



New South Wales

Biosecurity Amendment Bill 2017

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 make provision with respect to fees paid for the preparation of biosecurity certificates,
- (b) to provide for corporations to be accredited as biosecurity certifiers and appointed as biosecurity auditors,
- (c) to ensure that the issue of a biosecurity certificate by a biosecurity certifier, or the conduct of a biosecurity audit by a biosecurity auditor, will be carried out only by an appropriately qualified individual who is the biosecurity certifier or biosecurity auditor or who is an identified individual,
- (d) to permit mandatory grounds for the suspension or cancellation of accreditation as a biosecurity certifier, or appointment as a biosecurity auditor, to be prescribed by regulations under the *Biosecurity Act 2015* (the **Principal Act**),
- (e) to ensure that the accreditation of biosecurity certifiers and the appointment of biosecurity auditors by an accreditation authority will be carried out only by individuals notified to the Secretary of the Department of Industry, Skills and Regional Development (the **Secretary**),
- (f) to permit the Secretary to issue evidentiary certificates to facilitate proof of matters relating to the National Livestock Identification System,
- (g) to provide for the Secretary to make an order that permits an activity that would otherwise be prohibited by a mandatory measure or by a regulatory measure implemented in relation to a biosecurity zone.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Biosecurity Act 2015 No 24

Schedule 1 [1] inserts a definition of *identified individual* with respect to a function of a biosecurity certifier or a biosecurity auditor. An identified individual with respect to the function is an individual who is notified to the *responsible accreditation authority* (generally being the accreditation authority that accredited the biosecurity certifier or appointed the biosecurity auditor) as an individual who is to carry out the function for the biosecurity certifier or biosecurity auditor.

Schedule 1 [2] permits an authorised officer to charge a fee for preparing a biosecurity certificate. The fee is to be determined by the regulations. The fee for the preparation of any other biosecurity certificate is to be the fee agreed between the biosecurity certifier and the person seeking the biosecurity certificate.

Schedule 1 [3] provides that an offence of providing false or misleading information to a biosecurity certifier extends to providing such information to a person who is an identified individual with respect to the issuing of biosecurity certificates by a biosecurity certifier.

Schedule 1 [4] permits a person to issue, alter or amend a biosecurity certificate if the person is an identified individual with respect to the issuing of biosecurity certificates by a biosecurity certifier.

Schedule 1 [5] provides that an accreditation policy required to be adopted by an accreditation authority may make provision for or with respect to the qualifications, skills, knowledge and experience required with respect to the issue of biosecurity certificates by biosecurity certifiers accredited by the accreditation authority and the suitability of individuals to carry out the function of issuing biosecurity certificates for biosecurity certifiers.

Schedule 1 [6] and [7] make provision for corporations to be accredited as biosecurity certifiers by omitting references to “his or her”.

Schedule 1 [8] and [9] provide that an accreditation authority can refuse to grant accreditation, or refuse to grant renewal of accreditation, as a biosecurity certifier to an applicant if the accreditation authority is not satisfied that the applicant can ensure that the issue of biosecurity certificates by the applicant will be carried out only by suitable individuals who are appropriately qualified.

Schedule 1 [10] makes it a condition of accreditation as a biosecurity certifier that the issue of biosecurity certificates by the biosecurity certifier will be carried out only by an individual who is appropriately qualified and who is the biosecurity certifier or an identified individual with respect to the issue of biosecurity certificates by the biosecurity certifier.

Schedule 1 [11] provides that grounds for the suspension or cancellation of accreditation as a biosecurity certifier includes the responsible accreditation authority not being satisfied that the biosecurity certifier can ensure that the issue of biosecurity certificates by the biosecurity certifier will be carried out only by suitable individuals who are appropriately qualified.

Schedule 1 [12] provides that the regulations under the Principal Act may prescribe circumstances in which it is mandatory for a responsible accreditation authority to suspend the accreditation of a biosecurity certifier.

Schedule 1 [13] provides that the regulations under the Principal Act may prescribe circumstances in which it is mandatory for a responsible accreditation authority to cancel the accreditation of a biosecurity certifier.

Schedule 1 [14] makes the offence of contravening a condition of accreditation as a biosecurity certifier an executive liability offence which means that both the corporation and directors of the corporation may be guilty of the offence.

Schedule 1 [17], [24] and [25] make provision for corporations to be appointed as biosecurity auditors by omitting references to “his or her”.

Schedule 1 [20] provides that the power of a biosecurity auditor to enter premises for the purpose of exercising the biosecurity auditor’s functions as a biosecurity auditor extends to a person who is an identified individual with respect to any function of a biosecurity auditor.

Schedule 1 [21] provides that an offence of obstructing a biosecurity auditor extends to obstruction of an identified individual with respect to any function of a biosecurity auditor.

Schedule 1 [22] provides that an offence of providing false or misleading information to a biosecurity auditor extends to providing such information to a person who is an identified individual with respect to the conduct of biosecurity audits by a biosecurity auditor.

Schedule 1 [23] provides that an appointment policy required to be adopted by an accreditation authority may make provision for or with respect to the qualifications, skills, knowledge and experience required with respect to the conduct of biosecurity audits by biosecurity auditors appointed by the accreditation authority and the suitability of individuals to carry out the function of conducting biosecurity audits for biosecurity auditors.

Schedule 1 [26] and [27] provide that an accreditation authority can refuse to grant appointment, or refuse to grant renewal of appointment, as a biosecurity auditor to an applicant if the accreditation authority is not satisfied that the applicant can ensure that the conduct of biosecurity audits by the applicant will be carried out only by suitable individuals who are appropriately qualified.

Schedule 1 [28] makes it a condition of appointment as a biosecurity auditor that the conduct of biosecurity audits by the biosecurity auditor will be carried out only by an individual who is appropriately qualified and who is the biosecurity auditor or an identified individual with respect to the conduct of biosecurity audits by the biosecurity auditor.

Schedule 1 [29] provides that grounds for the suspension or cancellation of appointment as a biosecurity auditor includes the responsible accreditation authority not being satisfied that the biosecurity auditor can ensure that the conduct of biosecurity audits by the biosecurity auditor will be carried out only by suitable individuals who are appropriately qualified.

Schedule 1 [30] provides that the regulations under the Principal Act may prescribe circumstances in which it is mandatory for a responsible accreditation authority to suspend the appointment of a biosecurity auditor.

Schedule 1 [31] provides that the regulations under the Principal Act may prescribe circumstances in which it is mandatory for a responsible accreditation authority to cancel the appointment of a biosecurity auditor.

Schedule 1 [32] makes the offence of contravening a condition of appointment as a biosecurity auditor an executive liability offence which means that both the corporation and directors of the corporation may be guilty of the offence.

Schedule 1 [33] makes it a condition of the approval of an accreditation authority that the exercise of functions by the accreditation authority (such as the accreditation of biosecurity certifiers) will be carried out only by individuals notified to the Secretary.

Schedule 1 [34] permits the Secretary to issue a certificate in relation to codes issued as part of the National Livestock Identification System which is admissible in any legal proceedings and is evidence of the matters stated in the certificate.

Schedule 1 [35] permits the Secretary to make an order that permits an activity that would otherwise be prohibited by a mandatory measure or by a regulatory measure implemented in relation to a biosecurity zone. The order is to be published on the NSW legislation website and

may be published as part of a regulation under the Principal Act (but does not form part of that regulation). The provisions of the *Interpretation Act 1987* that require notice of the making of a statutory rule to be laid before each House of Parliament and that permit a statutory rule to be disallowed apply to the order in the same way as those provisions apply to a statutory rule.

Schedule 1 [15], [16], [18] and [19] update terminology consequential on other amendments set out in Schedule 1.