the land is located. However, if the Minister considers that the order is urgently required, the order may be published on the Department’s internet website.

(5A) If an order is published in accordance with subsection (5) on the Department’s internet website, the Minister is to publish the order as soon as practicable in a newspaper circulating in the area in which the land is located.

(5B) The order commences on the day it is first published in accordance with this section, or on such later day as may be specified in the order.

[8] Section 34A (6)

Omit “6 months”. Insert instead “12 months”.

[9] Section 44 Inspections and investigations

Insert after section 44 (c):

(c1) test, treat or disinfest any noxious weed material or any vegetable or other matter that the inspector or authorised officer reasonably suspects contains noxious weed material,

[10] Section 44 (j)

Insert after section 44 (i):

- (j) test, treat or disinfest any box, container, package or receptacle (including any place that could be used as a receptacle) in or about those premises that the inspector or authorised officer reasonably suspects contains any noxious weed material or vegetable or other matter containing noxious weed material.

[11] Section 64A

Insert after section 64:

64A Protection of emergency actions

- (1) The Minister may, by order published in the Gazette, declare:
- (a) that a notifiable weed emergency affects a specified part or the whole of New South Wales or there is a likelihood that such an emergency is imminent in New South Wales, and
 - (b) that it is necessary to make orders or take other actions under this Act (**emergency actions**) to control the notifiable weed concerned, and
 - (c) the specified period (the **emergency period**) during which emergency actions are required to be taken to enable effective control of the notifiable weed.
- (2) A court must not issue an interim injunction, make any other interim order or give any other interim relief having the effect of preventing, restricting or deferring any emergency action or anything authorised or required to be done pursuant to an emergency action during the emergency period.
- (3) An order under this section takes effect on publication or on such later day as is specified in the order.
- (4) This section does not prevent a court from making a permanent injunction or other final order in any proceedings at any time.

[12] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Primary Industries Legislation Amendment (Biosecurity) Act 2012

Schedule 4 Amendment of Plant Diseases Act 1924 No 38

[1] Section 3 Definitions

Omit “proclamation” wherever occurring from the definitions of **Disease**, **Fruit**, **Pest** and **Vegetable** in section 3 (1).

Insert instead “order”.

[2] Section 3 (1)

Insert in alphabetical order:

Emergency disease means a disease declared by an order under section 28B to be an emergency disease for the purposes of this Act.

Emergency pest means a pest declared by an order under section 28B to be an emergency pest for the purposes of this Act.

Land includes:

- (a) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or non-tidal, and
- (b) a watercourse, river or stream, whether tidal or non-tidal.

Treat means carry out a procedure for curing, alleviating, controlling, preventing or eradicating a disease or pest.

[3] Section 3 (1), definition of “Infected”

Insert “or infested” after “infected”.

[4] Section 5A Treatment and eradication of diseases and pests

Omit “published in the Gazette” from section 5A (1).

[5] Section 5A (2) (c)

Insert “(whether or not infected)” after “any thing”.

[6] Section 5A (2) (d)

Omit “in the Gazette”. Insert instead “in accordance with this section”.

[7] Section 5A (2A) and (2B)

Insert after section 5A (2):

(2A) An order made by the Minister under this section is to be published in the Gazette. However, if the Minister considers the order is required urgently, the order may be published:

- (a) in a newspaper circulating, or by radio or television broadcast, in the area to which the order applies, or

(b) on the Department's internet website.

(2B) If an order is published in accordance with subsection (2A) (a) or (b), the Minister is to publish the order as soon as practicable in the Gazette.

[8] Section 5A (3)

Omit the subsection. Insert instead:

(3) Sections 40 and 41 of the *Interpretation Act 1987* apply to an order made under subsection (1) in the same way as they apply to a statutory rule within the meaning of that Act published on the NSW legislation website.

[9] Section 6 Declaration of quarantine area

Omit "published in the Gazette".

[10] Section 6 (2) and (3)

Insert at the end of section 6:

(2) A notification by the Minister under this section is to be published in the Gazette. However, if the Minister considers the notification is required urgently, the notification may be published:

(a) in a newspaper circulating, or by radio or television broadcast, in the area to which the notification applies, or

(b) on the Department's internet website.

(3) If a notification is published in accordance with subsection (2) (a) or (b), the Minister is to publish the notification as soon as practicable in the Gazette.

[11] Section 7 Undertaking in prescribed cases

Insert after section 7 (3):

(4) For the purposes of this section, an inspector may, on behalf of the Minister, accept an undertaking given by an owner or occupier in a form acceptable to the inspector and release the owner or occupier from an undertaking.

[12] Section 8 Quarantine

Omit "in the Gazette" from section 8 (5).

[13] Section 8 (6)

Omit "a like".

[14] Section 8 (7) and (8)

Insert after section 8 (6):

- (7) A notification by the Minister under this section is to be published in the Gazette. However, if the Minister considers the notification is required urgently, the notification may be published:
- (a) in a newspaper circulating, or by radio or television broadcast, in the area to which the notification applies, or
 - (b) on the Department's internet website.
- (8) If a notification is published in accordance with subsection (7) (a) or (b), the Minister is to publish the notification as soon as practicable in the Gazette.

[15] Section 10

Omit the section. Insert instead:

10 Notification of notifiable diseases and pests

- (1) This section applies to the following diseases and pests (***notifiable diseases and pests***):
- (a) emergency diseases and emergency pests,
 - (b) diseases and pests specified for the purposes of this section by the Governor by proclamation published in the Gazette.
- (2) A person:
- (a) who owns or occupies any land or premises on which the person suspects there is a notifiable disease or pest, or
 - (b) who owns, or is in charge of, or has in his or her possession or control, a plant, plant product or soil that the person suspects is infected with a notifiable disease or pest, or
 - (c) who is, in a professional capacity, consulted in relation to a plant, plant product or soil that the person suspects is infected with a notifiable disease or pest,
- and who does not, as soon as possible after becoming aware of or suspecting the presence of the notifiable disease or pest report its presence to an inspector or the Director-General by the quickest means of communication available to the person is guilty of an offence.

Maximum penalty: 100 penalty units.

[16] Section 13 Powers of inspection

Insert before section 13 (1BA):

(1BAA) An inspector may enter any land, premises, vehicle or vessel for the purpose of carrying out surveillance work in relation to any plants, coverings or other things if the inspector reasonably suspects that a disease or pest is present at or is likely to spread to that land, premises, vehicle or vessel.

[17] Section 13 (1BA) (a)

Omit “subsection (1B) (a)”. Insert instead “subsection (1BAA) or (1B) (a)”.

[18] Section 13 (1BA) (b)

Insert “or take photographs or video recordings of” after “take samples of”.

[19] Section 13A Control orders

Insert after section 13A (1):

(1A) If the Minister believes on reasonable grounds that it is necessary to do so in order to eradicate or prevent the spread of an emergency disease or emergency pest, an order may authorise an inspector to do any of the following:

- (a) destroy or otherwise dispose of any plants or fruit (whether or not infected), or any coverings with which such plants or fruit have been contained,
- (b) destroy any other property (other than a dwelling).

[20] Section 13A (5)

Omit “6 months”. Insert instead “12 months”.

[21] Section 13B Objection to certain works authorised by control order

Insert after section 13B (3):

(4) This section does not apply to an order under section 13A (1) that relates to an emergency disease or emergency pest or to an order referred to in section 13A (1A).

[22] Section 15 Quarantine of infected lands or premises

Omit “thereon for a period of not exceeding twenty-one days” from section 15 (1).

Insert instead “on the land or premises for a specified period”.

[23] Section 15 (2) and (3)

Omit section 15 (2). Insert instead:

- (2) The notice may specify the date on which a measure or act is to be taken or done or commenced and the period within which any such measure or act is to be completed.
- (3) The quarantine period specified is to be a period not exceeding 40 days, or such other period as the Director-General may determine in a specified case.

[24] Section 18 Power to require information and documents

Omit section 18 (1). Insert instead:

- (1) An inspector may do any of the following for the purposes of controlling, eradicating or preventing the spread of a disease or pest:
 - (a) require a person to answer any question that the inspector reasonably believes may provide information relevant to the control or eradication of the disease or pest or prevention of the spread of the disease or pest,
 - (b) require a person to produce any record or document,
 - (c) inspect and take extracts from or copies of any record or other document.

[25] Section 18 (2) (c)

Insert at the end of section 18 (2) (b):

or

- (c) without reasonable excuse, fails to produce any record or document,

[26] Section 18AA

Insert after section 18:

18AA Protection from incrimination

- (1) A person is not excused from a requirement under this Act to make a statement, to give or furnish information, to answer a question or to produce a document on the ground that the statement, information, answer or document might incriminate the person or make the person liable to a penalty.

- (2) However, any statement made or any information or answer given or furnished by a natural person in compliance with a requirement under this Act is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under section 18, 23 (2), 25A or 25C) if:
 - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
 - (b) the person was not warned on that occasion that the person may object to making the statement or giving or furnishing the information or answer on the ground that it might incriminate the person.
- (3) Any document produced by a person in compliance with a requirement under this Act is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.
- (4) Further information obtained as a result of a document produced, a statement made or information or answer given or furnished in compliance with a requirement under this Act is not inadmissible on the ground:
 - (a) that the document, statement, information or answer had to be produced, made, given or furnished, or
 - (b) that the document, statement, information or answer might incriminate the person.

[27] Section 24A

Insert after section 24:

24A Protection of emergency actions

- (1) The Minister may, by order published in the Gazette, declare:
 - (a) that a plant disease emergency involving an emergency disease or emergency pest affects a specified part or the whole of New South Wales or there is a likelihood that such an emergency is imminent in New South Wales, and
 - (b) that it is necessary to make orders or take other actions under this Act (**emergency actions**) to eradicate or prevent the spread of the emergency disease or emergency pest concerned, and
 - (c) the specified period (the **emergency period**) during which emergency actions are required to be taken to enable the eradication or prevention of the spread of the emergency disease or emergency pest to occur.

- (2) A court must not issue an interim injunction, make any other interim order or give any other interim relief having the effect of preventing, restricting or deferring any emergency action or anything authorised or required to be done pursuant to an emergency action during the emergency period.
- (3) An order under this section takes effect on publication or on such later day as is specified in the order.
- (4) This section does not prevent a court from making a permanent injunction or other final order in any proceedings at any time.

[28] Section 25 Persons not entitled to compensation

Insert at the end of the section:

- (2) This section does not prevent the payment of compensation in accordance with an agreement entered into by this State.

[29] Section 28B Orders relating to diseases and pests

Omit "Governor may, by proclamation".

Insert instead "Minister may, by order".

[30] Section 28B (a)

Insert ", or any other thing," after "plants".

[31] Section 28B (f) and (g)

Insert at the end of section 28B (e):

, and

- (f) a disease to be an emergency disease for the purposes of this Act, and
- (g) a pest to be an emergency pest for the purposes of this Act.

[32] Section 28B (2) and (3)

Insert at the end of section 28B:

- (2) An order made by the Minister under this section is to be published in the Gazette. However, if the Minister considers the order is required urgently, the order may be published:
 - (a) in a newspaper circulating, or by radio or television broadcast, in the area to which the order applies, or

(b) on the Department's internet website.

(3) If an order is published in accordance with subsection (2) (a) or (b), the Minister is to publish the order as soon as practicable in the Gazette.

[33] Section 28BA

Insert after section 28B:

28BA Commencement of orders and notifications by Minister

An order or notification made or given by the Minister under this Act commences on the day it is published in accordance with this Act, or on such later day as may be specified in the order or notification.

[34] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

Primary Industries Legislation Amendment (Biosecurity) Act 2012

[35] Schedule 3

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Primary Industries Legislation Amendment (Biosecurity) Act 2012

Continuation of certain instruments

Any proclamation made under section 28B, and in force immediately before the commencement of Schedule 4 [29] to the *Primary Industries Legislation Amendment (Biosecurity) Act 2012*, is taken to be an order in force under that section, and may be amended or repealed accordingly.