

**LEGISLATIVE COUNCIL**

**Biosecurity Bill 2015**

**First print**

**Proposed amendments**

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No. 1 **State Biosecurity Committee**

Page 2, clause 2, line 6. Omit all words on that line. Insert instead:

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Part 22 (State Biosecurity Committee) and section 380 (Protection from liability) commence on the date of assent to this Act.

No. 2 **Objects**

Page 2, clause 3 (2) (b), line 15. Insert “prevention and” after “effective”.

No. 3 **Objects**

Page 2, clause 3 (2) (c), line 27. Insert “that provides effective integration of economic, environmental and community considerations in the decision-making process” after “biosecurity”.

No. 4 **Objects**

Page 2, clause 3 (2). Insert after line 27:

- (d) to provide increased opportunities for public involvement and participation in biosecurity,
- (e) to ensure that the community has access to relevant and meaningful information about biosecurity,

No. 5 **Precautionary principle**

Page 2. Insert after line 31:

**4 Precautionary principle to be applied**

- (1) The precautionary principle, namely, that if there is a risk of a serious biosecurity impact, lack of full scientific certainty should not be used as a reason for postponing or failing to take appropriate measures to prevent or manage that biosecurity impact, is a principle of this Act.
- (2) The Secretary and other persons on whom functions are conferred by this Act must apply the precautionary principle in exercising those functions.

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- (3) However, the exercise or purported exercise of any function under this Act is not invalid merely because:
- (a) the precautionary principle was not applied, or
  - (b) the exercise or purported exercise of the function was inconsistent with the precautionary principle.

No. 6 **State Biosecurity Committee**

Page 7, clause 7. Insert after line 33:

*State Biosecurity Committee* means the State Biosecurity Committee established under Part 22.

No. 7 **State Biosecurity Committee**

Page 125. Insert after line 13:

## **Part 22 State Biosecurity Committee**

### **Division 1 Preliminary**

#### **358 Definitions**

In this Part:

*appointed member* means a person who is appointed as a member of the Committee by the Minister, other than the Chairperson.

*Chairperson* means the Chairperson of the Committee appointed by the Minister under this Part.

*Committee* means the State Biosecurity Committee.

### **Division 2 State Biosecurity Committee**

#### **359 Minister to establish Committee**

- (1) The Minister is to establish a State Biosecurity Committee.
- (2) For the purposes of any Act, the Committee is taken to be a statutory body representing the Crown.

#### **360 Functions of Committee**

The Committee has the following functions:

- (a) to report on compliance by government agencies with their obligations under this Act,
- (b) to report on the state of biosecurity, as provided for by this Division,
- (c) to make recommendations to the Minister about prohibited matter,
- (d) to promote a co-ordinated strategic approach to biosecurity issues,
- (e) to review the biosecurity aspects of any local strategic plans prepared by local boards under the *Local Land Services Act 2013* and provide feedback to the Minister as to whether they are consistent with State policy and the principles of this Act,
- (f) to provide policy advice on biosecurity issues when requested to do so by the Minister,
- (g) to engage in public consultation as the Committee considers appropriate in relation to the work of the Committee,
- (h) any other functions conferred on the Committee by or under this or any other Act.

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**361 State of biosecurity reports**

- (1) The Committee is required to make a report on the state of biosecurity every 4 years.
- (2) Each such report is to be given to the Minister and tabled in both Houses of Parliament.
- (3) A report on the state of biosecurity is to include the following matters:
  - (a) an assessment of the status and conditions of biosecurity risk in the State,
  - (b) an examination of biosecurity trends and future threats, including the implications for the environment, industry and human health,
  - (c) a review of the programs and activities related to biosecurity, including those related to government, industry and communities,
  - (d) an examination of economic trends and of the costs and benefits (including economic evaluation) of biosecurity,
  - (e) any general recommendations for future legislative or other action that the Committee considers appropriate to ensure the State's biosecurity,
  - (f) a statement on the performance and suitability of biosecurity education programs in the State.
- (4) The first report on the state of biosecurity is to be made within 12 months after the establishment of the Committee.

**362 Ministerial control**

- (1) The Committee is, in the exercise of its functions, subject to the control and direction of the Minister.
- (2) However, the Committee is not subject to the control and direction of the Minister in respect of:
  - (a) any report or recommendation made to the Minister, or
  - (b) a state of biosecurity report under this Part.

**363 Resources to be made available to Committee**

The Minister is to ensure that the Committee is adequately resourced to carry out its functions, including by ensuring that:

- (a) staff of the Department or other government agencies (or both) are made available to assist the Committee, and
- (b) any other advice or assistance reasonably requested by the Committee is made available to the Committee.

**364 Information to be made available to Committee**

A government agency is authorised and, if directed by the Chairperson, required to provide to the Committee any information that the Committee reasonably requires to exercise its functions, including the following information:

- (a) information about current and emerging biosecurity risks,
- (b) information about activities of the government agency relating to the prevention, elimination, minimisation and management of biosecurity risks.

**Division 3 Chairperson of Committee****365 Chairperson of State Biosecurity Committee**

- (1) The Minister is to appoint a Chairperson of the Committee.

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- (2) The Chairperson may be appointed on a full-time or part-time basis.

**366 Chairperson not subject to Ministerial control**

The Chairperson is not subject to the control or direction of the Minister in the exercise of his or her functions as Chairperson of the Committee.

**367 Functions of Chairperson**

The Chairperson has any functions conferred on the Chairperson by or under this or any other Act.

**368 Compliance audits in relation to government agencies**

- (1) The Chairperson may, at any time, request the Secretary to require a compliance audit to be carried out in relation to any government agency.
- (2) If the Secretary refuses to comply with that request, the Chairperson may refer the matter to the Premier for resolution.
- (3) The Premier may give directions to the Secretary as the Premier sees fit to resolve the matter.
- (4) The Secretary is to comply with a direction given by the Premier under this section.
- (5) The Secretary is to provide the Chairperson with a copy of any report about a compliance audit that is carried out at the request of the Chairperson under this section.
- (6) The Secretary is to ensure that the following are published on the Department's website:
  - (a) any request for a compliance audit that is made by the Chairperson under this section,
  - (b) any referral of that request by the Chairperson to the Premier for resolution,
  - (c) any direction given by the Premier under this section.

**369 Term of office**

The Chairperson holds office for such period (not exceeding 5 years) as is specified in the Chairperson's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**370 Vacancy in office**

- (1) The office of Chairperson becomes vacant if the holder:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (e) becomes a mentally incapacitated person, or
  - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (g) is removed from office by the Minister under this Division.
- (2) The Minister is, subject to this Act and the regulations, to appoint a person to fill a vacancy in the office of Chairperson within 3 months of the office

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becoming vacant. However, an appointment is not invalid only because it was made after that period.

- (3) If the Minister fails to appoint a person in accordance with subsection (2), the Minister is to report to Parliament on the reasons for the failure.

**371 Removal from office**

- (1) The Minister may remove the Chairperson from office, but only for incompetence, incapacity or misbehaviour.
- (2) The Chairperson cannot be removed from office under Part 6 of the *Government Sector Employment Act 2013*.

**372 Chairperson not Public Service employee**

The office of Chairperson is a statutory office and the provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to that office.

**Division 4 Members of Committee**

**373 Composition of Committee**

- (1) The Committee is to consist of the following members:
- (a) the Chairperson of the Committee,
  - (b) a person nominated by NSW Farmers, or another industry lobby group, and appointed by the Minister,
  - (c) a person nominated by the Nature Conservation Council of New South Wales, or another environmental group, and appointed by the Minister,
  - (d) a person nominated by Local Government NSW and appointed by the Minister,
  - (e) a person nominated by the Royal Society for the Prevention of Cruelty to Animals, New South Wales, and appointed by the Minister,
  - (f) a person nominated by the Game and Pest Management Advisory Board constituted under the *Game and Feral Animal Control Act 2002* and appointed by the Minister,
  - (g) 4 skills-based members who are to be appointed by the Minister,
  - (h) the Secretary or a person employed in the Department who is nominated by the Secretary,
  - (i) the Chief Executive of the Office of Environment and Heritage or a person employed in that Office who is nominated by the Chief Executive,
  - (j) the Chair of the Board of Chairs (within the meaning of the *Local Land Services Act 2013*) or a person employed in Local Land Services who is nominated by the Chair of the Board of Chairs.
- (2) The persons appointed as skills-based members are to be persons who:
- (a) each have a broad understanding of biosecurity issues, and
  - (b) together have expertise, skill or knowledge in the areas of science, ecology, economics and community education and engagement.

**374 Terms of office of appointed members**

- (1) Subject to this Division, an appointed member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

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- (2) The Minister may decide on a maximum number of terms for which a person can be appointed as a member of the Committee to ensure that membership of the Committee is refreshed periodically.

**375 Part-time appointments**

Appointed members hold office as part-time members.

**376 Remuneration**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**377 Vacancy in office of member**

- (1) The office of an appointed member becomes vacant if the member:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (e) becomes a mentally incapacitated person, or
  - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (g) is absent from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (h) is removed from office by the Minister under this section.
- (2) The Minister may remove an appointed member from office at any time.
- (3) The Minister is, subject to this Act and the regulations, to appoint a person to fill a vacancy in the office of an appointed member within 3 months of the office becoming vacant. However, an appointment is not invalid only because it was made after that period.
- (4) If the Minister fails to appoint a person in accordance with subsection (3), the Minister is to report to Parliament on the reasons for the failure.

**378 Effect of certain other Acts**

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to an appointed member.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

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## **Division 5 Procedure of Committee**

### **379 General procedure**

The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Committee.

### **380 Quorum**

The quorum for a meeting of the Committee is a majority of its members for the time being.

### **381 Presiding member**

- (1) The Chairperson or, in the absence of the Chairperson, a member of the Committee elected by the members of the Committee who are present at a meeting of the Committee is to preside at a meeting of the Committee.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **382 Voting**

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.

### **383 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Committee, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.
- (2) A disclosure by a member at a meeting of the Committee that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subsection (1).
- (3) Particulars of any disclosure made under this section must be recorded by the Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Committee.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Committee otherwise determines:
  - (a) be present during any deliberation of the Committee with respect to the matter, or
  - (b) take part in any decision of the Committee with respect to the matter.
- (5) For the purposes of the making of a determination by the Committee under subsection (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

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- (a) be present during any deliberation of the Committee for the purpose of making the determination, or
  - (b) take part in the making by the Committee of the determination.
- (6) A contravention of this section does not invalidate any decision of the Committee.
- (7) This section applies to a member of any subcommittee of the Committee and the subcommittee in the same way as it applies to a member of the Committee and the Committee.

**384 Transaction of business outside meetings or by telephone etc**

- (1) The Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee made at a meeting of the Committee.
- (2) The Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subsection (1), or
  - (b) a meeting held in accordance with subsection (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Committee.
- (4) A resolution approved under subsection (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Committee.
- (5) Papers may be circulated among the members for the purposes of subsection (1) by electronic means.

**385 First meeting**

The Chairperson may call the first meeting of the Committee in such manner as the Chairperson thinks fit.

**386 Publication of decisions**

- (1) The Secretary is to ensure that reports and recommendations of the Committee are published on the Department's website, other than any report or recommendation, or part of a report or recommendation, that the Chairperson directs should not be publicly disclosed.
- (2) If the Chairperson directs that a report or recommendation, or part of a report or recommendation, of the Committee should not be publicly disclosed, the Secretary is to ensure that the direction is published on the website of the Department.

**Division 6 Miscellaneous**

**387 Transitional**

Parts 1 and 2 of this Act apply in relation to this Part as if they had commenced on the date of assent to this Act.

No. 8 **State Biosecurity Committee**

Page 132, clause 380. Insert after line 22:

- (c) a member of the State Biosecurity Committee, or