



New South Wales

# Biosecurity Bill 2014

## Explanatory note

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

## Overview of Bill

The objects of this Bill are as follows:

- (a) to 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,
- (b) to promote biosecurity as a shared responsibility between government, industry and communities,
- (c) to provide a framework for the timely and effective management of the following:
  - (i) pests, diseases, contaminants and other biosecurity matter that is 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,
- (d) to provide a framework for risk-based decision-making in relation to biosecurity,
- (e) to give effect to intergovernmental biosecurity agreements to which the State is a party,
- (f) to provide the means by which biosecurity requirements in other jurisdictions can be met, so as to maintain market access for industry.

## Outline of provisions

### Part 1 Preliminary

Part 1 deals with preliminary matters, including the following:

- (a) the name of the proposed Act,
- (b) the commencement of the proposed Act on a proclaimed day or days,
- (c) the objects of the proposed Act, which are the same as those of this Bill,
- (d) that the proposed Act binds the Crown and has extraterritorial application,
- (e) that the proposed Act does not give rise to or affect any civil cause of action.

### Part 2 Interpretation, key concepts and principles

Division 1 (Interpretation) contains provisions that:

- (a) define terms used in the proposed Act, and
- (b) explain the way in which biosecurity matter is referred to in the proposed Act, and
- (c) provide that notes included in the proposed Act do not form part of it.

Division 2 (Key concepts) defines key concepts used in the proposed Act including the following:

- (a) *biosecurity matter* which is defined to mean any living thing (other than a human), any part of an animal, plant or living thing (other than a human), any produce of a living thing (other than a human), a disease, a prion, a contaminant or 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,
- (b) *carrier* which is defined to mean 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,
- (c) *deal* with biosecurity matter or a carrier, which is defined to include keep, possess, produce, manufacture, supply, import, acquire, buy, sell, dispose of, move, use, breed, propagate, grow, raise, feed, culture, experiment with or display biosecurity matter or a carrier or do anything prescribed by the regulations as dealing,
- (d) *biosecurity impact* which is defined to mean 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 one of the matters listed in the definition,
- (e) *biosecurity risk* which is defined to mean the risk of a biosecurity impact occurring.

Division 3 (Principles that apply to biosecurity duties) sets out the following principles, which apply to all biosecurity duties that persons have under the proposed Act:

- (a) that a biosecurity duty cannot be transferred to another person,
- (b) that a person can have more than one biosecurity duty,
- (c) that more than one person can concurrently have the same biosecurity duty (and in such a case each duty holder must comply with that duty and retains responsibility for it),
- (d) that a duty imposed on a person to prevent, eliminate or minimise a biosecurity risk so far as is reasonably practicable is a duty to prevent or eliminate a biosecurity risk, so far as is reasonably practicable and, 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

Part 3 contains provisions that:

- (a) set out the general biosecurity duty, which is that 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 that is posed or likely to be posed by the biosecurity matter, carrier or dealing is prevented, eliminated or minimised, and
- (b) make it an offence for a person to fail to discharge the person's biosecurity duty (and provides for a person to be guilty of a continuing offence if the breach continues), and
- (c) provide for the regulations to 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 (called *mandatory measures* in the proposed Part), and
- (d) make it an offence for a person who deals with biosecurity matter or a carrier to contravene any such mandatory measures (which can also be a continuing offence), and
- (e) refer to Schedule 1, which contains further provisions relating to those duties that apply specifically to weeds.

### Part 4 Prohibited matter and related biosecurity duties

Division 1 (Preliminary) provides that:

- (a) biosecurity matter described in Schedule 2 to the proposed Act is prohibited matter, and
- (b) biosecurity matter described in Part 1 of Schedule 2 is prohibited matter throughout the State and biosecurity matter described in Part 2 of Schedule 2 is prohibited in that part of the State specified in the Part, and
- (c) the regulations may amend Schedule 2.

Division 2 (Offence of dealing with prohibited matter) contains provisions that:

- (a) make it an offence to deal with biosecurity matter that is prohibited matter (throughout the whole State or in the part of the State that it is prohibited matter), and
- (b) establish a defence of unknowing possession of biosecurity matter (if the person did not know, and could not reasonably be expected to have known, that the matter was in the person's possession, care, custody or control).

Division 3 (Duty to notify presence of prohibited matter) contains provisions that:

- (a) create a biosecurity duty to immediately notify any prohibited matter event that a person becomes aware of or suspects has occurred, is occurring or is about to occur (a *prohibited matter event* is defined as the presence of biosecurity matter in a part of the State in which it is prohibited matter or the introduction of biosecurity matter into a part of the State in which it is prohibited matter), where the duty arises if the person is:
  - (i) the owner, occupier or person in charge of, or who 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
  - (ii) becomes aware of, or suspects, 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
  - (iii) a person of a class prescribed by the regulations, and
- (b) create an offence of failing to discharge that biosecurity duty, and
- (c) establish a defence for failure to notify a prohibited matter event that was widely and publicly known, and

- (d) provide protection against self-incrimination for information required to be provided to discharge the biosecurity duty, and
- (e) enable the regulations to make further provision for notifications.

**Division 4 (Duty to prevent, eliminate or minimise risk posed by prohibited matter)** contains provisions that:

- (a) create a biosecurity duty to prevent, eliminate or minimise risk posed by prohibited matter which is imposed on a person who:
  - (i) becomes aware of, or suspects, the presence of biosecurity matter in a part of the State in which it is prohibited matter and who is the owner, occupier or person in charge of, or who 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
  - (ii) 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
  - (iii) is a person of a class prescribed by the regulations, and
- (b) provide that failure to discharge that biosecurity duty is an offence.

**Division 5 (Duty to notify biosecurity events)** contains provisions that:

- (a) create a biosecurity duty to notify a biosecurity event if a person becomes aware of or suspects that a biosecurity event has occurred, is occurring or is about to occur (*biosecurity event* is defined as something that has occurred, is occurring or is likely to occur and which has had, is having, or is likely to have, a significant biosecurity impact and includes anything declared by the regulations to be a biosecurity event), which is imposed on a person who:
  - (i) is the owner, occupier or person in charge of, or who 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 about to occur, or
  - (ii) 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
  - (iii) is a person of a class prescribed by the regulations, and
- (b) provide that failure to discharge that biosecurity duty is an offence, and
- (c) establish a defence for failure to notify a biosecurity event that was widely and publicly known, and
- (d) provide protection against self-incrimination for information required to be provided to discharge the biosecurity duty, and
- (e) enable the regulations to make further provision for notifications.

## **Part 5 Emergency orders**

**Division 1 (Emergency orders)** contains provisions that:

- (a) give the Secretary of the Department of Trade and Investment, Regional Infrastructure and Services the power to make an order in writing (an *emergency order*) that declares a biosecurity emergency and establishes measures to respond to that biosecurity emergency, in circumstances where the Secretary is satisfied that, or reasonably suspects that, there is a current or imminent biosecurity risk that may have a significant biosecurity impact, and
- (b) provide that the principal objects of an emergency order are to isolate an emergency zone or biosecurity matter, to prevent the spread of the biosecurity matter and to eradicate the biosecurity matter (if practicable), and
- (c) provide for the content of emergency orders and the giving of notice of them, and
- (d) provide that emergency orders operate for no longer than 6 months (but can be extended).

**Division 2 (Matters for which emergency order may provide)** sets out the matters for which emergency orders may provide, as follows:

- (a) by defining the concept of an *emergency zone* which 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,
- (b) by defining the concept of *emergency measures* which are the measures that the Secretary establishes under an emergency order to respond to a biosecurity emergency,
- (c) by giving examples of such emergency measures that can be specified in an emergency order,
- (d) by specifying the special powers for which those emergency measures may provide.

**Division 3 (Limitations that apply to emergency order)** imposes the following limitations on emergency orders:

- (a) an emergency order cannot require a person to undergo any treatment measure, other than an external treatment measure,
- (b) 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,
- (c) that a requirement to submit to an inspection is a requirement to submit to a visual inspection including of clothes and shoes and to shake or otherwise move a person's hair,
- (d) an emergency order cannot require or authorise the destruction of a thing unless the Secretary is of the opinion that it is reasonably necessary to prevent, eliminate or minimise a significant biosecurity impact,
- (e) that persons directly affected by a destruction requirement are generally required to be advised of the requirement.

**Division 4 (Effect of order)** deals with the effect of an emergency order by providing that:

- (a) an emergency order prevails, to the extent of any inconsistency, over the regulations or any biosecurity registration, permit (other than an emergency permit), control order or any other instrument or exemption made or given under the Act, and
- (b) it is an offence to contravene an emergency order (which may be a continuing offence), and
- (c) if there is a failure to comply with an emergency order, the Secretary may authorise the required actions to be taken by any person and recover the costs of doing so.

**Division 5 (General)** contains provisions:

- (a) dealing with the amendment or revocation of emergency orders, and
- (b) that prevent the making of any interim injunction, order or relief that prevents, restricts or defers any emergency order or anything authorised or required by an emergency order.

## **Part 6 Control orders**

**Division 1 (Control orders)** contains provisions that:

- (a) give the Secretary the power to make a control order, which establishes one or more control zones and establishes measures, in connection with the control zone, to prevent, eliminate, minimise or manage a biosecurity risk, but only if the Secretary reasonably believes that the order is necessary to prevent, eliminate, minimise or manage the biosecurity risk, and
- (b) provide that the principal object of a control order is to eradicate biosecurity matter that poses or is likely to pose a biosecurity risk, and
- (c) specify the contents of control orders, and
- (d) provide for the giving of notice of control orders, and
- (e) provide for their duration (for a maximum of 5 years) and their extension.

**Division 2 (Matters for which control order may provide)** specifies the matters for which control orders may provide, and related concepts, as follows:

- (a) by defining a *control zone* as the principal area or areas in relation to which, in the opinion of the Secretary, measures are required to be implemented,
- (b) by defining the *control measures* as the measures that the Secretary establishes under a control order to prevent, eliminate, minimise or manage the biosecurity risk to which an order relates,
- (c) by providing examples of control measures that may be contained in a control order.

**Division 3 (Limitations that apply to control order)** imposes the following limitations on control orders:

- (a) a control order cannot prohibit, regulate or control the movement of a person,
- (b) a control order cannot require treatment measures to be carried out in relation to a person,
- (c) 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,
- (d) a control order cannot authorise the destruction of a thing except in certain circumstances,
- (e) consultation is required in relation to regulations that deal with certain aspects of national parks and wildlife, native vegetation, threatened species and protected heritage items.

**Division 4 (Effect of control order)** deals with the effect of control orders by:

- (a) making it an offence to contravene a control order (which can be a continuing offence), and
- (b) providing that the Secretary can authorise any required actions to be taken by any person and recover costs if there is a failure to comply with a control order.

**Division 5 (General)** provides for the amendment or revocation of control orders.

## Part 7 Biosecurity zones

**Division 1 (Biosecurity zones)** contains provisions that:

- (a) provide that the regulations may establish one or more biosecurity zones for the purposes of preventing, eliminating, minimising or managing a biosecurity risk or biosecurity impact, and
- (b) list the matters that can be specified in biosecurity zone regulations.

**Division 2 (Matters for which regulations may provide)** specifies the matters for which biosecurity zone regulations may provide as follows:

- (a) by describing what a biosecurity zone may be,
- (b) by describing what the regulatory measures (that is, the measures to be implemented for the purpose of preventing, eliminating, minimising or managing a biosecurity risk or biosecurity impact) may be,
- (c) by providing examples of regulatory measures that can be included in a biosecurity zone regulation.

**Division 3 (Limitations on regulation-making power)** sets out the following limitations on the regulation-making power in relation to biosecurity zones:

- (a) a regulation cannot prohibit, regulate or control the movement of a person or require treatment measures to be carried out in relation to any person,
- (b) a regulation cannot require a person to provide samples of the person's blood, hair, saliva or any other body part or body fluid,
- (c) a regulation cannot require or authorise the destruction of a thing except in limited circumstances,
- (d) consultation is required in relation to regulations that deal with certain aspects of national parks and wildlife, native vegetation, threatened species and protected heritage items.

**Division 4 (Effect of biosecurity zone)** specifies the effect of the biosecurity zone regulation namely:

- (a) that a person who contravenes any biosecurity zone regulation is guilty of an offence (which can be a continuing offence), and
- (b) that the Secretary can authorise required actions under a biosecurity zone regulation and recover the costs.

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

**Division 1 (Preliminary)** sets out:

- (a) the purposes for which functions under the proposed Part may be exercised, including the purpose of investigating, monitoring and enforcing compliance with the requirements imposed by or under the proposed Act, and
- (b) when an authorised officer may exercise a function in the case of an emergency.

**Division 2 (Information gathering powers)** sets out the main information gathering powers of authorised officers, including the following:

- (a) the power to require information and records,
- (b) the power to require answers to questions,
- (c) the power to record evidence,
- (d) the power to demand names and addresses,
- (e) the additional power to require information in an emergency.

**Division 3 (Entry to premises)** provides for:

- (a) the powers of authorised officers to enter premises, and
- (b) the issue of search warrants, and
- (c) a power to require the owner or occupier of premises to provide assistance.

**Division 4 (Investigation and risk management powers)** provides for the exercise of investigation and risk management powers including:

- (a) that powers that can be exercised on premises, and
- (b) that an authorised officer can require the owner or occupier of premises or any person in or on the premises to provide reasonable assistance, and
- (c) for the recovery of fees for certain action taken.

**Division 5 (Limitations on powers)** sets out the following limitations on the exercise of powers of authorised officers:

- (a) limitations on the detention and treatment of persons,
- (b) limitations on the destruction of things,
- (c) that persons directly affected by destruction are generally to be advised of the proposed destruction,
- (d) the interaction of powers with restrictions imposed by Acts about national parks and wildlife, native vegetation, threatened species and the protection of heritage items.

**Division 6 (General)** makes general provisions in relation to the powers of authorised officers including:

- (a) making it an offence to contravene a requirement made by an authorised officer (which may be a continuing offence), and
- (b) providing for a defence of reasonable excuse to such a contravention, which applies in limited circumstances, and
- (c) requiring an authorised officer entering or searching premises, or doing anything else on premises, to do as little damage as possible, and

- (d) providing that the Secretary must compensate persons for the damage caused by an authorised officer in certain circumstances, and
- (e) providing for the revocation or variation of notices under the proposed Part.

## **Part 9 Biosecurity directions**

**Division 1 (Preliminary)** provides:

- (a) that a power conferred by the proposed Part to give a biosecurity direction may be exercised whether or not a power of entry has been exercised, and
- (b) for when an authorised officer can exercise functions in the case of an emergency.

**Division 2 (Biosecurity directions)** provides that an authorised officer can give a biosecurity direction which is either:

- (a) a general biosecurity direction, which is a direction that applies to the public generally or to a specified section of the public such as persons engaged in a specific activity or who frequent particular premises, or
- (b) an individual biosecurity direction, which is a direction that applies to particular person.

The proposed Division also provides for the revocation or variation of biosecurity directions.

**Division 3 (General biosecurity directions)** makes provision in relation to general biosecurity directions, in particular:

- (a) by providing that an authorised officer may give a general biosecurity direction if the officer reasonably believes it is necessary to do so to prevent, eliminate or minimise a biosecurity risk or to prevent, manage or control a biosecurity impact that has occurred, is occurring or is likely to occur or to enforce, administer or execute the proposed Act or an instrument made under the proposed Act, and
- (b) by specifying how a general biosecurity direction can be given, and
- (c) by setting out the possible contents of a general biosecurity direction, including one given in the case of an emergency.

**Division 4 (Individual biosecurity directions)** provides for the giving of individual biosecurity directions including:

- (a) the circumstances in which an individual biosecurity direction can be given, and
- (b) how an individual biosecurity direction can be given, and
- (c) examples of individual biosecurity directions, and
- (d) special emergency powers, and
- (e) the fee for individual biosecurity directions, and
- (f) providing for the taking of required actions and the recovery of fees.

**Division 5 (Limitations on powers)** sets out the following limitations on biosecurity directions:

- (a) limitations on the detention and treatment of persons in a particular way,
- (b) what is involved in requiring a person to submit to an inspection,
- (c) limitations on the destruction of things,
- (d) limitations on the exercise of powers that conflict with other legislation about national parks and wildlife, native vegetation, threatened species and the protection of heritage items.

**Division 6 (General)** makes general provisions in relation to biosecurity directions including:

- (a) by making it an offence to contravene a biosecurity direction (which may be a continuing offence), and
- (b) by creating a defence if there is a reasonable excuse for the contravention, and
- (c) by providing for appeals to the Land and Environment Court against a decision to give or amend a biosecurity direction, and



- (d) by providing that prior notice of biosecurity directions is not required.

## **Part 10 Biosecurity undertakings**

**Part 10** provides for the following:

- (a) the making and acceptance of biosecurity undertakings, which are undertakings given by a person if the person has contravened or an authorised officer suspects that the person has contravened or is likely to contravene a requirement imposed by or under the proposed Act, in which the person agrees to implement measures to remedy or prevent the contravention,
- (b) the contents of a biosecurity undertaking,
- (c) when a biosecurity undertaking takes effect,
- (d) that contravening a biosecurity undertaking is an offence (which may be a continuing offence),
- (e) the fee for acceptance of a biosecurity undertaking,
- (f) that an authorised officer can take or authorise the required actions under a biosecurity undertaking and that the costs of doing so can be recovered,
- (g) that the Land and Environment Court can make orders requiring compliance with a biosecurity undertaking,
- (h) the withdrawal or variation of biosecurity undertakings,
- (i) that enforcement action under the proposed Act is not prevented by an undertaking.

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

**Division 1 (Prohibited dealings)** provides that:

- (a) a dealing with biosecurity matter described in Schedule 3 to the proposed Act is a prohibited dealing, and
- (b) it is an offence to engage in a prohibited dealing.

**Division 2 (Dealings for which biosecurity registration is required)** provides that:

- (a) each of the dealings described in Schedule 4 to the proposed Act is a registrable dealing, and
- (b) it is an offence to engage in a registrable dealing unless a person is a registered entity and the dealing is authorised by the person's biosecurity registration, and
- (c) a defence is available for employees and agents who engage in registrable dealings without registration.

## **Part 12 Biosecurity registration**

**Division 1 (Preliminary)** contains provisions that:

- (a) give the Secretary power to authorise a person to engage in a registrable dealing by granting biosecurity registration, and
- (b) specify the meaning of a registered entity, and
- (c) provide for when the Secretary may exercise functions in the case of an emergency.

**Division 2 (Application for biosecurity registration)** provides for:

- (a) the making of applications for biosecurity registration, and
- (b) the grant or refusal of an application for biosecurity registration, and
- (c) the duration of biosecurity registration, and
- (d) the variation of biosecurity registration.

**Division 3 (Renewal of biosecurity registration)** provides for:

- (a) the making of applications for renewal of biosecurity registration in respect of a registrable dealing, and
- (b) the grant or refusal of renewal applications.

**Division 4 (Conditions of biosecurity registration)** provides that:

- (a) biosecurity registration is subject to any conditions prescribed by the regulations and any other conditions imposed by the Secretary at the time of the grant or renewal of biosecurity registration or at any other time by variation, and
- (b) those conditions may include conditions that require compliance with specified standards, that require works or measures, that require a person to have in place an alternative arrangement or that require insurance cover, biosecurity audits or financial assurances, and
- (c) conditions can provide that the authorisation conferred by biosecurity registration does not take effect until the end of a specified period or until the happening of a specified event.

**Division 5 (Suspension or cancellation of biosecurity registration)** contains provisions for the suspension or cancellation of biosecurity registration that:

- (a) set out the grounds for suspension or cancellation of biosecurity registration, which include a contravention by the registered entity of the proposed Act, and
- (b) set out the procedure for suspension, which includes the registered entity being given an opportunity to make submissions about suspension, and
- (c) set out the procedure for cancellation, which includes the registered entity being given an opportunity to make submissions about cancellation, and
- (d) specify the effect of suspension or cancellation on conditions.

**Division 6 (Miscellaneous)** provides:

- (a) that a registered entity who contravenes a condition of biosecurity registration is guilty of an offence, and
- (b) that biosecurity registration is not transferable, and
- (c) for the surrender of biosecurity registration, and
- (d) for the making of appeals to the Land and Environment Court against certain decisions about biosecurity registration.

## **Part 13 Biosecurity certificates**

**Division 1 (Biosecurity certificates)** provides:

- (a) that a biosecurity certifier may issue a biosecurity certificate, and
- (b) that a biosecurity certificate is a certificate that relates to any specified biosecurity matter or other thing and that certifies certain matters about the biosecurity matter or thing.

**Division 2 (Interstate biosecurity certificates)** contains provisions that:

- (a) provide for the recognition of interstate biosecurity certificates, and
- (b) specify what an interstate biosecurity certificate is.

**Division 3 (Offences)** creates offences of:

- (a) providing false or misleading information to a biosecurity certifier, and
- (b) issuing a false biosecurity certificate, and
- (c) altering or amending a biosecurity certificate in a way that makes it false or misleading, and
- (d) falsely representing that a biosecurity certificate has been issued, and
- (e) an unauthorised person issuing or altering a biosecurity certificate.

## Part 14 Accreditation of biosecurity certifiers

**Division 1 (Biosecurity certifiers)** provides for an accreditation authority to grant accreditation as a biosecurity certifier to any person and:

- (a) requires an accreditation authority to adopt an accreditation policy, and
- (b) specifies the effect of accreditation, which is that a biosecurity certifier is authorised by his or her accreditation to issue biosecurity certificates, and
- (c) provides that the authority that grants accreditation is the responsible accreditation authority in relation to that accreditation, and
- (d) provides for the approval of an authorised officer to exercise the functions of a biosecurity certifier.

**Division 2 (Accreditation procedure)** sets out the procedure for accreditation as a biosecurity certifier including the following:

- (a) the making of applications for accreditation,
- (b) the grant or refusal of applications,
- (c) the duration of accreditation, which cannot exceed 5 years,
- (d) the variation of accreditation.

**Division 3 (Renewal of accreditation)** provides for the renewal of accreditation including:

- (a) the making of applications for renewal, and
- (b) the grant or refusal of renewal applications.

**Division 4 (Conditions of accreditation)** specifies that:

- (a) accreditation as a biosecurity certifier is subject to any conditions prescribed by the regulations and any further conditions imposed by the responsible accreditation authority at the time of grant or renewal of accreditation or at any other time by variation, and
- (b) those conditions may include conditions that require the biosecurity certifier to exercise the functions of a biosecurity certifier in accordance with specified standards or require the biosecurity certifier to take out and maintain a policy of insurance.

**Division 5 (Suspension or cancellation of accreditation)** provides for the suspension or cancellation of accreditation as a biosecurity certifier including by setting out the following:

- (a) the grounds for suspension or cancellation of accreditation, which include a contravention of a requirement imposed by or under the proposed Act,
- (b) the procedure for suspension, which includes the biosecurity certifier being given an opportunity to make submissions about suspension,
- (c) the procedure for cancellation, which includes that the biosecurity certifier being given an opportunity to make submissions about cancellation,
- (d) the effect of suspension or cancellation on conditions.

**Division 6 (Miscellaneous)** contains provisions that:

- (a) make it an offence for a biosecurity certifier or former biosecurity certifier to contravene a condition of accreditation imposed by or under the proposed Act (which can be a continuing offence), and
- (b) make it an offence to impersonate a biosecurity certifier, and
- (c) provide for the appeal against certain decisions about accreditation to the Land and Environment Court.

## Part 15 Biosecurity audits

**Division 1 (Biosecurity audits)** provides:

- (a) for the 2 types of biosecurity audits that may be carried out under the proposed Act (an accreditation audit and a compliance audit), and
- (b) that audits are to be carried out only by a biosecurity auditor, and
- (c) that biosecurity audits are mandatory when required by the Secretary or an accreditation authority, and
- (d) that an audit target is the person the subject of a biosecurity audit.

**Division 2 (Accreditation audits)** provides for accreditation audits (that is, audits carried out for the purposes of assessing certain matters in relation to biosecurity registration, accreditation as a biosecurity certifier, permits, appointment as a biosecurity auditor and approvals to exercise functions of an accreditation authority), including:

- (a) who can require an accreditation audit, and
- (b) the appointment of a biosecurity auditor, and
- (c) the functions of a biosecurity auditor in relation to an accreditation audit, and
- (d) the recovery of fees for accreditation audits, and
- (e) the use of accreditation audits.

**Division 3 (Compliance audits)** provides for the carrying out of compliance audits (that is, audits carried out for the purposes of assessing certain matters in relation to compliance with or contravention of the proposed Act), including the following:

- (a) who can require a compliance audit,
- (b) the factors involved in the decision to require a compliance audit,
- (c) the audit frequency policy,
- (d) the engagement of biosecurity auditors,
- (e) the functions of biosecurity auditors in relation to compliance audits,
- (f) the recovery of fees for compliance audits,
- (g) the use of compliance audits.

**Division 4 (Functions of biosecurity auditor)** sets out the functions of biosecurity auditors including the following:

- (a) the general function of a biosecurity auditor to carry out biosecurity audits and other functions conferred by or under the proposed Act,
- (b) the power of entry to premises of biosecurity auditors,
- (c) the use of assistants,
- (d) reporting requirements,
- (e) the requirement that certain matters be reported immediately.

**Division 5 (Offences relating to biosecurity audits)** creates offences of:

- (a) obstructing or hindering a biosecurity auditor in the exercise of the biosecurity auditor's functions under the proposed Act, and
- (b) the provision of false or misleading information to a biosecurity auditor.

## Part 16 Appointment of biosecurity auditors

**Division 1 (Appointment of biosecurity auditors)** provides that:

- (a) an accreditation authority may appoint any person as a biosecurity auditor, and
- (b) an accreditation authority that has the power to appoint biosecurity auditors is required to adopt an appointment policy, and

- (c) the effect of appointment is that a biosecurity auditor is authorised to conduct biosecurity audits, and
- (d) the responsible accreditation authority is the authority that appoints the biosecurity auditor, and
- (e) authorised officers can be approved to exercise functions of biosecurity auditors.

**Division 2 (Appointment procedure)** provides for the procedure for the appointment of biosecurity auditors including:

- (a) the making of applications for appointment, and
- (b) the grant or refusal of applications, and
- (c) the duration of appointment, and
- (d) the variation of appointment.

**Division 3 (Renewal of appointment)** provides for the renewal of appointment as a biosecurity auditor, including:

- (a) the making of applications for renewal, and
- (b) the grant or refusal of renewal applications.

**Division 4 (Conditions of appointment as biosecurity auditor)** provides that appointment as a biosecurity auditor is subject to:

- (a) any conditions prescribed by the regulations, and
- (b) any conditions imposed by the responsible accreditation authority at the time of appointment or renewal of appointment or at any other time by variation.

**Division 5 (Suspension or cancellation of appointment)** provides for the suspension or cancellation of appointment as a biosecurity auditor, including by setting out:

- (a) the grounds for suspension or cancellation of appointment, which include contravention of a requirement imposed by or under the proposed Act, and
- (b) the procedure for suspension, which includes the biosecurity auditor being given an opportunity to make submissions about suspension, and
- (c) the procedure for cancellation, which includes the biosecurity auditor being given an opportunity to make submissions about cancellation, and
- (d) the effect of suspension or cancellation on conditions.

**Division 6 (Miscellaneous)** contains provisions that:

- (a) make it an offence for a biosecurity auditor to contravene a condition of appointment imposed by or under the proposed Act, and
- (b) make it an offence to impersonate a biosecurity auditor, and
- (c) provide for appeals to the Land and Environment Court against certain decisions about appointment as a biosecurity auditor.

## **Part 17 Accreditation authorities**

**Division 1 (Accreditation authorities)** makes the following provisions in relation to accreditation authorities:

- (a) that an accreditation authority means the Secretary or any other person approved by the Secretary to exercise the functions of an accreditation authority,
- (b) that the Secretary can approve other persons to exercise the functions of an accreditation authority,
- (c) the effect of approval.

**Division 2 (Approval procedure)** sets out the procedure for the approval of accreditation authorities, including:

- (a) the making of applications for approval, and
- (b) the grant or refusal of applications for approval, and
- (c) the duration of approval, and
- (d) the variation of approval.

**Division 3 (Renewal of approval)** provides for the renewal of approvals, including:

- (a) applications for renewal of approvals, and
- (b) the grant or refusal of renewal applications.

**Division 4 (Conditions of approval)** provides that approval as an accreditation authority is subject to:

- (a) any conditions prescribed the regulations, and
- (b) any other conditions imposed by the Secretary at the time of the grant or renewal of approval or at any other time by variation to the approval.

**Division 5 (Suspension or cancellation of approval)** provides for the suspension or cancellation of approval, including by setting out:

- (a) the grounds for suspension or cancellation of approval which include a contravention of a requirement imposed by or under the proposed Act, and
- (b) the procedure for suspension, which includes the accreditation authority being given an opportunity to make submissions about suspension, and
- (c) the procedure for cancellation, which includes the accreditation authority being given an opportunity to make submissions about cancellation, and
- (d) the effect of suspension or cancellation on conditions.

**Division 6 (Miscellaneous)** includes provisions that:

- (a) make it an offence for an accreditation authority or former accreditation authority to contravene a condition of approval imposed by or under the proposed Act, and
- (b) provide for appeals to the Land and Environment Court against certain decisions about approvals, and
- (c) provide for the disclosure of information to the Secretary by accreditation authorities.

## **Part 18 Offences and criminal proceedings**

**Division 1 (Criminal proceedings generally)** provides that:

- (a) the maximum penalty for a category 1 offence under the proposed Act is \$1,100,000 or 3 years imprisonment (in the case of an individual) or \$2,200,000 (in the case of a corporation) and provides for continuing offences, and
- (b) the maximum penalty for a category 2 offence is \$220,000 (in the case of an individual) or \$440,000 (in the case of a corporation) and 5 times that amount if the offence is committed negligently, and provides for continuing offences, and
- (c) negligence in the proposed Act 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, and
- (d) special requirements apply to the prosecution of an act or omission that can constitute both a category 1 offence and a category 2 offence, and
- (e) proceedings for offences are to be disposed of summarily by the Local Court or the Supreme Court in its summary jurisdiction, and
- (f) the time limit for proceedings is generally 3 years (for category 1 offences) and 2 years (for category 2 offences), and

(g) certain specified matters are to be considered in imposing a penalty.

**Division 2 (Facilitation of proof)** provides for the following aspects of the facilitation of proof:

- (a) the issue of evidentiary certificates to facilitate proof of matters,
- (b) the evidence of analysts,
- (c) evidence as to state of mind of a corporation,
- (d) evidence of the publication of instruments on the Department's website.

**Division 3 (Defences and related matters)** provides for the following defences and other matters:

- (a) a defence of due diligence in relation to category 1 offences that applies if the accused person establishes that the commission of the offence was due to causes over which the person had no control and that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence,
- (b) a defence that the conduct of the person was required or authorised by or under the proposed Act or a law of the Commonwealth,
- (c) a defence for things done by or under the direction of authorised officers,
- (d) a defence for common carriers,
- (e) proof of exemptions.

**Division 4 (Court orders in connection with offences)** specifies the court orders that can be made in connection with offences under the proposed Act, and appeals against orders, which include the following:

- (a) orders for restoration and prevention,
- (b) orders for costs, expenses and compensation, whether at the time the offence is proved or later,
- (c) orders regarding the recovery of the costs and expenses of investigations,
- (d) orders regarding monetary benefits,
- (e) prohibition orders,
- (f) additional orders.

**Division 5 (Penalty notices)** provides for:

- (a) the issue of penalty notices for offences under the proposed Act or the regulations, and
- (b) the restriction of the power to issue penalty notices to government officers and certain eligible officers.

**Division 6 (Ancillary offences)** provides for ancillary offences including:

- (a) liability of directors for offences by the corporation whether special executive liability offences or executive liability offences, and
- (b) liability for complicity, and
- (c) offences relating to furnishing false or misleading information.

## **Part 19 Compensation**

**Part 19** provides for the following aspects of compensation:

- (a) that compensation is payable to owners of certain animals, plants or property destroyed in accordance with an emergency order or certain animals or plants that have died as a result of emergency biosecurity matter,
- (b) the determination of the amount of compensation (including market value),
- (c) the exclusion of other losses,
- (d) the making of claims for compensation,

- (e) the recovery of compensation,
- (f) the grounds for refusal or reduction of claims,
- (g) the manner in which disputed claims or false claims will be dealt with,
- (h) the power to correct decisions,
- (i) the power to require payment for claimants.

## **Part 20 Recovery of administrative costs and other amounts**

**Division 1 (Preliminary)** provides that:

- (a) certain administrative costs are recoverable amounts under cost recovery orders, and
- (b) only government agencies can exercise certain cost recovery powers delegated by the Secretary.

**Division 2 (Cost recovery orders)** provides for:

- (a) the Secretary to require a person to pay the recoverable amount, and
- (b) the contents of such cost recovery orders, and
- (c) the charging of interest on unpaid amounts payable under such orders, and
- (d) the changing of payment arrangements for a recoverable amount.

**Division 3 (Recovery of compliance costs)** provides for:

- (a) the recovery of amounts payable under cost recovery orders as a debt, and
- (b) the registration of cost recovery orders as a charge on land.

**Division 4 (General)** provides for:

- (a) appeals to the Land and Environment Court against certain decisions relating to issue a cost recovery order, and
- (b) the waiver or remission of recoverable amounts, and
- (c) the presumed date of service of cost recovery orders.

## **Part 21 Permits**

**Division 1 (Preliminary)** contains provisions that:

- (a) provide that the relevant decision-maker in relation to a permit is the person who has the power to grant the permit, and
- (b) specify when a relevant decision-maker may exercise powers in the case of an emergency.

**Division 2 (Permits)** provides for the following:

- (a) the grant of permits that authorise conduct that, but for the permit, would or might contravene a requirement imposed by or under the proposed Act,
- (b) that permits may be individual permits or group permits,
- (c) that permits may be granted by the Secretary (in any case) or by an authorised officer,
- (d) that emergency permits and prohibited matter permits can only be granted by the Secretary,
- (e) that an emergency permit is a permit that authorises conduct that, but for the permit, would or might contravene an emergency order and that is expressed to apply during the emergency concerned,
- (f) that 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,
- (g) that the effect of a permit is that a person is not guilty of an offence against the proposed Act or the regulations if the person was authorised to engage in the conduct alleged to constitute the offence concerned by a permit (and that only an emergency permit expressed



- to apply in relation to an emergency authorises any conduct in contravention of an emergency order or emergency biosecurity direction),
- (h) that a person who contravenes a condition of an individual permit, or 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.

**Division 3 (Application for permit)** provides for applications for permits, including:

- (a) the making of applications, and
- (b) the grant or refusal of applications, and
- (c) the duration of permits, and
- (d) the variation of permits.

**Division 4 (Renewal of permit)** provides for the renewal of permits, including:

- (a) the making of applications for renewal, and
- (b) the grant or refusal of applications for renewal.

**Division 5 (Conditions of permit)** provides that:

- (a) a permit is subject to the conditions prescribed by the regulations or imposed by the relevant decision-maker either at the time of the grant or renewal of the permit or at any other time by variation, and
- (b) conditions of a permit may require insurance cover, co-operation with or arrangement of biosecurity audits or the provision of financial assurance, and
- (c) conditions can provide that a permit takes effect after a specified period or in specified circumstances.

**Division 6 (Suspension or cancellation of permit)** makes the following provisions about the suspension or cancellation of permits:

- (a) the general grounds for the suspension or cancellation of the permit, which include a contravention by the permit holder of a requirement imposed by or under the proposed Act,
- (b) additional grounds for suspension or cancellation of a permit in the case of an emergency,
- (c) the giving of notice of suspension of a permit and the giving of an opportunity to make submissions about suspension to a permit holder,
- (d) the giving of notice of cancellation of a permit and the giving of an opportunity to make submissions about cancellation to a permit holder,
- (e) the effect of the suspension or cancellation on conditions.

**Division 7 (Miscellaneous)** provides for:

- (a) the surrender of permits, and
- (b) appeals against decisions about permits to the Land and Environment Court.

## **Part 22 Administration**

**Division 1 (Authorised officers)** provides for the following:

- (a) the appointment of authorised officers,
- (b) the imposition of conditions or limitations on instruments of appointment as an authorised officer,
- (c) that police officers are taken to be authorised officers,
- (d) the identification of authorised officers,
- (e) the use of assistants and dogs by authorised officers,
- (f) offences of obstructing authorised officers, assaulting authorised officers and impersonating authorised officers.

**Division 2 (Local control authorities—weeds)** contains provisions:

- (a) providing that the council of a local government area is the local control authority for land in the area (unless weed control functions have been conferred on a county council), the Western Lands Commissioner is the local control authority for other land in the Western Division and the Lord Howe Island Board is the local control authority for Lord Howe Island, and
- (b) specifying the functions of local control authorities, and
- (c) providing for local control authorities to appoint authorised officers to control weeds, and
- (d) empowering local control authorities to recover fees, and
- (e) providing for arrangements to be made for the joint exercise of functions of local control authorities and for the making of delegations by local control authorities.

**Division 3 (Other officers)** provides for the appointment of:

- (a) a Chief Plant Protection Officer, and
- (b) a Chief Veterinary Officer.

**Division 4 (General)** provides for the following miscellaneous matters:

- (a) the delegation by the Secretary of certain functions conferred on the Secretary by the proposed Act,
- (b) the extraterritorial exercise of functions,
- (c) access to RMS information by authorised officers,
- (d) the waiver and refund of fees and charges.

## **Part 23 Miscellaneous**

**Part 23** deals with the following miscellaneous matters:

- (a) protection from liability for matters or things done or omitted to be done for the purposes of executing the proposed Act,
- (b) permitting the Secretary to bring proceedings in the Land and Environment Court to restrain a contravention or threatened or apprehended contravention of the proposed Act,
- (c) permitting actions authorised under the proposed Act to be taken despite other legislation about environmental planning and assessment, native vegetation, threatened species, national parks and wildlife,
- (d) making it clear that cruelty to animals is not authorised by the proposed Act,
- (e) providing for a limited exemption from the *Surveillance Devices Act 2007* for devices installed or used to monitor biosecurity matter or other things under the proposed Act,
- (f) the continuing effect of certain requirements that specify a time for compliance,
- (g) the service of notices and documents,
- (h) the description of land in notices and instruments,
- (i) the factors that underpin the formation of certain reasonable suspicions under the proposed Act in relation to carriers, infection and infestation,
- (j) the power of the Secretary to create exemptions from the operation of the proposed Act for occupiers, biosecurity matter, carriers, land or things,
- (k) establishing that the *Personal Property Securities Act 2009* of the Commonwealth does not apply to certain matters under the proposed Act,
- (l) the making of regulations,
- (m) the review of the proposed Act.

## **Schedule 1 Special provisions relating to weeds**

**Schedule 1** sets out further provisions relating to the general biosecurity duty imposed by proposed Part 3. Those special provisions relate to weeds and include the following:

- (a) a duty to control weeds on roads,
- (b) a duty to control aquatic weeds,
- (c) a duty to control weeds in irrigation areas.

## **Schedule 2 Prohibited matter**

**Schedule 2** specifies matter that is prohibited matter (that is, matter that it is an offence to deal with under proposed Part 4). Some matter is specified as prohibited matter throughout the State and some is only prohibited matter in a specified part of the State. The proposed Act enables the regulations to amend the proposed Schedule by inserting, altering or omitting any items or descriptions.

## **Schedule 3 Prohibited dealings**

**Schedule 3** specifies certain prohibited dealings (that is, dealings that it is an offence to engage in under proposed Division 1 of Part 11). The proposed Act enables the regulations to amend the proposed Schedule by inserting, altering or omitting the description of any matter.

## **Schedule 4 Registrable dealings**

**Schedule 4** specifies certain registrable dealings (that is, dealings for which registration is required under proposed Division 2 of Part 11). The proposed Act enables the regulations to amend the proposed Schedule by inserting, altering or omitting the description of any matter.

## **Schedule 5 Regulation-making powers**

**Schedule 5** lists some specific regulation-making powers, including the power to make regulations for or with respect to the following:

- (a) exemptions from the proposed Act,
- (b) fees,
- (c) the identification and tracing of biosecurity matter,
- (d) the classification of non-indigenous animals,
- (e) the powers of authorised officers.