

Primary Industries Legislation Amendment (Biosecurity) Act 2012 No 31

[2012-31]



New South Wales

Status Information

Currency of version

Repealed version for 30 May 2012 to 10 September 2012 (accessed 23 November 2024 at 9:00)

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

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 11.9.2012.

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](#).

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Primary Industries Legislation Amendment (Biosecurity) Act 2012 No 31



New South Wales

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

1 Name of Act

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

2 Commencement

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

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

[1] Long title

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

[2] Section 1 Name of Act

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

[3] Section 6B

Insert after section 6A:

6B Meaning of “emergency animal pest”

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

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

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

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

(3) An order that is not published within 14 days after it is made is taken (unless it has already been revoked) to have been revoked at the end of that 14-day period.

[4] Section 11A Extent of declaration

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

[5] Section 11A (2)

Insert at the end of section 11A:

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

[6] Section 12 Permit for entry or exit

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

[7] Section 12 (2)

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

[8] Section 12 (2) (b)

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

[9] Section 13 Entry and exit points

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

[10] Section 13 (3) (c)

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

[11] Section 15 Declaration of restricted areas

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

Insert instead “, vehicles or other things”.

[12] Section 15 (3)

Insert after section 15 (2):

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

[13] Section 16 Permit for entry or exit

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

Insert instead “, vehicles or other things”.

[14] Section 16 (2)

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

[15] Section 18 Entry and exit points

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

[16] Section 18 (2)

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

[17] Section 20 Area restriction order

Insert after section 20 (1):

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

[18] Section 20 (2)

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

[19] Section 22 Control orders

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

[20] Section 22 (1A)

Insert after section 22 (1):

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

[21] Section 24 Permits

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

Insert instead “, restricted area or control area”.

[22] Section 24 (2A)

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

[23] Part 3A

Insert after Part 3:

Part 3A Control of emergency animal pests

Division 1 Duties

27A Duty to notify

A person:

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

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

Maximum penalty: 200 penalty units.

27B Release of emergency animal pests

(1) A person must not:

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

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

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

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

Division 2 Infested places

27C Declaration of infested place

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

27D Permit for entry or exit

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

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

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

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

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

27E Entry and exit points

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

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

Division 3 Restricted areas

27F Declaration of restricted area

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

27G Permit for entry or exit

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

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

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

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

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

27I Entry and exit points

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

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

27J Area restriction order

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

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

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

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

Division 4 Control areas

27K Declaration of control area

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

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

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

(a) in the Gazette, and

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

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

27L Control orders

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

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

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

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

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

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

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

Division 5 General

27M Permits

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

Maximum penalty: 5 penalty units.

27N Restraint of persons

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

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

270 Interfering with fence or gate in declared area

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

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

Maximum penalty: 5 penalty units.

27P Other functions and liabilities not affected

Nothing in this Part in any way limits or affects:

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

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

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

Insert instead “, soil or other things”.

[25] Section 28 (1A)

Insert after section 28 (1):

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

[26] Section 28 (2)

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

Insert instead “, vehicles or other things”.

[27] Section 28 (2)

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

[28] Section 28 (3)

Insert after section 28 (2):

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

[29] Section 31 Contravention of importation order

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

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

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

[31] Section 32 (1) (b)

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

[32] Section 32 (1A)

Insert after section 32 (1):

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

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

[33] Section 32 (2) (a)

Omit "a domestic animal".

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

[34] Section 32 (2) (b)

Omit "domestic animal".

Insert instead "emergency animal pest or other animal".

[35] Section 32 (2) (c)

Omit “or vehicles” wherever occurring.

Insert instead “, vehicles or other things”.

[36] Section 32 (4)

Insert after section 32 (3):

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

[37] Section 33 Notice of destruction order

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

[38] Section 34 Enforcement of destruction order

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

Insert instead “emergency animal pest or other animal”.

[39] Section 34 (2)

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

[40] Section 35 Quarantine of places and vehicles

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

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

Omit “on to or out of” wherever occurring.

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

[42] Section 35 (1AA)

Insert after section 35 (1):

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

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

[43] Section 35 (1B)

Insert after section 35 (1A):

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

[44] Section 36 Duration of quarantine order

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

[45] Section 36 (2)

Insert at the end of section 36:

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

[46] Section 38A Undertaking in certain cases

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

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

[47] Section 39 Disinfection of places and vehicles

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

[48] Section 39 (1A)

Insert after section 39 (1):

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

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

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

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

[49] Section 41 Seizure for unauthorised movements

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

[50] Section 41 (b)

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

[51] Section 41 (c)

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

[52] Section 42 Seized animals and property

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

[53] Section 43 Verbal and documentary information

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

[54] Section 43 (1) (a)

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

[55] Section 45 Search and entry and other powers

Omit “authorised” from section 45 (1).

[56] Section 45 (1) (h)

Omit the paragraph. Insert instead:

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

[57] Section 45 (1) (i)

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

[58] Section 45 (2)

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

[59] Section 46 Requiring assistance

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

[60] Section 46 (2) (h)

Insert after section 46 (2) (g):

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

[61] Part 6, heading

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

[62] Section 51 Establishment of the Fund

Insert “and Pests” after “Diseases”.

[63] Section 51

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

[64] Section 52 Payments to the Fund

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

[65] Section 53 Purposes of the Fund

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

[66] Section 67 Delegation

Insert at the end of the section:

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

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

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

[67] Section 70AA

Insert after section 70:

70AA Reasonable suspicion of emergency animal pest infestation

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

[68] Section 76 Protection of control programs

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

[69] Section 76 (1) (b)

Insert “or pest” after “the disease”.

[70] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Primary Industries Legislation Amendment (Biosecurity) Act 2012

[71] Dictionary, definition of “disinfected”

Insert “or infestation” after “infection”.

[72] Dictionary

Insert in alphabetical order:

emergency animal pest—see section 6B.

[73] Dictionary, definition of “Fund”

Insert “and Pests” after “Diseases”.

[74] Dictionary, definition of “treatment”

Omit the definition. Insert instead:

treatment means any procedure:

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

Schedules 2-4 (Repealed)