

Passed by both Houses



New South Wales

Biosecurity Amendment (Independent Biosecurity Commissioner) Bill 2023

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

Legislative Council
2023

Clerk of the Parliaments



New South Wales

Biosecurity Amendment (Independent Biosecurity Commissioner) Bill 2023

Act No _____, 2023

An Act to amend the *Biosecurity Act 2015* to provide for an Independent Biosecurity Commissioner.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Biosecurity Amendment (Independent Biosecurity Commissioner) Act 2023*.

2 Commencement

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

Schedule 1 Amendment of Biosecurity Act 2015 No 24

[1] Section 7 General definitions

Insert in alphabetical order—

Independent Biosecurity Commissioner means the Commissioner under section 360B(1).

[2] Part 21A

Insert after section 360—

Part 21A Independent Biosecurity Commissioner

Division 1 Preliminary

360A Definitions

In this part—

Commissioner—see section 360B.

Commissioner's website means a NSW Government website used by the Commissioner to provide public access to matters relating to the Commissioner's functions.

personal information has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.

Division 2 Establishment and appointment

360B Establishment

- (1) There must be an Independent Biosecurity Commissioner (the *Commissioner*).
- (2) The Commissioner is an officer of the Crown.

360C Appointment

The Commissioner must be appointed by the Governor on the recommendation of the Minister.

360D Independence

- (1) The Commissioner reports directly to the Minister.
- (2) However, the Commissioner is not subject to the control and direction of the Minister in the exercise of the Commissioner's functions.
- (3) To avoid doubt, subsection (2) does not prevent the Minister from giving the Commissioner a direction referred to in section 360F(1)(b).

Division 3 Functions of Commissioner

360E Functions—generally

- (1) The Commissioner has the following functions—
 - (a) to provide advice to the Minister, other Ministers and the Government about issues relating to pests and weeds,
 - (b) to undertake reviews about issues relating to pests and weeds and prepare and publish reports about the reviews,

- (c) to monitor issues relating to pests and weeds and identify opportunities for improvements in relation to the issues,
 - (d) to promote coordinated and collaborative responses by occupiers of land to issues relating to pests and weeds,
 - (e) to engage experts and key stakeholders in matters relating to the exercise of the Commissioner's functions,
 - (f) to make recommendations to the Minister, other Ministers and the Government, whether in a report mentioned in paragraph (b) or otherwise, about matters relating to the exercise of the Commissioner's functions,
 - (g) other functions conferred on the Commissioner by—
 - (i) this Act or the regulations under this Act, or
 - (ii) another Act.
- (2) In exercising the Commissioner's functions, the Commissioner must act in an independent and impartial way.

360F Functions—advice and reviews

- (1) The Commissioner's functions of providing advice and undertaking reviews may be exercised—
- (a) on the Commissioner's own initiative, or
 - (b) at the direction of the Minister.
- (2) If the Commissioner undertakes a review, the Commissioner must—
- (a) as soon as practicable after completing the review, prepare a report about the review, and
 - (b) publish the report on the Commissioner's website after complying with subsection (3).
- (3) Before publishing a report under subsection (2)(b), the Commissioner must—
- (a) give a copy of the report to—
 - (i) the Minister, and
 - (ii) other Ministers to whom the contents of the report are relevant, and
 - (b) allow the Minister, and other Ministers to whom the report is given, reasonable time to consider the report.

360G Functions—recommendations

- (1) If the Commissioner makes a recommendation to a Minister or the Government, the following must respond to the recommendation—
- (a) for a recommendation to a Minister—the Minister to whom the recommendation was made,
 - (b) for a recommendation to more than one Minister—one or more of the Ministers to whom the recommendation was made,
 - (c) for a recommendation to the Government—the Government or the Minister on behalf of the Government.
- (2) A response under subsection (1) must be given to the Commissioner—
- (a) for a response to a recommendation made in a report—within 6 months after the report is published on the Commissioner's website, or
 - (b) for another recommendation—within 6 months after—

- (i) the Minister to whom the recommendation was made receives the recommendation, or
 - (ii) the Government receives the recommendation.
- (3) The Commissioner must, as soon as practicable after receiving a response under subsection (1), publish the response on the Commissioner's website.

Division 4 Powers of Commissioner

360H Definitions

In this division—

Public Service agency has the same meaning as in the *Government Sector Employment Act 2013*.

relevant executive means—

- (a) for a relevant Public Service agency—the head of the agency, or
- (b) for a relevant State owned corporation—the chief executive officer or a director of the corporation under the *State Owned Corporations Act 1989*.

relevant Public Service agency means a Public Service agency that has functions relating to, or that is otherwise involved in—

- (a) pest or weed management, or
- (b) the care, control or management of land.

relevant State owned corporation means a State owned corporation that has functions relating to, or that is otherwise involved in—

- (a) pest or weed management, or
- (b) the care, control or management of land.

360I Power to require documents

- (1) The Commissioner may, by notice given to a relevant executive, require the relevant executive to give the Commissioner documents specified in the notice that are reasonably required for the exercise of the Commissioner's functions, including documents that contain personal information.

Note— Under the *Privacy and Personal Information Protection Act 1998*, section 25, a public sector agency is not required to comply with particular provisions of that Act if non-compliance is otherwise permitted or is necessarily implied or reasonably contemplated under another Act.

- (2) A notice under subsection (1) must specify—
 - (a) the way in which the documents must be given, and
 - (b) a reasonable time within which the documents must be given.
- (3) A notice under this section may only require the relevant executive to give existing documents that are—
 - (a) in the possession of the relevant Public Service agency or relevant State owned corporation, or
 - (b) within the power of the relevant Public Service agency or relevant State owned corporation to obtain lawfully.
- (4) The Commissioner may take copies of a document given to the Commissioner under this section.

- (5) If a document required to be provided by a notice under this section is in electronic, mechanical or other form, the document must be given in written form, unless the notice specifies otherwise.
- (6) A relevant executive given a notice under this section must comply with the notice unless the relevant executive has a reasonable excuse.

360J Power to require information

- (1) The Commissioner may, by notice given to a relevant executive, require the relevant executive to give the Commissioner information specified in the notice that is reasonably required for the exercise of the Commissioner's functions, including personal information.
- (2) A notice under subsection (1) must specify—
 - (a) the way in which the information must be given, and
 - (b) a reasonable time within which the information must be given.
- (3) A relevant executive given a notice under this section must comply with the notice unless the relevant executive has a reasonable excuse.

360K Power to enter into contracts or other arrangements

The Commissioner may enter into contracts or other arrangements to assist the Commissioner in exercising the Commissioner's functions.

Division 5 Employment conditions

360L Term of office

- (1) The Commissioner holds office for the term, not more than 5 years, specified in the Commissioner's instrument of appointment.
- (2) The Commissioner is eligible for re-appointment.

360M Other employment conditions and remuneration

- (1) The employment of the Commissioner must, subject to this Act, be governed by a contract of employment between the Commissioner and the Minister.
Example— The contract of employment may provide for the Commissioner to be employed on a full-time or part-time basis.
- (2) The Commissioner is not a Public Service employee under the *Government Sector Employment Act 2013* and the provisions of that Act relating to the employment of Public Service employees do not apply to the Commissioner, except as provided by subsection (3).
- (3) The following provisions (the **relevant provisions**) of, or made under, the *Government Sector Employment Act 2013* relating to the employment of Public Service senior executives apply to the Commissioner—
 - (a) provisions relating to the band in which an executive must be employed,
 - (b) provisions relating to the contract of employment of an executive,
 - (c) provisions relating to the remuneration, employment benefits and allowances of an executive.
- (4) For subsection (3), the relevant provisions apply as if a reference to the employer of a Public Service senior executive were a reference to the Minister.
- (5) Without limiting subsection (3)(b), the provisions of the *Government Sector Employment Act 2013*, and regulations and rules made under that Act,

prescribing a model contract of employment, including specifying model provisions that are mandatory, for statutory office holders apply to the contract of employment for the Commissioner.

360N Removal from office

- (1) The Minister may remove the Commissioner from office, but only for incompetence, incapacity or misbehaviour.
- (2) To avoid doubt, the *Government Sector Employment Act 2013*, Part 6 applies in relation to the Commissioner.

Note— Under the *Government Sector Employment Act 2013*, Part 6, the Governor may remove the Commissioner from office at any time for any or no stated reason and without notice.

360O Vacancy in office

The office of Commissioner becomes vacant, and the person appointed as Commissioner ceases to be employed as Commissioner, if the Commissioner—

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns from office by notice to the Minister, or
- (d) is removed from office by—
 - (i) the Governor under the *Government Sector Employment Act 2013*, Part 6, or
 - (ii) the Minister under section 360N(1), or
- (e) becomes personally insolvent, or
- (f) becomes a mentally incapacitated person, or
- (g) is convicted—
 - (i) in New South Wales of an offence punishable by imprisonment for 12 months or more, or
 - (ii) elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence punishable by imprisonment for 12 months or more, or
- (h) is imprisoned in relation to a conviction for an offence—
 - (i) in New South Wales, or
 - (ii) elsewhere than in New South Wales that, if committed in New South Wales, would be an offence punishable by imprisonment.

360P Acting Commissioner

- (1) The Minister may appoint a person to act as Commissioner during—
 - (a) the illness or absence of the Commissioner, or
 - (b) a vacancy in the office of Commissioner.
- (2) A person acting as Commissioner—
 - (a) has and may exercise the Commissioner's functions, and
 - (b) is taken to be the Commissioner.
- (3) The Minister may, at any time, remove a person from office as acting Commissioner.

- (4) An acting Commissioner is entitled to be paid the same remuneration and allowances as the Commissioner.

Division 6 Miscellaneous

360Q Staff

Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Commissioner to exercise the Commissioner's functions.

Note— The *Government Sector Employment Act 2013*, section 59 provides that persons employed in the Public Service to enable the Commissioner to exercise the Commissioner's functions, or whose services the Commissioner makes use of, may be referred to as officers or employees, or members of staff, of the Commissioner. The *Constitution Act 1902*, section 47A precludes the Commissioner from employing staff.

360R Annual report

- (1) The Commissioner must, by 30 September in each year, table in each House of Parliament an annual report that describes—
- (a) the activities undertaken, and findings and recommendations made, by the Commissioner in the previous financial year, and
 - (b) the status of the implementation of any recommendations made by the Commissioner—
 - (i) in the previous financial year, or
 - (ii) in an earlier financial year that are still being implemented.
- (2) In this section—
- financial year*** means the period—
- (a) starting on 1 July in a year, and
 - (b) ending on 30 June in the following year.

360S Application of Privacy and Personal Information Protection Act 1998

The Commissioner is a public sector agency for the purposes of the *Privacy and Personal Information Protection Act 1998*.

360T Review of part

- (1) The Minister must review the operation of this part to determine whether the Commissioner's operations, objectives and functions remain appropriate.
- (2) A review must be undertaken after each 5-year period from the commencement of this part.
- (3) A report on the outcome of the review must be tabled in each House of Parliament within 12 months after the end of each 5-year period.

[3] Section 383 Protection from liability

Insert after section 383(4), definition of ***protected person***, paragraph (b)—

- (b1) the Independent Biosecurity Commissioner, or

[4] Schedule 7 Savings, transitional and other provisions

Insert after clause 32—

Part 3 Provision consequent on enactment of Biosecurity Amendment (Independent Biosecurity Commissioner) Act 2023

33 Annual report of Independent Biosecurity Commissioner

The first report of the Independent Biosecurity Commissioner required under section 360R must—

- (a) be tabled by 30 September 2025, and
- (b) relate to the period starting on the day the Commissioner is appointed and ending on 30 June 2025.

Schedule 2 Consequential amendments of other legislation

2.1 Government Information (Public Access) Regulation 2018

Schedule 3 Agencies declared to be part of other agencies

Insert in appropriate order—

Independent Biosecurity Commissioner under the Biosecurity Act 2015	Department of Regional NSW
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2.2 Government Sector Finance Regulation 2018

Clause 6 Prescribed government officers—the Act, s 2.9(1)(e)

Insert in appropriate order in the table to clause 6(2)—

3B	Department of Regional NSW	Independent Biosecurity Commissioner under the <i>Biosecurity Act 2015</i>
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