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## **Biosecurity Act 2019**

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TASMANIA

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## **Biosecurity Act 2019**

**An Act to provide for the protection and enhancement of Tasmania's biosecurity status for the benefit of Tasmania's industries, environment and public wellbeing by providing for the prevention, detection and control of animal and plant disease, pests and other biosecurity matter**

**[Royal Assent 26 August 2019]**

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## PART 1 - Preliminary

### 1. Short title

This Act may be cited as the Biosecurity Act 2019 .

### 2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

### 3. Objects of Act

The objects of this Act are –

- (a) to ensure that responsibility for biosecurity is shared between government, industry and the community; and
- (b) to protect Tasmania from –
  - (i) pests, diseases and other biosecurity matters that are economically significant for Tasmania; and
  - (ii) threats to terrestrial and aquatic environments arising from pests, diseases and other biosecurity matters; and
  - (iii) risks to public health and safety arising from pests, diseases and other biosecurity matters known to have an adverse effect on human health; and
  - (iv) pests, diseases and other biosecurity matters that may have an adverse effect on public amenities, community activities and infrastructure; and
- (c) to provide a regulatory framework in relation to biosecurity that –
  - (i) facilitates emergency preparedness and the effective management of biosecurity emergencies that may affect Tasmania; and
  - (ii) takes account of regional and local differences in respect of biosecurity risks and biosecurity impacts; and
  - (iii) supports an evidence-based approach to the assessment, prevention and management of biosecurity risks and biosecurity impacts; and
  - (iv) does not require a biosecurity risk to be proven with full certainty before taking reasonable and practicable measures to prevent, eliminate or minimise the risk; and
- (d) to give effect to –
  - (i) biosecurity-related strategies and policies developed, or endorsed, by the Tasmanian Government; and
  - (ii) intergovernmental agreements related to biosecurity to which Tasmania is a party; and
- (e) to facilitate the trade of Tasmanian produce by ensuring that it meets national and international biosecurity requirements; and
- (f) to promote compliance with the general biosecurity duty through emergency preparedness, effective enforcement measures, and communication and collaboration between government, industry and the community.

### 4. Principles for performing functions under this Act

A person performing a function under this Act is to ensure that –

- (a) the performance of the function is likely to further –
  - (i) the objects of this Act; and

(ii) the resource management and planning system objectives as set out in Part 1 of Schedule 1 to the Land Use Planning and Approvals Act 1993 ; and

(b) the performance of the function is appropriate and adapted to achieving its purpose and is within his or her authority under this Act; and

(c) in the reasonable opinion of the person, the manner of performing the function is no more intrusive, restrictive or expensive than is required in the circumstances; and

(d) the performance of the function does not, or is not likely to, unreasonably endanger the health or safety of a person; and

(e) if the performance of the function involves an animal, the performance of the function does not, or is not likely to, cause unreasonable and unjustifiable pain or suffering to the animal.

## **5. Application of Act**

Unless the contrary intention appears, this Act is in addition to, and does not derogate from, the provisions of any other Act.

## **6. Extraterritorial operation of Act**

It is the intention of Parliament that the operation of this Act should, so far as possible, operate in relation to each of the following:

(a) land situated outside Tasmania, whether in or outside Australia;

(b) persons or things situated outside Tasmania, whether in or outside Australia;

(c) acts, transactions and matters done, entered into and occurring outside Tasmania, whether in or outside Australia;

(d) persons, things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State or a foreign country.

## **7. Act binds Crown**

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

## PART 2 - Interpretation

### *Division 1 - General*

#### 8. Interpretation

(1) In this Act, unless the contrary intention appears –

**accreditation audit** – see section 145 ;

**accreditation authority** – see section 139 ;

**accreditation policy** means a policy, referred to in clause 3 of Part 1 of Schedule 1 , that is approved by the Secretary as required under that Schedule;

**act** includes an omission;

**animal** means any of the following, whether alive or dead:

- (a) a member of the animal kingdom, other than a human, including an amphibian, bird, crustacean, fish, insect, mammal, mollusc, reptile and any other vertebrate or invertebrate member of the animal kingdom;
- (b) an egg, embryo, ovum or sperm of such a member of the animal kingdom;
- (c) a carcass, or part of a carcass, of such a member of the animal kingdom;

**animal disease** means a disease of, or capable of infecting, an animal;

**animal food** means fodder, animal products or other materials that are fed to an animal or are intended to be consumed by, or fed to, an animal;

**animal product** includes –

- (a) the hide, skin, hair, wool, feather, shell, horn, scale, fin or hoof of an animal; and
- (b) any part of the viscera or offal of an animal; and
- (c) meat, fat, eggs, honey, milk, whey, cream, butter, cheese and other primary produce derived from an animal; and
- (d) the urine, faeces, bone or blood of an animal, or any article or substance derived from the urine, faeces, bone or blood of an animal; and
- (e) any secretion or excretion of an animal; and
- (f) any product or biological preparation prepared, or derived, from any tissue, secretion, excretion or other part of an animal; and
- (g) any other prescribed thing;

**Appeal Tribunal** means the Tasmanian Civil and Administrative Tribunal;

**approved biosecurity program** means a program approved by the Minister under Division 1 of Part 9 ;

**assess** includes investigate;

**audit frequency policy** means a policy adopted under section 153 that is approved by the Secretary as required under that section;

**audit target** means the person who is the subject of a biosecurity audit;

**authorised analyst** mean a person appointed as an authorised analyst under section 40 ;

**authorised officer** means –

- (a) the Chief Veterinary Officer and Deputy Chief Veterinary Officer; and

(b) the Chief Plant Protection Officer and Deputy Chief Plant Protection Officer; and

(c) a police officer; and

(d) a person appointed as an authorised officer under section 31 ;

**authorised purpose** – see section 41 ;

**Biosecurity Advisory Committee** means the Biosecurity Advisory Committee established by the Minister under section 267(1) ;

**biosecurity audit** – see section 141 ;

**biosecurity auditor** – see section 34 ;

**biosecurity certificate** means a certificate issued under section 158 ;

**biosecurity certifier** – see section 38 ;

**biosecurity compendium** means the compendium kept in accordance with section 9 ;

**biosecurity control agreement** means a written agreement made in accordance with Division 3 of Part 9;

**biosecurity direction** means a direction given under Division 3 of Part 11 ;

**biosecurity duty** means a duty referred to in section 73(1) ;

**biosecurity emergency** means an emergency arising from a biosecurity risk or biosecurity impact;

**biosecurity emergency (response and cost-sharing) agreement** means an agreement –

(a) to which Tasmania is a party; and

(b) that furthers the objects of this Act; and

(c) that has been certified by the Minister to be a biosecurity emergency (response and cost-sharing) agreement for the purposes of this Act;

**biosecurity event** – see section 10 ;

**biosecurity impact** – see section 11 ;

**biosecurity matter** – see section 12 ;

**biosecurity registration** means registration granted under Part 6 ;

**biosecurity risk** means a risk of a biosecurity impact occurring;

**biosecurity risk function** means a function under this Act relating to the prevention, elimination, minimisation, control or management of a biosecurity risk or biosecurity impact;

**biosecurity undertaking** – see section 201 ;

**biosecurity zone** – see section 128 ;

**biosecurity zone measure** – see section 129 ;

**carrier** – see section 13 ;

**Chief Plant Protection Officer** means a person appointed as Chief Plant Protection Officer under section 27 ;

**Chief Veterinary Officer** means a person appointed as Chief Veterinary Officer under section 29 ;

**compliance audit** – see section 150 ;

**conduct** includes any act;

**contaminant** means any non-living thing –

(a) occurring in, or on, biosecurity matter or a carrier; or

(b) that may be ingested, or absorbed, by biosecurity matter or a carrier;

**control**, in relation to a thing, includes to contain the thing;

**control order** means an order made under section 177(1) ;

**corresponding law** means a law of another State or the Commonwealth –

(a) that corresponds to the provisions of this Act; or

(b) is prescribed as a corresponding law;

**cost recovery order** means an order made under section 211(1) ;

**critical non-compliance** means any thing, or act, prescribed as critical non-compliance;

**data** has the same meaning as in the Electronic Transactions Act 2000 ;

**deal** – see section 14 ;

**Department** means the Department of Primary Industries, Parks, Water and Environment or such other department as is prescribed;

**Department website** means the website available to the public that is operated by, or on behalf of, the Department;

**Deputy Chief Plant Protection Officer** means a person appointed as Deputy Chief Plant Protection Officer under section 28 ;

**Deputy Chief Veterinary Officer** means a person appointed as Deputy Chief Veterinary Officer under section 30 ;

**director** has the same meaning as in the Corporations Act;

**disease** includes the following:

(a) an infection or infestation of an organism having the potential to result in, or resulting in, an abnormal, pathological or unhealthy condition, that is caused by a disease agent or pest;

(b) a syndrome, or a clinically identifiable set of signs or symptoms in an organism, for which the cause is known or unknown;

(c) a disease agent;

(d) any other prescribed thing or matter;

**disease agent** includes the following:

(a) a prion, microorganism, virus, infectious agent and parasite;

(b) any prescribed thing or matter;

**document** has the same meaning as in the Evidence Act 2001 ;

**electronic communication** has the same meaning as in the Electronic Transactions Act 2000 ;

**emergency** – see section 15(1) ;

**emergency biosecurity direction** means a biosecurity direction that is given in a biosecurity emergency;

**emergency order** – see section 163 ;

**emergency permit** means a permit referred to in section 100(1)(a) ;

**emergency zone** – see section 167 ;

**engage in a dealing** – see section 14 ;

**entity** means any person, including the Crown, regardless of whether the person –

(a) is an organisation or enterprise; or

(b) is incorporated or unincorporated; or

(c) is comprised of one or more individuals; or

(d) is of a government, commercial, charitable, educational, community or other nature;

**environment** means components of the earth, including –

(a) land, air and water; and

(b) any organic matter, inorganic matter and organisms; and

(c) human-made or modified structures and areas; and

(d) interacting natural ecosystems that each include components referred to in paragraph (a) or (b);

**external treatment measure**, in relation to a person, means a treatment, such as cleaning or disinfection, that –

(a) is limited to the external parts of the person's body; and

(b) does not require –

(i) any matter or thing to penetrate the person's skin; or

(ii) the person to ingest any matter or thing;

**fodder** includes any water, meal, meat, plant, vegetable, grain, algal product and other material, or mixture of materials, that is used for the food, supplementation or litter of animals;

**function** includes a power, authority and duty;

**general biosecurity direction** – see section 190(2);

**general biosecurity duty** – see section 70;

**Government biosecurity program** means a program implemented by the Secretary under Division 2 of Part 9;

**group permit** means a permit of any kind granted to a group, or class, of persons;

**health information** has the same meaning as in the Personal Information Protection Act 2004;

**import** means, in relation to any biosecurity matter, carrier or other thing –

(a) to import the biosecurity matter, carrier or other thing into Tasmania (excluding Macquarie Island) from Macquarie Island or from another State; or

(b) to import the biosecurity matter, carrier or other thing into Macquarie Island from another part of Tasmania or from another State; or

(c) to cause, permit or enable anything in paragraph (a) or (b) to occur;

**individual biosecurity direction** – see section 190(3);

**individual permit** means a permit granted to an entity;

**infringement offence** means an offence under this Act or the regulations that is prescribed to be an infringement offence;

**interstate biosecurity agency** means a government department or agency of another State, or the Commonwealth, that is responsible for the administration of a corresponding law;

**interstate biosecurity certificate** means a certificate recognised under section 159;

**interstate biosecurity officer** means an officer of an interstate biosecurity agency;

**introduce** means, in relation to biosecurity matter, to cause or allow the biosecurity matter to become established in an identifiable geographical area;

**invasive pest** – see section 16(3);

**land** includes –

- (a) inland waters, within the meaning of the Inland Fisheries Act 1995 , and state waters; and
- (b) land that is covered by water; and
- (c) water in, on and below land; and
- (d) air, or space, above and below the surface of land; and
- (e) the subsoil and substrate of land; and
- (f) buildings and other structures permanently fixed to the land, or part of such buildings and structures; and
- (g) any other prescribed thing;

**non-indigenous animal** means an animal that is not indigenous to Tasmania, regardless of whether or not the animal is indigenous to any other part of Australia;

**non-indigenous plant** means a plant that is not indigenous to Tasmania, regardless of whether or not the plant is indigenous to any other part of Australia;

**occupier**, in relation to premises, includes any person who has care, control or management of the premises;

**offal** means the brain, thymus gland, pancreas gland, liver, spleen, kidney, heart, lung, intestine, tongue, blood, head or tail of any slaughtered animal or any part of the body of the slaughtered animal which is removed in the course of dressing the body;

**offender** means the person who has been found guilty of an offence under this Act;

**organism** means any organic life form, including a human, whether living or dead;

**perform a function** includes perform a duty and exercise a power;

**permit** means a permit granted under Part 7 ;

**permit holder** means –

- (a) in the case of an individual permit, the person specified in the permit; and
- (b) in the case of a group permit, a member of the group or class of persons specified in the permit;

**permitted matter** – see section 19 ;

**personal information** has the same meaning as in the Personal Information Protection Act 2004 ;

**pest** – see section 16 ;

**plant** includes any member of the Plantae, Fungi or Protista kingdom, whether whole or in part and whether alive or dead;

**plant disease** means any disease of, or capable of infecting, a plant;

**plant product** includes –

- (a) the whole, or any part, of a flower, fruit, nut, seed, leaf, bulb, corm, tuber, stem, spore or pollen that has been separated from a plant; and
- (b) dried plant material or timber;

**premises** includes –

- (a) any land, whether built on or not; and
- (b) any building, structure, vehicle or public or private place;

**prohibited dealing** – see section 17(2) ;

**prohibited dealing permit** means a permit referred to in section 100(1)(c) ;

**prohibited matter** – see section 20 ;

**prohibited matter permit** means a permit referred to in section 100(1)(b) ;

**public authority** has the same meaning as in the Personal Information Protection Act 2004 ;

**public information** has the same meaning as in the Personal Information Protection Act 2004 ;

**Recorder of Titles** means the Recorder within the meaning of the Land Titles Act 1980 ;

**recoverable amount** – see section 210 ;

**Register** has the same meaning as in the Land Titles Act 1980 ;

**registered entity** means an entity that holds biosecurity registration;

**regulated dealing** – see section 17(1) ;

**regulations** means regulations made under this Act;

**relevant court**, in relation to an offence or offender, means the most senior court that has –

- (a) determined the guilt of the offender for the offence under this Act; or
- (b) convicted the offender for the offence; or
- (c) made an order under section 7 of the Sentencing Act 1997 against the offender in relation to the offence, whether or not a conviction is recorded in respect of the offence;

**relevant officer**, in relation to a biosecurity direction, means –

- (a) in relation to a general biosecurity direction, the Secretary, the Chief Veterinary Officer or the Chief Plant Protection Officer; and
- (b) in relation to an individual biosecurity direction, the Secretary or an authorised officer;

**requirement** includes a duty or obligation;

**residential premises** means any part of premises that is solely used for residential purposes;

**responsible accreditation authority** – see section 140 ;

**responsible person**, in relation to a seized thing, means the apparent owner of the thing or, if the owner cannot be reasonably ascertained, the apparent occupier of the premises where the thing is seized;

**restricted matter** – see section 21 ;

**Secretary** means Secretary of the Department;

**seized thing** means a thing seized by an authorised officer under Part 4 that has not been destroyed in accordance with this Act;

**specified biosecurity requirement** – see section 72 ;

**State** includes a Territory;

**state waters** has the same meaning as in the Living Marine Resources Management Act 1995 ;

**stock animal** means –

- (a) a farmed or domesticated animal of which any part of the animal is used as, or which produces a product that is ordinarily used as, or manufactured into, a food, fibre, medicine, cosmetic, animal food, or other similar product; and
- (b) an animal prescribed to be a stock animal;

**suitable person** – see section 18 ;

**supply** includes the following:

- (a) to deliver, sell, trade, give or distribute, whether for monetary consideration or not;
- (b) to offer or agree to deliver, sell, trade, give or distribute;
- (c) to cause or permit delivery, sale, trade, giving or distribution;
- (d) to hold in possession for the purpose of delivery, sale, trade, giving or distributing;
- (e) to produce or package for delivery, sale, trade, giving or distributing;

**thing** includes any biosecurity matter, or carriers, other than a human;

**treatment** means a treatment, or process, used for the prevention, elimination, minimisation, control or management of a biosecurity risk or biosecurity impact, including a process, or measure, for treating, cleaning, fumigating, irradiating, disinfecting, medicating and vaccinating;

**vehicle** means a conveyance of any kind, however propelled, whether or not it is capable of being moved or operated at the material time, and includes –

- (a) a caravan, trailer, truck, train and other land vehicle; and
- (b) a vessel; and
- (c) an aeroplane, helicopter, hot air balloon, drone and other aircraft; and
- (d) any other prescribed thing;

**vessel** includes –

- (a) a ship, boat, hovercraft, ferry, raft and other water craft; and
- (b) a pontoon, floating pier and other floating structure;

**veterinary surgeon** means a person who is a registered veterinary surgeon within the meaning of the Veterinary Surgeons Act 1987 ;

**virus** includes any virus and sub-viral agent capable of infecting an organism;

**weed** means a plant that is a pest.

(2) In this Act, a reference to biosecurity matter –

- (a) by a common name does not limit any reference to the biosecurity matter by its scientific name; and
- (b) includes a reference to all stages of the life cycle of the biosecurity matter, if such matter has a life cycle.

(3) In this Act, unless the contrary intention appears, a reference to the State, this State or Tasmania includes a reference to the state waters of Tasmania.

## 9. Meaning of *biosecurity compendium*

(1) The Secretary is to keep on the Department website a compendium that includes, but is not limited to –

- (a) a list of all prohibited matter; and
- (b) a list of all permitted matter, including any conditions, requirements and restrictions applying in respect of the permitted matter; and
- (c) a list of all restricted matter declared under section 21(2) ; and
- (d) any explanatory or supporting information and material that the Secretary considers appropriate.

(2) The Secretary is to ensure that –

- (a) the compendium, or a copy of the compendium, kept under subsection (1) is available to members of the public; and
- (b) the compendium or the copy made available is, on 1 July of each year, correct as at that point in time.

- (3) The compendium kept under subsection (1) –
- (a) is to be judicially noticed; and
  - (b) is not a statutory rule for the purposes of the Rules Publication Act 1953 ; and
  - (c) is not subordinate legislation for the purposes of the Subordinate Legislation Act 1992 .

#### **10. Meaning of *biosecurity event***

For the purposes of this Act, each of the following events is a biosecurity event:

- (a) the presence in Tasmania, or part of Tasmania, of prohibited matter;
- (b) the presence in Tasmania, or part of Tasmania, of an animal disease that may pose a biosecurity risk to Tasmania, or part of Tasmania, regardless of whether the disease, or cause of the disease, is known or identified;
- (c) the presence in Tasmania, or part of Tasmania, of a plant disease that may pose a biosecurity risk to Tasmania, or part of Tasmania, regardless of whether the disease, or cause of the disease, is known or identified;
- (d) the presence in Tasmania, or part of Tasmania, of an invasive pest that may pose a biosecurity risk to Tasmania, or part of Tasmania, regardless of whether the species, or subspecies, of the invasive pest is known or identified;
- (e) a prescribed event or circumstance.

#### **11. Meaning of *biosecurity impact***

(1) In this Act, biosecurity impact means an adverse effect on the environment, the community or the economy that arises, or has the potential to arise from any biosecurity matter or carrier, or a dealing with biosecurity matter or carrier, being an adverse effect that is a result of, or related to –

- (a) the introduction, presence, spread or increase of an animal disease or plant disease into or within Tasmania or any part of Tasmania; or
- (b) the introduction, presence, spread or increase of a pest into or within Tasmania or any part of Tasmania; or
- (c) an animal or plant, or the product of any animal or plant, that is contaminated; or
- (d) any thing, or circumstances, prescribed to have biosecurity impact.

(2) For the purposes of subsection (1)(c) , an animal or plant, or the product of an animal or plant, is contaminated if it contains a contaminant that makes, or is likely to make, the animal, plant or product –

- (a) unfit or unsuitable for use in any commercial or other activity in which it would normally be used; or
- (b) a risk to human health, human safety or the environment; or
- (c) unfit for export or other trade for which it would normally be used.

#### **12. Meaning of *biosecurity matter***

In this Act, biosecurity matter includes the following:

- (a) an animal, plant, and other organism, other than a human;
- (b) a part of an animal, plant or other organism, other than a human;
- (c) an animal product and plant product;
- (d) an animal disease and plant disease;
- (e) a prion;
- (f) a contaminant;
- (g) a disease that may cause either or both of the following:

- (i) disease in an animal, plant or other organism (other than a human);
- (ii) disease in a human through transmission to the human from an animal, plant or other organism (other than a human);

(h) any prescribed thing.

### 13. Meaning of *carrier*

- (1) In this Act, a carrier means any thing (other than a human), whether alive, dead or inanimate, that has or is capable of having biosecurity matter on it, attached to it or contained in it.
- (2) For the avoidance of doubt, a carrier within the meaning of subsection (1) may include any object, or thing, carried or worn by a human.

### 14. Meaning of *dealing*

(1) In this Act, a person deals with biosecurity matter or a carrier, or engages in a dealing with biosecurity matter or a carrier, if the person –

- (a) keeps or manages the biosecurity matter or carrier; or
- (b) has possession, care or control of the biosecurity matter or carrier; or
- (c) supplies, produces or manufactures the biosecurity matter or carrier; or
- (d) imports the biosecurity matter or carrier; or
- (e) accepts supply of, or otherwise acquires, the biosecurity matter or carrier; or
- (f) disposes of, or destroys, the biosecurity matter or carrier; or
- (g) marks, brands, tags or affixes a device to the biosecurity matter or carrier for the purposes of identifying, or tracing, the biosecurity matter or carrier; or
- (h) moves or conveys the biosecurity matter or carrier; or
- (i) releases the biosecurity matter or carrier into the environment, or from captivity or confinement; or
- (j) uses, or treats, the biosecurity matter or carrier; or
- (k) breeds, propagates, grows, raises, feeds, clones or cultures the biosecurity matter or carrier; or
- (l) experiments with the biosecurity matter or carrier; or
- (m) displays the biosecurity matter or carrier; or
- (n) enters into an agreement or arrangement to deal with the biosecurity matter or carrier; or
- (o) causes, permits or arranges for a dealing with the biosecurity matter, or carrier, to occur; or
- (p) does any other prescribed thing in respect of the biosecurity matter or carrier.

(2) For the purposes of subsection (1)(b), an occupier of premises is taken to have possession of any biosecurity matter, or carrier, on the premises unless the occupier establishes that another person had possession, care, custody or control of the biosecurity matter or carrier for the entire time when the biosecurity matter or carrier was on the premises.

(3) For the purposes of this Act, or any specific provision of this Act, the regulations may prescribe circumstances in which a person is taken not to be dealing with, or engaged in a dealing with, biosecurity matter or a carrier.

### 15. Meaning of *emergency*

(1) In this Act, an emergency includes –

- (a) an event in respect of which an emergency order has been made; and
- (b) the occurrence, suspected occurrence or imminent occurrence of a biosecurity emergency.

(2) In this Act, an act or function is performed by a person in an emergency if the person, at the time of performing the act or function, reasonably believes or suspects that –

- (a) the performance of the act or function is necessary under an emergency order; or
- (b) a biosecurity emergency is occurring, has occurred or is imminent and the performance of the act or function is necessary to assess, prevent, control or manage the biosecurity emergency.

#### **16. Meaning of *pest* and *invasive pest***

(1) In this Act, a non-indigenous animal, or non-indigenous plant, is a pest if it has an adverse effect on or is suspected of having an adverse effect on the environment, the community or the economy by –

- (a) competing with other organisms for resources including food, water, nutrients, habitat and sunlight; or
- (b) destroying or damaging the habitat of other organisms; or
- (c) preying or feeding on other organisms; or
- (d) transmitting disease to other organisms; or
- (e) causing harm to other organisms through toxicity or disturbance; or
- (f) reducing the productivity of any primary industry, or the value of any primary produce or commodity; or
- (g) damaging infrastructure; or
- (h) reducing the amenity or aesthetic value of premises; or
- (i) harming or reducing biodiversity; or
- (j) doing any other prescribed thing or having any other prescribed effect.

(2) In addition to subsection (1), a pest includes any thing, whether indigenous or non-indigenous, prescribed to be a pest for the purposes of this Act.

(3) For the purposes of this Act, a pest is an invasive pest in relation to Tasmania, or a specified part of Tasmania, if –

- (a) before the discovery of the pest, the pest is not known to have been introduced to Tasmania or that part of Tasmania; or
- (b) the pest is not otherwise known to be established in Tasmania or that part of Tasmania; or
- (c) the pest is prescribed as an invasive pest.

#### **17. Meaning of *regulated dealing* and *prohibited dealing***

(1) In this Act, a reference to a regulated dealing is a reference to a dealing that is prescribed to be a regulated dealing.

(2) In this Act, a reference to a prohibited dealing is a reference to a dealing that is prescribed to be a prohibited dealing.

#### **18. Meaning of *suitable person***

For the purposes of an application under this Act, or a decision made under this Act, the following matters may be taken into account when determining whether the person is, or is no longer, a suitable person:

- (a) if the person has been found guilty of an offence under this Act;
- (b) if the person has been found guilty of an offence under any other Act or law that –
  - (i) is relevant to the application, or decision, being made; or
  - (ii) is an offence punishable by imprisonment for a term longer than 6 months;

- (c) if the person has failed to comply with a requirement of this Act, or a requirement or condition of an authorisation issued or granted under this Act;
- (d) if there has been an unfavourable accreditation audit or biosecurity audit in respect of the person;
- (e) any prescribed matter;
- (f) any other matter that the person considering the application, or making the decision, considers relevant to the application or decision.

## ***Division 2 - Classification of matter***

### **19. Permitted matter**

- (1) The Minister may, by notice published in the *Gazette*, declare any biosecurity matter, or class of biosecurity matter, to be ***permitted matter*** if the Minister is satisfied on reasonable grounds that –
- (a) the biosecurity matter, or class of biosecurity matter, does not pose a biosecurity risk to Tasmania or a part of Tasmania; or
  - (b) any biosecurity risk posed by the biosecurity matter, or class of biosecurity matter, is not significant and is able to be effectively controlled.
- (2) A declaration under this section may be made subject to such conditions, requirements or restrictions in respect of biosecurity matter, or class of biosecurity matter, as the Minister considers reasonable in the circumstances.

### **20. Prohibited matter**

- (1) The Minister may, by notice published in the *Gazette*, declare any biosecurity matter, or class of biosecurity matter, to be ***prohibited matter*** if the Minister is satisfied on reasonable grounds that –
- (a) the biosecurity matter, or class of biosecurity matter, poses a significant biosecurity risk to Tasmania or a part of Tasmania; and
  - (b) the declaration is necessary to prevent, eliminate, minimise, control or manage the biosecurity risk posed by the biosecurity matter or class of biosecurity matter.
- (2) The Minister may, by notice published in the *Gazette*, declare any carrier, or class of carriers, to be ***prohibited matter*** if the Minister is satisfied on reasonable grounds that –
- (a) the carrier, or class of carriers, poses a significant biosecurity risk to Tasmania or a part of Tasmania; and
  - (b) the declaration is necessary to prevent, eliminate, minimise, control or manage the biosecurity risk posed by the carrier or class of carriers.
- (3) A declaration under this section may make provision for transitional arrangements –
- (a) for the lawful disposal, treatment or destruction of any biosecurity matter, or carrier, that becomes prohibited matter as a result of the declaration; and
  - (b) that specify certain provisions of this Act as not applying in respect of such disposal, treatment or destruction of the biosecurity matter or carrier.

### **21. Restricted matter**

- (1) Biosecurity matter or a carrier, or a class of biosecurity matter or carriers, is ***restricted matter*** if –
- (a) it is an animal or plant, or an animal or plant product, that is not permitted matter or prohibited matter; or
  - (b) it is an animal disease or plant disease that is not permitted matter or prohibited matter; or
  - (c) it is declared by the Minister under subsection (2) to be restricted matter.

(2) The Minister may, by notice published in the *Gazette*, declare biosecurity matter or a carrier, or a class of biosecurity matter or carriers, to be ***restricted matter*** if the Minister is satisfied on reasonable grounds that –

- (a) the biosecurity matter or carrier, or class of biosecurity matter or carriers, poses a biosecurity risk to Tasmania or a part of Tasmania; and
- (b) the declaration is necessary to prevent, eliminate, minimise, control or manage the biosecurity risk posed by the biosecurity matter or carrier, or class of biosecurity matter or carriers.

## **22. Form of declaration of matter**

(1) A declaration under this Division takes effect –

- (a) on the day on which notice of the declaration is published in the *Gazette*; or
- (b) such later date as is specified in the notice so published.

(2) A declaration under this Division ceases to have effect –

- (a) on the date specified in the notice so published; or
- (b) on the expiry of the period specified in the notice so published; or
- (c) if no such date or period is specified in the notice, on the revocation of the notice.

## **23. Minister to consult on declaration**

Before making a declaration under this Division, the Minister is to consult with the Chief Veterinary Officer and the Chief Plant Protection Officer in respect of the proposed declaration.

### ***Division 3 - Reasonable suspicion***

## **24. Reasonable suspicion – carriers**

(1) For the purposes of this Act, an animal, plant or other thing may reasonably be suspected of being a carrier of biosecurity matter if there are reasonable grounds for suspecting that –

- (a) biosecurity matter is present in or on the animal, plant or other thing; or
- (b) the animal, plant or other thing is or has been in or with a flock, group or herd, or is travelling or has travelled on any land or place, or in a vehicle, on or in which there is or was an animal, plant or other thing that was a carrier of the biosecurity matter; or
- (c) there is present, in or on the place where the animal, plant or other thing is kept, a vehicle, or other thing, that has been in or on another place when the biosecurity matter or a carrier of the biosecurity matter was present in, or on, that other place.

(2) For the purposes of this Act, a place may reasonably be suspected of being a carrier of biosecurity matter if there are reasonable grounds for suspecting that –

- (a) biosecurity matter is present in or on the place; or
- (b) there is present, in or on the place, a vehicle or other thing that has been in or on another place when the biosecurity matter or a carrier of the biosecurity matter was present in or on that other place.

(3) It is not necessary, in order to form a reasonable suspicion under this section that an animal or plant is a carrier of biosecurity matter, for the animal or plant to be exhibiting signs of infection or contamination or other signs that it is a carrier.

(4) Nothing in this section prevents the Secretary, an authorised officer or any other person from using any other evidence or consideration available to the Secretary, authorised officer or other person to form a reasonable suspicion that an animal, plant, place or other thing is a carrier of biosecurity matter.

## **25. Reasonable suspicion of infection**

- (1) For the purposes of this Act, an animal, plant or other thing may reasonably be suspected of being infected with a disease if there are reasonable grounds for suspecting that –
  - (a) a disease agent is present in or on the animal, plant or other thing; or
  - (b) the animal, plant or other thing is or has been in or with a flock, group or herd, or is travelling or has travelled on any land or place, or in a vehicle, on or in which there was, or is, an animal, plant or other thing infected with the disease.
- (2) For the purposes of this Act, a place may reasonably be suspected of being infected with a disease if there are reasonable grounds for suspecting that a disease agent is present in or on the place.
- (3) It is not necessary, in order to form a reasonable suspicion under this section that an animal, plant, place or other thing is infected with a disease, for the animal, plant, place or other thing to be exhibiting signs of the disease.
- (4) Nothing in this section prevents the Secretary, an authorised officer or any other person from using any other evidence or consideration available to the Secretary, authorised officer or other person to form a reasonable suspicion that an animal, plant, place or other thing is infected with a disease.

## **26. Reasonable suspicion of infestation**

- (1) For the purposes of this Act, an animal, plant, place or other thing may reasonably be suspected of being infested with a pest if there are reasonable grounds for suspecting –
  - (a) that the pest is present in or on the animal, plant, place or other thing; or
  - (b) that there is present, in or on the place or other thing, a vehicle or other thing that has been in or on another place when the pest was present in or on that other place.
- (2) It is not necessary, in order to form a reasonable suspicion under this section that an animal, plant, place or other thing is infested with a pest, for the animal, plant, place or other thing to be exhibiting signs of infestation with the pest.
- (3) Nothing in this section prevents the Secretary, an authorised officer or any other person from using any other evidence or consideration available to the Secretary, authorised officer or other person to form a reasonable suspicion that an animal, plant, place or other thing is infested with a pest.

## PART 3 - Officers

### *Division 1 - Plant protection officers*

#### **27. Chief Plant Protection Officer**

- (1) The Secretary may appoint, by written instrument, a person employed in the Department to be Chief Plant Protection Officer if satisfied that the person holds appropriate tertiary qualifications and expertise in plant sciences or another related discipline.
- (2) The person may hold the office of Chief Plant Protection Officer in conjunction with State Service employment.

#### **28. Deputy Chief Plant Protection Officer**

- (1) The Secretary may appoint, by written instrument, one or more persons employed in the Department to be Deputy Chief Plant Protection Officer if satisfied that the person holds appropriate tertiary qualifications and expertise in plant sciences or another related discipline.
- (2) A person may hold the office of Deputy Chief Plant Protection Officer in conjunction with State Service employment.
- (3) A Deputy Chief Plant Protection Officer may perform the functions of the Chief Plant Protection Officer, including any functions that have been delegated to the Chief Plant Protection Officer by the Secretary or Minister, on such terms and in such circumstances as may be specified in the instrument of appointment of the Deputy Chief Plant Protection Officer.
- (4) For the avoidance of doubt, a reference in this Act to the Chief Plant Protection Officer in relation to a function includes a reference to a Deputy Chief Plant Protection Officer if the Deputy Chief Plant Protection Officer is authorised to perform the function.

### *Division 2 - Veterinary officers*

#### **29. Chief Veterinary Officer**

- (1) The Secretary may appoint, by written instrument, a veterinary surgeon employed in the Department to be Chief Veterinary Officer.
- (2) The person may hold the office of Chief Veterinary Officer in conjunction with State Service employment.

#### **30. Deputy Chief Veterinary Officer**

- (1) The Secretary may appoint, by written instrument, one or more veterinary surgeons employed in the Department to be Deputy Chief Veterinary Officer.
- (2) A person may hold the office of Deputy Chief Veterinary Officer in conjunction with State Service employment.
- (3) A Deputy Chief Veterinary Officer may perform the functions of the Chief Veterinary Officer, including any functions that have been delegated to the Chief Veterinary Officer by the Secretary or Minister, on such terms and in such circumstances as may be specified in the instrument of appointment of the Deputy Chief Veterinary Officer.
- (4) For the avoidance of doubt, a reference in this Act to the Chief Veterinary Officer in relation to a function includes a reference to a Deputy Chief Veterinary Officer if the Deputy Chief Veterinary Officer is authorised to perform the function.

### *Division 3 - Authorised officers*

#### **31. Authorised officers**

- (1) The Secretary may appoint one or more of the following persons to be an authorised officer:
  - (a) a State Service officer or State Service employee;
  - (b) an employee of a council;
  - (c) an employee of the Commonwealth or of another State;
  - (d) an employee of an entity prescribed for the purposes of this section;
  - (e) a person who has entered into a contract, or who is employed by an organisation that has entered into a contract, with the Crown to perform a function under this Act.
- (2) A State Service officer, State Service employee, employee of a council, employee of the Commonwealth or of another State, or an employee of an organisation referred to in subsection (1)(d) or (e), may hold the office of authorised officer in conjunction with that employment.
- (3) The Secretary may only appoint a person as an authorised officer under subsection (1) if the Secretary is satisfied that the person –
  - (a) is a suitable person to be appointed as an authorised officer; and
  - (b) holds the qualifications, skills, knowledge and experience to perform the functions of an authorised officer; and
  - (c) holds any qualifications, skills, knowledge and experience that are prescribed for the purposes of this section.
- (4) The Minister may enter into an agreement with the relevant Minister of the Commonwealth, or another State, in relation to the performance of the functions of an authorised officer by an employee of the Commonwealth, or the other State, appointed under subsection (1).
- (5) An appointment under subsection (1) may be –
  - (a) on such terms and conditions as are specified in the instrument of appointment; and
  - (b) for such period specified in the instrument of appointment or, if no time is so specified, until such time as the appointment is revoked.
- (6) The Secretary may, at any time –
  - (a) revoke an appointment of an authorised officer; or
  - (b) impose, vary or revoke a term or condition specified in an instrument of appointment for an authorised officer.
- (7) If the Secretary takes an action under subsection (6) in respect of an employee of the Commonwealth or of another State appointed as an authorised officer under subsection (1), the Secretary is to notify the relevant Minister of the Commonwealth, or that State, in writing of the action taken.
- (8) If a person appointed as an authorised officer under subsection (1) ceases to hold the office or position of employment that made him or her eligible to be appointed as an authorised officer, he or she ceases to be an authorised officer.
- (9) The Secretary may publish, as he or she thinks fit, details as to what qualifications, skills, knowledge and experience may be required for a person –
  - (a) to be appointed as an authorised officer under subsection (1); and
  - (b) to be authorised to perform specified functions as an authorised officer.

### **32. Functions of authorised officer**

- (1) Unless otherwise specified in his or her instrument of appointment, an authorised officer is authorised to perform the functions of an authorised officer specified in this Act and, in particular, the functions specified in Part 4.

(2) Nothing in this Act authorises or requires an authorised officer to act in contravention of the conditions or limitations of his or her appointment as an authorised officer.

### 33. Identification of authorised officers

(1) The Secretary –

(a) is to issue a form of photographic identification to the Chief Veterinary Officer, the Chief Plant Protection Officer and each authorised officer appointed under section 31(1) ; and

(b) may issue a form of photographic identification to each authorised officer who is a police officer.

(2) Photographic identification issued under subsection (1) is to –

(a) be in a form approved by the Secretary and contain the prescribed particulars, if any; and

(b) contain a recent photograph of the authorised officer.

(3) An authorised officer who is not a police officer must, if issued with a form of photographic identification under subsection (1) –

(a) carry the photographic identification while performing functions under this Act; and

(b) if requested to do so, produce the photographic identification before performing functions under this Act.

(4) A police officer must, if requested to do so, identify himself or herself before performing the functions of an authorised officer under this Act.

(5) If a person ceases to be an authorised officer, the person must –

(a) return to the Secretary any photographic identification issued to the person under subsection (1) unless otherwise instructed by the Secretary; or

(b) comply with any such instruction by the Secretary.

Penalty: Fine not exceeding 100 penalty units.

(6) Photographic identification issued under this section may be combined with any identification issued or granted under this Act or any other Act.

## *Division 4 - Biosecurity auditors*

### 34. Biosecurity auditors

(1) For the purposes of this Act, an accreditation authority may appoint a person as a biosecurity auditor.

(2) A biosecurity auditor is authorised under this Act to perform –

(a) biosecurity audits as required under this Act; and

(b) any other functions conferred on a biosecurity auditor by, or under, this Act.

(3) An appointment by an accreditation authority under subsection (1) may –

(a) specify, in the instrument of appointment, that the biosecurity auditor may only act as a biosecurity auditor in respect of a specified class of biosecurity audits; and

(b) be subject to such conditions or limitations as are specified in the instrument of appointment.

(4) Schedule 1 applies in respect of –

(a) an application for appointment as a biosecurity auditor; and

(b) an application for renewal of appointment as a biosecurity auditor; and

(c) the suspension or cancellation of appointment as a biosecurity auditor.

(5) Nothing in this Act authorises or requires a biosecurity auditor to act in contravention of the conditions or limitations of his or her appointment as a biosecurity auditor.

### **35. Approval of authorised officer to perform functions of biosecurity auditor**

- (1) The Secretary may, by written instrument, approve any authorised officer to perform any specified function or functions of a biosecurity auditor.
- (2) An approval under subsection (1) –
  - (a) may apply to a specified authorised officer or to any specified class of authorised officers; and
  - (b) may be subject to such conditions or limitations as are specified in the approval.
- (3) An approval has effect for the period specified in the instrument of approval or, if no period is specified, until revoked by the Secretary.
- (4) The Secretary may, by written instrument, revoke or amend an approval under this section at any time.
- (5) The approval of a person as a biosecurity auditor under this section ceases to be in force if the person –
  - (a) ceases to be an authorised officer; or
  - (b) ceases to be an authorised officer of a particular class specified in the approval.
- (6) In this Act, a reference to –
  - (a) a biosecurity auditor appointed under this Act; or
  - (b) a person appointed as a biosecurity auditor –includes a reference to a person approved to perform the functions of a biosecurity auditor under this section.
- (7) Nothing in this Act authorises, or requires, a person approved to perform the functions of a biosecurity auditor under this section to act in contravention of the conditions or limitations of that approval.

### **36. Entry to premises by biosecurity auditor**

- (1) A biosecurity auditor who is also an authorised officer may perform his or her functions as a biosecurity auditor on premises entered under his or her functions as an authorised officer.
- (2) A biosecurity auditor who is not an authorised officer may enter premises for the purpose of performing the biosecurity auditor's functions as a biosecurity auditor if accompanying, or being accompanied by, an authorised officer who enters those premises in the performance of his or her functions as an authorised officer.
- (3) Nothing in this section prevents a biosecurity auditor from –
  - (a) entering or remaining on any premises, or doing anything else on premises, with the consent of the occupier of the premises; or
  - (b) entering or remaining in any public place while that place is open to the public.

### **37. Use of assistants**

A biosecurity auditor performing a function conferred by or under this Act may perform the function with the assistance of such other persons as the biosecurity auditor considers necessary, subject to any conditions of appointment as a biosecurity auditor.

## ***Division 5 - Biosecurity certifiers***

### **38. Biosecurity certifier**

- (1) For the purposes of this Act, an accreditation authority may grant accreditation as a biosecurity certifier to a person.
- (2) A biosecurity certifier is authorised to issue biosecurity certificates as required under this Act.
- (3) An accreditation by an accreditation authority under subsection (1) may only authorise the biosecurity certifier to act as a biosecurity certifier in respect of –
  - (a) a specified class of biosecurity certificates; or

(b) a specified class of biosecurity matter or carriers.

(4) Schedule 1 applies in respect of –

(a) an application for accreditation as a biosecurity certifier; and

(b) an application for renewal of accreditation as a biosecurity certifier; and

(c) the suspension or cancellation of accreditation as a biosecurity certifier.

(5) Nothing in this Act authorises or requires a biosecurity certifier to act in contravention of the conditions or limitations of his or her accreditation as a biosecurity certifier.

### **39. Approval of authorised officer to perform functions of biosecurity certifier**

(1) The Secretary may, by written instrument, approve any authorised officer to perform any specified function or functions of a biosecurity certifier.

(2) An approval under subsection (1) may –

(a) apply to a specified authorised officer or to any specified class of authorised officers; and

(b) be subject to such conditions or limitations as are specified in the approval.

(3) An approval under subsection (1) has effect for the period specified in the instrument of approval or, if no period is specified, until revoked by the Secretary.

(4) The Secretary may, by written instrument, revoke or amend an approval under this section at any time.

(5) The approval of a person as a biosecurity certifier under this section ceases to be in force if the person ceases to be an authorised officer or ceases to be an authorised officer of a particular class specified in the approval.

(6) In this Act, a reference to a biosecurity certifier includes a reference to a person approved to perform the functions of a biosecurity certifier under this section.

(7) Nothing in this Act authorises, or requires, a person approved to perform the functions of a biosecurity certifier under this section to act in contravention of the conditions or limitations of that approval.

## ***Division 6 - Authorised analysts***

### **40. Authorised analysts**

(1) The Secretary may, by written instrument, appoint a person as an authorised analyst for the purposes of this Act, if the Secretary is satisfied that the person holds the appropriate qualifications and experience for the position.

(2) An appointment under subsection (1) may be subject to such conditions, or limitations, as the Secretary considers reasonable in the circumstances.

(3) The Secretary may, by written instrument, revoke or amend the appointment of a person as an authorised analyst at any time.

(4) If an appointment of a person as an authorised analyst is made by reference to a particular office held by the person –

(a) the person ceases to be an authorised analyst if he or she ceases to hold that office; and

(b) any other person who holds that office, while the appointment is in effect, is an authorised analyst for the purposes of this Act while he or she holds that office.

(5) The Secretary may appoint an authorised officer as an authorised analyst and the authorised officer so appointed may perform the functions of an authorised officer in addition to the functions of an authorised analyst.

## PART 4 - Functions of Authorised Officers

### *Division 1 - General*

#### 41. Authorised purpose

(1) Unless otherwise specified in this Act, an authorised officer may only perform the functions of an authorised officer for one or more of the following purposes:

- (a) to assess, prevent, eliminate, minimise, control or manage any biosecurity risk or biosecurity impact, or suspected biosecurity risk or biosecurity impact;
- (b) to investigate, monitor and enforce compliance with this Act;
- (c) to administer or execute this Act;
- (d) to obtain information or records necessary for the administration or enforcement of this Act;
- (e) to assist a biosecurity auditor to perform the biosecurity auditor's functions in connection with a biosecurity audit;
- (f) if the authorised officer is a biosecurity auditor, to perform a biosecurity audit.

(2) An authorised officer who is also a biosecurity auditor may perform the functions of an authorised officer while he or she is also performing the functions of a biosecurity auditor.

#### 42. Use of assistants

(1) An authorised officer, performing a function under this Act, may perform the function with the assistance of such other persons as the authorised officer considers necessary in the circumstances.

(2) A person assisting an authorised officer in accordance with subsection (1) may –

- (a) accompany the authorised officer onto any premises that the authorised officer is lawfully allowed to enter under this Act; and
- (b) take all reasonable steps to assist the authorised officer in the performance of the authorised officer's functions under this Act.

#### 43. Use of dogs

(1) An authorised officer may be authorised, in his or her instrument of appointment, to use a dog to assist the authorised officer to detect the presence of, or manage, biosecurity matter in accordance with this Act.

(2) An authorised officer authorised to use a dog to assist the authorised officer may, in the performance of his or her functions as an authorised officer, bring the dog onto any premises that the authorised officer is lawfully allowed to enter under this Act.

(3) Despite subsection (1), an authorised officer may only use a dog to assist the authorised officer if –

- (a) the authorised officer considers the use of the dog necessary in the circumstances; and
- (b) while the dog is assisting the authorised officer –
  - (i) the dog is under the effective control, within the meaning of the Dog Control Act 2000, of the authorised officer; and
  - (ii) the authorised officer takes all reasonable steps to ensure that the dog does not unnecessarily interact with any person other than the authorised officer.

#### 44. Performance of functions in emergency

The fact that this Part only authorises an authorised officer to perform specified functions in an emergency does not prevent the authorised officer from performing any other function under this Act in that emergency.

#### 45. Extraterritorial performance of functions

- (1) The Minister may enter into an agreement with a Minister of another State or the Commonwealth providing for either or both of the following:
  - (a) the performance of functions under this Act in another State or the Commonwealth by authorised officers or interstate biosecurity officers;
  - (b) the performance of functions under a corresponding law in Tasmania by authorised officers or interstate biosecurity officers.
- (2) The Secretary may enter into an agreement with the head of an interstate biosecurity agency providing for either or both of the following:
  - (a) the performance of functions under this Act in another State by authorised officers or interstate biosecurity officers;
  - (b) the performance of functions under a corresponding law in Tasmania by authorised officers or interstate biosecurity officers.
- (3) An authorised officer or an interstate biosecurity officer may, in accordance with an agreement under this section –
  - (a) perform functions under this Act in another State as authorised under that agreement; and
  - (b) perform functions under a corresponding law in Tasmania as authorised under that agreement to the extent required in respect of a biosecurity impact, or potential biosecurity impact, in another State.

### *Division 2 - Information gathering*

#### 46. Application of Division

A function under this Division may be performed under this Act separately from, or in connection with, any other function being performed under this Act.

#### 47. Information to be provided

- (1) In this section –

*information* includes documents, records, recordings, registers, data and electronic communications.
- (2) An authorised officer may, by written notice, require a person to provide the authorised officer with such information as is specified in the notice.
- (3) A notice under subsection (2) is to specify –
  - (a) the information that is to be provided; and
  - (b) if the information is in more than one format, in which of those formats the information is to be provided; and
  - (c) the time and place at which the information is to be provided.
- (4) A person provided with a notice under subsection (2) must comply with the notice.

Penalty: In the case of –

  - (a) a body corporate, a fine not exceeding 2 500 penalty units; or
  - (b) an individual, a fine not exceeding 500 penalty units.
- (5) It is a defence in proceedings for an offence under subsection (4) if the defendant establishes that he or she –
  - (a) does not have possession or control of the information specified in the notice; and
  - (b) informed the authorised officer of that fact before the information was required to be provided under the notice.

- (6) An authorised officer may –
- (a) make copies of all or any part of information provided under this section as necessary; and
  - (b) retain information provided under this section for such time as is reasonably necessary.

#### **48. Authorised officer may require answer**

- (1) An authorised officer may require a person to answer questions in relation to a matter under this Act if the authorised officer reasonably believes that the person may have knowledge in respect of that matter.
- (2) An authorised officer may require, by written notice, that a person attend at the time and place specified in the notice in order to answer questions in relation to a matter of which the authorised officer reasonably believes that the person may have knowledge.
- (3) If a time and place specified in a notice under subsection (2) is not reasonable in the circumstances, the authorised officer is to nominate a time and place after taking into account any request of the person who is the subject of the notice.
- (4) A person who is the subject of a requirement made under this section must comply with that requirement.
- Penalty: In the case of –
- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
  - (b) an individual, a fine not exceeding 500 penalty units.

#### **49. Questions may be recorded**

- (1) An authorised officer may cause any information given orally under this Act to be recorded if the authorised officer has informed the person giving the information, before the information is given, that it is to be recorded.
- (2) A recording under this section may be made by any method that the authorised officer considers reasonable in the circumstances.
- (3) If a recording is made under this section, the authorised officer who made the recording is to provide a copy of the recording to the person who provided the information as soon as practicable after making the recording.
- (4) Nothing in any other Act prevents a recording from being made under this section.

### ***Division 3 - Entry of premises***

#### **50. Powers of authorised officers to enter premises**

- (1) If an authorised officer reasonably believes that entry into premises is necessary for an authorised purpose, the authorised officer may enter the premises –
- (a) in an emergency, at any time; and
  - (b) in any other case, at any reasonable time.
- (2) A function conferred by this Act that authorises entry into premises authorises entry –
- (a) on foot, by vehicle, vessel or aircraft, or by any other reasonable means; and
  - (b) by drone or other pilotless vehicle or equipment under remote control.
- (3) Entry into any premises authorised under this Act may be effected –
- (a) only with the use of reasonable force; and
  - (b) subject to subsection (4), with or without the authority of a warrant.
- (4) Despite subsection (3), nothing in this section authorises entry into any part of residential premises, other than –
- (a) with the consent of the occupier of the residential premises; or
  - (b) under the authority of a warrant; or

(c) in an emergency, if the Secretary has given notice to the occupier of the residential premises under section 174(4), section 188(5) or section 197(4) before the authorised officer is to enter the residential premises.

(5) For the purposes of subsection (4)(a), an occupier of residential premises is taken to have consented to an authorised officer entering the residential premises in an emergency if –

(a) at least 48 hours before the authorised officer intends to enter the residential premises, the authorised officer has given written notice of that intention to the occupier; and

(b) the occupier does not respond to the authorised officer, in respect of that written notice, before the authorised officer intends to enter the residential premises as notified.

## 51. Warrants

(1) On the application of an authorised officer, a magistrate or justice may issue a warrant if the magistrate or justice is satisfied that there are reasonable grounds for believing it necessary for an authorised officer to enter premises for an authorised purpose.

(2) A warrant is to –

(a) be in a form approved by the Commissioner of Police; and

(b) specify –

(i) the premises in respect of which it is made; and

(ii) the authorised officer, or class of authorised officers, that may execute the warrant.

(3) An authorised officer and any person assisting that officer may, in executing a warrant issued under this section –

(a) enter and remain in the premises, using such force as is necessary in the circumstances; and

(b) perform his or her functions in or in relation to the premises.

(4) A warrant has effect for a period of 30 days after the day on which it is granted.

(5) A warrant is not invalidated by any defect, other than a defect that affects the substance of the warrant in a material particular.

## *Division 4 - Investigation and risk management functions*

### 52. Authorised officers may require name and address

(1) An authorised officer may require a person –

(a) to state the person's full name and address; or

(b) to provide written evidence of the person's full name and address.

(2) A person who is the subject of a requirement under this section –

(a) must comply with the requirement; and

(b) must not give a false name or address when complying with the requirement.

Penalty: Fine not exceeding 100 penalty units.

### 53. General functions of authorised officers

(1) An authorised officer may, in any place or premises lawfully entered, do anything that the authorised officer reasonably believes is necessary to be done for an authorised purpose.

(2) Without limiting subsection (1), an authorised officer may do one or more of the following in a place or premises lawfully entered:

(a) examine and inspect any thing;

- (b) take and remove samples of any thing;
  - (c) make any examinations, inquiries or tests that the authorised officer considers necessary;
  - (d) carry out any treatment in relation to any biosecurity matter, carrier, potential carrier, premises, vehicle or other thing;
  - (e) isolate, confine or detain any biosecurity matter or other thing;
  - (f) erect or repair fencing, gates or any other method of enclosure, or perform any other security or containment measures in relation to any premises, biosecurity matter or other thing;
  - (g) erect signs;
  - (h) move or muster any biosecurity matter or other thing;
  - (i) stop, detain, move, search, examine or inspect a vehicle or direct a person in control, or charge, of a vehicle to stop or move the vehicle;
  - (j) require persons entering or leaving specified premises, or an area, in a vehicle to –
    - (i) stop the vehicle; and
    - (ii) allow the vehicle to be inspected; and
    - (iii) allow treatment to be carried out in relation to the vehicle;
  - (k) install or use any device, trap, bait or equipment for the purpose of detecting or monitoring the presence of any biosecurity matter or other thing;
  - (l) install any device, trap, bait or equipment for the purpose of capturing or killing, or otherwise controlling, any biosecurity matter or other thing;
  - (m) take any photographs, video or other recordings that the authorised officer considers necessary;
  - (n) require records to be produced for inspection;
  - (o) examine and inspect any records or documents;
  - (p) seize, copy and take extracts of any relevant records or documents;
  - (q) seize any biosecurity matter or other thing if the authorised officer reasonably believes that seizure of the biosecurity matter or other thing is necessary to assess, prevent, eliminate, minimise, control or manage a biosecurity risk posed by or in relation to the biosecurity matter or other thing;
  - (r) seize any thing that the authorised officer reasonably suspects is connected with an offence under this Act;
  - (s) move any seized thing from the place where it is seized or leave it at the place where it is seized and take reasonable action to restrict access to the thing;
  - (t) direct the occupier of the premises where a thing is seized to retain it at those premises or at another place under the control of the occupier;
  - (u) mark, brand, tag, or affix any device to, biosecurity matter or a carrier for identification or tracing purposes;
  - (v) destroy, dispose of or eradicate any thing, in accordance with this Act;
  - (w) do anything else authorised, or prescribed, by or under this Act.
- (3) The power of an authorised officer to examine and inspect any thing includes a power to use reasonable force to break open or otherwise access a container, vehicle or other thing being used, or suspected of being used, to hold or contain any thing.
- (4) The power of an authorised officer to seize any thing that an authorised officer reasonably suspects is connected with an offence includes a power to seize –
- (a) a thing in respect of which the offence may have been, or has been, committed; or

(b) a thing that will afford evidence of the commission of the offence; or

(c) a thing that may have been used, or was used, for the purpose of committing the offence.

(5) The power of an authorised officer to do a thing under this Act includes a power to arrange for, direct or cause that thing to be done.

(6) The power of an authorised officer to do something under this Act in relation to a thing may be exercised without the consent of the owner of the thing.

#### 54. Requiring assistance

(1) An authorised officer may require the owner or occupier of premises, or any person in or on premises (other than a public place), to provide any reasonable assistance and facilities that the authorised officer specifies for the purposes of performing the authorised officer's functions under this Division in relation to those premises.

(2) The requirement may be made in the form of a direction that is given orally to the person or by written notice served on the person.

(3) Without limiting subsection (1), an authorised officer may require a person under that subsection –

(a) to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner; or

(b) to confine, move or muster any animal under the care, custody or control of the person; or

(c) to provide any facilities, including yards and crushes, that the authorised officer requires to inspect, examine, provide treatment or take samples from any biosecurity matter, carrier, potential carrier or other thing; or

(d) provided it is reasonably safe and practicable in the circumstances to do so, to restrain an animal.

#### 55. Recovery of fee for action taken

(1) The Secretary may charge a person (the *liable person*) a fee for any action taken by an authorised officer under a function conferred by this Division if, in the opinion of the Secretary, it is reasonable to do so having regard to the following:

(a) any biosecurity duty or obligation of the liable person under this Act;

(b) any contravention or likely contravention by the liable person of this Act;

(c) any other matter the Secretary considers relevant in the circumstances.

(2) A fee charged under subsection (1) is to be no more than is reasonable to cover the costs and expenses incurred in connection with the action taken.

(3) For the purposes of subsection (2), costs and expenses incurred include costs and expenses incurred by or on behalf of the Crown or, in the case of an authorised officer who is not a State Service officer, the employer of the authorised officer.

(4) A fee charged under subsection (1) is a recoverable amount that is recoverable from the liable person.

### ***Division 5 - Functions in relation to seized things***

#### 56. Interpretation

(1) In this Division –

*owner*, in relation to a thing, includes any person entitled to possession of the thing.

(2) For the purposes of this Division, the continued retention of a seized thing in custody is no longer justified if –

(a) it is not, or is no longer, necessary to retain the thing to assess, prevent, eliminate, minimise, control or manage a biosecurity risk posed by or in relation to the thing; and

(b) it is not, or is no longer, necessary to retain the thing as evidence of an offence.

### **57. Receipt for seized things**

- (1) As soon as practicable after an authorised officer seizes a thing, the authorised officer must give a written receipt for it to a responsible person for the seized thing.
- (2) Despite subsection (1), the authorised officer may leave the receipt at the place of seizure, in a conspicuous position and in a reasonably secure way, if it is not reasonably practicable to comply with that subsection.
- (3) A receipt is not required under subsection (1) if –
  - (a) the thing is seized in a public place; and
  - (b) the apparent owner of the thing cannot be located after reasonable inquiry.
- (4) A receipt must describe the seized thing and its condition.
- (5) This section does not apply if it is reasonably impracticable, or would be unreasonable, to give a receipt, given the nature, condition or value of a seized thing.

### **58. Return of seized things**

- (1) An authorised officer must return a seized thing to its owner, as soon as is reasonably practicable, once the authorised officer is satisfied that –
  - (a) it is lawful for the owner to have possession of the thing; and
  - (b) the continued retention of the thing in custody is not justified.
- (2) A requirement to return a seized thing to its owner includes a requirement to remove or lift any restrictions on an owner's access to a seized thing.
- (3) This section does not apply if an authorised officer certifies in writing, in accordance with section 59, that the authorised officer is unable to return the seized thing to its owner.

### **59. Certification of inability to return seized thing**

- (1) An authorised officer may certify in writing that the authorised officer is unable to return a seized thing to its owner if –
  - (a) the authorised officer cannot find the owner of the thing after making such inquiries as are reasonable in the circumstances; or
  - (b) the authorised officer cannot, for any other reason, return the thing to its owner after making such efforts to do so as are reasonable in the circumstances.
- (2) For the purposes of subsection (1), regard is to be had to a seized thing's nature, condition and value in deciding –
  - (a) whether it is reasonable to make inquiries or efforts in the circumstances; and
  - (b) what inquiries or efforts (if any) are reasonable in the circumstances.
- (3) The Secretary may give directions as to the inquiries or efforts that are to be made by authorised officers in relation to the return of any seized thing or class of seized things.
- (4) Compliance with any such directions is evidence that all reasonable inquiries or efforts were made.

### **60. Court order requiring delivery of seized thing**

- (1) A court of competent jurisdiction may, on application by any person, make an order directing that a seized thing be delivered to the person.
- (2) An application may not be made under subsection (1) in respect of –
  - (a) a thing that has been seized by an authorised officer in an emergency unless the Secretary has given notice, under section 61(4), of the Secretary's intention to declare the seized thing to be forfeited to the

Crown; or

(b) a seized thing that has been forfeited to the Crown under this Part.

(3) A court of competent jurisdiction may make an order under subsection (1) if satisfied that –

(a) the person –

(i) is the owner of the seized thing; or

(ii) is otherwise lawfully entitled to possession of the seized thing; and

(b) it is lawful for the person to have possession of the thing; and

(c) the continued retention of the seized thing in custody is not justified.

(4) In deciding an application under this section, the court may do one or more of the following:

(a) make a finding or order as to the ownership of the seized thing;

(b) make a finding or order as to liability for, and payment of, costs and expenses incurred in keeping the seized thing;

(c) make any necessary incidental or ancillary findings or orders that the court thinks appropriate in the circumstances.

(5) A court may make an order under this section in respect of a seized thing even if the estimated value of the seized thing exceeds the monetary jurisdiction of the court.

## **61. Forfeiture of seized thing**

(1) The Secretary may, by order, declare any seized thing to be forfeited to the Crown.

(2) The Secretary may only make an order under subsection (1) if –

(a) the Secretary is satisfied that the continued retention of the seized thing in custody is not justified; and

(b) the seized thing cannot be returned to its owner.

(3) For the purposes of subsection (2)(b), a seized thing cannot be returned to its owner if –

(a) the Secretary is satisfied that it is not lawful for the owner of the seized thing to have possession of the thing; or

(b) an authorised officer certifies in writing, in accordance with section 59, that the authorised officer is unable to return the seized thing to its owner after making such efforts to do so as are reasonable in the circumstances.

(4) Before making an order under subsection (1) in respect of a seized thing, the Secretary must give notice of the Secretary's intention to make such an order in respect of the seized thing.

(5) A notice under subsection (4) must be –

(a) given at least 21 days before the order is made; and

(b) published on the Department website; and

(c) served on the responsible person for the seized thing.

(6) However, it is not necessary to serve the notice on the responsible person for the seized thing if an authorised officer has certified in writing that the authorised officer is unable to return the seized thing to its owner.

## **62. Dealing with forfeited things**

(1) When an order is made under section 61(1) declaring a seized thing to be forfeited to the Crown, the seized thing is forfeited to the Crown and becomes the property of the Crown.

(2) The Secretary may deal with the seized thing in any way the Secretary considers appropriate.

(3) Without limiting subsection (2), the Secretary may destroy, sell or dispose of the thing or authorise its destruction, sale or disposal.

### ***Division 6 - Limitations on functions***

#### **63. Detention or treatment of persons**

(1) Unless expressly specified, this Act does not authorise an authorised officer to do any of the following:

- (a) prohibit, regulate or control the movement of an individual;
- (b) examine or inspect an individual;
- (c) require an individual to undergo treatment or require treatment to be carried out in relation to an individual.

(2) This Act does not authorise an authorised officer to require an individual –

- (a) to submit to any testing; or
- (b) to provide samples of the person's blood, hair, saliva or any other body part or body fluid.

(3) Subsection (1)(a) does not prevent an authorised officer from doing any thing in relation to any biosecurity matter, premises, area, activity or other thing that has an impact on the movement of an individual but is not done for the purpose of restricting the movement of an individual.

#### **64. Destruction requirements**

(1) Subject to subsection (2), an authorised officer may destroy a thing under this Act if –

- (a) the thing is, or is reasonably suspected of being, prohibited matter; or
- (b) the thing is, or is reasonably suspected of being, an invasive pest; or
- (c) the thing is, or is reasonably suspected of being, infected or infested with, or of harbouring, biosecurity matter that poses a biosecurity risk and there is no reasonably practicable and available –
  - (i) treatment that could eliminate the biosecurity risk posed by the biosecurity matter; or
  - (ii) means of determining or confirming whether the thing is infected or infested with, or harbouring, the biosecurity matter; or
- (d) the destruction is expressly authorised or required by –
  - (i) an emergency order; or
  - (ii) a control order; or
  - (iii) an emergency biosecurity direction; or
  - (iv) a Government biosecurity program; or
  - (v) a biosecurity control agreement; or
  - (vi) the regulations.

(2) An authorised officer may not destroy a thing, or group of things, under this Part if the aggregate value of the thing, or group of things, is more than \$5 000, or such other amount as is prescribed, unless –

- (a) the destruction of the thing, or group of things, is specifically authorised under the regulations, a control order or an emergency order, regardless of the value of the thing or group of things; or
- (b) his or her instrument of appointment specifically authorises the authorised officer to destroy, if required, things of a greater value; or
- (c) the destruction of the thing, or group of things, is specifically authorised in writing by the Secretary, regardless of the value of the thing or group of things.

(3) This section does not apply to an authorised officer destroying a thing that has been forfeited to the Crown, regardless of the value of the thing.

#### **65. Notification of proposed destruction**

(1) An authorised officer must not destroy any thing in the performance of a function under this Part unless, before taking that action –

(a) the authorised officer gives written notice of the proposed destruction to the owner or person in charge of the thing; or

(b) the authorised officer is satisfied, on reasonable grounds, that the owner or person in charge of the thing has already been given written notice of the proposed destruction.

(2) For the purposes of subsection (1), notice of the proposed destruction must be given at least 48 hours before the thing is destroyed.

(3) A requirement to give notice of the proposed destruction of a thing under subsection (1) does not apply to the destruction of a thing if –

(a) the destruction of the thing is authorised, or required, to be performed immediately or without notice under –

(i) an emergency order; or

(ii) a control order; or

(iii) the regulations; or

(b) there appears to be no-one immediately in control of it, and the owner or person in charge cannot, after reasonable efforts, be determined or located; or

(c) the authorised officer reasonably believes that the function must be performed without delay in order to assess, prevent, eliminate, minimise, control or manage an immediate and significant biosecurity risk posed by the thing and it is not practicable to give notice before the thing is destroyed; or

(d) in the case of an animal, the authorised officer reasonably believes that delaying the destruction of the animal will cause unreasonable and unjustifiable pain or suffering to the animal.

(4) This section does not apply to the destruction of a thing that has been forfeited to the Crown, regardless of the value of the thing.

#### **66. Interaction of functions with restrictions imposed by other Acts**

(1) An authorised officer other than the Chief Plant Protection Officer or Chief Veterinary Officer must not, under this Act –

(a) destroy or direct the destruction of any protected plant within the meaning of the Nature Conservation Act 2002 ; or

(b) destroy or direct the destruction of any organism that is a threatened species within the meaning of the Threatened Species Protection Act 1995 ; or

(c) destroy or direct the destruction of any relic within the meaning of the Aboriginal Heritage Act 1975 .

(2) Subsection (1) does not apply to the destruction of a thing if that action is prescribed or expressly authorised, or required, by an emergency order or a control order.

### ***Division 7 - General***

#### **67. Interference with signs, device, trap, equipment, &c.**

A person must not, without reasonable excuse, move, damage or otherwise interfere with any device, trap, bait, sign or equipment placed on premises by, or under the direction of, an authorised officer for an authorised

purpose.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

## **68. Self-incrimination**

(1) A person is not excused from a requirement made by an authorised officer to furnish records or information, or to answer a question, on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty under this Act or any other Act.

(2) However, information furnished (other than a record) or answer given by an individual in compliance with a requirement under this Part is not admissible in evidence against that person in criminal proceedings, or other proceedings for the imposition of a penalty, other than proceedings for an offence under this Act relating to –

- (a) providing false or misleading information or failing to furnish material information; or
- (b) resisting or obstructing an authorised officer; or
- (c) assaulting, abusing or threatening an authorised officer under this Act.

(3) Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings, or other proceedings for the imposition of a penalty, on the ground that the record had to be furnished or might incriminate the person.

(4) Any information or evidence obtained as a result of a record or information furnished, or an answer given, in compliance with a requirement under this Part is not inadmissible on the ground –

- (a) that the record or information had to be furnished or the answer had to be given; or
- (b) that the record or information furnished or answer given might incriminate the person.

## **69. Care to be taken by authorised officers**

In the performance of a function to enter or search premises under this Part, or to do anything else on premises under this Act, an authorised officer is to do as little damage as is reasonably possible in the circumstances.

## PART 5 - Biosecurity Duties and Dealings

### *Division 1 - General biosecurity duty*

#### 70. General biosecurity duty

- (1) A person has a duty (the *general biosecurity duty*) to take all reasonable and practicable measures to prevent, eliminate or minimise, biosecurity risk when dealing with biosecurity matter, or a carrier, if the person knows or reasonably ought to know that the biosecurity matter, carrier or dealing poses a biosecurity risk.
- (2) Unless otherwise specified and without limiting the general biosecurity duty, a person fails to comply with the general biosecurity duty in respect of biosecurity matter, a carrier or a dealing if the person knowingly, or negligently, fails to comply with any applicable specified biosecurity requirement in respect of the biosecurity matter, carrier or dealing.

#### 71. Failure to comply with general biosecurity duty

- (1) A person must not cause a significant biosecurity impact by knowingly, or recklessly, failing to comply with the general biosecurity duty in respect of biosecurity matter, a carrier or a dealing.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 10 000 penalty units; or
- (b) an individual, a fine not exceeding 2 500 penalty units or a term of imprisonment not exceeding 48 months.

- (2) A person must comply with the general biosecurity duty when dealing with biosecurity matter or a carrier.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 3 750 penalty units; or
- (b) an individual, a fine not exceeding 750 penalty units or a term of imprisonment not exceeding 24 months, or both.

- (3) An offence under this section is an indictable offence.

- (4) Notwithstanding that an offence under this section is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if –

- (a) the court is satisfied that it is proper to do so; and
- (b) the defendant and prosecutor in respect of the offence both consent to the offence being so heard and determined.

- (5) If, in proceedings for an offence under subsection (1) in respect of a person, the court determining the proceedings is not satisfied that the person is guilty of that offence but is satisfied that the person has committed an offence under subsection (2), the court may find the person guilty of an offence under subsection (2).

#### 72. Specified biosecurity requirements

- (1) For the purposes of this Act, a *specified biosecurity requirement* includes any measure, prescription, rule, duty and other requirement imposed by, or under, this Act or any other Act that requires a person or class of persons to do one or more of the following for the purpose, whether express or implied, of preventing, eliminating or minimising a biosecurity risk or potential biosecurity risk:

- (a) to take a specified action or do a specified thing;
- (b) to refrain from engaging in a specified action or from doing a specified thing;
- (c) to adopt, comply with or implement any standard, rule, code, guideline, program or other specification;

(d) to comply with any undertaking, condition, order, determination, direction, permit, notice or other instrument made or issued under this Act or any other Act.

(2) For the purposes of this Act –

- (a) the general biosecurity duty is not a specified biosecurity requirement; and
- (b) a specified biosecurity requirement is part of the general biosecurity duty.

(3) If –

- (a) a person fails to comply with an applicable specified biosecurity requirement in respect of a dealing, biosecurity matter or carrier; and
- (b) that failure is an offence under both section 71 and another provision of this Act or any other Act –

the person may be charged with, and convicted of, each applicable offence in respect of the failure but may only be sentenced in respect of the most serious offence.

(4) For the avoidance of doubt, compliance with each applicable specified biosecurity requirement in respect of a dealing, biosecurity matter or carrier may not, of itself, discharge the general biosecurity duty in respect of that dealing, biosecurity matter or carrier.

## ***Division 2 - Notification of biosecurity events***

### **73. Notification of biosecurity event**

(1) Each of the following persons must notify an authorised officer of the occurrence of, or likely occurrence of, a biosecurity event as soon as practicable after the person becomes aware of, or reasonably suspects, the occurrence or likely occurrence of the biosecurity event:

- (a) the owner, occupier or person in charge of, or who has the care, custody or control of, premises on which, or in relation to which, the biosecurity event has occurred, is occurring or is about to occur;
- (b) a person who is aware of, or reasonably suspects, the occurrence or likely occurrence of the biosecurity event as a result of any inspection, analysis, consultation, communication, transaction or other activity undertaken by the person in a professional capacity;
- (c) a person who is aware of, or reasonably suspects, the occurrence or likely occurrence of the biosecurity event as a result of any dealing with biosecurity matter, or a carrier, undertaken by the person;
- (d) a prescribed person, or prescribed class of persons, in prescribed circumstances.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 3 750 penalty units; or
- (b) an individual, a fine not exceeding 750 penalty units or a term of imprisonment not exceeding 24 months, or both.

(2) A notification under subsection (1) must be in accordance with this Act.

(3) The regulations may prescribe the following:

- (a) the form, content and manner of a notification to be made in respect of a biosecurity event;
- (b) the procedure for requesting or providing further information in respect of a biosecurity event;
- (c) other matters or procedures in relation to a biosecurity event generally or a class of biosecurity events.

(4) In any proceedings for an offence under this section in respect of a biosecurity event, evidence that a reasonable person with the capacity, and in the circumstances, of the defendant ought to have known of, or suspected, the occurrence or likely occurrence of the biosecurity event is evidence, unless the contrary is proven, that the defendant held such knowledge or suspicion.

(5) It is a defence to proceedings for an offence under this section if the defendant establishes that he or she did not notify an authorised officer in respect of a biosecurity event, as required under this section, because the defendant had reasonable grounds to believe that the biosecurity event was widely and publicly known at the time the defendant allegedly committed the offence.

(6) Notification of a biosecurity event given by a person under this section is not admissible in evidence against that person in any criminal proceedings, or other proceedings for the imposition of a penalty, other than proceedings for –

- (a) an offence under this section; or
- (b) an offence under this Act that involves furnishing false or misleading information or failing to furnish material information; or
- (c) an offence relating to resisting or obstructing an authorised officer under this Act; or
- (d) an offence relating to assaulting, abusing or threatening an authorised officer under this Act.

### ***Division 3 - Dealings***

#### **74. Dealing with prohibited matter**

A person must not deal with prohibited matter.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

[Uncommenced

#### **75. Dealing with restricted matter**

*A person must not import restricted matter.*

*Penalty: In the case of –*

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or*
- (b) an individual, a fine not exceeding 500 penalty units.*

]

#### **76. Prohibited dealings**

A person must not engage in a prohibited dealing.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

#### **77. Regulated dealing**

A person must not engage in a regulated dealing unless –

- (a) the person is a registered entity; and
- (b) the person's biosecurity registration authorises the person to engage in the regulated dealing; and
- (c) the dealing is in accordance with the person's biosecurity registration.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

## PART 6 - Biosecurity Registration

### *Division 1 - Preliminary*

#### **78. Registration required to engage in regulated dealings**

- (1) Biosecurity registration granted by the Secretary to a person under this Part –
  - (a) authorises the person to engage in the regulated dealing specified in the registration; and
  - (b) may be granted, or renewed, on the application of the person or on the initiative of the Secretary.
- (2) Biosecurity registration –
  - (a) only authorises the dealing or dealings specified in the notice by which biosecurity registration is granted or renewed; and
  - (b) does not authorise a registered entity to do anything that is prohibited under any other Act.

#### **79. Application for biosecurity registration**

- (1) A person may apply to the Secretary for biosecurity registration in respect of a regulated dealing.
- (2) An application under subsection (1) is to –
  - (a) be in a form approved by the Secretary; and
  - (b) specify each type of regulated dealing that the person intends to engage in under the registration; and
  - (c) include, or be accompanied by, any information or evidence that the Secretary reasonably requires to determine the application; and
  - (d) be accompanied by the prescribed fee, if any.
- (3) The Secretary may require an applicant for biosecurity registration to lodge a separate application for each regulated dealing that the applicant wishes to engage in under the biosecurity registration.

#### **80. Grant or refusal of biosecurity registration**

- (1) After consideration of an application under section 79, the Secretary may grant biosecurity registration with or without conditions, or refuse to grant biosecurity registration, to the applicant.
- (2) The Secretary may refuse to grant biosecurity registration to an applicant –
  - (a) if the application for biosecurity registration does not comply with this Act; or
  - (b) if the Secretary is satisfied that the applicant is not a suitable person to engage in the regulated dealing concerned; or
  - (c) if it would not be appropriate to grant biosecurity registration to the applicant due to the occurrence of an emergency; or
  - (d) on any prescribed grounds; or
  - (e) for any other reason that the Secretary considers to be sufficient reason for refusing the application.
- (3) If the Secretary refuses to grant biosecurity registration under this section, the Secretary is to –
  - (a) notify the applicant of that decision, either orally or in writing, as soon as practicable after the decision is made; and
  - (b) provide the applicant with written confirmation of the decision and the reasons for the decision; and
  - (c) notify the applicant in writing that he or she may appeal to the Appeal Tribunal against the decision.
- (4) If the Secretary fails to give an applicant notice of a decision to grant or refuse biosecurity registration within the prescribed period, the Secretary is taken to have refused to grant the biosecurity registration.

**81. Duration of biosecurity registration**

- (1) Biosecurity registration granted or renewed under this Part remains in force for a period, not exceeding 5 years, specified in the notice under this Division by which biosecurity registration is so granted or renewed, unless sooner cancelled.
- (2) Biosecurity registration has no effect during any period during which the biosecurity registration is suspended.

**82. Variation of biosecurity registration**

- (1) The Secretary may, at any time, by written notice to a registered entity, vary the biosecurity registration of the registered entity.
- (2) A variation of biosecurity registration under subsection (1) may be made –
  - (a) on the Secretary's own initiative; or
  - (b) on the application of the registered entity.
- (3) A variation of biosecurity registration under subsection (1) may include –
  - (a) the imposition of new conditions on the biosecurity registration; and
  - (b) the substitution of an existing condition on the biosecurity registration; and
  - (c) the omission or amendment of an existing condition on the biosecurity registration.
- (4) The regulations may prescribe for the variation of biosecurity registration, including applications for such a variation and fees payable for such applications.

***Division 2 - Renewal of biosecurity registration*****83. Application for renewal of biosecurity registration**

- (1) At least 28 days before the expiry of a registered entity's biosecurity registration, the registered entity may apply to the Secretary for renewal of the biosecurity registration in respect of a regulated dealing.
- (2) An application under subsection (1) is to –
  - (a) be in a form approved by the Secretary; and
  - (b) specify each type of regulated dealing that the person intends to engage in under the registration; and
  - (c) include or be accompanied by any information or evidence that the Secretary reasonably requires to determine the application; and
  - (d) be accompanied by the relevant prescribed fee, if any.
- (3) If an application for renewal of a registered entity's biosecurity registration in respect of a dealing is made under this section and is not determined under section 84 before the expiry of the biosecurity registration, the biosecurity registration is taken to continue in force, unless otherwise suspended or cancelled, until the application is determined.

**84. Grant or refusal of renewal application**

- (1) The Secretary may, on application under section 83 or on the Secretary's own initiative, renew a registered entity's biosecurity registration.
- (2) If a registered entity has made an application under section 83, the Secretary may refuse to renew the registered entity's biosecurity registration –
  - (a) if an application for renewal of the biosecurity registration does not comply with this Act; or
  - (b) if the Secretary is satisfied that the registered entity is not a suitable person to engage in the regulated dealing concerned; or

(c) if it would not be appropriate to renew the biosecurity registration due to the occurrence of an emergency; or

(d) on any prescribed grounds; or

(e) for any other reason that the Secretary considers reasonable in the circumstances.

(3) If a registered entity has made an application under section 83 and the Secretary renews the registered entity's biosecurity registration under this section, the Secretary is to give the registered entity written notice of that decision.

(4) If a registered entity has made an application under section 83 and the Secretary refuses to renew the registered entity's biosecurity registration under this section, the Secretary is to –

(a) notify the registered entity of that decision, either orally or in writing, as soon as practicable after the decision is made; and

(b) provide the registered entity with written confirmation of the decision and the reasons for the decision; and

(c) notify the registered entity in writing that he or she may appeal to the Appeal Tribunal against the decision.

(5) Subject to subsection (6) , if –

(a) a registered entity's biosecurity registration is taken to continue in force by virtue of section 83(3) until an application to renew the biosecurity registration is determined under this section; and

(b) the Secretary refuses to renew the registered entity's biosecurity registration –

the registered entity's biosecurity registration remains in force until the registered entity is notified under subsection (4)(a) of the decision to refuse to renew the biosecurity registration.

(6) Nothing in subsection (5) prevents a registered entity's biosecurity registration from being suspended or cancelled in accordance with this Act before the expiry of such registration.

### ***Division 3 - Conditions of biosecurity registration***

#### **85. Conditions of biosecurity registration**

(1) The Secretary may impose conditions on a registered entity's biosecurity registration –

(a) at the time of the grant, or renewal, of the biosecurity registration; or

(b) at any other time by variation to the biosecurity registration under section 82 .

(2) In addition to any condition imposed on a registered entity's biosecurity registration under subsection (1) , the biosecurity registration may be subject to prescribed conditions.

(3) Unless expressly provided for under this Act, a section of this Division that authorises a type of condition to be imposed on a registered entity's biosecurity registration does not –

(a) prevent other conditions from being imposed on the biosecurity registration; or

(b) limit the types of conditions that may be imposed on the biosecurity registration.

#### **86. Compliance with standards**

A condition imposed on a registered entity's biosecurity registration may require the registered entity to engage in a regulated dealing in accordance with all of, or part of, a specified standard, code, guideline, protocol, program or other similar instrument.

#### **87. Conditions requiring specified works or measures**

A condition imposed on a registered entity's biosecurity registration may require the registered entity to carry out specified works, or put in place specified measures, to prevent, eliminate, minimise, control or manage the biosecurity risk of a regulated dealing.

## 88. Conditions imposing alternative arrangements

- (1) A condition imposed on a registered entity's biosecurity registration may require the registered entity to have in place an alternative arrangement that has been approved by the Secretary.
- (2) For the purposes of subsection (1), an **alternative arrangement** is a plan or arrangement, relating to the regulated dealing engaged in under the biosecurity registration, that takes effect if –
  - (a) the registered entity ceases to be authorised to engage in the regulated dealing; or
  - (b) the registered entity is unable, for any reason, to continue to engage in the regulated dealing.

## 89. Conditions for insurance cover

A condition imposed on a registered entity's biosecurity registration may require the registered entity to take out and maintain a policy of insurance that indemnifies the registered entity against any liability to which the registered entity may become subject in connection with the regulated dealing under the biosecurity registration.

## 90. Conditions requiring biosecurity audits

A condition imposed on a registered entity's biosecurity registration may require the registered entity to co-operate with, or arrange for, mandatory biosecurity audits and may provide for the frequency of biosecurity audits.

## 91. Conditions requiring financial assurances

- (1) In this section –

**secured event**, in relation to a registered entity's biosecurity registration, includes the following events:

  - (a) the registered entity contravening a condition on the biosecurity registration, other than a condition referred to in subsection (2);
  - (b) the registered entity placing any biosecurity matter, that the biosecurity registration authorises the registered entity to deal with, in the care of the Secretary;
  - (c) the registered entity engaging in conduct that the registered entity is not, or is no longer, authorised to engage in under the biosecurity registration;
  - (d) the registered entity being unable, for any reason, to continue to engage in the regulated dealing authorised to be engaged in under the biosecurity registration.
- (2) A condition imposed on a registered entity's biosecurity registration may require the registered entity –
  - (a) to provide a financial assurance to secure, or guarantee, funding for or towards the doing of anything required as a result of a secured event; and
  - (b) to provide evidence of such financial assurance before the Secretary grants, renews, varies, suspends or cancels the biosecurity registration.
- (3) A condition imposing a financial assurance may specify the assurance to be in one or more of the following forms:
  - (a) a bank guarantee;
  - (b) a bond;
  - (c) a prescribed form;
  - (d) any other form that is approved by the Secretary.
- (4) A financial assurance –
  - (a) may be claimed and realised, despite and without affecting –
    - (i) any liability of the registered entity for a penalty in respect of an offence that may have occurred as a result of the contravention to which the assurance relates; and

- (ii) any other action that may be taken, or is required to be taken, in relation to any contravention or other circumstances to which the assurance relates; and
  - (b) if it is claimed and realised, is in addition to, and does not prevent the imposition of, a penalty imposed for the contravention of this Act, or a condition of the biosecurity registration, in respect of the contravention to which the assurance relates.
- (5) Unless otherwise specified in this Act or the regulations, a condition imposed under this section may make provision for the following matters:
- (a) the method of calculating the amount of the financial assurance required;
  - (b) the circumstances in which all, or any part, of the financial assurance may be claimed, or realised, and the procedure for claiming or realising the financial assurance;
  - (c) the actions that may be taken following a secured event, including –
    - (i) the circumstances when those actions may be taken by, or on behalf of, the Secretary; and
    - (ii) the circumstances when the Secretary, or a person authorised by the Secretary, may enter land to take those actions;
  - (d) the provision of information in specified circumstances;
  - (e) the audit of actions that may result in the financial assurance being claimed or realised;
  - (f) the administration requirements in relation to the financial assurance;
  - (g) the release of the financial assurance.

## **92. Conditions to take effect later**

- (1) The conditions of a registered entity's biosecurity registration may provide that an authorisation conferred by the biosecurity registration does not take effect until the end of a specified period or on the happening of a particular event or on the occurrence of a specified state of affairs.
- (2) Without limiting the generality of subsection (1), the conditions may provide that an authorisation or variation will not take effect until a financial assurance is provided in accordance with the condition.

## **93. Failure to comply with biosecurity registration condition**

- (1) A registered entity must not contravene a condition of his or her biosecurity registration.  
Penalty: In the case of –
  - (a) a body corporate, a fine not exceeding 2 500 penalty units; or
  - (b) an individual, a fine not exceeding 500 penalty units.
- (2) A penalty imposed in respect of an offence under subsection (1) is in addition to any action taken under Division 4 for the contravention of the condition.

## ***Division 4 - Suspension, cancellation or surrender of biosecurity registration***

### **94. Grounds for suspension or cancellation of biosecurity registration**

Each of the following is grounds for suspending or cancelling a registered entity's biosecurity registration:

- (a) the registered entity has contravened this Act or a corresponding law;
- (b) the registered entity is not a suitable person to engage in the regulated dealing concerned;
- (c) an application relating to the biosecurity registration of the registered entity is false or misleading in a material particular;
- (d) the registered entity has failed to pay fees or charges payable by the registered entity under this Act;
- (e) it is in the interests of public safety to suspend or cancel the registration;

(f) the Secretary receives information about the registered entity and the Secretary is of the opinion that, had the information been received at the time when the application for biosecurity registration or renewal of biosecurity registration was made in respect of the registered entity, the Secretary would have refused the application;

(g) the suspension or cancellation is necessary in an emergency;

(h) any other prescribed ground.

#### **95. Suspension of biosecurity registration**

(1) The Secretary may, by written notice to a registered entity, suspend the biosecurity registration of the registered entity if the Secretary is satisfied that there are grounds for the suspension of registration.

(2) A notice under subsection (1) is to specify –

(a) the grounds for the suspension; and

(b) the date or time from which the suspension takes effect; and

(c) the period of the suspension; and

(d) the actions required, if any, for the suspension to be lifted.

(3) Before suspending the biosecurity registration of a registered entity under subsection (1), the Secretary must –

(a) give written notice to the registered entity of the Secretary's intention to suspend registration and the proposed grounds for doing so; and

(b) allow the registered entity at least 14 days to make a submission to the Secretary about the proposed suspension before the suspension is to occur; and

(c) take into account any submission made to the Secretary by the registered entity before the deadline for the making of a submission.

(4) The Secretary is not required to give notice under subsection (3) of a proposed suspension if the Secretary is of the opinion that the suspension is required urgently because of the biosecurity impact of the regulated dealing being carried out by the registered entity, or in an emergency.

(5) However, if the Secretary suspends a registered entity's biosecurity registration without giving notice to the registered entity under subsection (3), the Secretary must –

(a) give the registered entity written notice of the grounds for the suspension as soon as practicable after the suspension occurs; and

(b) invite the registered entity to make a submission to the Secretary about the suspension by a specified deadline (being at least 14 days after the notice is given to the registered entity).

(6) If the registered entity makes a submission to the Secretary about the suspension before the specified deadline, the Secretary must –

(a) decide whether the suspension should be revoked or continued, having regard to that submission; and

(b) give written notice of that decision to the registered entity.

#### **96. Cancellation of biosecurity registration**

(1) The Secretary may, by written notice to a registered entity, cancel the biosecurity registration of the registered entity if the Secretary is satisfied that there are grounds for the cancellation of the biosecurity registration.

(2) A notice under subsection (1) is to specify –

(a) the grounds for the cancellation; and

(b) the date or time from which the cancellation takes effect.

- (3) Before cancelling the biosecurity registration of a registered entity, the Secretary must –
- (a) give written notice to the registered entity of the Secretary's intention to cancel the biosecurity registration and the proposed grounds for doing so; and
  - (b) allow the registered entity at least 14 days to make a submission to the Secretary about the proposed cancellation before the cancellation is to occur; and
  - (c) take into account any submission made to the Secretary by the registered entity before the deadline for the making of a submission.
- (4) The Secretary is not required to give notice under this section of a proposed cancellation if the biosecurity registration of the registered entity is suspended and either –
- (a) the registered entity was given an opportunity to make a submission about the suspension before the suspension took effect; or
  - (b) the registered entity was given an opportunity to make a submission about the suspension after the suspension took effect, and the period specified by the Secretary for making that submission has ended.

### **97. Voluntary surrender of biosecurity registration**

- (1) A registered entity may surrender his or her biosecurity registration in respect of a regulated dealing.
- (2) The surrender of a registered entity's biosecurity registration under subsection (1) must –
- (a) be in a form approved by the Secretary; and
  - (b) be accompanied by the relevant prescribed fee, if any; and
  - (c) include or be accompanied by any information or evidence required by the Secretary to determine the consequences that may result from the surrender of the biosecurity registration.
- (3) The surrender of a registered entity's biosecurity registration under this section does not take effect until the Secretary has given the registered entity written notice that the Secretary is satisfied that all biosecurity matter and carriers will be dealt with appropriately by the registered entity.
- (4) On the surrender of a registered entity's biosecurity registration under this section taking effect, the biosecurity registration is cancelled.
- (5) Biosecurity registration surrendered under this section has no value.

### **98. Effect of suspension, cancellation or surrender on conditions**

- (1) A registered entity's biosecurity registration may be suspended, cancelled or surrendered under this Division unconditionally or subject to such conditions as the Secretary imposes.
- (2) A condition imposed in respect of a suspension, cancellation or surrender of a registered entity's biosecurity registration –
- (a) is to be imposed for the purpose of ensuring –
    - (i) that all relevant biosecurity matter and carriers are to be dealt with appropriately on the suspension, cancellation or surrender of the biosecurity registration; and
    - (ii) compliance with this Act and any other relevant Act; and
  - (b) may include, but is not limited to, any conditions to which the biosecurity registration was subject immediately before it was suspended, cancelled or surrendered.
- (3) The Secretary may, by written notice given to the registered entity or former registered entity, attach new conditions to, or vary or revoke any existing conditions of, the suspension, cancellation or surrender of the biosecurity registration.
- (4) A registered entity or former registered entity must comply with a condition attached to the suspension, cancellation or surrender of the entity's biosecurity registration.
- Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

## PART 7 - Permits

### *Division 1 - Preliminary*

#### 99. Relevant decision-maker

- (1) For the purposes of this Part, a *relevant decision-maker* in relation to a permit means –
  - (a) the Secretary; or
  - (b) an authorised officer.
- (2) Despite subsection (1), the following types of permit may only be issued by the Secretary, the Chief Veterinary Officer or the Chief Plant Protection Officer:
  - (a) an emergency permit;
  - (b) a prohibited matter permit;
  - (c) a prohibited dealing permit;
  - (d) a group permit.

#### 100. Types of permit

- (1) The following types of permit may be granted under this Part:
  - (a) a permit that –
    - (i) authorises conduct that, but for the permit, contravenes or may contravene an emergency order, or an emergency biosecurity direction; and
    - (ii) specifically relates or applies to the emergency relevant to the emergency order or emergency biosecurity direction;
  - (b) a permit that expressly authorises a specified dealing with prohibited matter;
  - (c) a permit that expressly authorises a prohibited dealing;
  - (d) a permit that authorises a dealing that, but for the issue of a permit, would be otherwise unlawful under this Act.
- (2) A permit granted under this Part may be granted to –
  - (a) an entity specified in the permit; or
  - (b) a group, or class, of persons specified in the permit.
- (3) In this Part, a requirement to give written notification of the grant, renewal, variation, suspension or cancellation of a group permit is satisfied if the written notification is published on the Department website or in the *Gazette*, or both.

#### 101. Effect of permit

- (1) Subject to subsection (2), a person is not guilty of an offence under this Act in respect of conduct if –
  - (a) the person is a permit holder with a valid permit; and
  - (b) the permit authorises the conduct; and
  - (c) the person is acting in accordance with the permit when engaging in the conduct.
- (2) A permit does not authorise conduct in contravention of an emergency order or emergency biosecurity direction unless –
  - (a) the permit is an emergency permit granted in respect of the relevant emergency; and
  - (b) the conduct of the person is in accordance with the emergency permit.

- (3) Nothing in this section, or a permit, authorises a permit holder to contravene the provisions of any other Act.
- (4) For the avoidance of doubt, compliance with a permit in respect of a dealing may not, of itself, discharge the general biosecurity duty in respect of any dealing engaged in in accordance with the permit.
- (5) A permit is of no effect while it is suspended.

## 102. Duration of permit

A permit remains in force for the period, not exceeding 5 years, specified on the permit unless sooner cancelled.

## *Division 2 - Individual permits*

### 103. Application for individual permit

- (1) A person may apply to a relevant decision-maker for an individual permit under this Act.
- (2) An application must –
  - (a) be in the form approved by the relevant decision-maker; and
  - (b) include, or be accompanied by, all information or evidence required by the relevant decision-maker that is relevant to the application; and
  - (c) be accompanied by the prescribed fee, if any.

### 104. Grant or refusal of permit

- (1) After considering an application for an individual permit under section 103, the relevant decision-maker may –
  - (a) grant a permit subject to any conditions that the relevant decision-maker thinks appropriate; or
  - (b) refuse to grant a permit; or
  - (c) ask the applicant for further information and, after considering the information –
    - (i) grant a permit subject to any conditions that the relevant decision-maker thinks appropriate; or
    - (ii) refuse to grant a permit.
- (2) A relevant decision-maker must refuse to grant a permit if satisfied that the granting of the permit would create a biosecurity risk that is inconsistent with the objectives of this Act.
- (3) Without limiting the generality of subsection (1)(b), a relevant decision-maker may refuse to grant a permit if satisfied that –
  - (a) the application for the permit does not comply with this Act; or
  - (b) the applicant is not a suitable person to engage in the conduct to be authorised under the permit; or
  - (c) in an emergency, it would not be appropriate to grant the permit.
- (4) If a relevant decision-maker grants a permit under this section, the relevant decision-maker is to –
  - (a) notify the applicant of that decision, either orally or in writing, as soon as practicable after the decision is made; and
  - (b) provide the applicant with the permit and written confirmation of that decision.
- (5) If a relevant decision-maker refuses to grant a permit under this section, the relevant decision-maker is to –
  - (a) notify the applicant of that decision, either orally or in writing, as soon as practicable after the decision is made; and
  - (b) provide the applicant with written confirmation of the decision and the reasons for the decision; and

(c) notify the applicant in writing that he or she may appeal to the Appeal Tribunal against the decision.

(6) A failure of a relevant decision-maker to make a decision within the prescribed period in respect of the application is taken for the purposes of this section to be a refusal of the application.

#### **105. Form of individual permit**

An individual permit granted under this Division is to –

- (a) be in a form approved by the Secretary; and
- (b) specify –
  - (i) the person in respect of which the permit has been granted; and
  - (ii) the type of permit granted; and
  - (iii) each condition imposed in respect of the permit; and
  - (iv) the period in respect of which the permit is in force.

#### **106. Variation of individual permit**

- (1) A relevant decision-maker may, at any time, vary an individual permit by written notice to the permit holder.
- (2) A variation of a permit under subsection (1) may be made –
  - (a) on the relevant decision-maker's own initiative; or
  - (b) on the application of the permit holder.
- (3) A variation of a permit under subsection (1) may include, but is not limited to –
  - (a) the imposition of a new condition on the permit; or
  - (b) the extension of the duration of the permit; or
  - (c) the substitution or amendment of a condition on the permit; or
  - (d) the removal of a condition from the permit.
- (4) The regulations may prescribe –
  - (a) the procedures for applying for a variation of a permit; and
  - (b) fees payable for such applications, including a fee for the reissue of the permit as varied.

#### **107. Application for renewal of individual permit**

- (1) At least 28 days before the expiry of an individual permit, the permit holder may apply to a relevant decision-maker for the renewal of the permit.
- (2) An application under subsection (1) must –
  - (a) be in the form approved by the relevant decision-maker; and
  - (b) include, or be accompanied by, all information or evidence required by the relevant decision-maker that is relevant to the application; and
  - (c) be accompanied by the prescribed fee, if any.
- (3) If an application for renewal of an individual permit is made in accordance with this section and is not determined under section 108 before the expiry of the permit, the permit is taken to continue in force, unless otherwise suspended or cancelled, until the application is determined.

#### **108. Grant or refusal of renewal of individual permit**

- (1) After considering an application for the renewal of an individual permit under section 107, the relevant decision-maker may –

- (a) renew the permit subject to any conditions that the relevant decision-maker thinks appropriate; or
  - (b) refuse to renew the permit; or
  - (c) ask the applicant for further information and, after considering the information –
    - (i) renew the permit subject to any conditions that the relevant decision-maker thinks appropriate; or
    - (ii) refuse to renew the permit.
- (2) Without limiting the generality of subsection (1)(b), a relevant decision-maker may refuse to renew an individual permit if satisfied that –
- (a) the application for the renewal of the permit does not comply with this Act; or
  - (b) the applicant is not a suitable person to engage in the conduct to be authorised under the permit; or
  - (c) in an emergency, it would not be appropriate to renew the permit.
- (3) If a relevant decision-maker renews an individual permit under this section, the relevant decision-maker is to –
- (a) notify the applicant of that decision, either orally or in writing, as soon as practicable after the decision is made; and
  - (b) provide the applicant with the renewed permit and written confirmation of that decision.
- (4) If a relevant decision-maker refuses to renew an individual permit under this section, the relevant decision-maker is to –
- (a) notify the applicant of that decision, either orally or in writing, as soon as practicable after the decision is made; and
  - (b) provide the applicant with written confirmation of the decision and the reasons for the decision; and
  - (c) notify the applicant in writing that he or she may appeal to the Appeal Tribunal against the decision.
- (5) A failure of a relevant decision-maker to make a decision within the prescribed period in respect of the application for the renewal of an individual permit is taken for the purposes of this section to be a refusal to renew the permit.

#### **109. Effect of refusal to renew individual permit**

- (1) Subject to subsection (2), if –
- (a) an individual permit is taken to continue in force by virtue of section 107(3) until an application to renew the permit is determined under section 108; and
  - (b) the relevant decision-maker refuses to renew the permit under that section –

the permit remains in force until the permit holder is notified under section 108 of the decision to refuse to renew or the prescribed period in respect of the application for the renewal expires without the relevant decision-maker making a decision under that section.

- (2) Nothing in subsection (1) prevents a permit from being suspended or cancelled in accordance with this Act before the expiry of such a permit.

### ***Division 3 - Group permit***

#### **110. Grant of group permit**

- (1) A relevant decision-maker may grant a group permit, subject to any conditions he or she thinks appropriate, on his or her own initiative or at the written request of a person.
- (2) A relevant decision-maker must not grant a group permit if satisfied that the granting of the permit would create a biosecurity risk that is inconsistent with the objectives of this Act.

(3) If a relevant decision-maker refuses to grant a group permit that has been requested by a person, the relevant decision-maker is to notify the person in writing of the refusal.

(4) No right of appeal lies against a decision of a relevant decision-maker to refuse to grant a group permit under this Act.

#### **111. Form of group permit**

A group permit granted under this Division is to –

- (a) be in a form approved by the Secretary; and
- (b) specify –
  - (i) the class of persons in respect of which the permit has been granted; and
  - (ii) the type of permit granted; and
  - (iii) each condition imposed in respect of the permit; and
  - (iv) the period in respect of which the permit is in force.

#### **112. Variation of group permit**

(1) A relevant decision-maker may, at any time, vary a group permit by written notification.

(2) A variation of a group permit under subsection (1) may be made –

- (a) on the relevant decision-maker's own initiative; or
- (b) at the written request of a person.

(3) A variation of a group permit under subsection (1) may include, but is not limited to –

- (a) the imposition of a new condition on the permit; or
- (b) the extension of the duration of the permit; or
- (c) the substitution or amendment of a condition on the permit; or
- (d) the removal of a condition from the permit.

#### **113. Renewal of group permit**

A relevant decision-maker may renew a group permit, for such period not exceeding 5 years, and on such terms, as the relevant decision-maker thinks fit by written notification.

### ***Division 4 - Conditions of permit***

#### **114. Conditions of permits**

(1) A permit is subject to –

- (a) any relevant conditions prescribed in respect of the permit, a class of permits or permits generally; and
- (b) any conditions imposed by the relevant decision-maker in respect of the permit.

(2) Unless expressly provided for under this Act, a section of this Part that authorises a type of condition to be imposed on a permit does not –

- (a) prevent other conditions from being imposed on the permit; or
- (b) limit the types of conditions that may be imposed on the permit.

#### **115. Conditions relating to insurance**

(1) A condition imposed on a permit may require the permit holder to take out a policy of insurance.

(2) The condition may include –

- (a) the form and type of insurance to be held; and
- (b) the types of conduct or actions to be indemnified by the insurance; and
- (c) the amount of insurance cover to be maintained; and
- (d) the period for which the insurance is to be maintained, including that the insurance be maintained beyond the duration of the permit; and
- (e) any other details and requirements that the relevant decision-maker thinks fit.

#### 116. Conditions relating to audits

A condition imposed on a permit may require the permit holder to co-operate with, or arrange, mandatory biosecurity audits at specified intervals.

#### 117. Conditions relating to financial assurances

(1) In this section –

*secured event*, in relation to a permit, includes the following events:

- (a) the permit holder contravening a condition on the permit, other than a condition referred to in subsection (2) ;
- (b) the permit holder placing any biosecurity matter, that the permit authorises the permit holder to deal with, in the care of the Secretary;
- (c) the permit holder engaging in conduct that the permit holder is not, or no longer, authorised to engage in under the relevant permit;
- (d) the permit holder being unable, for any reason, to continue to engage in the conduct authorised by the permit.

(2) A condition imposed on a permit may require the permit holder to provide a financial assurance to secure, or guarantee, funding for or towards the doing of anything required in the event of a secured event in relation to a dealing under the permit.

(3) A condition imposing a financial assurance may specify that the assurance is to be in one or more of the following forms:

- (a) a bank guarantee;
- (b) a bond;
- (c) a prescribed form;
- (d) any other form that is approved by the Secretary.

(4) A financial assurance may be claimed and realised, despite and without affecting –

- (a) any liability of the permit holder for any penalty for an offence for a contravention to which the assurance relates; and
- (b) any other action that may be taken, or is required to be taken, in relation to any contravention or other circumstances to which the assurance relates.

(5) Unless otherwise specified in this Act or the regulations, a condition imposed under this section may make provision for the following matters:

- (a) the method of calculating the amount of the financial assurance required;
- (b) the circumstances in which all, or any part, of the financial assurance may be claimed, or realised, and the procedure for claiming or realising the financial assurance;
- (c) the actions that may be taken following a secured event, including –
  - (i) the circumstances in which those actions may be taken by, or on behalf of, the Secretary; and

(ii) the circumstances in which the Secretary, or a person authorised by the Secretary, may enter land to take those actions;

- (d) the provision of information in specified circumstances;
- (e) the audit of actions that may result in the financial assurance being claimed or realised;
- (f) the administration requirements in relation to the financial assurance;
- (g) the release of the financial assurance.

#### **118. Conditions may take effect at any time**

(1) A condition imposed on a permit may specify that all or part of a permit does not take effect until –

- (a) the expiry of a specified period; or
- (b) the occurrence of a specified event or a specified set of circumstances.

(2) Without limiting the generality of subsection (1)(b), a set of circumstances under that subsection may be that, if the permit has been granted with a condition imposed under section 117, evidence of financial assurance is provided.

#### **119. Failure to comply with permit condition**

(1) A permit holder must not contravene a condition of the permit.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

(2) A penalty imposed in respect of an offence under subsection (1) is in addition to any action taken under Division 5 for the contravention of the condition.

### ***Division 5 - Suspension, cancellation or surrender of permits generally***

#### **120. Grounds for suspending or cancelling individual permit**

(1) In addition to any other reasons specified in this Act, an individual permit may be suspended or cancelled under this Division for one or more of the following grounds:

- (a) the permit holder has contravened a requirement imposed by, or under, this Act or a corresponding law;
- (b) the permit holder is no longer a suitable person to engage in the conduct authorised by the permit;
- (c) an application relating to the permit was false or misleading in a material particular;
- (d) the permit holder has failed to pay fees or charges payable by the permit holder under this Act;
- (e) it is in the interests of public safety to suspend or cancel the permit;
- (f) information has been provided that, if it had been provided at the time that an application relating to the permit was made, may have resulted in the application for the permit being refused;
- (g) the suspension or cancellation is necessary in an emergency;
- (h) any other prescribed reason.

(2) Subsection (1)(g) does not apply in respect of an emergency permit that was expressly granted in respect of the emergency.

#### **121. Grounds for suspending or cancelling group permit**

In addition to any other reasons specified in this Act, a group permit may be suspended or cancelled under this Division if the relevant decision-maker believes, on reasonable grounds, that the suspension or cancellation of the group permit is appropriate.

## 122. Suspension of permit

- (1) A relevant decision-maker may, by written notice to a permit holder, suspend a permit if the relevant decision-maker is satisfied that there are grounds for the suspension.
- (2) A notice under subsection (1) is to specify –
  - (a) the grounds for the suspension; and
  - (b) the date or time from which the suspension takes effect; and
  - (c) the period of the suspension; and
  - (d) the actions required, if any, for the suspension to be lifted.
- (3) A notice under subsection (1) may be given orally in an emergency.
- (4) If a notice of suspension is given orally under subsection (3), the relevant decision-maker is to give the permit holder written confirmation of the suspension as soon as practicable.

## 123. Permit holder may make submissions about suspension

- (1) Before suspending an individual permit, a relevant decision-maker must –
  - (a) give written notice to the permit holder of the relevant decision-maker's intention to suspend the permit and the proposed grounds for doing so; and
  - (b) invite the permit holder to make a submission about the proposed suspension to the relevant decision-maker within the specified period.
- (2) For the purposes of subsection (1)(b), the specified period is not to be a period that is less than 28 days from the date the notice is given to the permit holder under that subsection.
- (3) Despite subsection (1), the relevant decision-maker is not required to give notice under this section of a proposed suspension of an individual permit –
  - (a) if the relevant decision-maker is of the opinion that the suspension is required urgently because of the biosecurity impact of the conduct authorised by the permit; or
  - (b) in an emergency.
- (4) However, if the relevant decision-maker suspends a permit under this section without giving prior notice to the permit holder, the relevant decision-maker must –
  - (a) give the permit holder written notice of the grounds for the suspension; and
  - (b) invite the permit holder to make a submission about the suspension to the relevant decision-maker within the period specified in the written notice given under paragraph (a).
- (5) If the permit holder makes a submission about a proposed suspension to the relevant decision-maker before the specified deadline, the relevant decision-maker must –
  - (a) decide whether the suspension should be revoked or continued, having regard to that submission; and
  - (b) give written notice of that decision to the permit holder.

## 124. Cancellation of permit

- (1) A relevant decision-maker may, by written notice to a permit holder, cancel the permit of a permit holder if the relevant decision-maker is satisfied that there are grounds for the cancellation of the permit.
- (2) A notice under subsection (1) must specify –
  - (a) the grounds for the cancellation; and
  - (b) the date or time from which the cancellation takes effect.
- (3) A notice under subsection (1) may be given orally in an emergency.

(4) If notice is given orally under subsection (3), the relevant decision-maker is to give the permit holder written confirmation of the cancellation as soon as practicable.

#### **125. Permit holder may make submissions about cancellation**

(1) Before cancelling a permit, a relevant decision-maker must –

(a) give written notice to the permit holder of the relevant decision-maker's intention to cancel the permit and the proposed grounds for doing so; and

(b) invite the permit holder to make a submission about the proposed cancellation to the relevant decision-maker within the specified period; and

(c) take into account any submission made to the relevant decision-maker by the permit holder before the deadline for the making of a submission.

(2) For the purposes of subsection (1)(b), the specified period is not to be a period that is less than 28 days from the date the notice is given to the permit holder under that subsection.

(3) The relevant decision-maker is not required to give notice under this section of a proposed cancellation if –

(a) the permit is a group permit; or

(b) the permit is suspended and either –

(i) the permit holder was given an opportunity to make a submission about the suspension before the suspension took effect; or

(ii) the permit holder was given an opportunity to make a submission about the suspension after the suspension took effect, and the period specified by the relevant decision-maker for making that submission has ended.

#### **126. Voluntary surrender of individual permit**

(1) A permit holder may surrender his or her individual permit to a relevant decision-maker.

(2) The surrender of an individual permit under subsection (1) must –

(a) be in a form approved by the relevant decision-maker; and

(b) be accompanied by the relevant prescribed fee, if any; and

(c) include or be accompanied by any information or evidence required by the relevant decision-maker to determine the consequences that may result from the surrender of the permit.

(3) The surrender of an individual permit does not take effect until the relevant decision-maker has given the permit holder written notice that the relevant decision-maker is satisfied that all biosecurity matter and carriers will be dealt with appropriately by the permit holder.

(4) On the surrender of an individual permit under this section taking effect, the permit is cancelled.

(5) An individual permit surrendered under this section has no value.

#### **127. Effect of suspension, cancellation or surrender on conditions**

(1) A permit may be suspended, cancelled or surrendered under this Division unconditionally or subject to such conditions as the relevant decision-maker imposes.

(2) A condition imposed in respect of the suspension, cancellation or surrender of a permit –

(a) is to be imposed for the purpose of ensuring –

(i) that all relevant biosecurity matter and carriers are to be dealt with appropriately on the suspension, cancellation or surrender of the permit; and

(ii) compliance with this Act and any other relevant Act; and

(b) may include, but is not limited to, any condition to which the permit was subject immediately before it was suspended, cancelled or surrendered.

(3) A relevant decision-maker may, by giving written notice to the permit holder or former permit holder, attach new conditions to, or vary or revoke any existing conditions of, the suspension, cancellation or surrender of the permit.

(4) A permit holder or former permit holder must comply with any condition attached to the suspension, cancellation or surrender of the permit.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 2 500 penalty units; or

(b) an individual, a fine not exceeding 500 penalty units.

## PART 8 - Biosecurity Zones

### 128. Biosecurity zones

- (1) The regulations may prescribe one or more of the following as a *biosecurity zone*:
  - (a) any specified premises or specified part of premises;
  - (b) any specified place, area or region or specified part of such place, area or region;
  - (c) the whole, or any specified part, of Tasmania.
- (2) Without limiting the generality of subsection (1), a biosecurity zone may be prescribed –
  - (a) to provide for the long-term management of a biosecurity risk or biosecurity impact; or
  - (b) to prevent, eliminate, minimise, control or manage a biosecurity risk or biosecurity impact.
- (3) A regulation prescribing a biosecurity zone is to specify each of the following in respect of the zone:
  - (a) the biosecurity matter, or class of biosecurity matter, biosecurity risk or biosecurity impact in relation to which the biosecurity zone is prescribed;
  - (b) the premises, places, areas or regions which form the biosecurity zone in a clear and identifiable manner;
  - (c) the biosecurity zone measures to be followed in respect of the biosecurity zone;
  - (d) the persons, or class of persons, to which the biosecurity zone measures apply.

### 129. Biosecurity zone measures

- (1) A *biosecurity zone measure* is a measure to be implemented in respect of a biosecurity zone for the purpose of preventing, eliminating, minimising, controlling or managing a biosecurity risk, or biosecurity impact, in respect of which the biosecurity zone was established.
- (2) A biosecurity zone measure may be prescribed in respect of –
  - (a) the biosecurity zone in respect of which the measure is prescribed; or
  - (b) an area outside of the biosecurity zone.
- (3) A biosecurity zone measure may do one or more of the following:
  - (a) prohibit, regulate or control the doing of any thing;
  - (b) require, authorise, or provide for the doing of any thing;
  - (c) adopt, or incorporate, the whole or part of any specification, standard, rule, code, guideline, program or document, as amended from time to time and with or without modification, that was issued, prescribed, made or published before or after the biosecurity zone measure takes effect;
  - (d) impose an evidentiary presumption in respect of biosecurity matter, a carrier, a dealing, a biosecurity risk or biosecurity impact, in relation to the biosecurity zone.
- (4) Without limiting the generality of this section, a biosecurity measure may prohibit, regulate or control, or require or authorise, any of the following things:
  - (a) activities that involve biosecurity matter, carrier or potential carrier;
  - (b) the use of premises for an activity that involves biosecurity matter, carrier or potential carrier;
  - (c) the movement of any biosecurity matter or other thing;
  - (d) the isolation, confinement or detention of any biosecurity matter or other thing;
  - (e) the treatment to be carried out in relation to any biosecurity matter, premises or other thing;

- (f) the erection, reinforcement or repair of fencing, gates or any other method of enclosure, or the taking of any other specified security or containment measures in relation to any premises, biosecurity matter or other thing;
- (g) the erection of signs and notices;
- (h) the provision, or taking, of samples of any biosecurity matter or other thing;
- (i) the testing of any biosecurity matter or other thing;
- (j) the obtaining of a biosecurity certificate in relation to any biosecurity matter or other thing;
- (k) the installation or use of a device at any premises, for the purpose of detecting or monitoring the presence of any biosecurity matter or other thing or capturing any biosecurity matter or other thing;
- (l) the destruction, disposal or eradication of any thing (including by specifying the manner of destruction, disposal or eradication).

### **130. Failure to comply with biosecurity zone measure**

(1) A person must not contravene a biosecurity zone measure.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

(2) In addition to any penalty imposed under this Act, if a person contravenes a biosecurity zone measure, the Secretary may authorise a person to enter premises and take any action necessary to ensure the biosecurity zone measure is complied with.

(3) Despite subsection (2) , the Secretary may not authorise a person to enter residential premises unless, at least 24 hours before the person enters the premises, the occupier of the premises is given written notice of –

- (a) the intention to enter premises; and
- (b) the proposed date on which the premises are intended to be entered.

(4) Notice is not required to be given under subsection (3) if –

- (a) entry into the residential premises is made with the consent of the owner, or occupier, of the premises; or
- (b) entry into the residential premises is made under the authority of a warrant.

(5) The Secretary may charge the person referred to in subsection (1) a fee for the reasonable costs and expenses incurred by taking action in accordance with subsection (2) in respect of that person.

(6) A fee payable under subsection (5) is a recoverable amount from the person referred to in subsection (1) .

## PART 9 - Biosecurity Programs and Agreements

### *Division 1 - Approved biosecurity programs*

#### 131. Preparation of draft biosecurity program

- (1) An entity representing the interests of any industry, or of any part of the community, may prepare a draft program relating to the prevention, elimination, minimisation, control or management of a biosecurity risk or biosecurity impact.
- (2) A draft program prepared under subsection (1) is to specify the following:
  - (a) the name of the entity that prepared the program;
  - (b) the intended scope of the program;
  - (c) the biosecurity risk or biosecurity impact to which the program relates;
  - (d) the biosecurity matter or class of biosecurity matter that the program affects;
  - (e) the composition of the management committee for the program;
  - (f) the objectives of the program;
  - (g) the strategies and methods to be applied under the program to control the biosecurity risk or biosecurity impact to which the program relates;
  - (h) the manner in which the cost of implementing the program is to be met;
  - (i) the likely duration of the program;
  - (j) the manner in which the effectiveness of the program is to be monitored;
  - (k) the persons or classes of persons able to perform functions in relation to the control of the biosecurity risk or biosecurity impact to which the program relates;
  - (l) the functions of those persons or classes of persons;
  - (m) whether reimbursement for the destruction of any animal, plant or other property is payable under the program to the owner of the animal, plant or property;
  - (n) if reimbursement is payable under the program –
    - (i) the manner in which the amount of reimbursement is to be determined; and
    - (ii) who is to pay the reimbursement; and
    - (iii) the manner of claiming reimbursement;
  - (o) the manner in which any proceeds obtained from the implementation of the program are to be disposed of;
  - (p) the extent to which the owner of any biosecurity matter, carrier or other property affected by the implementation of the program is required to take action under the program.
- (3) A draft program may also specify one or more of the following matters:
  - (a) the method of identification and examination of any biosecurity matter, carrier or other thing;
  - (b) the method of treatment of any biosecurity matter or other thing;
  - (c) the destruction or other disposal of any biosecurity matter, carrier or other thing if necessary to control a biosecurity risk or biosecurity impact;
  - (d) measures to –
    - (i) eradicate specified biosecurity matter from an area; or

(ii) restrict or reduce the spread of specified biosecurity matter in a particular area.

### **132. Approval of draft biosecurity program**

- (1) An entity that has prepared a draft program under section 131 may apply to the Minister for approval of the program.
- (2) An application is to be –
  - (a) in writing; and
  - (b) in a form approved by the Minister; and
  - (c) accompanied by a copy of the program and any other information or material required by the Minister.
- (3) On receipt of an application under subsection (1), and after consultation with any entity representing persons who, in the opinion of the Minister, are likely to be affected by the implementation of the program, the Minister may by written notice to the entity that prepared the draft program –
  - (a) approve the program; or
  - (b) if the entity that prepared the draft program agrees, amend the program and approve the program as amended; or
  - (c) refuse to approve the program; or
  - (d) request that the entity provide further information in respect of the program and after consideration of that further information –
    - (i) approve the program; or
    - (ii) if the entity that prepared the draft program agrees, amend the program and approve the program as amended; or
    - (iii) refuse to approve the program.
- (4) The Minister must refuse to approve a draft program if –
  - (a) it does not provide that the Secretary or the Secretary's nominee is a member of the management committee for the program; or
  - (b) it provides for the destruction or other disposal of any biosecurity matter or other property without the written approval of the Secretary, or the owner of the biosecurity matter or property.
- (5) An approved biosecurity program takes effect on the date specified by the Minister in the notice of approval of the program.

### **133. Amendment of approved biosecurity program**

- (1) On receipt of an application from the entity that prepared an approved biosecurity program, the Minister may –
  - (a) amend the approved biosecurity program; or
  - (b) refuse to amend the approved biosecurity program.
- (2) An application to amend an approved biosecurity program is to be –
  - (a) in writing; and
  - (b) in a form approved by the Minister; and
  - (c) accompanied by a copy of the program as amended and any other information or material required by the Minister.

### **134. Termination of approved biosecurity program**

- (1) The Minister may terminate an approved biosecurity program –

- (a) at his or her discretion; or
  - (b) on the application of the entity that prepared the approved biosecurity program.
- (2) An application to terminate an approved biosecurity program is to be –
- (a) in writing; and
  - (b) in a form approved by the Minister.
- (3) If the Minister terminates an approved biosecurity program at his or her discretion, the Minister is to notify the entity that prepared the approved biosecurity program, at least 28 days before the termination is to take effect, of the termination of the program.

### **135. Cost of implementing approved biosecurity program**

- (1) The Minister, by written notice, may agree that the Crown is to reimburse the management committee for an approved biosecurity program for any specified costs incurred by the committee in implementing the program.
- (2) The notice is to –
- (a) specify the costs or portion of the costs that the Crown agrees to reimburse; and
  - (b) be provided to the management committee for the approved biosecurity program.
- (3) Except as agreed under subsection (1) –
- (a) any other costs incurred by a management committee for an approved biosecurity program are to be met as provided for in the program; and
  - (b) the Crown is not liable in respect of those costs.

## ***Division 2 - Government biosecurity programs***

### **136. Government biosecurity program**

- (1) The Minister may direct the Secretary to implement a program relating to the prevention, elimination, minimisation, control or management of a biosecurity risk or biosecurity impact, if the Minister –
- (a) has consulted with any persons (including a council or the Biosecurity Advisory Committee) who, in the opinion of the Minister, are likely to be affected by the implementation of the program, or any entity representing such persons; and
  - (b) is satisfied that implementation of the program will further the objects of this Act.
- (2) The Minister may give a direction under subsection (1) without prior consultation with the persons or entities referred to in that subsection if the Minister is satisfied that the interests of Tasmania require implementation of the program with minimal delay.
- (3) A program implemented under subsection (1) is to specify the following matters:
- (a) the biosecurity risk or biosecurity impact to which the program relates;
  - (b) the biosecurity matter or class of biosecurity matter that the program affects;
  - (c) the objectives of the program;
  - (d) the strategies and methods to be applied under the program to control the biosecurity risk or biosecurity impact to which the program relates;
  - (e) the likely duration of the program;
  - (f) the manner in which the effectiveness of the program is to be monitored;
  - (g) the persons or classes of persons able to perform functions in relation to the control of the biosecurity risk or biosecurity impact to which the program relates;

- (h) the functions of those persons or classes of persons;
  - (i) whether reimbursement for the destruction of any animal, plant or other property under the program is payable to the owner of the animal, plant or property;
  - (j) if reimbursement is payable under the program, the manner in which the amount of reimbursement is to be determined.
- (4) A program implemented under subsection (1) may also specify one or more of the following matters:
- (a) the identification and examination of any biosecurity matter, carrier or other thing;
  - (b) the treatment of any biosecurity matter, carrier or other thing;
  - (c) the destruction or disposal of any biosecurity matter, carrier or other thing if necessary to control a biosecurity risk or biosecurity impact;
  - (d) measures to –
    - (i) eradicate specified biosecurity matter from a specified area; or
    - (ii) restrict or reduce the spread of specified biosecurity matter in a specified area;
  - (e) any other measures that the Minister considers appropriate to control the relevant biosecurity risk or biosecurity impact.
- (5) The Secretary may, by notice published in the *Gazette*, amend, or terminate, a government biosecurity program on his or her own initiative or at the request of the Minister.
- (6) A notice published in the *Gazette* under subsection (5) in respect of the amendment, or termination, of a government biosecurity program is to specify the reasons for the amendment or termination.

### ***Division 3 - Biosecurity control agreements***

#### **137. Biosecurity control agreement**

- (1) The Secretary may make an agreement with the owner or occupier of any premises in relation to carrying out treatment, destruction or other activities on those premises for the purpose of preventing, eliminating, minimising, controlling or managing a biosecurity risk or biosecurity impact.
- (2) An agreement under subsection (1) –
- (a) is subject to such conditions as the Secretary considers appropriate; and
  - (b) may provide for the recovery by the Secretary of any costs incurred by the Crown in carrying out the agreement.
- (3) A person must not contravene a biosecurity control agreement.  
Penalty: Fine not exceeding 100 penalty units.

#### **138. Suspension or revocation of biosecurity control agreement**

The Secretary may, by written notice to the other party to a biosecurity control agreement, suspend or revoke the agreement if he or she reasonably believes that any condition of the agreement has not been complied with.

## PART 10 - Biosecurity Certification, Auditing and Accreditation

### *Division 1 - Accreditation authority*

#### **139. Accreditation authority**

- (1) For the purposes of this Act, an accreditation authority includes –
  - (a) the Secretary; and
  - (b) a person approved by the Secretary to be an accreditation authority.
- (2) An accreditation authority is authorised under this Act –
  - (a) to appoint persons as biosecurity auditors or biosecurity certifiers; and
  - (b) to require biosecurity audits to be performed in certain circumstances.
- (3) An approval by the Secretary under subsection (1)(b) may only authorise the accreditation authority to act as an accreditation authority in respect of –
  - (a) a specified class of biosecurity certificates or biosecurity certifiers; or
  - (b) a specified class of biosecurity audits or biosecurity auditors.
- (4) An approval by the Secretary under subsection (1)(b) may be subject to such conditions, and limitations, as the Secretary thinks fit.
- (5) For the purposes of this Act, a reference to an accreditation authority in respect of a function of an accreditation authority only includes a reference to a person approved by the Secretary under subsection (1)(b) if the person has been approved to perform the function.
- (6) Schedule 1 applies in respect of –
  - (a) an application for approval as an accreditation authority; and
  - (b) an application for renewal of approval as an accreditation authority; and
  - (c) the suspension or cancellation of approval as an accreditation authority.
- (7) Nothing in this Act authorises or requires an accreditation authority to act in contravention of the conditions or limitations of the accreditation authority's approval as an accreditation authority.

#### **140. Responsible accreditation authority**

- (1) The accreditation authority that –
  - (a) appoints a person as a biosecurity auditor; or
  - (b) grants accreditation to a person as a biosecurity certifier –is the responsible accreditation authority in relation to that appointment or accreditation.
- (2) If an accreditation authority other than the relevant responsible accreditation authority –
  - (a) renews a biosecurity auditor's appointment as a biosecurity auditor; or
  - (b) renews a biosecurity certifier's accreditation as a biosecurity certifier –the accreditation authority that renews the appointment or accreditation is then taken to be the responsible accreditation authority in relation to that appointment or accreditation.
- (3) For the purposes of this Act, the Secretary may, but is not required to, perform any of the functions of the responsible accreditation authority in relation to an appointment or accreditation for which there is a responsible accreditation authority.

(4) If a responsible accreditation authority ceases to be an accreditation authority in respect of an appointment, or accreditation, for which it is a responsible accreditation authority –

(a) the accreditation authority ceases to be the responsible accreditation authority in respect of the appointment or accreditation; and

(b) the functions of a responsible accreditation authority in respect of the appointment or accreditation may be performed by –

(i) an accreditation authority approved by the Secretary to perform those functions in respect of the appointment or accreditation; or

(ii) an accreditation authority approved by the Secretary as the responsible accreditation authority in respect of the appointment or accreditation; or

(iii) if no accreditation authority has been so approved under subparagraph (i) or (ii), the Secretary.

## ***Division 2 - Biosecurity audits***

### ***Subdivision 1 - Biosecurity audits generally***

#### **141. Biosecurity audits**

The following types of audits are biosecurity audits and may be performed under this Act by a biosecurity auditor:

(a) an accreditation audit;

(b) a compliance audit.

#### **142. Biosecurity audits mandatory in certain circumstances**

(1) A biosecurity audit is mandatory if the Secretary, or an accreditation authority, has required the audit to be performed.

(2) Nothing in this section prevents a biosecurity audit from being voluntarily performed at any time.

#### **143. Reporting requirements for biosecurity audit**

(1) A biosecurity auditor must prepare a written report about each biosecurity audit performed by the biosecurity auditor.

(2) A copy of the report must be submitted in accordance with subsection (3) –

(a) to the person who required the audit to be performed; and

(b) to the audit target.

(3) A copy of a report submitted under subsection (2) must be submitted –

(a) within 21 days after completion of the biosecurity audit; or

(b) if another period is prescribed by the regulations, within the prescribed period.

(4) A report under this section must include the following information:

(a) whether or not the audit target is complying, and capable of complying, with this Act;

(b) if the biosecurity auditor believes that the audit target is not complying with, or not capable of complying with, this Act, the reasons for that belief;

(c) if the biosecurity audit indicates contraventions of this Act or other deficiencies –

(i) the nature of those contraventions or other deficiencies; and

(ii) the actions that are required to remedy those contraventions or deficiencies;

(d) if a previous biosecurity audit has indicated contraventions or other deficiencies, the actions (if any) that have been taken to remedy those contraventions or other deficiencies;

(e) such other matters as are prescribed.

(5) A biosecurity auditor must provide a copy of a report prepared under this section to the Secretary if directed to do so by the Secretary.

#### **144. Biosecurity auditor to provide immediate report in certain circumstances**

(1) A biosecurity auditor must report to the Secretary if, during a biosecurity audit, the biosecurity auditor becomes aware of, or suspects, any of the following occurrences:

- (a) any instance of critical non-compliance by the audit target;
- (b) that a biosecurity certificate has been issued that is false or misleading in a material particular;
- (c) that a person is in possession of biosecurity matter in contravention of this Act;
- (d) the occurrence or likely occurrence of a biosecurity event;
- (e) any occurrence of a kind prescribed by the regulations.

(2) A report under subsection (1) must be given orally to the Secretary –

- (a) as soon as possible; and
- (b) no later than 24 hours after the biosecurity auditor becomes aware of the occurrence.

(3) A biosecurity auditor must give the Secretary a written copy of a report under subsection (1) within 5 days after becoming aware of the matter.

(4) For the purposes of this Act, the requirement to make a report under this section is taken to be a condition of appointment for each biosecurity auditor appointed under this Act.

### ***Subdivision 2 - Accreditation audits***

#### **145. Accreditation audits**

An accreditation audit is an audit that is performed in respect of a person –

- (a) to determine whether the person is eligible –
  - (i) to hold biosecurity registration, a permit or accreditation under this Act; or
  - (ii) to be appointed as a biosecurity auditor under this Act; or
- (b) to assess whether the person is capable of complying, or is reasonably likely to comply, with this Act.

#### **146. Who can require accreditation audits**

(1) The Secretary may require an accreditation audit to be performed in relation to the following applications:

- (a) an application for the grant or renewal of, or a variation to, biosecurity registration;
- (b) an application for the grant or renewal of, or a variation to, approval to perform any of the functions of an accreditation authority under this Act.

(2) The Secretary, or an authorised officer, may require an accreditation audit to be performed in relation to an application for the grant or renewal of, or a variation to, a permit.

(3) An accreditation authority may require an accreditation audit to be performed in relation to the following applications to be determined by an accreditation authority:

- (a) an application for the grant or renewal of, or a variation to, accreditation as a biosecurity certifier;
- (b) an application for the grant or renewal of, or a variation to, appointment as a biosecurity auditor.

(4) An authorised officer or an accreditation authority, other than the Secretary, must require an accreditation audit to be performed in relation to an application –

(a) if directed to do so by the Secretary; or

(b) in the case of an accreditation authority, if required to do so under the conditions of its approval as an accreditation authority.

(5) If an accreditation audit is required to be performed under this section, the accreditation authority is to notify the audit target in writing of that requirement.

#### **147. Engagement of auditors**

An accreditation authority that requires an accreditation audit to be performed may –

(a) engage a biosecurity auditor to perform the audit; or

(b) direct the audit target to engage a biosecurity auditor to perform the audit and specify requirements relating to –

(i) the engagement of the biosecurity auditor; and

(ii) the scope of the accreditation audit to be performed.

#### **148. Functions of biosecurity auditors – accreditation audits**

(1) A biosecurity auditor has the following functions in connection with an accreditation audit, subject to any limitations specified in his or her instrument of engagement as a biosecurity auditor:

(a) to assess the audit target's suitability for the grant, renewal or variation of biosecurity registration, accreditation as a biosecurity certifier, appointment as a biosecurity auditor, a permit or approval as an accreditation authority (as the case requires);

(b) to assess whether the audit target has the qualifications, skills, knowledge and experience (if any) required for biosecurity registration, accreditation as a biosecurity certifier, appointment as a biosecurity auditor, a permit or approval as an accreditation authority (as the case requires);

(c) to assess the audit target's compliance with, and capability of complying with, the requirements imposed or proposed to be imposed by or under this Act;

(d) to report, to the person who requires the accreditation audit, on the biosecurity auditor's assessment of those matters.

(2) A biosecurity auditor has such other functions in connection with an accreditation audit as are prescribed by the regulations or, subject to the regulations, conferred on the biosecurity auditor by his or her instrument of engagement for the accreditation audit.

#### **149. Recovery of fee for accreditation audits**

(1) An accreditation authority that requires an accreditation audit may charge the audit target a reasonable fee for the performance of an accreditation audit by a biosecurity auditor engaged by the person.

(2) If the Secretary requires the accreditation audit to be performed, the fee is a recoverable amount that is recoverable from the audit target.

(3) If an accreditation authority other than the Secretary requires the accreditation audit to be performed, the fee is an amount due and owing to the accreditation authority.

(4) An audit target is responsible for any fee payable in connection with an accreditation audit, performed by a biosecurity auditor engaged by the audit target, that is not specifically stated to be covered by a fee charged under subsection (1) in respect of the audit.

### ***Subdivision 3 - Compliance audits***

#### **150. Compliance audits**

A compliance audit is an audit that is performed for any of the following purposes:

- (a) to assess a person's compliance with, or capability of complying with, this Act;
- (b) to assess or identify any contravention or suspected contravention of this Act (including any contravention or other deficiency identified in another biosecurity audit);
- (c) to identify measures for improved compliance with this Act.

#### **151. Who can require compliance audits**

- (1) The Secretary may require a compliance audit to be performed in relation to any person at any time.
- (2) An accreditation authority, other than the Secretary, may require a compliance audit to be performed in relation to a person who is, or has been in the previous 7 years, a biosecurity certifier or biosecurity auditor at any time, but only if the accreditation authority is, or was, the responsible accreditation authority for the accreditation or appointment of the person.
- (3) An accreditation authority that requires a compliance audit to be performed is to give the audit target notice of the decision to require a compliance audit, unless the giving of notice would defeat the purpose of the audit.
- (4) A reference in this Division to the person who requires, or may require, a compliance audit is a reference to the person who requires, or who has power to require, the compliance audit under the power conferred by this section.

#### **152. Decision to require compliance audits**

- (1) The Secretary, or an accreditation authority, must have regard to the following in making a decision about whether to require the compliance audit or the frequency of compliance audits:
  - (a) the person's audit frequency policy;
  - (b) the compliance history of the audit target;
  - (c) any previous biosecurity audits performed in relation to the audit target that the person considers relevant (including any deficiencies identified in those audits);
  - (d) any information provided to the person by authorised officers about compliance with this Act;
  - (e) any other matters that the person considers relevant.
- (2) An accreditation authority (other than the Secretary) must require a compliance audit to be performed in relation to a person if –
  - (a) it is directed to do so by the Secretary; or
  - (b) it is required to do so under the conditions of its approval as an accreditation authority.
- (3) If the Secretary directs an accreditation authority to require a compliance audit, subsection (1) applies to the decision of the Secretary to make such a direction as if it were a decision about whether to require the compliance audit.

#### **153. Audit frequency policy**

- (1) An accreditation authority that, as part of its functions, may require a compliance audit is required to adopt a policy in relation to the frequency of audits which may be performed for the purposes of this Act.
- (2) An audit frequency policy adopted by an accreditation authority other than the Secretary has no effect unless it has been approved in writing by the Secretary.
- (3) Despite subsection (2), the approval of the Secretary is not required for any amendment to an audit frequency policy if the accreditation authority adopting the policy certifies that the amendment –

- (a) is minor in nature or for the purpose of correcting an error or updating a reference; or
  - (b) is necessary to reflect a change of –
    - (i) a course of study including a continuing professional development course; or
    - (ii) a qualification required; or
    - (iii) the provider of a course or qualification.
- (4) An audit frequency policy may make provision for, or in respect of, the following matters:
- (a) the frequency of compliance audits;
  - (b) any other prescribed matters.
- (5) An audit frequency policy is to be publicly available.
- (6) An audit frequency policy may apply generally or apply differently according to different factors of a specified kind, including but not limited to the following:
- (a) the type of biosecurity matter involved;
  - (b) the type of activity involved and the level of biosecurity risk associated with that activity;
  - (c) the class of biosecurity registration or accreditation involved (if any).
- (7) An accreditation authority may adopt an accreditation policy for each different type of accreditation.
- (8) In this Act, a reference to an audit frequency policy is taken to be a reference to the audit frequency policy that is relevant to the audit concerned.

#### **154. Engagement of auditor**

- (1) An accreditation authority that requires a compliance audit may –
- (a) engage a biosecurity auditor to perform the audit; or
  - (b) direct the audit target to engage a biosecurity auditor to perform the audit and specify requirements relating to –
    - (i) the engagement of the biosecurity auditor; and
    - (ii) the scope of the compliance audit to be performed.
- (2) An accreditation authority that requires the compliance audit may only direct the audit target to engage a biosecurity auditor under subsection (1)(b) if the audit target is –
- (a) a registered entity; or
  - (b) a biosecurity certifier; or
  - (c) a biosecurity auditor; or
  - (d) an accreditation authority other than the Secretary; or
  - (e) the holder of an individual permit; or
  - (f) a person who has the benefit of a group permit; or
  - (g) a person who has given a biosecurity undertaking; or
  - (h) an entity responsible for preparing a draft biosecurity program under Division 1 of Part 9 ; or
  - (i) a person who has entered into a biosecurity control agreement; or
  - (j) a prescribed person, or prescribed class of persons.

#### **155. Functions of biosecurity auditor – compliance audit**

- (1) A biosecurity auditor has the following functions in connection with a compliance audit, subject to any limitations specified in his or her instrument of engagement:

- (a) to assess the audit target's compliance with, and capability of complying with, this Act;
- (b) to assess or identify any contravention or suspected contravention of this Act (including any contravention or other deficiency identified in another biosecurity audit);
- (c) to identify measures for improved compliance with this Act;
- (d) to report, to the person who requires the audit, on the biosecurity auditor's assessment of those matters.

(2) A biosecurity auditor has such other functions in connection with a compliance audit as are prescribed by the regulations or, subject to the regulations, conferred on the biosecurity auditor by his or her instrument of engagement for the compliance audit.

#### **156. Recovery of fee for compliance audit**

- (1) A person who requires a compliance audit may charge the audit target a reasonable fee for the performance of the audit by a biosecurity auditor engaged by the person.
- (2) If the Secretary requires the compliance audit to be performed, the fee is a recoverable amount that is recoverable from the audit target.
- (3) If an accreditation authority other than the Secretary requires the compliance audit to be performed, the fee is an amount due and owing to the accreditation authority.
- (4) An audit target is responsible for any fee payable in connection with a compliance audit, performed by a biosecurity auditor engaged by the audit target, that is not specifically stated to be covered by a fee charged under subsection (1) in respect of the audit.

#### **157. Use of compliance audit**

A person who requires a compliance audit is to have regard to that compliance audit in performing the person's functions under this Act in relation to the audit target.

### ***Division 3 - Biosecurity certificates***

#### **158. Biosecurity certificate**

- (1) A biosecurity certifier may issue a certificate under this Act that certifies one or more of the following matters in respect of a specified biosecurity matter, or any other specified thing or specified area, for the purposes of this Act:
  - (a) that the biosecurity matter, thing or area is free from, or contains, a specified level of any stated biosecurity matter (such as a specified pest, disease or contaminant);
  - (b) that the biosecurity matter, thing or area is in a specified condition;
  - (c) that the biosecurity matter, thing or area has been the subject of a specified treatment;
  - (d) that the biosecurity matter, thing or area meets specified requirements;
  - (e) any other prescribed matter or circumstance.
- (2) A certificate issued under subsection (1) remains in effect for the period specified in the certificate.

#### **159. Recognition of interstate biosecurity certificates**

- (1) A certificate or other document –
    - (a) duly issued under a corresponding law in which a person certifies any matter in relation to which a biosecurity certificate could be issued under this Act; and
    - (b) that is in effect –
- is recognised for the purposes of this Act as an interstate biosecurity certificate.

(2) For the purposes of this Act, a person holds a biosecurity certificate in relation to a thing if the person holds an interstate biosecurity certificate that is in force in relation to that thing.

(3) A reference in this Act to a biosecurity certificate includes a reference to an interstate biosecurity certificate.

#### **160. Issue or alteration of biosecurity certificate by unauthorised person**

A person must not –

- (a) issue, or purport to issue, a biosecurity certificate or purported biosecurity certificate; or
- (b) alter or amend a biosecurity certificate, or purported biosecurity certificate –

unless the person is a biosecurity certifier authorised to do so under this Act or a corresponding law.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

#### **161. False biosecurity certificates**

(1) A person must not –

- (a) issue, or purport to issue, a biosecurity certificate or purported biosecurity certificate that is false or misleading in a material particular; or
- (b) alter or amend a biosecurity certificate, or purported biosecurity certificate, so as to make the certificate false or misleading in a material particular.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

(2) For the purposes of this section, a certificate is false or misleading in a material particular if it –

- (a) includes information that is false or misleading in a material particular; or
- (b) omits material information.

#### **162. False representations**

A person must not falsely represent that a biosecurity certificate has been issued in respect of any matter.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

## PART 11 - Orders, Directions and Undertakings

### *Division 1 - Emergency orders*

#### **163. Emergency orders**

- (1) The Minister may, by order –
  - (a) declare a biosecurity emergency; and
  - (b) establish measures to respond to that biosecurity emergency.
- (2) An order under subsection (1) is to specify each of the following:
  - (a) the biosecurity matter, biosecurity risk or biosecurity impact that is the subject of the emergency;
  - (b) the emergency zone or zones to which the order relates;
  - (c) the emergency measures to be followed in the biosecurity emergency;
  - (d) the persons or class of persons to whom the emergency measures apply;
  - (e) when the emergency order takes effect;
  - (f) the duration of the emergency order.
- (3) The Minister may only make an order under subsection (1) if the Minister –
  - (a) has consulted with the Chief Veterinary Officer and the Chief Plant Protection Officer in respect of the proposed order; and
  - (b) is satisfied, or reasonably suspects, that there is a current or imminent biosecurity risk that may have a significant biosecurity impact.
- (4) An order under subsection (1) may be made –
  - (a) to isolate an emergency zone or biosecurity matter; and
  - (b) to prevent the spread of the biosecurity matter; and
  - (c) to eradicate the biosecurity matter (if practicable); and
  - (d) for any other reason the Minister considers necessary.
- (5) An order under subsection (1) is not invalid merely because the Minister was unable, after making all reasonable attempts, to comply with subsection (3)(a) before the order was made.

#### **164. Duration of emergency order**

- (1) An emergency order remains in force for the period specified in the order, not exceeding 6 months from the date on which the order is made.
- (2) The Minister may, by making an order that amends an emergency order, extend the period during which an emergency order remains in force for a further period not exceeding 6 months.
- (3) The duration of an emergency order may be extended under subsection (2) as many times as the Minister considers necessary.

#### **165. Notice of emergency order generally**

- (1) The Minister is to give notice of an emergency order by causing a copy of the order to be published on, or in, either or both of the following:
  - (a) the Department website;
  - (b) the *Gazette*.

(2) The Minister is to take reasonable steps to ensure that all persons who are likely to be directly affected by an emergency order are made aware of the order.

#### **166. Notice of emergency order relating to specific property**

(1) Despite section 165, if the Minister makes an emergency order that is property-specific, the Minister may give notice of the order by causing a copy of the order to be served on the owner, occupier or person apparently in charge of the property.

(2) For the purposes of subsection (1), an emergency order is property-specific if it only relates to specified premises.

#### **167. Emergency zones**

(1) For the purposes of this Act, an area is an emergency zone if the Minister specifies the area as an emergency zone as part of an emergency order in respect of the area.

(2) An emergency zone may be made up of one or more of the following, as specified in the emergency order:

- (a) any premises, group of premises or part of premises or group of premises;
- (b) any place, area or region;
- (c) the whole, or any specified part, of Tasmania.

(3) An emergency order may provide for more than one emergency zone and for different classes of emergency zones.

#### **168. Emergency measures**

(1) For the purposes of this Act, a measure to be followed that is specified by the Minister in an emergency order is an emergency measure.

(2) The Minister may specify in an emergency order any measures that the Minister decides are reasonably necessary to respond to the biosecurity emergency to which the order relates.

(3) An emergency measure specified in an emergency order is to be no more onerous than the Minister considers necessary in the circumstances, having regard to the nature of the biosecurity emergency to which the order relates.

(4) In deciding on the emergency measures to be specified in an emergency order, the Minister is to have regard to the matters referred to in section 163 and any other matters that the Minister considers relevant.

(5) The emergency measures may apply –

- (a) within an emergency zone; and
- (b) outside an emergency zone, but only if the Minister considers that to be reasonably necessary having regard to the nature of the biosecurity emergency to which the order relates.

(6) The emergency measures may –

- (a) prohibit, regulate or control the doing of any thing; or
- (b) require or authorise the doing of any thing.

(7) Emergency measures may include, but are not limited to, provisions that prohibit, regulate or control, or that require or authorise, any of the following:

- (a) activities that involve biosecurity matter, a carrier or a potential carrier;
- (b) the use of premises for an activity that involves biosecurity matter, a carrier or a potential carrier;
- (c) the movement of any biosecurity matter, carrier, potential carrier or other thing;
- (d) the isolation, confinement or detention of any biosecurity matter or other thing;

- (e) treatment to be carried out in relation to biosecurity matter, a carrier, a potential carrier, premises or other thing;
- (f) the erection or repair of fencing, gates or any other method of enclosure, or the taking of any other specified security or containment measures in relation to any premises, biosecurity matter or other thing;
- (g) the erection of signs;
- (h) the provision of samples of any biosecurity matter or other thing;
- (i) the testing of any biosecurity matter or other thing;
- (j) the obtaining of a biosecurity certificate in relation to any biosecurity matter or other thing;
- (k) the installation or use of a device at any premises, for the purpose of detecting or monitoring the presence of any biosecurity matter or other thing or capturing any biosecurity matter or other thing;
- (l) the destruction, disposal or eradication of any biosecurity matter or other thing (including by specifying the manner of destruction, disposal or eradication);
- (m) any other prescribed matters.

### 169. Additional emergency measures

- (1) In addition to section 168 , emergency measures may do one or more of the following:
  - (a) prohibit, regulate or control entry into, or exit from, any specified premises or area;
  - (b) prohibit, regulate or control the use of any road within, or going into or out of, any specified premises or area (including by closing roads);
  - (c) require persons entering or leaving any specified premises or area to stop and, if required by an authorised officer –
    - (i) allow the person and any thing in their care, custody or control to be inspected; and
    - (ii) carry out or enable external treatment measures to be carried out in relation to the person and any thing in their care, custody or control;
  - (d) prohibit persons from entering or leaving any specified premises or area unless the person has done either or both of the following:
    - (i) carried out, in relation to himself or herself, any specified external treatment measure;
    - (ii) carried out, in relation to any thing in the person’s care, custody or control, any specified treatment.
- (2) An emergency order may not prohibit, regulate or control the movement of a person, except as expressly provided for by this section.
- (3) Subsection (2) does not prevent emergency measures being imposed, in relation to any biosecurity matter, premises, activity or other thing, that have an impact on the movement of a person but that are not imposed for the purpose of restricting the movement of a person.

### 170. Measures which may not be emergency measures

- (1) An emergency order may not include the following measures:
  - (a) a requirement for a treatment, other than an external treatment measure, to be carried out on an individual;
  - (b) a requirement for an individual to provide samples of the person’s blood, hair, saliva or any other body part or body fluid.
- (2) An emergency order may not require or authorise the destruction of biosecurity matter or any other thing unless –

- (a) the Minister is of the opinion that the destruction is reasonably necessary to assess, prevent, eliminate, minimise, control or manage a biosecurity risk or biosecurity impact; or
  - (b) the biosecurity matter to be destroyed is an animal, and the Minister, on the advice of the Chief Veterinary Officer, is satisfied that the destruction is necessary –
    - (i) to prevent or minimise any adverse effect on animal welfare, including any distress or likely distress to an animal; or
    - (ii) to detect, diagnose or determine the cause of a disease.
- (3) If an emergency order requires or authorises the destruction of biosecurity matter or any other thing, a copy of the order is to be given to the owner or person in charge of the biosecurity matter or other thing before it is destroyed, unless –
- (a) there appears to be no-one immediately in control of it, and the owner or person in charge cannot, after such search and inquiry as is reasonable in the circumstances, be located; and
  - (b) the Minister considers that, in the circumstances, the order must be carried out without delay or prior notice to the owner or person in charge.

### 171. Inspection of persons

A requirement in an emergency order that an individual is to allow himself or herself to be inspected by an authorised officer only authorises the officer to require the person to do any of the following:

- (a) to submit to a visual inspection (including of the exterior of the person's clothing, accessories and shoes);
- (b) to shake, or otherwise move, the person's hair.

### 172. Emergency order prevails

An emergency order that is validly made under this Act prevails, to the extent of any inconsistency, over the following:

- (a) the regulations;
- (b) a biosecurity registration, authorisation, approval, exemption or other right or instrument granted, or in effect, under this Act;
- (c) a permit granted or in effect under this Act, other than an emergency permit given in relation to the emergency that is the subject of the emergency order;
- (d) a control order;
- (e) a biosecurity program or biosecurity control agreement made, or in effect, under this Act;
- (f) a biosecurity direction other than an emergency biosecurity direction given in relation to the emergency that is the subject of the order;
- (g) an undertaking.

### 173. Offences

(1) A person must not contravene an emergency order.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

(2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that, at the time of the alleged contravention –

- (a) notice of the emergency order had not been published in accordance with this Division; and

(b) an authorised officer had not notified the person orally, or in writing or otherwise, of the making of the emergency order.

#### **174. Secretary may authorise required actions and recover costs**

- (1) If a person (the *liable person*) fails to comply with an emergency order, the Secretary may authorise any person to enter premises and take any actions in relation to those premises, or any thing on those premises, that the liable person is required to take by the order or that are otherwise necessary to remedy that failure.
- (2) The Secretary may charge the liable person a fee, that is not more than the reasonable amount to cover the costs and expenses incurred, for action taken under this section.
- (3) A fee charged under this section is a recoverable amount that is recoverable from the liable person.
- (4) If, as part of action taken under this section, a person intends to enter any residential premises for the purpose of taking the action, the Secretary must give an occupier of the premises written notice of the intention.
- (5) A notice under subsection (4) must –
  - (a) specify the day on which the residential premises are intended to be entered; and
  - (b) be given to the occupier of the residential premises before the day so specified.
- (6) Notice is not required to be given under subsection (4) if –
  - (a) entry into the residential premises is made with the consent of the occupier of the premises; or
  - (b) entry into the residential premises is made under the authority of a warrant.
- (7) Any action taken under this section for failure to comply with an emergency order is in addition to the taking of proceedings for an offence of failing to comply with an emergency order.

#### **175. Amendment or revocation of emergency order**

- (1) The Minister may amend or revoke an emergency order.
- (2) An amendment to an emergency order may make provision for any matter for which an emergency order may make provision.
- (3) An amendment to, or revocation of, an emergency order takes effect, and is to be notified, in the same way as an emergency order.

#### **176. Protection of emergency actions**

- (1) A court or tribunal must not issue an interim injunction, make any other interim order or give any other interim relief having the effect of preventing, restricting, staying or deferring any emergency order or anything authorised or required to be done pursuant to an emergency order during the period during which the order has effect.
- (2) Nothing in subsection (1) prevents a court or tribunal from making a permanent injunction or other final order in any proceedings at any time.

### ***Division 2 - Control orders***

#### **177. Control orders**

- (1) The Minister may, by order –
  - (a) establish one or more control zones; and
  - (b) establish control measures, in connection with a control zone, to prevent, eliminate, minimise, control or manage a biosecurity risk or biosecurity impact.
- (2) The Minister may make an order under subsection (1) if the Minister is satisfied on reasonable grounds that the order is necessary to prevent, eliminate, minimise, control or manage a biosecurity risk or biosecurity impact.

(3) Before making an order under subsection (1), the Minister is to consult with the Chief Veterinary Officer and the Chief Plant Protection Officer in respect of the proposed order.

(4) Without limiting the generality of this section, the principal object of an order under subsection (1) –

(a) is to prevent the introduction into Tasmania, or a part of Tasmania, of biosecurity matter that poses, or is likely to pose, a biosecurity risk; or

(b) is to eradicate from Tasmania, or a part of Tasmania, biosecurity matter that poses, or is likely to pose, a biosecurity risk; or

(c) if the Minister determines that it is not reasonably practicable to meet an object specified in paragraph (a) or (b), is to provide for the management of a biosecurity risk, or biosecurity impact, as a result of the introduction of biosecurity matter into Tasmania, or a part of Tasmania.

### **178. Content of control orders**

A control order is to specify each of the following:

(a) the biosecurity matter, biosecurity risk or biosecurity impact to which the control order relates;

(b) the control zone or zones;

(c) the control measures;

(d) the persons or class of persons to whom the control measures apply;

(e) the duration of the control order;

(f) if the principal object of the control order is the object specified in section 177(4)(c), the reasons why the Minister determined that it was not reasonably practicable to meet an object specified in section 177(4)(a) and (b).

### **179. Notice of control orders generally**

(1) The Minister is to give notice of a control order by causing a copy of the order to be published on, or in, either or both of the following:

(a) the Department website;

(b) the *Gazette*.

(2) The Minister is to take reasonable steps to ensure that all persons who are likely to be directly affected by a control order are made aware of the order.

### **180. Notice of control orders relating to specific property**

(1) Despite section 179, if the Minister makes a control order that is property-specific, the Minister may give notice of the order by causing a copy of the order to be served on the owner, occupier or person apparently in charge of the property.

(2) For the purposes of subsection (1), a control order is property-specific if it only relates to specified premises, specified biosecurity matter or any other specified thing.

### **181. Duration of control orders**

(1) A control order has effect for the period specified by the Minister in the order, not exceeding 5 years from the date on which the order is made.

(2) The Minister may, by making an order that amends a control order, extend the period during which a control order has effect for a further period (not exceeding 5 years).

(3) The duration of a control order may be extended under subsection (2) as many times as the Minister considers necessary.

### **182. Control zones**

(1) For the purposes of this Act, a control zone is the area or areas –

- (a) specified in a control order; and
  - (b) in relation to which, in the opinion of the Minister, control measures are required to be established.
- (2) A control zone may be made up of one or more of the following, as specified in the control order:
- (a) any premises, group of premises or part of premises or a group of premises;
  - (b) any place, area or region;
  - (c) the whole, or any specified part, of Tasmania.
- (3) A control order may provide for more than one control zone and for different classes of control zone.

### **183. Control measures**

- (1) A control measure is a measure that the Minister establishes under a control order to prevent, eliminate, minimise, control or manage the biosecurity risk or biosecurity impact to which the order relates.
- (2) The Minister may specify, as control measures under a control order, any measures that the Minister considers reasonably necessary to prevent, eliminate, minimise, control or manage the biosecurity risk or biosecurity impact to which the order relates.
- (3) The control measures are to be no more onerous than the Minister considers necessary having regard to the nature of the biosecurity risk or biosecurity impact to which the order relates.
- (4) In deciding on the control measures, the Minister is to have regard to the principal objects of a control order and any other matters that the Minister considers relevant.
- (5) A control measure may apply –
- (a) within a control zone; and
  - (b) outside a control zone, but only if the Minister considers that to be reasonably necessary having regard to the nature of the biosecurity risk or biosecurity impact.
- (6) Without limiting the functions conferred on the Minister by this Part, control measures may include provisions that prohibit, regulate or control, or that require or authorise, any of the following:
- (a) activities that involve biosecurity matter, a carrier or a potential carrier;
  - (b) the use of premises for an activity that involves biosecurity matter, a carrier or a potential carrier;
  - (c) the movement of any biosecurity matter or other thing;
  - (d) the isolation, confinement or detention of any biosecurity matter or other thing;
  - (e) treatment to be carried out in relation to any biosecurity matter, premises or other thing;
  - (f) the erection or repair of fencing, gates or any other method of enclosure, or the taking of any other specified security or containment measures in relation to any premises, biosecurity matter or other thing;
  - (g) the erection of signs;
  - (h) the provision of samples of any biosecurity matter or other thing;
  - (i) the testing of any biosecurity matter or other thing;
  - (j) the obtaining of a biosecurity certificate in relation to any biosecurity matter or other thing;
  - (k) the installation or use of a device at any premises, for the purpose of detecting or monitoring the presence of any biosecurity matter or other thing or capturing any biosecurity matter or other thing;
  - (l) the destruction, disposal or eradication of any thing (including by specifying the manner of destruction, disposal or eradication);
  - (m) any prescribed matters.

### **184. Consultation required for control order**

- (1) The Minister is to consult with the Minister administering the Nature Conservation Act 2002 before making a control order affecting, or relating to, Tasmanian native flora or fauna.
- (2) The Minister is to consult with the Minister administering the Threatened Species Protection Act 1995 before making a control order affecting, or relating to, any organism that is a threatened species within the meaning of that Act.
- (3) The Minister is to consult with the Minister administering the Living Marine Resources Management Act 1995 before making a control order affecting, or relating to, a living marine resource within the meaning of that Act.
- (4) The Minister is to consult with the Minister administering the Inland Fisheries Act 1995 before making a control order affecting, or relating to, an inland fishery.
- (5) The Minister is to consult with the Minister administering the Aboriginal Lands Act 1995 before making a control order affecting, or relating to, Aboriginal land within the meaning of that Act.
- (6) A failure to comply with this section does not affect the validity of a control order.

### **185. Measures which may not be control measures**

- (1) A control order may not –
  - (a) prohibit, regulate or control the movement of a person; or
  - (b) require any treatment to be carried out on a person.
- (2) A control order may not require an individual to provide samples of the person's blood, hair, saliva or any other body part or body fluid.
- (3) Subsection (1)(a) does not prevent a control measure being imposed, in relation to any biosecurity matter, premises, area, activity or other thing, that has an impact on the movement of a person but is not imposed for the purpose of restricting the movement of a person.

### **186. Destruction requirements**

A control order may not require or authorise the destruction of a thing unless –

- (a) the thing is, or is reasonably suspected of being, prohibited matter; or
- (b) the thing is a carrier of, or reasonably suspected of being a carrier of, prohibited matter; or
- (c) the thing is a pest to which the control order relates; or
- (d) the thing is, or is reasonably suspected of being, infected or infested with, or harbouring, biosecurity matter to which the control order relates and there is no other reasonably practicable and available treatment that could eliminate the biosecurity risk posed by the biosecurity matter; or
- (e) the thing is, or is reasonably suspected of being –
  - (i) abandoned; and
  - (ii) biosecurity matter to which the control order relates or a carrier of biosecurity matter to which the control order relates.

### **187. Offence of contravening control measure**

(1) A person must not contravene a control order.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
  - (b) an individual, a fine not exceeding 500 penalty units.
- (2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that, at the time of the alleged contravention –
- (a) notice of the control order had not been published in accordance with this Division; and

(b) an authorised officer had not notified the person orally, or in writing or otherwise, of the making of the control order.

#### **188. Secretary may authorise required actions and recover costs**

- (1) If a person (the *liable person*) fails to comply with a control order, the Secretary may authorise any person to enter premises and take any actions in relation to those premises, or any thing on those premises, that the liable person is required to take by the order, or that are otherwise necessary to remedy that failure.
- (2) The Secretary may charge the liable person a fee for the reasonable costs and expenses incurred in connection with the actions taken under subsection (1).
- (3) Costs and expenses incurred include costs and expenses incurred by or on behalf of the Crown.
- (4) A fee charged under this section is a recoverable amount that is recoverable from the liable person.
- (5) If, as part of action taken under this section, a person intends to enter residential premises for the purpose of taking the action, the Secretary must give an occupier of the premises written notice of the intention.
- (6) A notice under subsection (5) must –
  - (a) specify the day on which the premises are intended to be entered; and
  - (b) be given to the occupier of the premises before the day so specified.
- (7) Notice is not required to be given under subsection (5) if entry is made –
  - (a) with the consent of the occupier of the premises; or
  - (b) under the authority of a warrant.
- (8) Any action taken under this section for failure to comply with a control order is in addition to the taking of proceedings for an offence of failing to comply with a control order.

#### **189. Amendment or revocation of control order**

- (1) The Minister may amend or revoke a control order.
- (2) An amendment to a control order may make provision for any matter for which a control order may make provision.
- (3) An amendment to, or revocation of, a control order takes effect, and is to be notified, in the same way as a control order.

### ***Division 3 - Biosecurity directions***

#### **190. Types of biosecurity direction**

- (1) A biosecurity direction may be given as a general biosecurity direction or an individual biosecurity direction.
- (2) A general biosecurity direction is a direction that applies to the public generally or to a specified class of persons such as persons who engage in a specified activity, or who frequent particular premises.
- (3) An individual biosecurity direction is a direction that applies to a particular person.

#### **191. General biosecurity direction**

- (1) A relevant officer may give a general biosecurity direction if the relevant officer reasonably believes it is necessary to do so for any of the following purposes:
  - (a) to assess, prevent, eliminate, minimise, control or manage any biosecurity risk or biosecurity impact;
  - (b) to enforce, administer or execute this Act, the regulations or any instrument made under this Act.
- (2) A relevant officer may, in a general biosecurity direction, prohibit, regulate or control the carrying out of any activity in connection with biosecurity matter, a carrier or a potential carrier.

(3) A general biosecurity direction may be subject to such conditions as the relevant officer giving the direction considers reasonable in the circumstances.

(4) In an emergency, a relevant officer may also do one or more of the following in a general biosecurity direction:

- (a) prohibit, regulate or control entry into, or exit from, any specified premises or area;
- (b) prohibit, regulate or control the use of any road within or going into or out of a specified area or premises (including by closing roads).

#### **192. How general biosecurity direction is given**

(1) A general biosecurity direction may be given by causing a notice of the direction to be published on, or in, either or both of the following:

- (a) the Department website;
- (b) the *Gazette*.

(2) In an emergency, a general biosecurity direction may be given by displaying a copy of the direction in a prominent place on or adjacent to any premises or place to which, or in the vicinity of which, the direction applies.

(3) If a general biosecurity direction is given in the manner referred to in subsection (2), notice of the direction is to be published on the Department website or in the *Gazette* (or both) as soon as practicable after the decision is made.

(4) If a general biosecurity direction is given in an emergency, the direction is to include a warning that the direction is being given in an emergency.

(5) A failure to comply with this section does not affect the validity of a general biosecurity direction.

#### **193. Individual biosecurity directions**

(1) A relevant officer may give an individual biosecurity direction that prohibits, regulates or controls the doing of any thing by or on behalf of the person to whom the biosecurity direction is given, if the relevant officer reasonably believes that the direction is necessary for any of the following purposes:

- (a) to prevent the person from contravening or continuing to contravene this Act;
- (b) to assess, prevent, eliminate, minimise, control or manage any biosecurity risk or biosecurity impact;
- (c) to enforce, administer or execute this Act, the regulations or any instrument made under this Act.

(2) A relevant officer may also give an individual biosecurity direction that requires a person to do a thing if the officer reasonably believes that the direction is necessary for one or more of the following purposes:

- (a) to ensure that the person discharges a biosecurity duty imposed on the person by or under this Act;
- (b) to ensure that the person remedies a contravention, suspected contravention or likely contravention by the person of this Act;
- (c) to prevent, eliminate, minimise, control or manage a biosecurity risk posed by a dealing of the person, or suspected dealing of the person, with biosecurity matter, a carrier or a potential carrier;
- (d) to enforce, administer or execute this Act, the regulations or any instrument made under this Act.

(3) An individual biosecurity direction may be subject to such conditions as the relevant officer considers reasonable in the circumstances.

#### **194. How individual biosecurity direction is given**

(1) A relevant officer may give an individual biosecurity direction by giving the direction to the person who is the subject of the direction –

- (a) orally, while in the presence of the person, if –

- (i) the relevant officer is authorised, under his or her instrument of appointment as an authorised officer, to give such a direction orally; or
  - (ii) the relevant officer is giving the individual biosecurity direction in an emergency; or
- (b) by written notice served on the person.
- (2) A relevant officer may, in an emergency, give an individual biosecurity direction to an occupier of premises by displaying notice of the direction in a prominent place on or adjacent to the premises.
- (3) Written confirmation of any individual biosecurity direction that is given orally or in the manner referred to in subsection (2) is to be served on the person who is the subject of the direction within 7 days after it is so given, unless the direction has already been complied with.
- (4) If a relevant officer gives an individual biosecurity direction in an emergency, the direction is to include a warning that the direction is being given in an emergency.
- (5) A failure to comply with subsection (4) in respect of a biosecurity direction does not affect the validity of the biosecurity direction.
- (6) Without limiting the generality of this Division, an individual biosecurity direction may include provisions that prohibit, regulate or control, or that require, any of the following:
- (a) the use of any premises, vehicle or equipment for any dealing with any biosecurity matter or other thing;
  - (b) the isolation, confinement or detention of any biosecurity matter or other thing;
  - (c) the erection or repair of fencing, gates or any other method of enclosure, or other specified security or containment measures in relation to any premises, biosecurity matter or other thing;
  - (d) the erection of signs;
  - (e) the movement of any biosecurity matter, carrier, potential carrier or other thing;
  - (f) treatment in relation to any biosecurity matter, carrier, potential carrier, premises or other thing;
  - (g) the provision of samples of any biosecurity matter or other thing;
  - (h) the testing of any biosecurity matter or other thing;
  - (i) the obtaining of a biosecurity certificate in relation to any biosecurity matter or other thing;
  - (j) the installation or use of a device for the purpose of detecting or monitoring the presence of any biosecurity matter or other thing or capturing any biosecurity matter or other thing;
  - (k) the destruction, disposal or eradication of any thing;
  - (l) any other matters expressly authorised by an emergency order, control order or the regulations.
- (7) A power under subsection (6) to require a person to do something includes a power to require a person to arrange for, or cause, that thing to be done.

### **195. Special emergency powers – inspection and treatment**

- (1) A relevant officer who gives an individual biosecurity direction in an emergency may direct a person to do any of the following:
- (a) to permit the officer to inspect the person for biosecurity matter, a carrier or potential carrier;
  - (b) to permit the officer to inspect any thing in the person's possession, care, custody or control for biosecurity matter, a carrier or a potential carrier;
  - (c) to carry out or permit an external treatment measure to be carried out in relation to that person;
  - (d) to carry out a treatment or permit a treatment to be carried out in relation to any thing in the person's possession, care, custody or control.
- (2) This section is in addition to, and does not limit, any other functions of an authorised officer under this Act.

## 196. Recovery of costs

- (1) A relevant officer may recover from a person to whom an individual biosecurity direction is given the reasonable costs of any inspection, test or assessment made by, or on behalf of, the relevant officer as part of preparing the individual biosecurity direction.
- (2) The costs specified in subsection (1) are a recoverable amount that is recoverable from the person to whom the individual biosecurity direction is given.

## 197. Taking of required actions and recovery of costs

- (1) If a person (the *liable person*) fails to comply with an individual biosecurity direction, an authorised officer may enter or authorise any person to enter premises and take any actions in relation to those premises or any thing on those premises that the liable person is required to take by the direction or that are otherwise necessary to remedy that failure.
- (2) The Secretary may charge the liable person a fee, that is not more than the reasonable amount to cover the costs and expenses incurred, for action taken under this section.
- (3) A fee charged under this section is a recoverable amount that is recoverable from the liable person.
- (4) If, as part of action taken under this section, a person intends to enter any residential premises for the purpose of taking the action, the Secretary must give an occupier of the premises written notice of the intention.
- (5) A notice under subsection (4) must –
  - (a) specify the day on which the premises are intended to be entered; and
  - (b) be given to the occupier of the premises before the day so specified.
- (6) Notice is not required to be given under subsection (4) if entry is made –
  - (a) with the consent of the occupier of the premises; or
  - (b) under the authority of a warrant.
- (7) Any action taken under this section for failure to comply with a biosecurity direction is in addition to the taking of proceedings for an offence of failing to comply with a biosecurity direction.

## 198. Measures not to be included in biosecurity direction

- (1) A relevant officer may not include any of the following measures in a biosecurity direction, except as expressly authorised by this Act in an emergency:
  - (a) prohibit, regulate or control the movement of a person;
  - (b) require an individual to undergo any treatment or require treatment to be carried out in relation to a person.
- (2) A relevant officer may not, as part of a biosecurity direction, require an individual to provide samples of the person's blood, hair, saliva or any other body part or body fluid.
- (3) Subsection (1)(a) does not prevent a biosecurity direction being imposed, in relation to any biosecurity matter, premises, activity or other thing, that has an impact on the movement of a person but is not imposed for the purpose of restricting the movement of a person.
- (4) A function conferred by this Division to require an individual to submit to an inspection is a function to require the person to do any of the following:
  - (a) to submit to a visual inspection (including of the exterior of the person's clothing and shoes);
  - (b) to shake, or otherwise move, the person's hair;
  - (c) to make available for inspection any thing in the person's possession.
- (5) A relevant officer may only direct the destruction of a thing under this Division if –
  - (a) the thing is, or is reasonably suspected of being, prohibited matter; or

- (b) the thing is a pest; or
- (c) the thing is, or is reasonably suspected of being, infected or infested with, or of harbouring, biosecurity matter that poses a biosecurity risk and there is no other reasonably practicable and available treatment that could eliminate the biosecurity risk posed by the biosecurity matter; or
- (d) the destruction is expressly authorised or required by an emergency order, control order or the regulations.

#### 199. Additional measures not to be included in biosecurity direction

- (1) A relevant officer, other than the Secretary, Chief Plant Protection Officer or Chief Veterinary Officer, must not, under this Division –
  - (a) direct the destruction of a protected plant within the meaning of the Nature Conservation Act 2002 ; or
  - (b) direct the destruction of an organism that is a threatened species within the meaning of the Threatened Species Protection Act 1995 ; or
  - (c) direct the destruction of a relic within the meaning of the Aboriginal Heritage Act 1975 .
- (2) Subsection (1) does not limit the functions of a relevant officer to do a thing where that action is expressly authorised or required by an emergency order, a control order or the regulations.

#### 200. Offence not to comply with biosecurity direction

- (1) A person must not contravene a biosecurity direction.  
Penalty: In the case of –
  - (a) a body corporate, a fine not exceeding 2 500 penalty units; or
  - (b) an individual, a fine not exceeding 500 penalty units.
- (2) A person does not commit an offence under this section in respect of a general biosecurity direction if at the time of the relevant contravention –
  - (a) notice of the general biosecurity direction had not been published on the Department website or in the *Gazette*; and
  - (b) an authorised officer had not yet notified the person orally, or in writing or otherwise, of the making of the general biosecurity direction.

### ***Division 4 - Biosecurity undertakings***

#### 201. Authorised officer may accept undertakings

- (1) An authorised officer may accept a written undertaking (a ***biosecurity undertaking***) given by a person if the person has contravened, or the authorised officer suspects that the person has contravened or is likely to contravene, this Act.
- (2) An authorised officer may accept a biosecurity undertaking from a person instead of giving the person an individual biosecurity direction.
- (3) The giving of an undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention, suspected contravention or likely contravention of this Act to which the undertaking relates.

#### 202. Contents of biosecurity undertaking

- (1) A biosecurity undertaking is to specify –
  - (a) the contravention, suspected contravention or likely contravention to which the biosecurity undertaking relates; and
  - (b) the measures that the person has undertaken to implement to remedy or prevent the contravention, suspected contravention or likely contravention; and

(c) the period or periods by the end of which the measures must be implemented.

(2) A failure to comply with this section does not affect the validity of a biosecurity undertaking.

### 203. When biosecurity undertaking takes effect

(1) A biosecurity undertaking takes effect and becomes enforceable when a written instrument evidencing the terms of the undertaking is executed by both the person giving the undertaking and the authorised officer who is accepting the undertaking.

(2) An authorised officer who executes a biosecurity undertaking is taken to enter into that biosecurity undertaking on behalf of the Secretary.

### 204. Contravention of biosecurity undertaking

A person must comply with a biosecurity undertaking given by that person.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 2 500 penalty units; or

(b) an individual, a fine not exceeding 500 penalty units.

### 205. Fee for biosecurity undertaking

(1) An authorised officer who accepts a biosecurity undertaking may charge the person who gives the undertaking a prescribed fee for either or both of the following:

(a) preparing the undertaking;

(b) accepting the undertaking.

(2) For the purposes of this Act, the fee is a recoverable amount that is recoverable from the person who gave the biosecurity undertaking.

### 206. Authorised officer may take or authorise required actions and recover costs

(1) If a person (the *liable person*) fails to comply with a biosecurity undertaking, an authorised officer may enter or authorise any person to enter premises and take any actions in relation to those premises or any thing on those premises that the liable person is required to take by the biosecurity undertaking or that are otherwise necessary to remedy that failure.

(2) The Secretary may charge the liable person a fee, that is not more than the reasonable amount to cover the costs and expenses incurred, for action taken under this section.

(3) A fee charged under this section is a recoverable amount that is recoverable from the liable person.

(4) If, as part of action taken under this section, a person intends to enter any residential premises for the purpose of taking the action, the Secretary must give an occupier of the premises written notice of the intention.

(5) A notice under subsection (4) must –

(a) specify the day on which the premises are intended to be entered; and

(b) be given to the occupier of the premises before the day so specified.

(6) Notice is not required to be given under subsection (4) if entry is made –

(a) with the consent of the occupier of the premises; or

(b) under the authority of a warrant.

(7) Any action taken under this section for failure to comply with a biosecurity undertaking is in addition to the taking of proceedings for an offence of failing to comply with a biosecurity undertaking.

### 207. Order requiring compliance with biosecurity undertaking

(1) The Secretary may apply to the Appeal Tribunal for an order if a person contravenes a biosecurity undertaking.

(2) If the Appeal Tribunal is satisfied that the person who made the biosecurity undertaking has contravened the undertaking, the Appeal Tribunal may make one or more of the following orders:

- (a) an order directing the person to comply with the undertaking;
- (b) an order discharging or varying the undertaking;
- (c) any other order that the Appeal Tribunal considers appropriate in the circumstances, including orders directing the person to pay to the Secretary –
  - (i) the costs of the proceedings; and
  - (ii) the reasonable costs of the Secretary in monitoring compliance with the biosecurity undertaking in the future.

(3) The making of an order under this section does not affect the liability of a person for any penalty for an offence for the contravention of the biosecurity undertaking to which the order relates.

## **208. Withdrawal or variation of biosecurity undertaking**

(1) A person who has given a biosecurity undertaking may, at any time, with the written agreement of an authorised officer –

- (a) withdraw the undertaking; or
- (b) vary the undertaking.

(2) An authorised officer may, at any time –

- (a) withdraw an authorised officer's acceptance of a biosecurity undertaking, by written notice served on the person who gave the undertaking; or
- (b) vary a biosecurity undertaking (but only with the written agreement of the person who gave the undertaking).

(3) The provisions of a biosecurity undertaking may not be varied to provide for a different alleged contravention.

(4) A biosecurity undertaking ceases to have effect if –

- (a) it is withdrawn by the person who made it (in accordance with this section); or
- (b) acceptance of the undertaking is withdrawn by an authorised officer.

## **209. Enforcement action not prevented by undertaking**

(1) A biosecurity undertaking does not prevent the taking or continuation of proceedings for an offence under this Act in respect of any matter that is the subject of the undertaking.

(2) Despite subsection (1), compliance with a biosecurity undertaking may be taken into account as part of proceedings for an offence under this Act in respect of any matter that is the subject of the undertaking.

## PART 12 - Recovery of Costs and Reimbursements

### *Division 1 - Recovery of certain costs*

#### **210. Recoverable amounts**

Unless otherwise specified, for the purposes of this Act –

- (a) a fee or cost payable under this Act is a debt due and owing to the Secretary by the person who is liable to pay the fee; and
- (b) such a fee or cost is recoverable by the Secretary in accordance with this Division.

#### **211. Cost recovery orders**

- (1) The Secretary may, by written order served on a person from whom a recoverable amount is recoverable under this Act, require the person to pay that recoverable amount.
- (2) The Secretary may, by written notice served on a person, amend or revoke a cost recovery order.

#### **212. Form of cost recovery orders**

A cost recovery order is to –

- (a) specify the recoverable amount that is payable to the Secretary under the order; and
- (b) specify the date by which payment of the recoverable amount is due, being a date that is not less than 30 days after the date on which the order is served on the person; and
- (c) advise the person that, if the recoverable amount is not paid in full by the due date for payment, interest may be charged on the unpaid amount in accordance with section 213 ; and
- (d) if the decision to issue the cost recovery order may be appealed to the Appeal Tribunal under this Act, advise the person of the appeal right.

#### **213. Interest on cost recovery orders**

- (1) The Secretary may charge interest on any amount, or part of an amount, payable to the Secretary under a cost recovery order that is not paid by the due date for payment specified in the cost recovery order.
- (2) The interest rate charged under this section is not to exceed –
  - (a) the interest rate payable for the time being on an unpaid judgement of the Supreme Court; or
  - (b) if another rate is prescribed, that rate.
- (3) Interest charged on an unpaid amount under this section is taken to form part of the unpaid amount.

#### **214. Change in payment of cost recovery orders**

- (1) The Secretary may, on application by a person who is liable to pay a recoverable amount, approve a change in the payment arrangements for a recoverable amount so as to –
  - (a) reduce the amount payable; or
  - (b) extend the time to pay; or
  - (c) permit the amount payable to be paid by instalments or reduce instalments.
- (2) A change in the payment arrangements for a recoverable amount approved under subsection (1) is to be given by written notice served on the applicant.
- (3) A written notice of approval given under subsection (2) is taken to amend the cost recovery order served in respect of the recoverable amount to which it relates.

(4) If the Secretary approves the payment of a recoverable amount under subsection (2) by instalments and an instalment is not paid by the due date for payment of the instalment, the remaining instalments immediately become payable.

## 215. Recovery of recoverable amounts

(1) The Secretary may, by proceedings in any court of competent jurisdiction, recover as a debt due and owing any unpaid amount owed under a cost recovery order after the date has passed for payment specified in that order for that amount.

(2) If this Act confers on a person a right to appeal to the Appeal Tribunal against the decision to issue a cost recovery order, the Secretary is not to institute proceedings under this section in respect of the cost recovery order unless –

- (a) the period during which the appeal may be made has elapsed; and
- (b) if the person has made an appeal against the decision, the appeal has been determined or withdrawn.

## 216. Registration of cost recovery orders as charge on land

(1) If the Secretary is satisfied that there is an unpaid amount owed under a cost recovery order after the date has passed for payment specified in that order for that amount –

- (a) the Secretary may lodge with the Recorder of Titles, in a form approved by the Recorder of Titles –
  - (i) an office copy, within the meaning of the Land Titles Act 1980 , of the cost recovery order; and
  - (ii) such other information, including information identifying the land to which the cost recovery order is to apply, as the Recorder requests; and

(b) on receipt of such an office copy and information, the Recorder is to register the cost recover order against the relevant folio of the Register in such manner as the Recorder thinks fit.

(2) The registration of an order under subsection (1)(b) creates, at the time of registration, a charge on the land in relation to which the order is registered so as to secure the payment to the Secretary of the amount payable under the order.

(3) An order may be registered under subsection (1)(b) in respect of a folio of the Register despite the fact that a caveat may exist in respect of that folio.

(4) If the Secretary is satisfied that –

- (a) the amount payable under the cost recovery order has been paid in full to the Secretary; or
- (b) the land, in respect of which the charge has been created, has been sold or otherwise disposed of with the consent of the Secretary; or
- (c) the land, in respect of which the charge has been created, has been sold to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge; or
- (d) the charge should be cancelled for any other reason the Secretary considers reasonable in the circumstances –

the Secretary is to notify the Recorder of Titles of that fact in a form approved by the Recorder of Titles.

(5) On receipt of a notification by the Secretary under subsection (4) , the Recorder of Titles is to register the notification against the relevant folio of the Register.

(6) A charge created by the registration of an order under subsection (1)(b) ceases to have effect in relation to land when notification by the Secretary under subsection (4) is registered under subsection (5) .

## 217. Power to delegate functions under this Division

The Secretary may only delegate his or her functions to make a cost recovery order under this Division to a person who is a State Service officer.

## ***Division 2 - Reimbursements***

### **218. Eligibility for reimbursements**

- (1) The owner of an animal, plant or other property is eligible for reimbursement under this Division for the death or destruction of the animal, plant or other property in each of the following circumstances:
- (a) the animal, plant or property is covered by a biosecurity emergency (response and cost-sharing) agreement, and the agreement provides for reimbursement in respect of that death or destruction;
  - (b) the animal, plant or property is destroyed under a Government biosecurity program, and the program provides for reimbursement in respect of that destruction;
  - (c) the animal, plant or property is destroyed under an approved biosecurity program, and the program provides for reimbursement in respect of that destruction;
  - (d) any other prescribed circumstances.
- (2) Despite subsection (1), a person is not eligible for reimbursement under this Division –
- (a) for the death or destruction of any animal, plant or other property arising from, or connected with, a contravention of this Act committed by or on behalf of the person; or
  - (b) for any loss of profit, loss occasioned by breach of contract, loss of production, or any other consequential loss.
- (3) A person is not eligible for reimbursement under this Division in any circumstances other than those referred to in subsection (1).

### **219. Claims for reimbursement**

- (1) Except as provided under subsection (2), a claim for reimbursement under this Division is to be –
- (a) in a form approved by the Secretary; and
  - (b) lodged with the Secretary; and
  - (c) accompanied by such evidence as the Secretary requires to show that the animal, plant or other property died or was destroyed in at least one of the circumstances specified in section 218(1); and
  - (d) made within 90 days after the death or destruction, or such longer period as the Secretary allows in writing.
- (2) If an approved biosecurity program specifies a manner in which a claim for reimbursement may be made, a claim for reimbursement in respect of an animal, plant or other property destroyed under the program is to be made in accordance with the manner specified in that program.

### **220. Amount of reimbursement**

The amount of reimbursement payable under this Division is –

- (a) in the case of an animal, plant or property covered by a biosecurity emergency (response and cost-sharing) agreement, the amount allowed by, or determined in accordance with, that agreement;
- (b) in the case of an animal, plant or property covered by a Government biosecurity program, the amount allowed by, or determined in accordance with, that program;
- (c) in the case of an animal, plant or property covered by an approved biosecurity program, the amount allowed by, or determined in accordance with, that program;
- (d) in prescribed circumstances that allow for reimbursement under this Division, the amount allowed by, or determined in accordance with, the regulations.

### **221. Determination of value**

- (1) The calculation of the market or replacement value of any animal, plant or other property that may be the subject of a claim for reimbursement under this Division is to be calculated as prescribed.

(2) Regulations made for the purposes of this Division may apply retrospectively, but only if the Minister certifies in writing that the retrospective regulation does not affect, in a manner prejudicial to any person (other than the Crown), a right to reimbursement under this Division existing before the date of its commencement.

(3) Despite subsection (1), this section does not prevent an approved biosecurity program, a Government biosecurity program or a biosecurity emergency (response and cost-sharing) agreement from providing for the calculation of the market or replacement value of any animal, plant or other property covered by the relevant program or agreement.

(4) Unless otherwise specified, a means of calculating the market or replacement value of any animal, plant or other property specified in an approved biosecurity program, a Government biosecurity program or a biosecurity emergency (response and cost-sharing) agreement may override any prescribed means of calculation.

## **222. Reimbursements may be withheld**

(1) The Secretary may cause to be retained the whole or part of the reimbursement payable under this Division if a doubt or dispute arises as to the eligibility of a person for the reimbursement.

(2) A reimbursement may only be withheld under subsection (1) until the first of the following occurs:

- (a) the doubt or dispute as to the eligibility of a person for the reimbursement is resolved;
- (b) the prescribed period has elapsed;
- (c) the Secretary is satisfied that the person is eligible for the reimbursement.

## **223. Payment of reimbursements**

A reimbursement payable under this Division is payable –

- (a) in respect of an animal, plant or other property destroyed under an approved biosecurity program –
  - (i) by the entity specified in the program; and
  - (ii) within the time period specified in the program in respect of reimbursements; or
- (b) in any other case –
  - (i) by the Crown; and
  - (ii) within 30 days, unless otherwise prescribed, after both the eligibility of the person for the reimbursement, and the amount of reimbursement payable, has been determined.

## **224. Recovery of reimbursement**

If the Crown has mistakenly paid an amount by way of reimbursement, or partial reimbursement, under this Division to a person who was not eligible for the reimbursement or partial reimbursement, that person is liable to repay that amount to the Secretary within 90 days after receiving a written demand for repayment from the Secretary, or such other period as may be agreed between the parties.

## **225. Offence to make false claim**

A person must not –

- (a) make a claim for reimbursement under this Division that is false or misleading; or
- (b) fraudulently do, or omit to do, any act for the purpose of obtaining reimbursement under this Division.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 3 250 penalty units; or
- (b) an individual, a fine not exceeding 750 penalty units or a term of imprisonment not exceeding 24 months, or both.

## PART 13 - Offences

### 226. Failure to comply with requirement

A person must not, without reasonable excuse, fail to comply with a requirement made of the person by an authorised officer performing a function under this Act.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

### 227. Obstructing authorised officer or biosecurity auditor

(1) A person must not resist, obstruct or hinder an authorised officer, or biosecurity auditor, in the performance of a function under this Act.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

(2) For the purposes of subsection (1), a person does not obstruct or hinder a biosecurity auditor by refusing permission for the biosecurity auditor to enter or remain on premises, unless –

- (a) the biosecurity auditor –
  - (i) is an authorised officer, or is in the company of an authorised officer; and
  - (ii) has the power under this Act to enter and remain on the premises; or
- (b) the biosecurity auditor is authorised under a warrant to enter or remain on the premises.

(3) A refusal of a person referred to in subsection (2) may constitute a contravention of the person's biosecurity registration, accreditation as a biosecurity certifier, appointment as a biosecurity auditor or approval as an accreditation authority, or of any permit held by the person.

### 228. Assaulting authorised officer or biosecurity auditor

A person must not assault, abuse or threaten an authorised officer or a biosecurity auditor, or encourage another person to do so.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

### 229. Impersonating officials

A person must not impersonate an authorised officer, a biosecurity auditor or a biosecurity certifier.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

### 230. False or misleading information

(1) A person must not furnish information that is false or misleading in a material particular –

- (a) in, or in connection with, any application or document furnished, made, given or provided under this Act; or
- (b) in purported compliance with this Act.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 24 months, or both.

(2) A person must not omit information that relates to a material particular –

- (a) in or in connection with any application or document furnished, made, given or provided under this Act; or
- (b) in purported compliance with this Act.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 24 months, or both.

(3) It is a defence in proceedings for an offence under this section if the defendant establishes that, in respect of the alleged contravention, the defendant –

- (a) informed the person to whom the information was furnished that the information was false or misleading, or was incomplete; and
- (b) indicated the respects in which the information was false or misleading or incomplete; and
- (c) furnished, with the false, misleading or incomplete information, any correct information, record, material or thing that –
  - (i) related to the false, misleading or incomplete information so furnished; and
  - (ii) was in possession or control of the defendant; and
- (d) furnished, with the false, misleading or incomplete information, any information that the defendant had in respect of who had access to that information.

## PART 14 - Legal Proceedings

### *Division 1 - Offences generally*

#### **231. Infringement notices**

- (1) An authorised officer may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.
- (2) An infringement notice may not be served on an individual who has not attained the age of 16 years.
- (3) An infringement notice –
  - (a) is to be in accordance with section 14 of the Monetary Penalties Enforcement Act 2005 ; and
  - (b) is not to relate to 4 or more offences.
- (4) The regulations –
  - (a) may prescribe, for infringement offences, the penalties payable under infringement notices; and
  - (b) may prescribe different penalties for bodies corporate and individuals.

#### **232. Continuing offence**

- (1) A person who commits an offence under this Act that is a continuing offence is liable, in addition to any other penalty, to a further penalty not exceeding one-fifth of the maximum penalty prescribed for that offence for each day during which the offence continues.
- (2) For the purposes of this section, an obligation to do anything continues until it is done, notwithstanding that any period within which, or time before which, the thing is required to be done has ended or passed.

#### **233. Offences by employers**

- (1) If an employee or agent commits an offence under this Act, the employer or the principal of the agent is taken to have committed the same offence.
- (2) Despite subsection (1) , it is a defence in proceedings against an employer or principal for such an offence if it is proved that the employer or principal could not, despite taking all reasonable precautions and exercising all due diligence, have known of or prevented the commission of the offence.
- (3) An employer or principal may be proceeded against and convicted for an offence pursuant to this section whether or not the employee or agent has been proceeded against or convicted for the offence.

#### **234. Offences by bodies corporate**

- (1) If a body corporate contravenes, whether by act or omission, any provision of this Act, each person who is a member of the governing body of the body corporate, or who is concerned in the management of the body corporate, is taken to have contravened the same provision if the person knowingly or negligently authorised or permitted the contravention.
- (2) A person may be proceeded against for, and convicted of, an offence pursuant to this section whether or not the body corporate, or any other eligible person, has been proceeded against for, or convicted of, the offence.
- (3) Nothing in this section affects any liability imposed on a body corporate for an offence committed under this Act by the body corporate.

#### **235. Offences by employees or agents**

- (1) It is not a defence in proceedings for an offence under this Act that the defendant was, at the time of the commission of the offence, an employee or agent of another person and was acting for, or on behalf of, the other person.

(2) Despite subsection (1), it is a defence in proceedings for an offence under this Act if the defendant establishes that –

- (a) at the time of the commission of the offence, the defendant was acting under the direction or supervision of –
  - (i) the owner of, or the person carrying on, the day-to-day operation of an entity; or
  - (ii) the owner or person in charge of premises, a place, a vehicle, or a thing in relation to which the offence was committed; or
  - (iii) another person representing that owner or person in charge; and
- (b) his or her actions were as a direct result of that direction or supervision; and
- (c) the defendant could not have reasonably known that his or her actions would constitute an offence under this Act.

(3) Except with leave of the court, a defence under subsection (2) is only available if the person intending to rely on the defence gives written notice to the court and each other party to proceedings, before relying on the defence, stating –

- (a) the person's intention to rely on the defence; and
- (b) the name and address of the owner or person in charge who gave the direction, or provided the supervision, that is the basis of the defence.

### 236. Proceedings for offences

(1) Unless otherwise specified, proceedings for an offence –

- (a) are to be dealt with summarily; and
- (b) may be instituted by any one of the following persons:
  - (i) the Minister or a person authorised by the Minister;
  - (ii) the Secretary;
  - (iii) an authorised officer;
  - (iv) a prescribed person or class of persons; and
- (c) must be instituted within 3 years after the day on which the offence is alleged to have been committed.

(2) A court of competent jurisdiction may permit proceedings to be instituted outside of the period specified in subsection (1)(c).

### 237. Presumption of state of mind

(1) In any proceedings for an offence under this Act, except where the contrary intention appears, it is not necessary for the prosecution to prove any intention, or state of mind, to establish that the offence has been committed.

(2) Unless otherwise prescribed, subsection (1) does not apply in respect of an offence contained within the regulations.

## *Division 2 - Evidentiary provisions*

### 238. Evidentiary certificates

(1) In this section –

*given* includes served;

*instrument* includes, but is not limited to, a control order, emergency order or biosecurity certificate.

(2) A certificate that is issued by the Secretary and that states any of the following matters is admissible as evidence in any legal proceedings as evidence of the matters so stated:

- (a) that an instrument was issued, made, granted or given under this Act, or signed, on a specified day, by a specified person;
- (b) the terms of any instrument issued, made, granted or given, or purported to be issued, made, granted or given, under this Act, as in force on a specified day or during a specified period;
- (c) that an instrument issued, made, granted or given under this Act was amended or revoked, the day on which it was amended or revoked, and the terms of any amendment;
- (d) the terms of any approved form, on a specified day or during a specified period;
- (e) the terms of any application made under this Act;
- (f) that a function was delegated under this Act, including the following:
  - (i) the person or persons to whom the function was delegated;
  - (ii) the date of the delegation;
  - (iii) the period during which the delegation had effect;
  - (iv) the terms of the delegation, including any restrictions or limitations on the delegation;
- (g) that a person who made, gave, granted or issued, or purported to make, give, grant or issue, an instrument under this Act was the holder of a specified office on a specified day or during a specified period;
- (h) that a person was or was not authorised under this Act (including as a delegate) to perform specified functions under this Act, on a specified day or during a specified period;
- (i) that a person was or was not, on a specified day or during a specified period, a registered entity under this Act;
- (j) that a person was or was not, on a specified day or during a specified period, the holder of a permit under this Act;
- (k) the terms of any permit granted under this Act, including any conditions or restrictions on a permit, as in force on a specified day or during a specified period;
- (l) that a person was, on a specified day or during a specified period –
  - (i) an authorised officer; or
  - (ii) Chief Veterinary Officer or Deputy Chief Veterinary Officer; or
  - (iii) Chief Plant Protection Officer or Deputy Chief Plant Protection Officer; or
  - (iv) an authorised analyst;
- (m) the terms of, and any conditions of or limitations on, the following, as in force on a specified day or during a specified period:
  - (i) a person's appointment as an authorised officer or authorised analyst under this Act;
  - (ii) an approval that authorises an authorised officer to perform the functions of a biosecurity certifier or biosecurity auditor;
- (n) that a person was or was not, on a specified day or during a specified period –
  - (i) a registered entity; or
  - (ii) a biosecurity certifier; or
  - (iii) a biosecurity auditor; or
  - (iv) an accreditation authority;

(o) the terms of, and any conditions of or limitations on, the following, as in force on a specified day or during a specified period:

- (i) a person's biosecurity registration;
- (ii) a person's accreditation as a biosecurity certifier;
- (iii) a person's appointment as a biosecurity auditor;
- (iv) a person's approval as an accreditation authority;

(p) the suspension or cancellation of any of the following, on a specified day:

- (i) a person's biosecurity registration;
- (ii) a person's accreditation as a biosecurity certifier;
- (iii) a person's appointment as a biosecurity auditor;
- (iv) a person's approval as an accreditation authority;

(q) that a specified authorised officer gave a specified person a written biosecurity direction on a specified day, and the terms of that biosecurity direction;

(r) the terms of any biosecurity undertaking executed, the persons who executed the biosecurity undertaking and the date on which it was executed, and the terms and date of any variation to or withdrawal from that biosecurity undertaking;

(s) that a report on a biosecurity audit was received by the Secretary on a particular day, and the particulars of any report so received;

(t) that a notice or other information was provided by a person to the Secretary, or any other person authorised by or under this Act to receive the notice or information, on a specified date, and particulars of the notice or information provided;

(u) that a person was, on a specified date, directed to engage a biosecurity auditor to perform a biosecurity audit;

(v) that an amount payable under this Act by a specified person has, or has not, been paid.

(3) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, taken to be such a certificate.

### **239. Evidence of allegation**

An allegation contained in a complaint for an offence under this Act that states any of the following matters is admissible as evidence in any legal proceedings as evidence of the matters so stated:

- (a) that a specified person is or was, at the specified time, the owner, occupier or person in charge of premises, a place, biosecurity matter, carrier or other thing;
- (b) that specified biosecurity matter or a specified carrier was, at the specified time, in a specified area or was moved into or out of a specified area;
- (c) that any specified thing was, at the specified time, infected or infested with or harbouring any specified biosecurity matter.

### **240. Evidence of authorised analyst**

(1) A certificate of an authorised analyst certifying the result of an analysis, or examination, is admissible in any legal proceedings and is evidence of –

- (a) the facts stated in the certificate; and
- (b) the correctness of the result of the analysis or examination.

(2) A certificate of an authorised analyst certifying that, on receipt of a container containing a sample submitted to the analyst under this Act, the container was sealed and the seal securing the container was unbroken is

admissible in any legal proceedings and is evidence –

- (a) of the facts stated in the certificate; and
- (b) that the sample –
  - (i) was the same sample as the one submitted to the analyst under this Act; and
  - (ii) had not been tampered with after sealing.

(3) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, taken to be such a certificate.

#### **241. Evidence as to state of mind of corporation**

(1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) –

- (a) was responsible for a particular act or omission, is evidence that the corporation was responsible for that act or omissions; or
- (b) had at any particular time a particular state of mind, is evidence that the corporation had that state of mind.

(2) In this section, the state of mind of a person includes, but is not limited to –

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

#### **242. Evidence of publication of instruments on website**

(1) The Secretary is to cause a record to be kept of the publication on the Department website of the following:

- (a) an emergency order;
- (b) a control order;
- (c) a general biosecurity direction;
- (d) a group permit;
- (e) any other notice, order, declaration, instrument or document that may be made or given under this Act by publication on the Department website.

(2) A record to be kept under subsection (1) in respect of an instrument referred to in that subsection is to include –

- (a) the date of publication of the instrument; and
- (b) the web address where the instrument was so published; and
- (c) the wording of the instrument as published.

(3) In any legal proceedings, a certificate issued by the Secretary stating that records kept by the Secretary under this section indicate that an instrument referred to in subsection (1) was published on the Department website on a particular date –

- (a) is admissible in those legal proceedings; and
- (b) is evidence of the matters stated in the certificate.

(4) For the purposes of this section, a document purporting to be a certificate issued under this section is, unless the contrary is proved, taken to be such a certificate.

#### **243. Evidence of part to be evidence of whole**

In any legal proceedings, evidence as to the nature of the whole or part of a sample of a thing –

- (a) taken from a parcel of the thing; or

(b) taken from a quantity of the thing that was, at the time when the sample was so taken, represented as being, or as being part of, a bulk lot of the thing –

in the performance of a function conferred by this Act, is evidence as to the nature of the whole of the contents of the parcel or bulk lot, as the case may be.

### ***Division 3 - Defences, etc.***

#### **244. Defence of due diligence**

It is a defence in proceedings for an offence under this Act if the defendant establishes that the defendant had taken all reasonable precautions and exercised all due diligence to prevent the commission of the offence by the defendant or by another person under the direction, or supervision, of the defendant.

#### **245. Defence of lawful excuse**

It is a defence in proceedings for an offence under this Act if the defendant establishes that the conduct of the defendant was authorised by, or under, this Act.

#### **246. Actions done under direction of authorised officers**

A person is not guilty of an offence under this Act for an act done, or omitted, by the person in good faith at the request, or under the direction, of –

- (a) the Secretary, or the Chief Veterinary Officer or the Chief Plant Protection Officer, performing his or her functions under this Act; or
- (b) an authorised officer performing his or her functions as an authorised officer.

#### **247. Burden of proof in certain circumstances**

In proceedings for an offence under this Act, the obligation is on the defendant to prove –

- (a) that the defendant was exempt from a requirement imposed by or under this Act; or
- (b) that the defendant was authorised by or under this Act to engage in any conduct so engaged in by the defendant.

### ***Division 4 - Court orders***

#### **248. Orders generally**

- (1) The relevant court may make one or more orders under this Division in respect of an offence under this Act.
- (2) Orders may be made under this Division in addition to any other penalty that may be imposed, or any other action that may be taken, in relation to the offence under this Act or any other Act.
- (3) Orders may be made under this Division regardless of whether any penalty is available and imposed, or other action is available and taken, in relation to the offence under this Act or any other Act.

#### **249. Orders for restoration and prevention**

The relevant court may order the offender to take such steps as are specified in the order, within such time as is so specified or such further time that the relevant court, on application, may allow –

- (a) to prevent, eliminate, minimise, control or manage any biosecurity impact caused by the commission of the offence by the offender; or
- (b) to rectify or make good any resulting biosecurity impact; or
- (c) to prevent the continuance or recurrence of the offence by the offender.

#### **250. Orders regarding costs and expenses of investigation**

Without affecting any other power of the relevant court to award costs, the relevant court may make such order in respect of an offender as it thinks fit in respect of the costs and expenses of and incidental to –

- (a) the investigation of the commission of the offence by the offender; and
- (b) the examination, seizure, detention, storage, analysis, treatment or destruction or other disposal of any thing that is the subject of the proceedings before the court.

## 251. Prohibition orders

- (1) The relevant court may do one or more of the following in respect of an offender:
  - (a) order the offender not to deal with any specified biosecurity matter or thing or not to engage in any specified dealing with specified biosecurity matter;
  - (b) cancel, suspend or vary any biosecurity registration, permit, accreditation as a biosecurity certifier, appointment as a biosecurity auditor or approval as an accreditation authority held by the offender under this Act;
  - (c) extend any biosecurity undertaking given by the offender;
  - (d) order that the offender be not eligible to apply for biosecurity registration, a permit, accreditation as a biosecurity certifier, appointment as a biosecurity auditor or approval as an accreditation authority.
- (2) The relevant court may, in an order under this section, fix a period during which the order applies and impose any other requirements that the relevant court considers necessary or expedient for enforcement of the order.

## 252. Publication order

- (1) The relevant court may order the offender to take specified action to publicise one or more of the following:
  - (a) the offence, including the circumstances of the offence;
  - (b) the biosecurity impact of the offence;
  - (c) any other consequences and any other orders made against the offender.
- (2) The relevant court may, in an order under this section, fix a period for compliance and impose any other requirements that the relevant court considers necessary or expedient for enforcement of the order.
- (3) If the offender fails to comply with an order under subsection (1) in respect of the offender, the Secretary or a person authorised by the Secretary may take action to carry out the order.
- (4) The reasonable cost of taking action referred to in subsection (3) is recoverable in a court of competent jurisdiction from the offender as a debt due and owing to the Secretary or the person who took the action.

## 253. Recovery from court of competent jurisdiction of costs, expenses and compensation after offence proved

If, after a court has convicted an offender for an offence under this Act –

- (a) the Crown has incurred costs and expenses in connection with –
  - (i) the prevention, elimination, minimisation, control or management of a biosecurity risk or biosecurity impact caused by the commission of the offence; or
  - (ii) making good any resulting biosecurity impact; or
- (b) any person (or the Crown) has, by reason of the commission of the offence, suffered property loss or damage or has incurred costs and expenses in preventing, controlling, mitigating or managing any such loss or damage, or attempting to do so –

the person or Crown may recover from the offender the reasonable costs and expenses incurred, or the amount of the loss or damage, in any court of competent jurisdiction.

## 254. Forfeiture

Without affecting any other power of the relevant court to order forfeiture, the relevant court may order the forfeiture to the Crown of any thing that was used in the commission of an offence under this Act.

**255. Failure to comply with orders**

A person must not contravene an order under this Division that is made in respect of the person.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

***Division 5 - Appeals*****256. Appeals generally**

(1) Unless otherwise accepted by the Appeal Tribunal, an appeal under this Act may not be made more than 28 days after the day on which written notice of the decision that is the subject of the appeal is served on the person applying for the appeal.

(2) Subject to any order made by the Appeal Tribunal, an appeal does not, of itself, operate to stay or suspend the decision to which the appeal relates.

(3) Unless otherwise specified in this Act, the provisions of the Tasmanian Civil and Administrative Tribunal Act 2020 apply to an appeal to the Appeal Tribunal under this Act.

**257. Appeals relating to accreditation authorities**

A person aggrieved by any of the following decisions of the Secretary may appeal to the Appeal Tribunal against the decision:

- (a) a decision to refuse approval of the person as an accreditation authority;
- (b) a decision to refuse to renew approval of the person as an accreditation authority;
- (c) a decision to suspend or cancel approval of the person as an accreditation authority;
- (d) a decision to impose any condition on the grant of approval of the person as an accreditation authority, or on the suspension or cancellation of an approval;
- (e) a decision to vary approval of the person as an accreditation authority.

**258. Appeals relating to biosecurity auditors**

A person aggrieved by any of the following decisions of an accreditation authority may appeal to the Appeal Tribunal against the decision:

- (a) a decision to refuse the appointment of the person as a biosecurity auditor;
- (b) a decision to refuse to renew the appointment of the person as a biosecurity auditor;
- (c) a decision to suspend or cancel an appointment of the person as a biosecurity auditor;
- (d) a decision to impose any condition on the appointment of the person as a biosecurity auditor, or on the suspension or cancellation of an appointment as a biosecurity auditor;
- (e) a decision to vary an appointment of the person as a biosecurity auditor.

**259. Appeals relating to permits**

(1) A person aggrieved by any of the following decisions may appeal to the Appeal Tribunal against the decision:

- (a) a decision to refuse to grant or renew a permit to the person;
- (b) a decision to suspend or cancel a permit held by the person;
- (c) a decision to refuse to revoke a suspension of a permit following the making of a submission by the former permit holder under this Act, being a suspension of which the former permit holder was not given prior notice;

(d) a decision to impose any condition on a permit held by the person, or on the suspension, cancellation or surrender of a permit held by the person;

(e) a decision to vary a permit held by the person or any condition on a permit held by the person.

(2) Despite subsection (1), no right of appeal lies against any of the following decisions:

(a) a decision in respect of an emergency permit;

(b) a decision in respect of a prohibited dealing permit;

(c) a decision in respect of a prohibited matter permit;

(d) a decision of a relevant decision-maker to refuse to renew a permit, or to suspend or cancel a permit, due to the occurrence of an emergency;

(e) a decision in respect of a group permit.

## 260. Appeals relating to biosecurity registrations

A person aggrieved by any of the following decisions of the Secretary may appeal to the Appeal Tribunal against the decision:

(a) a decision to refuse to grant the person's application for biosecurity registration;

(b) a decision to refuse to renew the person's biosecurity registration;

(c) a decision to suspend or cancel the person's biosecurity registration;

(d) a decision to refuse to revoke a suspension of the person's biosecurity registration following the making of a submission by the person under this Act, being a suspension of which the person was not given prior notice;

(e) a decision to impose any condition on the person's biosecurity registration, or on the suspension, cancellation or surrender of the person's biosecurity registration;

(f) a decision to vary the person's biosecurity registration or any condition on the person's biosecurity registration.

## 261. Appeals relating to accreditations

A person aggrieved by any of the following decisions of an accreditation authority may appeal to the Appeal Tribunal against the decision:

(a) a decision to refuse accreditation of the person as a biosecurity certifier;

(b) a decision to refuse to renew accreditation of the biosecurity certifier;

(c) a decision to suspend or cancel accreditation of the person as a biosecurity certifier;

(d) a decision to refuse to revoke a suspension of accreditation of the person as a biosecurity certifier following the making of a submission under this Act, being a suspension of which the person was not given prior notice;

(e) a decision to impose any condition on accreditation of the person as a biosecurity certifier, or on the suspension or cancellation of accreditation of the person as a biosecurity certifier;

(f) a decision to vary accreditation of the person as a biosecurity certifier or any condition on accreditation of the person as a biosecurity certifier.

## 262. Appeals relating to cost recovery orders

A person aggrieved by a decision of the Secretary to issue a cost recovery order in respect of a recoverable amount may appeal to the Appeal Tribunal against the decision if the recoverable amount is a fee charged by the Secretary for action taken –

(a) as a result of a failure by a person to comply with an emergency order; or

- (b) as a result of a failure by a person to comply with a control order; or
- (c) by an authorised officer under this Act; or
- (d) as a result of a failure by a person to comply with an individual biosecurity direction that was given in an emergency.

**263. Appeals relating to individual biosecurity directions**

- (1) A person given an individual biosecurity direction may appeal to the Appeal Tribunal against –
  - (a) the biosecurity direction; or
  - (b) any requirement in the biosecurity direction.
- (2) Despite subsection (1) , no right of appeal lies against –
  - (a) a general biosecurity direction; or
  - (b) an emergency biosecurity direction.

**264. Appeals relating to reimbursements**

A person who has applied for reimbursement under Part 12 may apply to the Appeal Tribunal for a review of the following decisions:

- (a) a refusal to pay reimbursement to the person in respect of the death or destruction of any plant, animal or other property;
- (b) a decision to recover from the person any amount of reimbursement paid to the person under that Part;
- (c) a determination of the amount of reimbursement that is payable.

## PART 15 - Miscellaneous

### 265. Delegation

(1) The Minister may, by written instrument, delegate to the following persons any of his or her functions under this Act other than this power of delegation:

- (a) the Secretary;
- (b) the Chief Plant Protection Officer or Deputy Chief Plant Protection Officer;
- (c) the Chief Veterinary Officer or Deputy Chief Veterinary Officer.

(2) Subject to subsections (4) and (5), the Secretary may, by written instrument, delegate to a person any of his or her functions under this Act, including a function that has been delegated to the Secretary by the Minister, other than this power of delegation.

(3) Subject to subsections (4) and (5), a delegate under subsection (2) may subdelegate any function delegated under that subsection if the delegate is authorised to do so in the instrument that delegated that function to the delegate.

(4) The following functions may only be delegated, or subdelegated, under this section to a State Service officer or State Service employee:

- (a) a function in relation to declarations under this Act of prohibited matter, restricted matter or permitted matter;
- (b) a function in relation to emergency orders under this Act;
- (c) a function in relation to control orders under this Act;
- (d) a function in relation to prohibited matter permits, emergency permits or group permits under this Act;
- (e) a function in relation to general biosecurity directions under this Act.

(5) A function subdelegated under this section may only be performed in accordance with –

- (a) the conditions and limitations imposed on the initial delegation; and
- (b) any further conditions and limitations imposed as part of the subdelegation.

### 266. Authorisations non-transferrable

Unless otherwise specified, an instrument under this Act authorising a person in respect of a dealing is not transferrable.

### 267. Biosecurity Advisory Committee

(1) The Minister is to, by written instrument, establish a Biosecurity Advisory Committee.

(2) The Minister is to appoint –

- (a) a person as Chair of the Biosecurity Advisory Committee; and
- (b) such other persons as members of the Biosecurity Advisory Committee as the Minister considers appropriate.

(3) In appointing persons as members of the Biosecurity Advisory Committee under subsection (2), the Minister is to ensure that the members of the Committee, as a whole, include –

- (a) a person with relevant knowledge, and experience, in science, industry and community liaison and education, that relates to biosecurity; and
- (b) a person with financial and accounting expertise, or equivalent economic expertise, and with strategic planning expertise; and

- (c) a person with public administration expertise at both the State and local government level; and
  - (d) a representative of animal-based agricultural industries; and
  - (e) a representative of plant-based agricultural industries; and
  - (f) a representative of wild fisheries industries; and
  - (g) a representative of aquaculture industries; and
  - (h) a representative of tourism industries; and
  - (i) a representative from environmental organisations; and
  - (j) a community member; and
  - (k) a State Service employee who holds the office of member in conjunction with his or her State Service employment.
- (4) For the avoidance of doubt, nothing in subsection (3) prevents one person from satisfying the requirements of more than one paragraph specified in that subsection.
- (5) The functions of the Biosecurity Advisory Committee are –
- (a) to advise the Minister or Secretary, in accordance with the instrument establishing the Committee, on the matters specified in that instrument; and
  - (b) to investigate and advise the Minister or Secretary, as the case requires, on any matter related to biosecurity referred to it by the Minister or Secretary; and
  - (c) any other function specified in the instrument establishing the Committee; and
  - (d) any other prescribed function.
- (6) An instrument establishing the Biosecurity Advisory Committee is to –
- (a) subject to subsections (2) , (3) and (10) , set out the membership of the Committee; and
  - (b) set out any other matters in relation to the terms of reference, operation or procedure of the Committee that the Minister considers appropriate.
- (7) An instrument establishing the Biosecurity Advisory Committee may include such terms, conditions and directions that the Minister considers appropriate in the circumstances.
- (8) The Minister may, by written instrument, amend or revoke an instrument referred to in subsection (1) .
- (9) Schedule 2 has effect with respect to membership and meetings of the Biosecurity Advisory Committee.
- (10) The regulations may prescribe –
- (a) qualifications, expertise or experience that are required for a person to be taken to satisfy a requirement, or to be a representative, specified in subsection (3) ; and
  - (b) qualifications, expertise or experience, required by the members of the Biosecurity Advisory Committee, that are in addition to subsection (3) ; and
  - (c) government agencies, and community and industry organisations, that must be represented on the Biosecurity Advisory Committee that are in addition to subsection (3) ; and
  - (d) reporting requirements for the Biosecurity Advisory Committee.

## 268. Protection from liability

A person who provides, while acting in good faith, any information to the Secretary, an authorised officer or any other person performing functions under this Act about –

- (a) a biosecurity risk or biosecurity impact; or
- (b) a biosecurity event; or

(c) any biosecurity matter or carrier, or any dealing with any biosecurity matter or carrier –

does not incur any civil liability, or liability for any professional or ethical sanction, because of a breach of a duty of confidentiality in relation to that information.

## **269. Planning and other requirements in relation to authorised actions excluded**

The following actions may be taken on land despite any requirements for an approval, consent or other authorisation for the work under the Building Act 2016 , the Land Use Planning and Approvals Act 1993 , the Environmental Management and Pollution Control Act 1994 or any other Act:

- (a) an action authorised, required or taken under –
  - (i) an emergency order; or
  - (ii) a control order; or
  - (iii) an emergency biosecurity direction; or
  - (iv) an emergency permit; or
  - (v) this Act;
- (b) an action taken by an authorised officer under this Act.

## **270. Disclosure of information**

An accreditation authority is authorised to disclose to the Secretary any information (including personal information within the meaning of the Personal Information Protection Act 2004 ) obtained by the accreditation authority in the performance of functions under this Act.

## **271. Collection, use and disclosure of information**

- (1) The Secretary, an authorised officer, a public authority and any other person engaged in the administration or enforcement of this Act may collect and use information (including personal information and health information) for the purpose of performing their biosecurity risk functions.
- (2) The Secretary, an authorised officer, a public authority and any other person engaged in the administration or enforcement of this Act may, for the purpose of performing a biosecurity risk function, disclose information (including personal information and health information) about a person, without the consent of the person –
  - (a) to a public authority; or
  - (b) to any other person if the disclosure is reasonably necessary for the purpose of performing a biosecurity risk function.
- (3) A public authority may disclose to the Secretary, an authorised officer, or any other person engaged in the administration or enforcement of this Act any information (including personal information and health information) about a person that the public authority holds, without the consent of the person, if the Secretary, authorised officer or other person requests the information and certifies in writing that the information –
  - (a) is required for the purpose of performing a biosecurity risk function; and
  - (b) the provision of the information is reasonably necessary for the purpose of performing that biosecurity risk function.
- (4) The Secretary, authorised officers, and any other persons engaged in the administration of this Act are not required to comply with section 17 of the Personal Information Protection Act 2004 if such compliance would detrimentally affect or prevent the performance of their biosecurity risk functions.
- (5) Nothing in this section prevents or limits the release or publication of any public information held, collected or used under this Act.

## **272. Cruelty to animals not authorised**

Nothing in this Act, or any instrument or document made under this Act, authorises the contravention of the Animal Welfare Act 1993 .

### **273. Requirements may continue to have effect**

- (1) A requirement imposed by or under this Act that does not specify a time by which, or period within which, the requirement must be complied with continues to have effect until the requirement is complied with, unless sooner revoked or cancelled.
- (2) A requirement imposed by or under this Act that specifies a time by which, or a period within which, the requirement must be complied with continues to have effect until the requirement is complied with, even though the time has passed or the period has expired, unless sooner revoked or cancelled.
- (3) Nothing in this section affects the powers of the Secretary in respect of the enforcement of any requirement imposed by or under this Act.

### **274. Service of notices and other documents**

- (1) A notice or other document that is authorised or required by or under this Act to be served on or given to any person may be served or given by –
  - (a) in the case of an individual –
    - (i) delivering it to the person personally; or
    - (ii) leaving it at, or sending it by post to, the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document; or
    - (iii) sending it by electronic transmission to an email address nominated by the person (in correspondence or otherwise) as an email address or location for the giving or service of documents of that kind; or
    - (iv) sending it by any other electronic means nominated by the person (in correspondence or otherwise) as a means of giving or serving documents of that kind; or
  - (b) in the case of a body corporate –
    - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal place of business of the body corporate or to an address specified by the body corporate for the giving or service of documents; or
    - (ii) sending it by electronic transmission to an email address nominated by the body corporate (in correspondence or otherwise) as an email address for the giving or service of documents of that kind; or
    - (iii) sending it by any other electronic means nominated by the body corporate (in correspondence or otherwise) as a means of giving or serving documents of that kind.
- (2) A notice or other document that is to be served by leaving it at any particular premises is taken, if addressed to the occupier of the premises (either by name or as the occupier), to be given or served –
  - (a) by delivering the document or a true copy of it to a person on those premises who is apparently over the age of 16 years; or
  - (b) if there is no person on those premises who may be given or served with the document, by fixing the document or a copy of it to some conspicuous part of the premises.
- (3) Nothing in this section affects the operation of any provision of another law, or of the rules of a court, authorising a document to be served on a person in any other manner.

### **275. Description of land in notices and other instruments**

Any premises or land is sufficiently described in a notice, order, direction or other instrument given or made under this Act if the description of the premises or land allows no reasonable doubt as to the premises or land to which the notice or instrument relates.

### **276. Exemptions**

- (1) The Secretary may, by order published in the *Gazette*, exempt any specified person or class of persons, specified occupier or class of occupiers or any specified biosecurity matter, carrier, premises or other thing from the operation of all or any specified provisions of this Act.
- (2) An exemption under subsection (1) may be unconditional or subject to any condition that the Secretary considers reasonable in the circumstances.
- (3) An order under subsection (1) is to specify –
  - (a) when the order takes effect and the duration of the order; and
  - (b) the specified person or class of persons, specified occupier or class of occupiers or any specified biosecurity matter, carrier, premises or other thing to which the order relates; and
  - (c) any conditions imposed in respect of the exemption.

#### **277. Waiver and refund of fees and other amounts**

The Secretary may waive, reduce, refund or remit payment of all or part of any fee or other amount payable under this Act or the regulations if the Secretary considers it is appropriate to do so.

#### **278. Application of *Personal Property Securities Act 2009* of the Commonwealth**

Each of the following is declared not to be personal property for the purposes of the *Personal Property Securities Act 2009* of the Commonwealth:

- (a) biosecurity registration;
- (b) a permit;
- (c) accreditation as a biosecurity certifier;
- (d) appointment as a biosecurity auditor;
- (e) approval to perform the functions of an accreditation authority.

#### **279. Immunity**

- (1) The Minister, the Secretary, an authorised officer or any other person does not incur any personal liability in respect of any act done or omitted in good faith –
  - (a) in the performance, or the purported performance, of any function under this Act; or
  - (b) in the administration or execution, or the purported administration or execution, of this Act.
- (2) A civil liability that would, but for subsection (1), lie against a person lies against the Crown.

#### **280. Orders, notices, &c., not statutory rules**

Unless otherwise specified, an order, notice, declaration or other instrument under this Act –

- (a) is not a statutory rule for the purposes of the Rules Publication Act 1953 ; and
- (b) is not subordinate legislation for the purposes of the Subordinate Legislation Act 1992 .

#### **281. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1) , the Governor may make regulations for, or in respect of, the following:
  - (a) any matter relating to the prevention, elimination, minimisation, control or management of a biosecurity risk or biosecurity impact;
  - (b) the testing, analysis, vaccination, inoculation and other treatment of any biosecurity matter or carrier (other than a human), including, but not limited to –

- (i) the accreditation, registration or other authorisation of any person or entity to carry out the testing, analysis, vaccination, inoculation or other treatment; and
  - (ii) the use, manufacture, testing, distribution, storage, display or supply of any substance or equipment used for the testing, analysis, vaccination, inoculation or other treatment;
  - (c) the classification and identification of any premises, biosecurity matter, carrier or other thing;
  - (d) the marking, branding, tracing or other means of recording the location, movement and status of any biosecurity matter or class of biosecurity matter whether on a voluntary or mandatory basis;
  - (e) the establishment and administration of any register of persons, entities, premises, biosecurity matter, carriers, dealings or any other matter or other thing for the purposes of this Act;
  - (f) the qualifications, functions, identification or other matter in respect of officers, auditors or other persons who may perform a function under this Act, including the issuing of identification for that person under this Act;
  - (g) the publication or provision of information contained in any register established or administered under this Act;
  - (h) the destruction and disposal of any biosecurity matter, carrier or other thing seized by an authorised officer under this Act;
  - (i) any matter in respect of animal feed and fodder including, but not limited to –
    - (i) the amount or proportion of any specified ingredient or other thing that may be added to or contained in animal feed or fodder; and
    - (ii) the use, manufacture, testing, distribution, storage, display or supply of animal feed or fodder;
  - (j) the provision and performance of additional functions of authorised officers and other specified persons;
  - (k) evidentiary presumptions in respect of any biosecurity matter, carrier, dealing, biosecurity risk, biosecurity impact or other matter or other thing to which this Act relates;
  - (l) the calculation, imposition and collection of levies, fees and charges, and the allocation of any proceeds from the collection of such levies, fees and charges, including, but not limited to –
    - (i) fees and charges for the provision of information, or for the carrying out of any inspection, analysis or other function under this Act (whether or not the inspection, analysis or function was requested or agreed to); and
    - (ii) fees and charges in respect of applications made under this Act; and
    - (iii) levies to fund the establishment or operation of any entity, facility, program or activity for any purpose under this Act;
  - (m) the payment of levies, fees and charges, payable under this Act, other than into the Public Account in specified circumstances;
  - (n) the provision or publication of the reasons for a decision, made under this Act, in specified circumstances;
  - (o) all other matters that are required, permitted, or necessary, to be prescribed or made by regulation under this Act.
- (3) Regulations may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstance as is specified in the regulations.
- (4) Without limiting the generality of this section, the regulations may provide that any one or more of the following is authorised for the purposes of Part IV of the *Competition and Consumer Act 2010* of the Commonwealth:

- (a) a dealing or class of dealing;
  - (b) a biosecurity matter or carrier, or class of biosecurity matter or carriers;
  - (c) any other act or thing, or kind of act or thing.
- (5) The regulations may –
- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
  - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 250 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.
- (6) The regulations may –
- (a) authorise any matter to be determined, applied or regulated by a person or entity specified in the regulations; and
  - (b) confer a power or impose a duty on a specified person, entity or class of persons.
- (7) The regulations may adopt or incorporate the whole or part of any standard, rule, code, specification, guidelines, program, scheme or plan, as amended from time to time, with or without modification, issued, prescribed, made or published by any person or entity (including the Crown) before or after the regulations take effect.
- (8) The regulations may exempt a person, class of persons, matter or other thing from the operation of this Act or any specified provision of this Act or the regulations including, but not limited to, an exemption from any fee, charge or levy payable under this Act.
- (9) The regulations may rescind regulations or other subordinate legislation made under –
- (a) any Act repealed under this Act; or
  - (b) any other Act prescribed by the regulations.

[Uncommenced

**282. *Legislation repealed, rescinded and revoked***

*The legislation specified in Schedule 3 is repealed, rescinded or revoked, as applicable.*

]

**283. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

- (a) the administration of this Act is assigned to the Minister for Primary Industries and Water; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Primary Industries, Parks, Water and Environment.

# SCHEDULE 1 - Administrative authorities

Sections 34, 38 and 139

## PART 1 - Preliminary

### 1. Interpretation

In this Schedule –

*relevant authorisation* means –

- (a) in relation to an accreditation authority, the approval of the person as an accreditation authority; and
- (b) in relation to a biosecurity auditor, the appointment of the person as a biosecurity auditor; and
- (c) in relation to a biosecurity certifier, the accreditation of the person as a biosecurity certifier;

*relevant decision-maker* means –

- (a) in the case of an application relating to an accreditation authority, the Secretary; and
- (b) in the case of an application relating to a biosecurity auditor, an accreditation authority; and
- (c) in the case of an application relating to a biosecurity certifier, an accreditation authority.

### 2. Appointment policy for biosecurity auditors

(1) An accreditation authority that is authorised to appoint biosecurity auditors under this Act is required to adopt a policy in relation to the appointment of biosecurity auditors for the purposes of this Act (an *appointment policy*).

(2) An appointment policy may make provision for, or in respect of, the following matters:

- (a) the qualifications, skills, knowledge and experience required for a person to be appointed as a biosecurity auditor by the accreditation authority;
- (b) any other prescribed matters.

(3) An appointment policy adopted by an accreditation authority (other than the Secretary) has no effect unless it, and any amendment to it, has been approved by the Secretary.

(4) However, subclause (3) does not apply to an amendment to an appointment policy if the accreditation authority certifies that the amendment –

- (a) is minor in nature or for the purpose of correcting an error; or
- (b) is necessary to reflect a change of –
  - (i) a course of study including a continuing professional development course; or
  - (ii) a qualification required; or
  - (iii) the provider of a course or qualification.

(5) An accreditation authority is to make its appointment policy publicly available.

(6) An accreditation authority may adopt different appointment policies for different types of –

- (a) biosecurity auditors; or
- (b) biosecurity audits to be performed by the biosecurity auditors.

(7) A reference in this Act to an appointment policy is a reference to the appointment policy as adopted by the relevant accreditation authority, that is relevant to the appointment or type of appointment to which the reference relates.

### 3. Accreditation policy for biosecurity certifiers

- (1) An accreditation authority that is authorised to accredit biosecurity certifiers under this Act is required to adopt a policy in relation to the accreditation of biosecurity certifiers for the purpose of this Act (an *accreditation policy*).
- (2) An accreditation policy is to make provision for, or in respect of, the following matters:
  - (a) the qualifications, skills, knowledge and experience required for a person to be granted accreditation as a biosecurity certifier by the accreditation authority;
  - (b) any other prescribed matters.
- (3) A policy adopted under subclause (1) is not an accreditation policy, and has no effect, unless it, and any amendment to it, has been approved by the Secretary.
- (4) However, subclause (3) does not apply to an amendment to an accreditation policy if the relevant accreditation authority certifies that the amendment –
  - (a) is minor in nature or for the purpose of correcting an error or updating a reference; or
  - (b) is necessary to reflect a change of –
    - (i) a course of study including a continuing professional development course; or
    - (ii) a qualification required; or
    - (iii) the provider of a course or qualification.
- (5) An accreditation authority is to make its accreditation policy publicly available.
- (6) An accreditation authority may adopt an accreditation policy for each different type of accreditation.
- (7) A reference in this Act to an accreditation policy is a reference to the accreditation policy, as adopted by the relevant accreditation authority, that is relevant to the accreditation to which the reference relates.

## PART 2 - Applications

### *Division 1 - Applications for approval, &c.*

#### 1. Applications

- (1) A person may apply to the relevant decision-maker for –
  - (a) approval as an accreditation authority; or
  - (b) appointment as a biosecurity auditor; or
  - (c) accreditation as a biosecurity certifier.
- (2) An application under subclause (1) is to –
  - (a) be in a form approved by the relevant decision-maker; and
  - (b) include, or be accompanied by, any prescribed information or evidence; and
  - (c) include, or be accompanied by, any other information or evidence that the relevant decision-maker reasonably requires to determine the application; and
  - (d) be accompanied by the relevant application fee specified in subclause (3) , if any.
- (3) The amount of the application fee is –
  - (a) if the relevant decision-maker is the Secretary, the prescribed amount; or
  - (b) in any other case, the amount required by the relevant decision-maker.
- (4) If an application is made to a relevant decision-maker other than the Secretary, all application fees in relation to that application are payable to, and are to be retained by, the relevant decision-maker.

#### 2. Grant or refusal of application

- (1) On receipt of an application under clause 1 , the relevant decision-maker may grant or refuse the application.
- (2) The relevant decision-maker must refuse an application under clause 1 in prescribed circumstances.
- (3) The relevant decision-maker may refuse an application under clause 1 –
  - (a) if the application does not comply with any requirement imposed by or under this Act, including the payment of any relevant application fee; or
  - (b) if the relevant decision-maker is of the opinion that the applicant –
    - (i) is not a suitable person to hold the relevant authorisation; or
    - (ii) does not have the qualifications, skills, knowledge and experience required under this Act for the relevant authorisation; or
  - (c) on any prescribed grounds.
- (4) If the relevant decision-maker grants an application under this clause, the relevant decision-maker is to –
  - (a) notify the applicant of that decision, either orally or in writing, as soon as practicable after the decision is made; and
  - (b) issue the applicant with an identity card in an approved form; and
  - (c) provide the applicant within the prescribed period with written confirmation of the decision and the reasons for the decision.
- (5) If the relevant decision-maker refuses to renew a relevant authorisation under this clause, the relevant decision-maker is to –

- (a) notify the applicant of that decision, either orally or in writing, as soon as practicable after the decision is made; and
- (b) provide the applicant within the prescribed period with written confirmation of the decision and the reasons for the decision; and
- (c) notify the applicant in writing that he or she may appeal to the Appeal Tribunal against the decision.

(6) If the relevant decision-maker fails to give an applicant for approval notice of a decision to grant or refuse approval within the prescribed period, the relevant decision-maker is taken to have refused approval.

### **3. Effect of grant of application**

- (1) If an application for approval as an accreditation authority is granted under clause 2 –
  - (a) the applicant is taken to be approved as an accreditation authority subject to any conditions specified in the written notice given by the relevant decision-maker under that clause in respect of the application; and
  - (b) the approval of the applicant as an accreditation authority is taken to remain in force for a period (not exceeding 5 years) specified in the written notice given by the relevant decision-maker under that clause in respect of the application, unless sooner cancelled under this Act.
- (2) If an application for appointment as a biosecurity auditor is granted under clause 2 –
  - (a) the applicant is taken to be appointed as a biosecurity auditor subject to any conditions specified in the written notice given by the relevant decision-maker under that clause in respect of the application; and
  - (b) the appointment of the applicant as a biosecurity auditor is taken to remain in force for a period (not exceeding 5 years) specified in the written notice given by the relevant decision-maker under that clause in respect of the application, unless sooner cancelled under this Act.
- (3) If an application for accreditation as a biosecurity certifier is granted under clause 2 –
  - (a) the applicant is taken to be a biosecurity certifier subject to any conditions specified in the written notice given by the relevant decision-maker under that clause in respect of the application; and
  - (b) the accreditation of the applicant as a biosecurity certifier is taken to remain in force for a period (not exceeding 5 years) specified in the written notice given by the relevant decision-maker under that clause in respect of the application, unless sooner cancelled under this Act.

### **4. Variation of approval, &c.**

- (1) A relevant decision-maker may vary, at any time, a person's –
  - (a) approval as an accreditation authority; or
  - (b) appointment as a biosecurity auditor; or
  - (c) accreditation as a biosecurity certifier.
- (2) A variation under this clause includes the imposition of a new condition, the substitution of an existing condition, or the removal or amendment of an existing condition.
- (3) A variation of a relevant authorisation under this clause may be made –
  - (a) on the relevant decision-maker's own initiative; or
  - (b) on the application of the holder of the relevant authorisation
- (4) The regulations may make further provision for a variation under this clause, including –
  - (a) the form and procedure for an application for such a variation; and

(b) any fee payable for an application for such a variation.

## ***Division 2 - Application for renewal of relevant authorisation***

### **5. Application to renew**

- (1) A person may apply to the relevant decision-maker for renewal of the person's relevant authorisation.
- (2) An application under subclause (1) is to –
  - (a) be made at least 28 days before the expiry of the relevant authorisation to which it relates; and
  - (b) be in a form approved by the relevant decision-maker; and
  - (c) include, or be accompanied by, any prescribed information or evidence; and
  - (d) include, or be accompanied by, any other information or evidence that the relevant decision-maker reasonably requires to determine the application; and
  - (e) be accompanied by the relevant application fee specified in subclause (3) , if any.
- (3) The amount of the application fee is –
  - (a) if the relevant decision-maker is the Secretary, the prescribed amount; or
  - (b) in any other case, the amount required by the relevant decision-maker.
- (4) If an application to renew a relevant authorisation is made to a relevant decision-maker other than the Secretary, all application fees in relation to that application are payable to, and are to be retained by, the relevant decision-maker.
- (5) If an application to renew a relevant authorisation is made to the relevant decision-maker under this clause before the expiry of the relevant authorisation held by the applicant and is not determined under clause 6 before its expiry, the applicant is taken to continue to hold the relevant authorisation until the relevant decision-maker notifies the applicant under clause 6 of a decision to grant or refuse the application, unless the relevant authorisation is sooner cancelled under this Act.

### **6. Grant or refusal of application to renew**

- (1) On receipt of an application under clause 5 , the relevant decision-maker may grant or refuse the application to renew.
- (2) The relevant decision-maker must refuse an application under clause 5 in prescribed circumstances.
- (3) The relevant decision-maker may refuse an application under clause 5 –
  - (a) if the application does not comply with any requirement imposed by or under this Act, including the payment of an application fee; or
  - (b) if the relevant decision-maker is of the opinion that the applicant –
    - (i) is not a suitable person to hold the relevant authorisation; or
    - (ii) does not have the qualifications, skills, knowledge and experience required under this Act to continue to hold the relevant authorisation; or
  - (c) on any prescribed grounds.
- (4) If the relevant decision-maker renews a relevant authorisation under this clause, the relevant decision-maker is to –
  - (a) notify the applicant of that decision, either orally or in writing, as soon as practicable after the decision is made; and
  - (b) provide the applicant within the prescribed period with written confirmation of the decision and the reasons for the decision.

(5) If the relevant decision-maker refuses to renew a relevant authorisation under this clause, the relevant decision-maker is to –

- (a) notify the applicant of that decision, either orally or in writing, as soon as practicable after the decision is made; and
- (b) provide the applicant within the prescribed period with written confirmation of the decision and the reasons for the decision; and
- (c) notify the applicant in writing that he or she may appeal to the Appeal Tribunal against the decision.

## **7. Effect of grant of application to renew**

(1) If an application for renewal as an accreditation authority is granted under clause 6 –

- (a) the applicant is taken to be approved as an accreditation authority subject to any conditions specified in the written notice given by the relevant decision-maker under that clause in respect of the application; and
- (b) the approval of the applicant as an accreditation authority is taken to remain in force for a period (not exceeding 5 years) specified in the written notice given by the relevant decision-maker under that clause in respect of the application, unless sooner cancelled under this Act.

(2) If an application for renewal as a biosecurity auditor is granted under clause 6 –

- (a) the applicant is taken to be appointed as a biosecurity auditor subject to any conditions specified in the written notice given by the relevant decision-maker under that clause in respect of the application; and
- (b) the appointment of the applicant as a biosecurity auditor is taken to remain in force for a period (not exceeding 5 years) specified in the written notice given by the relevant decision-maker under that clause in respect of the application, unless sooner cancelled under this Act.

(3) If an application for renewal as a biosecurity certifier is granted under clause 6 –

- (a) the applicant is taken to be a biosecurity certifier subject to any conditions specified in the written notice given by the relevant decision-maker under that clause in respect of the application; and
- (b) the accreditation of the applicant as a biosecurity certifier is taken to remain in force for a period (not exceeding 5 years) specified in the written notice given by the relevant decision-maker under that clause in respect of the application, unless sooner cancelled under this Act.

(4) If the relevant decision-maker considers it necessary, the relevant decision-maker is to reissue the applicant with a new identity card, in an approved form, if the applicant's application for renewal is granted under clause 6 .

## PART 3 - Conditions

### 1. Conditions of approval as accreditation authority

(1) Approval as an accreditation authority is subject to the following conditions:

- (a) any relevant prescribed conditions;
- (b) any conditions imposed by the Secretary on the approval.

(2) The Secretary may impose conditions on an approval as an accreditation authority at any time.

(3) The Secretary may impose a condition on an approval as an accreditation authority that requires the accreditation authority to perform the functions of an accreditation authority in accordance with all of, or any part of, a specified standard, code, guideline, protocol, program or other similar specification.

### 2. Conditions of appointment as a biosecurity auditor

(1) Appointment as a biosecurity auditor is subject to the following conditions:

- (a) any relevant prescribed conditions;
- (b) any conditions imposed by the relevant accreditation authority on the appointment.

(2) An accreditation authority may impose conditions on an appointment as a biosecurity auditor at any time.

(3) An accreditation authority may impose a condition on an appointment as a biosecurity auditor that requires the biosecurity auditor to perform the functions of a biosecurity auditor in accordance with all of, or any part of, a specified standard, code, guideline, protocol, program or other similar specification.

### 3. Conditions of accreditation as a biosecurity certifier

(1) Accreditation as a biosecurity certifier is subject to the following conditions:

- (a) any relevant prescribed conditions;
- (b) any conditions imposed by the responsible accreditation authority on the accreditation.

(2) The responsible accreditation authority may impose conditions on accreditation at any time.

(3) The responsible accreditation authority may impose a condition on accreditation as a biosecurity certifier that requires the biosecurity certifier to perform the functions of a biosecurity certifier in accordance with all of, or any part of, a specified standard, code, guideline, protocol, program or other similar specification.

(4) The responsible accreditation authority may impose a condition on accreditation as a biosecurity certifier that requires the biosecurity certifier to take out and maintain a policy of insurance that indemnifies the biosecurity certifier for any liability to which the biosecurity certifier may become subject as a result of performing, or purporting to perform, the functions of a biosecurity certifier.

(5) Nothing in this clause limits the types of conditions that may be imposed on accreditation as a biosecurity certifier, unless that limit is expressly provided for under this Act.

### 4. Offence of contravening conditions

(1) An accreditation authority must comply with the conditions of his or her approval as an accreditation authority.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

(2) A biosecurity auditor must comply with the conditions of his or her appointment as a biosecurity auditor.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

(3) A biosecurity certifier must comply with the conditions of his or her accreditation as a biosecurity certifier.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 500 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

## **PART 4 - Suspension or cancellation of relevant authorisation**

### **1. Grounds for suspension or cancellation of relevant authorisation**

Each of the following is grounds for suspending or cancelling a relevant authorisation:

- (a) the relevant decision-maker is of the opinion that the holder of the relevant authorisation has contravened a requirement imposed by or under this Act or a corresponding law;
- (b) the relevant decision-maker is not satisfied that the holder of the relevant authorisation has the qualifications, skills, knowledge and experience to continue to hold the relevant authorisation;
- (c) the relevant decision-maker is satisfied, on reasonable grounds, that the holder of the relevant authorisation is not a suitable person to hold the relevant authorisation;
- (d) the relevant decision-maker receives information about the holder of the relevant authorisation and the relevant decision-maker is of the opinion that, had the information been received at the time when an application in respect of the relevant authorisation was made under this Act, the relevant decision-maker would have refused the application;
- (e) any other prescribed grounds.

### **2. Suspension of relevant authorisation**

- (1) The relevant decision-maker may, by written notice to the holder of a relevant authorisation, suspend the relevant authorisation if satisfied that there are grounds for the suspension.
- (2) A notice under subclause (1) is to specify –
  - (a) the grounds for the suspension; and
  - (b) the date or time from which the suspension takes effect; and
  - (c) the period of the suspension; and
  - (d) the actions required, if any, for the suspension to be lifted.

### **3. Cancellation of relevant authorisation**

- (1) The relevant decision-maker may, by written notice to the holder of a relevant authorisation, cancel the relevant authorisation if satisfied that there are grounds for the cancellation.
- (2) A notice under subclause (1) must specify –
  - (a) the grounds for the cancellation; and
  - (b) the date or time from which the cancellation takes effect; and
  - (c) that, after the cancellation takes effect, the holder of the relevant authorisation that has been cancelled is to return, in accordance with the notice, the identity card issued to the holder.
- (3) A relevant authorisation cancelled under this clause has no value.

### **4. Submissions may be made in respect of suspension or cancellation**

- (1) Before suspending or cancelling a relevant authorisation under this Part, the relevant decision-maker must –
  - (a) give written notice to the holder of the relevant authorisation specifying –
    - (i) the relevant decision-maker's intention to suspend, or cancel, the relevant authorisation; and
    - (ii) the proposed grounds for doing so; and
    - (iii) the period during which the holder of the relevant authorisation may make submissions under paragraph (b) ; and

(b) invite the holder of the relevant authorisation to make a submission to the relevant decision-maker about the proposed suspension or cancellation; and

(c) take into account any submission made to the relevant decision-maker by the holder before the deadline for the making of a submission.

(2) A period specified under subclause (1)(a)(iii) is to be at least 30 days after the notice referred to in subclause (1)(a) is given to the holder of the relevant authorisation.

(3) The Secretary is not required to give notice under subclause (1)(a) of a proposed cancellation of a relevant authorisation if –

(a) that authorisation is already suspended; and

(b) a notice was given under that subclause in respect of the suspension before it took effect.

## **5. Immediate suspension in certain circumstances**

(1) The relevant decision-maker may immediately, and without notice, suspend a relevant authorisation if satisfied that –

(a) the suspension is necessary for public health or safety; or

(b) the holder of the relevant authorisation has failed to comply with the relevant authorisation and that failure has resulted in a critical non-compliance; or

(c) the holder of the relevant authorisation has engaged in fraudulent behaviour under the authorisation.

(2) However, if the relevant decision-maker suspends a relevant authorisation without giving prior notice to the holder of the relevant authorisation, the relevant decision-maker must –

(a) give the holder of the relevant authorisation written notice of –

(i) the grounds for the suspension; and

(ii) the actions required, if any, for the suspension to be lifted; and

(b) invite the holder of the relevant authorisation to make a submission to the relevant decision-maker about the suspension by a specified deadline that is at least 30 days after the notice is given to the holder of the relevant authorisation.

(3) If the holder of the relevant authorisation makes a submission to the relevant decision-maker about the suspension before the specified deadline, the relevant decision-maker must –

(a) decide whether the suspension should be revoked or continued, having regard to that submission; and

(b) give written notice of that decision to the holder of the relevant authorisation.

## **6. Effect of suspension of relevant authorisation**

A relevant authorisation is of no effect while it is suspended.

## **7. Voluntary cancellation of relevant authorisation**

(1) The holder of a relevant authorisation may apply to the relevant decision-maker to cancel his or her relevant authorisation.

(2) An application under subclause (1) must –

(a) be in a form approved by the relevant decision-maker; and

(b) be accompanied by the applicable application fee specified in subclause (3), if any; and

(c) include or be accompanied by any information or evidence required by the relevant decision-maker to determine the consequences that may result from the cancellation of the authorisation.

(3) The amount of the application fee is –

- (a) if the relevant decision-maker is the Secretary, the prescribed amount; or
- (b) in any other case, the amount required by the relevant decision-maker.

(4) If the relevant decision-maker grants an application to cancel a relevant authorisation under this clause, the relevant decision-maker is to notify the holder of the relevant authorisation in writing that the application is granted.

(5) On receipt of written notification under subclause (4) in respect of a relevant authorisation, the relevant authorisation is cancelled.

(6) A relevant authorisation cancelled under this clause has no value.

#### **8. Conditions may be imposed as part of suspension or cancellation**

(1) The suspension or cancellation of a relevant authorisation under this Part may be subject to such conditions as the relevant decision-maker imposes.

(2) A condition imposed in respect of a suspension or cancellation of a relevant authorisation –

(a) is to be imposed for the purpose of ensuring –

(i) that all relevant biosecurity matter and carriers are to be dealt with appropriately on the suspension or cancellation of the relevant authorisation; and

(ii) compliance with this Act and any other relevant Act; and

(b) may include, but is not limited to, any conditions to which the relevant authorisation was subject immediately before it was suspended or cancelled.

(3) The relevant decision-maker may, by written notice given to the holder of a suspended relevant authorisation, or the former holder of a cancelled relevant authorisation, attach new conditions to, or vary or revoke any existing conditions imposed in respect of the suspension or cancellation of the relevant authorisation.

(4) A person to whom a condition is imposed under this clause must comply with the condition.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 2 500 penalty units; or

(b) an individual, a fine not exceeding 500 penalty units.

## **SCHEDULE 2 - Biosecurity Advisory Committee**

Section 267

### **PART 1 - Preliminary**

#### **1. Interpretation**

In this Schedule –

*member* means a member of the Biosecurity Advisory Committee.

## PART 2 - Membership

### 1. Term of office

A member is appointed for such period, not exceeding 3 years, as is specified in the member's instrument of appointment and, if eligible, may be reappointed for a single further period, not exceeding 3 years, as is specified in the member's instrument of reappointment.

### 2. Remuneration and conditions of appointment

(1) A member is entitled to be paid such remuneration and allowances as the Minister may determine.

(2) A member who is a State Service employee or State Service officer is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the State Service Act 2000 .

(3) A member holds office on such terms and conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

### 3. Vacation of office

(1) A member vacates office if he or she –

- (a) dies; or
- (b) resigns by written notice given to the Minister; or
- (c) is removed from office under subclause (2) or (3) .

(2) The Minister may remove a member from office if the member –

- (a) is absent from 3 consecutive meetings of the Biosecurity Advisory Committee without the permission of the other members of the Biosecurity Advisory Committee; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
- (c) is convicted of an offence under this Act or an Act in another jurisdiction that relates to biosecurity.

(3) The Minister may remove a member from office if satisfied that the member is unable to perform adequately or competently the duties of office.

(4) A member of the Biosecurity Advisory Committee must not be removed from office other than in accordance with this clause.

### 4. Filling of vacancies

If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

## **PART 3 - Meetings**

### **1. Presiding at meetings**

(1) The Chair of the Biosecurity Advisory Committee is to preside at all meetings of the Biosecurity Advisory Committee at which he or she is present.

(2) If the Chair is not present at a meeting of the Biosecurity Advisory Committee, a member elected by the members present at the meeting is to preside.

### **2. Quorum and voting at meetings**

(1) Six members constitute a quorum at a meeting of the Biosecurity Advisory Committee.

(2) A meeting of the Biosecurity Advisory Committee at which a quorum is present is competent to transact any business of the Biosecurity Advisory Committee.

(3) The person presiding at a meeting of the Biosecurity Advisory Committee has a deliberative vote only.

### **3. General procedure of meetings**

Subject to this Act and the instrument that establishes the Biosecurity Advisory Committee, the Biosecurity Advisory Committee may determine its own practices, procedures and proceedings.

### **4. Expert advice**

Subject to this Act and the instrument that establishes the Biosecurity Advisory Committee, the Biosecurity Advisory Committee may –

(a) advise itself on any relevant matter in any way it thinks fit; and

(b) seek expert advice from any person or body that is relevant to the matter to which the advice relates.

## **SCHEDULE 3 - Legislation Repealed, Rescinded and Revoked**

[Uncommenced]

Section 282

[Commences: Never commenced]

***PART 1 - Animal (Brands and Movement)***

*[Commences: Never commenced]*

- 1. Animal (Brands and Movement) Act 1984 (No. 14 of 1984)*
- 2. Animal (Brands and Movement) Regulations 2014 (No. 126 of 2014)*

]

[Commences: Never commenced

## ***PART 2 - Animal Farming (Registration)***

*[Commences: Never commenced]*

- 1. Animal Farming (Registration) Act 1994 (No. 11 of 1994)*
- 2. Animal Farming (Registration) Regulations 2015 (No. 100 of 2015)*

]

[Commences: Never commenced

***PART 3 - Animal Health***

*[Commences: Never commenced]*

- 1. Animal Health Act 1995 (No. 85 of 1995)*
- 2. Animal Health (Apiaries) Regulations 2011 (No. 122 of 2011)*
- 3. Animal Health Regulations 2016 (No. 67 of 2016)*

]

[Commences: Never commenced]

## ***PART 4 - Plant Quarantine***

*[Commences: Never commenced]*

- 1. Plant Quarantine Act 1997 (No. 62 of 1997)*
- 2. Plant Quarantine Regulations 2017 (No. 36 of 2017)*

]

[Commences: Never commenced

## ***PART 5 - Seeds***

*[Commences: Never commenced]*

- 1. Seeds Act 1985 (No. 87 of 1985)*
- 2. Seeds Regulations 2010 (No. 52 of 2010)*

]

[Commences: Never commenced

***PART 6 - Vermin***

*[Commences: Never commenced]*

- 1. Vermin Control Act 2000 (No. 76 of 2000)*

]

[Commences: Never commenced

## ***PART 7 - Weed Management***

*[Commences: Never commenced]*

1. *Weed Management Act 1999 (No. 105 of 1999)*
2. *Weed Management Regulations 2017 (No. 116 of 2017)*
3. *Weed Management (Declared Weeds) Order 2001 (No. 135 of 2001)*
4. *Weed Management (Declared Weeds) Order 2005 (No. 135 of 2005)*
5. *Weed Management (Declared Weeds) Order 2011 (No. 48 of 2011)*
6. *Weed Management (Declared Weeds) Amendment Order 2012 (No. 33 of 2012)*
7. *Weed Management (Declared Weeds) Order 2012 (No. 34 of 2012)*
8. *Weed Management (Declared Weeds) Order 2017 (No. 25 of 2017)*

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