

# Biosecurity Act 2015 No 24

[2015-24]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

None of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **See also**  
[Local Government Amendment \(Parliamentary Inquiry Recommendations\) Bill 2016](#) [Non-government Bill: Rev the Hon F J Nile, MLC]  
[Biosecurity Amendment Bill 2017](#)
- **Note**  
Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 22 February 2017

# Biosecurity Act 2015 No 24



New South Wales

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# Biosecurity Act 2015 No 24



New South Wales

An Act to provide for the prevention, elimination, minimisation and management of biosecurity risks; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Biosecurity Act 2015*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

- (1) The primary object of this Act is to provide a framework for the prevention, elimination and minimisation of biosecurity risks posed by biosecurity matter, dealing with biosecurity matter, carriers and potential carriers, and other activities that involve biosecurity matter, carriers or potential carriers.
- (2) The other objects of this Act are as follows:
  - (a) to promote biosecurity as a shared responsibility between government, industry and communities,
  - (b) to provide a framework for the timely and effective management of the following:
    - (i) pests, diseases, contaminants and other biosecurity matter that are economically significant for primary production industries,
    - (ii) threats to terrestrial and aquatic environments arising from pests, diseases, contaminants and other biosecurity matter,
    - (iii) public health and safety risks arising from contaminants, non-indigenous animals, bees, weeds and other biosecurity matter known to contribute to human health problems,
    - (iv) pests, diseases, contaminants and other biosecurity matter that may have an

adverse effect on community activities and infrastructure,

- (c) to provide a framework for risk-based decision-making in relation to biosecurity,
- (d) to give effect to intergovernmental biosecurity agreements to which the State is a party,
- (e) to provide the means by which biosecurity requirements in other jurisdictions can be met, so as to maintain market access for industry.

#### **4 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

#### **5 Extraterritorial application**

- (1) It is the intention of the Parliament that this Act apply within the State and outside the State to the full extent of the extraterritorial legislative capacity of the Parliament.
- (2) Without limiting subsection (1), it is the intention of the Parliament that the operation of this Act is, as far as possible, to include operation in relation to the following:
  - (a) things situated in or outside the territorial limits of this State,
  - (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this State,
  - (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another jurisdiction.

#### **6 Act does not give rise to or affect civil cause of action**

- (1) A provision of this Act does not confer a right of action in civil proceedings based on a contravention of the provision.
- (2) Except as otherwise expressly provided by this Act, this Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.
- (3) Without limiting subsection (2), compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.

## Part 2 Interpretation, key concepts and principles

### Division 1 Interpretation

#### 7 General definitions

In this Act:

**accreditation audit**—see section 218.

**accreditation authority**—see section 260.

**approved form** means a form approved by the Secretary.

**approved manner** means a manner approved by the Secretary.

**assess** includes investigate.

**authorised analyst** means a person appointed as an authorised analyst under section 378.

**authorised officer** means a person who is appointed as an authorised officer under this Act and authorised by that appointment to exercise the function in relation to which the expression is used.

**bee** means a managed bee of the species *Apis mellifera* L. or any other species of managed bee prescribed in the regulations for the purposes of this definition.

**biosecurity audit** means an accreditation audit or a compliance audit.

**biosecurity auditor** means a person who has been appointed as a biosecurity auditor under Part 16 and whose appointment is in force.

**biosecurity certificate**—see section 184.

**biosecurity certifier** means a person who has been accredited by an accreditation authority as a biosecurity certifier under Part 14 and whose accreditation is in force.

**biosecurity direction** means a general biosecurity direction or an individual biosecurity direction under Part 9.

**biosecurity duty** means a biosecurity duty imposed by this Act.

**Note—**

See Parts 3 and 4 for biosecurity duties.

**biosecurity emergency** means an emergency arising because of a biosecurity risk or biosecurity impact.

**biosecurity event**—see section 39.

**biosecurity impact**—see section 13.

**biosecurity matter**—see section 10.

**biosecurity participant** means a person who is, or formerly was:

- (a) a registered entity, or
- (b) a biosecurity certifier, or
- (c) a biosecurity auditor, or
- (d) the holder of an individual permit, or
- (e) an applicant for a group permit that was granted, or
- (f) a person who has given a biosecurity undertaking, or
- (g) an accreditation authority.

**biosecurity registration** means biosecurity registration granted under Part 12.

**biosecurity risk**—see section 14.

**biosecurity undertaking** means a biosecurity undertaking under Part 10 that is in effect.

**biosecurity zone regulation** means a regulation made under Part 7.

**carrier**—see section 11.

**category 1 offence**—see section 279 for the maximum penalty.

**category 2 offence**—see section 280 for the maximum penalty.

**Chief Plant Protection Officer** means the person appointed under this Act to be the Chief Plant Protection Officer.

**Chief Veterinary Officer** means the person appointed under this Act to be the Chief Veterinary Officer.

**compliance audit**—see section 224.

**conduct** includes an omission.

**contaminant** means any non-living thing:

- (a) occurring in or on biosecurity matter or a carrier, or
- (b) that may be ingested or absorbed by biosecurity matter or a carrier.



**contravene** includes cause or permit a contravention to occur.

**control order** means an order under Part 6.

**corresponding law** means a law of another State or a Territory, or the Commonwealth, that corresponds to the provisions of this Act, and includes any law declared by the regulations to be a corresponding law.

**cost recovery order** means an order under section 322.

**critical non-compliance** means anything prescribed by the regulations as critical non-compliance.

**deal**—see section 12.

**Department** means the Department of Industry, Skills and Regional Development.

**director** has the same meaning it has in the [Corporations Act 2001](#) of the Commonwealth.

**disease** means any infection of an organism having the potential to result in or resulting in an abnormal, pathological or unhealthy condition that is caused by a known or unknown disease agent.

**disease agent** includes a prion, a microorganism, an infectious agent and a parasite.

**emergency biosecurity matter** means biosecurity matter that is the subject of an emergency order.

**emergency order** means an order under Part 5.

**emergency permit**—see section 337.

**engage in a dealing**—see section 12.

**executive liability offence**—see section 306.

**external treatment measure** means a treatment measure (such as cleaning or disinfection) that is limited to the external parts of the subject's body and, accordingly, that does not require:

- (a) the penetration of the subject's skin, or
- (b) the subject to take any substance.

**fertiliser** means:

- (a) a substance that consists of or contains nitrogen, phosphorus or potassium (or any combination of nitrogen, phosphorus or potassium) and is manufactured, represented, sold or used as a means for directly or indirectly supplying nutriment for the purpose

of enhancing the development, productivity, quality or reproductive capacity of vegetation, other than a substance excluded from this definition by the regulations, or

(b) any other substance prescribed by the regulations to be a fertiliser.

**fitting** means any thing that is commonly used for production, management, growing, housing, cultivation, harvesting, storage, transport, handling, processing or sale of animals, animal products or plants.

**fodder** means any water, meal, meat, plant, vegetable, grain, algal products or other material (including a mixture of materials) used for the food, supplementation or litter of animals.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**general biosecurity direction**—see section 124.

**government agency** means:

- (a) a Public Service agency within the meaning of the [Government Sector Employment Act 2013](#), or
- (b) a NSW Government agency, or
- (c) a State owned corporation within the meaning of the [State Owned Corporations Act 1989](#), or
- (d) a council or county council within the meaning of the [Local Government Act 1993](#), or
- (e) any other public or local authority constituted by or under an Act, or
- (f) the Western Lands Commissioner, or
- (g) any person or body declared by the regulations to be a government agency.

**group permit**—see section 335.

**individual biosecurity direction**—see section 124.

**individual permit**—see section 335.

**intentionally** includes knowingly.

**interstate biosecurity certificate**—see section 186.

**land** includes:

- (a) the sea or an arm of the sea, and

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

(c) a river, stream or watercourse, whether tidal or non-tidal.

**liming material** means a substance that:

(a) consists of or contains dolomite (an artificially prepared or naturally occurring mixture of carbonates, oxides or hydroxides of calcium and magnesium), gypsum (the sulphate of calcium in either hydrated or anhydrous form), lime (an oxide, hydroxide or carbonate compound of calcium) or magnesite (an oxide, hydroxide or carbonate compound of magnesium), and

(b) is manufactured, represented, sold or used as a means for directly or indirectly affecting the nature or composition of soil or any other matter in which vegetation is grown.

**local control authority**—see section 370.

**mandatory measures**—see section 24.

**move** includes transport or distribute.

**negligent**—see section 281.

**non-indigenous animal** means an animal not native to Australia before European settlement.

**obstruction offence** means an offence of:

(a) furnishing false or misleading information, or

(b) resisting or obstructing an authorised officer, or

(c) assaulting, abusing or threatening an authorised officer.

**occupier**, in relation to land, includes any person having the care, control or management of the land.

**permit** means a permit granted by the Secretary or an authorised officer under Part 21.

**pest**—see section 15.

**plant** includes any member of the Plantae, Fungi and Protista kingdoms, whether whole or in part, and whether alive or dead.

**premises** includes any land, building, structure or vehicle and any place, whether built on or not.

**prohibited dealing** means a dealing described in Schedule 3.

**prohibited matter** means biosecurity matter that is prohibited matter throughout the State or in a part of the State under section 27.

**prohibited matter event**—see section 31.

**prohibited matter permit**—see section 338.

**property**, in Part 19, means any building, structure, animal products, fodder, fittings and vehicles.

**reasonably practicable**—see section 16.

**recoverable amount**—see section 320.

**registered entity**—see section 157.

**registrable dealing** means a dealing described in Schedule 4.

**responsible accreditation authority**—see sections 194 and 242.

**Secretary** means the Secretary of the Department.

**sell** includes:

- (a) sell by wholesale, retail, auction or tender, or
- (b) barter or exchange, or
- (c) supply for profit, or
- (d) offer for sale, receive for sale or expose for sale, or
- (e) consign or deliver for sale, or
- (f) have in possession for sale, or
- (g) cause or allow any of the above to be done.

**special executive liability offence**—see section 305.

**stock food** means a stockfood within the meaning of the *Agvet Regulations of New South Wales* and also includes any block, lick, premix or stockfood supplement (within the meaning of those Regulations) and any substance prescribed by the regulations under this Act as stock food, (whether or not any such stock food is mixed or treated with a stock medicine (within the meaning of the *Stock Medicines Act 1989*)), but does not include:

- (a) a stock medicine (within the meaning of the *Stock Medicines Act 1989*), or
- (b) a substance declared by the regulations not to be a stock food, or
- (c) subject to the regulations, a substance that is intended to be fed to animals other

than horses or animals belonging to a food-producing species.

**Note—**

Section 6 of the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994* gives effect to the *Agvet Regulations of New South Wales*.

**thing** includes any biosecurity matter.

**trace element product** means a substance that:

- (a) consists of or contains a trace element (that is, boron, cobalt, copper, iron, magnesium, manganese, molybdenum, selenium or zinc or any other element prescribed by the regulations), or any compound of a trace element, and
- (b) is manufactured, represented, sold or used as a means for directly or indirectly:
  - (i) supplying nutriment for the purpose of enhancing the development, productivity, quality or reproductive capacity of vegetation, or
  - (ii) affecting the nature or composition of soil or any other matter in which vegetation is grown.

**treatment measure** means a treatment or process for the prevention, elimination, minimisation or management of biosecurity matter (including cleaning, fumigation, disinfection, medication and vaccination).

**vehicle** includes a conveyance of any kind, whether or not self-propelled, and whether or not (at any material time) capable of being moved or operated, and includes:

- (a) any caravan, trailer, truck, train or other land vehicle, and
- (b) any ship, hovercraft, boat, ferry, raft and pontoon or other water craft, and
- (c) any aeroplane, helicopter, hot air balloon, drone or other aircraft.

**weed** means a plant that is a pest.

## 8 Identification of biosecurity matter

- (1) If biosecurity matter referred to in this Act or the regulations is referred to by both a common name and a scientific name, the common name is for information purposes only and does not limit the description of the biosecurity matter.
- (2) If biosecurity matter referred to in this Act or the regulations has a life cycle, a reference to the biosecurity matter includes a reference to that biosecurity matter at any stage of its life cycle.

## 9 Notes

Notes included in this Act do not form part of this Act.

## Division 2 Key concepts

### 10 Biosecurity matter

**Biosecurity matter** means:

- (a) any living thing, other than a human, or
- (b) any part of an animal, plant or living thing, other than a human, or
- (c) a product of a living thing, other than a human, or
- (d) a disease, or
- (e) a prion, or
- (f) a contaminant, or
- (g) a disease agent that can cause disease in a living thing (other than a human) or that can cause disease in a human via transmission from a non-human host to a human, or
- (h) any thing declared by the regulations to be biosecurity matter.

### 11 Carriers

A **carrier** means any thing (whether alive, dead or inanimate, and including a human) that has, or is capable of having, any biosecurity matter on it, attached to it or contained in it.

### 12 Dealings

- (1) **Deal** with biosecurity matter or a carrier, or **engage in a dealing** with biosecurity matter or a carrier, includes any of the following:
  - (a) keep biosecurity matter or a carrier,
  - (b) have possession, care, custody or control of biosecurity matter or a carrier,
  - (c) produce, manufacture or supply biosecurity matter or a carrier,
  - (d) import biosecurity matter or a carrier into the State,
  - (e) acquire biosecurity matter or a carrier,
  - (f) buy, sell or dispose of biosecurity matter or a carrier,
  - (g) move biosecurity matter or a carrier,
  - (h) release biosecurity matter or a carrier from captivity,
  - (i) use or treat biosecurity matter or a carrier for any purpose,

- (j) breed, propagate, grow, raise, feed or culture biosecurity matter or a carrier,
  - (k) experiment with biosecurity matter or a carrier,
  - (l) display biosecurity matter or a carrier,
  - (m) enter into an agreement or other arrangement under which another person deals with biosecurity matter or a carrier,
  - (n) agree to deal with biosecurity matter or a carrier,
  - (o) cause or permit a dealing in biosecurity matter or a carrier to occur,
  - (p) anything prescribed by the regulations as a dealing with, or engaging in a dealing with, biosecurity matter or a carrier.
- (2) An occupier of land is taken to have possession of any biosecurity matter or carrier on that land unless the occupier establishes that the biosecurity matter or carrier was in the possession, care, custody or control of another person.
- (3) The regulations may specify circumstances in which a person is taken not to be dealing with or engaging in a dealing with biosecurity matter or a carrier for the purposes of this Act or any provision of this Act.

### 13 Biosecurity impact

- (1) A **biosecurity impact** means an adverse effect on the economy, the environment or the community that arises, or has the potential to arise, from biosecurity matter, a carrier or dealing with biosecurity matter or a carrier, being an adverse effect that is related to:
- (a) the introduction, presence, spread or increase of a disease or disease agent into or within the State or any part of the State, or
  - (b) the introduction, presence, spread or increase of a pest into or within the State or any part of the State, or
  - (c) stock food or fertilisers, or
  - (d) animals, plants or animal products becoming chemically affected, or
  - (e) public nuisance caused by bees, or
  - (f) a risk to public safety caused by bees or non-indigenous animals, or
  - (g) any thing declared by the regulations to be a biosecurity impact.
- (2) An animal or plant, or a product of an animal or plant, is **chemically affected** if it contains a contaminant and, as a result:

- (a) it is or is likely to become unfit for sale or export for human consumption, or
- (b) it is or is likely to pose a danger to human health or to the environment, or
- (c) it is or is likely to be detrimental to export or other trade.

**Note—**

**Plant** is defined to include parts of plants (whether alive or dead).

#### **14 Biosecurity risk**

**Biosecurity risk** means the risk of a biosecurity impact occurring.

#### **15 Pests**

- (1) A **pest** means a plant or animal (other than a human) that has an adverse effect on, or is suspected of having an adverse effect on, the environment, the economy or the community because it has the potential to:
- (a) out-compete other organisms for resources, including food, water, nutrients, habitat and sunlight, or
  - (b) prey or feed on other organisms, or
  - (c) transmit disease to other organisms, or
  - (d) cause harm to other organisms through its toxicity, or
  - (e) otherwise reduce the productivity of agricultural systems or the value of agricultural products, or
  - (f) damage infrastructure, or
  - (g) reduce the amenity or aesthetic value of premises, or
  - (h) harm or reduce biodiversity, or
  - (i) do any other thing, or have any other effect, prescribed by the regulations.
- (2) A **pest** includes any thing declared by the regulations to be a pest for the purposes of this Act.

#### **16 Reasonably practicable**

**Reasonably practicable**, in relation to the prevention, elimination or minimisation of a biosecurity risk, means that which is, or was at a particular time, reasonably able to be done, taking into account and weighing up all relevant matters including:

- (a) the biosecurity risk concerned, and



- (b) the degree of biosecurity impact that arises, or might arise, from the biosecurity risk, and
- (c) what the person concerned knows, or ought reasonably to know, about the biosecurity risk and the ways of preventing, eliminating or minimising the risk, and
- (d) the availability and suitability of ways to prevent, eliminate or minimise the biosecurity risk, and
- (e) the cost associated with available ways of preventing, eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

### **Division 3 Principles that apply to biosecurity duties**

#### **17 Principles that apply to duties**

This Division sets out the principles that apply to all biosecurity duties that persons have under this Act.

#### **18 Duties not transferable**

A biosecurity duty cannot be transferred to another person.

#### **19 Person can have more than one duty**

A person can have more than one biosecurity duty.

#### **20 More than one person can have a duty**

- (1) More than one person can concurrently have the same biosecurity duty.
- (2) Each person who has a biosecurity duty must discharge that duty to the standard required by this Act even if another person has the same duty.
- (3) If more than one person has a biosecurity duty in relation to the same thing, each person:
  - (a) retains responsibility for the person's duty in relation to the thing, and
  - (b) must discharge the person's duty to the extent to which the person has the capacity to influence and control the thing or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

#### **21 Duty to prevent, eliminate or minimise biosecurity risk**

A duty imposed on a person to prevent, eliminate or minimise a biosecurity risk so far as is reasonably practicable is a duty:

- (a) to prevent or eliminate a biosecurity risk so far as is reasonably practicable, and

- (b) if it is not reasonably practicable to prevent or eliminate the biosecurity risk, to minimise the biosecurity risk so far as is reasonably practicable.

### **Part 3 General biosecurity duty**

#### **22 Biosecurity duty—dealings with biosecurity matter and carriers**

Any person who deals with biosecurity matter or a carrier and who knows, or ought reasonably to know, the biosecurity risk posed or likely to be posed by the biosecurity matter, carrier or dealing has a biosecurity duty to ensure that, so far as is reasonably practicable, the biosecurity risk is prevented, eliminated or minimised.

#### **23 Offence of failing to discharge biosecurity duty**

- (1) A person who fails to discharge the person's biosecurity duty under this Part is guilty of an offence.
- (2) An offence against this section is a category 1 offence if:
  - (a) the failure is intentional or reckless, and
  - (b) the failure caused, or was likely to cause, a significant biosecurity impact.
- (3) In any other case, the offence is a category 2 offence.
- (4) An offence against this section is an executive liability offence.
- (5) A person who is guilty of a category 1 offence or category 2 offence against this section because the person fails to discharge the person's biosecurity duty under this Part:
  - (a) continues, until the duty is discharged, to be required to discharge that duty, and
  - (b) is guilty of a continuing offence (of the same category) for each day the failure continues.

#### **24 Mandatory measures**

- (1) The regulations may require persons who deal with biosecurity matter or carriers to take specified actions to prevent, eliminate or minimise a biosecurity risk posed or likely to be posed by the biosecurity matter, carrier or dealing. Those requirements are **mandatory measures**.
- (2) The mandatory measures may apply in relation to all or any specified class of persons, dealings, biosecurity matter or carriers.
- (3) A person who deals with biosecurity matter or a carrier and who contravenes any mandatory measures that are applicable to the biosecurity matter, carrier or dealing is taken to have failed to ensure that, so far as is reasonably practicable, the biosecurity

risk posed or likely to be posed by the biosecurity matter, carrier or dealing is prevented, eliminated or minimised.

**Note—**

Accordingly, the person could be charged with an offence under section 23 in respect of that failure.

- (4) The mandatory measures may be specified to be minimum mandatory measures, in which case compliance with those measures does not, of itself, demonstrate that a person ensured that, so far as is reasonably practicable, the biosecurity risk posed or likely to be posed by the biosecurity matter, carrier or dealing was prevented, eliminated or minimised.
- (5) In this section, **actions** include:
  - (a) refraining from doing a thing, and
  - (b) adopting any procedures or programs.

## **25 Offence of failure to comply with mandatory measures**

- (1) A person who deals with biosecurity matter or a carrier in contravention of any mandatory measures that apply to that biosecurity matter, carrier or dealing is guilty of an offence.
- (2) An offence against this section is a category 2 offence.
- (3) An offence against this section is an executive liability offence.
- (4) A person who is guilty of an offence against this section because of a contravention of any mandatory measures:
  - (a) continues, until the mandatory measures are complied with and despite the fact that any specified period or time for compliance has expired or passed, to be required to comply with the mandatory measures, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (5) A person cannot be found guilty of both an offence against section 23 and an offence against this section in respect of the same conduct.
- (6) In proceedings for an offence against section 23 in which it is alleged the person charged with the offence contravened any mandatory measures, if the court is not satisfied that the offence is proven, but is satisfied that the person committed an offence against this section, the court may find the person guilty of an offence against this section. The person is liable to punishment accordingly.

## **26 Special provisions relating to weeds**

Schedule 1 contains further provisions relating to the requirements imposed by this Part.

Those provisions relate specifically to weeds.

## **Part 4 Prohibited matter and related biosecurity duties**

### **Division 1 Preliminary**

#### **27 What is prohibited matter**

- (1) The biosecurity matter described in Schedule 2 is prohibited matter.
- (2) Biosecurity matter described in Part 1 of Schedule 2 is prohibited matter throughout the State.
- (3) Biosecurity matter described in Columns 1 and 2 of Part 2 of Schedule 2 is prohibited matter in that part of the State described opposite the biosecurity matter in Column 3.
- (4) The regulations may amend Schedule 2 by inserting, altering or omitting any items or descriptions in that Schedule.
- (5) The regulations may provide for transitional arrangements for the lawful disposal or destruction of biosecurity matter that becomes prohibited matter (including by providing for exceptions to offences under this Part).

### **Division 2 Offence of dealing with prohibited matter**

#### **28 Dealings with prohibited matter**

- (1) A person who deals with any biosecurity matter that is prohibited matter throughout the State is guilty of an offence.
- (2) A person who deals with biosecurity matter is guilty of an offence if:
  - (a) the biosecurity matter is located in a part of the State in which it is prohibited matter, or
  - (b) as a result of the dealing, the biosecurity matter enters or is likely to enter a part of the State in which it is prohibited matter.
- (3) An offence against subsection (1) or (2) is a category 1 offence if the offence is committed intentionally or recklessly.
- (4) In any other case, the offence is a category 2 offence.
- (5) A category 1 offence or category 2 offence against subsection (1) or (2) is an executive liability offence.
- (6) A person who is guilty of a category 1 offence or category 2 offence against subsection (1) or (2) because the person deals with biosecurity matter in contravention of that subsection:

(a) continues, until that contravention ceases, to be liable for a contravention of subsection (1), and

(b) is guilty of a continuing offence (of the same category) for each day that contravention continues.

### **29 Defence for unknowing possession**

In proceedings for a category 2 offence under this Division, it is a defence to the prosecution of an offence constituted by a person having prohibited matter in the person's possession, care, custody or control if the person charged with the offence proves that the person did not know, and could not reasonably be expected to have known, that the person had the prohibited matter in the person's possession, care, custody or control.

**Note—**

A due diligence defence applies to category 1 offences. See Part 18.

## **Division 3 Duty to notify presence of prohibited matter**

### **30 Biosecurity duty**

(1) A person who becomes aware of, or suspects, that a prohibited matter event has occurred, is occurring or is about to occur has a biosecurity duty to immediately notify the prohibited matter event in accordance with the requirements specified in the regulations.

(2) A biosecurity duty arises under this Division only if the person:

(a) is the owner, occupier or person in charge of, or has the care, custody or control of, premises, a carrier or other thing in relation to which the prohibited matter is present or suspected of being present, or

(b) becomes aware of, or suspects, the occurrence of the prohibited matter event as a result of any consultation or other work carried out in relation to premises, a carrier or other thing in the person's professional capacity, or

(c) is a person of a class prescribed by the regulations.

### **31 Prohibited matter event—meaning**

A **prohibited matter event** means:

(a) the presence of biosecurity matter in a part of the State in which it is prohibited matter, or

(b) the introduction of biosecurity matter into a part of the State in which it is prohibited matter.

### **32 Offence of failing to discharge biosecurity duty to notify presence of prohibited matter**

- (1) A person who fails to discharge the person's biosecurity duty under this Division is guilty of an offence.
- (2) An offence against this section is a category 1 offence if the failure is intentional or reckless.
- (3) In any other case, the offence is a category 2 offence.
- (4) A category 1 offence against this section is a special executive liability offence.
- (5) A category 2 offence against this section is an executive liability offence.
- (6) A person who is guilty of a category 1 offence or category 2 offence against this section because the person fails to discharge the person's biosecurity duty under this Division:
  - (a) continues, until the duty is discharged, to be required to discharge that duty, and
  - (b) is guilty of a continuing offence (of the same category) for each day the failure continues.

### **33 Defence for failure to notify prohibited matter event that is well-known**

It is a defence to the prosecution of an offence under this Division if the person charged with the offence proves that the person did not notify the prohibited matter event because the person had good reason to believe that the particular circumstances that the person became aware of, or suspected, were widely and publicly known (including to the Department).

### **34 Protection against self-incrimination**

- (1) Information furnished or an answer given by a natural person that the person was required to furnish or give to comply with a requirement under this Division is not admissible in evidence against the person in criminal proceedings, except proceedings for an obstruction offence.
- (2) Further information obtained as a result of information furnished or an answer given in compliance with a requirement under this Division is not inadmissible on the ground:
  - (a) that the information had to be furnished or the answer had to be given, or
  - (b) that the information furnished or answer given might incriminate the person.

### **35 Regulations relating to notifications**

The regulations may make further provision for notifications under this Division, including the following:

- (a) the person or persons to whom notification is to be given,
- (b) the form and manner in which notification is to be given,
- (c) the information required to be given,
- (d) requirements in relation to notifications (such as a requirement to provide further information or answer questions).

## **Division 4 Duty to prevent, eliminate or minimise risk posed by prohibited matter**

### **36 Biosecurity duty**

- (1) A person who becomes aware of, or suspects, the presence of biosecurity matter in a part of the State in which it is prohibited matter has a biosecurity duty to ensure that, so far as is reasonably practicable, the biosecurity risk posed or likely to be posed by the prohibited matter is prevented, eliminated or minimised.
- (2) A biosecurity duty arises under this Division only if the person:
  - (a) is the owner, occupier or person in charge of, or has the care, custody or control of, premises, a carrier or other thing in relation to which the prohibited matter is present or suspected of being present, or
  - (b) becomes aware of, or suspects, the presence of prohibited matter as a result of any consultation or other work carried out in relation to premises, a carrier or other thing in the person's professional capacity, or
  - (c) is a person of a class prescribed by the regulations.

### **37 Offence of failing to discharge biosecurity duty**

- (1) A person who fails to discharge the person's biosecurity duty under this Division is guilty of an offence.
- (2) An offence against this section is a category 1 offence if the failure is intentional or reckless.
- (3) In any other case, the offence is a category 2 offence.
- (4) A category 1 offence or category 2 offence against this section is an executive liability offence.
- (5) A person who is guilty of a category 1 offence or category 2 offence against this section because the person fails to discharge the person's biosecurity duty under this Division:
  - (a) continues, until the duty is discharged, to be required to discharge that duty, and

- (b) is guilty of a continuing offence (of the same category) for each day the failure continues.

## **Division 5 Duty to notify biosecurity events**

### **38 Biosecurity duty**

- (1) A person who becomes aware of, or suspects, the existence of a biosecurity event has a biosecurity duty to immediately notify the biosecurity event in accordance with the requirements specified in the regulations.
- (2) A biosecurity duty arises under this Division only if the person:
  - (a) is the owner, occupier or person in charge of, or has the care, custody or control of, premises, a carrier or other thing in relation to which the biosecurity event has occurred, is occurring or is likely to occur, or
  - (b) becomes aware of, or suspects, the biosecurity event as a result of any consultation or other work carried out in relation to premises, a carrier or other thing in the person's professional capacity, or
  - (c) is a person of a class prescribed by the regulations.

### **39 Biosecurity event—meaning**

- (1) A **biosecurity event** means something that has occurred, is occurring or is likely to occur and that has had, is having, or is likely to have, a significant biosecurity impact, other than a prohibited matter event.
- (2) A **biosecurity event** includes anything declared by the regulations to be a biosecurity event.

### **40 Offence of failing to discharge biosecurity duty to notify event**

- (1) A person who fails to discharge the person's biosecurity duty under this Division is guilty of an offence.
- (2) An offence against this section is a category 1 offence if the failure is intentional or reckless.
- (3) In any other case, the offence is a category 2 offence.
- (4) A category 1 offence or category 2 offence against this section is an executive liability offence.
- (5) A person who is guilty of a category 1 offence or category 2 offence against this section because the person fails to discharge the person's biosecurity duty under this Division:



- (a) continues, until the duty is discharged, to be required to discharge that duty, and
- (b) is guilty of a continuing offence (of the same category) for each day the failure continues.

#### **41 Defence for failure to notify event that is well-known**

It is a defence to the prosecution of an offence under this Division if the person charged with the offence proves that the person did not notify the biosecurity event because the person had good reason to believe that the particular circumstances that the person became aware of, or suspected, were widely and publicly known (including to the Department).

#### **42 Protection against self-incrimination**

- (1) Information furnished or an answer given by a natural person that the person was required to furnish or give to comply with a requirement under this Division is not admissible in evidence against the person in criminal proceedings, except proceedings for an obstruction offence.
- (2) Further information obtained as a result of information furnished or an answer given in compliance with a requirement under this Division is not inadmissible on the ground:
  - (a) that the information had to be furnished or the answer had to be given, or
  - (b) that the information furnished or answer given might incriminate the person.

#### **43 Regulations relating to notifications**

The regulations may make further provision for notifications under this Division, including the following:

- (a) the person or persons to whom notification is to be given,
- (b) the form and manner in which notification is to be given,
- (c) the information required to be given,
- (d) requirements in relation to notifications (such as a requirement to provide further information or answer questions).

## **Part 5 Emergency orders**

### **Division 1 Emergency orders**

#### **44 Emergency order**

- (1) The Secretary may, by order in writing (an **emergency order**):
  - (a) declare a biosecurity emergency, and

(b) establish measures to respond to that biosecurity emergency.

(2) The Secretary may make an emergency order only if the Secretary is satisfied, or reasonably suspects, that there is a current or imminent biosecurity risk that may have a significant biosecurity impact.

(3) The principal objects of an emergency order are:

(a) to isolate an emergency zone or biosecurity matter, and

(b) to prevent the spread of the biosecurity matter, and

(c) to eradicate the biosecurity matter (if practicable).

(4) However, the principal objects of an emergency order do not limit the matters that may be provided for by an emergency order.

#### **45 Content of emergency order**

An emergency order is to specify the following:

(a) the biosecurity matter, biosecurity risk or biosecurity impact that is the subject of the emergency,

(b) the emergency zone or zones,

(c) the emergency measures,

(d) the persons or class of persons to whom the emergency measures apply,

(e) the duration of the emergency order.

#### **46 Notice of emergency order**

(1) The Secretary is to give notice of an emergency order by causing a copy of the order to be published on the website of the Department or in the Gazette (or both).

(2) The Secretary is to take reasonable steps to ensure that persons who are likely to be directly affected by the order are made aware of the order.

#### **47 Notice of property specific order**

(1) The Secretary may, if the Secretary considers it appropriate in the circumstances, give notice of an emergency order that is property specific by causing a copy of the order to be served on the owner, occupier or person apparently in charge of the affected property (instead of by publishing the order on the website of the Department or in the Gazette).

(2) An emergency order is **property specific** if it relates to specified premises, specified biosecurity matter or any other specified thing (each of which is **affected property**).

#### **48 Duration of emergency order**

- (1) An emergency order remains in force for the period specified in the order, not exceeding 6 months from the date the order is made.
- (2) The Secretary may, by making an order that amends an emergency order, extend the period during which an emergency order remains in force for a further period (not exceeding 6 months).
- (3) The period during which an emergency order remains in force may be extended any number of times.

### **Division 2 Matters for which emergency order may provide**

#### **49 Emergency zone**

- (1) An **emergency zone** is the principal area or areas in relation to which, in the opinion of the Secretary, measures are required to be implemented under the emergency order.
- (2) An emergency zone may be:
  - (a) any specified premises or specified part of premises, or
  - (b) any specified area, or
  - (c) the whole or any specified part of the State.
- (3) An emergency order may provide for more than one emergency zone and for different classes of emergency zone.

#### **50 Emergency measures**

- (1) The **emergency measures** are the measures that the Secretary establishes under an emergency order to respond to a biosecurity emergency.
- (2) The Secretary may specify, as emergency measures, any measures that the Secretary decides are reasonably necessary to respond to the biosecurity emergency concerned.
- (3) The emergency measures are to be no more onerous than the Secretary considers necessary having regard to the nature of the biosecurity emergency.
- (4) In deciding on the emergency measures, the Secretary is to have regard to the principal objects of an emergency order and any other matters the Secretary considers are relevant.
- (5) The emergency measures may apply:
  - (a) within an emergency zone, and

(b) outside an emergency zone, but only if the Secretary considers that reasonably necessary having regard to the nature of the biosecurity emergency.

(6) The emergency measures may:

(a) prohibit, regulate or control the doing of any thing, or

(b) require or authorise the doing of any thing.

(7) A power to require the doing of a thing includes a power to require a person to arrange for that thing to be done.

### **51 Examples of emergency measures**

Without limiting the powers conferred on the Secretary by this Part, emergency measures may include provisions that prohibit, regulate or control, or that require or authorise, any of the following:

(a) activities that involve biosecurity matter, a carrier or a potential carrier,

(b) the use of premises for an activity that involves biosecurity matter, a carrier or a potential carrier,

(c) the movement of any biosecurity matter, carrier, potential carrier or other thing,

(d) the isolation, confinement or detention of any biosecurity matter or other thing,

(e) treatment measures to be carried out in relation to biosecurity matter, a carrier, a potential carrier, premises or other thing,

(f) the erection or repair of fencing, gates or any other method of enclosure, or the taking of any other specified security or containment measures in relation to any premises, biosecurity matter or other thing,

(g) the erection of signs,

(h) the provision of samples of any biosecurity matter or other thing,

(i) the testing of any biosecurity matter or other thing,

(j) the obtaining of a biosecurity certificate in relation to any biosecurity matter or other thing,

(k) the installation or use of a device at any premises, for the purpose of detecting or monitoring the presence of any biosecurity matter or other thing or capturing any biosecurity matter or other thing,

(l) the destruction, disposal or eradication of any thing (including by specifying the manner of destruction, disposal or eradication),

(m) any other matters expressly authorised by the regulations.

## **52 Special powers**

(1) In addition, the emergency measures may do any of the following:

- (a) prohibit, regulate or control entry to or exit from any specified premises or area,
- (b) prohibit, regulate or control the use of any road within or going into or out of a specified premises or area (including by closing roads),
- (c) require persons entering or leaving any specified premises or area in a vehicle to stop and, if required by an authorised officer:
  - (i) permit the vehicle to be inspected, and
  - (ii) permit treatment measures to be carried out in relation to the vehicle,
- (d) require persons entering or leaving any specified premises or area to stop and, if required by an authorised officer:
  - (i) permit themselves and any thing in their care, custody or control to be inspected, and
  - (ii) carry out or permit external treatment measures to be carried out in relation to themselves and any thing in their care, custody or control,
- (e) prohibit a person from entering or leaving any specified premises or area unless the person has done either or both of the following:
  - (i) carried out, in relation to himself or herself, any specified external treatment measure,
  - (ii) carried out, in relation to any thing in the person's care, custody or control, any specified treatment measure.

(2) An emergency order cannot prohibit, regulate or control the movement of a person, except as expressly provided for by this section.

(3) Subsection (2) does not prevent emergency measures being imposed in relation to any biosecurity matter, premises, activity or thing that have an impact on the movement of a person but that are not imposed for the purpose of restricting the movement of a person.

### **Note—**

For example, emergency measures could prohibit persons from taking a particular animal or plant out of premises. This measure may have an impact on the movement of a person but is not imposed for that purpose.

## **Division 3 Limitations that apply to emergency order**

### **53 Treatment of persons**

- (1) An emergency order cannot require any treatment measure to be carried out on a person, other than an external treatment measure.
- (2) An emergency order cannot require a person to provide samples of the person's blood, hair, saliva or any other body part or body fluid.

### **54 Inspection of persons**

A requirement in an emergency order that persons permit themselves to be inspected by an authorised officer authorises the authorised officer to require a person to do any of the following:

- (a) to submit to a visual inspection (including of the exterior of the person's clothing and shoes),
- (b) to shake, or otherwise move, the person's hair.

### **55 Destruction requirements**

- (1) An emergency order cannot require or authorise the destruction of biosecurity matter or any other thing unless:
  - (a) the Secretary is of the opinion that the destruction is reasonably necessary to prevent, eliminate or minimise a significant biosecurity impact, or
  - (b) the biosecurity matter to be destroyed is an animal and the Secretary is of the opinion that the destruction is necessary to ensure that the other emergency measures provided for by the emergency order do not have or continue to have an adverse effect on animal welfare.
- (2) To avoid doubt, distress or likely distress to an animal is an adverse effect on animal welfare.
- (3) Part 2B of the [Prevention of Cruelty to Animals Act 1979](#) does not apply to the destruction of an animal as required or authorised by an emergency order.

### **56 Persons directly affected by destruction requirement to be advised of requirement**

If an emergency order requires or authorises the destruction of any biosecurity matter or other thing, the Secretary must ensure that a copy of the order is given to the owner or person in charge of the biosecurity matter or thing, unless:

- (a) there appears to be no one immediately in control of it, and the owner or person in charge cannot, after such search and inquiry as is reasonable in the circumstances, be located, and

- (b) the Secretary considers that, in the circumstances, the order must be carried out without prior notice to the owner or person in charge.

## **Division 4 Effect of order**

### **57 Order prevails over other instruments**

An emergency order prevails, to the extent of any inconsistency, over the following:

- (a) the regulations,
- (b) any biosecurity registration, permit (other than an emergency permit) or exemption granted under this Act,
- (c) any control order,
- (d) any other instrument made or issued under this Act.

### **58 Offence of contravening emergency order**

- (1) A person who contravenes an emergency order is guilty of an offence.
- (2) An offence against this section is a category 1 offence if the contravention is intentional or reckless.
- (3) In any other case, the offence is a category 2 offence.
- (4) A category 1 offence against this section is a special executive liability offence.
- (5) A category 2 offence against this section is an executive liability offence.
- (6) A person who is guilty of a category 1 offence or category 2 offence against this section because the person contravenes a requirement of an emergency order:
  - (a) continues, until the requirement is complied with and despite the fact that any specified period or time for compliance has expired or passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence (of the same category) for each day the contravention continues.
- (7) Subsection (6) does not apply to the extent that a requirement of an emergency order is revoked.
- (8) A person does not commit an offence against this section of contravening an emergency order unless:
  - (a) the order was published on the website of the Department or in the Gazette, or
  - (b) the person was served with a copy of the order.

## **59 Secretary may authorise required actions and recover costs**

- (1) If a person (the **liable person**) fails to comply with an emergency order, the Secretary may authorise any person to enter premises and take any actions in relation to those premises, or any thing on those premises, that the liable person is required to take by the order or that are otherwise necessary to remedy that failure.
- (2) The Secretary may charge the liable person a fee for action taken under this section.
- (3) The fee is to be no more than is reasonable to cover the costs and expenses incurred in connection with the action.
- (4) Costs and expenses incurred include costs and expenses incurred by or on behalf of any government agency.
- (5) The fee is:
  - (a) a recoverable amount that is payable to the Secretary, and
  - (b) recoverable from the liable person.

### **Note—**

See Part 20, which provides for the recovery of recoverable amounts.

- (6) The Secretary must give an occupier of premises used for residential purposes written notice of an intention to enter any part of the premises used only for residential purposes under this section.
- (7) The notice must specify the day on which the premises are intended to be entered and must be given before that day.
- (8) Notice is not required to be given if:
  - (a) entry is made with the consent of the occupier of the premises, or
  - (b) entry is made under the authority of a search warrant.
- (9) This section does not prevent the taking of proceedings for an offence of contravening an emergency order.

## **Division 5 General**

### **60 Amendment or revocation of emergency order**

- (1) The Secretary may, by order in writing, amend or revoke an emergency order.
- (2) An amendment to an emergency order may make provision for any matter for which an emergency order may make provision.



- (3) An amendment to, or revocation of, an emergency order takes effect, and is to be notified, in the same way as an emergency order.

#### **61 Protection of emergency actions**

- (1) A court or tribunal 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 order or anything authorised or required to be done pursuant to an emergency order during the period in which the order has effect.
- (2) This section does not prevent a court from making a permanent injunction or other final order in any proceedings at any time.

### **Part 6 Control orders**

#### **Division 1 Control orders**

##### **62 Control order**

- (1) The Minister may, by order in writing (a **control order**):
  - (a) establish one or more control zones, and
  - (b) establish measures, in connection with a control zone, to prevent, eliminate, minimise or manage a biosecurity risk or biosecurity impact.
- (2) The Minister may make a control order if the Minister reasonably believes that the order is necessary to prevent, eliminate, minimise or manage a biosecurity risk or biosecurity impact.
- (3) The principal object of a control order is to prevent the introduction of, or eradicate, biosecurity matter that poses or is likely to pose a biosecurity risk.
- (4) A control order may also serve as a measure for the management of a biosecurity risk or biosecurity impact. In that case, an additional or alternative object of the control order is to provide for the management of a biosecurity risk or biosecurity impact.
- (5) Subsections (3) and (4) do not limit the matters that may be provided for by a control order.

##### **63 Content of control order**

A control order is to specify the following:

- (a) the biosecurity matter, biosecurity risk or biosecurity impact to which the control order relates,
- (b) the control zone or zones,

- (c) the control measures,
- (d) the persons or class of persons to whom the control measures apply,
- (e) the duration of the control order.

#### **64 Notice of control order**

- (1) The Minister is to give notice of a control order by causing a copy of the order to be published on the website of the Department or in the Gazette (or both).
- (2) The Minister is to take reasonable steps to ensure that persons who are likely to be directly affected by the order are made aware of the order.

#### **65 Notice of property specific order**

- (1) The Minister may, if the Minister considers it appropriate in the circumstances, give notice of a control order that is property specific by causing a copy of the order to be served on the owner, occupier or person apparently in charge of the affected property (instead of by publishing the order on the website of the Department or in the Gazette).
- (2) A control order is **property specific** if it relates to specified premises, specified biosecurity matter or any other specified thing (each of which is **affected property**).

#### **66 Duration of control order**

- (1) A control order has effect for the period specified by the Minister in the order, not exceeding 5 years from the date the order is made.
- (2) The Minister may, by making an order that amends a control order, extend the period during which a control order has effect for a further period (not exceeding 5 years).
- (3) The period during which a control order has effect may be extended any number of times.

### **Division 2 Matters for which control order may provide**

#### **67 Control zone**

- (1) A **control zone** is the principal area or areas in relation to which, in the opinion of the Minister, measures are required to be implemented under the control order.
- (2) A control zone may be:
  - (a) any specified premises or specified part of premises, or
  - (b) any specified area, or
  - (c) the whole or any specified part of the State.

- (3) A control order may provide for more than one control zone and for different classes of control zone.

## **68 Control measures**

- (1) The **control measures** are the measures that the Minister establishes under a control order to prevent, eliminate, minimise or manage the biosecurity risk or biosecurity impact to which the order relates.
- (2) The Minister may specify, as control measures under a control order, any measures that the Minister decides are reasonably necessary to prevent, eliminate, minimise or manage the biosecurity risk or biosecurity impact to which the order relates.
- (3) The control measures are to be no more onerous than the Minister considers necessary having regard to the nature of the biosecurity risk or biosecurity impact to which the order relates.
- (4) In deciding on the control measures, the Minister is to have regard to the principal objects of a control order and any other matters the Minister considers relevant.
- (5) The control measures may apply:
  - (a) within a control zone, and
  - (b) outside a control zone, but only if the Minister considers that reasonably necessary having regard to the nature of the biosecurity risk or biosecurity impact.
- (6) The control measures may:
  - (a) prohibit, regulate or control the doing of any thing, or
  - (b) require or authorise the doing of any thing.
- (7) A power to require the doing of a thing includes a power to require a person to arrange for that thing to be done.

## **69 Examples of control measures**

Without limiting the powers conferred on the Minister by this Part, control measures may include provisions that prohibit, regulate or control, or that require or authorise, any of the following:

- (a) activities that involve biosecurity matter, a carrier or a potential carrier,
- (b) the use of premises for an activity that involves biosecurity matter, a carrier or a potential carrier,
- (c) the movement of any biosecurity matter or other thing,
- (d) the isolation, confinement or detention of any biosecurity matter or other thing,

- (e) treatment measures to be carried out in relation to biosecurity matter, premises or any other thing,
- (f) the erection or repair of fencing, gates or any other method of enclosure, or the taking of any other specified security or containment measures in relation to any premises, biosecurity matter or other thing,
- (g) the erection of signs,
- (h) the provision of samples of any biosecurity matter or other thing,
- (i) the testing of any biosecurity matter or other thing,
- (j) the obtaining of a biosecurity certificate in relation to biosecurity matter or any other thing,
- (k) the installation or use of a device at any premises, for the purpose of detecting or monitoring the presence of any biosecurity matter or other thing or capturing any biosecurity matter or other thing,
- (l) the destruction, disposal or eradication of any thing (including by specifying the manner of destruction, disposal or eradication),
- (m) any other matters expressly authorised by the regulations.

### **Division 3 Limitations that apply to control order**

#### **70 Consultation required for control order affecting game animals**

- (1) A control order in relation to or affecting a game animal (being a game animal within the meaning of the [Game and Feral Animal Control Act 2002](#) that is specified in Part 1 or 1A of Schedule 3 to that Act) may only be made after consultation with the Chairperson of the Game and Pest Management Advisory Board constituted under that Act.
- (2) A failure to comply with this section does not affect the validity of a control order.

#### **71 Consultation required for control order affecting native flora or fauna**

- (1) A control order in relation to or affecting native flora or fauna may only be made after consultation with the Minister for the Environment.
- (2) A failure to comply with this section does not affect the validity of a control order.

#### **72 Detention or treatment of persons**

- (1) A control order cannot:
  - (a) prohibit, regulate or control the movement of a person, or

(b) require any treatment measure to be carried out on a person.

- (2) A control order cannot require a person to provide samples of the person's blood, hair, saliva or any other body part or body fluid.
- (3) Subsection (1) (a) does not prevent a control measure being imposed in relation to any biosecurity matter, premises, area, activity or thing that has an impact on the movement of a person but is not imposed for the purpose of restricting the movement of a person.

**Note—**

For example, a control measure cannot prohibit a person from leaving premises but could prohibit a person from taking a particular animal out of premises. This measure may have an impact on the movement of a person but is not imposed for that purpose.

### **73 Destruction requirements**

- (1) A control order cannot require or authorise the destruction of a thing unless:
- (a) the thing is, or is reasonably suspected of being, prohibited matter, or
  - (b) the thing is a carrier of, or reasonably suspected of being a carrier of, prohibited matter, or
  - (c) the thing is a pest to which the control order relates, or
  - (d) the thing is, or is reasonably suspected of being, infected or infested with, or harbouring, the biosecurity matter to which the control order relates and there are no other reasonably practicable treatment measures that could eliminate or minimise the biosecurity risk posed by the biosecurity matter, or
  - (e) the thing is, or is reasonably suspected of being:
    - (i) abandoned, and
    - (ii) biosecurity matter to which the control order relates or a carrier of biosecurity matter to which the control order relates.

- (2) In this section:

**reasonably practicable** means reasonably practicable in the opinion of the Minister or an authorised officer.

**reasonably suspected** means reasonably suspected by the Minister or an authorised officer.

### **74 Interaction of powers with restrictions imposed by other Acts**

- (1) The Minister must not, in a control order, require the destruction of any living thing that is protected fauna or a protected native plant within the meaning of the *National*

*Parks and Wildlife Act 1974*, except after consultation with the head of the government agency responsible for the administration of that Act.

- (2) The Minister must not, in a control order, require the destruction of any living thing that is a threatened species within the meaning of the *Threatened Species Conservation Act 1995*, except after consultation with the head of the government agency responsible for the administration of that Act.
- (3) The Minister must not, in a control order, require the clearing of any native vegetation within the meaning of the *Native Vegetation Act 2003*, except after consultation with the head of the government agency responsible for the administration of that Act.
- (4) The Minister must not, in a control order, require harm (within the meaning of the *Heritage Act 1977*) to any building, work, relic, moveable object or place the subject of an interim heritage order or listing on the State Heritage Register under that Act, except after consultation with the head of the government agency responsible for the administration of that Act.
- (5) A failure to comply with this section does not affect the validity of a control order.

## **Division 4 Effect of control order**

### **75 Offence of contravening control order**

- (1) A person who contravenes a control order is guilty of an offence.
- (2) An offence against this section is a category 2 offence.
- (3) An offence against this section is an executive liability offence.
- (4) A person who is guilty of an offence against this section because the person contravenes a requirement of a control order:
  - (a) continues, until the requirement is complied with and despite the fact that any specified period or time for compliance has expired or passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (5) Subsection (4) does not apply to the extent that a requirement of a control order is revoked.
- (6) A person does not commit an offence against this section of contravening a control order unless:
  - (a) the order was published on the website of the Department or in the Gazette, or
  - (b) the person was served with a copy of the order.

## **76 Secretary may authorise required actions and recover costs**

- (1) If a person (the **liable person**) fails to comply with a control order, the Secretary may authorise any person to enter premises and take any actions in relation to those premises or any thing on those premises that the liable person is required to take by the order or that are otherwise necessary to remedy that failure.
- (2) The Secretary may charge the liable person a fee for action taken under this section.
- (3) The fee is to be no more than is reasonable to cover the costs and expenses incurred in connection with the action.
- (4) Costs and expenses incurred include costs and expenses incurred by or on behalf of any government agency.
- (5) The fee is:
  - (a) a recoverable amount that is payable to the Secretary, and
  - (b) recoverable from the liable person.

### **Note—**

See Part 20, which provides for the recovery of recoverable amounts.

- (6) The Secretary must give an occupier of premises used for residential purposes written notice of an intention to enter any part of the premises used only for residential purposes under this section.
- (7) The notice must specify the day on which the premises are intended to be entered and must be given before that day.
- (8) Notice is not required to be given if:
  - (a) entry is made with the consent of the occupier of the premises, or
  - (b) entry is made under the authority of a search warrant.
- (9) This section does not prevent the taking of proceedings for an offence of contravening a control order.

## **Division 5 General**

### **77 Amendment or revocation of control order**

- (1) The Minister may, by order in writing, amend or revoke a control order.
- (2) An amendment to a control order may make provision for any matter for which a control order may make provision.

- (3) An amendment to, or revocation of, a control order takes effect, and is to be notified, in the same way as a control order.

### **78 Authorisation of person to make control orders**

The Minister may authorise a person to exercise any functions of the Minister under this Part.

## **Part 7 Biosecurity zones**

### **Division 1 Biosecurity zones**

#### **79 Biosecurity zones**

- (1) The regulations may establish one or more biosecurity zones for the purpose of preventing, eliminating, minimising or managing a biosecurity risk or biosecurity impact.
- (2) The principal object of a biosecurity zone regulation is to provide for the long term management of a biosecurity risk or biosecurity impact.
- (3) Subsection (2) does not limit the matters that may be provided for by the regulations.

#### **80 Matters to be specified**

A biosecurity zone regulation is to specify the following:

- (a) the biosecurity matter, biosecurity risk or biosecurity impact in relation to which the biosecurity zone is established,
- (b) the biosecurity zone or zones,
- (c) the regulatory measures,
- (d) the persons or class of persons to whom those measures apply.

### **Division 2 Matters for which regulations may provide**

#### **81 Biosecurity zone**

- (1) A **biosecurity zone** may be:
  - (a) any specified premises or specified part of premises, or
  - (b) any specified area, or
  - (c) the whole or any specified part of the State.
- (2) The regulations may provide for more than one biosecurity zone and for different classes of biosecurity zone.



## 82 Regulatory measures

- (1) The **regulatory measures** are the measures to be implemented for the purpose of preventing, eliminating, minimising or managing a biosecurity risk or biosecurity impact.
- (2) The regulatory measures may apply within or outside a biosecurity zone.
- (3) The regulatory measures may:
  - (a) prohibit, regulate or control the doing of any thing, or
  - (b) require or authorise the doing of any thing.
- (4) A power to require the doing of a thing includes a power to require a person to arrange for that thing to be done.

## 83 Examples of regulatory measures

Without limiting the power to make regulations conferred by this Part, the regulatory measures may include provisions that prohibit, regulate or control, or that require or authorise, any of the following:

- (a) activities that involve biosecurity matter, a carrier or a potential carrier,
- (b) the use of premises for an activity that involves biosecurity matter, a carrier or a potential carrier,
- (c) the movement of any biosecurity matter or other thing,
- (d) the isolation, confinement or detention of any biosecurity matter or other thing,
- (e) the treatment measures to be carried out in relation to any biosecurity matter, premises or other thing,
- (f) the erection or repair of fencing, gates or any other method of enclosure, or the taking of any other specified security or containment measures in relation to any premises, biosecurity matter or other thing,
- (g) the erection of signs,
- (h) the provision of samples of any biosecurity matter or other thing,
- (i) the testing of any biosecurity matter or other thing,
- (j) the obtaining of a biosecurity certificate in relation to any biosecurity matter or other thing,
- (k) the installation or use of a device at any premises, for the purpose of detecting or monitoring the presence of any biosecurity matter or other thing or capturing any

biosecurity matter or other thing,

- (l) the destruction, disposal or eradication of any thing (including by specifying the manner of destruction, disposal or eradication).

### **Division 3 Limitations on regulation-making power**

#### **84 Detention or treatment of persons**

- (1) A biosecurity zone regulation cannot:
  - (a) prohibit, regulate or control the movement of a person, or
  - (b) require treatment measures to be carried out on any person.
- (2) A biosecurity zone regulation cannot require a person to provide samples of the person's blood, hair, saliva or any other body part or body fluid.
- (3) Subsection (1) (a) does not prevent a biosecurity zone regulation being imposed in relation to any biosecurity matter, premises, area, activity or thing that has an impact on the movement of a person but is not imposed for the purpose of restricting the movement of a person.

**Note—**

For example, a regulatory measure cannot prohibit a person from leaving premises but could prohibit a person from taking a particular animal or plant out of premises. This measure may have an impact on the movement of a person, but is not imposed for that purpose.

#### **85 Destruction requirements**

- (1) A biosecurity zone regulation cannot require or authorise the destruction of a thing unless:
  - (a) the thing is, or is reasonably suspected of being, prohibited matter, or
  - (b) the thing is a carrier of, or reasonably suspected of being a carrier of, prohibited matter, or
  - (c) the thing is a pest to which the biosecurity zone relates, or
  - (d) the thing is, or is reasonably suspected of being, infected or infested with, or of harbouring, the biosecurity matter to which the regulations relate and there are no other reasonably practicable treatment measures that could eliminate or minimise the biosecurity risk posed by the biosecurity matter, or
  - (e) the thing is, or is reasonably suspected of being:
    - (i) abandoned, and
    - (ii) biosecurity matter to which the regulations relate or a carrier of biosecurity

matter to which the regulations relate.

(2) In this section:

***reasonably practicable*** means reasonably practicable in the opinion of the Secretary or an authorised officer.

***reasonably suspected*** means reasonably suspected by the Secretary or an authorised officer.

## **86 Consultation requirements**

- (1) The Minister is not to recommend to the Governor the making of a biosecurity zone regulation that would authorise or require the destruction of any living thing that is protected fauna or a protected native plant within the meaning of the [National Parks and Wildlife Act 1974](#) unless the Minister has certified that he or she consulted with the Minister administering that Act before recommending the making of the regulation.
- (2) The Minister is not to recommend to the Governor the making of a biosecurity zone regulation that would authorise or require the destruction of any living thing that is a threatened species within the meaning of the [Threatened Species Conservation Act 1995](#) unless the Minister has certified that he or she consulted with the Minister administering that Act before recommending the making of the regulation.
- (3) The Minister is not to recommend to the Governor the making of a biosecurity zone regulation that would authorise or require the clearing of any native vegetation within the meaning of the [Native Vegetation Act 2003](#) unless the Minister has certified that he or she consulted with the Minister administering that Act before recommending the making of the regulation.
- (4) The Minister is not to recommend to the Governor the making of a biosecurity zone regulation that would authorise or require harm (within the meaning of the [Heritage Act 1977](#)) to any building, work, relic, moveable object or place the subject of an interim heritage order or listing on the State Heritage Register under that Act unless the Minister has certified that he or she consulted with the Minister administering that Act before recommending the making of the regulation.
- (5) A failure to comply with this section does not affect the validity of any regulation.

## **Division 4 Effect of biosecurity zone**

### **87 Offence of contravening biosecurity zone regulation**

- (1) A person who contravenes any biosecurity zone regulation is guilty of an offence.
- (2) An offence against this section is a category 2 offence.

- (3) An offence against this section is an executive liability offence.
- (4) A person who is guilty of an offence against this section because the person contravenes a requirement of a biosecurity zone regulation:
  - (a) continues, until the requirement is complied with and despite the fact that any specified period or time for compliance has expired or passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (5) Subsection (4) does not apply to the extent that a requirement of a biosecurity zone regulation is repealed.

#### **88 Secretary may authorise required actions and recover costs**

- (1) If a person (the **liable person**) fails to comply with a biosecurity zone regulation, the Secretary may authorise any person to enter premises and take any actions in relation to those premises or any thing on those premises that the liable person is required to take by the regulation or that are otherwise necessary to remedy that failure.
- (2) The Secretary may charge the liable person a fee for action taken under this section.
- (3) The fee is to be no more than is reasonable to cover the costs and expenses incurred in connection with the action.
- (4) Costs and expenses incurred include costs and expenses incurred by or on behalf of any government agency.
- (5) The fee is:
  - (a) a recoverable amount that is payable to the Secretary, and
  - (b) recoverable from the liable person.

#### **Note—**

See Part 20, which provides for the recovery of recoverable amounts.

- (6) The Secretary must give an occupier of premises used for residential purposes written notice of an intention to enter any part of the premises used only for residential purposes under this section.
- (7) The notice must specify the day on which the premises are intended to be entered and must be given before that day.
- (8) Notice is not required to be given if:
  - (a) entry is made with the consent of the occupier of the premises, or

(b) entry is made under the authority of a search warrant.

(9) This section does not prevent the taking of proceedings for an offence of contravening a biosecurity zone regulation.

## **Part 8 Powers of authorised officers**

### **Division 1 Preliminary**

#### **89 Purposes for which functions under Part may be exercised**

- (1) An authorised officer may exercise the functions conferred by this Part for any of the following purposes:
- (a) for the purpose of investigating, monitoring and enforcing compliance with the requirements imposed by or under this Act,
  - (b) for the purpose of obtaining information or records for purposes connected with the administration of this Act,
  - (c) if the authorised officer is a biosecurity auditor, for the purpose of exercising functions in connection with a biosecurity audit,
  - (d) for the purpose of assisting a biosecurity auditor to exercise the biosecurity auditor's functions in connection with a biosecurity audit,
  - (e) for the purpose of preventing, eliminating, minimising or managing biosecurity risks or suspected biosecurity risks,
  - (f) for the purpose of preventing, managing or controlling a biosecurity impact,
  - (g) for the purpose of enforcing, administering or executing this Act (including any instrument made under this Act).
- (2) In this Part, a reference to an **authorised purpose** is a reference to any purpose referred to in subsection (1).

#### **90 Exercise of functions under other legislation**

- (1) The functions conferred by this Part may also be exercised in connection with the following legislation:
- (a) the *Stock Medicines Act 1989* and the regulations under that Act,
  - (b) any previous legislation, in respect of offences under the previous legislation that are alleged to have been committed before the enactment of this Act or in respect of any other provisions of the previous legislation that continue to have any force or effect after the enactment of this Act.

- (2) Accordingly, a reference in this Part to this Act or the regulations includes a reference to the *Stock Medicines Act 1989*, the regulations under the *Stock Medicines Act 1989* and the previous legislation.
- (3) Nothing in this Part limits any function that an authorised officer has under a provision of the previous legislation that continues to have any force or effect after the enactment of this Act.
- (4) In this section:

**previous legislation** means:

- (a) an Act or regulation repealed by this Act, or
- (b) a provision of the *Border Fence Maintenance Act 1921*, the *Fisheries Management Act 1994* or the *Local Land Services Act 2013* that was repealed or amended by this Act, or any regulations under any such provision.

**Note—**

See Schedule 6 for a list of repealed Acts and Schedule 7 for transitional provisions relating to those repeals. Under Schedule 7, the repealed Acts continue to have effect in relation to some matters.

**91 References to functions exercisable “in the case of an emergency”**

- (1) A provision of this Part that enables an authorised officer to exercise a function **in the case of an emergency** enables the authorised officer to exercise that function if:
  - (a) the authorised officer is required or authorised to exercise the function under an emergency order, or
  - (b) the authorised officer otherwise reasonably believes it is necessary to exercise the function because:
    - (i) a biosecurity emergency has occurred, is occurring or is imminent, or
    - (ii) the authorised officer reasonably suspects a biosecurity emergency has occurred, is occurring or is imminent.
- (2) A function under this Part is taken to have been exercised **in the case of an emergency** if it is exercised by an authorised officer in the circumstances referred to in subsection (1).
- (3) The fact that this Part enables an authorised officer to exercise certain functions only in the case of an emergency does not prevent an authorised officer from exercising any other function conferred by this Part in the case of an emergency.

## **Division 2 Information gathering powers**

### **92 Exercise in conjunction with other powers**

A power conferred by this Division may be exercised whether or not a power of entry under Division 3 is being exercised.

### **93 Powers of authorised officers to require information and records**

- (1) An authorised officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as he or she may require for an authorised purpose.
- (2) A notice under this Division must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.
- (3) A notice under this Division may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (4) The person to whom any record is furnished under this Division may take copies of it.
- (5) If any record required to be furnished under this Division is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.

### **94 Power of authorised officers to require answers**

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for an authorised purpose to answer questions in relation to those matters.
- (2) An authorised officer may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.
- (4) An authorised officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (5) The place and time at which a person may be required to attend under subsection (4) is to be:

- (a) a place and time nominated by the person, or
- (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the authorised officer that is reasonable in the circumstances.

#### **95 Recording of evidence**

- (1) An authorised officer may cause any questions and answers to questions given under this Division to be recorded if the officer has informed the person who is to be questioned that the record is to be made.
- (2) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the authorised officer.
- (3) A copy of any such record must be provided by the authorised officer to the person who is questioned as soon as practicable after it is made.
- (4) A record may be made under this section despite the provisions of any other law.

#### **96 Power of authorised officers to demand name and address**

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have committed, or to be committing, an offence against this Act or the regulations to state the person's full name and residential address.
- (2) An authorised officer may request a person who is required under this section to state the person's full name and residential address to provide proof of the name and address. It is not an offence to fail to comply with any such request.

#### **97 Requiring information in the case of an emergency**

- (1) A person is not excused from a requirement made by an authorised officer to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty if:
  - (a) the authorised officer makes the requirement in the case of an emergency, and
  - (b) the authorised officer warns the person that the authorised officer is making the requirement in the case of an emergency.
- (2) However, any information furnished (other than a record) or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an obstruction offence) 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 furnishing the information or giving the answer on the ground that it might incriminate the person.
- (3) Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (4) Further information obtained as a result of a record or information furnished or an answer given in compliance with a requirement under this Part is not inadmissible on the ground:
  - (a) that the record or information had to be furnished or the answer had to be given, or
  - (b) that the record or information furnished or answer given might incriminate the person.
- (5) This section extends to a requirement to state a person's name and address.

### **Division 3 Entry to premises**

#### **98 Powers of authorised officers to enter premises**

- (1) An authorised officer may enter any premises:
  - (a) at any reasonable time, or
  - (b) in the case of an emergency, at any time.
- (2) A power to enter premises conferred by this Act authorises entry by foot, vehicle, vessel or aircraft or by any other means.
- (3) Entry may be effected under this Act with the use of reasonable force.
- (4) Entry to any premises may be effected with or without the authority of a search warrant.

#### **99 Entry into residential premises only with permission or warrant**

This Division does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant.

#### **100 Search warrants**

- (1) An authorised officer under this Act may apply to an issuing officer for the issue of a search warrant if the authorised officer believes on reasonable grounds that:
  - (a) a requirement imposed by or under this Act is being or has been contravened at

any premises, or

(b) there is, in or on any premises, matter or a thing that is connected with an offence under this Act or the regulations.

(2) An issuing officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant:

(a) to enter the premises, and

(b) to exercise any function of an authorised officer under this Part.

(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) In this section:

**issuing officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

#### **101 Power to require occupier to provide assistance**

An authorised officer proposing to exercise a power of entry under this Division may, by notice in writing given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.

### **Division 4 Investigation and risk management powers**

#### **102 Powers that can be exercised on premises**

(1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for an authorised purpose, including (but not limited to) the things specified in subsection (2).

(2) An authorised officer may do any or all of the following:

(a) examine and inspect any thing,

(b) take and remove samples of a thing,

(c) make any examinations, inquiries or tests that the authorised officer considers necessary,

(d) carry out any treatment measures in relation to any biosecurity matter, carrier, potential carrier, premises or other thing,

(e) isolate, confine or detain any biosecurity matter or other thing,

- (f) erect or repair fencing, gates or any other method of enclosure, or carry out any other security or containment measures in relation to any premises, biosecurity matter or other thing,
  - (g) erect signs,
  - (h) move any biosecurity matter or other thing,
  - (i) install or use a device for the purpose of detecting or monitoring the presence of any biosecurity matter or other thing,
  - (j) install devices for the purpose of capturing any biosecurity matter or other thing,
  - (k) take any photographs or other recordings that the authorised officer considers necessary,
  - (l) require records to be produced for inspection,
  - (m) examine and inspect any records,
  - (n) copy any records,
  - (o) seize any biosecurity matter or other thing if the authorised officer has reasonable grounds for believing that seizure of the biosecurity matter or other thing is necessary to prevent, eliminate or minimise a biosecurity risk posed by or in relation to the biosecurity matter or thing,
  - (p) seize any thing that the authorised officer has reasonable grounds for believing is connected with an offence against this Act or the regulations,
  - (q) move any seized thing from the place where it is seized or leave it at the place where it is seized and take reasonable action to restrict access to the thing,
  - (r) direct the occupier of the premises where a thing is seized to retain it at those premises or at another place under the control of the occupier,
  - (s) destroy, dispose of or eradicate any thing,
  - (t) do anything else authorised by or under this Act.
- (3) The power to examine and inspect any thing includes a power to use reasonable force to break open or otherwise access a container or other thing being used, or suspected of being used, to hold or contain another thing.
- (4) The power to seize any thing connected with an offence includes a power to seize:
- (a) a thing with respect to which the offence has been committed, and
  - (b) a thing that will afford evidence of the commission of the offence, and

(c) a thing that was used for the purpose of committing the offence.

(5) The power to do a thing under this section includes a power to arrange for that thing to be done.

(6) A power to do something under this section in relation to a thing may be exercised without the consent of the owner of the thing.

(7) The power to destroy a thing is subject to the other provisions of this Part.

**Note—**

See Division 6.

(8) In this section, a reference to an offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

### **103 Requiring assistance**

(1) An authorised officer may require the owner or occupier of premises, or any person in or on premises (other than a public place), to provide any reasonable assistance that the authorised officer specifies for the purposes of exercising the authorised officer's functions under this Division in relation to those premises.

(2) The requirement may be made in the form of a direction that is given orally to the person or by notice in writing served on the person.

(3) The direction may, for example, require the person:

(a) to confine or move any animal under the care, custody or control of the person, or

(b) to provide any facilities, including yards and crushes, that the authorised officer requires to inspect, examine, treat or take samples from any biosecurity matter, carrier, potential carrier or other thing, or

(c) to restrain any animal.

### **104 Recovery of fee for action taken**

(1) The Secretary may charge a person (the **liable person**) a fee for any action taken by an authorised officer under a power conferred by this Division if, in the opinion of the Secretary, it is reasonable to do so having regard to the following:

(a) any biosecurity duty of the liable person under this Act,

(b) any contravention or likely contravention by the liable person of a requirement imposed by or under this Act.

(2) The fee is to be no more than is reasonable to cover the costs and expenses incurred in connection with the action.

- (3) Costs and expenses incurred include costs and expenses incurred by or on behalf of any government agency.
- (4) The fee is:
  - (a) a recoverable amount that is payable to the Secretary, and
  - (b) recoverable from the liable person.

**Note—**

See Part 20, which provides for the recovery of recoverable amounts and also provides for appeals to the Land and Environment Court against the decision to charge a fee.

## **Division 5 Functions in relation to seized things**

### **105 Definitions**

- (1) In this Division:

**owner** of a thing includes a person entitled to possession of the thing.

**responsible person** for a seized thing means the apparent owner of the thing or the apparent occupier of premises at which the thing is seized.

**seized thing** means a thing seized by an authorised officer under this Part.

- (2) For the purposes of the Division, the continued retention of a seized thing in custody is **not justified** if and only if:
  - (a) it is not or is no longer necessary to retain the thing to prevent, eliminate or minimise a biosecurity risk posed by or in relation to the thing, and
  - (b) it is not or is no longer necessary to retain the thing as evidence of an offence.

### **106 Receipt for seized things**

- (1) As soon as practicable after an authorised officer seizes a thing, the authorised officer must give a receipt for it to a responsible person.
- (2) If it is not practicable to comply with subsection (1), the authorised officer may instead leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) A receipt is not required if the thing is seized in a public place and the apparent owner of the thing cannot be located after reasonable inquiry.
- (4) A receipt must describe generally the seized thing and its condition.
- (5) This section does not apply if it is impracticable or would be unreasonable to give a receipt given the nature, condition or value of a seized thing.

### **107 Return of seized things**

- (1) An authorised officer must return a seized thing to its owner if the authorised officer is satisfied that:
  - (a) it is lawful for the owner to have possession of the thing, and
  - (b) the continued retention of the thing in custody is not justified.
- (2) A requirement to return a seized thing to its owner includes a requirement to remove or lift any restrictions on an owner's access to a seized thing.
- (3) This section does not apply if an authorised officer certifies in writing that the authorised officer is unable to return the seized thing to its owner.

### **108 Certification of inability to return seized thing**

- (1) An authorised officer may certify in writing that the authorised officer is unable to return a seized thing to its owner if:
  - (a) the authorised officer cannot find the owner of the thing after making any inquiries it is reasonable to make in the circumstances, or
  - (b) the authorised officer cannot, for any other reason, return the thing to its owner after making any efforts to do so that are reasonable to make in the circumstances.
- (2) Regard is to be had to a thing's nature, condition and value in deciding:
  - (a) whether it is reasonable to make inquiries or efforts, and
  - (b) what inquiries or efforts (if any) are reasonable in the circumstances.
- (3) The Secretary may give directions as to the inquiries or efforts that are to be made by authorised officers in relation to the return of any seized thing or class of seized things.
- (4) Compliance with any such directions is evidence that all reasonable inquiries or efforts were made.

### **109 Court order requiring delivery of seized thing**

- (1) A court may, on application by any person, make an order directing that a seized thing be delivered to the person.
- (2) A court may make such an order only if satisfied that:
  - (a) the person is the owner of the seized thing, and
  - (b) it is lawful for the person to have possession of the thing, and

- (c) the continued retention of the seized thing in custody is not justified.
- (3) In deciding an application the court may do any one or more of the following things:
  - (a) make a finding or order as to the ownership of the thing,
  - (b) make a finding or order as to liability for, and payment of, costs and expenses incurred in keeping a thing in custody,
  - (c) make any necessary incidental or ancillary findings or orders.
- (4) The court to which an application under this section may be made is:
  - (a) the Local Court, if the estimated value of the thing does not exceed \$100,000, or
  - (b) the Land and Environment Court, if the estimated value of the thing exceeds \$100,000.
- (5) Despite subsection (4), a court that is hearing proceedings for an offence may deal with an application relating to a seized thing connected with that offence regardless of the estimated value of the thing.
- (6) A court cannot make an order under this section in respect of a thing that has been seized by an authorised officer in the case of an emergency unless the Secretary has given notice of the Secretary's intention to declare the seized thing to be forfeited to the Secretary.
- (7) A court cannot make an order under this section in respect of a seized thing that has been forfeited to the Secretary.
- (8) A requirement to deliver a seized thing to its owner includes a requirement to remove or lift any restrictions on an owner's access to a seized thing.

#### **110 Forfeiture of seized thing**

- (1) The Secretary may, by order in writing, declare any seized thing to be forfeited to the Secretary.
- (2) The Secretary may make such an order only if:
  - (a) the Secretary is satisfied that the continued retention of the thing in custody is not justified, and
  - (b) the thing cannot be returned to its owner.
- (3) A thing cannot be returned to its owner if:
  - (a) the Secretary is satisfied that it is not lawful for the owner of the seized thing to have possession of the thing, or

- (b) an authorised officer certifies in writing that the authorised officer is unable to return the seized thing to its owner.
- (4) The Secretary must give notice of the Secretary's intention to declare a seized thing to be forfeited to the Secretary.
- (5) The notice must be given at least 21 days before the order is made.
- (6) The Secretary gives notice by:
  - (a) publishing the notice on the Department's website, and
  - (b) serving the notice on the apparent owner of the thing.
- (7) However, it is not necessary to serve the notice on the apparent owner of the thing if an authorised officer has certified in writing that the authorised officer is unable to return the seized thing to its owner.

**Note—**

Notice of the intention to make the declaration gives the owner of the thing an opportunity to seek a court order for the return of the thing.

### **111 Dealing with forfeited things**

- (1) When an order is made by the Secretary declaring a seized thing to be forfeited to the Secretary, the seized thing is forfeited to the Secretary and becomes the property of the Secretary.
- (2) The Secretary may deal with the thing in any way the Secretary considers appropriate.
- (3) Without limiting subsection (2), the Secretary may destroy, sell or dispose of the thing or authorise its destruction, sale or disposal.

## **Division 6 Limitations on powers**

### **112 Detention or treatment of persons**

- (1) An authorised officer cannot do any of the following except as expressly authorised by an emergency order or under Part 9:
  - (a) prohibit, regulate or control the movement of a person,
  - (b) examine or inspect a person,
  - (c) require a person to undergo treatment measures or require treatment measures to be carried out in relation to a person.
- (2) An authorised officer cannot:



- (a) require a person to submit to any testing, or
  - (b) require a person to provide samples of the person's blood, hair, saliva or any other body part or body fluid.
- (3) Subsection (1) (a) does not prevent an authorised officer from doing any thing in relation to any biosecurity matter, premises, area, activity or thing that has an impact on the movement of a person but is not done for the purpose of restricting the movement of a person.

**Note—**

For example, an authorised officer could erect a fence on premises so as to isolate particular animals or plants from other animals or plants. This may have an impact on the movement of a person but is not done for that purpose.

### **113 Destruction requirements**

- (1) An authorised officer may destroy a thing under this Part only if:
- (a) the thing is, or is reasonably suspected of being, prohibited matter, or
  - (b) the thing is a pest, or
  - (c) the thing is, or is reasonably suspected of being, infected or infested with, or of harbouring, biosecurity matter that poses a biosecurity risk and there are no other reasonably practicable treatment measures that could eliminate or minimise the biosecurity risk posed by the biosecurity matter, or
  - (d) the destruction is expressly authorised or required by an emergency order, control order or biosecurity zone regulation.
- (2) This section does not prevent an authorised officer from destroying a thing that has been forfeited to the Secretary.

- (3) In this section:

***reasonably practicable*** means reasonably practicable in the opinion of the authorised officer.

***reasonably suspected*** means reasonably suspected by the authorised officer.

### **114 Persons directly affected by destruction to be advised of proposed destruction**

- (1) An authorised officer must not destroy any thing in the exercise of a function under this Part unless:
- (a) before taking that action, the authorised officer gives notice in writing of the proposed destruction to the owner or person in charge of the thing, or
  - (b) the authorised officer is satisfied that the owner or person in charge of the thing

has already been given notice in writing of the proposed destruction.

- (2) Notice must be given at least one day before the function is exercised.
- (3) A requirement to give notice does not apply to the destruction of a thing if:
  - (a) there appears to be no one immediately in control of it, and the owner or person in charge cannot, after such search and inquiry as is reasonable in the circumstances, be located, and
  - (b) the authorised officer considers that, in the circumstances, the function must be exercised without prior notice to the owner or person in charge.
- (4) This section does not apply to the destruction of a thing that has been forfeited to the Secretary.

### **115 Interaction of powers with restrictions imposed by other Acts**

- (1) An authorised officer must not, under this Part:
  - (a) destroy any living thing that is protected fauna or a protected native plant within the meaning of the *National Parks and Wildlife Act 1974*, or
  - (b) destroy any living thing that is a threatened species within the meaning of the *Threatened Species Conservation Act 1995*, or
  - (c) clear any native vegetation within the meaning of the *Native Vegetation Act 2003*, or
  - (d) harm (within the meaning of the *Heritage Act 1977*) any building, work, relic, moveable object or place the subject of an interim heritage order or listing on the State Heritage Register under that Act.
- (2) This section does not limit the power of an authorised officer to do a thing where that action is expressly authorised or required by an emergency order, a control order or a biosecurity zone regulation.

## **Division 7 General**

### **116 Offence of failing to comply with requirement made by authorised officer**

- (1) A person who contravenes a requirement made of the person by an authorised officer exercising a power conferred by this Part is guilty of an offence.
- (2) An offence against this section is a category 2 offence.
- (3) A person is not guilty of an offence of failing to comply with a requirement to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

- (4) A person who is guilty of an offence against this section because the person contravenes a requirement made by an authorised officer to do or refrain from doing something:
  - (a) continues, until the requirement is complied with and despite the fact that any specified period or time for compliance has expired or passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (5) Subsection (4) does not apply to the extent that a requirement of an authorised officer is revoked.

### **117 Defence to contravention**

- (1) In proceedings in which a person is charged with an offence of contravening a requirement made of the person by an authorised officer exercising a function conferred by this Part, it is a defence to the prosecution of the offence if the person charged proves that the person had a reasonable excuse for the contravention concerned.
- (2) Subsection (1) does not apply to a requirement made under Division 2.
- (3) A requirement made under Division 2 does not affect the privilege against self-incrimination as it applies to a natural person, except where the authorised officer makes the requirement in the case of an emergency.

#### **Note—**

See section 97.

### **118 Care to be taken**

In the exercise of a power of entering or searching premises under this Part, or doing anything else on premises under this Act, an authorised officer must do as little damage as possible.

### **119 Compensation**

- (1) The Secretary must compensate all interested parties for damage caused by an authorised officer in exercising a power to enter premises, or a power to break open or otherwise access a thing for the purposes of examination or inspection, but not any damage caused by the exercise of any other power.
- (2) Subsection (1) does not apply if the occupier obstructed or hindered the authorised officer in the exercise of the power concerned.

### **120 Revocation or variation of notices**

- (1) A notice given under this Part may be revoked or varied by a subsequent notice or

notices.

- (2) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (3) A notice may be revoked or varied by the Secretary or by any authorised officer.

## **Part 9 Biosecurity directions**

### **Division 1 Preliminary**

#### **121 Exercise in conjunction with other powers**

A power conferred by this Part to give a biosecurity direction may be exercised whether or not a power of entry under Part 8 is being exercised.

#### **122 References to functions exercisable “in the case of an emergency”**

- (1) A provision of this Part that enables an authorised officer to exercise a function ***in the case of an emergency*** enables the authorised officer to exercise that function if:
  - (a) the authorised officer is required or authorised to exercise the function under an emergency order, or
  - (b) the authorised officer otherwise reasonably believes it is necessary to exercise the function because:
    - (i) a biosecurity emergency has occurred, is occurring or is imminent, or
    - (ii) the authorised officer reasonably suspects a biosecurity emergency has occurred, is occurring or is imminent.
- (2) A function under this Part is taken to have been exercised ***in the case of an emergency*** if it is exercised by an authorised officer in the circumstances referred to in subsection (1).
- (3) The fact that this Part enables an authorised officer to exercise certain functions only in the case of an emergency does not prevent an authorised officer from exercising any other function conferred by this Part in the case of an emergency.

### **Division 2 Biosecurity directions**

#### **123 Power to issue biosecurity direction**

- (1) An authorised officer may give a direction as authorised by this Part.
- (2) A direction under this Part is a ***biosecurity direction***.

#### **124 Types of biosecurity direction**

- (1) A biosecurity direction may be given as a general biosecurity direction or an individual biosecurity direction.
- (2) A **general biosecurity direction** is a direction that applies to the public generally or to a specified class of persons (such as persons who engage in a specified activity, or who frequent particular premises).
- (3) An **individual biosecurity direction** is a direction that applies to a particular person.

#### **125 Revocation or variation of biosecurity direction**

- (1) A biosecurity direction may be revoked or varied by a subsequent biosecurity direction or directions.
- (2) Without limiting the above, a biosecurity direction may be varied by extending the time for complying with the direction.
- (3) A biosecurity direction may be revoked or varied by the Secretary or by any authorised officer.

### **Division 3 General biosecurity directions**

#### **126 General biosecurity direction**

- (1) An authorised officer may give a general biosecurity direction if the officer reasonably believes it is necessary to do so for any of the following purposes:
  - (a) to prevent, eliminate or minimise a biosecurity risk,
  - (b) to prevent, manage or control a biosecurity impact that has occurred, is occurring or is likely to occur,
  - (c) to enforce, administer or execute this Act (including any instrument made under this Act).
- (2) The authorised officer may, in a general biosecurity direction, prohibit, regulate or control (absolutely or conditionally) the carrying out of any activity in connection with biosecurity matter, a carrier or a potential carrier.
- (3) The authorised officer may also, in a general biosecurity direction, do any of the following, but only in the case of an emergency:
  - (a) prohibit, regulate or control entry to or exit from any specified premises or area,
  - (b) prohibit, regulate or control the use of any road within or going into or out of a specified area or premises (including by closing roads).

**Note—**

See Division 5 for limitations on directions.

**127 How general biosecurity direction is given**

- (1) An authorised officer may give a general biosecurity direction by publishing notice of the direction on the website of the Department or in the Gazette (or both).
- (2) An authorised officer may, in the case of an emergency, give a general biosecurity direction by displaying a copy of the direction in a prominent place in or adjacent to any premises to which, or in the vicinity of which, the direction applies.
- (3) If a general biosecurity direction is given in the manner referred to in subsection (2), notice of the direction is to be published on the website of the Department or in the Gazette (or both) as soon as practicable after it is made.
- (4) If an authorised officer gives a general biosecurity direction in the case of an emergency, the direction is to include a warning that the direction is being given in the case of an emergency.
- (5) A failure to comply with subsection (4) does not affect the validity of a biosecurity direction.

**Division 4 Individual biosecurity directions**

**128 Individual biosecurity direction**

- (1) An authorised officer may give an individual biosecurity direction that prohibits, regulates or controls (absolutely or conditionally) the doing of anything by the person to whom the biosecurity direction is given if the authorised officer reasonably believes the direction is necessary for any of the following purposes:
  - (a) to prevent the person from contravening or continuing to contravene a requirement imposed by or under this Act,
  - (b) to prevent, eliminate or minimise a biosecurity risk,
  - (c) to prevent, manage or control a biosecurity impact that has occurred, is occurring or is likely to occur,
  - (d) to enforce, administer or execute this Act (including an instrument made under this Act).
- (2) An authorised officer may also give an individual biosecurity direction that requires a person to do anything if the authorised officer reasonably believes the direction is necessary for any of the following purposes:
  - (a) to ensure the person discharges a biosecurity duty of the person under this Act,

- (b) to ensure that the person remedies a contravention, suspected contravention or likely contravention by the person of a requirement imposed by or under this Act,
- (c) to prevent, eliminate, minimise or manage a biosecurity risk posed by a dealing of the person, or suspected dealing of the person, with biosecurity matter, a carrier or a potential carrier,
- (d) to enforce, administer or execute this Act (including an instrument made under this Act).

**Note—**

See Division 5 for limitations on directions.

**129 How individual biosecurity direction is given**

- (1) An authorised officer may give an individual biosecurity direction by giving the direction to the person the subject of the direction orally (in person) or by notice in writing served on the person.
- (2) An authorised officer may, in the case of an emergency, give an individual biosecurity direction to an occupier of premises by displaying notice of the direction in a prominent place in or adjacent to the premises.
- (3) Written confirmation of any individual biosecurity direction that is given orally or in the manner referred to in subsection (2) is to be served on the person the subject of the direction within 7 days after it is so given, unless the direction has already been complied with.
- (4) If an authorised officer gives an individual biosecurity direction in the case of an emergency, the direction is to include a warning that the direction is being given in the case of an emergency.
- (5) A failure to comply with subsection (4) does not affect the validity of a biosecurity direction.

**130 Examples of individual biosecurity directions**

- (1) Without limiting the generality of this Division, an individual biosecurity direction may include provisions that prohibit, regulate or control, or that require, any of the following:
  - (a) the isolation, confinement or detention of any biosecurity matter or other thing,
  - (b) the erection or repair of fencing, gates or any other method of enclosure, or other specified security or containment measures in relation to any premises, biosecurity matter or other thing,
  - (c) the erection of signs,

- (d) the movement of any biosecurity matter, carrier, potential carrier or other thing,
  - (e) treatment measures in relation to any biosecurity matter, carrier, potential carrier, premises or other thing,
  - (f) the provision of samples of any biosecurity matter or other thing,
  - (g) the testing of any biosecurity matter or other thing,
  - (h) the obtaining of a biosecurity certificate in relation to any biosecurity matter or any other thing,
  - (i) the installation or use of a device for the purpose of detecting or monitoring the presence of any biosecurity matter or other thing or capturing any biosecurity matter or other thing,
  - (j) the destruction, disposal or eradication of any thing,
  - (k) any other matters expressly authorised by the regulations.
- (2) A power to require a person to do something includes a power to require a person to arrange for that thing to be done.

**131 Special emergency powers—inspection and treatment measures**

- (1) An authorised officer who gives an individual biosecurity direction in the case of an emergency may direct a person to do any of the following:
- (a) permit the authorised officer to inspect the person for biosecurity matter, a carrier or potential carrier,
  - (b) permit the authorised officer to inspect any thing in the person’s possession, care, custody or control for biosecurity matter, a carrier or a potential carrier,
  - (c) carry out or permit an external treatment measure to be carried out in relation to that person,
  - (d) carry out a treatment measure or permit a treatment measure to be carried out in relation to any thing in the person’s possession, care, custody or control.
- (2) An authorised officer who gives an individual biosecurity direction in the case of an emergency may direct a person in control or apparently in control of a vehicle to do any of the following:
- (a) permit the vehicle to be inspected for biosecurity matter, a carrier or a potential carrier,
  - (b) carry out a treatment measure or permit a treatment measure to be carried out in relation to the vehicle.



- (3) An authorised officer may direct a person to stop, or to stop a vehicle, for the purpose of exercising a power conferred by this section.
- (4) This section does not limit the powers of an authorised officer under Part 8 with respect to any vehicle, or vehicle on premises, entered under a power conferred by that Part that is not occupied by a person at the time that the power is exercised.

### **132 Fee for individual biosecurity direction**

- (1) An authorised officer who gives an individual biosecurity direction may charge the person to whom it is given a fee for preparing and giving the direction.
- (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 given the biosecurity direction.

**Note—**

See Part 20, which provides for the recovery of recoverable amounts.

### **133 Taking of required actions and recovery of costs**

- (1) If a person (the **liable person**) fails to comply with an individual biosecurity direction, an authorised officer may enter or authorise any person to enter premises and take any actions in relation to those premises or any thing on those premises that the liable person is required to take by the direction or that are otherwise necessary to remedy that failure.
- (2) The Secretary may charge the liable person a fee for action taken under this section.
- (3) The fee is to be no more than is reasonable to cover the costs and expenses incurred in connection with the action.
- (4) Costs and expenses incurred include costs and expenses incurred by or on behalf of any government agency.
- (5) The fee is:
  - (a) a recoverable amount that is payable to the Secretary, and
  - (b) recoverable from the liable person.

**Note—**

See Part 20, which provides for the recovery of recoverable amounts.

- (6) An authorised officer must give an occupier of premises used for residential purposes written notice of an intention to enter any part of the premises used only for residential purposes under this section.
- (7) The notice must specify the day on which the premises are intended to be entered and must be given before that day.
- (8) Notice is not required to be given if:
  - (a) entry is made with the consent of the occupier of the premises, or
  - (b) entry is made under the authority of a search warrant.
- (9) This section does not prevent the taking of proceedings for an offence of contravening a biosecurity direction.

## **Division 5 Limitations on powers**

### **134 Detention or treatment of persons**

- (1) An authorised officer cannot do any of the following in a biosecurity direction, except as expressly authorised by this Act in the case of an emergency:
  - (a) prohibit, regulate or control the movement of a person,
  - (b) require a person to undergo any treatment measures or require treatment measures to be carried out in relation to a person.
- (2) An authorised officer cannot, in a biosecurity direction, require a person to provide samples of the person's blood, hair, saliva or any other body part or body fluid.
- (3) Subsection (1) (a) does not prevent a biosecurity direction being imposed in relation to any biosecurity matter, premises, activity or thing that has an impact on the movement of a person but is not imposed for the purpose of restricting the movement of a person.

**Note—**

For example, a biosecurity direction could prohibit a person from taking a particular animal or plant out of premises. This direction may have an impact on the movement of a person but is not imposed for that purpose.

### **135 Inspection of persons**

A power conferred by this Part to require a person to submit to an inspection is a power to require a person to do any of the following:

- (a) to submit to a visual inspection (including of the exterior of the person's clothing and shoes),
- (b) to shake, or otherwise move, the person's hair,

- (c) to make available for inspection any thing in the person's possession.

### **136 Destruction requirements**

- (1) An authorised officer may, under this Part, destroy or require the destruction of a thing only if:
- (a) the thing is, or is reasonably suspected of being, prohibited matter, or
  - (b) the thing is a pest, or
  - (c) the thing is, or is reasonably suspected of being, infected or infested with, or of harbouring, biosecurity matter that poses a biosecurity risk and there are no other reasonably practicable treatment measures that could eliminate or minimise the biosecurity risk posed by the biosecurity matter, or
  - (d) the destruction is expressly authorised or required by an emergency order, control order or biosecurity zone regulation.
- (2) In this section:

***reasonably practicable*** means reasonably practicable in the opinion of the authorised officer.

***reasonably suspected*** means reasonably suspected by the authorised officer.

### **137 Interaction of powers with restrictions imposed by other Acts**

- (1) An authorised officer must not, under this Part:
- (a) destroy or require the destruction of any living thing that is protected fauna or a protected native plant within the meaning of the [National Parks and Wildlife Act 1974](#), or
  - (b) destroy or require the destruction of any living thing that is a threatened species within the meaning of the [Threatened Species Conservation Act 1995](#), or
  - (c) clear or require the clearing of native vegetation within the meaning of the [Native Vegetation Act 2003](#), or
  - (d) harm (within the meaning of the [Heritage Act 1977](#)) or require the harming of any building, work, relic, moveable object or place the subject of an interim heritage order or listing on the State Heritage Register under that Act.
- (2) This section does not limit the power of an authorised officer to do or require a thing to be done where that action is expressly authorised or required by an emergency order, a control order or a biosecurity zone regulation.

## **Division 6 General**

### **138 Offence not to comply with biosecurity direction**

- (1) A person who contravenes a biosecurity direction is guilty of an offence.
- (2) An offence against this section is a category 2 offence.
- (3) An offence against this section is an executive liability offence.
- (4) A person who is guilty of an offence against this section because the person contravenes a requirement of a biosecurity direction to do or refrain from doing something:
  - (a) continues, until the requirement is complied with and despite the fact that any specified period or time for compliance has expired or passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (5) Subsection (4) does not apply to the extent that a requirement of a biosecurity direction is revoked.

### **139 Defence of reasonable excuse**

In proceedings in which a person is charged with an offence of contravening a biosecurity direction, it is a defence to the prosecution of the offence if the person charged proves that the person had a reasonable excuse for the contravention concerned.

### **140 Appeal to Land and Environment Court**

- (1) A person aggrieved by a decision of an authorised officer to give a biosecurity direction, or to amend a biosecurity direction, may appeal to the Land and Environment Court against the decision.
- (2) An appeal is to be made in accordance with the rules of court, but may not be made more than 28 days after the day on which written notice of the decision is served on the person.
- (3) Subject to any order made by the Land and Environment Court, an appeal does not operate to stay the decision to which the appeal relates.
- (4) No appeal lies against any of the following decisions:
  - (a) a decision to give a general biosecurity direction,
  - (b) a decision to give an individual biosecurity direction that is given by an authorised officer in the case of an emergency.

#### **141 Prior notice of direction not required**

An authorised officer is not required to notify any person who may be affected by a biosecurity direction before giving the direction.

### **Part 10 Biosecurity undertakings**

#### **142 Authorised officer may accept undertakings**

- (1) An authorised officer may accept a written undertaking (a **biosecurity undertaking**) given by a person if the person has contravened or the authorised officer suspects that the person has contravened or is likely to contravene a requirement imposed by or under this Act.
- (2) An authorised officer may accept a biosecurity undertaking from a person instead of giving the person a biosecurity direction.
- (3) The giving of an undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention, suspected contravention or likely contravention to which the undertaking relates.

#### **143 Contents of biosecurity undertaking**

- (1) A biosecurity undertaking must specify:
  - (a) the contravention, suspected contravention or likely contravention to which the biosecurity undertaking relates, and
  - (b) the measures that the person has agreed to implement to remedy or prevent the contravention, suspected contravention or likely contravention, and
  - (c) the period or periods by the end of which the measures must be implemented.
- (2) A failure to comply with this section does not affect the validity of a biosecurity undertaking.

#### **144 When biosecurity undertaking takes effect**

- (1) A biosecurity undertaking takes effect and becomes enforceable when a written instrument evidencing the terms of the undertaking is executed by both the person giving the undertaking and the authorised officer who is accepting the undertaking.
- (2) An authorised officer who executes a biosecurity undertaking is taken to enter into that biosecurity undertaking on behalf of the Secretary.

#### **145 Contravention of biosecurity undertaking**

- (1) A person who contravenes a biosecurity undertaking given by that person, and that is in effect, is guilty of an offence.

- (2) An offence against this section is a category 2 offence.
- (3) An offence against this section is an executive liability offence.
- (4) A person who is guilty of an offence against this section because the person contravenes a requirement of a biosecurity undertaking to do or refrain from doing something:
  - (a) continues, until the requirement is complied with and despite the fact that any specified period or time for compliance has expired or passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (5) Subsection (4) does not apply to the extent that a requirement of a biosecurity undertaking is withdrawn in accordance with this Part.

#### **146 Fee for biosecurity undertaking**

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

#### **Note—**

See Part 20, which provides for the recovery of recoverable amounts.

#### **147 Authorised officer may take or authorise required actions and recover costs**

- (1) If a person (the **liable person**) fails to comply with a biosecurity undertaking, an authorised officer may enter or authorise any person to enter premises and take any actions in relation to those premises or any thing on those premises that the liable person is required to take by the biosecurity undertaking or that are otherwise necessary to remedy that failure.
- (2) The Secretary may charge the liable person a fee for action taken under this section.
- (3) The fee is to be no more than is reasonable to cover the costs and expenses incurred in connection with the action.
- (4) Costs and expenses incurred include any costs and expenses incurred by or on behalf of any government agency.

- (5) The fee is:
- (a) a recoverable amount that is payable to the Secretary, and
  - (b) recoverable from the liable person.

**Note—**

See Part 20, which provides for the recovery of recoverable amounts.

- (6) An authorised officer must give an occupier of premises used for residential purposes written notice of an intention to enter any part of the premises used only for residential purposes under this section.
- (7) The notice must specify the day on which the premises are intended to be entered and must be given before that day.
- (8) Notice is not required to be given if:
- (a) entry is made with the consent of the occupier of the premises, or
  - (b) entry is made under the authority of a search warrant.
- (9) This section does not prevent the taking of proceedings for an offence of contravening a biosecurity undertaking.

**148 Order requiring compliance with biosecurity undertaking**

- (1) The Secretary may apply to the Land and Environment Court for an order if a person contravenes a biosecurity undertaking.
- (2) If the Court is satisfied that the person who made the biosecurity undertaking has contravened the undertaking, the Court may make one or both of the following orders:
- (a) an order directing the person to comply with the undertaking,
  - (b) an order discharging or varying the undertaking.
- (3) In addition to the orders referred to in subsection (2), the Court may make any other order that the Court considers appropriate in the circumstances, including orders directing the person to pay to the State:
- (a) the costs of the proceedings, and
  - (b) the reasonable costs of the Secretary in monitoring compliance with the biosecurity undertaking in the future.
- (4) Nothing in this section affects the liability of a person who contravenes a biosecurity undertaking for an offence.

### **149 Withdrawal or variation of biosecurity undertaking**

- (1) A person who has made a biosecurity undertaking may, at any time, with the written agreement of an authorised officer:
  - (a) withdraw the undertaking, or
  - (b) vary the undertaking.
- (2) Any authorised officer may, at any time:
  - (a) withdraw an authorised officer's acceptance of a biosecurity undertaking, by notice in writing served on the person who gave the undertaking, or
  - (b) vary a biosecurity undertaking (but only with the written agreement of the person who gave the undertaking).
- (3) The provisions of an undertaking cannot be varied to provide for a different alleged contravention.
- (4) A biosecurity undertaking ceases to have effect if:
  - (a) it is withdrawn by the person who made it (in accordance with this section), or
  - (b) acceptance of the undertaking is withdrawn by an authorised officer.

### **150 Enforcement action not prevented by undertaking**

A biosecurity undertaking does not prevent the taking or continuation of proceedings for an offence against this Act or the regulations in respect of any matter that is the subject of the undertaking.

## **Part 11 Prohibited dealings and registrable dealings**

### **Division 1 Prohibited dealings**

#### **151 Prohibited dealings**

- (1) A dealing with biosecurity matter described in Schedule 3 is a prohibited dealing.
- (2) The regulations may amend Schedule 3 by inserting, altering or omitting the description of any matter in that Schedule.

#### **152 Offence of engaging in prohibited dealing**

- (1) A person who engages in a prohibited dealing is guilty of an offence.
- (2) An offence against this section is a category 2 offence.
- (3) An offence against this section is an executive liability offence.



- (4) A person who is guilty of an offence against this section because the person engages in a prohibited dealing in contravention of subsection (1):
  - (a) continues, until that contravention ceases, to be liable for a contravention of subsection (1), and
  - (b) is guilty of a continuing offence (of the same category) for each day the contravention continues.

## **Division 2 Dealings for which biosecurity registration is required**

### **153 Registrable dealings in biosecurity matter**

- (1) Each of the dealings described in Schedule 4 is a registrable dealing.
- (2) The regulations may amend Schedule 4 by inserting, altering or omitting the description of any matter in that Schedule.

### **154 Offence of engaging in registrable dealing without biosecurity registration**

- (1) A person who engages in a registrable dealing is guilty of an offence unless:
  - (a) the person is a registered entity, and
  - (b) the dealing is authorised by the person's biosecurity registration.
- (2) An offence against this section is a category 2 offence.
- (3) An offence against this section is an executive liability offence.
- (4) A person who is guilty of an offence against this section because the person engages in a registrable dealing in contravention of subsection (1):
  - (a) continues, until that contravention ceases, to be liable for a contravention of subsection (1), and
  - (b) is guilty of a continuing offence (of the same category) for each day the contravention continues.

**Note—**

Part 12 deals with biosecurity registration.

### **155 Defence for employees and agents**

In proceedings for an offence against this Division, it is a defence to the prosecution of the offence if the person who engaged in the registrable dealing proves that:

- (a) the person did so as the employee or agent of a registered entity, and
- (b) the biosecurity registration authorises the registered entity to engage in the dealing.

## **Part 12 Biosecurity registration**

### **Division 1 Preliminary**

#### **156 Registration of persons authorised to engage in registrable dealings**

- (1) The Secretary may, by granting biosecurity registration under this Part, authorise a person to engage in a registrable dealing.
- (2) Biosecurity registration authorises only the dealing or dealings specified in the notice by which biosecurity registration is granted or renewed.
- (3) The authorisation is subject to any conditions of biosecurity registration.

#### **157 Registered entity—meaning**

A person is a **registered entity** if the person has been granted biosecurity registration under this Part, and that biosecurity registration is in force.

#### **158 References to functions exercisable “in the case of an emergency”**

- (1) A provision of this Part that enables the Secretary to exercise a function ***in the case of an emergency*** enables the Secretary to exercise that function if:
  - (a) the Secretary reasonably believes it is necessary to exercise the function because of an emergency order, or
  - (b) the Secretary otherwise reasonably believes it is necessary to exercise the function because:
    - (i) a biosecurity emergency has occurred, is occurring or is imminent, or
    - (ii) the Secretary reasonably suspects a biosecurity emergency has occurred, is occurring or is imminent.
- (2) A function under this Part is taken to have been exercised in the case of an emergency if it is exercised by the Secretary in the circumstances referred to in subsection (1).

### **Division 2 Application for biosecurity registration**

#### **159 Application for biosecurity registration**

- (1) A person may apply to the Secretary for biosecurity registration.
- (2) An application must:
  - (a) be in an approved form, and
  - (b) include or be accompanied by any information or evidence that the Secretary

reasonably requires to assess the application.

- (3) The Secretary may require a separate application to be made in relation to each registrable dealing.
- (4) The regulations may provide for the fee to be paid for an application for the grant of biosecurity registration.
- (5) The Secretary may require the fee to accompany the application.

**160 Grant or refusal of biosecurity registration**

- (1) The Secretary may, on application, grant or refuse biosecurity registration.
- (2) The Secretary may refuse biosecurity registration:
  - (a) if the application for biosecurity registration does not comply with any requirement imposed by or under this Act, or
  - (b) if the Secretary is of the opinion that the applicant is not a suitable person to be involved in the registrable dealing concerned, or
  - (c) in the case of an emergency, or
  - (d) on any grounds prescribed by the regulations, or
  - (e) for any other reason that the Secretary considers to be a good reason for refusing the application.
- (3) A decision about the suitability of a person to be involved in a registrable dealing may be made having regard to any of the following:
  - (a) the fact that the person has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) an accreditation audit,
  - (c) any matter prescribed by the regulations,
  - (d) any other circumstances that the Secretary considers relevant.
- (4) The Secretary is to give the applicant notice in writing of a decision to grant or refuse biosecurity registration.
- (5) If the Secretary fails to give an applicant for biosecurity registration notice of a decision to grant or refuse the biosecurity registration within the period prescribed by the regulations, the Secretary is taken to have refused to grant the biosecurity registration.

**Note—**

Part 15 provides for accreditation audits in relation to applications.

### **161 Duration of biosecurity registration**

- (1) Biosecurity registration remains in force for a period (not exceeding 5 years) specified by the Secretary in the notice by which biosecurity registration is granted or renewed, unless sooner cancelled.
- (2) Biosecurity registration has no effect during any period in which biosecurity registration is suspended.

### **162 Variation of biosecurity registration**

- (1) The Secretary may, at any time, by notice in writing to a registered entity, vary the biosecurity registration of that registered entity (including any conditions of biosecurity registration imposed by the Secretary).
- (2) A variation includes the imposition of new conditions on biosecurity registration, the substitution of a condition, or the omission or amendment of a condition.
- (3) The regulations may make further provision for the variation of biosecurity registration, including:
  - (a) applications for variation, and
  - (b) fees for applications for variation.

## **Division 3 Renewal of biosecurity registration**

### **163 Application for renewal of biosecurity registration**

- (1) A registered entity may apply to the Secretary for renewal of biosecurity registration in respect of a registrable dealing.
- (2) An application must:
  - (a) be in an approved form, and
  - (b) include or be accompanied by any information or evidence that the Secretary reasonably requires to assess the application.
- (3) The Secretary may require a separate application in relation to each registrable dealing.
- (4) The regulations may provide for the fee to be paid for an application for the renewal of biosecurity registration.
- (5) The Secretary may require the fee to accompany the application.
- (6) If an application for renewal of biosecurity registration in respect of a dealing is duly

made to the Secretary before the expiry of biosecurity registration, biosecurity registration is taken to continue in force until the Secretary notifies the applicant of a decision to grant or refuse the application.

**164 Grant or refusal of renewal application**

- (1) The Secretary may, on application, renew or refuse to renew biosecurity registration.
- (2) The Secretary may refuse to renew biosecurity registration:
  - (a) if the application for renewal of biosecurity registration does not comply with any requirement imposed by or under this Act, or
  - (b) if the Secretary is of the opinion that the applicant is not a suitable person to be involved in the registrable dealing concerned, or
  - (c) in the case of an emergency, or
  - (d) on any grounds prescribed by the regulations, or
  - (e) for any other reason that the Secretary considers to be a good reason for refusing the application.
- (3) A decision about the suitability of a person to be involved in a registrable dealing may be made having regard to any of the following:
  - (a) the fact that the person has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) any biosecurity audit relating to the registered entity,
  - (c) any matter prescribed by the regulations,
  - (d) any other circumstances that the Secretary considers relevant.
- (4) The Secretary is to give the applicant notice in writing of a decision to grant or refuse a renewal of biosecurity registration.
- (5) If the Secretary fails to give an applicant for renewal of biosecurity registration notice of a decision to grant or refuse the renewal within the period prescribed by the regulations, the Secretary is taken to have refused to renew the biosecurity registration.

**Note—**

Part 15 provides for accreditation audits in relation to applications.

## **Division 4 Conditions of biosecurity registration**

### **165 Conditions of biosecurity registration**

- (1) Biosecurity registration is subject to the following conditions:
  - (a) any conditions prescribed by the regulations,
  - (b) any conditions imposed by the Secretary.
- (2) The Secretary may impose conditions on biosecurity registration:
  - (a) at the time of the grant or renewal of biosecurity registration, or
  - (b) at any other time by variation to the biosecurity registration.
- (3) A provision of this Division that authorises a type of condition to be imposed on biosecurity registration does not prevent other types of conditions being imposed, or limit the matters that can be provided for by conditions, except where expressly provided for by this Division.
- (4) In this Division:

**registered entity** includes a former registered entity.

### **166 Compliance with standards**

The conditions of biosecurity registration may require the registered entity to engage in a registrable dealing in accordance with specified standards.

### **167 Conditions requiring works or measures**

The conditions of biosecurity registration may require the registered entity to carry out specified works, or put in place specified measures, to prevent, eliminate, minimise or manage the biosecurity risk of a registrable dealing.

### **168 Alternative arrangements**

- (1) The conditions of biosecurity registration may require the registered entity to have in place an alternative arrangement that has been approved by the Secretary.
- (2) An alternative arrangement is a plan or arrangement relating to the registrable dealing that takes effect if:
  - (a) the registered entity ceases to be authorised to engage in the registrable dealing, or
  - (b) the registered entity is unable, because of illness, financial circumstances or otherwise, to continue to engage in the registrable dealing.

### **169 Conditions for insurance cover**

The conditions of biosecurity registration may require the registered entity to take out and maintain a policy of insurance that indemnifies the registered entity against any liability to which the registered entity may become subject in connection with the registrable dealing.

### **170 Conditions for biosecurity audits**

The conditions of biosecurity registration may require the registered entity to co-operate with, or arrange for, mandatory biosecurity audits and may provide for the frequency of biosecurity audits.

### **171 Conditions requiring financial assurances**

- (1) The conditions of biosecurity registration may require the registered entity to provide a financial assurance. The Secretary may require any such financial assurance to be provided before the Secretary grants, renews, varies, suspends or cancels biosecurity registration.
- (2) The purpose of a condition requiring the provision of a financial assurance is to secure or guarantee funding for or towards the doing of anything required as a result of any of the following events (each of which is a **secured event**):
  - (a) the registered entity contravening another condition of biosecurity registration,
  - (b) the registered entity placing any biosecurity matter that registration authorises the registrable entity to deal with in the care of the Secretary,
  - (c) the registered entity ceasing to be authorised to engage in the registrable dealing,
  - (d) the registered entity becoming unable, because of illness, financial circumstances or otherwise, to continue to engage in the registrable dealing.
- (3) A financial assurance is not to operate as a mere penalty for a contravention of a requirement imposed by or under this Act.
- (4) A financial assurance may be in one or more of the following forms:
  - (a) a bank guarantee,
  - (b) a bond,
  - (c) a form specified by the regulations,
  - (d) another form of security that the Secretary considers appropriate and specifies in the condition.
- (5) The regulations and, subject to the regulations, the conditions of biosecurity

registration, may make provision for or with respect to financial assurances, including the following:

- (a) the calculation of the amount of financial assurances that can be required,
  - (b) the circumstances in which financial assurances may be claimed or realised, and the procedure for claiming or realising financial assurances,
  - (c) the actions that can be taken following a secured event, including provisions that:
    - (i) specify the circumstances in which those actions can be taken by or on behalf of the Secretary, and
    - (ii) authorise the Secretary, or a person acting on behalf of the Secretary, to enter land to carry out those actions,
  - (d) the provision of information in respect of the actions,
  - (e) the audit of the actions,
  - (f) the administration of financial assurances,
  - (g) the release of financial assurances.
- (6) The Land and Environment Court has jurisdiction to determine disputes about calling on or using a financial assurance.
- (7) A financial assurance may be called on and used, despite and without affecting:
- (a) any liability of the registered entity for any penalty for an offence for a contravention to which the assurance relates, and
  - (b) any other action that might be taken or is required to be taken in relation to any contravention or other circumstances to which the assurance relates.

#### **172 Conditions to take effect later**

- (1) The conditions of biosecurity registration may provide that an authorisation conferred by the biosecurity registration does not take effect until the end of a specified period or on the happening of a particular event or on the occurrence of a specified state of affairs.
- (2) Without limiting the generality of the above, the conditions may provide that an authorisation or variation will not take effect until a financial assurance is provided in accordance with the condition.



## **Division 5 Suspension or cancellation of biosecurity registration**

### **173 Grounds for suspension or cancellation of biosecurity registration**

- (1) Each of the following constitutes grounds for suspending or cancelling biosecurity registration:
  - (a) the Secretary is of the opinion that the registered entity has contravened a requirement imposed by or under this Act,
  - (b) the Secretary is of the opinion that the registered entity is not a suitable person to be involved in the registrable dealing concerned,
  - (c) the Secretary receives information about the registered entity and the Secretary is of the opinion that, had the information been received at the time when the application for biosecurity registration or renewal of biosecurity registration was made, the Secretary would have refused the application,
  - (d) any other grounds prescribed by the regulations.
- (2) The Secretary may also suspend or cancel biosecurity registration in the case of an emergency (in which case, the emergency is the grounds for the suspension or cancellation).
- (3) A decision about the suitability of a person to be involved in a registrable dealing may be made having regard to any of the following:
  - (a) the fact that the person has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) a biosecurity audit,
  - (c) any matter prescribed by the regulations,
  - (d) any other circumstances that the Secretary considers relevant.

- (4) In this Division:

***registered entity*** includes a former registered entity.

### **174 Suspension of biosecurity registration**

- (1) The Secretary may, by notice in writing to a registered entity, suspend the biosecurity registration of the registered entity if the Secretary is satisfied that there are grounds for the suspension of registration.
- (2) Notice of the suspension must specify:
  - (a) the date or time from which suspension takes effect, and

- (b) the period of suspension, and
- (c) the grounds for the suspension.

**175 Registered entity to be given opportunity to make submissions about suspension**

- (1) Before suspending the biosecurity registration of a registered entity, the Secretary must:
  - (a) give notice in writing to the registered entity of the Secretary's intention to suspend registration and the proposed grounds for doing so, and
  - (b) invite the registered entity to make a submission to the Secretary about the proposed suspension, and
  - (c) take into account any submission made to the Secretary by the registered entity before the deadline for the making of a submission.
- (2) The Secretary is to specify a deadline for the making of a submission to the Secretary about a proposed suspension that is at least 30 days after notice of the proposed suspension is given to the registered entity.
- (3) The Secretary is not required to give notice under this section of a proposed suspension if the Secretary is of the opinion that the suspension is required urgently because of the biosecurity impact of the registrable dealing being carried out by the registered entity or in the case of an emergency.
- (4) However, if the Secretary suspends biosecurity registration without giving prior notice to the registered entity, the Secretary must:
  - (a) give the registered entity notice in writing of the grounds for the suspension, and
  - (b) invite the registered entity to make a submission to the Secretary about the suspension by a specified deadline (being at least 30 days after the notice is given to the registered entity).
- (5) If the registered entity makes a submission to the Secretary about the suspension before the specified deadline, the Secretary must:
  - (a) decide whether the suspension should be revoked or continued, having regard to that submission, and
  - (b) give notice in writing of that decision to the registered entity.

**176 Cancellation of biosecurity registration**

- (1) The Secretary may, by notice in writing to a registered entity, cancel the biosecurity registration of the registered entity if:
  - (a) the Secretary is satisfied that there are grounds for the cancellation of biosecurity

registration, or

(b) the registered entity applies for cancellation of biosecurity registration.

(2) Notice of the cancellation must specify:

(a) the date or time from which cancellation takes effect, and

(b) the grounds for the cancellation.

### **177 Registered entity to be given opportunity to make submissions about cancellation**

(1) Before cancelling the biosecurity registration of a registered entity, the Secretary must:

(a) give notice in writing to the registered entity of the Secretary's intention to cancel biosecurity registration and the proposed grounds for doing so, and

(b) invite the registered entity to make a submission to the Secretary about the proposed cancellation, and

(c) take into account any submission made to the Secretary by the registered entity before the deadline for the making of a submission.

(2) The Secretary must specify a deadline for the making of a submission to the Secretary about the proposed cancellation that is at least 30 days after notice of the proposed cancellation is given to the registered entity.

(3) The Secretary is not required to give notice under this section of a proposed cancellation if:

(a) the biosecurity registration of the registered entity is suspended and either:

(i) the registered entity was given an opportunity to make a submission about the suspension before the suspension took effect, or

(ii) the registered entity was given an opportunity to make a submission about the suspension after the suspension took effect, and the period specified by the Secretary for the making of that submission has ended, or

(b) the registered entity has applied for cancellation of biosecurity registration.

### **178 Effect of suspension or cancellation on conditions**

(1) Biosecurity registration may be suspended or cancelled unconditionally or subject to such conditions as the Secretary imposes.

(2) Those conditions may include (but are not limited to) any conditions to which the biosecurity registration was subject immediately before it was suspended or cancelled.

- (3) The Secretary may, by notice in writing given to the former registered entity, attach new conditions to, or vary or revoke any existing conditions of, the suspension or cancellation of the biosecurity registration.

## **Division 6 Miscellaneous**

### **179 Offence of contravening condition of biosecurity registration**

- (1) A registered entity who contravenes a condition of biosecurity registration is guilty of an offence.
- (2) An offence against this section is a category 2 offence.
- (3) An offence against this section is an executive liability offence.
- (4) A person who is guilty of an offence against this section because the person contravenes a requirement of a condition of biosecurity registration to do or refrain from doing something:
  - (a) continues, until the requirement is complied with and despite the fact that any specified period or time for compliance has expired or passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (5) Subsection (4) does not apply to the extent that a requirement of a condition is revoked.
- (6) In this section:

**registered entity** includes a former registered entity.

### **180 Biosecurity registration not transferable**

Biosecurity registration is not transferable.

### **181 Surrender of biosecurity registration**

- (1) A registered entity may apply to the Secretary for a cancellation of biosecurity registration.
- (2) An application must:
  - (a) be in an approved form, and
  - (b) be accompanied by the fee for voluntary cancellation of biosecurity registration (if any) in respect of the dealing concerned prescribed by the regulations, and
  - (c) include or be accompanied by any information or evidence required by the Secretary to assess the application.

- (3) A separate application may be required in relation to each dealing for which biosecurity registration is required.
- (4) An application for cancellation of biosecurity registration is not duly made unless it complies with this section.

## **182 Appeal to Land and Environment Court**

- (1) A person aggrieved by any of the following decisions may appeal to the Land and Environment Court against the decision:
  - (a) a decision of the Secretary to refuse biosecurity registration,
  - (b) a decision of the Secretary to refuse to renew biosecurity registration,
  - (c) a decision of the Secretary to suspend or cancel biosecurity registration,
  - (d) a decision of the Secretary to refuse to revoke a suspension of biosecurity registration following the making of a submission by a registered entity under this Part, being a suspension of which the registered entity was not given prior notice,
  - (e) a decision of the Secretary to impose any condition on biosecurity registration, or on the suspension or cancellation of biosecurity registration,
  - (f) a decision of the Secretary to vary biosecurity registration.
- (2) An appeal is to be made in accordance with rules of court, but may not be made more than 28 days after the date written notice of the decision is served on the person.
- (3) Subject to any order made by the Land and Environment Court, an appeal does not operate to stay the decision to which the appeal relates.

## **Part 13 Biosecurity certificates**

### **Division 1 Biosecurity certificates**

#### **183 Biosecurity certifier may issue biosecurity certificates**

A biosecurity certifier may issue a biosecurity certificate under this Act.

#### **184 Biosecurity certificate—meaning**

- (1) A **biosecurity certificate** is a certificate that certifies any of the following matters:
  - (a) that biosecurity matter or any other thing or area is free from, or contains a specified level of, any stated biosecurity matter (such as a specified pest, disease or contaminant),
  - (b) that biosecurity matter or any other thing or area is in a specified condition,

(c) that biosecurity matter or any other thing or area has been the subject of a specified treatment,

(d) that biosecurity matter or any other thing or area meets specified requirements,

(e) any matter of a kind prescribed by the regulations.

(2) A biosecurity certificate remains in force for the period specified in the certificate.

## **Division 2 Interstate biosecurity certificates**

### **185 Recognition of interstate biosecurity certificates**

A requirement imposed by or under this Act that a person obtain, or have in possession, a biosecurity certificate in relation to a matter may be satisfied by the person obtaining, or having in possession, an interstate biosecurity certificate in relation to that matter that is in force.

### **186 Interstate biosecurity certificate—meaning**

An **interstate biosecurity certificate** is a certificate or other document duly issued under a corresponding law in which a person certifies any matter in relation to which a biosecurity certificate could be issued under this Act and that is in force.

## **Division 3 Offences**

### **187 Provision of false or misleading information to biosecurity certifier**

(1) A person who, in connection with obtaining or the issue of a biosecurity certificate, furnishes any information to a biosecurity certifier that is false or misleading in a material particular, or fails to furnish any material information, is guilty of an offence.

(2) An offence against this section is a category 1 offence if the offence is committed intentionally or recklessly.

(3) In any other case, the offence is a category 2 offence.

(4) A category 1 offence or category 2 offence against this section is an executive liability offence.

(5) In this section:

**biosecurity certifier** includes a person acting on behalf of a biosecurity certifier.

### **188 False biosecurity certificates**

(1) A person who issues, or purports to issue, a biosecurity certificate or purported biosecurity certificate is guilty of an offence if the certificate is false or misleading in a material particular.

- (2) A person who alters or amends a biosecurity certificate, or purported biosecurity certificate, is guilty of an offence if the alteration or amendment makes the certificate false or misleading in a material particular.
- (3) A certificate is false or misleading in a material particular if it:
  - (a) includes information that is false or misleading in a material particular, or
  - (b) omits material information.
- (4) An offence against subsection (1) or (2) is a category 1 offence if the offence is committed intentionally or recklessly.
- (5) In any other case, an offence against subsection (1) or (2) is a category 2 offence.
- (6) A category 1 offence or category 2 offence against subsection (1) or (2) is an executive liability offence.
- (7) In this section:

***biosecurity certificate*** includes an interstate biosecurity certificate.

#### **189 False representations**

- (1) A person who falsely represents that a biosecurity certificate has been issued in respect of any matter is guilty of an offence.
- (2) An offence against this section is a category 1 offence if the offence is committed intentionally or recklessly.
- (3) In any other case, an offence against this section is a category 2 offence.
- (4) A category 1 offence or category 2 offence against this section is an executive liability offence.
- (5) In this section:

***biosecurity certificate*** includes an interstate biosecurity certificate.

#### **190 Issue or alteration of biosecurity certificate by unauthorised person**

- (1) A person who issues, or purports to issue, a biosecurity certificate or purported biosecurity certificate is guilty of an offence if the person is not a biosecurity certifier authorised by or under this Act to issue the certificate concerned.
- (2) A person who alters or amends a biosecurity certificate, or purported biosecurity certificate, is guilty of an offence unless the person is a biosecurity certifier authorised by or under this Act to do so.
- (3) An offence against subsection (1) or (2) is a category 1 offence if the offence is

committed intentionally or recklessly.

(4) In any other case, an offence against subsection (1) or (2) is a category 2 offence.

(5) A category 1 offence or category 2 offence against this section is an executive liability offence.

## **Part 14 Accreditation of biosecurity certifiers**

### **Division 1 Biosecurity certifiers**

#### **191 Grant of accreditation by accreditation authority**

An accreditation authority may, by instrument in writing, grant accreditation as a biosecurity certifier to any person, subject to this Act.

#### **192 Accreditation policy**

(1) An accreditation authority is required to adopt an accreditation policy for the purposes of this Act.

(2) An accreditation policy may make provision for or with respect to the following matters:

(a) the qualifications, skills, knowledge and experience required for the grant of accreditation as a biosecurity certifier by the accreditation authority,

(b) any other matters prescribed by the regulations.

(3) An accreditation authority is to make the accreditation policy publicly available.

(4) An accreditation policy adopted by an accreditation authority (other than the Secretary) has no effect unless it has been approved by the Secretary.

(5) An accreditation authority may amend or replace an accreditation policy adopted by the accreditation authority.

(6) Subsection (4) applies in relation to the amendment or replacement of an accreditation policy in the same way as it applies to the adoption of an accreditation policy.

(7) However, subsection (4) does not apply to an amendment of an accreditation policy if the accreditation authority certifies that the amendment:

(a) is minor in nature or for the purpose of correcting an error, or

(b) is necessary to reflect a change of a course (including a continuing professional development course) or qualification or of the provider of a course or qualification.

(8) An accreditation authority may adopt different accreditation policies for different



types of accreditation.

- (9) A reference in this Act to an accreditation authority's accreditation policy is a reference to the accreditation policy as adopted by the accreditation authority, being, if the authority has more than one policy, the accreditation policy that is relevant to the type of accreditation concerned.

### **193 Effect of accreditation**

- (1) A biosecurity certifier is authorised by his or her accreditation as a biosecurity certifier to issue biosecurity certificates.
- (2) The authorisation is subject to any conditions or limitations specified in the instrument by which the person is accredited as a biosecurity certifier.
- (3) In particular, an accreditation may be limited to:
- (a) a specified class of biosecurity certificates, or
  - (b) the certification, by the issue of a biosecurity certificate, of specified matters.
- (4) Nothing in this Act authorises or requires a biosecurity certifier to act in contravention of the conditions or limitations of his or her accreditation as a biosecurity certifier.

### **194 Responsible accreditation authority**

- (1) An accreditation authority that grants accreditation to a person as a biosecurity certifier is the **responsible accreditation authority** in relation to that accreditation.
- (2) An accreditation authority ceases to be the responsible accreditation authority in relation to an accreditation if the accreditation is renewed by another accreditation authority. In that case, the accreditation authority that renews the accreditation becomes the responsible accreditation authority in relation to the accreditation.
- (3) The Secretary is entitled, but is not required, to exercise any of the functions of the responsible accreditation authority in relation to an accreditation granted or renewed by an accreditation authority.
- (4) If an accreditation authority ceases to be an accreditation authority in relation to accreditation generally or a class of accreditation, the functions of the responsible accreditation authority in relation to any accreditation, or accreditation of that class, that has already been granted or renewed by that accreditation authority may be exercised by:
- (a) any accreditation authority approved by the Secretary to exercise the functions of the accreditation authority in respect of the accreditation or class of accreditation concerned, or
  - (b) if no accreditation authority has been so approved, the Secretary.

### **195 Approval of authorised officer to exercise functions of biosecurity certifier**

- (1) The Secretary may, by instrument in writing, approve any authorised officer to exercise any specified function or functions of a biosecurity certifier.
- (2) An approval may apply to a specified authorised officer or to any specified class of authorised officers.
- (3) An approval may be unconditional, or subject to conditions or limitations.
- (4) An approval has effect for the period specified in the instrument of approval or, if no period is specified, until revoked by the Secretary.
- (5) The Secretary may, by instrument in writing, revoke or amend an approval under this section at any time.
- (6) The approval of a person as a biosecurity certifier under this section ceases to be in force if the person ceases to be an authorised officer.
- (7) A person approved to exercise the functions of a biosecurity certifier under this section is taken to be a biosecurity certifier.
- (8) Nothing in this Act authorises or requires the person to act in contravention of the conditions or limitations of his or her approval to exercise the functions of a biosecurity certifier.

## **Division 2 Accreditation procedure**

### **196 Application for accreditation**

- (1) A person may apply to an accreditation authority for accreditation as a biosecurity certifier.
- (2) An application must:
  - (a) be in a form approved by the accreditation authority, and
  - (b) include or be accompanied by any information or evidence of a kind prescribed by the regulations, and
  - (c) include or be accompanied by any other information or evidence that the accreditation authority reasonably requires to assess the application.
- (3) The accreditation authority may require a fee to be paid for an application for accreditation.
- (4) The accreditation authority may require the application fee to accompany the application.

- (5) The amount of the application fee is:
- (a) if the accreditation authority is the Secretary—the amount provided for by the regulations, or
  - (b) in any other case—the amount required by the accreditation authority.

**197 Grant or refusal of accreditation**

- (1) The accreditation authority may, on application, grant or refuse to grant accreditation as a biosecurity certifier.
- (2) The accreditation authority may refuse to grant accreditation:
- (a) if the application for accreditation does not comply with any requirement imposed by or under this Act, or
  - (b) if the accreditation authority is not satisfied that the applicant has the qualifications, skills, knowledge and experience required by the accreditation authority's accreditation policy, or
  - (c) if the accreditation authority is of the opinion that the applicant is not a suitable person to be accredited as a biosecurity certifier, or
  - (d) on any grounds prescribed by the regulations.
- (3) A decision about the suitability of a person for accreditation may be made having regard to any of the following:
- (a) the fact that the applicant has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) an accreditation audit,
  - (c) any matter prescribed by the regulations,
  - (d) any other circumstances that the accreditation authority considers relevant.
- (4) The regulations may prescribe circumstances in which it is mandatory for an accreditation authority to refuse accreditation.
- (5) An accreditation authority must refuse accreditation if it is mandatory for the accreditation authority to refuse accreditation.
- (6) The accreditation authority is to give the applicant notice in writing of a decision to grant or refuse accreditation.
- (7) An accreditation authority that fails to give an applicant for accreditation notice of a decision to grant or refuse accreditation within the period prescribed by the regulations is taken to have refused accreditation.

### **198 Duration of accreditation**

- (1) Accreditation remains in force for a period (not exceeding 5 years) specified by the accreditation authority in any notice by which accreditation is granted or renewed, unless sooner cancelled.
- (2) Accreditation has no effect during any period in which accreditation is suspended.

### **199 Variation of accreditation**

- (1) The responsible accreditation authority may, at any time, by notice in writing to a person who has been accredited as a biosecurity certifier, vary the accreditation of the person (including any conditions of accreditation imposed by an accreditation authority).
- (2) A variation includes the imposition of new conditions on accreditation, the substitution of a condition, or the omission or amendment of a condition.
- (3) The regulations may make further provision for the variation of accreditation, including:
  - (a) applications for variation, and
  - (b) fees for applications for variation.

## **Division 3 Renewal of accreditation**

### **200 Application for renewal of accreditation**

- (1) A biosecurity certifier may apply to an accreditation authority for renewal of accreditation as a biosecurity certifier.
- (2) An application must:
  - (a) be in a form approved by the accreditation authority, and
  - (b) include or be accompanied by any information or evidence of a kind prescribed by the regulations, and
  - (c) include or be accompanied by any other information or evidence that the accreditation authority reasonably requires to assess the application.
- (3) The accreditation authority may require a fee to be paid for an application for renewal of accreditation.
- (4) The accreditation authority may require the application fee to accompany the application.
- (5) The amount of the application fee is:

- (a) if the accreditation authority is the Secretary—the amount provided for by the regulations, or
  - (b) in any other case—the amount required by the accreditation authority.
- (6) If an application for renewal of accreditation is duly made to an accreditation authority before the expiry of accreditation, accreditation is taken to continue in force until the accreditation authority notifies the applicant of a decision to grant or refuse the application.

## **201 Grant or refusal of renewal application**

- (1) An accreditation authority may, on application, renew or refuse to renew accreditation as a biosecurity certifier.
- (2) An accreditation authority may refuse to renew accreditation:
  - (a) if the application for renewal of accreditation does not comply with any requirement imposed by or under this Act, or
  - (b) if the accreditation authority is not satisfied that the applicant has the qualifications, skills, knowledge and experience required by the accreditation authority's accreditation policy, or
  - (c) if the accreditation authority is of the opinion that the applicant is not a suitable person to be accredited as a biosecurity certifier, or
  - (d) on any grounds prescribed by the regulations.
- (3) A decision about the suitability of a person for accreditation may be made having regard to any of the following:
  - (a) the fact that the applicant has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) any biosecurity audit relating to the biosecurity certifier,
  - (c) any matter prescribed by the regulations,
  - (d) any other circumstances that the accreditation authority considers relevant.
- (4) The regulations may prescribe circumstances in which it is mandatory for an accreditation authority to refuse to renew accreditation.
- (5) An accreditation authority must refuse to renew accreditation if it is mandatory for the accreditation authority to refuse to renew accreditation.
- (6) An accreditation authority is to give the applicant notice in writing of a decision to grant or refuse renewal of accreditation.

- (7) An accreditation authority that fails to give an applicant for accreditation notice of a decision to grant or refuse the renewal of accreditation within the period prescribed by the regulations is taken to have refused accreditation.

## **Division 4 Conditions of accreditation**

### **202 Conditions of accreditation**

- (1) Accreditation as a biosecurity certifier is subject to the following conditions:
  - (a) any conditions prescribed by the regulations,
  - (b) any conditions imposed by the responsible accreditation authority.
- (2) The responsible accreditation authority may impose conditions on accreditation:
  - (a) at the time of the grant or renewal of accreditation, or
  - (b) at any other time by variation to the accreditation.
- (3) A provision of this Part that authorises a type of condition to be imposed on accreditation does not prevent other types of conditions being imposed or limit the matters that can be provided for by conditions, except where expressly provided for by this Part.

### **203 Compliance with standards**

The conditions of accreditation may require the biosecurity certifier to exercise the functions of a biosecurity certifier in accordance with specified standards.

### **204 Conditions for insurance cover**

The conditions of accreditation may require the biosecurity certifier to take out and maintain a policy of insurance that indemnifies the biosecurity certifier for any liability to which the biosecurity certifier may become subject as a result of exercising, or purporting to exercise, the functions of a biosecurity certifier.

## **Division 5 Suspension or cancellation of accreditation**

### **205 Grounds for suspension or cancellation of accreditation**

- (1) Each of the following constitutes grounds for suspending or cancelling accreditation as a biosecurity certifier:
  - (a) the accreditation authority is of the opinion that the biosecurity certifier has contravened a requirement imposed by or under this Act,
  - (b) the accreditation authority is not satisfied that the biosecurity certifier has the qualifications, skills, knowledge and experience required by the accreditation authority's accreditation policy,

- (c) the accreditation authority is of the opinion that the biosecurity certifier is not a suitable person to be accredited as a biosecurity certifier,
  - (d) the accreditation authority receives information about the biosecurity certifier and the accreditation authority is of the opinion that, had the information been received at the time when the application for accreditation or renewal of accreditation was made, it would have refused the application,
  - (e) any other grounds prescribed by the regulations.
- (2) A decision about the suitability of a person for accreditation may be made having regard to any of the following:
- (a) the fact that the biosecurity certifier has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) a biosecurity audit relating to the biosecurity certifier,
  - (c) any matter prescribed by the regulations,
  - (d) any other circumstances that the accreditation authority considers relevant.
- (3) In this Division:

***biosecurity certifier*** includes a former biosecurity certifier.

#### **206 Suspension of accreditation**

- (1) The responsible accreditation authority may, by notice in writing to a biosecurity certifier, suspend the accreditation of the biosecurity certifier if the accreditation authority is satisfied that there are grounds for the suspension of accreditation.
- (2) Notice of the suspension must specify:
- (a) the date or time from which suspension takes effect, and
  - (b) the period of suspension, and
  - (c) the grounds for the suspension.

#### **207 Biosecurity certifier to be given opportunity to make submissions about suspension**

- (1) Before suspending the accreditation of a biosecurity certifier, an accreditation authority must:
- (a) give notice in writing to the biosecurity certifier of the accreditation authority's intention to suspend accreditation and the proposed grounds for doing so, and
  - (b) invite the biosecurity certifier to make a submission to the accreditation authority about the proposed suspension, and

- (c) take into account any submission made to the accreditation authority by the biosecurity certifier before the deadline for the making of a submission.
- (2) An accreditation authority is to specify a deadline for the making of a submission to the accreditation authority about the proposed suspension that is at least 30 days after the notice of the proposed suspension is given to the biosecurity certifier.
- (3) An accreditation authority is not required to give notice under this section of a proposed suspension if the accreditation authority proposes to suspend the accreditation because the accreditation authority is of the opinion that:
  - (a) the suspension relates to a matter of critical non-compliance, or
  - (b) the biosecurity certifier has issued a biosecurity certificate that is false or misleading in a material particular or has otherwise engaged in fraudulent behaviour.
- (4) However, if the accreditation authority suspends accreditation of a biosecurity certifier without giving prior notice to the biosecurity certifier, the accreditation authority must:
  - (a) give the biosecurity certifier notice in writing of the grounds for the suspension, and
  - (b) invite the biosecurity certifier to make a submission to the accreditation authority about the suspension by a specified deadline that is at least 30 days after the notice is given to the biosecurity certifier.
- (5) If the biosecurity certifier makes a submission to the accreditation authority about the suspension before the specified deadline, the accreditation authority must:
  - (a) decide whether the suspension should be revoked or continued, having regard to that submission, and
  - (b) give notice in writing of that decision to the biosecurity certifier.

## **208 Cancellation of accreditation**

- (1) The responsible accreditation authority may, by notice in writing to a biosecurity certifier, cancel the accreditation of the biosecurity certifier if:
  - (a) there are grounds for the cancellation of accreditation, or
  - (b) the biosecurity certifier applies for cancellation of accreditation.
- (2) Notice of the cancellation must specify:
  - (a) the date or time from which cancellation takes effect, and
  - (b) the grounds for the cancellation.



### **209 Biosecurity certifier to be given opportunity to make submissions about cancellation**

- (1) Before cancelling the accreditation of a biosecurity certifier, an accreditation authority must:
  - (a) give notice in writing to the biosecurity certifier of the accreditation authority's intention to cancel accreditation and the proposed grounds for doing so, and
  - (b) invite the biosecurity certifier to make a submission to the accreditation authority about the proposed cancellation, and
  - (c) take into account any submission made to the accreditation authority by the biosecurity certifier before the deadline for the making of a submission.
- (2) An accreditation authority must specify a deadline for the making of a submission to the accreditation authority about the proposed cancellation that is at least 30 days after the notice of the proposed cancellation is given to the biosecurity certifier.
- (3) An accreditation authority is not required to give notice under this section of a proposed cancellation if:
  - (a) the accreditation of the biosecurity certifier is suspended and either:
    - (i) the biosecurity certifier was given an opportunity to make a submission about the suspension before the suspension took effect, or
    - (ii) the biosecurity certifier was given an opportunity to make a submission about the suspension after the suspension took effect, and the period specified by the accreditation authority for the making of that submission has ended, or
  - (b) the biosecurity certifier has applied for cancellation of accreditation.

### **210 Effect of suspension or cancellation on conditions**

- (1) Accreditation may be suspended or cancelled unconditionally or subject to such conditions as the accreditation authority imposes.
- (2) Those conditions may include (but are not limited to) any conditions to which the accreditation was subject immediately before it was suspended or cancelled.
- (3) The accreditation authority may, by notice in writing given to the former biosecurity certifier, attach new conditions to, or vary or revoke any existing conditions of, the suspension or cancellation of the accreditation.

## **Division 6 Miscellaneous**

### **211 Offence of contravening conditions of accreditation**

- (1) A biosecurity certifier or former biosecurity certifier who contravenes a condition of

accreditation imposed by or under this Part is guilty of an offence.

- (2) An offence against this section is a category 2 offence.
- (3) A person who is guilty of an offence against this section because the person contravenes a requirement of a condition of accreditation to do or refrain from doing something:
  - (a) continues, until the requirement is complied with and despite the fact that any specified period or time for compliance has expired or passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (4) Subsection (3) does not apply to the extent that a requirement of a condition is revoked.

### **212 Impersonation of biosecurity certifier**

- (1) A person who impersonates a biosecurity certifier is guilty of an offence.
- (2) An offence against this section is a category 2 offence.
- (3) In this section:

**biosecurity certifier** includes a person who is accredited or otherwise authorised by or under a corresponding law to issue, alter or amend an interstate biosecurity certificate.

### **213 Appeal to Land and Environment Court**

- (1) A person aggrieved by any of the following decisions may appeal to the Land and Environment Court against the decision:
  - (a) a decision of an accreditation authority to refuse accreditation,
  - (b) a decision of an accreditation authority to refuse to renew accreditation,
  - (c) a decision of an accreditation authority to suspend or cancel accreditation,
  - (d) a decision of an accreditation authority to refuse to revoke a suspension of accreditation following the making of a submission by the biosecurity certifier under this Part, being a suspension of which the biosecurity certifier was not given prior notice,
  - (e) a decision of an accreditation authority to impose any condition on accreditation, or on the suspension or cancellation of accreditation,
  - (f) a decision of an accreditation authority to vary accreditation.

- (2) An appeal is to be made in accordance with rules of court, but may not be made more than 28 days after the date written notice of the decision is served on the person.
- (3) Subject to any order made by the Land and Environment Court, an appeal does not operate to stay the decision to which the appeal relates.

## **Part 15 Biosecurity audits**

### **Division 1 Biosecurity audits**

#### **214 Biosecurity audits**

The following types of audit (each of which is a **biosecurity audit**) may be carried out under this Act:

- (a) an accreditation audit,
- (b) a compliance audit.

#### **215 Audits to be carried out by biosecurity auditor only**

A biosecurity audit may be carried out only by a biosecurity auditor.

#### **216 Biosecurity audits are mandatory**

A biosecurity audit is mandatory when required by the Secretary or an accreditation authority under this Act.

#### **217 Audit target—meaning**

In this Part, the **audit target** is the person the subject of a biosecurity audit.

### **Division 2 Accreditation audits**

#### **218 Accreditation audit**

An **accreditation audit** is an audit that is carried out for the purposes of assessing:

- (a) an application for the grant or renewal of, or variation to, biosecurity registration, or
- (b) an application for the grant or renewal of, or variation to, accreditation as a biosecurity certifier, or
- (c) an application for the grant or renewal of, or variation to, appointment as a biosecurity auditor, or
- (d) an application for the grant or renewal of, or variation to, a permit, or
- (e) an application for the grant or renewal of, or variation to, approval to exercise any of the functions of an accreditation authority under this Act.

### **219 Who can require accreditation audit**

- (1) The Secretary may require an accreditation audit to be carried out in relation to any of the following applications:
  - (a) an application for the grant or renewal of, or variation to, biosecurity registration,
  - (b) an application for the grant or renewal of, or variation to, a permit,
  - (c) an application for the grant or renewal of, or variation to, approval to exercise any of the functions of an accreditation authority under this Act.
- (2) An accreditation authority may require an accreditation audit to be carried out in relation to any of the following applications:
  - (a) an application for the grant or renewal of, or variation to, accreditation as a biosecurity certifier that is made to the accreditation authority,
  - (b) an application for the grant or renewal of, or variation to, appointment as a biosecurity auditor that is made to the accreditation authority.
- (3) An accreditation authority, other than the Secretary, must require an accreditation audit to be carried out in relation to an application if:
  - (a) it is directed to do so by the Secretary, or
  - (b) it is required to do so under the conditions of its approval as an accreditation authority.
- (4) A person who requires an accreditation audit is to give the audit target notice in writing of the decision to require an accreditation audit.
- (5) A reference in this Division to the person who requires an accreditation audit is a reference to the person who requires the accreditation audit under the power conferred by this section.

### **220 Engagement of auditor**

- (1) A person who requires an accreditation audit may:
  - (a) engage a biosecurity auditor to carry out the audit, or
  - (b) direct the audit target to engage a biosecurity auditor to carry out the audit.
- (2) If the person who requires the accreditation audit directs the audit target to engage a biosecurity auditor to carry out the audit, the person may specify requirements relating to the engagement of the biosecurity auditor and the scope of the accreditation audit.

## **221 Functions of biosecurity auditor in relation to accreditation audit**

- (1) A biosecurity auditor has the following functions in connection with an accreditation audit, subject to any limitations specified in his or her instrument of engagement:
  - (a) to assess the audit target's suitability for the grant, renewal or variation of biosecurity registration, accreditation as a biosecurity certifier, appointment as a biosecurity auditor, a permit or approval as an accreditation authority (as the case requires),
  - (b) to assess whether the audit target has the qualifications, skills, knowledge and experience (if any) required for biosecurity registration, accreditation as a biosecurity certifier, appointment as a biosecurity auditor, a permit or approval as an accreditation authority (as the case requires),
  - (c) to assess the audit target's compliance with, and capability of complying with, the requirements imposed or proposed to be imposed by or under this Act,
  - (d) to report to the person who requires the accreditation audit on the biosecurity auditor's assessment of those matters.
- (2) A biosecurity auditor has such other functions in connection with an accreditation audit as are prescribed by the regulations or, subject to the regulations, conferred on the biosecurity auditor by his or her instrument of engagement.

## **222 Recovery of fee for accreditation audit**

- (1) A person who requires an accreditation audit may charge the audit target a reasonable fee for the carrying out of an accreditation audit by a biosecurity auditor engaged by the person.
- (2) If the person who requires the accreditation audit is the Secretary, the fee:
  - (a) is a recoverable amount that is payable to the Secretary, and
  - (b) is recoverable from the audit target.

### **Note—**

See Part 20, which provides for the recovery of recoverable amounts.

- (3) If the person who requires the accreditation audit is an accreditation authority (other than the Secretary), the fee is recoverable by the accreditation authority as a debt in a court of competent jurisdiction.
- (4) An audit target is responsible for any fee payable in connection with an accreditation audit conducted by a biosecurity auditor engaged by the audit target.

### **223 Use of accreditation audit**

A person who requires an accreditation audit is to have regard to that accreditation audit in exercising the person's functions under this Act in relation to the audit target.

## **Division 3 Compliance audits**

### **224 Compliance audit**

A **compliance audit** is an audit that is carried out for any of the following purposes:

- (a) to assess compliance with, and capability of complying with, the requirements imposed by or under this Act,
- (b) to assess or identify any contravention or suspected contravention of the requirements imposed by or under this Act (including any contravention or other deficiency identified in another biosecurity audit),
- (c) to identify measures for improved compliance with the requirements imposed by or under this Act.

### **225 Who can require compliance audit**

- (1) The Secretary may require a compliance audit to be carried out in relation to any person at any time.
- (2) An accreditation authority, other than the Secretary, may require a compliance audit to be carried out in relation to a person who is or was formerly a biosecurity certifier or biosecurity auditor at any time, but only if the accreditation authority is the responsible accreditation authority for the accreditation or appointment of the person.
- (3) A person who requires a compliance audit to be carried out is to give the audit target notice of the decision to require a compliance audit, unless the giving of notice would defeat the purpose of the audit.
- (4) A reference in this Division to the person who requires, or can require, a compliance audit is a reference to the person who requires, or who has power to require, the compliance audit under the power conferred by this section.

### **226 Decision to require compliance audit**

- (1) A person who can require a compliance audit must, in making a decision about whether to require the compliance audit, or the frequency of compliance audits, have regard to the following:
  - (a) the person's audit frequency policy,
  - (b) the compliance history of the audit target,

- (c) any previous biosecurity audits carried out in relation to the audit target that the person considers relevant (including any deficiencies identified in those audits),
  - (d) any information provided to the person by authorised officers about compliance with requirements imposed by or under this Act,
  - (e) any other matters the person considers relevant.
- (2) An accreditation authority (other than the Secretary) must require a compliance audit to be carried out in relation to a person if:
- (a) it is directed to do so by the Secretary, or
  - (b) it is required to do so under the conditions of its approval as an accreditation authority.
- (3) Subsection (1) applies to a decision of the Secretary to direct an accreditation authority to require a compliance audit as if the Secretary were requiring the compliance audit.

## **227 Audit frequency policy**

- (1) A person who can require a compliance audit is required to adopt an audit frequency policy for the purposes of this Act.
- (2) An audit frequency policy may make provision for or with respect to the following matters:
- (a) the frequency of compliance audits,
  - (b) any other matters that are prescribed by the regulations.
- (3) An audit frequency policy adopted by a person who can require a compliance audit (other than the Secretary) has no effect unless it has been approved in writing by the Secretary.
- (4) A person may amend or replace an audit frequency policy adopted by the person.
- (5) Subsection (3) applies in relation to the amendment or replacement of an audit frequency policy in the same way as it applies to the adoption of an audit frequency policy.
- (6) However, subsection (3) does not apply to an amendment of an audit frequency policy if the person making the amendment certifies that the amendment is minor in nature or for the purpose of correcting an error.
- (7) An audit frequency policy may apply generally or apply differently according to different factors of a specified kind, such as the following:

- (a) the type of biosecurity matter involved,
  - (b) the type of activity involved and the level of biosecurity risk associated with that activity,
  - (c) the class of biosecurity registration or accreditation involved (if any).
- (8) A person who can require a compliance audit is to make the person's audit frequency policy publicly available.
- (9) A reference in this Act to a person's audit frequency policy is a reference to the audit frequency policy adopted by the person or, if the person has more than one policy, the audit frequency policy that is relevant to the audit concerned.

## **228 Engagement of auditor**

- (1) A person who requires a compliance audit may:
- (a) engage a biosecurity auditor to carry out the audit, or
  - (b) direct the audit target to engage a biosecurity auditor to carry out the audit.
- (2) The person who requires the compliance audit may direct the audit target to engage a biosecurity auditor to carry out an audit only if the audit target is a biosecurity participant.
- (3) If the person who requires the compliance audit to be carried out directs the audit target to engage a biosecurity auditor to carry out the audit, the person may specify requirements relating to the engagement of the biosecurity auditor and the scope of the compliance audit.

## **229 Functions of biosecurity auditor in relation to compliance audit**

- (1) A biosecurity auditor has the following functions in connection with a compliance audit, subject to any limitations specified in his or her instrument of engagement:
- (a) to assess the audit target's compliance with, and capability of complying with, the requirements imposed by or under this Act,
  - (b) to assess or identify any contravention or suspected contravention of the requirements imposed by or under this Act (including any contravention or other deficiency identified in another biosecurity audit),
  - (c) to identify measures for improved compliance with the requirements imposed by or under this Act,
  - (d) to report to the person who requires the audit on the biosecurity auditor's assessment of those matters.



- (2) A biosecurity auditor has such other functions in connection with a compliance audit as are prescribed by the regulations or, subject to the regulations, conferred on the biosecurity auditor by his or her instrument of engagement.

### **230 Recovery of fee for compliance audit**

- (1) A person who requires a compliance audit may charge the audit target a reasonable fee for the carrying out of a compliance audit by a biosecurity auditor engaged by the person, but only if the audit target is a biosecurity participant.
- (2) If the person who requires the compliance audit is the Secretary, the fee:
  - (a) is a recoverable amount that is payable to the Secretary, and
  - (b) is recoverable from the audit target.

#### **Note—**

See Part 20, which provides for the recovery of recoverable amounts.

- (3) If the person who requires the compliance audit is an accreditation authority (other than the Secretary), the fee is recoverable by the accreditation authority as a debt in a court of competent jurisdiction.
- (4) An audit target is responsible for any fee payable in connection with a compliance audit conducted by a biosecurity auditor engaged by the audit target.

### **231 Use of compliance audit**

A person who requires a compliance audit is to have regard to that compliance audit in exercising the person's functions under this Act in relation to the audit target.

## **Division 4 Functions of biosecurity auditor**

### **232 General functions**

A biosecurity auditor has the following functions:

- (a) carrying out biosecurity audits,
- (b) any other functions conferred by or under this Act.

### **233 Entry to premises**

- (1) A biosecurity auditor who is an authorised officer may exercise his or her functions as a biosecurity auditor on premises entered under Part 8.
- (2) A biosecurity auditor who is not an authorised officer may accompany an authorised officer who enters premises under Part 8 for the purpose of exercising the biosecurity auditor's functions as a biosecurity auditor.

(3) This section does not prevent a biosecurity auditor from:

- (a) entering or remaining on any premises, or doing anything else on premises, with the consent of the occupier of the premises, or
- (b) entering or remaining in any public place while that place is open to the public.

**Note—**

Failure to consent to entry by a biosecurity auditor, or to co-operate with a biosecurity audit, may constitute a contravention of conditions of biosecurity registration, a permit, accreditation as a biosecurity certifier, appointment as a biosecurity auditor or approval as an accreditation authority.

**234 Use of assistants**

A biosecurity auditor exercising a function conferred by or under this Act may exercise the function with the assistance of such other persons as the biosecurity auditor considers necessary, subject to any conditions of appointment as a biosecurity auditor.

**235 Reporting requirements**

- (1) A biosecurity auditor must prepare a written report about each biosecurity audit.
- (2) A copy of the report must be submitted:
  - (a) to the person who required the audit to be carried out, and
  - (b) to the audit target.
- (3) The report must be submitted within 21 days after completion of the biosecurity audit or, if another period is prescribed by the regulations, within the prescribed period.
- (4) The report must indicate the biosecurity auditor's opinion as to the following:
  - (a) whether or not the audit target is complying, and capable of complying, with the requirements imposed by or under this Act,
  - (b) the requirements imposed by or under this Act that the audit target is not complying with or not capable of complying with,
  - (c) if the biosecurity audit indicates contraventions of the requirements imposed by or under this Act or other deficiencies:
    - (i) the nature of those contraventions or other deficiencies, and
    - (ii) the actions that are required to remedy those contraventions or deficiencies,
  - (d) if a previous biosecurity audit has indicated contraventions or other deficiencies, the actions (if any) that have been taken to remedy those contraventions or other deficiencies.

- (5) An accreditation authority must provide to the Secretary a copy of the report submitted to the accreditation authority if directed to do so by the Secretary.
- (6) The regulations may require further matters to be included in the report.

### **236 Certain matters to be reported immediately**

- (1) A biosecurity auditor must report to the Secretary if, during a biosecurity audit, the biosecurity auditor becomes aware of, or suspects, any of the following occurrences:
  - (a) any instance of critical non-compliance by the audit target,
  - (b) that a biosecurity certificate has been issued that is false or misleading in a material particular,
  - (c) that a person is in possession of biosecurity matter in contravention of a requirement imposed by or under this Act,
  - (d) any occurrence of a kind prescribed by the regulations.
- (2) The report must be given orally to the Secretary as soon as possible but in any case within 24 hours after the biosecurity auditor becomes aware of the matter.
- (3) A biosecurity auditor must give the Secretary a copy of the report in writing within 5 days of becoming aware of the matter.
- (4) The requirement imposed by this section is taken to be a condition of appointment as a biosecurity auditor.

## **Division 5 Offences relating to biosecurity audits**

### **237 Obstruction of biosecurity auditor**

- (1) A person who obstructs or hinders a biosecurity auditor in the exercise of the biosecurity auditor's functions under this Act is guilty of an offence.
- (2) An offence against subsection (1) is a category 2 offence.
- (3) A person does not obstruct or hinder a biosecurity auditor by refusing permission to enter or remain on premises, unless:
  - (a) the biosecurity auditor has the power under this Act to enter and remain on those premises because the biosecurity auditor is an authorised officer or is in the company of an authorised officer, or
  - (b) the biosecurity auditor enters the premises under the power conferred by a search warrant.
- (4) However, any such refusal may constitute a contravention of the conditions of

biosecurity registration, a permit, accreditation as a biosecurity certifier, appointment as a biosecurity auditor or approval as an accreditation authority.

### **238 Provision of false or misleading information to biosecurity auditor**

- (1) A person who, in connection with a biosecurity audit, furnishes any information to a biosecurity auditor that the person knows to be false or misleading in a material particular is guilty of an offence.
- (2) An offence against this section is a category 2 offence.
- (3) In this section:

***biosecurity auditor*** includes a person acting on behalf of a biosecurity auditor.

## **Part 16 Appointment of biosecurity auditors**

### **Division 1 Appointment of biosecurity auditors**

#### **239 Appointment of auditors by accreditation authority**

An accreditation authority may, by instrument in writing, appoint any person as a biosecurity auditor, subject to this Act.

#### **240 Appointment policy**

- (1) An accreditation authority that has the power to appoint biosecurity auditors is required to adopt an appointment policy for the purposes of this Act.
- (2) An appointment policy may make provision for or with respect to the following matters:
  - (a) the qualifications, skills, knowledge and experience required for appointment as a biosecurity auditor by the accreditation authority,
  - (b) any other matters prescribed by the regulations.
- (3) An accreditation authority is to make the appointment policy publicly available.
- (4) An appointment policy adopted by an accreditation authority (other than the Secretary) has no effect unless it has been approved by the Secretary.
- (5) An accreditation authority may amend or replace an appointment policy adopted by the accreditation authority.
- (6) Subsection (4) applies in relation to the amendment or replacement of an appointment policy in the same way as it applies to the adoption of an appointment policy.
- (7) However, subsection (4) does not apply to an amendment of an appointment policy if

the accreditation authority certifies that the amendment:

- (a) is minor in nature or for the purpose of correcting an error, or
- (b) is necessary to reflect a change of a course (including a continuing professional development course) or qualification or of the provider of a course or qualification.

- (8) An accreditation authority may adopt different appointment policies for different types of biosecurity auditors or biosecurity audits.
- (9) A reference in this Act to an accreditation authority's appointment policy is a reference to the appointment policy as adopted by the accreditation authority, being, if the authority has more than one policy, the appointment policy that is relevant to the appointment or type of appointment concerned.

#### **241 Effect of appointment**

- (1) A biosecurity auditor is authorised by his or her appointment to conduct biosecurity audits.
- (2) The authorisation is subject to any conditions or limitations specified in his or her instrument of appointment.
- (3) In particular, the authorisation may be limited to a specified class of biosecurity audit.
- (4) Nothing in this Act authorises or requires a biosecurity auditor to act in contravention of the conditions or limitations of his or her appointment as a biosecurity auditor.

#### **242 Responsible accreditation authority**

- (1) An accreditation authority that appoints a person as a biosecurity auditor is the **responsible accreditation authority** in relation to that appointment.
- (2) An accreditation authority ceases to be the responsible accreditation authority in relation to an appointment if the appointment is renewed by another accreditation authority. In that case, the accreditation authority that renews the appointment becomes the responsible accreditation authority in relation to the appointment.
- (3) The Secretary is entitled, but is not required, to exercise any of the functions of the responsible accreditation authority in relation to an appointment granted or renewed by an accreditation authority.
- (4) If an accreditation authority ceases to be an accreditation authority in relation to appointments generally or any class of appointments, the functions of the responsible accreditation authority in relation to any appointment or class of appointments that has already been granted or renewed by that accreditation authority may be exercised by:
  - (a) any accreditation authority approved by the Secretary to exercise the functions of

the accreditation authority in respect of the appointment or class of appointments concerned, or

(b) if no accreditation authority has been so approved, the Secretary.

### **243 Approval of authorised officer to exercise functions of biosecurity auditor**

- (1) The Secretary may, by instrument in writing, approve any authorised officer to exercise any specified function or functions of a biosecurity auditor.
- (2) An approval may apply to a specified authorised officer or to any specified class of authorised officers.
- (3) An approval may be unconditional, or subject to conditions or limitations.
- (4) An approval has effect for the period specified in the instrument of approval or, if no period is specified, until revoked by the Secretary.
- (5) The Secretary may, by instrument in writing, revoke or amend an approval under this section at any time.
- (6) The approval of a person as a biosecurity auditor under this section ceases to be in force if the person ceases to be an authorised officer.
- (7) A person approved to exercise the functions of a biosecurity auditor under this section is taken to be a biosecurity auditor.
- (8) Nothing in this Act authorises or requires the person to act in contravention of the conditions or limitations of his or her approval to exercise the functions of a biosecurity auditor.

## **Division 2 Appointment procedure**

### **244 Application for appointment**

- (1) A person may apply to an accreditation authority for appointment as a biosecurity auditor.
- (2) An application must:
  - (a) be in a form approved by the accreditation authority, and
  - (b) include or be accompanied by any information or evidence of a kind prescribed by the regulations, and
  - (c) include or be accompanied by any other information or evidence that the accreditation authority reasonably requires to assess the application.
- (3) The accreditation authority may require a fee to be paid for an application for

appointment.

- (4) The accreditation authority may require the application fee to accompany the application.
- (5) The amount of the application fee is:
  - (a) if the accreditation authority is the Secretary—the amount provided for by the regulations, or
  - (b) in any other case—the amount required by the accreditation authority.

#### **245 Grant or refusal of appointment**

- (1) The accreditation authority may, on application, grant or refuse appointment as a biosecurity auditor.
- (2) The accreditation authority may refuse appointment as a biosecurity auditor:
  - (a) if the application for appointment does not comply with a requirement imposed by or under this Act, or
  - (b) if the accreditation authority is not satisfied that the applicant has the qualifications, skills, knowledge and experience required for appointment by the accreditation authority's appointment policy, or
  - (c) if the accreditation authority is of the opinion that the applicant is not a suitable person to be appointed as a biosecurity auditor, or
  - (d) on any other grounds prescribed by the regulations.
- (3) A decision about the suitability of a person for appointment may be made having regard to any of the following:
  - (a) the fact that the applicant has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) an accreditation audit,
  - (c) any other matter prescribed by the regulations,
  - (d) any other circumstances that the accreditation authority considers relevant.
- (4) The accreditation authority is to give the applicant notice in writing of a decision to grant or refuse appointment.
- (5) An accreditation authority that fails to give an applicant for appointment notice of a decision to grant or refuse appointment within the period prescribed by the regulations is taken to have refused appointment.

#### **246 Duration of appointment**

- (1) An appointment as a biosecurity auditor that is made under this Part remains in force for a period (not exceeding 5 years) specified by the accreditation authority in any notice by which appointment is granted or renewed, unless sooner cancelled.
- (2) The appointment has no effect during any period in which the appointment is suspended.

#### **247 Variation of appointment**

- (1) The responsible accreditation authority may, at any time, by notice in writing to a person who has been appointed as a biosecurity auditor, vary the appointment of the person (including any conditions of appointment imposed by an accreditation authority).
- (2) A variation includes the imposition of new conditions on an appointment, the substitution of a condition, or the omission or amendment of a condition.
- (3) The regulations may make further provision for the variation of an appointment, including:
  - (a) applications for variation, and
  - (b) fees for applications for variation.

### **Division 3 Renewal of appointment**

#### **248 Application for renewal of appointment**

- (1) A biosecurity auditor may apply to an accreditation authority for renewal of appointment as a biosecurity auditor.
- (2) An application must:
  - (a) be in a form approved by the accreditation authority, and
  - (b) include or be accompanied by any information or evidence of a kind prescribed by the regulations, and
  - (c) include or be accompanied by any other information or evidence that the accreditation authority reasonably requires to assess the application.
- (3) The accreditation authority may require a fee to be paid for an application for renewal of appointment.
- (4) The accreditation authority may require the application fee to accompany the application.
- (5) The amount of the application fee is:



- (a) if the accreditation authority is the Secretary—the amount provided for by the regulations, or
  - (b) in any other case—the amount required by the accreditation authority.
- (6) If an application for renewal of appointment as a biosecurity auditor is duly made to the responsible accreditation authority before the expiry of the appointment, the appointment is taken to continue in force until the accreditation authority notifies the applicant of a decision to grant or refuse the application.

#### **249 Grant or refusal of renewal application**

- (1) An accreditation authority may, on application, renew or refuse to renew appointment as a biosecurity auditor.
- (2) An accreditation authority may refuse to renew appointment as a biosecurity auditor:
  - (a) if the application for renewal of appointment does not comply with any requirement imposed by or under this Act, or
  - (b) if the accreditation authority is not satisfied that the applicant has the qualifications, skills, knowledge and experience required for appointment under the accreditation authority's appointment policy, or
  - (c) if the accreditation authority is of the opinion that the applicant is not a suitable person to be appointed as a biosecurity auditor, or
  - (d) on any grounds prescribed by the regulations.
- (3) A decision about the suitability of a person for appointment may be made having regard to any of the following:
  - (a) the fact that the applicant has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) any biosecurity audit relating to the person,
  - (c) any other matter prescribed by the regulations,
  - (d) any other circumstances that the accreditation authority considers relevant.
- (4) An accreditation authority is to give the applicant notice in writing of a decision to grant or refuse renewal of appointment as a biosecurity auditor.
- (5) An accreditation authority that fails to give an applicant for renewal of appointment as a biosecurity auditor notice of a decision to grant or refuse the application within the period prescribed by the regulations is taken to have refused to renew the appointment.

## **Division 4 Conditions of appointment as biosecurity auditor**

### **250 Conditions of appointment**

- (1) Appointment as a biosecurity auditor is subject to the following conditions:
  - (a) any conditions prescribed by the regulations,
  - (b) any conditions imposed by the responsible accreditation authority.
- (2) The responsible accreditation authority may impose conditions on appointment as a biosecurity auditor:
  - (a) at the time of the appointment or renewal of appointment, or
  - (b) at any other time by variation to the appointment.

## **Division 5 Suspension or cancellation of appointment**

### **251 Grounds for suspension or cancellation of appointment**

- (1) Each of the following constitutes grounds for suspending or cancelling appointment as a biosecurity auditor:
  - (a) the accreditation authority is of the opinion that the biosecurity auditor has contravened a requirement imposed by or under this Act,
  - (b) the accreditation authority is not satisfied that the biosecurity auditor has the qualifications, skills, knowledge and experience required by the accreditation authority's appointment policy,
  - (c) the accreditation authority is of the opinion that the biosecurity auditor is not a suitable person to be appointed as a biosecurity auditor,
  - (d) the accreditation authority receives information about the biosecurity auditor and the accreditation authority is of the opinion that, had the information been received at the time when the application for appointment or renewal of the appointment was made, it would have refused the application,
  - (e) any other grounds prescribed by the regulations.
- (2) A decision about the suitability of a person for appointment may be made having regard to any of the following:
  - (a) the fact that the biosecurity auditor has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) a biosecurity audit in relation to the biosecurity auditor,
  - (c) any matter prescribed by the regulations,

(d) any other circumstances that the accreditation authority considers relevant.

(3) In this Division:

**biosecurity auditor** includes a former biosecurity auditor.

### **252 Suspension of appointment**

(1) The responsible accreditation authority may, by notice in writing to a biosecurity auditor, suspend the appointment of the biosecurity auditor if there are grounds for the suspension of the appointment.

(2) Notice of the suspension must specify:

- (a) the date or time from which the suspension takes effect, and
- (b) the period of suspension, and
- (c) the grounds for the suspension.

### **253 Biosecurity auditor to be given opportunity to make submissions about suspension**

(1) Before suspending the appointment of a biosecurity auditor, an accreditation authority must:

- (a) give notice in writing to the biosecurity auditor of the accreditation authority's intention to suspend the appointment and the proposed grounds for doing so, and
- (b) invite the biosecurity auditor to make a submission to the accreditation authority about the proposed suspension, and
- (c) take into account any submission made to the accreditation authority by the biosecurity auditor before the deadline for the making of a submission.

(2) An accreditation authority is to specify a deadline for the making of a submission to the accreditation authority about the proposed suspension that is at least 30 days after notice of the proposed suspension is given to the biosecurity auditor.

### **254 Cancellation of appointment**

(1) The responsible accreditation authority may, by notice in writing to a biosecurity auditor, cancel the appointment of the biosecurity auditor if:

- (a) the responsible accreditation authority is satisfied that there are grounds for the cancellation of the appointment, or
- (b) the biosecurity auditor applies for cancellation of the appointment.

(2) Notice of the cancellation must specify:

- (a) the date or time from which cancellation takes effect, and

(b) the grounds for the cancellation.

### **255 Biosecurity auditor to be given opportunity to make submissions about cancellation**

- (1) Before cancelling the appointment of a biosecurity auditor, an accreditation authority must:
  - (a) give notice in writing to the biosecurity auditor of the accreditation authority's intention to cancel the appointment and the proposed grounds for doing so, and
  - (b) invite the biosecurity auditor to make a submission to the accreditation authority about the proposed cancellation, and
  - (c) take into account any submission made to the accreditation authority by the biosecurity auditor before the deadline for the making of a submission.
- (2) The accreditation authority must specify a deadline for the making of a submission to the accreditation authority about the proposed cancellation that is at least 30 days after notice of the proposed cancellation is given to the biosecurity auditor.
- (3) An accreditation authority is not required to give notice under this section of a proposed cancellation if:
  - (a) the appointment of the biosecurity auditor is suspended, or
  - (b) the biosecurity auditor has applied for cancellation of the appointment.

### **256 Effect of suspension or cancellation on conditions**

- (1) Appointment as a biosecurity auditor may be suspended or cancelled unconditionally or subject to such conditions as the accreditation authority imposes.
- (2) Those conditions may include (but are not limited to) any conditions to which the appointment was subject immediately before it was suspended or cancelled.
- (3) The accreditation authority may, by notice in writing given to the former biosecurity auditor, attach new conditions to, or vary or revoke any existing conditions of, the suspension or cancellation of the appointment.

## **Division 6 Miscellaneous**

### **257 Offence of contravening conditions of appointment**

- (1) A biosecurity auditor or former biosecurity auditor who contravenes a condition of appointment imposed by or under this Part is guilty of an offence.
- (2) An offence against this section is a category 2 offence.
- (3) A person who is guilty of an offence against this section because the person contravenes a requirement of a condition of appointment to do or refrain from doing

something:

- (a) continues, until the requirement is complied with and despite the fact that any specified period or time for compliance has expired or passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (4) Subsection (3) does not apply to the extent that a requirement of a condition is revoked.

### **258 Impersonation of biosecurity auditor**

- (1) A person who impersonates a biosecurity auditor is guilty of an offence.
- (2) An offence against this section is a category 2 offence.

### **259 Appeal to Land and Environment Court**

- (1) A person aggrieved by any of the following decisions may appeal to the Land and Environment Court against the decision:
  - (a) a decision of an accreditation authority to refuse appointment as a biosecurity auditor,
  - (b) a decision of an accreditation authority to refuse to renew appointment as a biosecurity auditor,
  - (c) a decision of an accreditation authority to suspend or cancel an appointment as a biosecurity auditor,
  - (d) a decision of an accreditation authority to impose any condition on appointment as a biosecurity auditor, or on the suspension or cancellation of an appointment as a biosecurity auditor,
  - (e) a decision of an accreditation authority to vary an appointment as a biosecurity auditor.
- (2) An appeal is to be made in accordance with rules of court, but may not be made more than 28 days after the date written notice of the decision is served on the person.
- (3) Subject to any order made by the Land and Environment Court, an appeal does not operate to stay the decision to which the appeal relates.

## **Part 17 Accreditation authorities**

### **Division 1 Accreditation authorities**

#### **260 Accreditation authority—meaning**

- (1) For the purposes of this Act, an **accreditation authority** means:
  - (a) the Secretary, or
  - (b) a person for the time being approved by the Secretary under this Part to exercise the functions of an accreditation authority.
- (2) A reference in this Act to an accreditation authority, in relation to any function of an accreditation authority, includes a reference to a person approved by the Secretary to exercise the functions of an accreditation authority only if the accreditation authority is approved to exercise the function concerned.

#### **261 Approval of accreditation authority to exercise functions**

- (1) The Secretary may, by instrument in writing, approve any person to exercise the functions of an accreditation authority in relation to any of the following:
  - (a) accreditation of biosecurity certifiers under this Act,
  - (b) appointment of biosecurity auditors under this Act.
- (2) Approval may be unconditional, or subject to conditions or limitations.
- (3) In particular, an approval may be limited to accreditation in respect of:
  - (a) a specified class of biosecurity certificates or biosecurity certifiers, or
  - (b) a specified class of biosecurity auditors or biosecurity audits.

#### **262 Effect of approval**

- (1) A person who is approved to exercise the functions of an accreditation authority may exercise those functions in accordance with this Act.
- (2) Nothing in this Act authorises or requires an accreditation authority to act in contravention of the conditions or limitations of the accreditation authority's approval as an accreditation authority.

### **Division 2 Approval procedure**

#### **263 Application for approval**

- (1) A person may apply to the Secretary for approval to exercise the functions of an accreditation authority.

- (2) An application must:
  - (a) be in an approved form, and
  - (b) include or be accompanied by any information or evidence of a kind prescribed by the regulations, and
  - (c) include or be accompanied by any other information or evidence that the Secretary reasonably requires to assess the application.
- (3) The regulations may provide for a fee to be paid for an application for the grant of approval.
- (4) The Secretary may require the fee to accompany the application.

#### **264 Grant or refusal of approval**

- (1) The Secretary may, on application, grant or refuse approval to exercise the functions of an accreditation authority.
- (2) The Secretary may refuse approval to exercise the functions of an accreditation authority:
  - (a) if the application for approval does not comply with any requirement imposed by or under this Act, or
  - (b) if the Secretary is of the opinion that the applicant is not a suitable person to be approved as an accreditation authority, or
  - (c) on any other grounds prescribed by the regulations.
- (3) A decision about the suitability of a person for approval may be made having regard to any of the following:
  - (a) the fact that the applicant has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) an accreditation audit,
  - (c) any matter prescribed by the regulations,
  - (d) any other circumstances that the Secretary considers relevant.
- (4) The Secretary is to give the applicant notice in writing of a decision to grant or refuse approval.
- (5) If the Secretary fails to give an applicant for approval notice of a decision to grant or refuse approval within the period prescribed by the regulations, the Secretary is taken to have refused approval.

### **265 Duration of approval**

- (1) An approval to exercise the functions of an accreditation authority remains in force for a period (not exceeding 5 years) specified by the Secretary in the notice by which approval is granted or renewed, unless sooner cancelled.
- (2) Approval has no effect during any period in which the approval is suspended.

### **266 Variation of approval**

- (1) The Secretary may, at any time, by notice in writing to a person who has been approved to exercise the functions of an accreditation authority, vary the approval of the person (including any conditions of approval imposed by the Secretary).
- (2) A variation includes the imposition of new conditions on an approval, the substitution of a condition, or the omission or amendment of a condition.
- (3) The regulations may make further provision for the variation of approval, including:
  - (a) applications for variation, and
  - (b) fees for applications for variation.

## **Division 3 Renewal of approval**

### **267 Application for renewal of approval**

- (1) An accreditation authority may apply to the Secretary for renewal of approval to exercise the functions of an accreditation authority.
- (2) An application must:
  - (a) be in an approved form, and
  - (b) include or be accompanied by any information or evidence of a kind prescribed by the regulations, and
  - (c) include or be accompanied by any other information or evidence that the Secretary reasonably requires to assess the application.
- (3) The regulations may provide for a fee for an application for the renewal of approval.
- (4) The Secretary may require the fee to accompany the application.
- (5) If an application for renewal of approval is duly made to the Secretary before the expiry of approval, approval is taken to continue in force until the Secretary notifies the applicant of a decision to grant or refuse the application.



## **268 Grant or refusal of renewal application**

- (1) The Secretary may, on application, renew or refuse to renew an approval to exercise the functions of an accreditation authority.
- (2) The Secretary may refuse to renew an approval to exercise the functions of an accreditation authority:
  - (a) if the application for renewal of approval does not comply with any requirement imposed by or under this Act, or
  - (b) if the Secretary is of the opinion that the applicant is not a suitable person to be approved as an accreditation authority, or
  - (c) on any other grounds prescribed by the regulations.
- (3) A decision about the suitability of a person for approval may be made having regard to any of the following:
  - (a) the fact that the applicant has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) any biosecurity audit relating to the person,
  - (c) any other matter prescribed by the regulations,
  - (d) any other circumstances that the Secretary considers relevant.
- (4) The Secretary is to give the applicant notice in writing of a decision to renew or refuse to renew an approval.
- (5) If the Secretary fails to give an applicant for renewal of approval notice of a decision to renew or refuse to renew an approval within the period prescribed by the regulations, the Secretary is taken to have refused to renew the approval.

## **Division 4 Conditions of approval**

### **269 Conditions of approval**

- (1) An approval to exercise the functions of an accreditation authority is subject to the following conditions:
  - (a) any conditions prescribed by the regulations,
  - (b) any conditions imposed by the Secretary.
- (2) The Secretary may impose conditions on an approval:
  - (a) at the time of the grant or renewal of the approval, or

- (b) at any other time by variation to the approval.

## **Division 5 Suspension or cancellation of approval**

### **270 Grounds for suspension or cancellation of approval**

- (1) Each of the following constitutes grounds for suspending or cancelling approval to exercise the functions of an accreditation authority:
- (a) the Secretary is of the opinion that the accreditation authority has contravened a requirement imposed by or under this Act,
  - (b) the Secretary is of the opinion that the accreditation authority is not a suitable person to be approved to exercise the functions of an accreditation authority,
  - (c) the Secretary receives information about the accreditation authority and the Secretary is of the opinion that, had the information been received at the time when the application for approval or renewal of the approval was made, the Secretary would have refused the application,
  - (d) any other grounds prescribed by the regulations.
- (2) A decision about the suitability of a person for approval may be made having regard to any of the following:
- (a) the fact that the accreditation authority has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) a biosecurity audit,
  - (c) any matter prescribed by the regulations,
  - (d) any other circumstances that the Secretary considers relevant.
- (3) In this Division:
- accreditation authority*** includes a former accreditation authority.

### **271 Suspension of approval**

- (1) The Secretary may, by notice in writing to an accreditation authority, suspend approval to exercise the functions of an accreditation authority if there are grounds for the suspension of approval.
- (2) Notice of the suspension must specify:
- (a) the date or time from which suspension takes effect, and
  - (b) the period of suspension, and

(c) the grounds for the suspension.

**272 Accreditation authority to be given opportunity to make submissions about suspension**

- (1) Before suspending an approval to exercise the functions of an accreditation authority, the Secretary must:
  - (a) give notice in writing to the accreditation authority of the Secretary's intention to suspend approval and the proposed grounds for doing so, and
  - (b) invite the accreditation authority to make a submission to the Secretary about the proposed suspension, and
  - (c) take into account any submission made to the Secretary by the accreditation authority before the deadline for the making of a submission.
- (2) The Secretary is to specify a deadline for the making of a submission to the Secretary about the proposed suspension that is at least 30 days after the notice is given to the accreditation authority.

**273 Cancellation of approval**

- (1) The Secretary may, by notice in writing to an accreditation authority, cancel approval to exercise the functions of an accreditation authority if:
  - (a) the Secretary is satisfied that there are grounds for the cancellation of approval, or
  - (b) the accreditation authority applies for cancellation of approval.
- (2) Notice of the cancellation must specify:
  - (a) the date or time from which cancellation takes effect, and
  - (b) the grounds for the cancellation.

**274 Accreditation authority to be given opportunity to make submissions about cancellation**

- (1) Before cancelling an approval to exercise the functions of an accreditation authority, the Secretary must:
  - (a) give notice in writing to the accreditation authority of the Secretary's intention to cancel approval and the proposed grounds for doing so, and
  - (b) invite the accreditation authority to make a submission to the Secretary about the proposed cancellation, and
  - (c) take into account any submission made to the Secretary by the accreditation

authority before the deadline for the making of a submission.

- (2) The Secretary is to specify a deadline for the making of a submission to the Secretary about the proposed cancellation that is at least 30 days after the notice is given to the accreditation authority.
- (3) The Secretary is not required to give notice under this section of a proposed cancellation if:
  - (a) the approval of the accreditation authority is suspended, or
  - (b) the accreditation authority has applied for cancellation of approval.

### **275 Effect of suspension or cancellation on conditions**

- (1) An approval to exercise the functions of an accreditation authority may be suspended or cancelled unconditionally or subject to such conditions as the Secretary imposes.
- (2) Those conditions may include (but are not limited to) any conditions to which the approval was subject immediately before it was suspended or cancelled.
- (3) The Secretary may, by notice in writing given to the former accreditation authority, attach new conditions to, or vary or revoke any existing conditions of, the suspension or cancellation of the approval.

## **Division 6 Miscellaneous**

### **276 Offence of contravening conditions of approval**

- (1) An accreditation authority or former accreditation authority who contravenes a condition of an approval imposed by or under this Part is guilty of an offence.
- (2) An offence against this section is a category 2 offence.
- (3) A person who is guilty of an offence against this section because the person contravenes a requirement of a condition of an approval to do or refrain from doing something:
  - (a) continues, until the requirement is complied with and despite the fact that any specified period or time for compliance has expired or passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (4) Subsection (3) does not apply to the extent that a requirement of a condition is revoked.

### **277 Appeal to Land and Environment Court**

- (1) A person aggrieved by any of the following decisions may appeal to the Land and

Environment Court against the decision:

- (a) a decision of the Secretary to refuse approval as an accreditation authority,
  - (b) a decision of the Secretary to refuse to renew approval as an accreditation authority,
  - (c) a decision of the Secretary to suspend or cancel approval as an accreditation authority,
  - (d) a decision of the Secretary to impose any condition on the grant of approval as an accreditation authority, or on the suspension or cancellation of an approval,
  - (e) a decision of the Secretary to vary approval as an accreditation authority.
- (2) An appeal is to be made in accordance with rules of court, but may not be made more than 28 days after the date written notice of the decision is served on the person.
- (3) Subject to any order made by the Land and Environment Court, an appeal does not operate to stay the decision to which the appeal relates.

#### **278 Disclosure of information**

An accreditation authority is authorised to disclose to the Secretary any information (including personal information within the meaning of the [Privacy and Personal Information Protection Act 1998](#)) obtained by the accreditation authority in the exercise of functions under this Act.

## **Part 18 Offences and criminal proceedings**

### **Division 1 Criminal proceedings generally**

#### **279 Maximum penalty for category 1 offence**

The maximum penalty for a category 1 offence is:

- (a) in the case of an individual—\$1,100,000 or imprisonment for 3 years, or both, and, in the case of a continuing offence, a further penalty of \$137,500 for each day the offence continues, or
- (b) in the case of a corporation—\$2,200,000 and, in the case of a continuing offence, a further penalty of \$275,000 for each day the offence continues.

#### **280 Maximum penalty for category 2 offence**

- (1) The maximum penalty for a category 2 offence is, subject to subsection (2):
- (a) in the case of an individual—\$220,000 and, in the case of a continuing offence, a further penalty of \$55,000 for each day the offence continues, or

- (b) in the case of a corporation—\$440,000 and, in the case of a continuing offence, a further penalty of \$110,000 for each day the offence continues.
- (2) The maximum penalty for a category 2 offence that is committed negligently is:
  - (a) in the case of an individual—\$1,100,000 and, in the case of a continuing offence, a further penalty of \$137,500 for each day the offence continues, or
  - (b) in the case of a corporation—\$2,200,000 and, in the case of a continuing offence, a further penalty of \$275,000 for each day the offence continues.
- (3) An offence is **committed negligently** if the court that finds the person guilty of the offence is satisfied (to the criminal standard of proof) that the person committed the offence negligently.
- (4) A court cannot impose a penalty for an offence on the basis of subsection (2) unless the process by which the proceedings are commenced specifies that the offence is alleged to have been committed negligently and the factors that were alleged to constitute negligence.

### **281 Negligent—meaning**

For the purposes of this Act, a person is **negligent** if the person's conduct involves such a great falling short of the standard of care that a reasonable person would exercise in the circumstances that the conduct merits criminal punishment.

### **282 Special requirements for prosecution of category 1 offences**

- (1) If conduct can constitute both a category 1 offence and a category 2 offence under the same section of this Act:
  - (a) a person cannot be found guilty of a category 1 offence in respect of that conduct unless the process by which the proceedings are commenced specifies that the offence is alleged to be a category 1 offence and the factors that are alleged to make the offence a category 1 offence, and
  - (b) a person cannot be found guilty of both a category 1 offence and a category 2 offence under the section in respect of the same conduct.
- (2) In proceedings for a category 1 offence, if the court is not satisfied that the offence is proven, but is satisfied that the person committed a category 2 offence under the same section of this Act, the court may find the person guilty of that category 2 offence. The person is liable to punishment accordingly.
- (3) Subsection (2) does not apply if the proceedings for the category 1 offence were commenced more than 2 years after the date on which the offence is alleged to have been committed.

### **283 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily:
  - (a) by the Local Court, or
  - (b) by the Supreme Court in its summary jurisdiction.
- (2) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against this Act or the regulations is \$22,000.
- (3) The maximum term of imprisonment that the Local Court may impose for an offence against this Act or the regulations is 2 years or the maximum term of imprisonment provided by law for the offence, whichever is the shorter term.

### **284 Time limit for proceedings**

- (1) Proceedings for a category 1 offence may be commenced at any time within, but not later than, 3 years after the date on which the offence is alleged to have been committed.
- (2) Proceedings for any offence against this Act that is a category 2 offence, or an offence against the regulations, may be commenced at any time within, but not later than, 2 years after the date on which the offence is alleged to have been committed.
- (3) Proceedings for a category 1 offence may also be commenced at any time within, but not later than, 3 years after the date on which evidence of the alleged offence first came to the attention of any authorised officer.
- (4) If subsection (3) is relied on for the purpose of commencing proceedings for an offence, the process by which the proceedings are commenced must contain particulars of the date on which evidence of the offence first came to the attention of any authorised officer and need not contain particulars of the date on which the offence was committed.
- (5) The date on which evidence first came to the attention of any authorised officer is the date specified in the process by which the proceedings are commenced, unless the contrary is established.

- (6) In this section:

**evidence** of an offence means evidence of any conduct constituting the offence.

### **285 Matters to be considered in imposing penalty**

- (1) In imposing a penalty on a person for an offence against this Act or the regulations, the court is to take into consideration the following (so far as they are relevant):

- (a) the extent to which a biosecurity impact was caused or likely to be caused, or a biosecurity risk increased, by the commission of the offence,
  - (b) the extent to which the person could reasonably have foreseen the biosecurity impact or biosecurity risk caused or likely to be caused by the commission of the offence,
  - (c) the reasonably practicable measures that may have been taken to prevent, eliminate or minimise that biosecurity impact or biosecurity risk,
  - (d) the extent to which the person had control over the causes that gave rise to the offence,
  - (e) the person's intentions in committing the offence,
  - (f) whether, in committing the offence, the person was complying with orders from an employer or supervising employee.
- (2) For the purposes of, but without limiting, section 21A of the *Crimes (Sentencing Procedure) Act 1999*, the following aggravating factors are to be taken into account in determining the appropriate sentence for an offence against this Act or the regulations (so far as they are relevant):
- (a) that the conduct was a contravention of an emergency order or a biosecurity direction given in the case of an emergency,
  - (b) that the offence caused or had the potential to cause a significant biosecurity impact.
- (3) The court may take into consideration other matters that it considers relevant.

## **Division 2 Defences and related matters**

### **286 Defence of due diligence—category 1 offences**

It is a defence to a prosecution under this Act in relation to a category 1 offence if the person charged with the offence proves:

- (a) that the commission of the offence was due to causes over which the person had no control, and
- (b) that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

### **287 Lawful excuse**

It is a defence to the prosecution of an offence against this Act or the regulations if the person charged with the offence proves:



- (a) that the conduct of the person was authorised or required by or under this Act, or
- (b) that the conduct of the person was authorised by or under a law of the Commonwealth.

### **288 Things done by or under the direction of authorised officers**

- (1) An authorised officer is not guilty of an offence against this Act or the regulations for anything done in good faith in the exercise of his or her functions as an authorised officer.
- (2) A person is not guilty of an offence against this Act or the regulations for anything done by the person in good faith at the request or under the direction of an authorised officer acting in the exercise of his or her functions as an authorised officer.

### **289 Common carriers**

- (1) A person is not guilty of a category 2 offence against this Act because of a dealing with any biosecurity matter, carrier or potential carrier in the ordinary course of business as a common carrier.
- (2) The regulations may:
  - (a) declare that a person or class of persons is a common carrier for the purposes of this section, and
  - (b) declare that a person or class of persons is not a common carrier for the purposes of this section.
- (3) This section does not apply to the following offences:
  - (a) an obstruction offence,
  - (b) an offence of contravening an individual biosecurity direction,
  - (c) an offence excluded by the regulations.

### **290 Proof of exemptions**

In proceedings for an offence against this Act or the regulations, proof that a person was exempt from a requirement imposed by or under this Act, or was authorised by or under this Act to engage in any conduct, lies on the accused person.

## **Division 3 Court orders in connection with offences**

### **291 Operation of Division**

- (1) **Application to proved offences** This Division applies where a court finds an offence against this Act or the regulations proved.

- (2) **Meaning of proved offences** Without limiting the generality of subsection (1), a court finds an offence proved if:
- (a) the court convicts the offender of the offence, or
  - (b) the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* against the offender in relation to the offence (in which case the order is not a punishment for the purposes of that section).

- (3) **Definitions** In this Division:

**the court** means the court that finds the offence proved.

**the offender** means the person who is found to have committed the offence.

## 292 Orders generally

- (1) One or more orders may be made under this Division against the offender.
- (2) Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.
- (3) Orders may be made under this Division regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

## 293 Orders for restoration and prevention

- (1) The court may order the offender to take such steps as are specified in the order, within such time as is so specified (or any further time that the court, on application, may allow):
  - (a) to prevent, control, mitigate or manage any biosecurity impact caused by the commission of the offence, or
  - (b) to make good any resulting biosecurity impact, or
  - (c) to prevent the continuance or recurrence of the offence.
- (2) A person who fails to comply with an order under this section is guilty of an offence.
- (3) An offence against subsection (2) is a category 2 offence.

## 294 Orders for costs, expenses and compensation at time offence proved

- (1) The court may order the offender to pay to a government agency or person costs and expenses incurred, or compensation for loss or damage suffered, as the case may be, in such amount as is fixed by the order, if it appears to the court that:
  - (a) a government agency has incurred costs and expenses in connection with:
    - (i) the prevention, control, mitigation or management of any biosecurity impact

caused by the commission of the offence, or

(ii) making good any resulting biosecurity impact, or

(b) a person (including a government agency) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing, controlling, mitigating or managing any such loss or damage, or attempting to do so.

(2) The Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the jurisdictional limit of the Local Court under the *Civil Procedure Act 2005*.

### **295 Recovery of costs, expenses and compensation after offence proved**

(1) If, after the court finds the offence proved:

(a) a government agency has incurred costs and expenses in connection with:

(i) the prevention, control, mitigation or management of any biosecurity impact caused by the commission of the offence, or

(ii) making good any resulting biosecurity impact, or

(b) a person (including a government agency) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing, controlling, mitigating or managing any such loss or damage, or attempting to do so,

the government agency or person may recover from the offender the costs and expenses incurred or the amount of the loss or damage in any court of competent jurisdiction.

(2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

### **296 Orders regarding costs and expenses of investigation**

(1) The court may, if it appears to the court that a government agency has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the government agency the costs and expenses so incurred in such amount as is fixed by the order.

(2) In this section:

**costs and expenses**, in relation to the investigation of an offence, means the costs and expenses incurred:

(a) in taking any sample or conducting any inspection, test, measurement or analysis

during the investigation of the offence, or

- (b) in transporting, storing or disposing of evidence during the investigation of the offence.

### **297 Orders regarding monetary benefits**

- (1) The court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.
- (2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.
- (3) The Local Court is not authorised to make an order under this section.
- (4) In this section:

***monetary benefits*** means monetary, financial or economic benefits.

### **298 Prohibition orders**

- (1) The court may do any one or more of the following:
  - (a) order the offender not to deal with any specified biosecurity matter or not to engage in any specified dealing with specified biosecurity matter,
  - (b) cancel, suspend or vary any biosecurity registration, permit, accreditation as a biosecurity certifier, appointment as a biosecurity auditor or approval as an accreditation authority held by the offender under this Act,
  - (c) extend any biosecurity undertaking given by the offender,
  - (d) order the offender not to apply for biosecurity registration, a permit, accreditation as a biosecurity certifier, appointment as a biosecurity auditor or approval as an accreditation authority.
- (2) The court may, in an order under this section, fix a period during which the order applies and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (3) A person who fails to comply with an order made under subsection (1) (a) or (d) is guilty of an offence.
- (4) An offence against subsection (3) is a category 2 offence.
- (5) An offence against this section is an executive liability offence.

- (6) A person who is guilty of an offence against this section because the person contravenes a requirement of an order made under subsection (1) (a) or (d):
- (a) continues, until the requirement is complied with and despite the fact that any specified period or time for compliance has expired or passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.

### **299 Forfeiture**

- (1) The court may order forfeiture to the Secretary of any biosecurity matter or other thing to which the offence relates.
- (2) In any such case, the forfeiture may extend to the whole of the biosecurity matter or other thing or to any similar things belonging to the offender or in the offender's possession at the time of committing the offence.
- (3) When an order is made by the court declaring any biosecurity matter or other thing to be forfeited to the Secretary, the biosecurity matter or other thing is forfeited to the Secretary and becomes the property of the Secretary.
- (4) The Secretary may deal with the biosecurity matter or other thing in any way the Secretary considers appropriate.
- (5) Without limiting subsection (4), the Secretary may destroy, sell or dispose of the biosecurity matter or other thing or authorise its destruction, sale or disposal.
- (6) To avoid doubt, a forfeiture order is not a monetary penalty for the purposes of any provision of this Act that provides for the maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence under this Act or the regulations.

### **300 Forfeiture of boats and motor vehicles**

- (1) The court may order forfeiture to the Secretary of a boat or motor vehicle that has been seized under this Act in connection with the offence.
- (2) The Local Court must not order any such forfeiture if it is satisfied that the value of the boat or motor vehicle exceeds the jurisdictional limit of the Local Court sitting in its General Division within the meaning of the [Local Court Act 2007](#).
- (3) When an order is made by the court declaring any boat or motor vehicle to be forfeited to the Secretary, the boat or motor vehicle is forfeited to the Secretary and becomes the property of the Secretary.
- (4) The Secretary may deal with the boat or motor vehicle in any way the Secretary considers appropriate.

- (5) Without limiting subsection (4), the Secretary may destroy, sell or dispose of the boat or motor vehicle or authorise its destruction, sale or disposal.
- (6) To avoid doubt, a forfeiture order is not a monetary penalty for the purposes of any provision of this Act that provides for the maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence under this Act or the regulations.

### **301 Additional orders**

- (1) The court may do any one or more of the following:
  - (a) order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its biosecurity impact and other consequences and any other orders made against the person,
  - (b) order the offender to carry out, or contribute a specified amount to the cost of carrying out, a specified project that will promote the objects of this Act,
  - (c) order the offender to attend, or to cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court.
- (2) The Local Court is not authorised to make an order referred to in subsection (1) (b) or (c).
- (3) The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (4) If the offender fails to comply with an order under subsection (1) (a), the prosecutor or a person authorised by the prosecutor may take action to carry out the order.
- (5) The reasonable cost of taking action referred to in subsection (4) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.
- (6) A person who fails to comply with an order made under this section is guilty of an offence.
- (7) An offence against subsection (6) is a category 2 offence.

### **302 Appeals against orders**

- (1) An order made by the Supreme Court under this Division is a sentence for the purposes of the *Criminal Appeal Act 1912*.
- (2) An order made by the Local Court under this Division is a sentence for the purposes of the *Crimes (Appeal and Review) Act 2001*.

## **Division 4 Penalty notices**

### **303 Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

### **304 Restriction on power to issue penalty notices**

- (1) An authorised officer cannot exercise a power to serve penalty notices under this Division unless the authorised officer is:
  - (a) a government officer, or

(b) a person, or a person of a class, specified by the regulations to be eligible to exercise penalty notice powers.

(2) The Minister is not to recommend the making of a regulation under subsection (1) (b) unless the Minister certifies that the regulation is made with the concurrence of the Attorney General.

(3) In this section:

**government officer** means an officer or employee of a government agency.

## Division 5 Ancillary offences

### 305 Liability of directors etc for offences by corporation—special executive liability offences

(1) If a corporation commits a special executive liability offence, a person who is a director of the corporation or who is concerned in the management of the corporation is taken to commit the same offence, unless the person satisfies the court that:

(a) the person was not in a position to influence the conduct of the corporation in relation to the commission of the offence, or

(b) the person, if in such a position, used all due diligence to prevent the commission of the offence by the corporation.

(2) The maximum penalty for the offence is the maximum penalty for the special executive liability offence if committed by an individual.

(3) For the purposes of this section, a **special executive liability offence** is any offence against this Act that is specified by this Act to be a special executive liability offence.

(4) This section does not affect the liability of the corporation for the special executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the special executive liability offence.

### 306 Liability of directors etc for offences by corporation—executive liability offences

(1) A person commits an offence against this section if:

(a) a corporation commits an executive liability offence, and

(b) the person is:

(i) a director of the corporation, or

(ii) an individual who is concerned in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and



(c) the person:

- (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
- (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

- (2) The maximum penalty for the offence is the maximum penalty for the executive liability offence if committed by an individual.
- (3) For the purposes of this section, an **executive liability offence** is any offence against this Act that is specified by this Act to be an executive liability offence.
- (4) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

(a) action towards:

- (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
- (ii) ensuring that the corporation arranges regular professional assessments of its compliance with the provision,

(b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,

(c) action towards ensuring that:

- (i) the plant, equipment and other resources, and

(ii) the structures, work systems and other processes,

relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,

(d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

### **307 Liability for complicity**

A person who:

- (a) aids, abets, counsels or procures another person to commit an offence against this Act or the regulations, or
- (b) incites another person to commit an offence against this Act or the regulations, or
- (c) conspires to commit an offence against this Act or the regulations, or
- (d) attempts to commit an offence against this Act or the regulations,

is guilty of that offence and liable to the penalty prescribed by this Act or the regulations for that offence.

### **308 False or misleading information**

- (1) A person who furnishes information that the person knows to be false or misleading in a material particular:
  - (a) in or in connection with an application under this Act, or
  - (b) in purported compliance with any requirement imposed by or under this Act,is guilty of an offence.
- (2) An offence against this section is a category 2 offence.

## **Part 19 Compensation**

### **309 Compensation payable to owners of animals, plants and property**

- (1) Compensation is payable under this Part:
  - (a) to the owner of any animal, plant or property that has been destroyed in accordance with an emergency order for the purpose of minimising, eradicating or preventing the spread of emergency biosecurity matter, and
  - (b) to the owner of any animal or plant that:
    - (i) has been reported to the Secretary or an authorised officer as being affected

by, or as having died of, emergency biosecurity matter, and

(ii) is certified by the Chief Veterinary Officer (in the case of an animal) or the Chief Plant Protection Officer (in the case of a plant) as having died of emergency biosecurity matter.

(2) However, compensation is payable to the owner of an animal or plant under subsection (1) (b) only if the Chief Veterinary Officer or Chief Plant Protection Officer is satisfied that:

(a) there has been no unreasonable delay in reporting the death of the animal or plant, and

(b) the destruction of the animal or plant would have been required under this Act had the animal or plant not died.

(3) In this Part:

(a) a reference to the Chief Veterinary Officer includes a reference to an authorised officer authorised by the Chief Veterinary Officer to exercise the functions of the Chief Veterinary Officer under this section, and

(b) a reference to the Chief Plant Protection Officer includes a reference to an authorised officer authorised by the Chief Plant Protection Officer to exercise the functions of the Chief Plant Protection Officer under this section.

### **310 Amount of compensation**

(1) The amount of compensation payable is the market value of the animal, plant or property immediately before the relevant time.

(2) In the case of destroyed property that is not an animal or plant, the **relevant time** is the time of destruction.

(3) In the case of an animal or plant that died or was destroyed on account of emergency biosecurity matter, **the relevant time** is:

(a) the time of its destruction, or

(b) the time when the Secretary or an authorised officer was notified that it was affected by, or died of, the emergency biosecurity matter,

whichever time is earlier.

(4) The regulations may provide for the payment of additional compensation in any specified circumstances and the method by which the additional compensation is to be calculated.

(5) Any such regulation may apply to the payment of compensation from a date specified

in the regulation that is earlier than the date of its publication on the NSW legislation website, but only if the Minister, before recommending the making of the regulation, certifies in writing that the regulation does not affect, in a manner prejudicial to any person (other than the State or an authority of the State), a right to compensation under this Part existing before the date of its publication.

- (6) This section does not prevent the Secretary from coming to an agreement with the owner of an animal, plant or property about the amount of compensation payable under this Part (whether or not by reference to market value). In that case, the amount payable is the amount as agreed by the parties.

**Note—**

Additional compensation may be payable under a national biosecurity agreement.

**311 Market value to take no account of emergency biosecurity matter**

- (1) In assessing the market value of an animal, plant or other property for the purposes of this Part, the animal, plant or property concerned is to be regarded as not suffering from or affected by the emergency biosecurity matter concerned.
- (2) The regulations may make further provision for the calculation of the market value of an animal, plant or property.
- (3) Any such regulation may apply to the payment of compensation from a date specified in the regulation that is earlier than the date of its publication on the NSW legislation website, but only if the Minister, before recommending the making of the regulation, certifies in writing that the regulation does not affect, in a manner prejudicial to any person (other than the State or an authority of the State), a right to compensation under this Part existing before the date of its publication.

**312 Other losses excluded**

No compensation is payable under this Part for any loss of profit, loss occasioned by breach of contract, loss of production or any other consequential loss.

**Note—**

Compensation may be payable under a national biosecurity agreement.

**313 Claims**

A claim for compensation under this Part in respect of any animal, plant or property which has been destroyed or any animal or plant that has been certified by the Chief Veterinary Officer or Chief Plant Protection Officer as having died of emergency biosecurity matter:

- (a) must be in an approved form, and
- (b) must be lodged with the Secretary in a manner required by the Secretary within 90 days after the destruction or death or within such further time as the Secretary may in

a particular case allow.

### **314 Recovery of compensation**

Disputed claims for compensation payable under this Part may be recovered by action against the Crown in any court of competent jurisdiction.

### **315 Grounds for refusal or reduction of claim**

- (1) The Secretary may direct that compensation otherwise payable under this Part, or such part of it as the Secretary thinks fit, not be paid if the Secretary is of the opinion that:
  - (a) the owner of the animal, plant or property that has died or been destroyed has committed an offence in this State, the Commonwealth or any State or Territory of the Commonwealth and the conduct constituting the offence has caused or contributed to:
    - (i) the spread of the emergency biosecurity matter, or
    - (ii) the destruction or death of any animal or plant in respect of which a claim for compensation is lodged, or
    - (iii) the destruction of any property in respect of which a claim for compensation is lodged, or
  - (b) the owner of the animal, plant or property that has died or been destroyed is indemnified for the loss caused by the death or destruction of the animal, plant or property concerned under a contract of insurance, or
  - (c) the emergency biosecurity matter was, immediately before the emergency order, being kept at the premises at which the animal, plant or property was located before its death or destruction in contravention of a requirement imposed by or under this Act, or
  - (d) the owner of the animal, plant or property has made a claim for compensation that is false or misleading in a material particular, or
  - (e) the animal, plant or property was required to be destroyed under a control order, biosecurity zone regulation, biosecurity direction or other instrument made under this Act (other than an emergency order).
- (2) The Secretary may direct that compensation otherwise payable under this Part, or such part of it as the Secretary thinks fit, not be paid in any other circumstances prescribed by the regulations.
- (3) The Secretary is to make a direction under this section by order in writing.

### **316 Disputed claims**

If any doubt or dispute arises as to the right or entitlement of a person to receive compensation, the Secretary may cause the amount of the compensation payable, or a part of that amount, to be retained until a person has established a right or entitlement to compensation to the satisfaction of the Secretary.

### **317 False claims**

- (1) Any person who lodges a claim for compensation knowing that it is false or misleading in a material particular, or who practises or is concerned in any fraudulent act or omission for the purpose of obtaining compensation for the person or any other person under this Part, is guilty of an offence.
- (2) An offence against this section is a category 1 offence.

### **318 Power to correct decision**

- (1) If the Secretary decides a claim, and is later satisfied that the decision is incorrect, the Secretary may vary or reverse the decision.
- (2) A decision cannot be varied or reversed under this section more than 5 years after it was made.
- (3) The 5-year time limit on varying or reversing a decision does not apply to a decision that was made on the basis of false or misleading information provided by a claimant or by a person on behalf of the claimant.

### **319 Power to require repayment from claimant**

- (1) The Secretary may direct a claimant for compensation under this Part to repay to the Secretary an amount, or part of an amount, paid by way of compensation under this Part if the Secretary varies or reverses the decision under which the amount was paid.
- (2) The Secretary is to make a direction under this section by order in writing.
- (3) The amount required to be repaid is a recoverable amount that is payable to the Secretary.

**Note—**

See Part 20 for recovery of recoverable amounts.

## **Part 20 Recovery of administrative costs and other amounts**

### **Division 1 Preliminary**

#### **320 Recoverable amounts**

For the purposes of this Act:

- (a) an amount referred to in Column 1 of the Table to this section is a **recoverable amount**, and
- (b) the amount is recoverable from the person specified in relation to the amount concerned in Column 2 of the Table.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Recoverable amount</b>	<b>Person from whom amount is recoverable</b>
Fee for an application for the grant of, renewal of, or a variation to, biosecurity registration	Person who makes the application
Fee for an application for the grant of, renewal of, or a variation to, accreditation as a biosecurity certifier (if the Secretary is the accreditation authority)	Person who makes the application
Fee for an application for the grant of, renewal of, or a variation to, appointment as a biosecurity auditor (if the Secretary is the accreditation authority)	Person who makes the application
Fee for an application for the grant of, renewal of, or a variation to, approval to exercise the functions of an accreditation authority	Person who makes the application
Fee for an application for the grant of, renewal of, or a variation to, a permit (if the relevant decision-maker is the Secretary or an authorised officer who is an officer or employee of a government agency)	Person who makes the application
Any fee that is a recoverable amount under another provision of this Act	The person declared by that provision to be the person from whom the amount is recoverable
Any amount that is declared by the regulations to be a recoverable amount	The person declared by the regulations to be a person from whom that amount is recoverable

**321 Part permits recovery by government agencies only**

The power conferred on the Secretary to make a cost recovery order under this Part may be exercised by a delegate of the Secretary, but only if the delegate is an officer of a government agency.

## **Division 2 Cost recovery orders**

### **322 Cost recovery order**

- (1) The Secretary may, by order in writing served on a person from whom a recoverable amount is recoverable under this Act, require the person to pay that recoverable amount.
- (2) An order under this section is a ***cost recovery order***.
- (3) The Secretary may, by notice in writing served on a person, amend or revoke a cost recovery order.

### **323 Contents of cost recovery order**

A cost recovery order must:

- (a) specify the amount of the recoverable amount that is payable to the Secretary, and
- (b) specify a due date for payment of the recoverable amount (being a date that is not less than 30 days after the date the order is served on the person), and
- (c) advise the person that, if the recoverable amount is not paid in full by the due date for payment, interest may be charged on the unpaid amount, and
- (d) if the decision to issue the cost recovery order can be appealed to the Land and Environment Court under this Part, advise the person of the appeal right.

### **324 Charging of interest**

- (1) The Secretary is entitled to charge interest on any amount, or part of an amount, payable to the Secretary under a cost recovery order that is not paid by the due date for payment specified in the cost recovery order.
- (2) The interest rate charged is not to exceed the interest rate payable for the time being on an unpaid judgment of the Supreme Court or, if another rate is prescribed by the regulations, that rate.
- (3) Interest charged on an unpaid amount is taken to be part of the unpaid amount.

### **325 Change in payment arrangements**

- (1) The Secretary may, on application by a person who is liable to pay a recoverable amount, approve a change in the payment arrangements for a recoverable amount so as:
  - (a) to reduce the amount payable, or
  - (b) to extend the time to pay, or



- (c) to permit the amount payable to be paid by instalments or reduce instalments.
- (2) Approval is to be given by notice in writing served on the applicant.
- (3) Any cost recovery order served on a person before a change in payment arrangements is approved is taken to be amended in accordance with the approval.
- (4) If the Secretary approves the payment of a recoverable amount by instalments and an instalment is not paid by the due date for payment of the instalment, the remaining instalments immediately become payable.

### **Division 3 Recovery of amounts payable under cost recovery orders**

#### **326 Recovery of amount payable under cost recovery order as debt**

- (1) The Secretary may, by proceedings in any court of competent jurisdiction, recover as a debt any unpaid amount under a cost recovery order.
- (2) Proceedings may be taken at any time after the due date for payment specified in the cost recovery order.
- (3) If this Part confers on a person a right to appeal to the Land and Environment Court against the decision to issue a cost recovery order, the Secretary is not to institute proceedings on the cost recovery order unless:
  - (a) the period during which the appeal can be made has elapsed, and
  - (b) if the person has appealed against the decision, the appeal has been determined.

#### **327 Registration of cost recovery order as charge on land**

- (1) The Secretary may apply to the Registrar-General for registration of any unpaid amount under a cost recovery order in relation to any land owned by the person from whom that amount is recoverable (including any land owned jointly with another person).
- (2) An application under this section must define the land to which it relates.
- (3) The Registrar-General must, on application under this section and lodgment of a copy of the relevant cost recovery order, register the order in relation to the land in such manner as the Registrar-General thinks fit.
- (4) There is created by force of this section, on the registration of the order, a charge on the land in relation to which the order is registered to secure the payment to the Secretary of the amount payable under the order.
- (5) Such a charge ceases to have effect in relation to the land:
  - (a) on payment to the Secretary of the amount payable under the cost recovery

order, or

- (b) on registration of the cancellation of the charge, made at the request of the Secretary, or
- (c) on the sale or other disposition of the property with the consent of the Secretary, or
- (d) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,

whichever first occurs.

- (6) Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the order was registered and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every prior mortgage, lease or other interest recorded in the Register kept under that Act.
- (7) Such a charge is not affected by any change of ownership of the land, except as provided by subsection (5).
- (8) If:
  - (a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and
  - (b) the charge is so registered,a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (5), taken to have notice of the charge.
- (9) If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act.
- (10) The Secretary may, at any time, request the Registrar-General to cancel a charge registered under this section.

## **Division 4 General**

### **328 Appeal to Land and Environment Court**

- (1) A person aggrieved by a decision of the Secretary to issue a cost recovery order in respect of a recoverable amount may appeal to the Land and Environment Court against that decision if the recoverable amount is a fee charged by the Secretary for:
  - (a) action taken as a result of a failure by a person to comply with an emergency order, or

- (b) action taken as a result of a failure by a person to comply with a control order, or
- (c) action taken under Division 4 of Part 8, or
- (d) action taken as a result of a failure by a person to comply with an individual biosecurity direction that was given in the case of an emergency.

**Note—**

If the biosecurity direction is not an emergency biosecurity direction, the direction itself can be appealed to the Land and Environment Court. See Part 9.

- (2) An appeal is to be made in accordance with rules of court, but may not be made more than 28 days after the date written notice of the cost recovery order is served on the person.
- (3) Subject to any order made by the Land and Environment Court, an appeal does not operate to stay the decision to which the appeal relates.

**329 Waiver or remission of recoverable amounts**

The Secretary may waive or remit payment of a recoverable amount or any part of a recoverable amount.

**330 Presumed date of service of cost recovery order**

It is to be presumed that a cost recovery order or other notice sent to a person by post under this Part is served on the person 7 days after it is posted, unless the person establishes that it was not served within that 7-day period.

**Part 21 Permits**

**Division 1 Preliminary**

**331 Relevant decision-maker—meaning**

In this Part, a **relevant decision-maker**, in relation to a permit, means a person who has power to grant the permit under this Act.

**332 References to functions exercisable “in the case of an emergency”**

- (1) A provision of this Part that enables a relevant decision-maker to exercise a function **in the case of an emergency** enables the relevant decision-maker to exercise that function if:
  - (a) the relevant decision-maker reasonably believes it is necessary to exercise the function because of an emergency order, or
  - (b) the relevant decision-maker otherwise reasonably believes it is necessary to exercise the function because:

- (i) a biosecurity emergency has occurred, is occurring or is imminent, or
  - (ii) the relevant decision-maker reasonably suspects a biosecurity emergency has occurred, is occurring or is imminent.
- (2) A function under this Part is taken to have been exercised ***in the case of an emergency*** if it is exercised by the relevant decision-maker in the circumstances referred to in subsection (1).

## Division 2 Permits

### 333 Grant of permits

- (1) Permits may be granted under this Act.
- (2) A permit authorises conduct that, but for the permit, would or might contravene a requirement imposed by or under this Act.

### 334 Relationship between Part and [Stock Medicines Act 1989](#)

- (1) A permit under this Part may also be granted to authorise conduct that, but for the permit, would or might contravene a requirement imposed by or under the [Stock Medicines Act 1989](#).
- (2) Accordingly, a reference in this Part to this Act or the regulations includes a reference to the [Stock Medicines Act 1989](#) and the regulations under that Act.

### 335 Types of permit

- (1) The following types of permit may be granted:
  - (a) an ***individual permit***, that is, a permit granted to a specified person,
  - (b) a ***group permit***, that is, a permit granted to a specified class of persons.
- (2) A reference in this Act to a permit holder includes any person who is a member of the class of persons authorised to engage in conduct by a group permit.
- (3) A requirement under this Act that the grant or renewal of a permit, or the variation, suspension or cancellation of a permit, be notified to the applicant or to a permit holder is taken to have been satisfied, in relation to a group permit, if the grant, renewal, variation, suspension or cancellation is notified by publication on the website of the Department.

### 336 Who has power to grant permit

- (1) The Secretary has power to grant a permit.
- (2) An authorised officer also has power to grant a permit, unless it is an emergency permit or a prohibited matter permit.

- (3) A permit may be granted or renewed on application or on the initiative of the Secretary or authorised officer.

### **337 Emergency permit**

- (1) Emergency permits can be granted only by the Secretary.
- (2) An **emergency permit** is a permit that authorises conduct that, but for the permit, would or might contravene an emergency order, or a biosecurity direction given in the case of an emergency, and that is expressed to apply to the emergency concerned.

### **338 Prohibited matter permit**

- (1) Prohibited matter permits can be granted only by the Secretary.
- (2) A **prohibited matter permit** is a permit that authorises dealing with biosecurity matter that is prohibited matter throughout the State or in a part of the State.

### **339 Effect of permit**

- (1) A person is not guilty of an offence against this Act or the regulations under this Act if the person was authorised to engage in the conduct alleged to constitute the offence concerned by a permit in force under this Act.
- (2) A permit does not authorise any conduct in contravention of an emergency order, or a biosecurity direction given in the case of an emergency, unless:
  - (a) the permit is an emergency permit, and
  - (b) the permit is expressed to apply in relation to the emergency concerned.

### **340 Contravention of permit**

- (1) A person who contravenes a condition of an individual permit is guilty of an offence.
- (2) A person who engages in any dealing or other conduct under the purported authority of a group permit and who contravenes a condition of the permit is guilty of an offence.
- (3) An offence against subsection (1) or (2) is a category 1 offence if the contravention is intentional or reckless.
- (4) In any other case, the offence is a category 2 offence.
- (5) A category 1 offence against this section is an executive liability offence.
- (6) A person who is guilty of a category 1 offence or category 2 offence against this section because the person contravenes a requirement of a condition of a permit to do or refrain from doing something:

- (a) continues, until the requirement is complied with and despite the fact that any specified period or time for compliance has expired or passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence (of the same category) for each day the contravention continues.
- (7) Subsection (6) does not apply to the extent that a requirement of a condition is revoked.

### **Division 3 Application for permit**

#### **341 Application for permit**

- (1) A person may apply to a relevant decision-maker for a permit under this Act.
- (2) An application must:
  - (a) be made in an approved form or approved manner, and
  - (b) include or be accompanied by any information or evidence reasonably required by the relevant decision-maker to assess the application.
- (3) The regulations may provide for a fee to be paid for an application for a permit.
- (4) A relevant decision-maker may require the fee to accompany the application.

#### **342 Grant or refusal of permit**

- (1) A relevant decision-maker may, on application or on the relevant decision-maker's own initiative, grant or refuse a permit.
- (2) A relevant decision-maker may refuse a permit:
  - (a) if an application for the permit does not comply with any requirement imposed by or under this Act, or
  - (b) if the relevant decision-maker is of the opinion that the applicant is not a suitable person to engage in the conduct to be authorised by the permit, or
  - (c) in the case of an emergency, or
  - (d) on any other grounds prescribed by the regulations, or
  - (e) for any other reason that the relevant decision-maker considers to be a good reason for refusing the application.
- (3) A decision about the suitability of a person to be issued with a permit may be made having regard to any of the following:

- (a) the fact that the applicant has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) an accreditation audit,
  - (c) any other matter prescribed by the regulations,
  - (d) any other circumstances that the relevant decision-maker considers relevant.
- (4) The relevant decision-maker is to give the applicant written or oral notice of a decision to grant or refuse a permit.
- (5) If notice of the decision is given orally, the relevant decision-maker is to give the applicant written confirmation of the decision as soon as practicable after it is made.
- (6) A relevant decision-maker who fails to give an applicant for a permit notice of a decision to grant or refuse the permit within the period prescribed by the regulations is taken to have refused the permit.

### **343 Duration of permit**

- (1) A permit remains in force for a period (not exceeding 5 years) specified by the relevant decision-maker in the notice by which the permit is granted or renewed, unless sooner cancelled.
- (2) A permit has no effect during any period in which it is suspended.

### **344 Variation of permit**

- (1) A relevant decision-maker may, at any time, vary a permit by notice in writing to a permit holder (including any conditions of a permit imposed by a relevant decision-maker).
- (2) A variation includes the imposition of new conditions on a permit, the substitution of a condition, or the omission or amendment of a condition.
- (3) The regulations may make further provision for the variation of permits, including:
- (a) applications for variation, and
  - (b) fees for applications for variation.

## **Division 4 Renewal of permit**

### **345 Application for renewal of permit**

- (1) A permit holder may apply to a relevant decision-maker for renewal of a permit.
- (2) An application must:

- (a) be made in an approved form or approved manner, and
  - (b) include or be accompanied by any information or evidence required by the relevant decision-maker to assess the application.
- (3) The regulations may provide for a fee to be paid for an application for renewal of a permit.
- (4) A relevant decision-maker may require the fee to accompany the application.
- (5) If an application for renewal of a permit is duly made to a relevant decision-maker before the expiry of the permit, the permit is taken to continue in force until the relevant decision-maker notifies the applicant of a decision to grant or refuse the application.

### **346 Grant or refusal of renewal**

- (1) A relevant decision-maker may, on application or on the decision-maker's own initiative, renew or refuse to renew a permit.
- (2) A relevant decision-maker may refuse to renew a permit:
- (a) if an application for renewal of the permit does not comply with any requirement imposed by or under this Act, or
  - (b) if the relevant decision-maker is of the opinion that the applicant is not a suitable person to engage in the conduct to be authorised by the permit, or
  - (c) in the case of an emergency, or
  - (d) on any other grounds prescribed by the regulations, or
  - (e) for any other reason that the relevant decision-maker considers to be a good reason for refusing the application.
- (3) A decision about the suitability of a person to engage in the conduct to be authorised by the permit may be made having regard to any of the following:
- (a) the fact that the applicant has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) a biosecurity audit in relation to the permit holder,
  - (c) any other matter prescribed by the regulations,
  - (d) any other circumstances that the relevant decision-maker considers relevant.
- (4) The relevant decision-maker is to give the applicant written or oral notice of a decision to renew or refuse to renew a permit.



- (5) If notice of the decision is given orally, the relevant decision-maker is to give the applicant written confirmation of the decision as soon as practicable after it is made.
- (6) A relevant decision-maker who fails to give an applicant for renewal of a permit notice of a decision to renew or refuse to renew the permit within the period prescribed by the regulations is taken to have refused the renewal.

## **Division 5 Conditions of permit**

### **347 Conditions of permit**

- (1) A permit is subject to the following conditions:
  - (a) any conditions prescribed by the regulations,
  - (b) any conditions imposed by the relevant decision-maker.
- (2) A relevant decision-maker may impose conditions on a permit:
  - (a) at the time of the grant or renewal of the permit, or
  - (b) at any other time by variation to the permit.
- (3) A provision of this Part that authorises a type of condition to be imposed on a permit does not prevent other types of conditions being imposed or limit the matters that can be provided for by conditions, except where otherwise expressly provided for by this Part.
- (4) In this Division:

***permit holder*** includes a former permit holder.

### **348 Conditions for insurance cover**

The conditions of a permit may require the permit holder to take out and maintain a policy of insurance that indemnifies the permit holder against any liability to which the permit holder may become subject as a result of conduct engaged in under, or purportedly under, the permit.

### **349 Conditions for biosecurity audits**

The conditions of a permit may require the permit holder to co-operate with, or arrange for, mandatory biosecurity audits.

### **350 Conditions requiring financial assurances**

- (1) The conditions of a permit may require the permit holder to provide a financial assurance. The relevant decision-maker may require any such financial assurance to be provided before the relevant decision-maker grants, renews, varies, suspends or cancels a permit.

- (2) The purpose of a condition requiring the provision of a financial assurance is to secure or guarantee funding for or towards the doing of anything required as a result of any of the following events (each of which is a **secured event**):
- (a) the permit holder contravening another condition of the permit,
  - (b) the permit holder placing any biosecurity matter that the permit authorises the permit holder to deal with in the care of the Secretary,
  - (c) the permit holder ceasing to be authorised to engage in the conduct authorised by the permit,
  - (d) the permit holder becoming unable, because of illness, financial circumstances or otherwise, to continue to engage in the conduct authorised by the permit.
- (3) A financial assurance is not to operate as a mere penalty for a contravention of this Act, the regulations or the conditions of a permit.
- (4) A financial assurance may be in one or more of the following forms:
- (a) a bank guarantee,
  - (b) a bond,
  - (c) a form specified by the regulations,
  - (d) another form of security that has been approved by the Secretary and is specified in the condition.
- (5) The regulations and, subject to the regulations, the conditions of a permit, may make provision for or with respect to financial assurances, including the following:
- (a) the calculation of the amount of financial assurances that can be required,
  - (b) the circumstances in which financial assurances may be claimed or realised, and the procedure for claiming or realising financial assurances,
  - (c) the actions that can be taken following a secured event, including provisions that:
    - (i) specify the circumstances in which those actions can be taken by or on behalf of the Secretary, and
    - (ii) authorise the Secretary, or a person acting on behalf of the Secretary, to enter land to carry out those actions,
  - (d) the provision of information in respect of the actions,
  - (e) the audit of the actions,
  - (f) the administration of financial assurances,

- (g) the release of financial assurances.
- (6) The Land and Environment Court has jurisdiction to determine disputes about calling on or using a financial assurance.
- (7) A financial assurance may be called on and used, despite and without affecting:
  - (a) any liability of the permit holder for any penalty for an offence for a contravention to which the assurance relates, and
  - (b) any other action that might be taken or is required to be taken in relation to any contravention or other circumstances to which the assurance relates.

### **351 Conditions to take effect later**

- (1) The conditions of a permit may provide that an authorisation conferred by the permit does not take effect until the end of a specified period or on the happening of a particular event or on the occurrence of a specified state of affairs.
- (2) Without limiting the generality of the above, the conditions may provide that an authorisation or variation will not take effect until a financial assurance is provided in accordance with the condition.

## **Division 6 Suspension or cancellation of permit**

### **352 General grounds for suspension or cancellation of permit**

- (1) Each of the following constitutes grounds for suspending or cancelling a permit:
  - (a) a relevant decision-maker is of the opinion that the permit holder has contravened a requirement imposed by or under this Act,
  - (b) a relevant decision-maker is of the opinion that the permit holder is not a suitable person to engage in the conduct authorised by the permit,
  - (c) a relevant decision-maker receives information about the permit holder and the relevant decision-maker is of the opinion that, had the information been received at the time when the application for grant or renewal of the permit was made, the relevant decision-maker would have refused the application,
  - (d) any other grounds prescribed by the regulations.
- (2) A decision about the suitability of the person for a permit may be made having regard to any of the following:
  - (a) the fact that the permit holder has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) a biosecurity audit in relation to the permit holder,

- (c) any matter prescribed by the regulations,
- (d) any other circumstances that the relevant decision-maker considers relevant.

(3) In this Division:

**permit holder** includes a former permit holder.

### **353 Additional grounds for suspension or cancellation of permit—emergency**

- (1) A relevant decision-maker may also suspend or cancel a permit in the case of an emergency (in which case, the emergency is the grounds for the suspension or cancellation).
- (2) This section does not apply to an emergency permit that expressly authorises conduct in relation to the emergency concerned.

#### **Note—**

In any case, a permit does not authorise conduct that contravenes an emergency order, unless it is an emergency permit.

### **354 Suspension of permit**

- (1) A relevant decision-maker may, by notice to a permit holder, suspend a permit if the relevant decision-maker is satisfied that there are grounds for the suspension.
- (2) Notice of the suspension must specify:
  - (a) the date or time from which suspension takes effect, and
  - (b) the period of suspension, and
  - (c) the grounds for the suspension.
- (3) Notice of a suspension is to be given in writing but, in the case of an emergency, may be given orally by the relevant decision-maker.
- (4) If notice is given orally, the relevant decision-maker is to give the permit holder written confirmation of the suspension as soon as practicable.

### **355 Permit holder to be given opportunity to make submissions about suspension**

- (1) Before suspending a permit, a relevant decision-maker must:
  - (a) give notice in writing to the permit holder of the relevant decision-maker's intention to suspend the permit and the proposed grounds for doing so, and
  - (b) invite the permit holder to make a submission to the relevant decision-maker about the proposed suspension, and

- (c) take into account any submission made to the relevant decision-maker by the permit holder before the deadline for the making of a submission.
- (2) The relevant decision-maker is to specify a deadline for the making of a submission to the relevant decision-maker about the proposed suspension that is at least 30 days after the notice is given to the permit holder.
- (3) The relevant decision-maker is not required to give notice under this section of a proposed suspension:
  - (a) if the permit is a group permit, or
  - (b) if the relevant decision-maker is of the opinion that the suspension is required urgently because of the biosecurity impact of the conduct authorised by the permit, or
  - (c) in the case of an emergency.
- (4) However, if the relevant decision-maker suspends a permit (other than a group permit) without giving prior notice to the permit holder, the relevant decision-maker must:
  - (a) give the permit holder notice in writing of the grounds for the suspension, and
  - (b) invite the permit holder to make a submission to the relevant decision-maker about the suspension by a specified deadline (which is at least 30 days after the notice is given to the permit holder).
- (5) If the permit holder makes a submission to the relevant decision-maker about the suspension before the specified deadline, the relevant decision-maker must:
  - (a) decide whether the suspension should be revoked or continued, having regard to that submission, and
  - (b) give notice in writing of that decision to the permit holder.

### **356 Cancellation of permit**

- (1) A relevant decision-maker may, by notice to a permit holder, cancel the permit of a permit holder if:
  - (a) the relevant decision-maker is satisfied that there are grounds for the cancellation of the permit, or
  - (b) the permit holder applies for cancellation of the permit.
- (2) Notice of the cancellation must specify:
  - (a) the date or time from which cancellation takes effect, and

(b) the grounds for the cancellation.

(3) Notice of a cancellation is to be given in writing but, in the case of an emergency, may be given orally by the relevant decision-maker.

(4) If notice is given orally, the relevant decision-maker is to give the permit holder written confirmation of the cancellation as soon as practicable.

### **357 Permit holder to be given opportunity to make submissions about cancellation**

(1) Before cancelling a permit, a relevant decision-maker must:

(a) give notice in writing to the permit holder of the relevant decision-maker's intention to cancel the permit and the proposed grounds for doing so, and

(b) invite the permit holder to make a submission to the relevant decision-maker about the proposed cancellation, and

(c) take into account any submission made to the relevant decision-maker by the permit holder before the deadline for the making of a submission.

(2) The relevant decision-maker is to specify a deadline for the making of a submission to the relevant decision-maker about the proposed cancellation that is at least 30 days after the notice is given to the permit holder.

(3) The relevant decision-maker is not required to give notice under this section of a proposed cancellation if:

(a) the permit is a group permit, or

(b) the permit is suspended and either:

(i) the permit holder was given an opportunity to make a submission about the suspension before the suspension took effect, or

(ii) the permit holder was given an opportunity to make a submission about the suspension after the suspension took effect, and the period specified by the relevant decision-maker for the making of that submission has ended, or

(c) the permit holder has applied for cancellation.

### **358 Effect of suspension or cancellation on conditions**

(1) A permit may be suspended or cancelled unconditionally or subject to such conditions as the relevant decision-maker imposes.

(2) Those conditions may include (but are not limited to) any conditions to which the permit was subject immediately before it was suspended or cancelled.

(3) A relevant decision-maker may, by notice in writing given to the former permit holder,

attach new conditions to, or vary or revoke any existing conditions of, the suspension or cancellation of the permit.

## **Division 7 Miscellaneous**

### **359 Surrender of permit**

- (1) A permit holder may apply to a relevant decision-maker for a cancellation of a permit.
- (2) An application must:
  - (a) be in an approved form, and
  - (b) be accompanied by the fee for voluntary cancellation of a permit (if any) prescribed by the regulations, and
  - (c) include or be accompanied by any information or evidence required by the relevant decision-maker to assess the application.
- (3) An application for cancellation of a permit is not duly made unless it complies with subsection (2).

### **360 Appeal to Land and Environment Court**

- (1) A person aggrieved by any of the following decisions may appeal to the Land and Environment Court against the decision:
  - (a) a decision of a relevant decision-maker to refuse a permit,
  - (b) a decision of a relevant decision-maker to refuse to renew a permit,
  - (c) a decision of a relevant decision-maker to suspend or cancel a permit,
  - (d) a decision of a relevant decision-maker to refuse to revoke a suspension of a permit following the making of a submission by the former permit holder under this Part, being a suspension of which the former permit holder was not given prior notice,
  - (e) a decision of a relevant decision-maker to impose any condition on a permit, or on the suspension or cancellation of a permit,
  - (f) a decision of a relevant decision-maker to vary a permit.
- (2) An appeal is to be made in accordance with rules of court, but may not be made more than 28 days after the date written notice of the decision is served on the person.
- (3) Subject to any order made by the Land and Environment Court, an appeal does not operate to stay the decision to which the appeal relates.
- (4) No appeal lies against any of the following decisions:

- (a) a decision of a relevant decision-maker to refuse to grant or renew an emergency permit,
- (b) a decision of a relevant decision-maker to refuse to renew a permit, or to suspend or cancel a permit, in the case of an emergency,
- (c) any decision about a group permit.

## **Part 22 Administration**

### **Division 1 Authorised officers**

#### **361 Appointment of authorised officers**

- (1) The Secretary may, by instrument in writing, appoint any person as an authorised officer for the purposes of this Act.
- (2) An appointment may apply to a specified person or to persons of a specified class.
- (3) An appointment may be unconditional, or subject to conditions or limitations.
- (4) An appointment has effect for the period specified in the instrument of appointment or, if no period is specified, until revoked by the Secretary.
- (5) The Secretary may, by instrument in writing, revoke or amend an appointment under this section at any time.
- (6) If an appointment of an authorised officer is made by reference to a particular office, the person appointed ceases to be an authorised officer if he or she ceases to hold that office.

#### **362 Powers subject to instrument of appointment**

- (1) An authorised officer may exercise the functions of an authorised officer under this Act, subject to any conditions or limitations specified in his or her instrument of appointment.
- (2) Nothing in this Act authorises or requires an authorised officer to act in contravention of the conditions or limitations specified in his or her instrument of appointment as an authorised officer.

#### **363 Police officers taken to be authorised officers**

- (1) A police officer is taken to be an authorised officer under this Act and may exercise all of the functions of an authorised officer under this Act.
- (2) Nothing in this Act limits the powers of a police officer under the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) or any other law.



### **364 Identification**

- (1) Every authorised officer, other than a police officer, is to be provided with evidence of his or her authority as an authorised officer.
- (2) In the course of exercising the functions of an authorised officer under this Act, the officer must, if requested to do so by any person affected by the exercise of any such function, produce to the person the officer's evidence of authority, unless the person is a police officer.
- (3) The Secretary may direct any person who ceases to be an authorised officer to return to the Secretary the evidence of his or her authority as an authorised officer.
- (4) A person who fails to comply with a direction under subsection (3) is guilty of an offence.
- (5) An offence against subsection (4) is a category 2 offence.

### **365 Use of assistants**

- (1) An authorised officer exercising a power conferred by or under this Act may exercise the power with the assistance of any other persons the authorised officer considers necessary.
- (2) The person may accompany an authorised officer and take all reasonable steps to assist the authorised officer in the exercise of the authorised officer's functions under this Act.

### **366 Use of dogs**

- (1) An authorised officer may use a dog for the purpose of assisting the authorised officer to detect the presence of, or manage, biosecurity matter.
- (2) An authorised officer who is entitled to enter premises under this Act is entitled to enter those premises in the company of a dog that is used or proposed to be used for that purpose.
- (3) An authorised officer who exercises a function in the company of, or using, a dog is required to keep the dog under control and to take all reasonable precautions to prevent the dog from touching any person who is affected by the exercise of the function.
- (4) Nothing in this section authorises the use of a dog for general drug detection (within the meaning of Division 2 of Part 11 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#)).

### **367 Obstructing authorised officers**

- (1) A person who resists or obstructs an authorised officer in the exercise of the officer's

functions under this Act is guilty of an offence.

- (2) An offence against this section is a category 2 offence.

### **368 Assaulting authorised officers**

- (1) A person who assaults, abuses or threatens an authorised officer, or who encourages another person to do so, is guilty of an offence.
- (2) An offence against this section is a category 1 offence.

### **369 Impersonating authorised officers**

- (1) A person who impersonates an authorised officer is guilty of an offence.
- (2) An offence against this section is a category 2 offence.

## **Division 2 Local control authorities—weeds**

### **370 Local control authority—meaning**

- (1) The council of a local government area is the local control authority for land within that local government area unless the weed control functions for that area have been conferred on a county council under any other Act. If the weed control functions for an area have been conferred on a county council, the county council is the local control authority for that area.
- (2) The Western Lands Commissioner is the local control authority for land within the Western Division that is not within a local government area.
- (3) The Lord Howe Island Board is the local control authority for land within Lord Howe Island.

### **371 Functions of local control authority**

- (1) A local control authority has the following functions, in relation to the land for which it is the local control authority:
- (a) the prevention, elimination, minimisation and management of the biosecurity risk posed or likely to be posed by weeds,
  - (b) to develop, implement, co-ordinate and review weed control programs,
  - (c) to inspect land in connection with its weed control functions,
  - (d) to keep records about the exercise of the local control authority's functions under this Act,
  - (e) to report to the Secretary about the exercise of the local control authority's functions under this Act.

- (2) Nothing in this section limits the functions of the Secretary under this Act in relation to the control of weeds in any area.
- (3) A function of a local control authority under this Act is to be exercised in accordance with any requirements specified in the regulations and any directions (not inconsistent with the regulations) given by the Secretary.

**372 Local authorities to appoint authorised officers to control weeds**

- (1) A local control authority has the same power as the Secretary to appoint authorised officers in relation to land for which it is the local control authority.
- (2) A person appointed by a local control authority as an authorised officer may exercise the functions of an authorised officer:
  - (a) in relation to weeds only, and
  - (b) subject to this Division, only in relation to land for which that local control authority is the local control authority.
- (3) Division 1 applies in relation to the appointment of an authorised officer by a local control authority in the same way as it applies in relation to the appointment of an authorised officer by the Secretary.
- (4) A local control authority has the same functions as the Secretary with respect to:
  - (a) any biosecurity direction given by an authorised officer appointed by the local control authority, or
  - (b) any biosecurity undertaking executed by an authorised officer appointed by the local control authority.
- (5) A reference in this Act to an authorised officer acting on behalf of the Secretary includes a reference to an authorised officer acting on behalf of a local control authority.
- (6) The regulations may make further provision for:
  - (a) the exercise by a local control authority of any functions of the Secretary under this Act, in relation to weeds, and
  - (b) the exercise by an authorised officer appointed by a local control authority of functions under this Act.
- (7) Nothing in this section limits the functions of an authorised officer appointed by the Secretary in relation to the control of weeds in any area.

### **373 Recovery of fees**

- (1) A local control authority may exercise any function of the Secretary under this Act in relation to the recovery of fees charged, or costs or expenses incurred, in connection with the exercise of functions by an authorised officer who is appointed by the local control authority.
- (2) For that purpose:
  - (a) a reference in this Act to the Secretary includes a reference to a local control authority, and
  - (b) a reference in this Act to any costs or expenses incurred by or on behalf of the Secretary includes a reference to costs or expenses incurred by or on behalf of the local control authority.

### **374 Arrangements for joint exercise of functions**

- (1) A local control authority may enter into an arrangement with one or more local control authorities that authorises an authorised officer appointed by any of those local control authorities to exercise functions in relation to land for which any of those local control authorities is a local control authority.
- (2) An authorised officer appointed by a local control authority may, in accordance with any such arrangement, exercise functions under this Act in relation to land for which another local control authority is the local control authority.

### **375 Delegation by local control authority**

- (1) A local control authority may delegate to any officer or employee of the local control authority any function conferred on the local control authority by this Act or the regulations, other than this power of delegation.
- (2) A delegate may subdelegate any function delegated to the delegate by the local control authority if authorised to do so by the local control authority by instrument in writing.
- (3) A delegate cannot subdelegate a function to a person if the local control authority does not have power to delegate that function to the person.
- (4) If a local control authority delegates functions subject to conditions or limitations, any subdelegation by the delegate is taken to be subject to the same conditions and limitations, and any further conditions or limitations imposed by the delegate.

## **Division 3 Other officers**

### **376 Chief Plant Protection Officer**

- (1) The Secretary may, by instrument in writing, appoint an officer employed in the

Department to be Chief Plant Protection Officer, and one or more other officers so employed to be Deputy Chief Plant Protection Officers, for the purposes of this Act.

- (2) A Deputy Chief Plant Protection Officer may exercise the functions of Chief Plant Protection Officer on such terms and in such circumstances as may be specified in the instrument of appointment of the Deputy Chief Plant Protection Officer.

### **377 Chief Veterinary Officer**

- (1) The Secretary may, by instrument in writing, appoint an officer employed in the Department to be Chief Veterinary Officer, and one or more other officers so employed to be Deputy Chief Veterinary Officers, for the purposes of this Act.
- (2) A Deputy Chief Veterinary Officer may exercise the functions of Chief Veterinary Officer on such terms and in such circumstances as may be specified in the instrument of appointment of the Deputy Chief Veterinary Officer.

### **378 Analysts**

- (1) The Secretary may, by instrument in writing, appoint any person as an authorised analyst for the purposes of this Act.
- (2) An appointment may be unconditional, or subject to conditions or limitations.
- (3) An authorised analyst may exercise the following functions, subject to any conditions or limitations specified in his or her instrument of appointment:
  - (a) the functions of an authorised analyst under this Act,
  - (b) the functions of an analyst under the [Stock Medicines Act 1989](#).
- (4) The Secretary may, by instrument in writing, revoke or amend the appointment of a person as an authorised analyst at any time.
- (5) If an appointment of an authorised analyst is made by reference to a particular office, the person appointed ceases to be an authorised analyst if he or she ceases to hold that office.

## **Division 4 General**

### **379 Delegation by Secretary**

- (1) The Secretary may delegate to any person any function conferred on the Secretary by this Act or the regulations, other than this power of delegation.
- (2) The following functions may be delegated only to an officer or employee of a government agency:
  - (a) making emergency orders under this Act,

- (b) making control orders under this Act,
  - (c) granting or renewing emergency permits under this Act,
  - (d) granting or renewing prohibited matter permits under this Act.
- (3) A delegate may subdelegate any function delegated to the delegate by the Secretary, if authorised to do so by the Secretary, by instrument in writing.
- (4) A delegate cannot subdelegate a function to a person if the Secretary does not have power to delegate that function to the person.
- (5) If the Secretary delegates functions subject to conditions or limitations, any subdelegation by the delegate is taken to be subject to the same conditions and limitations, and any further conditions or limitations imposed by the delegate.

### **380 Extraterritorial exercise of functions**

- (1) The Minister may enter into an arrangement with a Minister of another State or a Territory providing for either or both of the following:
- (a) the exercise, in another State or a Territory, by authorised officers or by officers of that State or Territory of functions under this Act or the regulations,
  - (b) the exercise, in this State, by authorised officers or by officers of that State or Territory of functions under a corresponding law.
- (2) The Secretary may enter into an arrangement with the head of an interstate biosecurity agency providing for either or both of the following:
- (a) the exercise, in another State or a Territory, by authorised officers or by officers of that State or Territory of functions under this Act or the regulations,
  - (b) the exercise, in this State, by authorised officers or by officers of that State or Territory of functions under a corresponding law.
- (3) An authorised officer or an officer of another State or a Territory may, in accordance with any such arrangement, exercise functions under this Act in another State or a Territory, but only to the extent that the matters concerned relate to a biosecurity impact or potential biosecurity impact on this State.
- (4) An authorised officer or an officer of another State or a Territory may, in accordance with any such arrangement, exercise functions in this State under a corresponding law of another State or a Territory, but only to the extent that the matters concerned relate to a biosecurity impact or potential biosecurity impact on that State or Territory.
- (5) In this section:

***interstate biosecurity agency*** means a government department or agency of

another State or a Territory responsible for the administration of a corresponding law.

### **381 Access to information by authorised officers**

- (1) Roads and Maritime Services is authorised and required to provide an authorised officer, on request, with the following information, if available, if an authorised officer requires the information in connection with an investigation of a suspected contravention of the requirements imposed by or under this Act:
  - (a) the name and address of the person in whose name a vehicle is registered,
  - (b) details of any licence for a vehicle held by a person,
  - (c) details of any vehicle registered in the name of a person.
- (2) The regulations may authorise and require any other government agency to provide an authorised officer with specified information (including personal information within the meaning of the *Privacy and Personal Information Protection Act 1998*).
- (3) A regulation may not be made under this section except with the concurrence of the Attorney General.

### **382 Waiver and refund of fees and other amounts**

The Secretary may waive, reduce or refund payment of all or part of any fee or other amount payable under this Act or the regulations if the Secretary considers it is appropriate to do so.

## **Part 23 Miscellaneous**

### **383 Protection from liability**

- (1) A matter or thing done or omitted to be done by a protected person does not subject the protected person, the Crown or any government agency to any action, liability, claim or demand if the matter or thing was done or omitted to be done in good faith for the purpose of executing any provision of this Act, the regulations or any instrument made under this Act.
- (2) This section extends to any matter or thing done or omitted to be done by a person who is requested by an authorised officer to provide assistance to that authorised officer in the exercise or purported exercise of any function conferred on the authorised officer, as if the thing were done or omitted to be done by the authorised officer.
- (3) This section extends to any matter or thing done or omitted to be done by an authorised officer who is approved by the Secretary to exercise the functions of a biosecurity certifier or biosecurity auditor in the exercise or purported exercise of any of those functions.

(4) In this section:

**Crown** means the Crown within the meaning of the *Crown Proceedings Act 1988* or an officer, employee or agency of the Crown.

**protected person** means:

- (a) the Minister, or
- (b) the Secretary, or
- (c) an authorised officer, or
- (d) an officer, employee or agent of the Crown or a government agency, or
- (e) the Western Lands Commissioner, or
- (f) any other person of a class prescribed by the regulations.

#### **384 Breach of duty of confidentiality excluded**

A person who, acting in good faith, provides any information to the Secretary, an authorised officer or any other person exercising functions under this Act about biosecurity matter or a carrier does not incur any civil liability because of a breach of a duty of confidentiality in relation to that information.

#### **385 Restraint of contraventions of requirement imposed by or under Act**

- (1) The Secretary may bring proceedings in the Land and Environment Court for an order to restrain a contravention (or a threatened or apprehended contravention) of any requirement imposed by or under this Act.
- (2) If the Court is satisfied that a contravention, or a threatened or apprehended contravention, will occur or is likely to occur, unless restrained by order of the Court, it may make such orders as it thinks fit to restrain the contravention or other conduct of the person by whom the contravention is committed or by whom the threatened or apprehended contravention is likely to be committed.
- (3) Without limiting the powers of the Court under this section, an order under this section may suspend any biosecurity registration or permit.

#### **386 Planning and other requirements in relation to authorised actions**

- (1) Authorised actions may be taken on land despite any requirement for an approval, consent or other authorisation for the work made by the *Environmental Planning and Assessment Act 1979*, the *Native Vegetation Act 2003*, the *Threatened Species Conservation Act 1995*, the *National Parks and Wildlife Act 1974* or any other Act or instrument made under an Act.



- (2) An environmental planning instrument under the *Environmental Planning and Assessment Act 1979* cannot prohibit, require development consent for or otherwise restrict the taking of any authorised action.
- (3) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of any authorised action that is:
  - (a) authorised or required by or under an emergency order, or
  - (b) required by a biosecurity direction that is given in the case of an emergency, or
  - (c) taken by an authorised officer under Division 4 of Part 8 in the case of an emergency.

- (4) In this section:

**authorised action** means:

- (a) any action that is required to discharge a biosecurity duty arising because of the presence or suspected presence of biosecurity matter in a part of the State in which it is prohibited matter, or
- (b) any action authorised, required or taken under:
  - (i) the mandatory measures, or
  - (ii) an emergency order, or
  - (iii) a control order, or
  - (iv) a biosecurity zone regulation, or
  - (v) a biosecurity direction, or
  - (vi) a permit, or
- (c) any action taken by an authorised officer under Division 4 of Part 8.

### **387 Collection, use and disclosure of information**

- (1) The Secretary, an authorised officer, a local control authority and any other person engaged in the administration of this Act may collect and use information (including personal information and health information) for the purpose of exercising their biosecurity risk functions.
- (2) The Secretary, an authorised officer, a local control authority and any other person engaged in the administration of this Act may, for the purpose of exercising a biosecurity risk function, disclose information (including personal information and health information) about a person, without the consent of the person:

- (a) to a public sector agency, or
- (b) to any other person, but only if the disclosure is reasonably necessary for the purpose of exercising a biosecurity risk function.

**Note—**

Public sector agencies are bound by the [Privacy and Personal Information Protection Act 1998](#).

- (3) A public sector agency may disclose to the Secretary, an authorised officer, a local control authority or any other person engaged in the administration of this Act any information (including personal information and health information) about a person that the public sector agency holds, without the consent of the person, if the Secretary, authorised officer, local control authority or other person requests the information and certifies in writing that the information:
  - (a) is required for the purpose of exercising a biosecurity risk function, and
  - (b) the provision of the information is reasonably necessary for the purpose of exercising that biosecurity risk function.
- (4) The Secretary, an authorised officer, a local control authority and any other person engaged in the administration of this Act are not required to comply with section 9 of the [Privacy and Personal Information Protection Act 1998](#) if compliance would detrimentally affect, or prevent, the exercise of their biosecurity risk functions.
- (5) In this section:

**biosecurity risk function** means a function under this Act relating to the prevention, elimination, minimisation or management of biosecurity risks.

**health information** has the same meaning as it has in the [Health Records and Information Privacy Act 2002](#).

**personal information** has the same meaning as it has in the [Privacy and Personal Information Protection Act 1998](#).

**public sector agency** has the same meaning as it has in the [Privacy and Personal Information Protection Act 1998](#).

### **388 Hunting may be authorised**

The holder of a game hunting licence under the [Game and Feral Animal Control Act 2002](#) does not contravene a condition of that licence relating to the manner of hunting a game animal (within the meaning of that Act) if the holder hunts the game animal on land to which an emergency order, control order or biosecurity zone regulation applies and the manner of hunting is authorised by that order or regulation.

### **389 Cruelty to animals not authorised**

This Act or an instrument made under this Act does not authorise the contravention of the *Prevention of Cruelty to Animals Act 1979*.

### **390 Application of *Surveillance Devices Act 2007***

- (1) The *Surveillance Devices Act 2007* does not:
  - (a) prevent the Secretary or an authorised officer from imposing a requirement under this Act that an owner or occupier of premises install or use a device on those premises for the purpose of detecting or monitoring the presence of any biosecurity matter or other thing on those premises, or
  - (b) prevent the owner or occupier from installing or using the device in accordance with that requirement.
- (2) The *Surveillance Devices Act 2007* does not prevent an authorised officer from exercising a function under this Act of installing or using a device on any premises for the purpose of detecting or monitoring the presence of any biosecurity matter or other thing.
- (3) The *Surveillance Devices Act 2007* does not prevent the Secretary or an authorised officer from possessing a record of an activity obtained by use of a device installed or used as referred to in this section.
- (4) However, this section does not authorise:
  - (a) the installation or use of a device for the purpose of detecting or monitoring the presence of a person, or
  - (b) the installation or use of a device for the purpose of overhearing, recording, monitoring or listening to a private conversation, or
  - (c) the possession, publication or communication of a record of a private conversation obtained by the use of a device.
- (5) A record of any conversation obtained by the use of a device under this Act in circumstances that, but for this section, would contravene the *Surveillance Devices Act 2007*, is inadmissible as evidence in any criminal proceedings.
- (6) A record of any image of a person that is obtained by the use of a device under this Act in circumstances that, but for this section, would contravene the *Surveillance Devices Act 2007*, is inadmissible as evidence in any criminal proceedings except with the consent of the person.
- (7) Subsection (5) or (6) does not prevent the admission of any part of a record obtained by use of a device that is not a record of a conversation or image of a person.

- (8) In this section, **private conversation** and **record** have the same meanings as in the [Surveillance Devices Act 2007](#).

### **391 Continuing effect of requirements**

- (1) A requirement imposed by or under this Act that specifies a time by which, or a period within which, the requirement must be complied with continues to have effect until the requirement is complied with even though the time has passed or the period has expired.
- (2) A requirement that does not specify a time by which, or period within which, the requirement must be complied with continues to have effect until the requirement is complied with.
- (3) This section does not apply to the extent that any requirement imposed by or under this Act is revoked.
- (4) Nothing in this section affects the powers of the Secretary with respect to the enforcement of any requirement imposed by or under this Act.

### **392 Service of notices and other documents**

- (1) A notice or other document that is authorised or required by this Act or the regulations to be served on or given to any person may be served or given by:
  - (a) in the case of a natural person:
    - (i) delivering it to the person personally, or
    - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) sending it by electronic transmission to an address or location nominated by the person (in correspondence or otherwise) as an address or location for the giving or service of documents of that kind, or
  - (b) in the case of a body corporate:
    - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
    - (ii) sending it by electronic transmission to an address or location nominated by the body corporate (in correspondence or otherwise) as an address or location for the giving or service of documents of that kind.

- (2) A notice or other document that is authorised or required to be served on or given to the occupier of any particular premises may, if addressed to the occupier of the premises (either by name or as the occupier), be given or served:
- (a) by delivering the document or a true copy of it to some person on those premises who is apparently over the age of 16 years, or
  - (b) if there is no person on those premises who can be given or served with the document, by fixing the document or copy to some conspicuous part of the premises.
- (3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

### **393 Evidentiary certificates**

- (1) A certificate that is issued by the Secretary and that states any of the following matters is admissible in any legal proceedings and is evidence of the matters so stated:
- (a) that an instrument was issued, made or given under this Act, or signed, on a specified day, by a specified person,
  - (b) the terms of any instrument issued, made or given, or purported to be made, issued or given, under this Act, as in force on a specified day or during a specified period,
  - (c) that an instrument issued, made or given under this Act was amended or revoked, the day on which it was amended or revoked, and the terms of any amendment,
  - (d) the terms of any approved form, on a specified day or during a specified period,
  - (e) the terms of any application made to the Secretary under this Act,
  - (f) that a function was delegated under this Act, including the following:
    - (i) the person or persons to whom the function was delegated,
    - (ii) the date of the delegation,
    - (iii) the period during which the delegation had effect,
    - (iv) the terms of the delegation, including any restrictions or limitations on the delegation,
  - (g) that a person who made, gave or issued, or purported to make, give or issue, an instrument under this Act was the holder of a specified office on a specified day or during a specified period,

- (h) that a person was or was not authorised under this Act (including as a delegate) to exercise specified functions under this Act, on a specified day or during a specified period,
- (i) that a person was or was not, on a specified day or during a specified period, a registered entity under this Act,
- (j) that a person was or was not, on a specified day or during a specified period, the holder of a permit under this Act,
- (k) the terms of any permit issued under this Act, including any conditions or restrictions on a permit, as in force on a specified day or during a specified period,
- (l) that a person was, on a specified day or during a specified period:
  - (i) an authorised officer, or
  - (ii) Chief Plant Protection Officer or Deputy Chief Plant Protection Officer, or
  - (iii) Chief Veterinary Officer or Deputy Chief Veterinary Officer, or
  - (iv) an authorised analyst,
- (m) the terms of, and any conditions of or limitations on, the following, as in force on a specified day or during a specified period:
  - (i) a person's appointment as an authorised officer under this Act,
  - (ii) an approval that authorises an authorised officer to exercise the functions of a biosecurity certifier or biosecurity auditor,
- (n) that a person was or was not, on a specified day or during a specified period:
  - (i) a registered entity, or
  - (ii) a biosecurity certifier, or
  - (iii) a biosecurity auditor, or
  - (iv) an accreditation authority,
- (o) the terms of, and any conditions of or limitations on, the following, as in force on a specified day or during a specified period:
  - (i) a person's biosecurity registration,
  - (ii) a person's accreditation as a biosecurity certifier under this Act,
  - (iii) a person's appointment as a biosecurity auditor under this Act,
  - (iv) a person's approval as an accreditation authority,

- (p) the suspension or cancellation of any of the following, on a specified day:
    - (i) biosecurity registration,
    - (ii) accreditation as a biosecurity certifier under this Act,
    - (iii) appointment as a biosecurity auditor under this Act,
    - (iv) approval as an accreditation authority,
  - (q) that a specified authorised officer gave a specified person a written biosecurity direction on a specified day, and the terms of that biosecurity direction,
  - (r) the terms of any biosecurity undertaking executed, the persons who executed the biosecurity undertaking and the date it was executed, and the terms and date of any variation to or withdrawal from that biosecurity undertaking,
  - (s) that a report on a biosecurity audit was received by the Secretary on a particular day, and the particulars of any report so received,
  - (t) that a notice or other information was provided by a person to the Secretary, or any other person authorised by or under this Act to receive the notice or information, on a specified date, and particulars of the notice or information provided,
  - (u) that a person was, on a specified date, directed to engage a biosecurity auditor to carry out a biosecurity audit,
  - (v) that an amount payable under this Act by a specified person has, or has not, been paid.
- (2) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, taken to be such a certificate.

(3) In this section:

**given** includes served.

**instrument** includes a control order, emergency order or biosecurity certificate.

### **394 Evidence of analysts**

- (1) A certificate of an authorised analyst stating the result of an analysis or examination is admissible in evidence in any legal proceedings as evidence of the facts stated in the certificate and the correctness of the result of the analysis or examination.
- (2) A certificate of an authorised analyst certifying that, on receipt of a container containing a sample submitted to the analyst by an authorised officer or any other person, the container was sealed and the seal securing the container was unbroken is

admissible in evidence in any legal proceedings as evidence:

- (a) of the facts stated in the certificate, and
- (b) that the sample was the same sample as the one submitted by the authorised officer or other person, and
- (c) that the sample had not been tampered with after sealing.

(3) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, taken to be such a certificate.

### **395 Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the **state of mind** of a person includes:
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

### **396 Evidence of publication of instruments on website**

- (1) The Secretary is to cause a record to be kept of the publication on the Department's website of any of the following:
  - (a) an emergency order,
  - (b) a control order,
  - (c) a general biosecurity direction.
- (2) The record must include:
  - (a) the date of publication, and
  - (b) the web address of publication, and
  - (c) the wording of the instrument as published.
- (3) In any legal proceedings, a certificate issued by the Secretary and stating that records kept by the Secretary under this section indicate that an instrument referred to in subsection (1) was published on the website of the Department on a particular date is admissible and is evidence of the matters stated in the certificate.
- (4) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, taken to be such a certificate.



### **397 Evidence of part to be evidence of whole**

In any legal proceedings, evidence as to the nature of the whole or part of a sample of a thing:

- (a) taken from a parcel of the thing, or
- (b) taken from a quantity of the thing that was, at the time the sample was so taken, represented as being, or as being part of, a bulk lot of the thing,

in the exercise of a function conferred by this Act is evidence as to the nature of the whole of the contents of the parcel or bulk lot, as the case may be.

### **398 Description of land in notices and other instruments**

Land is sufficiently described in a notice or other instrument given or made under this Act if the description of the land allows no reasonable doubt as to the land to which the notice or instrument relates.

### **399 Reasonable suspicion—carriers**

- (1) For the purposes of this Act, an animal, plant, place or thing may reasonably be suspected of being a carrier of biosecurity matter if there is reason to think that biosecurity matter is present in or on the animal, plant, place or thing.
- (2) It is not necessary, in order to form a reasonable suspicion that an animal or plant is a carrier of biosecurity matter, for the animal or plant to be exhibiting signs of infection or contamination or other signs that it is a carrier.
- (3) An animal, plant or thing may, for the purposes of this Act, be reasonably suspected of being a carrier of biosecurity matter if there is reason to think it is or has been in or with a flock, group or herd, or is travelling or has travelled on any land or place, or in a vehicle, in which there is or was an animal, plant or thing that was a carrier of the biosecurity matter.
- (4) An animal or plant may, for the purposes of this Act, be reasonably suspected of being a carrier of biosecurity matter if there is reason to think that there is present in or on the place where the animal or plant is kept a vehicle or thing that has been in or on another place when the biosecurity matter or a carrier of the biosecurity matter was present in or on that other place.
- (5) A place or thing may, for the purposes of this Act, be reasonably suspected of being a carrier of biosecurity matter if there is reason to think that there is present in or on the place or thing a vehicle or thing that has been in or on another place when the biosecurity matter or a carrier of the biosecurity matter was present in or on that other place.
- (6) This section does not prejudice any other evidence or consideration by which the

Secretary, an authorised officer or any other person might reasonably suspect that an animal, plant, place or thing is a carrier of biosecurity matter.

#### **400 Reasonable suspicion of infection**

- (1) For the purposes of this Act, an animal, plant, place or thing may reasonably be suspected of being infected with a disease if there is reason to think that a disease agent is present in or on the animal, plant, place or thing.
- (2) It is not necessary, in order to form a reasonable suspicion that an animal, plant, place or thing is infected with a disease, for the animal, plant, place or thing to be exhibiting signs of the disease.
- (3) An animal, plant or thing may, for the purposes of this Act, be reasonably suspected of being infected with a disease if it is or has been in or with a flock, group or herd, or is travelling or has travelled on any land or place, or in a vehicle, in which there was or is an animal, plant or thing infected with a disease.
- (4) This section does not prejudice any other evidence or consideration by which the Secretary, an authorised officer or other person might reasonably suspect that an animal, plant, place or thing is infected with a disease.

#### **401 Reasonable suspicion of infestation**

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

#### **402 Exemptions**

- (1) The Secretary may, by order published in the Gazette, exempt any specified person or class of persons, specified occupier or class of occupiers or any specified biosecurity matter, carrier, premises or thing from the operation of all or any specified provisions of this Act.
- (2) An exemption may be unconditional or subject to conditions.

#### **403 Application of [Personal Property Securities Act 2009](#) (Cth)**

Each of the following is declared not to be personal property for the purposes of the [Personal Property Securities Act 2009](#) of the Commonwealth:

- (a) biosecurity registration,
- (b) a permit,
- (c) accreditation as a biosecurity certifier,
- (d) appointment as a biosecurity auditor,
- (e) approval to exercise the functions of an accreditation authority.

**Note—**

The *Personal Property Securities Act 2009* of the Commonwealth does not apply in relation to a right, licence or authority granted by or under a law of a State that is declared by the law not to be personal property for the purposes of that Act.

#### **404 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of the above, the regulations may make provision for or with respect to any matter described in Schedule 5.
- (3) A regulation may apply, adopt or incorporate any publication as in force at a particular time or as in force from time to time.
- (4) A regulation may create an offence punishable by a penalty not exceeding \$11,000.

#### **405 Repeals**

The Acts specified in Schedule 6, and any regulations under those Acts, are repealed.

#### **406 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the day appointed by proclamation for the commencement of this Act or, if more than one day is appointed, the first of those days.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 Special provisions relating to weeds

### 1 Application of Schedule

This Schedule applies for the purposes of, and without limiting, Part 3.

### 2 Definitions

In this Schedule:

**channel land** means land in an irrigation area designed and used or proposed to be used by the Water Administration Ministerial Corporation or an irrigation corporation (within the meaning of Part 1 of Chapter 4 of the [Water Management Act 2000](#)) for the purpose of water supply or drainage channels.

**irrigation area** means:

- (a) land within an area within the meaning of the [Hay Irrigation Act 1902](#) or the [Wentworth Irrigation Act 1890](#), or
- (b) land within the area of operations of an irrigation corporation within the meaning of Part 1 of Chapter 4 of the [Water Management Act 2000](#).

**public authority** means:

- (a) a public or local authority constituted by or under an Act (other than a local control authority), or
- (b) a Public Service agency (within the meaning of the [Government Sector Employment Act 2013](#)), or
- (c) a statutory body representing the Crown, or
- (d) the Forestry Corporation, or
- (e) the trustees of land reserved or dedicated for any public purpose.

**public channel land** means channel land that is owned by the Crown or a public authority (other than land occupied by a person other than a public authority).

**public reserve** has the same meaning as it has in the [Local Government Act 1993](#).

**road** does not include a highway, freeway, tollway or State work within the meaning of the [Roads Act 1993](#).

### 3 Duty to control weeds on roads

- (1) A biosecurity duty imposed on an occupier of land under Part 3 to prevent, eliminate or minimise any biosecurity risk posed or likely to be posed by weeds on that land extends to weeds on:

- (a) any part of a road that intersects the land, not being part of the road that is fenced on both sides, and
  - (b) the half of the width of any part of a road that forms part of the boundary of the land, not being a part of the road that is fenced on both sides, and
  - (c) any part of a road that forms part of the boundary of the land, being a part of the road that is not fenced on the side forming part of the boundary but is fenced on the other side.
- (2) An occupier of land is required to comply with any mandatory measures relating to weeds on land referred to in subclause (1) as if the occupier were dealing with those weeds.
- (3) An occupier may enter a road at all reasonable times for the purpose of discharging the occupier's biosecurity duty in relation to weeds or complying with a mandatory measure or biosecurity direction given in connection with weeds.
- (4) This clause does not apply to a road referred to in clause 5.

#### **4 Duty to control aquatic weeds**

- (1) If the land of an occupier is situated on opposite sides of a watercourse, river or inland water (tidal or non-tidal), a biosecurity duty imposed on an occupier of the land under Part 3 to prevent, eliminate or minimise any biosecurity risk posed or likely to be posed by weeds on that land extends to weeds located on the land between those sides.
- (2) If a watercourse, river or inland water (tidal or non-tidal) is situated between land occupied by different occupiers, a biosecurity duty imposed on each occupier under Part 3 to prevent, eliminate or minimise any biosecurity risk posed or likely to be posed by weeds extends to weeds located on the land between the boundary of the land and any fence erected to define the boundary of the land or, if there is no such fence, to the middle line of the watercourse, river or inland water.
- (3) An occupier of land is required to comply with any mandatory measures relating to weeds on land referred to in subclause (1) or (2) as if the occupier were dealing with those weeds.
- (4) An occupier may enter a watercourse, river or inland water for the purpose of discharging the occupier's biosecurity duty in relation to weeds or complying with a mandatory measure or biosecurity direction given in connection with weeds.
- (5) A local control authority may, by order, exempt the whole or part of a watercourse, river or inland water in the area for which it is local control authority from the operation of subclause (1) or (2), or both, if, in its opinion, the depth or width of the watercourse, river or inland water is such that, in the circumstances, it would be

unreasonable to apply the provisions concerned.

- (6) A local control authority is to be responsible for weeds located on a watercourse, river or inland water in the area for which it is local control authority if subclause (1) or (2), or both, do not apply to the prevention, elimination or minimisation of the biosecurity risk posed or likely to be posed by those weeds because of an exemption granted by a local control authority or the Secretary under this Act.
- (7) This clause does not apply to land referred to in clause 5.

## **5 Duty to control weeds in irrigation areas**

- (1) A biosecurity duty imposed on an occupier of land under Part 3 to prevent, eliminate or minimise any biosecurity risk posed or likely to be posed by weeds on that land extends, if the land is within an irrigation area, to weeds on:
- (a) any part of a public road, a public reserve or public channel land that intersects the occupier's land, or forms part of its boundary and is within 20 metres from the boundary of the land, and
  - (b) any part of a watercourse, river or inland water (tidal or non-tidal) situated on the land.
- (2) If a public road, a public reserve or public channel land less than 40 metres wide is situated between land within an irrigation area occupied by different occupiers, a biosecurity duty imposed on each occupier under Part 3 to prevent, eliminate or minimise any biosecurity risk posed or likely to be posed by weeds extends to weeds located on that part of the road, reserve or channel land that is located between the boundary of the occupier's land and the middle line of the road, reserve or channel land.
- (3) An occupier of land is required to comply with any mandatory measures relating to weeds on land referred to in subclause (1) or (2) as if the occupier were dealing with those weeds.
- (4) An occupier may enter a public road, a public reserve or public channel land at all reasonable times for the purpose of discharging the occupier's biosecurity duty in relation to weeds or complying with a mandatory measure or biosecurity direction given in connection with weeds.

## **Schedule 2 Prohibited matter**

(Section 27)

### **Part 1 Prohibited matter—throughout the State**

<b>Column 1</b>	<b>Column 2</b>
<b>Scientific name</b>	<b>Common name</b>

Pests and Diseases of Plants

<i>Achatina fulica</i>	Giant African snail
<i>Acleris comariana</i>	Strawberry tortrix
<i>Adoxophyes orana</i>	Summer fruit tortrix
<i>Agrilus planipennis</i>	Emerald ash borer
<i>Aleurodicus dispersus</i>	Spiraling whitefly
<i>Aleurolobus barodensis</i>	Sugarcane whitefly
<i>Amyelois transitella</i>	Navel orangeworm
<i>Anarsia lineatella</i>	Peach twig borer
<i>Anisogramma anomala</i>	Hazelnut blight
<i>Anthonomus bisignifer</i>	Strawberry bud weevil
<i>Anthonomus grandis</i>	Cotton boll weevil
<i>Apiosporina morbosa</i>	Black knot
<i>Bactericera cockerelli</i>	Tomato potato psyllid
<i>Bactrocera cucurbitae</i>	Melon fruit fly
<i>Bactrocera dorsalis</i>	Oriental fruit fly
Banana bract mosaic virus	Banana bract mosaic
Blood disease bacterium	Blood disease
<i>Botrytis squamosa</i>	Botrytis leaf blight
<i>Burkholderia glumae</i>	Panicle blight
<i>Bursaphelenchus</i> species complex	Pinewood nematode species complex
<i>Candidatus Liberibacter asiaticus</i>	Huanglongbing /HLB/Citrus greening
<i>Candidatus Liberibacter solanacearum</i>	Zebra chip
<i>Candidatus Phytoplasma prunorum</i>	European stone fruit yellows
<i>Ceratitis capitata</i>	Mediterranean fruit fly
Cherry leaf roll virus	Blackline
<i>Ciborinia camelliae</i>	Camellia petal blight
Citrus leprosis virus	Citrus leprosis
<i>Cladosporium caryigenum</i>	Pecan scab
<i>Clavibacter michiganensis</i> subsp. <i>sepedonicus</i>	Bacterial ring rot
<i>Colletotrichum kahawae</i>	Coffee berry disease

<i>Conotrachelus nenuphar</i>	Plum curculio
<i>Coryphodema tristis</i>	South African cossid
Cotton leaf curl virus	Cotton leaf curl
<i>Cryphonectria parasitica</i>	Chestnut blight
<i>Cryptotermes brevis</i>	West Indian drywood termite
<i>Ctenopseustis obliquana</i>	Brown headed leafroller
<i>Dasineura mali</i>	Apple leaf curling midge
<i>Delia antiqua</i>	Onion fly
<i>Dendroctonus ponderosae</i>	Mountain pine beetle
<i>Diaphorina citri</i>	Asiatic citrus psyllid/Asian citrus psyllid
<i>Diuraphis noxia</i>	Russian wheat aphid
<i>Drosophila suzukii</i>	Spotted winged drosophila
<i>Endocronartium harknessii</i>	Western gall rust
<i>Erwinia amylovora</i>	Fire blight
<i>Erwinia tracheiphila</i>	Bacterial wilt
<i>Fusarium circinatum</i>	Pine pitch canker
<i>Fusarium oxysporum</i> f.sp. <i>cubense</i>	Panama disease tropical race 4
<i>Gibberella fujikuroi</i>	Bakanae
<i>Globodera pallida</i>	Pale potato cyst nematode
<i>Globodera rostochiensis</i>	Golden potato cyst nematode
Grapevine flavescence dorée phytoplasma	Flavescence dorée
<i>Guignardia bidwellii</i>	Black rot
<i>Halyomorpha halys</i>	Brown marmorated stink bug
<i>Hemileia vastatrix</i>	Coffee leaf rust
<i>Heterobostrychus aequalis</i>	Lesser auger beetle
<i>Heterodera carotae</i>	Carrot cyst nematode
<i>Homalodisca vitripennis</i>	Glassy-winged sharp shooter
<i>Ips typographus</i>	European spruce bark beetle
<i>Leptinotarsa decemlineata</i>	Colorado potato beetle
<i>Liriomyza sativae</i>	Vegetable leaf miner
<i>Lissorhoptrus oryzophilus</i>	Rice water weevil



<i>Lyctus africanus</i>	Powder post beetle
<i>Lygus hesperus</i>	Western plant bug
<i>Lymantria dispar</i>	Asian gypsy moth
<i>Lymantria monacha</i>	Nun moth
<i>Mayetiola destructor</i>	Hessian fly
<i>Monochamus alternatus</i>	Japanese pine sawyer beetle
<i>Monilinia fructigena</i>	Brown rot
<i>Mycosphaerella eumusae</i>	Eumusae leaf spot
<i>Mycosphaerella fijiensis</i>	Black sigatoka
<i>Mythimna unipuncta</i>	Armyworm
<i>Neonectria ditissima</i>	European canker
<i>Oidium citri</i>	Citrus powdery mildew
<i>Ophiostoma novo-ulmi</i>	Dutch elm disease
<i>Orgyia thyellina</i>	White spotted tussock moth
Pepino mosaic virus	Pepino mosaic virus
<i>Phakopsora euvitis</i>	Grapevine leaf rust
<i>Phoma tracheiphila</i>	Mal secco
<i>Phomopsis helianthi</i>	Sunflower stem canker
<i>Phyllosticta cavendishii</i>	Banana freckle
<i>Phymatotrichopsis omnivora</i>	Texas root rot
<i>Phytophthora fragariae</i> var. <i>fragariae</i>	Red steele root rot
<i>Phytophthora pinifolia</i>	Pine needle disease
<i>Phytophthora ramorum</i>	Sudden oak death
Plum pox virus	Sharka
<i>Pomacea canaliculata</i>	Golden apple snail
<i>Prostephanus truncatus</i>	Larger grain borer
<i>Pseudococcus maritimus</i>	Grape mealybug
<i>Psila rosae</i>	Carrot rust fly
<i>Puccinia asparagi</i>	Asparagus rust
<i>Puccinia graminis</i> f.sp. <i>tritici</i> race Ug99	Wheat stem rust Ug99
<i>Puccinia striiformis</i> f.sp. <i>hordei</i>	Barley stripe rust

<i>Raffaelea lauricola</i>	Laurel wilt
<i>Ralstonia solanacearum</i> race 2	Moko
<i>Rhagoletis pomonella</i>	Apple maggot
<i>Roesleria subterranea</i>	Grape root rot
<i>Scirtothrips aurantii</i>	South African citrus thrips
<i>Sphaceloma perseae</i>	Avocado scab
<i>Spiroplasma citri</i>	Stubborn
<i>Stagonospora sacchari</i>	Leaf scorch
<i>Sternochetus frigidus</i>	Mango pulp weevil
<i>Stromatium barbatum</i>	Drywood longicorn beetle
<i>Synchytrium endobioticum</i>	Potato wart
<i>Teratosphaeria zuluensis</i>	Coniothyrium eucalypt canker
<i>Tetranychus piercei</i>	Spider mite
<i>Tetranychus turkestanii</i>	Strawberry spider mite
<i>Thaumatotibia leucotreta</i>	False codling moth
<i>Thrips palmi</i>	Melon thrips
<i>Tilletia barclayana</i>	Kernel smut of rice
<i>Tilletia indica</i>	Karnal bunt
<i>Tomicus piniperda</i>	Pine shoot beetle
<i>Trioza erytreae</i>	African citrus psyllid
<i>Trogoderma granarium</i>	Khapra beetle
<i>Urocerus gigas</i>	Yellow-horned horntail
X disease phytoplasma	Peach X disease
<i>Xanthomonas axonopodis</i> pv. <i>allii</i>	Xanthomonas leaf blight
<i>Xanthomonas citri</i> subsp. <i>citri</i>	Citrus canker
<i>Xanthomonas citri</i> subsp. <i>malvacearum</i>	Bacterial blight/Angular leaf spot
<i>Xanthomonas fragariae</i>	Strawberry angular leaf spot
<i>Xylella fastidiosa</i>	Pierce's disease/Citrus variegated chlorosis
Pests and Diseases of Animals	
<i>Acaraspis woodi</i>	Acariasis tracheal mite
<i>Anaplasma marginale</i>	Anaplasmosis

<i>Avian metapneumovirus</i>	Turkey rhinotracheitis
<i>Babesia bigemina</i>	Babesiosis
<i>Babesia bovis</i>	Babesiosis
<i>Babesia caballi</i>	Equine piroplasmosis
<i>Braula coeca</i>	Braula fly/Bee louse
<i>Brucella abortus</i>	Bovine brucellosis
<i>Brucella canis</i>	Canine brucellosis
<i>Brucella melitensis</i>	Brucellosis
<i>Brucella suis</i>	Porcine brucellosis (in non-feral pigs)
<i>Burkholderia mallei</i>	Glanders
<i>Chlamydophila abortus</i>	Enzootic abortion of ewes
<i>Chrysomya bezziana</i>	Screw-worm fly—Old World
<i>Cochliomyia hominivorax</i>	Screw-worm fly—New World
<i>Ehrlichia ruminantium</i>	Heartwater
<i>Histoplasma capsulatum</i> var. <i>farciminosum</i>	Epizootic lymphangitis
<i>Mycobacterium bovis</i>	Tuberculosis/Bovine tuberculosis
<i>Mycoplasma capricolum</i> subsp. <i>capripneumoniae</i>	Contagious caprine pleuropneumonia
<i>Mycoplasma mycoides</i> subsp. <i>mycoides</i> small colony type	Contagious bovine pleuropneumonia
<i>Psoroptes ovis</i>	Sheep scab
<i>Rhipicephalus (Boophilus) australis</i>	Cattle tick
<i>Salmonella abortus-equi</i>	Salmonellosis
<i>Salmonella abortus-ovis</i>	Salmonellosis
<i>Salmonella gallinarum</i>	Fowl typhoid
<i>Taylorella equigenitalis</i>	Contagious equine metritis
<i>Theileria equi (Babesia equi)</i>	Equine piroplasmosis
<i>Theileria parva</i>	Exotic theileria/East coast fever
<i>Theileria annulata</i>	Mediterranean theileriosis/Tropical theileriosis
<i>Trichinella spiralis</i>	Trichinellosis
<i>Tropilaelaps clareae</i>	Tropilaelaps mite
<i>Tropilaelaps mercedesae</i>	Tropilaelaps mite

<i>Trypanosoma cruzi</i>	Chagas' disease
<i>Trypanosoma equiperdum</i>	Dourine
<i>Trypanosoma evansi</i>	Surra
<i>Varroa destructor</i>	Varroa mite
<i>Varroa jacobsoni</i>	Varroa mite
	African horse sickness
	African swine fever
	Anthrax
	Aujeszky's disease
	Avian influenza
	Bluetongue (clinical disease)
	Borna disease
	Bovine virus diarrhoea type 2
	Bovine Spongiform Encephalopathy
	Camelpox
	Chronic wasting disease of deer
	Classical swine fever
	Contagious agalactia
	Crimean Congo haemorrhagic fever
	Devil facial tumour disease
	Encephalitides (tick borne)
	Epizootic haemorrhagic disease (clinical disease)
	Equine encephalomyelitis (Eastern, Western and Venezuelan)
	Equine encephalosis
	Equine herpes—virus 1 (neurological strain)
	Equine influenza
	Feline spongiform encephalopathy
	Foot and mouth disease
	Getah virus infection
	Goat pox

Haemorrhagic septicaemia

Hendra virus infection (other than in pteropid bats)

Infectious bursal disease (hypervirulent and exotic antigenic variant forms)

Japanese encephalitis

Jembrana disease

Leishmaniasis

Lumpy skin disease

Lyssavirus (including Australian bat lyssavirus)

Maedi-visna

Malignant catarrhal fever (wildebeest associated)

Menangle virus infection

Nairobi sheep disease

Newcastle disease (all strains other than non-pathogenic V4-like strains)

Nipah virus infection

Peste des petits ruminants

Porcine enterovirus encephalomyelitis (Teschen)

Porcine epidemic diarrhoea

Porcine myocarditis (Bungowannah virus infection)

Porcine reproductive and respiratory syndrome

Post-weaning multi-systemic wasting syndrome

Potomac fever

Pulmonary adenomatosis (Jaagsiekte)

Rabies

Rift Valley fever

Rinderpest

Scrapie

Sheep pox

Swine influenza (other than H1N1 2009)

Swine vesicular disease

Transmissible gastroenteritis

Transmissible spongiform encephalopathies

Trypanosomosis (tsetse fly associated)

Tularaemia

Vesicular exanthema

Vesicular stomatitis

Warble-fly myiasis

Wesselsbron disease

#### Diseases of Aquatic Animals

*Aeromonas salmonicida* subsp. *salmonicida*

Furunculosis

*Aphanomyces astaci*

Crayfish plague

*Bonamia exitiosa*

Bonamia exitiosa

*Bonamia ostreae*

Bonamia ostreae

*Edwardsiella ictaluri*

Enteric septicaemia of catfish

*Gyrodactylus salaris*

Gyrodactylosis

*Marteilia refringens*

Marteilia refringens

*Marteilioides chungmuensis*

Marteilioides chungmuensis

*Mikrocytos mackini*

Mikrocytos mackini

*Myxobolus cerebralis*

Whirling disease

*Perkinsus marinus*

Perkinsus marinus

*Piscirickettsia salmonis*

Piscirickettsiosis

*Renibacterium salmoninarum*

Bacterial kidney disease

*Xenohalictis californiensis*

Xenohalictis californiensis

*Yersinia ruckeri* - Hagerman strain

Enteric redmouth disease

Abalone viral ganglioneuritis

Acute hepatopancreatic necrosis disease (AHPND) of crustaceans

Channel catfish virus disease

European catfish virus

European sheatfish virus

Grouper iridoviral disease

HPR-deleted or HPR0 infectious salmon anaemia virus

Salmonid alphavirus  
Infectious haematopoietic necrosis of finfish  
Infectious hypodermal necrosis of crustaceans  
Infectious haematopoietic necrosis of crustaceans  
Infectious myonecrosis of crustaceans  
Infectious pancreatic necrosis of finfish  
Infectious spleen and kidney necrosis virus-like viruses/  
ISKNV-like viruses  
Iridoviroses of molluscs  
Koi herpesvirus disease  
Monodon slow growth syndrome  
Necrotising hepatopancreatitis of crustaceans  
Red sea bream iridoviral disease  
Spring viraemia of carp  
Taura syndrome of crustaceans  
Viral haemorrhagic septicaemia of finfish  
White spot disease of crustaceans  
White tail disease of crustaceans  
Yellowhead disease/Yellowhead virus

Pest Terrestrial Invertebrates

<i>Aedes albopictus</i>	Asian tiger mosquito
<i>Anoplolepis gracilipes</i>	Yellow crazy ant
<i>Apis cerana</i>	Asian honeybee
<i>Apis dorsata</i>	Giant honeybee
<i>Apis florea</i>	Dwarf honeybee
<i>Apis mellifera scutellata</i> and its hybrids	Africanised honeybee
<i>Hypoderma species</i>	Warble fly
<i>Lepisiota frauenfeldi</i>	Browsing ant
<i>Solenopsis geminata</i>	Tropical fire ant
<i>Solenopsis invicta</i>	Red imported fire ant
<i>Solenopsis richteri</i>	Black imported fire ant

<i>Wasmannia auropunctata</i>	Electric ant/Little fire ant
Terrestrial and Freshwater Weeds	
<i>Andropogon gayanus</i>	Gamba grass
<i>Annona glabra</i>	Pond apple
<i>Asparagus declinatus</i>	Bridal veil creeper
<i>Bassia scoparia</i> (excluding subsp. <i>trichophylla</i> )	Kochia
<i>Centaurea stoebe</i> subsp. <i>micranthos</i>	Spotted knapweed
<i>Centaurea xmoncktonii</i>	Black knapweed
<i>Chromolaena odorata</i>	Siam weed
<i>Clidemia hirta</i>	Koster's curse
<i>Cryptostegia grandiflora</i>	Rubber vine
<i>Eichhornia azurea</i>	Anchored water hyacinth
<i>Hieracium</i> spp. (all species)	Hawkweed
<i>Hydrocotyle ranunculoides</i>	Hydrocotyl/Water pennywort
<i>Lagarosiphon major</i>	Lagarosiphon
<i>Limnobium</i> spp. (all species)	Frogbit/Spongeplant
<i>Limnocharis flava</i>	Yellow burrhead
<i>Miconia</i> spp. (all species)	Miconia
<i>Mikania micrantha</i>	Mikania vine
<i>Mimosa pigra</i>	Mimosa
<i>Myriophyllum spicatum</i>	Eurasian water milfoil
<i>Nassella tenuissima</i> (syn. <i>Stipa tenuissima</i> )	Mexican feather grass
<i>Orobanche</i> spp. (all species except the native <i>O. cernua</i> var. <i>australiana</i> and <i>O. minor</i> )	Broomrape
<i>Parthenium hysterophorus</i>	Parthenium weed
<i>Stratiotes aloides</i>	Water soldier
<i>Striga</i> spp. (except the native <i>S. parviflora</i> )	Witchweed
<i>Trapa</i> spp. (all species)	Water caltrop
<i>Vachellia karroo</i> (syn. <i>Acacia karroo</i> )	Karoo acacia
<i>Vachellia nilotica</i> (syn. <i>Acacia nilotica</i> )	Prickly acacia



Freshwater Algae

*Didymosphenia geminata* Didymo

Aquatic Pests

Pest Marine and Freshwater Finfish

*Acestrorhynchus microlepis*

*Acipenser baerii* subsp. *baerii* Siberian sturgeon

*Acipenser baerii* subsp. *baicalensis* Baikal sturgeon

*Acipenser brevirostrum* Shortnose sturgeon

*Acipenser dabryanus* Yangtze sturgeon

*Acipenser fulvescens* Lake sturgeon

*Acipenser gueldenstaedtii* Russian sturgeon

*Acipenser medirostris* Green sturgeon

*Acipenser mikadoi* Sakhalin sturgeon

*Acipenser multiscutatus* Japanese sturgeon

*Acipenser naccarii* Adriatic sturgeon

*Acipenser nudiventris* Fringebarbel sturgeon

*Acipenser oxyrinchus* subsp. *desotoi* Gulf sturgeon

*Acipenser oxyrinchus* subsp. *oxyrinchus* Atlantic sturgeon

*Acipenser persicus* Persian sturgeon

*Acipenser ruthenus* Sterlet

*Acipenser schrenckii* Amur sturgeon

*Acipenser sinensis* Chinese sturgeon

*Acipenser stellatus* Starry sturgeon

*Acipenser sturio* European sturgeon

*Acipenser transmontanus* White sturgeon

*Alfaro cultratus* Knife-edged livebearer

*Alfaro huberi*

*Allomogurnda nesolepis* Yellowbelly gudgeon

*Ameiurus brunneus* Snail bullhead

*Ameiurus catus* White catfish

<i>Ameiurus melas</i>	Black bullhead
<i>Ameiurus natalis</i>	Yellow bullhead
<i>Ameiurus nebulosus</i>	Brown bullhead
<i>Ameiurus platycephalus</i>	Flat bullhead
<i>Ameiurus serracanthus</i>	Spotted bullhead
<i>Amia calva</i>	Bowfin
<i>Anabas cobojus</i>	Gangetic climbing perch
<i>Anabas testudineus</i>	Climbing perch
<i>Anaspidoglanis macrostoma</i>	Flatnose catfish
<i>Apeltes quadracus</i>	Four spined stickleback
<i>Aristichthys nobilis</i>	Bighead carp
<i>Astyanax aeneus</i>	Banded tetra
<i>Astyanax fasciatus</i>	Banded astyanax
<i>Atractosteus</i> spp. (all species except <i>A.spatula</i> )	American gar/Armoured gar
<i>Bagrus ubangensis</i>	Ubangi shovelnose catfish
<i>Barbodes hexagonolepis</i>	Copper mahseer
<i>Belonesox belizanus</i>	Pike minnow/Pike killifish
<i>Boulengerochromis microlepis</i>	Giant cichlid/Yellow belly cichlid
<i>Catla catla</i>	Catla
<i>Catlocarpio siamensis</i>	Giant barb
Centrarchidae family	
<i>Centropomus</i> spp. (all species)	Snook
<i>Chaca bankanensis</i>	Angler catfish
<i>Chaca burmensis</i>	Burmensis frogmouth catfish
<i>Chaca chaca</i>	Squarehead catfish
<i>Channa</i> spp. (all species)	Snake head
<i>Cirrhinus cirrhosus</i>	Mrigal
<i>Clarias</i> spp. (all species)	Walking catfish
<i>Colossoma</i> spp. (all species)	
<i>Ctenopharyngodon idella</i>	Grass carp
<i>Ctenopoma argentoventer</i>	Silverbelly ctenopoma

<i>Ctenopoma kingsleyae</i>	Tailspot ctenopoma
<i>Ctenopoma multispine</i>	Manyspined ctenopoma
<i>Ctenopoma muriei</i>	Ocellated labyrinth fish
<i>Ctenopoma nigropannosum</i>	Twospot climbing perch
<i>Ctenopoma ocellatum</i>	Eyespot ctenopoma
<i>Ctenopoma weeksii</i>	Mottled ctenopoma
<i>Culaea inconstans</i>	
<i>Dormitator latifrons</i>	Pacific fat sleeper
<i>Dormitator lebretonis</i>	
<i>Dormitator maculatus</i>	Pacific sleeper
<i>Elassoma</i> spp. (all species)	Pygmy sunfish
<i>Electrophorus electricus</i>	Electric eel
<i>Eleotris amblyopsis</i>	Large scaled spiny cheek sleeper
<i>Eleotris sandwicensis</i>	Sandwich Island sleeper
<i>Erpetoichthys calabaricus</i>	Reedfish
<i>Erythrinus</i> spp. (all species)	
<i>Esox</i> spp. (all species)	Pike
<i>Gambusia</i> spp. (all species except <i>G. holbrooki</i> )	Mosquitofish
<i>Gobiomorphus gobioides</i>	Giant bully
<i>Gobiomorphus huttoni</i>	Redfin bully
<i>Gobiomorus dormitor</i>	Bigmouth sleeper
<i>Gobiomorus maculatus</i>	
<i>Gymnarchus niloticus</i>	Aba aba
<i>Helicophagus leptorhynchus</i>	
<i>Helicophagus waandersii</i>	
<i>Hemichromis fasciatus</i>	Banded jewelfish
<i>Hepsetus odoe</i>	African pike
<i>Heterandria bimaculata</i>	Twospot livebearer
<i>Heteropneustes fossilis</i>	Stinging catfish
<i>Himantura kittipongi</i>	
<i>Himantura krempfi</i>	Marbled freshwater whip ray

<i>Himantura oxyrhyncha</i>	Marbled whipray
<i>Hoplerythrinus</i> spp. (all species)	Aimira
<i>Hoplias</i> spp. (all species)	Trahira
<i>Huso huso</i>	Beluga
<i>Hydrocynus</i> spp. (all species)	Pike characin/Giant tigerfish
<i>Hypophthalmichthys molitrix</i>	Silver carp
<i>Hypseleotris cyprinoides</i>	Tropical carp-gudgeon
<i>Hypseleotris tohizonae</i>	
<i>Ichthyborinae</i> subfamily of the family Citharinidae (all species)	African pike-characin/Tubenose poacher/Fin eater
<i>Ictalurus balsanus</i>	Balsas catfish
<i>Ictalurus dugesii</i>	Lerma catfish
<i>Ictalurus furcatus</i>	Blue catfish
<i>Ictalurus lupus</i>	Headwater catfish
<i>Ictalurus mexicanus</i>	Rio Verde catfish
<i>Ictalurus ochoterenai</i>	Chapala catfish
<i>Ictalurus pricei</i>	Yaqui catfish
<i>Ictalurus punctatus</i>	Channel catfish
<i>Labeo calabasu</i>	Orangefin labeo
<i>Labeo rohita</i>	Rohu
<i>Lates microlepis</i>	Forktail lates
<i>Lates niloticus</i>	Nile perch
<i>Lebiasina bimaculata</i>	Twospot lebiasina
<i>Lepidosiren paradoxa</i>	South American lungfish
<i>Leptolebias aureoguttatus</i>	
<i>Leptolebias marmoratus</i>	Marbled pearlfish
<i>Leptolebias minimus</i>	Barred tail pearlfish
<i>Leptolebias opalescens</i>	Opal pearlfish
<i>Malapterurus</i> spp. (all species)	Electric catfish
<i>Mormyrops anguilloides</i>	Cornish jack
<i>Neogobius melanostomus</i>	Round goby

<i>Notropis</i> spp. (all species)	Shiner
<i>Noturus albater</i>	Ozark madtom
<i>Noturus baileyi</i>	Smoky madtom
<i>Noturus crypticus</i>	Chucky madtom
<i>Noturus elegans</i>	Elegant madtom
<i>Noturus eleutherus</i>	Mountain madtom
<i>Noturus exilis</i>	Slender madtom
<i>Noturus fasciatus</i>	Saddled madtom
<i>Noturus flavater</i>	Checkered madtom
<i>Noturus flavipinnis</i>	Yellowfin madtom
<i>Noturus flavus</i>	Stonecat
<i>Noturus funebris</i>	Black madtom
<i>Noturus furiosus</i>	Carolina madtom
<i>Noturus gilberti</i>	Orangefin madtom
<i>Noturus gladiator</i>	
<i>Noturus gyrinus</i>	Tadpole madtom
<i>Noturus hildebrandi</i> subsp. <i>hildebrandi</i>	Least madtom
<i>Noturus hildebrandi</i> subsp. <i>lautus</i>	
<i>Noturus insignis</i>	Margined madtom
<i>Noturus lachneri</i>	Ouachita madtom
<i>Noturus leptacanthus</i>	Speckled madtom
<i>Noturus maydeni</i>	Black River madtom
<i>Noturus miurus</i>	Brindled madtom
<i>Noturus munitus</i>	Frecklebelly madtom
<i>Noturus nocturnus</i>	Freckled madtom
<i>Noturus phaeus</i>	Brown madtom
<i>Noturus placidus</i>	Neosho madtom
<i>Noturus stanauli</i>	Pygmy madtom
<i>Noturus stigmosus</i>	Northern madtom
<i>Noturus taylori</i>	Caddo madtom
<i>Noturus trautmani</i>	Scioto madtom

<i>Oreochromis</i> spp. (all species except <i>O. mossambicus</i> )	Tilapia
<i>Oxydoras</i> spp. (all species)	Ripsaw catfish/Black doras/Black shielded catfish
<i>Oxyeleotris heterodon</i>	Sentani gudgeon
<i>Oxyeleotris marmorata</i>	Marble goby
<i>Oxyeleotris siamensis</i>	
<i>Oxyeleotris urophthalmoides</i>	
<i>Oxyeleotris urophthalmus</i>	
<i>Pangasianodon gigas</i>	Mekong giant catfish
<i>Pangasius conchophilus</i>	
<i>Pangasius elongatus</i>	
<i>Pangasius krempfi</i>	
<i>Pangasius kunyit</i>	
<i>Pangasius larnaudii</i>	Spot pangasius
<i>Pangasius macronema</i>	
<i>Pangasius nasutus</i>	
<i>Pangasius nieuwenhuisii</i>	
<i>Pangasius pangasius</i>	Yellowtailed catfish
<i>Paratrygon aiereba</i>	Discus ray
<i>Paravandelia oxyptera</i>	Pantanal parasitic catfish
<i>Phoxinus erythrogaster</i>	Southern redbelly dace
<i>Polyodon spathula</i>	Mississippi paddlefish
<i>Protopterus aethiopicus</i>	Marbled lungfish
<i>Protopterus amphibius</i>	Gilled lungfish
<i>Protopterus annectens</i>	African lungfish
<i>Protopterus dolloi</i>	Slender lungfish
<i>Psephurus gladius</i>	Chinese swordfish
<i>Pungitius pungitius</i>	Ninespine stickleback
<i>Pygocentrus</i> spp. (all species)	Red piranha
<i>Pylodictis olivaris</i>	Flathead catfish
<i>Rutilus rutilus</i>	Roach

<i>Sargochromis</i> spp. (all species)	Pink happy/Slender happy/Cunene happy/Green happy
<i>Sarotherodon</i> spp. (all species)	Blackchin tilapia
<i>Schilbe intermedius</i>	Silver butter catfish
<i>Schilbe marmoratus</i>	Shoulderspot catfish
<i>Schilbe mystus</i>	African butter catfish
<i>Serranochromis</i> spp. (all species)	
<i>Serrasalmus</i> spp. (all species)	Redeye piranha
<i>Siganus rivulatus</i>	Marbled spinefoot
<i>Silurus</i> spp. (all species)	European catfish/Wels catfish
<i>Tilapia</i> spp. (all species except <i>T. buttikoferi</i> )	Redbelly tilapia
<i>Tinca tinca</i>	Tench
<i>Tomeurus gracilis</i>	
<i>Tor</i> spp. (all species)	River carp/Deccan mahseer/High backed mahseer/ Jungha mahseer/Thai mahseer
<i>Valencia hispanica</i>	Valencia toothcarp
<i>Zacco platypus</i>	Freshwater minnow
Pest Marine Invertebrates	
<i>Asterias amurensis</i>	Northern Pacific seastar
<i>Balanus improvisus</i>	Barnacle
<i>Charybdis japonica</i>	Lady crab
<i>Crepidula fornicata</i>	American slipper limpet/Slipper limpet
<i>Didemnum vexillum</i>	Colonial sea squirt
<i>Ensis directus</i>	Jack-knife clam
<i>Eriocheir</i> spp. (all species)	Chinese mitten crab
<i>Hemigrapsus penicillatus</i>	Pacific crab/Brush-clawed shore crab
<i>Hemigrapsus sanguineus</i>	Japanese shore crab/Asian shore crab
<i>Hemigrapsus takanoi</i>	Pacific crab/Brush-clawed shore crab
<i>Mnemiopsis leidyi</i>	Comb jelly/Sea walnut
<i>Musculista senhousia</i>	Asian bag mussel/Asian date mussel
<i>Mya arenaria</i>	Soft shell clam
<i>Mytilopsis sallei</i>	Black striped mussel

<i>Perna canaliculus</i>	New Zealand green lipped mussel
<i>Perna perna</i>	Brown mussel
<i>Perna viridis</i>	Asian green mussel
<i>Potamocorbula amurensis</i>	Asian clam/Brackish-water corbula
<i>Procambarus clarkii</i>	Red swamp crayfish
<i>Rapana venosa</i>	Rapa whelk
<i>Varicorbula gibba</i>	European clam
Pest Marine Plants	
<i>Grateloupia turuturu</i>	Red macroalga
<i>Sargassum muticum</i>	Japanese wireweed

## Part 2 Prohibited matter—part of the State

Column 1	Column 2	Column 3
Scientific name	Common name	Part of State in which matter is prohibited matter
Plant Pests and Diseases		
<i>Daktulosphaira vitifoliae</i>	Grapevine phylloxera	<p>All of NSW except the following local government areas:</p> <p><i>Albury/Corowa Phylloxera Infested Zone</i></p> <p>Albury</p> <p>Corowa (that part within the County of Hume)</p> <p>Greater Hume, excluding the former local government areas of Culcairn and Holbrook</p> <p><i>Sydney Basin Phylloxera Infested Zone</i></p> <p>Ashfield</p> <p>Auburn</p> <p>Bankstown</p> <p>Baulkham Hills</p> <p>Blacktown</p> <p>Botany Bay</p>



Burwood  
Camden  
Campbelltown  
Canada Bay  
Canterbury  
Fairfield  
Hawkesbury (within the County of Cumberland)  
Holroyd  
Hornsby  
Hunters Hill  
Hurstville  
Kogarah  
Ku-ring-gai  
Lane Cove  
Leichhardt  
Liverpool  
Manly  
Marrickville  
Mosman  
North Sydney  
Parramatta  
Penrith (other than the portion west of the Nepean River)  
Pittwater  
Randwick  
Rockdale  
Ryde  
Strathfield  
Sutherland Shire  
Sydney  
The Hills Shire

Warringah

Waverley

Willoughby

Wollondilly (portion that is within the counties of Cumberland and Camden)

Wollongong

Woollahra

Invertebrate pests

*Pheidole megacephala*

African big-headed ant

Lord Howe Island

## Schedule 3 Prohibited dealings

(Section 151)

### 1 Dealings with class 1a and 1b non-indigenous animals

Any dealing with a non-indigenous animal classified under the regulations as class 1a or 1b.

### 2 Dealings with class 2 and 3a non-indigenous animals

- (1) Any dealing with a non-indigenous animal classified under the regulations as class 2 or 3a, unless the dealing is for permitted exhibition purposes or for permitted research purposes.
- (2) A dealing is for permitted exhibition purposes if the animal is to be kept at an animal display establishment (within the meaning of the [Exhibited Animals Protection Act 1986](#)) authorised by a licence under that Act.
- (3) A dealing is for permitted research purposes if:
  - (a) the person keeping the animal is accredited as a research establishment under the [Animal Research Act 1985](#), or
  - (b) the person keeping the animal holds an animal research authority under the [Animal Research Act 1985](#), or
  - (c) the person keeping the animal holds an animal supplier's licence under the [Animal Research Act 1985](#).

## Schedule 4 Registrable dealings

(Section 153)

### 1 Bee-keeping

Dealing with managed bees.

### 2 Class 3b non-indigenous animals

- (1) Dealing with any non-indigenous animal classified under the regulations as class 3b, unless the dealing is for permitted exhibition purposes or permitted research purposes.
- (2) A dealing is for permitted exhibition purposes if the animal is kept in accordance with a permit issued under section 25 of the *Exhibited Animals Protection Act 1986*.
- (3) A dealing is for permitted research purposes if:
  - (a) the person keeping the animal is accredited as a research establishment under the *Animal Research Act 1985*, or
  - (b) the person keeping the animal holds an animal research authority under the *Animal Research Act 1985*, or
  - (c) the person keeping the animal holds an animal supplier's licence under the *Animal Research Act 1985*.

## Schedule 5 Regulation-making powers

### 1 Prevention, elimination, management and minimisation of biosecurity risks

The prevention, elimination, management and minimisation of biosecurity risks.

### 2 Exemptions

The exemption of any person, class of persons, matter or thing from the operation of this Act or any specified provision of this Act, either unconditionally or subject to conditions.

### 3 Fees

The fees payable under this Act, including the following:

- (a) exemptions from fees,
- (b) reduction, waiver or refund of fees,
- (c) payment of fees by instalments,
- (d) the method by which a fee is to be calculated (such as by reference to an hourly rate),

- (e) the time for payment of fees (including payment in advance or the payment of a deposit towards a fee),
- (f) penalties for the late payment of fees,
- (g) the charging of interest on overdue fees.

#### **4 Supplementary provisions**

Provisions that are supplemental to emergency orders and control orders, including offences relating to emergency zones and control zones.

#### **5 Authorised officers**

The functions of authorised officers under this Act or the [Stock Medicines Act 1989](#).

#### **6 Local control authorities**

The functions of local control authorities under this Act.

#### **7 Identification and tracing of biosecurity matter**

The marking, tracing or other identification of biosecurity matter or carriers of biosecurity matter (other than humans) for or in connection with the management or control of disease or other biosecurity impacts, whether on a mandatory or voluntary basis.

#### **8 Classification**

The classification of non-indigenous animals for the purposes of this Act.

#### **9 Testing, analysis, vaccination and inoculation**

The testing, analysis, vaccination and inoculation of biosecurity matter, including with respect to the following:

- (a) the accreditation or authorisation of persons to carry out any specified testing, analysis, vaccination or inoculation,
- (b) the use, manufacture, testing, distribution, storage, display or display for sale of any substance used for testing, analysing, vaccinating or inoculating biosecurity matter.

#### **10 Stock foods**

The regulation of stock foods, including with respect to the following:

- (a) the amount or proportion of a specified ingredient or other thing that may be added to or contained in a stock food,
- (b) the use, manufacture, testing, distribution, storage, display or display for sale of stock foods.

## **11 Fertilisers, liming materials and trace element products**

The regulation of fertilisers, liming materials and trace element products, including with respect to the following:

- (a) the amount or proportion of a specified ingredient or other thing that may be added to or contained in a fertiliser, liming material or trace element product,
- (b) the use, manufacture, testing, distribution, storage, display or display for sale of fertilisers, liming materials and trace element products.

## **Schedule 6 Repeals**

(Section 405)

*Animal Diseases and Animal Pests (Emergency Outbreaks) Act 1991 No 73*

*Apiaries Act 1985 No 16*

*Deer Act 2006 No 113*

*Fertilisers Act 1985 No 5*

*Non-Indigenous Animals Act 1987 No 166*

*Noxious Weeds Act 1993 No 11*

*Plant Diseases Act 1924 No 38*

*Stock (Chemical Residues) Act 1975 No 26*

*Stock Diseases Act 1923 No 34*

*Stock Foods Act 1940 No 19*

## **Schedule 7 Savings, transitional and other provisions**

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an

authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(4) Any such provision has effect despite anything to the contrary in this Schedule.

(5) The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

## **Part 2 Provisions consequent on enactment of Act**

### **Division 1 General**

#### **2 Definitions**

In this Division:

**relevant instrument** means any order, notice, proclamation, declaration, notification, direction, warrant, undertaking, delegation or other instrument made, given, granted or issued under a repealed Act.

**repealed Act** means an Act repealed by Schedule 6.

**Secretary** includes any person exercising the functions of the Secretary under the repealed Act.

#### **3 Continuation of instruments and powers under repealed Act**

(1) A repealed Act continues to have effect in respect of:

(a) any relevant instrument in force immediately before the repeal of the repealed Act, and

(b) anything done (before or after the repeal of the repealed Act) under or in connection with such a relevant instrument.

(2) A relevant instrument in force immediately before the repeal of a repealed Act:

(a) continues to have effect (despite the repeal of the repealed Act), and

(b) may be withdrawn, varied, revoked or cancelled in accordance with the repealed Act (as if that Act remained in force), and

(c) ceases to have effect as provided for by the repealed Act (as if that Act remained in force) or as provided for by this clause (whichever happens first).

(3) Accordingly, any function conferred on any person under a repealed Act in connection

with a relevant instrument (including a power to give directions or to seize or destroy any thing) may continue to be exercised after the repeal of the repealed Act as if that Act remained in force.

- (4) The Secretary may, by order in writing, declare that a relevant instrument is a superseded instrument.
- (5) A relevant instrument that is declared to be a superseded instrument ceases to have effect when the order takes effect.
- (6) This clause does not apply to the following:
  - (a) a permit or exemption granted or issued under a repealed Act,
  - (b) a licence or registration granted under a repealed Act.

**Note—**

Other provisions of this Part provide specifically for the transition of the instruments referred to in subclause (6).

#### **4 Continuation of regulations**

- (1) Any regulations made under a repealed Act, as in force immediately before the repeal of the repealed Act, are taken to continue to have effect in relation to the relevant instruments and anything done under or in connection with the relevant instruments.
- (2) The power to make regulations conferred by Part 1 of this Schedule includes power to amend or revoke any regulation under a repealed Act that is taken to continue to have effect under this clause.

#### **5 Obligations under repealed Act continue to apply**

- (1) If a provision of a repealed Act continues to have effect, any liability or obligation imposed on a person by, under or in connection with a contravention of, that provision also continues to have effect.
- (2) Accordingly, a person may incur liability for an offence under a repealed Act after the repeal of the repealed Act.

**Note—**

For example, if the Minister declares an infected area under section 23 of the [Apiaries Act 1985](#) before the repeal of that Act, the repealed Act continues to have effect in respect of that declaration. Accordingly, a person who, after the repeal of the repealed Act, enters the infected area in contravention of the order could be found guilty of an offence under section 23 (6) of that Act.

- (3) However, a person cannot be found guilty of both an offence against this Act and an offence against a repealed Act in respect of the same act or omission occurring on the same occasion.

## 6 Continuation of permits

- (1) A permit granted or issued under a repealed Act and in force immediately before the repeal of the repealed Act continues to have effect on that repeal.
- (2) The permit remains in force for the period for which it was granted or issued under the repealed Act, unless it is sooner cancelled.
- (3) On the repeal of the repealed Act, this Act applies in respect of the permit as if it had been granted by a relevant decision-maker under Part 21 of this Act.
- (4) The permit is authority to engage in the conduct authorised by the permit for the purposes of both the repealed Act (to the extent that it continues to have effect) and this Act (to the extent it would otherwise prohibit the conduct concerned).
- (5) Any conditions of the permit imposed by the Minister, the Secretary, an inspector or authorised officer under the repealed Act that were in force immediately before the repeal of the repealed Act are taken on that repeal to be conditions of the permit under this Act (as if they had been imposed by a relevant decision-maker under section 347 of this Act).
- (6) To avoid doubt, a permit is also subject to any conditions prescribed by the regulations or imposed by a relevant decision-maker under this Act.

## 7 Applications for permits

- (1) An application for a permit or a renewal of a permit that was duly made to the Minister, the Secretary, an inspector or an authorised officer under a repealed Act before the repeal of the repealed Act and not finally determined before the repeal of that Act is to be dealt with as an application for a permit or renewal of a permit under Part 21 of this Act.
- (2) A relevant decision-maker may require the applicant to comply with any requirement relating to the application that the applicant would have been required to comply with if the application had been made under section 341 or 345 of this Act.

## 8 Seizure of property

- (1) A repealed Act continues to have effect in respect of anything seized, taken or removed under a power conferred by the repealed Act whether before or after the repeal of the repealed Act. Accordingly, such a thing is to be dealt with as provided for by the repealed Act (as if that Act remained in force).
- (2) This clause does not continue the operation of Part 7 of the *Animal Diseases and Animal Pests (Emergency Outbreaks) Act 1991*.

### Note—

See Division 2.



## **9 Functions of inspectors and authorised officers under repealed Act**

- (1) A person who, immediately before the repeal of a repealed Act, was an inspector or authorised officer under the repealed Act is taken, on that repeal, to have been appointed as an authorised officer under this Act.
- (2) Appointment is subject to any conditions or limitations that were in force immediately before the repeal of the repealed Act.
- (3) Any instrument of authority as an inspector or authorised officer issued under a repealed Act is taken to be sufficient evidence of authority as an authorised officer under the *Biosecurity Act 2015*.
- (4) However, the Secretary is to issue each inspector or authorised officer appointed as an authorised officer under this clause with evidence of their authority to exercise functions as an authorised officer under the *Biosecurity Act 2015* as soon as practicable.
- (5) This clause does not apply to police officers.

## **10 Functions of authorised officers under this Act**

- (1) An authorised officer under this Act may exercise any function of an inspector or authorised officer under a provision of a repealed Act or a relevant instrument that continues to have effect. Accordingly, a reference in a repealed Act or relevant instrument to an inspector or authorised officer is taken, on the repeal of a repealed Act, to include a reference to an authorised officer under this Act.
- (2) The powers conferred on an authorised officer by subclause (1) are subject to any conditions or limitations that apply to the person's appointment as an authorised officer under this Act.
- (3) Any evidence of authority as an authorised officer issued under this Act is taken to be sufficient evidence of authority to exercise the functions of an inspector or authorised officer under a repealed Act.

## **11 Analysts**

- (1) A person who, immediately before the repeal of a repealed Act, was an analyst under the repealed Act is taken, on that repeal, to have been appointed as an authorised analyst under this Act.
- (2) Appointment is subject to any conditions or limitations that were in force immediately before the repeal of the repealed Act.
- (3) An authorised analyst under this Act may exercise any function of an analyst under a provision of a repealed Act that continues to have effect after the repeal of that Act. Accordingly, a reference in a repealed Act to an analyst is taken to include a reference

to an authorised analyst under this Act.

- (4) The powers conferred on an authorised analyst by subclause (3) are subject to any conditions or limitations that apply to the person's appointment as an authorised analyst under this Act.

## **12 Chief Veterinary Officer**

The Chief Veterinary Officer under this Act may exercise any function of the Chief Veterinary Officer under a provision of a repealed Act that continues to have effect after the repeal of that Act. Accordingly, a reference in a repealed Act to the Chief Veterinary Officer is taken to include a reference to the Chief Veterinary Officer under this Act.

## **13 General saving**

Except as expressly provided for by this Act or the regulations under this Schedule, the repeal or amendment of any Act or regulation by this Act does not affect the continued operation of that Act or regulation:

- (a) in respect of a relevant instrument or anything done under or in connection with a relevant instrument, or
- (b) in respect of any appeals or other proceedings arising under or in connection with a repealed or amended Act or regulation.

## **Division 2 Repeal of [Animal Diseases and Animal Pests \(Emergency Outbreaks\) Act 1991](#)**

### **14 Definition**

In this Division:

**repealed Act** means the [Animal Diseases and Animal Pests \(Emergency Outbreaks\) Act 1991](#).

### **15 Continuation of repealed Act for existing emergencies**

- (1) If, on the repeal of the repealed Act, there is an order in force under section 76 (1) of the repealed Act, the repealed Act and the regulations under the repealed Act continue to have effect in respect of the emergency animal disease or emergency animal pest that is the subject of the order.
- (2) Accordingly, any function conferred on any person by the repealed Act in respect of such an emergency animal disease or emergency animal pest may continue to be exercised as if the repealed Act remained in force.
- (3) Subclauses (1) and (2) cease to have effect at the end of the period of 6 months after the repeal of the repealed Act or, if another period is prescribed by the regulations,

that period.

- (4) This clause is in addition to, and does not limit the operation of, clause 3.
- (5) A reference in clause 16 to the repeal of the repealed Act, in relation to any animal or property destroyed under a power conferred by this clause, is a reference to the date on which subclause (1) of this clause ceases to have effect.

## 16 Compensation

- (1) Part 7 of the repealed Act continues to apply in relation to the destruction or death of an animal, or the destruction of property, before the repeal of the repealed Act.
- (2) Part 7 of the repealed Act extends to the destruction or death of an animal, or the destruction of property, after the repeal of the repealed Act if:
  - (a) the destruction is in accordance with a destruction order made under section 32 of the repealed Act before the repeal of that Act, or
  - (b) the destruction is in accordance with a destruction order made under section 32 (1) (c) of the repealed Act after the repeal of that Act, in relation to an animal that is in a declared area that became a declared area under Part 3 of the repealed Act before its repeal, or
  - (c) the animal or property was seized under section 41 of the repealed Act before its repeal and was subsequently destroyed under section 42 of the repealed Act, or
  - (d) the animal was reported to the Secretary as being affected by an emergency animal disease to which that Part applied before the repeal of the repealed Act and subsequently died of a class A compensable disease.

## Division 3 Repeal of [Apiaries Act 1985](#)

### 17 Definitions

In this Division:

**Director-General** means the Director-General under the repealed Act and includes any person exercising the functions of the Director-General under the repealed Act.

**repealed Act** means the [Apiaries Act 1985](#).

### 18 Continuation of registration

- (1) Registration as a beekeeper under the repealed Act that was in force or subject to a suspension immediately before the repeal of the repealed Act is taken, on that repeal, to be biosecurity registration granted under this Act.
- (2) Biosecurity registration authorises the person registered as a beekeeper to engage in

any dealing that the person was authorised to engage in by registration under the repealed Act.

- (3) Biosecurity registration remains in force for the period for which registration was granted under the repealed Act, unless it is sooner cancelled under this Act.
- (4) If registration was subject to a suspension immediately before the repeal of the repealed Act, the suspension continues to have effect as a suspension of biosecurity registration under this Act.

## 19 Conditions of registration

- (1) Any conditions imposed by the Director-General under section 8 of the repealed Act that were in force immediately before the repeal of the repealed Act are taken on the repeal of the repealed Act to be conditions of biosecurity registration (as if they had been imposed by the Secretary under section 165 of this Act).
- (2) To avoid doubt, biosecurity registration is also subject to any conditions prescribed by the regulations or imposed by the Secretary under this Act.

## 20 Applications for registration and renewal of registration

- (1) An application for registration or renewal of registration as a beekeeper duly made to the Director-General before the repeal of the repealed Act that was not finally determined before the repeal of that Act is to be dealt with as an application for biosecurity registration or renewal of biosecurity registration under this Act.
- (2) The Secretary may require the applicant to comply with any requirement relating to the application that the applicant would have been required to comply with if the application had been made under section 159 or 163 of this Act.

# Division 4 Repeal of **Non-Indigenous Animals Act 1987**

## 21 Definitions

In this Division:

**Director-General** means the Director-General under the repealed Act and includes any person exercising the functions of the Director-General under the repealed Act.

**repealed Act** means the *Non-Indigenous Animals Act 1987*.

## 22 Dissolution of Advisory Committee

- (1) The Non-Indigenous Animals Advisory Committee is dissolved on the repeal of the repealed Act.
- (2) A person who held office as a member of the Non-Indigenous Animals Advisory Committee before the repeal of the repealed Act is not entitled to any compensation

or remuneration because of the dissolution of that Committee.

### 23 Continuation of licences

- (1) A licence under the repealed Act that was in force immediately before the repeal of the repealed Act is taken, on that repeal, to be biosecurity registration granted under this Act.
- (2) Biosecurity registration authorises the person who was the licence holder immediately before that repeal to keep the animals specified in the licence.
- (3) Biosecurity registration remains in force for the period for which the licence was granted under the repealed Act, unless it is sooner cancelled.

### 24 Conditions of licences

- (1) Any conditions imposed by the Director-General under section 17 of the repealed Act that were in force immediately before the repeal of the repealed Act are taken on the repeal of the repealed Act to be conditions of biosecurity registration (as if they had been imposed by the Secretary under section 165 of this Act).
- (2) To avoid doubt, biosecurity registration is also subject to any conditions prescribed by the regulations or imposed by the Secretary under this Act.

### 25 Applications for licences or renewal of licences

- (1) An application for a licence or renewal of a licence under the repealed Act that was duly made to the Director-General before the repeal of the repealed Act and not finally determined before the repeal of that Act is to be dealt with as an application for biosecurity registration or renewal of biosecurity registration under this Act.
- (2) The Secretary may require the applicant to comply with any requirement relating to the application that the applicant would have been required to comply with if the application had been made under section 159 or 163 of this Act.

## Division 5 Repeal of **Noxious Weeds Act 1993**

### 26 Definitions

In this Division:

**Director-General** means the Director-General under the repealed Act and includes any person exercising the functions of the Director-General under that Act.

**public authority** has the same meaning as it has in Schedule 1.

**repealed Act** means the [Noxious Weeds Act 1993](#).

**weed control notice** means a notice given under section 18 (1) or (3) or 22 (1) or (3) of

the repealed Act before its repeal.

## **27 Offence of failing to comply with weed control notice**

An owner or occupier of land (other than a public authority or a local control authority) given a weed control notice by a local control authority, or a successor in title to the owner or occupier who has notice of the notice, must not fail to comply with the notice.

Maximum penalty: 100 penalty units.

### **Note—**

This clause continues the operation of section 19 of the repealed Act, so that weed control notices issued under the repealed Act remain binding on owners and occupiers of land and their successors in title.

## **28 Certificate as to weed control notices, expenses and charges on land**

- (1) A person may apply to a local control authority for a certificate as to weed control notices affecting particular land and as to any outstanding expenses payable to the authority or any resulting charge on the land under the repealed Act.
- (2) The application:
  - (a) is to be in the form approved by the local control authority, and
  - (b) is to be accompanied by the fee approved by the local control authority, being a fee not exceeding the maximum amount (if any) prescribed by the regulations.
- (3) On an application being made in accordance with this clause, the local control authority is to issue a certificate to the applicant stating the following matters:
  - (a) whether there are in force any weed control notices issued by or on behalf of the authority or the Minister that affect the land,
  - (b) the amounts of expenses due or payable to the authority under the repealed Act in connection with any weed control notice given by the authority that affects the land and any subsequent action to control weeds taken by the authority under the repealed Act,
  - (c) whether the land is subject to any charge arising out of the control of weeds under the repealed Act and the amount of any such charge.
- (4) The production of the certificate is taken for all purposes to be conclusive proof in favour of a purchaser for value in good faith of the matters certified.

### **Note—**

This clause continues the operation of section 64 of the repealed Act, so that prospective purchasers of land may find out about weed control notices issued under the repealed Act that remain in force.

### **29 Exemptions granted by local control authority**

- (1) An exemption granted by a local control authority under section 17A (4) of the repealed Act and in force on the repeal of the repealed Act continues to have effect on the repeal of the repealed Act.
- (2) On the repeal of the repealed Act, this Act applies in respect of the exemption as if it had been granted by the local control authority under clause 4 (5) of Schedule 1 to this Act.
- (3) The exemption applies for the purposes of both the repealed Act (to the extent that it continues to have effect) and this Act (to the extent it would otherwise apply to the person or thing concerned).
- (4) Any conditions of the exemption imposed under the repealed Act that were in force immediately before the repeal of the repealed Act are taken on the repeal of the repealed Act to be conditions of the exemption under this Act.
- (5) The exemption remains in force for the period for which it was granted under the repealed Act, unless it is sooner revoked by order of the local control authority.

### **30 Exemptions granted by Minister or Director-General**

- (1) An exemption granted by the Director-General or the Minister under section 17A (5) or (6) of the repealed Act and in force on the repeal of the repealed Act continues to have effect on the repeal of the repealed Act.
- (2) On the repeal of the repealed Act, this Act applies in respect of the exemption as if it had been granted by the Secretary under section 402 of this Act.
- (3) The exemption applies for the purposes of both the repealed Act (to the extent that it continues to have effect) and this Act (to the extent it would otherwise apply to the person or thing concerned).
- (4) Any conditions of the exemption imposed under the repealed Act that were in force immediately before the repeal of the repealed Act are taken on the repeal of the repealed Act to be conditions of the exemption under this Act.
- (5) The exemption remains in force for the period for which it was granted under the repealed Act, unless it is sooner revoked by order of the Secretary.

### **31 Advisory committees**

- (1) Any advisory committee established under Division 2 of Part 5 of the repealed Act is dissolved on the repeal of that Act.
- (2) A person who held office as a member of such an advisory committee before the repeal of that Act is not entitled to any compensation or remuneration because of the

dissolution of the committee.

### 32 References to “noxious weeds” in planning instruments

- (1) A reference in any instrument made under the *Environmental Planning and Assessment Act 1979* to a noxious weed under the repealed Act (however expressed) is to be read, on the repeal of that Act, as a reference to any weed (within the meaning of the *Biosecurity Act 2015*) that is a priority weed for the land or area to which the instrument applies.
- (2) A **priority weed** is any weed identified in a local strategic plan, for a region that includes that land or area, as a weed that is or should be prevented, managed, controlled or eradicated in the region.
- (3) In this clause:

**local strategic plan** means a local strategic plan approved by the Minister under Division 2 of Part 4 of the *Local Land Services Act 2013*.

## Schedule 8 Amendment of other legislation

### 8.1 Agricultural Livestock (Disease Control Funding) Act 1998 No 139

#### Section 3 Definitions

Omit the definitions of **disease** and **livestock**.

Insert in alphabetical order:

**disease** means any disease (within the meaning of the *Biosecurity Act 2015*) in livestock.

### 8.2 Agricultural Tenancies Act 1990 No 64

#### [1] Schedule 1 Improvements that a tenant may make as of right

Omit item 4. Insert instead:

- 4 Destruction or control of pests (within the meaning of the *Biosecurity Act 2015*) as authorised or required by an order, biosecurity direction, permit or regulation under that Act.

#### [2] Schedule 1, item 5

Omit “noxious”.



**[3] Schedule 1, item 8**

Omit “within the meaning of the *Fertilisers Act 1985*.”

Insert instead “within the meaning of the *Biosecurity Act 2015*”.

### **8.3 Animal Research Regulation 2010**

**[1] Clause 3 Definitions**

Insert “(an Act repealed by the *Biosecurity Act 2015*)” after “*Non-Indigenous Animals Act 1987*” in paragraph (a) of the definition of **prescribed offence** in clause 3 (1).

**[2] Clause 3 (1), definition of “prescribed offence”**

Insert after paragraph (a):

- (a1) an offence under the *Biosecurity Act 2015*, or the regulations under that Act, relating to a dealing with a non-indigenous animal (within the meaning of that Act),  
or

### **8.4 Animals Act 1977 No 25**

**[1] Long title**

Insert “; and other matters” after “animals”.

**[2] Section 10A**

Insert before section 11:

#### **10A Ownership of deer**

- (1) A deer that is held in captivity may be bought, sold or otherwise dealt with or disposed of.
- (2) If a deer ceases to be held in captivity, all property in the deer is immediately extinguished.
- (3) If a person captures a deer that is not held in captivity, the person becomes the owner of the deer.
- (4) In this section:

**deer** means a living animal of the family cervidae.

## 8.5 Civil and Administrative Tribunal Act 2013 No 2

### Schedule 3 Administrative and Equal Opportunity Division

Omit “*Plant Diseases Act 1924*” from clause 3 (1) (a).

## 8.6 Commons Management Act 1989 No 13

### Section 9 Power of a trust to make a by-law

Omit “noxious” wherever occurring in section 9 (1) (g) and (i).

## 8.7 Commons Management Regulation 2006

### [1] Schedule 1 Model by-law

Omit “noxious” from clause 5 (b).

### [2] Schedule 1, clause 5, note

Omit the note.

## 8.8 Companion Animals Act 1998 No 87

### Section 5 Definitions

Omit the note to the definition of **dog** in section 5 (1).

## 8.9 Contaminated Land Management Act 1997 No 140

### [1] Section 11 Declaring land to be significantly contaminated land

Omit section 11 (4) (e). Insert instead:

- (e) if the EPA has reason to believe that a significant contaminant of land originates from the use of a cattle dip site on the land in relation to a treatment ordered under the *Biosecurity Act 2015* or the *Stock Diseases Act 1923* (an Act repealed by the *Biosecurity Act 2015*)—the Secretary of the Department of Industry, Skills and Regional Development.

### [2] Section 13 Choice of appropriate person to be made subject to management order

Omit section 13 (5). Insert instead:

- (5) Despite subsection (2), in the case where a significant contaminant of the land originates from the use of a cattle dip site on the land in relation to a treatment ordered under the *Biosecurity Act 2015*, or the *Stock Diseases Act 1923* (an Act repealed by the *Biosecurity Act 2015*), the appropriate person is:

- (a) except in the case referred to in paragraph (b)—the Secretary of the Department of Industry, Skills and Regional Development, or
- (b) if a person is responsible for significant contamination of the land (whether or not there are other persons who are responsible for such contamination of the land) because of the operation of section 6 (2) (b)—that person.

## 8.10 Conveyancing Act 1919 No 6

### Section 85 (1) (c) and Schedule 4, item 7, column 2

Omit “noxious” wherever occurring.

## 8.11 Conveyancing (Sale of Land) Regulation 2010

### [1] Schedule 3 Prescribed warranties

Omit “following under the *Stock Diseases Act 1923*” from clause 17.

Insert instead “following instruments under the *Stock Diseases Act 1923* (an Act repealed by the *Biosecurity Act 2015*) that are in force”.

### [2] Schedule 3, clause 18

Omit “following under the *Stock (Chemical Residues) Act 1975*”.

Insert instead “following instruments under the *Stock (Chemical Residues) Act 1975* (an Act repealed by the *Biosecurity Act 2015*) that are in force”.

### [3] Schedule 3, clauses 23-26

Insert after clause 22:

- 23** An emergency order under the *Biosecurity Act 2015* that has been served on the owner or occupier of the land.
- 24** A control order under the *Biosecurity Act 2015* that has been served on the owner or occupier of the land.
- 25** An individual biosecurity direction (within the meaning of the *Biosecurity Act 2015*) that:
  - (a) prohibits, regulates or controls the doing of anything, or

(b) requires something to be done.

**26** A biosecurity undertaking (within the meaning of the *Biosecurity Act 2015*).

## **8.12 Crown Lands (General Reserves) By-law 2006**

### **Clause 42 Destruction or taking of plants or animals**

Omit “noxious” from clause 42 (a).

## **8.13 Exhibited Animals Protection Act 1986 No 123**

### **[1] Section 27 Applications**

Insert after section 27 (3A) (e):

(e1) any biosecurity risk (within the meaning of the *Biosecurity Act 2015*) that arises from keeping the animals, and the capacity of the applicant to prevent, eliminate or minimise that risk,

### **[2] Schedule 4 Relationship to other Acts etc**

Omit “*Non-Indigenous Animals Act 1987*” from clause 3.

Insert instead “*Biosecurity Act 2015*”.

## **8.14 Exhibited Animals Protection Regulation 2010**

### **Clause 31 Acquisition etc animals**

Omit clause 31 (1) (a) (iii). Insert instead:

(iii) the *Biosecurity Act 2015*,

## **8.15 Fair Trading Act 1987 No 68**

### **[1] Schedule 1 Paramount legislation**

Omit the following:

*Fertilisers Act 1985*  
*Plant Diseases Act 1924*  
*Stock Foods Act 1940*

### **[2] Schedule 1**

Insert in alphabetical order:

*Biosecurity Act 2015*

**[3] Schedule 2 Acts prohibiting or regulating supply of goods or services**

Omit the following:

*Fertilisers Act 1985*

*Plant Diseases Act 1924*

*Stock Foods Act 1940*

**[4] Schedule 2**

Insert in alphabetical order:

*Biosecurity Act 2015*

**8.16 Fines Act 1996 No 99**

**[1] Schedule 1 Statutory provisions under which penalty notices issued**

Omit the following:

*Animal Diseases (Emergency Outbreaks) Act 1991*, section 71A

*Apiaries Act 1985*, section 42A

*Deer Act 2006*, section 33

*Non-Indigenous Animals Act 1987*, section 27A

*Noxious Weeds Act 1993*, section 63

*Plant Diseases Act 1924*, section 19

*Stock (Chemical Residues) Act 1975*, section 15A

*Stock Diseases Act 1923*, section 200

*Stock Foods Act 1940*, section 32A

**[2] Schedule 1**

Insert in alphabetical order:

*Biosecurity Act 2015*, section 303

**8.17 Fisheries Management Act 1994 No 38**

**[1] Section 152 Conditions of permits**

Insert at the end of section 152 (2) (f):

, and

(g) conditions requiring the destruction or control of pests (within the meaning of the *Biosecurity Act 2015*).

**[2] Part 6, Division 4 Diseased fish and marine vegetation**

Omit the Division.

**[3] Part 7, Division 6 Noxious fish and noxious marine vegetation**

Omit the Division.

**[4] Section 220ZFA Further defences**

Omit section 220ZFA (2) (b) and (c). Insert instead:

(b) anything done to prevent, eliminate, minimise or manage a biosecurity risk posed or likely to be posed by a pest (within the meaning of the *Biosecurity Act 2015*) and which is authorised or required by any of the following:

- (i) the mandatory measures under that Act,
- (ii) an emergency order under that Act,
- (iii) a control order under that Act,
- (iv) a biosecurity zone regulation under that Act,
- (v) a biosecurity direction under that Act.

**[5] Schedule 6B Diseases affecting fish and marine vegetation**

Omit the Schedule.

**[6] Schedule 6C Noxious fish and noxious marine vegetation**

Omit the Schedule.

**[7] Schedule 7 Savings, transitional and other provisions**

Insert after Part 10:

## **Part 11 Provisions relating to enactment of *Biosecurity Act 2015***

### **26 Definitions**

In this Part:

**relevant instrument** means any order, notice, declaration, notification, direction, warrant, undertaking, delegation or other instrument made, given, granted or issued under a repealed provision.

**repealed provision** means a provision of this Act repealed by the *Biosecurity Act 2015*.

## **27 Continuation of instruments and powers under repealed provisions**

- (1) This Act, as in force immediately before its amendment by the *Biosecurity Act 2015*, continues to have effect in respect of:
  - (a) any relevant instrument in force immediately before the repeal of a repealed provision, and
  - (b) anything done (before or after the repeal of a repealed provision) under or in connection with such a relevant instrument.
- (2) A relevant instrument:
  - (a) continues to have effect (despite the amendments made by the *Biosecurity Act 2015*), and
  - (b) may be withdrawn, varied, revoked or cancelled in accordance with this Act (as if those amendments had not been made), and
  - (c) ceases to have effect as provided for by this Act, as in force immediately before those amendments were made, or as provided for by this clause (whichever happens first).
- (3) Accordingly, any function conferred on any person under a repealed provision in connection with a relevant instrument (including a power to give directions or to seize or destroy any thing) may continue to be exercised after the repeal of the repealed provision as if that provision remained in force.
- (4) The Secretary of the Department of Industry, Skills and Regional Development may, by order in writing, declare that a relevant instrument is a superseded instrument.
- (5) A relevant instrument that is declared to be a superseded instrument ceases to have effect when the order takes effect.
- (6) This clause does not apply to a permit issued under a repealed provision.

## **28 Continuation of regulations**

- (1) Any regulations made under or relating to a repealed provision, as in force immediately before the repeal of the repealed provision, are taken to continue to

have effect in relation to the relevant instruments and anything done under or in connection with the relevant instruments.

- (2) The power to make regulations conferred by Part 2 of this Schedule includes power to amend or revoke any regulation that is taken to continue to have effect under this clause.

## **29 Obligations under repealed provisions continue to apply**

- (1) If a repealed provision continues to have effect, any liability or obligation imposed on a person by, under or in connection with a contravention of, that provision also continues to have effect.
- (2) Accordingly, a person may incur liability for an offence under a repealed provision after the repeal of the repealed provision.
- (3) However, a person cannot be found guilty of both an offence against this Act and an offence against the *Biosecurity Act 2015* in respect of the same act or omission occurring on the same occasion.

## **30 Continuation of permits**

- (1) A permit issued by the Minister under a repealed provision and in force immediately before the repeal of the repealed provision continues to have effect on that repeal.
- (2) The permit remains in force for the period for which it was issued under the repealed provision, unless it is sooner cancelled.
- (3) On the repeal of the repealed provision, the *Biosecurity Act 2015* applies in respect of the permit as if it had been granted by a relevant decision-maker under Part 21 of that Act.
- (4) The permit is authority to engage in the conduct authorised by the permit for the purposes of both this Act (to the extent that the repealed provisions continue to have effect) and the *Biosecurity Act 2015* (to the extent it would otherwise prohibit the conduct concerned).
- (5) Any conditions of the permit imposed by the Minister under this Act that were in force immediately before the amendments made by the *Biosecurity Act 2015* are taken on the commencement of those amendments to be conditions of the permit under the *Biosecurity Act 2015* (as if they had been imposed by a relevant decision-maker under section 347 of the *Biosecurity Act 2015*).
- (6) To avoid doubt, a permit is also subject to any conditions prescribed by the regulations or imposed by a relevant decision-maker under the *Biosecurity Act 2015*.



### **31 Applications for permits**

- (1) An application for a permit or a renewal of a permit that was duly made to the Minister under a repealed provision before the repeal of the repealed provision and not finally determined before the repeal of that provision is to be dealt with as an application for a permit or renewal of a permit under Part 21 of the *Biosecurity Act 2015*.
- (2) A relevant decision-maker may require the applicant to comply with any requirement relating to the application that the applicant would have been required to comply with if the application had been made under section 341 or 345 of the *Biosecurity Act 2015*.

### **32 Seizure and destruction of things**

This Act, as in force before its amendment by the *Biosecurity Act 2015*, continues to have effect in respect of anything seized or taken under the power conferred by section 213 (whether before or after the repeal of that section). Accordingly, such a thing is to be dealt with as provided for by that section (as if it remained in force).

### **33 Fisheries officers may exercise biosecurity functions**

- (1) A person who, immediately before the repeal of a repealed provision, was a fisheries officer under this Act is taken, on that repeal, to have also been appointed as an authorised officer under the *Biosecurity Act 2015*.
- (2) Appointment is subject to any conditions or limitations on the person's appointment as a fisheries officer.
- (3) Any instrument of authority as a fisheries officer issued under this Act is taken to be sufficient evidence of authority as an authorised officer under the *Biosecurity Act 2015*.
- (4) However, the Secretary under the *Biosecurity Act 2015* is to issue each fisheries officer appointed as an authorised officer under this clause with evidence of their authority to exercise functions as an authorised officer under the *Biosecurity Act 2015* as soon as practicable.
- (5) This clause does not apply to police officers.

### **34 Biosecurity officer may exercise fisheries officer functions**

- (1) An authorised officer under the *Biosecurity Act 2015* may exercise any function of a fisheries officer under a repealed provision or relevant instrument that continues to have effect. Accordingly, a reference in a repealed provision or relevant instrument to a fisheries officer is taken, on the enactment of the *Biosecurity Act 2015*, to include a reference to an authorised officer under that

Act.

- (2) The powers conferred on an authorised officer by subclause (1) are subject to any conditions or limitations that apply to the person's appointment as an authorised officer under the *Biosecurity Act 2015*.
- (3) Any evidence of authority as an authorised officer issued under the *Biosecurity Act 2015* is taken to be sufficient evidence of authority to exercise the functions of a fisheries officer under a repealed provision or relevant instrument.

### **35 General saving**

Except as expressly provided for by this Act or the regulations under this Schedule, the amendment of any Act or regulation by the *Biosecurity Act 2015* does not affect the continued operation of that Act or regulation:

- (a) in respect of a relevant instrument or anything done under or in connection with a relevant instrument, or
- (b) in respect of any appeals or other proceedings arising under or in connection with a repealed provision.

## **8.18 Fisheries Management (General) Regulation 2010**

### **[1] Part 13A Diseased and noxious fish and marine vegetation**

Omit the Part.

### **[2] Clause 263 Dredging work**

Omit "but does not include noxious weeds within the meaning of the *Noxious Weeds Act 1993*" from clause 263 (2).

## **8.19 Game and Feral Animal Control Act 2002 No 64**

### **Section 17 Exemptions from requirement for game hunting licence**

Omit section 17 (1) (d) and (d1). Insert instead:

- (d) a person who is hunting a game animal in accordance with a requirement or function imposed or conferred on the person by an emergency order, control order or biosecurity zone regulation under the *Biosecurity Act 2015*,

## **8.20 Game and Feral Animal Control Regulation 2012**

### **Clause 19 Exemptions from licensing**

Omit clause 19 (a).

## **8.21 Government Information (Public Access) Regulation 2009**

### **Schedule 3 Agencies declared to be part of other agencies**

Omit all the matter relating to the Advisory Committee established under the *Noxious Weeds Act 1993* and the Non-Indigenous Animals Advisory Committee.

## **8.22 Hemp Industry Regulation 2008**

### **Clause 4 Information and particulars to be included in licence applications**

Omit clause 4 (2) (c), (4) (c) and (6) (c).

## **8.23 Land and Environment Court Act 1979 No 204**

### **[1] Section 18 Class 2—local government and miscellaneous appeals and applications**

Omit section 18 (c4).

### **[2] Section 18 (i)**

Insert after section 18 (h):

(i) appeals under sections 140, 182, 213, 259, 277, 328 and 360 of the *Biosecurity Act 2015*.

### **[3] Section 20 Class 4—environmental planning and protection and development contract civil enforcement**

Insert after section 20 (1) (di):

(dj) proceedings under sections 109, 148, 171, 350 and 385 of the *Biosecurity Act 2015*,

## **8.24 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

### **[1] Section 216 Application to property**

Omit section 216 (2) (b).

### **[2] Schedule 2 Search warrants under other Acts**

Omit the following:

*Animal Diseases (Emergency Outbreaks) Act 1991*, section 48

*Deer Act 2006*, section 21

*Non-Indigenous Animals Act 1987*, section 24

*Noxious Weeds Act 1993*, section 52  
*Stock Medicines Act 1989*, section 51

**[3] Schedule 2**

Insert in alphabetical order:

*Biosecurity Act 2015*, section 100

**[4] Schedule 2**

Omit “sections 214 and” from the matter relating to the *Fisheries Management Act 1994*.

Insert instead “section”.

## **8.25 Local Government Act 1993 No 30**

### **Section 387 Formation of county councils**

Omit section 387 (3). Insert instead:

- (3) A proclamation under this section conferring weed control functions on a county council is to be made only with the concurrence of the Minister administering the *Biosecurity Act 2015*.

## **8.26 Local Land Services Act 2013 No 51**

### **[1] Section 17 Delegation of Ministerial functions**

Omit section 17 (3). Insert instead:

- (3) The Minister may delegate to Local Land Services any function of the Minister under an Act that is administered by the Minister and prescribed by the regulations for the purposes of this section.

### **[2] Section 70 Closure orders**

Omit section 70 (1) (c). Insert instead:

- (c) suspending the operation of any permit issued under the *Biosecurity Act 2015* in relation to the reserve (or part of any such reserve) except to the extent (if any) specified in the order.

### **[3] Section 70 (4)**

Insert after section 70 (3):

- (4) A closure order prevails to the extent of any inconsistency over a control order, biosecurity direction, permit or biosecurity zone regulation under the *Biosecurity Act 2015*.

**[4] Section 73 Unauthorised use of public roads**

Omit section 73 (2). Insert instead:

- (2) A person is not guilty of an offence under this section if the stock are being walked or grazed under the authority of an order, biosecurity direction, permit or biosecurity zone regulation under the *Biosecurity Act 2015* or in any other circumstances prescribed by the regulations for the purposes of this subsection.

**[5] Section 102 When may Local Land Services impound bees or beehives placed or kept on a controlled travelling stock reserve?**

Omit section 102 (4). Insert instead:

- (4) Nothing in this section limits or affects any power with respect to bees or beehives conferred on an authorised officer by the *Biosecurity Act 2015*.

**[6] Section 103 Orders for mustering of stock**

Omit section 103 (2). Insert instead:

- (2) The person in charge of stock is not required to produce an appropriate permit for inspection if the person claims that the stock are being conveyed under the authority of an order, biosecurity direction, permit or biosecurity zone regulation under the *Biosecurity Act 2015*.

**[7] Section 103 (4) (c)**

Omit the paragraph. Insert instead:

- (c) an authorised officer under the *Biosecurity Act 2015*,

**[8] Section 120 Restrictions on the transport of stock by vehicle on road**

Omit section 120 (4) (b). Insert instead:

- (b) an order, biosecurity direction, permit or biosecurity zone regulation under the *Biosecurity Act 2015*.

**[9] Section 121 Restrictions on the consignment of stock by rail, water or air transport**

Omit section 121 (4) (b). Insert instead:

- (b) an order, biosecurity direction, permit or biosecurity zone regulation under the [Biosecurity Act 2015](#).

**[10] Part 10 Pests**

Omit the Part.

**[11] Schedule 6 Savings, transitional and other provisions**

Insert after Part 2:

## **Part 3 Provisions relating to enactment of [Biosecurity Act 2015](#)**

### **20 Definition**

In this Part:

**relevant instrument** means any order, approval, warrant, delegation or other instrument made, given, granted or issued under a repealed provision.

**repealed provision** means a provision of this Act repealed by the [Biosecurity Act 2015](#).

### **21 Continuation of instruments and powers under repealed provisions**

- (1) This Act, as in force immediately before its amendment by the [Biosecurity Act 2015](#), continues to have effect in respect of:
- (a) any relevant instrument in force immediately before the repeal of a repealed provision, and
  - (b) anything done (before or after the repeal of a repealed provision) under or in connection with such a relevant instrument.
- (2) A relevant instrument:
- (a) continues to have effect (despite the amendments made by the [Biosecurity Act 2015](#)), and
  - (b) may be withdrawn, varied, revoked or cancelled in accordance with this Act (as if those amendments had not been made), and
  - (c) ceases to have effect as provided for by this Act, as in force immediately

before those amendments were made, or as provided for by this clause (whichever happens first).

- (3) Accordingly, any function conferred on any person under a repealed provision in connection with a relevant instrument (including a power to give directions or to seize or destroy any thing) may continue to be exercised after the repeal of the repealed provision as if that provision remained in force.
- (4) The Secretary of the Department of Industry, Skills and Regional Development may, by order in writing, declare that a relevant instrument is a superseded instrument.
- (5) A relevant instrument that is declared to be a superseded instrument ceases to have effect when the order takes effect.

## **22 Continuation of regulations**

- (1) Any regulations made under or relating to a repealed provision, as in force immediately before the repeal of the repealed provision, are taken to continue to have effect in relation to the relevant instruments and anything done under or in connection with the relevant instruments.
- (2) The power to make regulations conferred by Part 1 of this Schedule includes power to amend or revoke any regulation that is taken to continue to have effect under this clause.

## **23 Obligations under repealed provisions continue to apply**

- (1) If a repealed provision continues to have effect, any liability or obligation imposed on a person by, under or in connection with a contravention of, that provision also continues to have effect.
- (2) Accordingly, a person may incur liability for an offence under a repealed provision after the repeal of the repealed provision.
- (3) However, a person cannot be found guilty of both an offence against this Act and an offence against the *Biosecurity Act 2015* in respect of the same act or omission occurring on the same occasion.

## **24 General saving**

Except as expressly provided for by this Act or the regulations under this Schedule, the amendment of any Act or any regulation by the *Biosecurity Act 2015* does not affect the continued operation of that Act or regulation:

- (a) in respect of a relevant instrument or anything done under or in connection with a relevant instrument, or

- (b) in respect of any appeals or other proceedings arising under or in connection with a repealed provision.

## **8.27 Local Land Services Regulation 2014**

### **[1] Clause 79 Supply of water**

Omit clause 79 (2) (c). Insert instead:

- (c) travelling stock that are subject to an order, biosecurity direction or permit under the *Biosecurity Act 2015*,

### **[2] Part 9 Pests**

Omit the Part.

### **[3] Clause 99 Certificate as to rates, charges and other matters**

Insert “(Acts repealed by the *Biosecurity Act 2015*)” after “Act 1975” in clause 99 (1) (d).

## **8.28 National Parks and Wildlife Act 1974 No 80**

### **[1] Section 118G Defences**

Omit section 118G (2) (b) and (c). Insert instead:

- (b) anything done to prevent, eliminate, minimise or manage a biosecurity risk posed or likely to be posed by a pest (within the meaning of the *Biosecurity Act 2015*) and which is authorised or required by any of the following:
- (i) the mandatory measures under that Act,
  - (ii) an emergency order under that Act,
  - (iii) a control order under that Act,
  - (iv) a biosecurity zone regulation under that Act,
  - (v) a biosecurity direction under that Act,

### **[2] Section 197 Evidentiary provisions etc**

Omit section 197 (10).

### **[3] Section 197, note**

Insert at the end of the section:

**Note—**



See the *Biosecurity Act 2015* for certification of matters under that Act.

**[4] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Biosecurity Act 2015*

**[5] Schedule 3, Part 11**

Insert after Part 10:

## **Part 11 Provisions consequent on enactment of *Biosecurity Act 2015***

### **74 Certificate evidence**

Section 197 (10), as in force immediately before its repeal by the *Biosecurity Act 2015*, continues to apply in relation to any time or period occurring before the repeal of Part 10 of the *Local Land Services Act 2013* by the *Biosecurity Act 2015*.

## **8.29 Native Vegetation Act 2003 No 103**

### **Section 11 Meaning of routine agricultural management activities**

Omit section 11 (1) (b) and (c). Insert instead:

- (b) anything done to prevent, eliminate, minimise or manage a biosecurity risk posed or likely to be posed by a pest (within the meaning of the *Biosecurity Act 2015*) and which is authorised or required by any of the following:
  - (i) the mandatory measures under that Act,
  - (ii) an emergency order under that Act,
  - (iii) a control order under that Act,
  - (iv) a biosecurity zone regulation under that Act,
  - (v) a biosecurity direction under that Act,

## **8.30 Native Vegetation Regulation 2013**

### **[1] Clause 52 Control of pest animals**

Omit the clause.

**[2] Clause 59 Limitation of routine agricultural management activities on protected riparian land**

Omit clause 59 (b). Insert instead:

- (b) anything done to prevent, eliminate, minimise or manage a biosecurity risk posed or likely to be posed by a pest (within the meaning of the *Biosecurity Act 2015*) and which is authorised or required by any of the following:
  - (i) the mandatory measures under that Act,
  - (ii) an emergency order under that Act,
  - (iii) a control order under that Act,
  - (iv) a biosecurity zone regulation under that Act,
  - (v) a biosecurity direction under that Act,

**[3] Clause 59 (f)**

Omit the paragraph.

## **8.31 Poisons and Therapeutic Goods Regulation 2008**

### **Appendix C Persons authorised to possess and use substances**

Omit clause 16. Insert instead:

#### **16 Bee keeping**

- (1) A registered beekeeper is authorised to possess and use oxytetracycline in the form of a stock medicine (within the meaning of the *Stock Medicines Act 1989*) if:
  - (a) required by the registered beekeeper for use in the treatment or prevention of European Foulbrood disease in bees, and
  - (b) the registered beekeeper holds a written authority (issued by the Secretary of the Department of Industry, Skills and Regional Development) recommending the use, by that person, of that substance for that purpose.
- (2) In this clause:

**registered beekeeper** means a person registered to keep bees under the *Biosecurity Act 2015*.

## **8.32 Protection of the Environment Operations Act 1997 No 156**

### **Section 142D Defences relating to pesticides and fertilisers and other substances**

Omit section 142D (1) (b). Insert instead:

- (b) a fertiliser, liming material or trace element product within the meaning of the *Biosecurity Act 2015* that may lawfully be sold as such,

## **8.33 Protection of the Environment Operations (Clean Air) Regulation 2010**

### **Clause 9 Application of Part**

Omit clause 9 (c). Insert instead:

- (c) the destruction, by means of burning, of an animal that has died, or is reasonably suspected to have died, as the result of a disease (within the meaning of the *Biosecurity Act 2015*) by a person who:
  - (i) is an authorised officer exercising functions under that Act, or
  - (ii) is acting as authorised or required by an emergency order, control order, biosecurity zone regulation, biosecurity direction or biosecurity undertaking under that Act or by the mandatory measures under that Act.

## **8.34 Protection of the Environment Operations (Waste) Regulation 2014**

### **Clause 114 Residue waste not to be applied to land used for growing vegetation**

Omit "*Fertilisers Act 1985*" from clause 114 (2).

Insert instead "*Biosecurity Act 2015*".

## **8.35 Residential (Land Lease) Communities Act 2013 No 97**

### **Section 37 Operator's responsibilities**

Omit "noxious" from section 37 (1) (g).

## **8.36 Stock Medicines Act 1989 No 182**

### **[1] Section 2B**

Insert after section 2A:

## 2B Relationship with [Biosecurity Act 2015](#)

This Act is to be read in conjunction with the [Biosecurity Act 2015](#), which provides for the powers of authorised officers in connection with this Act and for other administrative matters in connection with this Act.

### [2] Section 3 Definitions

Omit the definitions of **analyst**, **inspector**, **permit** and **tag** from section 3 (1).

Insert in alphabetical order:

**analyst** means an authorised analyst under the [Biosecurity Act 2015](#).

**permit** means a permit under Part 21 of the [Biosecurity Act 2015](#) that is in force.

**relevant withholding period**, in relation to a stock medicine, means:

- (a) the withholding period (if any) specified under section 39D by the veterinary practitioner who prescribed or supplied the stock medicine for the treatment of the stock, or
- (b) if paragraph (a) does not apply, the withholding period specified in the use instructions.

**tag** means a tag attached to an animal in accordance with any requirements relating to the identification of animals specified by or under the [Biosecurity Act 2015](#).

**use instructions**—see section 4.

### [3] Sections 4 and 5

Insert after section 3:

#### 4 Use instructions

- (1) In this Act, **use instructions**, in relation to a stock medicine, means the instructions that:
  - (a) are on the label attached to the package in which the stock medicine is contained and are required or permitted by or under the Agvet Code to be on the label when sold, and
  - (b) relate to the use of the stock medicine on stock or the way in which stock, or any product from stock, is to be dealt with after the administration of the stock medicine.

**Note—**

Products from stock would include, for example, milk, wool, honey and eggs.

- (2) Without limiting subsection (1), **use instructions** include the following matter appearing on the label attached to the package of a stock medicine:
- (a) any instructions, directions, recommendations or indications as to the dosage rate for, and method and timing of administration of, the stock medicine,
  - (b) the type of stock on which the stock medicine is intended to be used or should not be used,
  - (c) any withholding period,
  - (d) any precautions and contraindications,
  - (e) any instructions, directions or recommendations appearing under the heading "Restraint" or "Restrains".
- (3) In this Act, a reference to a label attached to a package includes a reference to writing appearing on the package.

## **5 Use of stock medicines**

- (1) In this Act, a reference (however expressed) to the use of a stock medicine on stock, or the treatment of stock with a stock medicine, includes a reference to the administration to stock of stock food treated with a stock medicine.
- (2) In this Act, a reference (however expressed) to using a stock medicine in a manner contrary to the use instructions includes a reference to dealing with stock on which the stock medicine has been used in a manner contrary to the use instructions and includes, in particular, not observing the withholding period or varying the withholding period in relation to the stock medicine.

### **[4] Part 3 Permits and other authorisations**

Omit the Part.

### **[5] Section 36A Interpretation of Part**

Omit the section.

### **[6] Section 46 Supply and use bans and recall orders**

Omit "required under the *Stock Diseases Act 1923*" from section 46 (2A) (a).

Insert instead "required by or under the *Biosecurity Act 2015*".

**[7] Sections 48-55**

Omit the sections.

**[8] Sections 58 and 59**

Omit the sections.

**[9] Section 60A Penalty notices**

Omit “section and includes” from section 60A (9).

Insert instead “section, an authorised officer under the *Biosecurity Act 2015* or”.

**[10] Section 65 Regulations**

Omit section 65 (2) (j).

**[11] Schedule 2 Savings, transitional and other provisions**

Insert after Part 5:

## **Part 6 Provisions consequent on enactment of *Biosecurity Act 2015***

### **20 Definitions**

In this Part:

**Director-General** includes any person exercising the functions of the Director-General under this Act.

**relevant instrument** means any notice, direction, warrant, consent, delegation or other instrument made, given, granted or issued under a repealed provision.

**repealed provision** means a provision of this Act repealed by the *Biosecurity Act 2015*.

### **21 Continuation of instruments and powers under repealed provisions**

(1) This Act, as in force immediately before its amendment by the *Biosecurity Act 2015*, continues to have effect in respect of:

- (a) any relevant instrument in force immediately before the repeal of a repealed provision, and
- (b) anything done (before or after the repeal of a repealed provision) under or in connection with such a relevant instrument.

- (2) A relevant instrument:
  - (a) continues to have effect (despite the amendments made by the *Biosecurity Act 2015*), and
  - (b) may be withdrawn, varied, revoked or cancelled in accordance with this Act (as if those amendments had not been made), and
  - (c) ceases to have effect as provided for by this Act, as in force immediately before those amendments were made, or as provided for by this clause (whichever happens first).
- (3) Accordingly, any function conferred on any person under a repealed provision in connection with a relevant instrument (including a power to enter land or to seize or destroy any thing) may continue to be exercised after the repeal of the repealed provision as if that provision remained in force.
- (4) The Secretary of the Department of Industry, Skills and Regional Development may, by order in writing, declare that a relevant instrument is a superseded instrument.
- (5) A relevant instrument that is declared to be a superseded instrument ceases to have effect when the order takes effect.
- (6) This clause does not apply to the following:
  - (a) to a permit issued under a repealed provision, or
  - (b) to any instrument by which a person is authorised as an inspector or analyst.

## **22 Continuation of regulations**

- (1) Any regulations made under a repealed provision, as in force immediately before the repeal of the repealed provision, are taken to continue to have effect in relation to the relevant instruments and anything done under or in connection with the relevant instruments.
- (2) The power to make regulations conferred by Part 1 of this Schedule includes power to amend or revoke any regulation under a repealed provision that is taken to continue to have effect under this clause.

## **23 Obligations under repealed provisions continue to apply**

- (1) If a repealed provision continues to have effect, any liability or obligation imposed on a person by, under or in connection with a contravention of, that provision also continues to have effect.

- (2) Accordingly, a person may incur liability for an offence under a repealed provision after the repeal of the repealed provision.

**Note—**

For example, a person could incur liability for an offence under section 58 (as in force before its repeal by the *Biosecurity Act 2015*) for a failure to comply with a direction given by an inspector before the repeal of section 50 even though that failure occurs after the repeal of section 50.

- (3) However, a person cannot be found guilty of both an offence against this Act and an offence against the *Biosecurity Act 2015* in respect of the same act or omission occurring on the same occasion.

## **24 Seizure of property**

This Act, as in force immediately before its amendment by the *Biosecurity Act 2015*, continues to have effect in respect of anything seized, taken or removed under a power conferred by a repealed provision whether before or after the repeal of the repealed provision. Accordingly, such a thing is to be dealt with as provided for by the repealed provisions.

## **25 Continuation of permits**

- (1) A permit granted or issued under this Act and in force immediately before the repeal of section 32 by the *Biosecurity Act 2015* continues to have effect on that repeal.
- (2) The permit remains in force, subject to any condition relating to its duration specified in it, until it is cancelled under Part 21 of the *Biosecurity Act 2015*.
- (3) On the repeal of section 32, the *Biosecurity Act 2015* applies in respect of the permit as if it had been granted by a relevant decision-maker under Part 21 of that Act.
- (4) The permit is authority to engage in the conduct authorised by the permit for the purposes of both this Act and the *Biosecurity Act 2015* (to the extent it would otherwise prohibit the conduct concerned).
- (5) The permit applies to any person to whom it would have applied under section 33 of this Act (had that section not been repealed) as if:
- (a) the permit were a group permit under the *Biosecurity Act 2015*, and
  - (b) the persons referred to in section 33 were the specified class of person to whom the permit were granted.
- (6) Any conditions of the permit imposed by the Director-General under this Act that were in force immediately before the repeal of section 32 are taken on that repeal to be conditions of the permit under the *Biosecurity Act 2015* (as if they



had been imposed by a relevant decision-maker under section 347 of the *Biosecurity Act 2015*).

- (7) To avoid doubt, a permit is also subject to any conditions prescribed by the regulations or imposed by a relevant decision-maker under the *Biosecurity Act 2015*.

## **26 Applications for permits**

- (1) An application for a permit or a renewal of a permit under this Act that was duly made to the Director-General and not finally determined before the repeal of section 32 by the *Biosecurity Act 2015* is to be dealt with as an application for a permit or renewal of a permit under Part 21 of the *Biosecurity Act 2015*.
- (2) A relevant decision-maker under the *Biosecurity Act 2015* may require the applicant to comply with any requirement relating to the application that the applicant would have been required to comply with if the application had been made under section 341 or 345 of that Act.

## **27 Functions of inspectors**

- (1) A person who, immediately before the repeal of section 48 by the *Biosecurity Act 2015*, was an inspector under this Act is taken, on that repeal, to have been appointed as an authorised officer under the *Biosecurity Act 2015*.
- (2) Appointment is subject to any conditions or limitations that were in force immediately before the repeal of section 48.
- (3) Any instrument of authority as an inspector issued under this Act is taken to be sufficient evidence of authority as an authorised officer under the *Biosecurity Act 2015*.
- (4) However, the Secretary is to issue each inspector appointed as an authorised officer under this clause with evidence of their authority to exercise functions as an authorised officer under the *Biosecurity Act 2015* as soon as practicable.
- (5) This clause does not apply to police officers.

## **28 Functions of authorised officers under this Act**

- (1) An authorised officer under the *Biosecurity Act 2015* may exercise any function of an inspector under a repealed provision or a relevant instrument that continues to have effect. Accordingly, a reference in a repealed provision or relevant instrument to an inspector is taken, on the repeal of section 48 by the *Biosecurity Act 2015*, to include a reference to an authorised officer under that Act.
- (2) The powers conferred on an authorised officer by subclause (1) are subject to

any conditions or limitations that apply to the person's appointment as an authorised officer under that Act.

- (3) Any evidence of authority as an authorised officer issued under the *Biosecurity Act 2015* is taken to be sufficient evidence of authority to exercise the functions of an inspector under a repealed provision or relevant instrument.

## 29 Analysts

- (1) A person who, immediately before the repeal of section 49 by the *Biosecurity Act 2015*, was an analyst under this Act is taken, on that repeal, to have been appointed as an authorised analyst under the *Biosecurity Act 2015*.
- (2) Appointment is subject to any conditions or limitations that were in force immediately before the repeal of section 49.
- (3) An authorised analyst under the *Biosecurity Act 2015* may exercise any function of an analyst under a repealed provision or a relevant instrument that continues to have effect. Accordingly, a reference in a repealed provision or relevant instrument to an analyst is taken, on the repeal of section 49 by the *Biosecurity Act 2015*, to include a reference to an authorised analyst under that Act.
- (4) The powers conferred on an authorised analyst by subclause (3) are subject to any conditions or limitations that apply to the person's appointment as an authorised analyst under the *Biosecurity Act 2015*.

## 8.37 Stock Medicines Regulation 2010

### Clause 3 Definitions

Omit the definition of **stock food** from clause 3 (1).

Insert instead:

**stock food** has the same meaning as in the *Biosecurity Act 2015*.

## 8.38 Summary Offences Act 1988 No 25

### Section 28J Offence of hunting on private land

Omit section 28J (3) (c). Insert instead:

- (c) the land is land to which an emergency order, control order or biosecurity zone regulation under the *Biosecurity Act 2015* applies and the person enters the land and hunts animals:
  - (i) in accordance with a duty imposed on the person by that order or regulation, or

(ii) under section 59, 76 or 88 of that Act, or

### **8.39 Veterinary Practice Act 2003 No 87**

#### **[1] Section 18 Refusal of registration**

Omit “the *Stock Diseases Act 1923*, the *Exotic Diseases of Animals Act 1991*” from section 18 (b) (i).

Insert instead “the *Biosecurity Act 2015*”.

#### **[2] Section 27 Removal of person’s name from Register**

Omit “the *Stock Diseases Act 1923*, the *Exotic Diseases of Animals Act 1991*” from section 27 (2) (c) (i).

Insert instead “the *Biosecurity Act 2015*”.

#### **[3] Section 33 Annual return to be submitted**

Omit “the *Stock Diseases Act 1923*, the *Exotic Diseases of Animals Act 1991*” from section 33 (1) (a) (i).

Insert instead “the *Biosecurity Act 2015*”.

#### **[4] Schedule 1 Unrestricted acts of veterinary science**

Omit “(within the meaning of the *Stock Diseases Act 1923*)” from clause 1 (g).

#### **[5] Schedule 4 Savings, transitional and other provisions**

Insert after Part 3:

## **Part 4 Provisions consequent on enactment of *Biosecurity Act 2015***

### **24 Offences under repealed Acts**

In this Act, a reference to an offence under the *Biosecurity Act 2015* includes a reference to an offence under an Act repealed by the *Biosecurity Act 2015*.

### **8.40 Veterinary Practice Regulation 2013**

#### **Clause 4 Restricted acts of veterinary science**

Omit “(within the meaning of the *Stock Diseases Act 1923*)” from clause 4 (1) (d) (vii).

## 8.41 Water Management (General) Regulation 2011

### [1] Clause 176 Pesticides and pest control

Omit “noxious” from clause 176 (1) (b).

### [2] Clause 176 (2), definition of “noxious weed”

Omit the definition.

## 8.42 Water NSW Regulation 2013

### Clause 27 Pesticides and pest control on Schedule 1 land and Schedule 2 land

Omit “noxious” from clause 27 (1) (b).

## 8.43 Western Lands Act 1901 No 70

### [1] Schedule 1 General lease conditions

Omit paragraph (c). Insert instead:

- (c) To carry out the control of weeds (within the meaning of the *Biosecurity Act 2015*) as required by that Act.

### [2] Schedule 3 Savings, transitional and other provisions

Insert after Part 3:

## Part 4 Provisions consequent on enactment of **Biosecurity Act 2015**

### 16 Change to standard covenant

- (1) A lease in force immediately before the commencement of the amendment to this Act made by the *Biosecurity Act 2015* that contained an old form of covenant is taken, on that commencement, to contain a new form of covenant.

- (2) In this clause:

**new form of covenant** means a covenant of a kind referred to in paragraph (c) of Schedule 1, as in force immediately after its amendment by the *Biosecurity Act 2015*.

**old form of covenant** means a covenant of a kind referred to in paragraph (c) of Schedule 1, as in force immediately before its amendment by the *Biosecurity Act 2015*.

## **8.44 Wild Dog Destruction Act 1921 No 17**

### **[1] Long title**

Omit “destruction”. Insert instead “control”.

### **[2] Section 1 Name of Act and commencement**

Omit “*Wild Dog Destruction*”. Insert instead “*Border Fence Maintenance*”.

### **[3] Section 3 Definitions**

Omit “Wild Dog Destruction” from the definition of **Board** in section 3 (1).

Insert instead “Border Fence Maintenance”.

### **[4] Section 3 (1), definition of “Scalp”**

Omit the definition.

### **[5] Part 2, heading**

Omit “**Wild Dog Destruction**”. Insert instead “**Border Fence Maintenance**”.

### **[6] Section 3A Border Fence Maintenance Board**

Omit “Wild Dog Destruction” from section 3A (1) and (2) (a) wherever occurring.

Insert instead “Border Fence Maintenance”.

### **[7] Section 3E Removal of board from office and appointment of administrator**

Omit “Wild Dog Destruction” from section 3E (2).

Insert instead “Border Fence Maintenance”.

### **[8] Part 3, heading**

Omit the heading. Insert instead:

Part 3 **Erection of dog-proof fences**

### **[9] Sections 4-9**

Omit the sections.

### **[10] Section 9A Erection of dog-proof fences by board**

Insert “authorised” after “authorise any”.

### **[11] Section 11 Recovery of expenses incurred by board**

Omit “section 9”. Insert instead “section 9A”.

**[12] Section 18 Payment of subsidy**

Omit “Wild Dog Destruction”. Insert instead “Border Fence Maintenance”.

**[13] Part 4, Division 3, heading**

Omit “**Wild Dog Destruction**”. Insert instead “**Border Fence Maintenance**”.

**[14] Section 19 Border Fence Maintenance Fund**

Omit “Wild Dog Destruction” from section 19 (1).

Insert instead “Border Fence Maintenance”.

**[15] Section 20 Purposes for which Border Fence Maintenance Fund may be used**

Omit “Wild Dog Destruction”. Insert instead “Border Fence Maintenance”.

**[16] Section 20 (b)**

Omit “and allowances for scalps”.

**[17] Section 20 (e1)**

Omit “or eradication”.

**[18] Section 21 Payment for scalps**

Omit the section.

**[19] Section 25 False statement with respect to scalps**

Omit the section.

**[20] Section 26 Possession of dingo**

Omit the section.

**[21] Section 27 Offences**

Omit section 27 (a) and (b).

**[22] Section 28 Destruction of traps**

Omit the section.

**[23] Schedule 1 Savings and transitional provisions**

Insert after Part 2:

## **Part 3 Provisions consequent on enactment of [Biosecurity](#)**

## Act 2015

### 3 Change of name of Board

- (1) The Border Fence Maintenance Board is a continuation of, and the same entity as, the Wild Dog Destruction Board that was constituted under this Act before its amendment by the *Biosecurity Act 2015*.
- (2) A reference in any Act or any instrument to the Wild Dog Destruction Board, to the extent that it relates to anything that is done or occurs after the commencement of the amendments made to this Act by the *Biosecurity Act 2015*, is taken to be a reference to the Border Fence Maintenance Board.

### 4 Change of name of Fund

- (1) The Border Fence Maintenance Fund is a continuation of, and the same fund as, the Wild Dog Destruction Fund that was maintained under this Act before its amendment by the *Biosecurity Act 2015*.
- (2) A reference in any Act or any instrument to the Wild Dog Destruction Fund, to the extent that it relates to anything that is done or occurs after the commencement of the amendments made to this Act by the *Biosecurity Act 2015*, is taken to be a reference to the Border Fence Maintenance Fund.
- (3) In particular, any approval given by the Minister or the Treasurer in relation to the Wild Dog Destruction Fund that has effect for the purposes of section 19 is taken to be an approval in relation to the Border Fence Maintenance Fund.

### 5 Continuation of certain provisions

- (1) This Act, as in force immediately before its amendment by the *Biosecurity Act 2015*, continues to apply to any notice given to an owner or occupier of land under section 6 or 8 before their repeal by that Act.
- (2) Except as expressly provided for by this Act or the regulations under this Schedule, the amendment of any Act or regulation by the *Biosecurity Act 2015* does not affect the continued operation of that Act or regulation:
  - (a) in respect of a notice referred to in subclause (1) or anything done under or in connection with such a notice, or
  - (b) in respect of any appeals or other proceedings arising under or in connection with a provision of this Act repealed by the *Biosecurity Act 2015*.