

South Australia

Biosecurity Bill 2023

A BILL FOR

An Act to protect and enhance South Australia's biosecurity for the benefit of South Australian industries, the environment and the community by providing for the prevention, detection and control of animal and plant pathogens, pests and other biosecurity matter; to repeal the *Dog Fence Act 1946*, the *Impounding Act 1920*, the *Livestock Act 1997* and the *Plant Health Act 2009*; to make related amendments to the *Fisheries Management Act 2007*; and for other purposes.

Contents

Part 1—Preliminary

Division 1—Formal

- 1 Short title
- 2 Commencement

Division 2—Interpretation and key concepts

- 3 Interpretation
- 4 Meaning of *biosecurity event*
- 5 Meaning of *biosecurity impact*
- 6 Meaning of *biosecurity matter*
- 7 Meaning of *carrier*
- 8 Meaning of *dealing*
- 9 Meaning of *emergency*
- 10 Meaning of *pest*
- 11 Meaning of *suitable person*
- 12 Meaning of *reasonably practicable*

Division 3—Classification of matter and dealings

- 13 Prohibited matter
- 14 Prohibited and regulated dealings

Division 4—Principles that apply to biosecurity duties

- 15 Duty not transferable
- 16 Person may have more than one duty
- 17 More than one person can have a duty
- 18 Duty to prevent, eliminate or minimise biosecurity risk

Division 5—Extraterritorial application

- 19 Extraterritorial application

Division 6—Status of Act

- 20 Interaction with other Acts
- 21 Act does not give rise to or affect civil causes of action

Part 2—Objects

- 22 Objects

Part 3—Administration**Division 1—Chief Officers and deputies**

- 23 Chief Officers
- 24 Deputy Chief Officers
- 25 Roles of Deputy Chief Officers

Division 2—Authorised officers

- 26 Appointment of authorised officers
- 27 Identity cards
- 28 Use of assistants
- 29 Use of animals
- 30 Provision of assistance
- 31 Performance and exercise of functions and powers in emergency
- 32 Extraterritorial performance and exercise of functions and powers
- 33 Hindering etc persons engaged in the administration of Act

Division 3—Authorised analysts

- 34 Authorised analysts

Division 4—Statutory corporations

- 35 Establishment of statutory corporations by regulation
- 36 Dog Fence Board

Division 5—Quarantine stations

- 37 Quarantine stations

Division 6—Register

- 38 Register

Division 7—Delegations

- 39 Delegations

Part 4—Biosecurity duties, dealings and measures**Division 1—General biosecurity duty**

- 40 General biosecurity duty
- 41 Failure to comply with general biosecurity duty
- 42 Specified biosecurity requirements

Division 2—Dealings

- 43 Prohibited matter
- 44 Prohibited dealings

45	Regulated dealings
Division 3—Other requirements	
46	Manifests
47	Biosecurity matter sold for propagation
48	Packaging and labelling for sale
Division 4—Duty to notify biosecurity event	
49	Biosecurity duty to notify biosecurity event
50	Failure to comply with biosecurity duty
51	Protection against self-incrimination
Part 5—Registration scheme	
Division 1—Preliminary	
52	Nature of biosecurity registration
Division 2—Obtaining registration	
53	Application for registration
54	Grant or refusal of biosecurity registration
55	Duration of biosecurity registration
56	Periodic fees and annual returns
57	Variation of biosecurity registration
Division 3—Renewal of biosecurity registration	
58	Renewal of biosecurity registration
59	Grant or refusal of renewal of biosecurity registration
Division 4—Conditions of biosecurity registration	
60	Conditions of biosecurity registration
61	Compliance with standards
62	Conditions requiring specified works or measures
63	Conditions imposing alternative arrangements
64	Conditions for insurance cover
65	Conditions requiring biosecurity audits
66	Conditions requiring financial assurances
67	Conditions for record keeping and the provision of information
68	Conditions to take effect later
69	Failure to comply with condition
Division 5—Suspension, cancellation or surrender of biosecurity registration	
70	Grounds for suspension or cancellation of biosecurity registration
71	Suspension of biosecurity registration
72	Cancellation of biosecurity registration
73	Voluntary suspension of biosecurity registration
74	Effect of suspension, cancellation or surrender
Division 6—Identification codes	
75	Identification codes

Part 6—Biosecurity accreditation, auditing and certification—administration**Division 1—Preliminary**

- 76 Interpretation
- 77 Appointment policy for biosecurity auditors
- 78 Accreditation policy for biosecurity certifiers

Division 2—Accreditation authorities

- 79 Accreditation authorities
- 80 Responsible accreditation authority

Division 3—Applications

- 81 Applications
- 82 Grant or refusal of application
- 83 Scope of appointment or accreditation
- 84 Duration of relevant authorisation
- 85 Variation of relevant authorisation

Division 4—Renewal of relevant authorisation

- 86 Applications to renew
- 87 Grant or refusal of renewal of relevant authorisation

Division 5—Conditions of relevant authorisation

- 88 Conditions of relevant authorisation
- 89 Conditions of approval as accreditation authority
- 90 Conditions of appointment as a biosecurity auditor
- 91 Conditions of accreditation as a biosecurity certifier
- 92 Failure to comply with condition

Division 6—Suspension, cancellation or surrender of relevant authorisation

- 93 Grounds for suspension or cancellation of relevant authorisation
- 94 Suspension of relevant authorisation
- 95 Cancellation of relevant authorisation
- 96 Immediate suspension in certain circumstances
- 97 Voluntary suspension of relevant authorisation
- 98 Effect of suspension, cancellation or surrender

Part 7—Biosecurity audits and certification**Division 1—Biosecurity audits****Subdivision 1—Preliminary**

- 99 Interpretation

Subdivision 2—Authority to act

- 100 Biosecurity auditors
- 101 Approval of authorised officer to perform functions of biosecurity auditor
- 102 Entry to premises by biosecurity auditor
- 103 Use of assistants

Subdivision 3—Biosecurity audits generally

- 104 Biosecurity audits
- 105 Biosecurity audit mandatory in certain circumstances
- 106 Reporting requirements
- 107 Biosecurity auditor to provide immediate report in certain circumstances

Subdivision 4—Accreditation audits

- 108 Accreditation audits
- 109 Imposition of requirement to perform accreditation audit
- 110 Engagement of auditor
- 111 Functions of biosecurity auditors - accreditation audits
- 112 Recovery of fee for accreditation audits
- 113 Use of biosecurity audits

Subdivision 5—Compliance audits

- 114 Compliance audits
- 115 Imposition of requirement to perform compliance audit
- 116 Decision to require compliance audits
- 117 Audit frequency policy
- 118 Engagement of auditor
- 119 Functions of biosecurity auditor—compliance audits
- 120 Recovery of fee for compliance audit
- 121 Use of compliance audits

Subdivision 6—Related matters

- 122 Audit agreements
- 123 Hindering etc biosecurity auditors

Division 2—Biosecurity certificates

- 124 Biosecurity certifier may issue biosecurity certificates
- 125 Content, form and duration of biosecurity certificates
- 126 Specific powers of biosecurity certifiers
- 127 Fees
- 128 Recognition of interstate biosecurity certificates
- 129 Approval of authorised officers to perform functions of biosecurity certifiers
- 130 Use of assistance
- 131 Offences

Part 8—Permits**Division 1—Preliminary**

- 132 Interpretation
- 133 Types of permit
- 134 Effect of permit

Division 2—Applications

- 135 Application for permit
- 136 Grant or refusal of permit
- 137 Duration of permit
- 138 Variation of permit

Division 3—Renewal of permit

- 139 Renewal of permit
- 140 Grant or refusal of renewal of permit

Division 4—Conditions of permit

- 141 Conditions of permit
- 142 Conditions relating to insurance
- 143 Conditions requiring biosecurity audits
- 144 Conditions requiring financial assurances
- 145 Conditions to take effect later
- 146 Failure to comply with condition

Division 5—Suspension, cancellation or surrender of permit

- 147 Grounds for suspension or cancellation of permit
- 148 Suspension of permit
- 149 Cancellation of permit
- 150 Voluntary surrender of permit
- 151 Effect of suspension, cancellation or surrender

Part 9—Biosecurity programs and agreements

Division 1—Approved biosecurity programs

- 152 Preparation of draft biosecurity program
- 153 Approval of draft biosecurity program
- 154 Amendment of approved biosecurity program
- 155 Termination of approved biosecurity program
- 156 Cost of implementing approved biosecurity program

Division 2—Government biosecurity programs

- 157 Government biosecurity programs

Division 3—Biosecurity control agreements

- 158 Biosecurity control agreements

Part 10—Biosecurity zones

Division 1—General scheme

- 159 Biosecurity zones
- 160 Biosecurity zone measures
- 161 Failure to comply with a biosecurity zone measure
- 162 Chief Officer may authorise required action and recover costs

Division 2—Accreditation of biosecurity zones

- 163 Accreditation of biosecurity zones

Division 3—Limitations on regulation-making power

- 164 Interpretation
- 165 Detention or treatment of persons
- 166 Destruction requirements
- 167 Consultation requirements

Division 4—Warrants

168 Warrants

Part 11—Orders and directions

Division 1—Emergency orders

169 Emergency orders
170 Duration of emergency order
171 Notice of emergency order generally
172 Notice of emergency order relating to specific property
173 Emergency zones
174 Emergency measures
175 Additional emergency measures
176 Measures which may not be emergency measures
177 Inspection of persons
178 Emergency order prevails
179 Offences
180 Variation or revocation of emergency order
181 SA Police

Division 2—Control orders

182 Control orders
183 Content of control orders
184 Duration of control orders
185 Notice of control orders generally
186 Notice of control orders relating to specific property
187 Control zones
188 Control measures
189 Measures which may not be control measures
190 Destruction requirements
191 Consultation requirements
192 Offences
193 Variation or revocation of control order

Division 3—Biosecurity directions

Subdivision 1—Preliminary

194 Types of biosecurity direction
195 Period for which biosecurity direction has effect
196 Related provision

Subdivision 2—General biosecurity directions

197 General biosecurity direction
198 How general biosecurity direction is given

Subdivision 3—Individual biosecurity directions

199 Individual biosecurity direction
200 How individual biosecurity direction is given
201 Special emergency powers—inspection and treatment measures
202 Recovery of costs

Subdivision 4—Related provisions

- 203 Measures which may not be included in biosecurity direction
- 204 Interaction with other Acts
- 205 Variation or revocation of biosecurity direction
- 206 Offences

Division 4—Action on default

- 207 Action on default

Division 5—Warrants

- 208 Warrants

Part 12—Reimbursement and compensation**Division 1—Reimbursement**

- 209 Eligibility for reimbursements
- 210 Claims for reimbursement
- 211 Amount of reimbursement
- 212 Determination of value
- 213 Reimbursement may be withheld
- 214 Payment of reimbursement
- 215 Recovery of reimbursement
- 216 Offence to make false claim

Division 2—Compensation

- 217 Compensation for loss or damage as consequence of a biosecurity order or direction

Part 13—Review**Division 1—Preliminary**

- 218 Interpretation

Division 2—Internal review

- 219 Application for internal review
- 220 Consideration of application for internal review
- 221 Operation and implementation of decision or direction subject to review

Division 3—External review

- 222 Application to Tribunal

Part 14—Functions and powers of authorised officers**Division 1—Preliminary**

- 223 Purposes for which functions and powers under Part may be exercised

Division 2—Information gathering

- 224 Exercise in conjunction with other powers
- 225 Power to require information and records
- 226 Power to require answers to questions
- 227 Recording of evidence

- 228 Power of authorised officer to demand name and address
- 229 Requiring information in case of an emergency

Division 3—Power to enter

- 230 Power to enter
- 231 Entry to residential premises

Division 4—Investigation powers

- 232 Powers that can be exercised on premises or in relation to a vehicle
- 233 Recovery of fee for action taken

Division 5—Provisions relating to seizure

- 234 Provisions relating to seizure

Division 6—Warrants

- 235 Warrants

Division 7—Related matters

- 236 Care to be taken
- 237 Detention or treatment of persons
- 238 Destruction requirements
- 239 Destruction proposal
- 240 Interaction with other Acts
- 241 Interference with device, trap or equipment

Part 15—Specific biosecurity offences

- 242 Interpretation
- 243 Act to cause serious or material harm or risk
- 244 Act that may cause harm or risk
- 245 Substantial harm and material harm
- 246 Alternative finding

Part 16—Legal proceedings

Division 1—Offences generally

- 247 Classification of offence
- 248 Proceedings for offences
- 249 Offences by employers (vicarious liability)
- 250 Offences by bodies corporate
- 251 Offences by employees and agents
- 252 Continuing offences
- 253 General defence of due diligence
- 254 Defence of lawful excuse
- 255 Actions done under direction of an authorised person
- 256 Common carriers
- 257 Burden of proof in certain circumstances
- 258 Expiation of offences

Division 2—Evidentiary provisions

- 259 Evidentiary certificates
- 260 Evidence of allegation

- 261 Evidence of authorised analyst
- 262 Evidence of state of mind of body corporate
- 263 Evidence of publication of instruments on website
- 264 Evidence of part to be evidence of whole
- 265 Evidence in relation to bees

Division 3—Court orders

- 266 Preliminary
- 267 Orders for restoration and prevention
- 268 Orders for costs, expenses and compensation at time offence proved
- 269 Recovery of costs, expenses and compensation after offence proved
- 270 Orders regarding costs and expenses of investigation
- 271 Orders regarding financial benefits
- 272 Prohibition orders
- 273 Forfeiture
- 274 Publication order
- 275 Failure to comply with orders

Part 17—Miscellaneous

- 276 Reasonable suspicion of carrier
- 277 Reasonable suspicion of infection
- 278 Reasonable suspicion of infestation
- 279 Public warning statements
- 280 Management of stray stock
- 281 Facilities for temporary detention of stray stock
- 282 Implied contractual terms and conditions
- 283 False or misleading information
- 284 Self-incrimination
- 285 Vicarious liability
- 286 Service of orders, notices, directions and other instruments and documents
- 287 Description of land in instruments
- 288 Statutory declarations
- 289 Protection from liability
- 290 Collection, use and disclosure of information
- 291 Immunity
- 292 Planning or other requirements for authorised actions excluded
- 293 Requirements may continue to have effect
- 294 Civil proceedings by the Crown
- 295 Application of *Personal Property Securities Act 2009* of the Commonwealth
- 296 Establishment of biosecurity advisory groups
- 297 Charges on land
- 298 Use of equipment or computers to make decisions
- 299 Defence if act authorised under another Act
- 300 Exemption from Act
- 301 Regulations, notices and instruments

Schedule 1—Statutory corporations

Part 1—Interpretation

- 1 Interpretation

Part 2—Boards

- 2 Conditions of office
- 3 Allowances and expenses
- 4 Validity of acts
- 5 Proceedings
- 6 General management duties of board

Part 3—Staff

- 7 Staff

Part 4—Committees

- 8 Committees

Part 5—Operational, property and financial matters

- 9 Common seal
- 10 Specific powers
- 11 Property to be held on behalf of Crown
- 12 Transfer of property
- 13 Effect of transfers
- 14 Registering authorities to note transfer
- 15 Audit and accounts

Part 6—Performance and reporting obligations

- 16 Objectives
- 17 Provision of information and reports to Minister
- 18 Annual report

Schedule 2—Dog Fence Board

Part 1—Preliminary

- 1 Interpretation

Part 2—Dog Fence Board

- 2 Members of board
- 3 Term of office
- 4 Remuneration
- 5 Conflict of interest
- 6 Removal from office and vacancies
- 7 Meetings
- 8 Staff

Part 3—Provisions as to dog fences

- 9 Primary dog fence
- 10 Secondary dog fences
- 11 Construction work
- 12 General authorisation
- 13 Duty of owner to maintain dog fence and destroy wild dogs
- 14 Powers and duties of board as to dog fences
- 15 Dog fences on Crown land
- 16 Payments to owners of dog fences

17 Ownership of dog fences

Part 4—Financial provisions

18 Rates on ratable land

19 Special rate in respect of local board areas

20 Payment and recovery of rates and special rates

21 Contributions by councils as alternative to rating by board

22 Charge payable by occupiers of land outside dog fence

23 Subsidy

24 Borrowing and investment powers of board

25 Dog Fence Fund

Part 5—Local dog fence boards

26 Establishment of local dog fence boards

27 Borrowing and investment powers of local dog fence boards

Part 6—Related matters

28 Inspection of fences

29 Effect of notice

30 Recovery of amounts payable to board

31 Penalty for damaging or removing a dog fence

32 Leaving gate open

Schedule 3—Specific measures and provisions to deal with biosecurity risk or biosecurity impact

Schedule 4—Biosecurity advisory groups

1 Composition of a biosecurity advisory group

2 Conditions of membership

3 Validity of acts

4 Conflict of interest under the Public Sector (Honesty and Accountability) Act

5 Proceedings

6 Annual report

Schedule 5—Regulations

Schedule 6—Related amendments, repeals and transitional provisions

Part 1—Preliminary

1 Amendment provisions

Part 2—Amendment of *Fisheries Management Act 2007*

2 Amendment of long title

3 Amendment of section 78—Unauthorised activities relating to exotic organisms or noxious species prohibited

4 Repeal of section 83

5 Repeal of section 130

Part 3—Repeal of Acts

6 Repeal of Acts

Part 4—Transitional provisions

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

Division 1—Formal

1—Short title

5 This Act may be cited as the *Biosecurity Act 2023*.

2—Commencement

 This Act will come into operation on a day to be fixed by proclamation.

Division 2—Interpretation and key concepts

3—Interpretation

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

accreditation audit — see section 108;

accreditation authority — see section 79;

accreditation policy means an accreditation policy for biosecurity certifiers approved by the Chief Executive under section 78;

15 ***act*** includes an omission;

animal means any of the following, whether living or dead and including at any stage of its development:

20 (a) a member of the animal kingdom, other than a human being, including an amphibian, bird, crustacean, fish, insect, mammal, mollusc, reptile or 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,

 but does not include any animal, matter or thing excluded by the regulations from the ambit of this definition;

25 ***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 intended to be fed to an animal;

animal product includes:

30 (a) the hide, skin, hair, wool, feather, shell, horn, scale, fin or hoof of an animal;

 (b) any part of the viscera or offal of an animal;

 (c) a carcass, or part of a carcass, of an animal;

Biosecurity Bill 2023

Part 1—Preliminary

Division 2—Interpretation and key concepts

- (d) meat, fat, eggs, honey, milk, whey, cream, butter, cheese and other primary produce derived from an animal;
- (e) urine, faeces, bone or blood of an animal, or any article or any article of substance derived from the urine, faeces, bone or blood of an animal;
- 5 (f) any secretion or excretion of an animal;
- (g) any product or biological preparation prepared, or derived, from any tissue, secretion, excretion or other part of an animal;
- (h) any other matter or thing identified by the regulations as being included within the ambit of this definition;

10 **appointment policy** means an appointment policy for biosecurity auditors approved by the Chief Executive under section 77;

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

approved form means a form approved by the Chief Executive;

15 **approved manner** means a manner approved by the Chief Executive;

assess includes investigate;

audit frequency policy — see section 117;

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

20 **authorised analyst** means a person appointed as an authorised analyst under section 34;

authorised officer means—

- (a) the Chief Veterinary Officer and any Deputy Chief Veterinary Officer; or
- (b) the Chief Plant Protection Officer and any Deputy Chief Plant Protection Officer; or
- 25 (c) a person appointed by the Minister as an authorised officer under section 26; or
- (d) a person taken to have been appointed as an authorised officer under section 26;

bee or **managed bee** means—

- 30 (a) a managed bee of the species *Apis mellifera* L. genus *Apis* or *Megachile*; or
- (b) any other species of bee identified by the regulations as being included within the ambit of this definition;

biosecurity advisory group means a biosecurity advisory group established by the Minister under section 296;

35 **biosecurity audit** — see section 104;

biosecurity auditor means a person who holds an appointment as a biosecurity auditor under Part 6 or as provided by section 101;

biosecurity certificate means a certificate issued under Part 7 Division 2;

biosecurity certifier means a person who holds an accreditation as a biosecurity certifier under Part 6;

biosecurity control agreement means an agreement under Part 9 Division 3;

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

5 **biosecurity duty** means a duty referred to in section 40 or 49;

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

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

- 10 (a) to which South Australia is a party; and
(b) 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 4;

biosecurity impact — see section 5;

15 **biosecurity matter** — see section 6;

biosecurity registration means registration granted under Part 5;

biosecurity risk means a risk of a biosecurity impact occurring;

biosecurity zone — see section 159;

biosecurity zone measure — see section 160;

20 **carrier** — see section 7;

Chief Executive means the Chief Executive of the Department and includes a person for the time being acting in that position;

Chief Officer means—

- 25 (a) the Chief Plant Protection Officer; or
(b) the Chief Veterinary Officer;

Chief Plant Protection Officer means the Chief Plant Protection Officer appointed under section 23;

Chief Veterinary Officer means the Chief Veterinary Officer appointed under section 23;

30 **compliance audit** — see section 114;

conduct includes an omission;

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;

35 **contravene** includes cause or permit a contravention to occur, or a failure to comply with a relevant requirement;

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

control order means an order made under section 182;

corresponding law means a law of another State or of the Commonwealth declared by the regulations to be a law that corresponds to this Act;

council means a council within the meaning of the *Local Government Act 1999*;

5 **deal** — see section 8;

Department means the administrative unit designated from time to time by the Minister by notice in the Gazette as being the Department primarily responsible for assisting the Minister in the administration of this Act;

Department website means the website operated by, or on behalf of, the Department;

10 **Deputy Chief Officer** means—

- (a) a Deputy Chief Plant Protection Officer; or
- (b) a Deputy Chief Veterinary Officer;

Deputy Chief Plant Protection Officer means a Deputy Chief Plant Protection Officer appointed under section 24;

15 **Deputy Chief Veterinary Officer** means a Deputy Chief Veterinary Office appointed under section 24;

director, in relation to a body corporate, includes—

- (a) any member of the governing body of the body corporate; and
 - (b) any other person who is in a position to control or influence substantially the affairs of the body corporate;
- 20

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;
 - (b) a syndrome, or clinically identifiable set of signs or symptoms in an organism, whether or not the cause is known;
 - (c) a disease agent;
 - (d) a pathogen;
 - (e) any other matter or thing identified by the regulations as being included within the ambit of this definition,
- 25
30

but does not include any matter or thing excluded by the regulations from the ambit of this definition;

disease agent includes the following:

- (a) a bacterium, virus, fungus, parasite, prion, protozoa, phytoplasma, insect, microorganism or any other organism or pathogen;
 - (b) any other matter or thing identified by the regulations as being included within the ambit of this definition;
- 35

Dog Fence Board—see section 36;

emergency — see section 9;

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

emergency order means an order made under section 169;

emergency permit means a permit referred to in section 133(a);

5 **emergency zone** — see section 173;

engage in a dealing — see section 8;

entity means any person, including the Crown, regardless of whether the person—

- (a) is comprised of 1 or more individuals; or
- (b) is incorporated or unincorporated; or
- 10 (c) is an organisation or enterprise; 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;
- 15 (b) any organic matter, inorganic matter or organisms;
- (c) human-made or modified structures or areas;
- (d) interacting natural ecosystems that each include 1 or more components referred to in paragraph (a) or (b);

20 **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;

25 **fish** has the same meaning as in the *Fisheries Management Act 2007*;

function includes an authority or duty, and perform a function includes to perform a duty;

general biosecurity direction — see section 194(2);

general biosecurity duty — see section 40;

30 **government agency** means—

- (a) a Minister; or
- (b) a government department; or
- (c) any other agency or instrumentality of the Crown; or
- (d) a council or any other body established under the *Local Government Act 1999*;

35

Government biosecurity program means a program under Part 9 Division 2;

import, in relation to any biosecurity matter, carrier or thing, means—

- (a) to import the biosecurity matter, carrier or thing into South Australia from outside the State; or
- (b) to cause, permit or enable anything mentioned under paragraph (a) to occur;

5 **incursion** means the presence, or suspected presence, of a pest or disease in South Australia, or any part of South Australia, which has not previously been present in South Australia, or that part of South Australia, where the pest or disease has, or is suspected or reasonably believed to pose, a biosecurity risk or have a biosecurity impact;

10 **individual biosecurity direction** — see section 194(3);

information includes documents (including copies of any certificate or other instrument of registration or accreditation under this Act), recordings, registers, data and electronic communications;

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

interstate biosecurity certificate is a certificate or other document recognised under section 128;

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

20 **jurisdiction** includes a jurisdiction outside Australia;

label includes a ticket, manifest, cartnote, stamp, tag, barcode or sticker;

land includes:

- 25 (a) inland waters (including any body of water or watercourse of any kind whether occurring naturally or artificially created) and coastal waters within the meaning of the *Fisheries Management Act 2007*;
- (b) land that is covered by water;
- (c) water in, on or below land;
- (d) air, or space, above or below the surface of land;
- (e) the subsoil and substrate of land;
- 30 (f) buildings or other structures permanently fixed to land, or part of such buildings or structures;
- (g) any other thing identified by the regulations as being included within the ambit of this definition,

35 and also includes, according to its context, a legal estate or interest in, or right in respect of, land;

move includes transport or distribute;

non-indigenous means an animal or plant that is not indigenous to South Australia;

occupier, in relation to land or premises, includes any person who has the care, control or management of the land or 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 part of the body of a slaughtered animal which is removed in the course of dressing the body or part of the body;

5 **organism** means any living thing, including an animal and a human;

permit means a permit granted under Part 8;

pest — see section 10;

10 **plant** includes any member of the *Plantae*, *Fungi* or *Protista* kingdom, whether whole or in part and whether alive or dead and including at any stage of its development but does not include any plant excluded by the regulations from the ambit of this definition;

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

plant product includes:

- 15 (a) the whole, or any part, of a flower, fruit, nut, seed, leaf, bulb, corm, tuber or stem that has been separated from a plant;
- (b) dried plant material or timber;
- (c) any other matter or thing identified by the regulations as being included within the ambit of this definition;

20 **premises** includes any land, building or structure (including a moveable building or structure), whether constituting a public place or a private place and whether built or not;

prohibited dealing means a dealing declared to be a prohibited dealing under section 14;

prohibited dealing permit means a permit referred to in section 133(c);

25 **prohibited matter** means biosecurity matter declared to be prohibited matter under section 13;

prohibited matter permit means a permit referred to in section 133(b);

public sector agency means a public sector agency under the *Public Sector Act 2009*;

30 **public sector employee** means a public sector employee under the *Public Sector Act 2009*;

quarantine station means a place declared to be a quarantine station under section 37;

reasonably practicable — see section 12;

35 **record** includes any book, document or writing and any other form or source of information compiled, recorded or stored by computer or any other process, in any other manner or by any other means;

registered entity means a person who holds a biosecurity registration;

Registrar-General means the Registrar-General appointed under the *Real Property Act 1886*;

regulated dealing means a dealing declared to be a regulated dealing under section 14;

40 **repealed Act** means an Act repealed by this Act;

relevant Chief Officer — see subsection (3);

requirement includes a duty or obligation;

residential premises means any part of premises that is used only for residential purposes and includes the curtilage of any premises but does not include land outside a curtilage;

responsible accreditation authority — see section 80;

sell includes:

- (a) sell by wholesale, retail, auction or tender;
- (b) barter or exchange;
- (c) supply for profit;
- (d) offer for sale, receive for sale or expose for sale;
- (e) consign or deliver for sale;
- (f) have in possession for sale;
- (g) cause or allow anything referred to in a preceding paragraph to be done;

specified biosecurity requirement — see section 42;

State includes a Territory;

statutory corporation means a statutory corporation established under Part 3 Division 4;

thing includes—

- (a) biosecurity matter and carriers;
- (b) any substance;

treatment measure means a treatment or process for the prevention, elimination, minimisation, control or management of a biosecurity matter, biosecurity risk or suspected biosecurity risk, or biosecurity impact (including cleaning, fumigation, disinfection, medication, vaccination and inoculation);

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

variation of conditions includes an addition, deletion or substitution, and **to vary** has a corresponding meaning;

vehicle includes:

- (a) a motor vehicle;
- (b) a train or rolling stock;
- (c) a caravan or trailer;
- (d) an aeroplane, helicopter, drone or other aircraft;
- (e) a vessel;
- (f) plant or equipment designed to be moved or operated by a driver;

(g) any thing within the ambit of a preceding paragraph that is operated or controlled remotely by a person or computer rather than by a driver, pilot or other person on the actual thing;

(h) any other thing identified by the regulations as being included within the ambit of this definition;

vessel includes:

(a) a ship, boat, barge, oil rig, hovercraft, ferry, raft or other water craft;

(b) a pontoon, floating pier or other floating structure;

veterinary surgeon means a person registered as a veterinary surgeon under the *Veterinary Practice Act 2003*;

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

(2) In this Act, a reference to a 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) For the purposes of this Act, the relevant Chief Officer in relation to particular biosecurity matter is the Chief Officer who is designated as the relevant Chief Officer in relation to that particular biosecurity matter by the Chief Executive by notice published on the Department website.

4—Meaning of *biosecurity event*

(1) For the purposes of this Act, each of the following events is a *biosecurity event*:

(a) the presence, or suspected presence, in South Australia, or any part of South Australia, of prohibited matter;

(b) the incursion of a pest or an animal or plant disease, regardless of whether the pest or disease, or cause of the pest or disease, is known or identified;

(c) the presence, or suspected presence, of a contaminant in, or on, biosecurity matter or carrier that is, or is suspected to be, a biosecurity impact;

(d) any prescribed event or circumstance.

(2) However, an event or circumstance is not a biosecurity event for the purposes of this Act if it is excluded from the ambit of this section by the regulations.

5—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 a biosecurity matter or carrier, being an adverse effect that is the result of, or related to—

(a) the introduction, presence, spread or increase of an animal disease or a plant disease into or within South Australia, or any part of South Australia; or

(b) the introduction, presence, spread or increase of a pest into or within South Australia, or any part of South Australia; or

Biosecurity Bill 2023

Part 1—Preliminary

Division 2—Interpretation and key concepts

- (c) stock food or any fertiliser; or
- (d) any animal or plant, or the product of any animal or plant, that is contaminated, or exposed to any contaminant; or
- (e) a risk to public safety, or a public nuisance, caused by managed bees; or
- 5 (f) any thing or circumstance that is prescribed to have biosecurity impact.
- (2) For the purposes of subsection (1)(d), 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
- 10 would normally be used; or
- (b) a risk to human health, human activity or the environment; or
- (c) unfit to export or other trade for which it would normally be used.
- (3) However, a thing or circumstance is not a biosecurity impact for the purposes of this Act if it is excluded from the ambit of this section by the regulations.

6—Meaning of *biosecurity matter*

In this Act, *biosecurity matter* includes the following:

- (a) an animal, plant or other organism, other than a human;
- (b) a part of an animal, plant or other organism, other than a human;
- (c) an animal product or plant product;
- 20 (d) an animal disease or 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);
- 25 (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.

7—Meaning of *carrier*

- (1) In this Act, a *carrier* means any thing (other than a human), whether alive, dead or
- 30 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.
- (3) However, an object or thing is not a carrier for the purposes of this Act if it is
- 35 excluded from the ambit of this section by the regulations.

8—Meaning of *dealing*

- (1) In this Act, a person *deals* with biosecurity matter or a carrier, or engages in a dealing with a biosecurity matter or a carrier, if the person—
- (a) keeps or manages the biosecurity matter or carrier; or
 - 5 (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) buys or sells the biosecurity matter or carrier; or
 - 10 (g) disposes of, or destroys, the biosecurity matter or carrier; or
 - (h) 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
 - (i) moves or conveys the biosecurity matter or carrier; or
 - (j) releases the biosecurity matter or carrier into the environment, or from
 - 15 captivity or confinement; or
 - (k) uses, or treats, the biosecurity matter or carrier; or
 - (l) breeds, propogates, grows, raises, feeds, clones or cultures the biosecurity matter or carrier; or
 - (m) experiments with the biosecurity matter or carrier; or
 - 20 (n) displays the biosecurity matter or carrier; or
 - (o) enters into an agreement or arrangement to deal with the biosecurity matter or carrier; or
 - (p) causes, permits or arranges for a dealing with the biosecurity matter, or carrier, to occur; or
 - 25 (q) 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 has possession, care or control of the biosecurity matter or carrier for the entire time when the biosecurity matter or carrier was on the
- 30 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.

9—Meaning of *emergency*

- 35 (1) In this Act, an *emergency* includes:
- (a) an act or event in respect of which an emergency order has been made; or
 - (b) the occurrence, suspected occurrence or imminent occurrence of a biosecurity emergency.

(2) In this Act, an act or function is performed, or a power is exercised, by a person in an emergency (or in the case of an emergency) if the person, at the time of performing the act or function or exercising the power (as the case may be), reasonably believes or suspects that—

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

10—Meaning of *pest*

(1) In this Act, an animal or plant is a *pest*—

15 (a) if it is a non-indigenous animal or a non-indigenous plant (as the case may be) and it has an adverse effect on, or is suspected of having an adverse effect on, the environment, the community or the economy by—

- (i) competing with other organisms for resources, including food, water, nutrients, habitat and sunlight; or
- (ii) destroying or damaging the habitat of other organisms; or
- (iii) preying or feeding on other organisms; or
- 20 (iv) transmitting disease to other organisms; or
- (v) causing harm to other organisms through toxicity or disturbance; or
- (vi) reducing the productivity of any primary industry, or the value of any primary produce or commodity; or
- (vii) damaging infrastructure; or
- 25 (viii) reducing the amenity or aesthetic value of premises; or
- (ix) harming or reducing biodiversity; or
- (x) doing any other prescribed thing or having any other prescribed effect; or

30 (b) if it is an animal or plant declared by the Minister to be a pest for the purposes of this Act.

(2) However, an animal or plant is not a pest if it is excluded from the ambit of subsection (1) by the regulations.

(3) A declaration of the Minister under this section—

- 35 (a) must be by notice in the Gazette; and
- (b) may be varied or revoked by the Minister by further notice in the Gazette.

11—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 a person is, or is no longer, a suitable person:

- 5 (a) if the person has been found guilty of an offence under this Act or a repealed Act;
- (b) if the person has been found guilty of an offence against any other Act or law that—
- 10 (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 been found guilty of an offence of dishonesty;
- (d) if the person has failed to comply with a requirement of this Act or a repealed Act, or a requirement or condition of an authorisation, registration or other authority issued or granted under this Act or a repealed Act;
- 15 (e) if there has been an unfavourable accreditation audit or biosecurity audit in respect of the person;
- (f) any prescribed matter;
- (g) any other matter that the person considering the application, or making the decision, considers relevant to the application or decision.
- 20

12—Meaning of *reasonably practicable*

Reasonably practicable, in relation to the prevention, elimination, minimisation, control or management of a biosecurity risk, means that which is, or was at a particular time, reasonably able to be done, taking into account and weighing up all relevant matters, including—

25

- (a) the biosecurity risk concerned; and
- (b) the degree of biosecurity impact that arises, or might arise, from the biosecurity risk; and
- 30 (c) what the concerned person knows, or ought reasonably to know, about the biosecurity risk and the ways of preventing, eliminating, minimising, controlling or managing the risk; and
- (d) the availability and suitability of ways to prevent, eliminate, minimise, control or manage the biosecurity risk; and
- 35 (e) the cost associated with available ways of preventing, eliminating, minimising, controlling or managing the risk, including whether the cost is grossly disproportionate to the risk.

Division 3—Classification of matter and dealings

13—Prohibited matter

- (1) The Minister may, by notice in the Gazette, declare any biosecurity matter, or class of biosecurity matter, to be *prohibited matter* if the Minister is satisfied that—
- 5 (a) the biosecurity matter, or class of biosecurity matter, poses a significant biosecurity risk to South Australia, or a part of South Australia; 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.
- 10 (2) The Minister may, by notice in the Gazette, declare any carrier, or class of carriers, to be *prohibited matter* if the Minister is satisfied that—
- (a) the carrier, or class of carriers, poses a significant biosecurity risk to South Australia, or a part of South Australia; and
- 15 (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
- 20 (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.

14—Prohibited and regulated dealings

- (1) The regulations may declare a dealing to be—
- (a) a *prohibited dealing* in relation to South Australia, or a part of South Australia; or
- 25 (b) a *regulated dealing* in relation to South Australia, or a part of South Australia.
- (2) A regulation should only be made under this section on the recommendation of the Minister on the basis that the Minister considers the declaration is appropriate for the administration or operation of this Act in relation to South Australia, or a specified
- 30 part of South Australia.

Division 4—Principles that apply to biosecurity duties

15—Duty not transferable

A biosecurity duty cannot be transferred to another person.

16—Person may have more than one duty

35 A person can have more than 1 biosecurity duty.

17—More than one person can have a duty

- (1) More than 1 person can concurrently have the same biosecurity duty.

- (2) Each person who has a biosecurity duty must discharge that duty to the standard required by this Act even if another person has the same duty.
- (3) If more than 1 person has a biosecurity duty in relation to the same thing, each person—
- 5 (a) retains responsibility for the person's duty in relation to the thing; and
- (b) must discharge the person's duty to the extent to which the person has the capacity to influence and control the thing or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

10 **18—Duty to prevent, eliminate or minimise biosecurity risk**

A duty imposed on a person to prevent, eliminate or minimise a biosecurity risk so far as is reasonably practicable is a duty—

- (a) to prevent or eliminate a biosecurity risk so far as is reasonably practicable; and
- 15 (b) if it is not reasonably practicable to prevent or eliminate a biosecurity risk, to minimise the biosecurity risk so far as is reasonably practicable.

Division 5—Extraterritorial application

19—Extraterritorial application

- (1) It is the intention of the Parliament that this Act is to apply within the State and outside the State to the full extent of the extraterritorial legislative capacity of the Parliament.
- 20 (2) Without limiting subsection (1), it is the intention of the Parliament that the operation of this Act is, as far as possible, to include operation in relation to the following:
- 25 (a) persons and things situated in or outside the territorial limits of this State (including in another country);
- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this State (including in another country);
- (c) persons, things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or
- 30 otherwise affected by the law of another jurisdiction.

Division 6—Status of Act

20—Interaction with other Acts

Unless the contrary intention appears—

- 35 (a) subject to paragraph (b), this Act is in addition to, and does not derogate from, the provisions of any other Act;
- (b) if—
- (i) a provision of this Act applies because of, or in relation to, an emergency; and

- (ii) another Act or law, other than the *Emergency Management Act 2004* is inconsistent with the provision,

this Act prevails to the extent of the inconsistency.

21—Act does not give rise to or affect civil causes of action

- 5 (1) A provision of this Act does not confer a right of action in civil proceedings based on a contravention of the provision.
- (2) Except as otherwise expressly provided by this Act, this Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.
- 10 (3) Without limiting subsection (2), compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.

Part 2—Objects

22—Objects

15 The objects of this Act are—

- (a) to protect South Australia from—
- (i) pests, diseases and other biosecurity matters that are economically significant for the State; and
- (ii) threats to terrestrial and aquatic environments arising from pests, diseases and other biosecurity matters; and
- 20 (iii) pests, diseases and other biosecurity matters that may have an adverse effect on public amenities, community activities and infrastructure; and
- (b) to ensure that responsibility for biosecurity is shared between government, industry and the community; and
- 25 (c) to provide a framework for risk and evidence-based decision making to ensure timely and effective management of biosecurity risks and impacts; and
- (d) to provide a framework that is flexible and responsive so as to enable the effective prevention, elimination, minimisation, control or management of the risk of adverse impacts on the South Australian economy, environment and community in connection with biosecurity risks; and
- 30 (e) to establish a biosecurity system that is focused on science in evidence-based decision making, innovative technologies, risk assessment, information management, planning, training and communication; and
- (f) to give effect to intergovernmental agreements relating to biosecurity to which South Australia is a party and to facilitate the alignment of the State's approach to biosecurity management with other States and nationally; and
- 35 (g) to support market access, and to facilitate trade of South Australia's food, fibre, beverages and other products; and

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- (h) to promote compliance with statutory duties and requirements through effective enforcement measures, and communication and collaboration between government, industry and the community.

Part 3—Administration

5 Division 1—Chief Officers and deputies

23—Chief Officers

- (1) There will be—
- (a) a *Chief Plant Protection Officer*; and
 - (b) a *Chief Veterinary Officer*.
- 10 (2) A Chief Officer will be appointed by the Chief Executive (and will be a member of the Public Service).
- (3) In relation to the appointment of a Chief Officer—
- 15 (a) the Chief Plant Protection Officer must be a person who, in the opinion of the Chief Executive, holds appropriate tertiary qualifications and expertise in plant sciences or another related discipline; and
 - (b) the Chief Veterinary Officer must be a veterinary surgeon.
- (4) An appointment may be made subject to such conditions as may be specified in the instrument of appointment.
- 20 (5) The Chief Executive may, at any time, revoke an appointment or vary a condition of an appointment.

24—Deputy Chief Officers

- (1) There will be—
- (a) 1 or more *Deputy Chief Plant Protection Officers*; and
 - (b) 1 or more *Deputy Chief Veterinary Officers*.
- 25 (2) A Deputy Chief Officer will be appointed by the Chief Executive (and will be a member of the Public Service).
- (3) In relation to the appointment of a Deputy Chief Officer—
- 30 (a) a Deputy Chief Plant Protection Officer must be a person who, in the opinion of the Chief Executive, holds appropriate tertiary qualifications and expertise in plant sciences or another related discipline; and
 - (b) a Deputy Chief Veterinary Officer must be a veterinary surgeon or a person who, in the opinion of the Chief Executive, holds appropriate tertiary qualifications and expertise in a discipline other than veterinary science.
- 35 (4) An appointment may be made subject to such conditions as may be specified in the instrument of appointment (including a condition limiting the area within which, or the purposes for which, an appointee may perform or exercise the functions and powers of a Deputy Chief Officer).

- (5) The Chief Executive may, at any time, revoke an appointment or vary a condition of an appointment.

25—Roles of Deputy Chief Officers

- 5 (1) A Deputy Chief Officer may perform the functions and exercise the powers of the corresponding Chief Officer, including any functions or powers that have been delegated to the corresponding Chief Officer under this Act, on such terms and conditions as may be specified in the instrument of appointment of the Deputy Chief Officer.
- 10 (2) To avoid doubt, a reference in this Act to a Chief Officer in relation to a function or power includes a reference to a corresponding Deputy Chief Officer if the Deputy Chief Officer is authorised to perform the function or exercise the power.
- (3) Nothing in this section limits—
- 15 (a) a specific delegation under this Act; or
- (b) a function or power that a person appointed as a Deputy Chief Officer may otherwise have or exercise under this Act or in connection with any appointment or position held apart from this Division.

Division 2—Authorised officers

26—Appointment of authorised officers

- 20 (1) The Minister may appoint a suitable person to be an authorised officer for the purposes of this Act.
- (2) A person appointed as an authorised officer may be—
- 25 (a) a public sector employee; or
- (b) an officer or employee of a council; or
- (c) an employee of the Commonwealth or of another State; or
- (d) an employee of an entity prescribed for the purposes of this subsection; or
- (e) a person who has entered into a contract, or who is employed by an entity that has entered into a contract, with the Crown to perform a function under this Act.
- 30 (3) The Minister may enter into an agreement with a council in relation to the performance of the functions and the exercise of powers of an authorised officer by an officer or employee of the council appointed under subsection (1).
- (4) The Minister may enter into an agreement with the Commonwealth, or another State, in relation to the performance of the functions and the exercise of powers of an authorised officer by an employee of the Commonwealth, or another State, appointed
- 35 under subsection (1).
- (5) An appointment under subsection (1) may be made subject to such conditions as may be specified in the instrument of appointment (including a condition limiting the area within which, or the purposes for which, an appointee may perform the functions or exercise the powers of an authorised officer).

- (6) The Minister may, at any time, revoke an appointment or vary a condition of an appointment.
- (7) In connection with the operation of subsection (6)—
- 5 (a) if the Minister takes action under that subsection in respect of an officer or employee of a council, the Minister must notify the council in writing of the action taken; and
- (b) if the Minister takes action under that subsection in respect of an employee of the Commonwealth or of another State, the Minister must notify the relevant Minister of the Commonwealth, or that State, in writing of the action taken.
- 10 (8) If a person appointed as an authorised officer under subsection (1) ceases to hold an office or position of employment that made the person eligible to be appointed as an authorised officer, the person ceases to be an authorised officer.
- (9) A person holding any of the following offices will be taken to have been appointed as an authorised officer for the purposes of this Act:
- 15 (a) fisheries officer under the *Fisheries Management Act 2007*;
- (b) authorised person under the *Primary Produce (Food Safety Schemes) Act 2004*.
- (10) A person holding an appointment under subsection (9) may perform the functions or exercise the powers of an authorised officer subject to such conditions as the Minister may specify from time to time (including a condition limiting the area within which, or the purposes for which, the person may perform or exercise the functions or powers of an authorised officer).
- 20

27—Identity cards

- 25 (1) The Chief Executive must issue a person appointed as an authorised officer under section 26(1) an identity card—
- (a) containing the person's name and a photograph of the person; and
- (b) specifying that the person is an authorised officer; and
- (c) stating any limitation on the person's authority to act as an authorised officer under this Act.
- 30 (2) Subject to this Act, an authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise powers under this Act, produce for the inspection of the person an appropriate identity card.
- (3) For the purposes of subsection (2), an appropriate identity card is—
- 35 (a) in relation to a person appointed under section 26(1)—the identity card issued under subsection (1); and
- (b) in relation to a person taken to have been appointed as an authorised officer under section 26(9)—an identity card issued to the person for the purposes of the office referred to in that subsection.
- 40 (4) If the appointment of a person as an authorised officer is revoked or otherwise ceases, the person must, as soon as is reasonably practicable, return to the Chief Executive any identity card issued to the person under subsection (1)
- Maximum penalty: \$1 000.

28—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.
- 5 (2) A person assisting an authorised officer under subsection (1) may—
- (a) accompany the authorised officer onto any premises that the authorised officer is allowed to enter under this Act; and
 - (b) take all reasonable steps to assist the authorised officer in the performance of a function of the authorised officer under this Act.

10 29—Use of animals

- (1) An authorised officer, performing a function under this Act, may perform the function with the assistance of an animal to detect the presence of, or to manage, biosecurity matter.
- 15 (2) An authorised officer who is authorised to enter premises under this Act may enter those premises in the company of any animal as envisaged by subsection (1).
- (3) An authorised officer who performs a function with the assistance of an animal must keep the animal under control and take all reasonable steps to ensure that the animal does not unnecessarily interact with any person other than the authorised officer or a person assisting the authorised officer.

20 30—Provision of assistance

- (1) An authorised officer may require an owner or occupier of any premises, any person in or on any premises (other than a public place), or a person apparently in charge of any vehicle, plant, equipment or other thing, to provide any reasonable assistance and facilities that the authorised officer or a person assisting the authorised officer reasonably requires for the effective exercise of a power under this Act.
- 25 (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) A direction may, for example, require the person—
- 30 (a) to confine or move any animal under the care, custody or control of the person; or
 - (b) to provide any facilities, including yards and crushes, that the authorised officer requires to inspect, examine, test, treat or take samples from any biosecurity matter, carrier, potential carrier or other thing; or
 - (c) to restrain an animal.

35 31—Performance and exercise of functions and powers in emergency

The fact that a provision of this Act only authorises an authorised officer to perform or exercise specified functions or powers in an emergency (or in the case of an emergency) does not prevent the authorised officer from performing or exercising any other function or power under this Act in that emergency.

32—Extraterritorial performance and exercise of functions and powers

- (1) The Minister may enter into an agreement with a Minister of the Commonwealth or another State providing for either or both of the following:
- 5 (a) the performance of functions or the exercise of powers under this Act on behalf of the Commonwealth or in another State by authorised officers or interstate biosecurity officers;
- (b) the performance of functions or the exercise of powers under a corresponding law in South Australia by authorised officers or interstate biosecurity officers.
- (2) The Chief Executive may enter into an agreement with the head of an interstate biosecurity agency providing for either or both of the following:
- 10 (a) the performance of functions or the exercise of powers under this Act in another State by authorised officers or interstate biosecurity officers;
- (b) the performance of functions or the exercise of powers under a corresponding law in South Australia by authorised officers or interstate biosecurity officers.
- 15 (3) An authorised officer or an interstate biosecurity officer may, in accordance with an agreement under this section—
- (a) perform functions or exercise powers under this Act on behalf of the Commonwealth or in another State as authorised under the Act; and
- 20 (b) perform functions or exercise powers under a corresponding law in South Australia as authorised under that agreement to the extent required in respect of a biosecurity impact, or potential biosecurity impact, in another State.

33—Hindering etc persons engaged in the administration of Act

A person who—

- 25 (a) without reasonable excuse hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the performance of a function or the exercise of a power under this Act; or
- (b) fails to answer a question put by an authorised officer to the best of the person's knowledge, information or belief; or
- 30 (c) provides an answer to a question put by an authorised officer that the person knows to be false or misleading in a material particular; or
- (d) produces a document or record that the person knows to be false or misleading in a material particular; or
- 35 (e) fails without reasonable excuse to comply with a requirement or direction of an authorised officer under this Act (including a requirement to attend at a time and place specified by an authorised officer); or
- (f) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer, in the performance of a function or the exercise of a power under this Act; or
- 40 (g) falsely represents, by words or conduct, that the person is an authorised officer,

is guilty of an offence.

Maximum penalty: \$25 000.

Division 3—Authorised analysts

34—Authorised analysts

- 5 (1) The Chief Executive may, by written instrument, appoint a person as an authorised analyst for the purposes of this Act if the Chief Executive is satisfied that the person holds the appropriate qualifications and experience for the position.
- (2) An appointment under subsection (1) may be made subject to such conditions as the Chief Executive considers reasonable in the circumstances and are specified in the
10 instrument of appointment (including a condition limiting the functions or powers of the authorised analyst).
- (3) The Chief Executive may, at any time, revoke an appointment or vary a condition of an appointment.
- (4) If an appointment of a person as an authorised analyst is made by reference to an
15 office held by the person—
- (a) the person ceases to be an authorised analyst if the person 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 they hold that office.
- 20 (5) The Chief Executive may appoint an authorised officer as an authorised analyst and the authorised officer so appointed may perform the functions and exercise the powers of an authorised officer in addition to the functions and powers of an authorised analyst.

Division 4—Statutory corporations

25 35—Establishment of statutory corporations by regulation

- (1) The Governor may, by regulation, establish a body as a statutory corporation under this Act.
- (2) Regulations establishing a statutory corporation—
- (a) must name the statutory corporation; and
 - 30 (b) must provide for the constitution of a board of management as the statutory corporation's governing body; and
 - (c) must specify the functions of the statutory corporation; and
 - (d) may provide for the powers of the statutory corporation and may limit the powers of the statutory corporation; and
 - 35 (e) may make other provisions (not inconsistent with this Act) that are necessary or expedient for the purposes of the statutory corporation or that are contemplated by Schedule 1.
- (3) A statutory corporation established under this section—
- (a) is a body corporate; and

- (b) subject to a limitation imposed by regulation, has all the powers of a natural person together with the powers specifically conferred on it by or under this Act; and
- (c) is subject to the control and direction of the Minister, other than where the
5 statutory corporation is—
- (i) making a recommendation to the Minister; or
 - (ii) providing advice to the Minister.
- (4) The Governor may, by regulation—
- (a) alter the name of a statutory corporation; or
 - 10 (b) vary the constitution of the board of management of a statutory corporation; or
 - (c) alter the functions of a statutory corporation; or
 - (d) alter or limit the powers of a statutory corporation; or
 - 15 (e) may make other provisions (not inconsistent with this Act) that in the opinion of the Governor are necessary or expedient for the purposes of a statutory corporation or that are contemplated by Schedule 1.
- (5) Without limiting a preceding subsection, the regulations may, in providing for the constitution of a board of management of a statutory corporation, make provision with respect to—
- 20 (a) how a member of the board is appointed or selected; and
 - (b) the term of office of a member of the board; and
 - (c) the appointment of a presiding member; and
 - (d) the appointment or selection of deputies; and
 - 25 (e) the grounds on which a member may be removed from office, and how an office becomes vacant.
- (6) The Governor may, by regulation—
- (a) dissolve a statutory corporation established under this section; and
 - (b) transfer any assets, rights or liabilities of a statutory corporation dissolved
30 under this provision (either as a whole or in separate parcels specified by regulation)—
 - (i) to the Minister; or
 - (ii) to another statutory corporation; or
 - (iii) to the Crown, or to another agency or instrumentality of the Crown; or
 - 35 (iv) with the agreement of the person or body—to a person or body that is not an agency or instrumentality of the Crown; and - (c) make other provisions that in the opinion of the Governor are necessary or expedient in connection with the dissolution of the statutory corporation.

Biosecurity Bill 2023

Part 3—Administration

Division 4—Statutory corporations

- (7) If a regulation establishing a statutory corporation under this section is disallowed by either House of Parliament, the assets, rights and liabilities of the statutory corporation become the assets, rights and liabilities of the Minister.
- (8) Schedule 1 contains other provisions that are relevant to a statutory corporation established under this section.

36—Dog Fence Board

- (1) The Dog Fence Board (as established under the *Dog Fence Act 1946* and now to be known as the *Dog Fence Board*) continues as a statutory corporation under this Act.
- (2) The Dog Fence Board—
- (a) is a body corporate; and
- (b) is an instrumentality of the Crown; and
- (c) subject to a limitation imposed by regulation, has all the powers of a natural person together with the powers specifically conferred on it by or under this Act.
- (3) Subject to this Act, Schedule 1, other than any provision of that Schedule prescribed by the regulations, applies to the Dog Fence Board as a statutory corporation under this Act.
- (4) Schedule 2 makes additional provisions in relation to the Dog Fence Board and dog fences.

Division 5—Quarantine stations**37—Quarantine stations**

- (1) In this section—
- designated authority* means—
- (a) the Chief Executive; or
- (b) a Chief Officer.
- (2) A designated authority may, by notice published on the Department website, declare a place to be a quarantine station at which biosecurity matter may, subject to this Act, be held, examined, disinfected, treated, destroyed or otherwise disposed of.
- (3) A designated authority may, by further notice published on the Department website, vary or revoke a notice under this section.

Division 6—Register**38—Register**

- (1) The Chief Executive must maintain a register of—
- (a) registered entities under Part 5; and
- (b) accreditation authorities established under Part 6; and
- (c) biosecurity auditors appointed under Part 6; and
- (d) biosecurity certifiers accredited under Part 6; and

- (e) biosecurity programs under Part 9; and
 - (f) declared biosecurity zones under section 163; and
 - (g) any other matter required to be included on the register under this Act or the regulations.
- 5 (2) The register may include such other information as the Chief Executive thinks fit.
- (3) The register will be kept in such forms as the Chief Executive thinks fit (including in an electronic format).
- (4) The Chief Executive may establish requirements as to—
- (a) the provision of information for the purposes of the register; and
 - 10 (b) the form of any information or instrument that is to be registered or included on the register; and
 - (c) the use of electronic files, including as to their formats; and
 - (d) any other matter determined by the Chief Executive for the purposes of the register.

15 **Division 7—Delegations**

39—Delegations

- (1) In this section—
- statutory authority* means—
- (a) the Minister; or
 - 20 (b) the Chief Executive; or
 - (c) a Chief Officer; or
 - (d) a Deputy Chief Officer; or
 - (e) a statutory corporation.
- (2) A statutory authority may delegate any of the statutory authority's functions or powers
- 25 under this Act—
- (a) to a particular person or body; or
 - (b) to the person for the time being holding or occupying a particular office or position.
- (3) A delegation under this section—
- 30 (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the delegator to act in any matter; and
- (d) is revocable at will.
- (4) A function or power delegated under this section may, if the instrument of delegation
- 35 so provides, be further delegated.

Part 4—Biosecurity duties, dealings and measures

Division 1—General biosecurity duty

40—General biosecurity duty

5 (1) A person has a duty (the *general biosecurity duty*) to take, so far as is reasonably practicable, measures to prevent, eliminate, minimise, control or manage a 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.

10 (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.

41—Failure to comply with general biosecurity duty

15 (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.

Maximum penalty:

(a) for a body corporate—\$500 000;

20 (b) for a natural person—\$100 000.

(2) In determining what is a significant biosecurity impact for the purposes of subsection (1), regard must be had, amongst other things, to the objects of this Act, and to—

(a) the potential impact of a failure to comply with the duty; and

25 (b) the economic, environmental, community or practicable implications; and

(c) the extent of any risk to public safety; and

(d) the nature, extent and duration of any biosecurity impact; and

(e) any relevant standard, code, guideline, program or other specification; and

(f) any matter prescribed by the regulations.

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

Maximum penalty:

(a) for a body corporate—\$250 000;

(b) for a natural person—\$50 000.

35 (4) If, in proceedings for an offence against 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 against subsection (3), the court may find the person guilty of an offence under subsection (3).

- (5) A person who commits an offence under this section because of failing to comply with the general biosecurity duty—
- (a) continues, until the duty is discharged, to be required to discharge the duty; and
 - (b) is guilty of a continuing offence (of the relevant kind) for each day that the failure continues.

42—Specified biosecurity requirements

- (1) For the purposes of this Act, a *specified biosecurity requirement* means any measure, prescription, rule, duty or other requirement imposed by, or under, this Act or any other Act that requires a person or class of persons to do 1 or more of the following for the purpose, whether express or implied, of preventing, eliminating, minimising, controlling or managing a biosecurity risk or potential biosecurity risk:
- (a) to take specified action or to 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, code, guideline, program or other specification;
 - (d) to comply with any 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 biosecurity matter, carrier or dealing; and
 - (b) that failure is an offence under both section 41 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) To avoid doubt, compliance with each applicable specified biosecurity requirement in respect of biosecurity matter, carrier or dealing may not, of itself, discharge the general biosecurity duty in respect of that biosecurity matter, carrier or dealing.

Division 2—Dealings

43—Prohibited matter

- (1) A person who deals with any biosecurity matter that is prohibited matter throughout the State is guilty of an offence.

Maximum penalty:

- (a) for a body corporate—\$500 000;
- (b) for a natural person—\$100 000.

Biosecurity Bill 2023

Part 4—Biosecurity duties, dealings and measures

Division 2—Dealings

- (2) A person who deals with biosecurity matter is guilty of an offence if—
- (a) the biosecurity matter is located in a part of the State in which it is prohibited matter; or
 - (b) as a result of the dealing, the biosecurity matter enters or is likely to enter a part of the State in which it is prohibited matter.

Maximum penalty:

- (a) for a body corporate—\$500 000;
 - (b) for a natural person—\$100 000.
- (3) A person who commits an offence against subsection (1) or (2) because the person deals with biosecurity matter in contravention of that subsection—
- (a) continues, until the contravention ceases, to be liable for a contravention of the subsection; and
 - (b) is guilty of a continuing offence (of the relevant kind) for each day that the contravention continues.
- (4) It is a defence to the prosecution of an offence constituted by a person having prohibited matter in the person's possession, care, custody or control if the person charged with the offence proves that the person did not know, and could not reasonably be expected to know, that the person had the prohibited matter in the person's possession, care, custody or control.

44—Prohibited dealings

- (1) A person must not engage in a prohibited dealing.

Maximum penalty:

- (a) for a body corporate—\$500 000;
 - (b) for a natural person—\$100 000.
- (2) A person who commits an offence under this section because the person engages in a prohibited dealing in contravention of subsection (1)—
- (a) continues, until the contravention ceases, to be liable for a contravention of that subsection; and
 - (b) is guilty of a continuing offence for each day that the contravention continues.

45—Regulated dealings

- (1) 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.

Maximum penalty:

- (a) for a body corporate—\$250 000;
- (b) for a natural person—\$50 000.

- (2) A person who commits an offence under this section because the person engages in a regulated dealing in contravention of subsection (1)—
- (a) continues, until the contravention ceases, to be liable for a contravention of that subsection; and
 - (b) is guilty of a continuing offence for each day that the contravention continues.
- (3) In proceedings for an offence against this section, it is a defence to the prosecution of the offence if the person who engaged in the regulated dealing proves that—
- (a) the person did so as an employee or agent of a registered entity; and
 - (b) the biosecurity registration authorises the registered entity to engage in the dealing.

Division 3—Other requirements

46—Manifests

- (1) A person must not bring or introduce any prescribed biosecurity matter into the State for sale or any other commercial purpose unless, before so doing, a manifest that conforms with the requirements of the relevant Chief Officer about its form, contents and the manner in which it is made has been lodged with the relevant Chief Officer in a manner determined by the relevant Chief Officer.

Maximum penalty:

- (a) for a body corporate—\$250 000;
 - (b) for a natural person—\$50 000.
- (2) A person must not tranship, or transport through the State, any prescribed biosecurity matter for sale or other commercial purpose in another State unless, before so doing, a manifest that conforms with the requirements of the relevant Chief Officer about its form, contents and the manner in which it is made has been lodged with the relevant Chief Officer in a manner determined by the relevant Chief Officer.

Maximum penalty:

- (a) for a body corporate—\$250 000;
 - (b) for a natural person—\$50 000.
- (3) A person referred to in subsection (1) or (2) must, at a quarantine station or on the request of an authorised officer, produce a copy of the manifest.

Maximum penalty:

- (a) for a body corporate—\$50 000;
- (b) for a natural person—\$10 000.

47—Biosecurity matter sold for propagation

A person must not sell any prescribed biosecurity matter for propagation unless it is accompanied by a label or other notice in writing containing the information prescribed by the regulations.

Maximum penalty:

- (a) for a body corporate—\$50 000;
- (b) for a natural person—\$10 000.

Biosecurity Bill 2023

Part 4—Biosecurity duties, dealings and measures

Division 3—Other requirements

48—Packaging and labelling for sale

- (1) A person must not pack for sale or sell any prescribed biosecurity matter in packaging unless the packaging—
- (a) is in good repair; and
 - 5 (b) is clean and free from extraneous visible matter; and
 - (c) is free of any objectionable odour; and
 - (d) is labelled in accordance with the regulation; and
 - (e) complies with any other requirements prescribed by the regulations.

Maximum penalty:

- 10 (a) for a body corporate—\$50 000;
- (b) for a natural person—\$10 000.
- (2) A person must not pack for sale or sell any prescribed biosecurity matter in used packaging except in accordance with the regulations (which may prohibit the use of certain used packaging absolutely or subject to conditions).

Maximum penalty:

- 15 (a) for a body corporate—\$50 000;
- (b) for a natural person—\$10 000.

Division 4—Duty to notify biosecurity event**49—Biosecurity duty to notify biosecurity event**

- 20 (1) A person who becomes aware of, or who reasonably suspects, the occurrence or likely occurrence of a biosecurity event has a duty (a *biosecurity duty*)—
- 25 (a) to notify the occurrence or likely occurrence of the biosecurity event as soon as reasonably practicable after the person becomes aware of, or reasonably suspects, the occurrence or likely occurrence of the biosecurity event in accordance with the regulations; and
 - (b) to comply with any other requirements prescribed by the regulations.
- (2) The regulations may prescribe the following:
- 30 (a) the form, contents and manner of a notification to be made in respect of a biosecurity event;
 - (b) the person or persons to whom a notification must be made;
 - (c) the procedure for requesting or providing further information in respect of a biosecurity event;
 - (d) other matters or procedures in relation to a biosecurity event generally or a class of biosecurity events.
- 35 (3) A person is not required to notify the occurrence or likely occurrence of a particular biosecurity event under subsection (1) if the person knows or reasonably believes that the biosecurity event has already been notified to a person as envisaged by the regulations under subsection (2).

- (4) A biosecurity duty arises under this Division only if the person—
- (a) is 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 likely to occur; or
 - 5 (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;
 - 10 (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 a prescribed class of persons, in prescribed circumstances.

50—Failure to comply with biosecurity duty

- 15 (1) A person must not fail to discharge the person's biosecurity duty under this Division.
Maximum penalty:
- (a) for a body corporate—\$250 000;
 - (b) for a natural person—\$50 000.
- 20 (2) A person who commits an offence under this section because of failing to comply with the person's biosecurity duty under this Division—
- (a) continues, until the duty is discharged, to be required to discharge the duty; and
 - (b) is guilty of a continuing offence for each day that the failure continues.
- 25 (3) 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, 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.
- 30 (4) It is a defence to proceedings for an offence under this section in respect of a biosecurity event if the defendant establishes that the defendant did not notify the biosecurity event as required under this Division, because the defendant has reasonable grounds to believe that the biosecurity event was widely and publicly known at the time the defendant allegedly committed the offence.

51—Protection against self-incrimination

- 35 Notification of a biosecurity event given by a person under this Division is not admissible in evidence against that person in any criminal proceedings, or in other proceedings for the imposition of a penalty, other than proceedings for—
- (a) an offence under this Division; or
 - 40 (b) an offence under this Act that involves furnishing false or misleading information or failing to furnish material information; or
 - (c) an offence under section 33.

Part 5—Registration scheme

Division 1—Preliminary

52—Nature of biosecurity registration

Biosecurity registration granted to a person by the relevant Chief Officer under this Part—

- (a) authorises the person to engage in the regulated dealing specified in the registration; and
- (b) only authorises the dealing or dealings specified in the registration; and
- (c) does not authorise a registered entity to do anything that is prohibited under any other Act.

Division 2—Obtaining registration

53—Application for registration

- (1) A person may apply to the relevant Chief Officer for biosecurity registration in respect of a regulated dealing.
- (2) An application must—
 - (a) be made in the approved form; 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 relevant Chief Officer reasonably requires in connection with the application; and
 - (d) be accompanied by the prescribed fee.
- (3) The relevant Chief Officer may, by written notice, require an applicant for biosecurity registration to provide further information, documents or records relevant to the application.
- (4) The applicant may, with the approval of the relevant Chief Officer or at the request of the relevant Chief Officer, amend the application before the relevant Chief Officer has finished considering it.
- (5) The relevant Chief Officer 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.

54—Grant or refusal of biosecurity registration

- (1) The relevant Chief Officer may, after considering an application for biosecurity registration, grant biosecurity registration with or without conditions, or refuse to grant biosecurity registration, to the applicant.
- (2) Biosecurity registration may be granted in the form the relevant Chief Officer considers appropriate.

- (3) The relevant Chief Officer may refuse to grant biosecurity registration to an applicant—
- (a) if the application for biosecurity registration does not comply with any requirement imposed by or under this Act, including the payment of the relevant application fee; or
 - (b) if the relevant Chief Officer is not satisfied—
 - (i) that the applicant is a suitable person to be registered; or
 - (ii) if the applicant is a body corporate—that each director of the body corporate is a suitable person to be a director of a body corporate that is to be registered; or
 - (c) if the relevant Chief Officer considers that any requirements for biosecurity registration relating to standards, codes of practice, protocols or operational procedures have not been followed; or
 - (d) if the relevant Chief Officer considers that it would not be appropriate to grant biosecurity registration to the applicant due to the occurrence of an emergency; or
 - (e) on any prescribed ground; or
 - (f) for any other reason that the relevant Chief Officer considers to be sufficient reason for refusing the application.
- (4) If the relevant Chief Officer refuses to grant biosecurity registration, the relevant Chief Officer must, by written notice—
- (a) notify the applicant of the decision; and
 - (b) provide the applicant with reasons for the decision; and
 - (c) notify the applicant that the applicant may apply for a review of the decision under Part 13.
- (5) If the relevant Chief Officer fails to give an applicant notice of a decision to grant or to refuse biosecurity registration within the prescribed period, the relevant Chief Officer is taken to have refused to grant the biosecurity registration.

55—Duration of biosecurity registration

- (1) Biosecurity registration remains in force for a period, not exceeding 5 years, specified by the relevant Chief Officer, unless sooner cancelled or surrendered.
- (2) Biosecurity registration has no effect during any period during which the biosecurity registration is suspended.
- (3) Biosecurity registration may be renewed in accordance with Division 3.

56—Periodic fees and annual returns

- (1) A prescribed registered entity must in each year, on or before a day set or determined by or under the regulations—
 - (a) pay to the Department the prescribed fee; and
 - (b) lodge with the relevant Chief Officer a return in the approved form in a manner determined by the relevant Chief Officer.

Biosecurity Bill 2023

Part 5—Registration scheme

Division 2—Obtaining registration

(2) If a prescribed registered entity fails to lodge a return or pay a fee in accordance with this section, the relevant Chief Officer may, by written notice, require the prescribed registered entity to make good the default and, in addition, to pay to the Department the amount prescribed as a penalty for default.

5 (3) If a prescribed registered entity—

(a) fails to comply with a notice under subsection (2) within 14 days after the giving of the notice—the biosecurity registration is suspended until the notice is complied with; and

10 (b) fails to comply with any such notice within 3 months after the giving of the notice—the biosecurity registration is cancelled.

(4) The relevant Chief Officer must give written notice of the suspension or cancellation to the relevant entity.

(5) In this section—

15 *prescribed registered entity* means a registered entity of a class prescribed by the regulations for the purposes of this section.

57—Variation of biosecurity registration

(1) The relevant Chief Officer may, at any time, by written notice to the registered entity, vary the biosecurity registration of the registered entity.

(2) A variation of biosecurity registration may be made—

20 (a) on the relevant Chief Officer's own initiative; or

(b) on the application of the registered entity.

(3) A variation of biosecurity registration may include the variation of a condition of the biosecurity registration.

(4) An application to vary biosecurity registration under subsection (2)(b) must—

25 (a) be made in the approved form; and

(b) include, or be accompanied by, any information or evidence that the relevant Chief Officer reasonably requires to determine the application; and

(c) be accompanied by the prescribed fee.

30 (5) The relevant Chief Officer may, by written notice, require an applicant for variation of biosecurity registration to provide further information, documents or records relevant to the application.

(6) If the relevant Chief Officer refuses to grant an application for variation of biosecurity registration, the relevant Chief Officer must, by written notice—

35 (a) notify the registered entity of the decision; and

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

(c) notify the registered entity that the registered entity may apply for a review of the decision under Part 13.

Division 3—Renewal of biosecurity registration

58—Renewal of biosecurity registration

- (1) A registered entity may apply to the relevant Chief Officer for renewal of biosecurity registration in respect of a regulated dealing.
- 5 (2) An application must—
 - (a) be made in the approved form; and
 - (b) include, or be accompanied by, any information or evidence that the relevant Chief Officer reasonably requires in connection with the application; and
 - (c) be accompanied by the prescribed fee.
- 10 (3) The relevant Chief Officer may, by written notice, require an applicant for renewal of biosecurity registration to provide further information, documents or records relevant to the application.
- (4) The relevant Chief Officer may require a separate application for each regulated dealing.
- 15 (5) If an application for renewal of biosecurity registration in respect of a regulated dealing is duly made to the relevant Chief Officer before the expiry of the biosecurity registration, biosecurity registration is taken to continue in force until the relevant Chief Officer notifies the applicant of a decision to grant or refuse the application.
- 20 (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 the biosecurity registration.

59—Grant or refusal of renewal of biosecurity registration

- 25 (1) The relevant Chief Officer may, after considering an application for renewal of biosecurity registration, renew the biosecurity registration with or without conditions, or refuse to renew the biosecurity registration.
- (2) The renewal of biosecurity registration may be granted in the form the relevant Chief Officer considers appropriate.
- (3) The relevant Chief Officer may refuse to renew the registered entity's biosecurity registration—
 - 30 (a) if the application for renewal of the registration does not comply with this Act; or
 - (b) if the relevant Chief Officer is not satisfied—
 - 35 (i) that the registered entity is a suitable person to continue to be registered; or
 - (ii) if the registered entity is a body corporate—that each director of the body corporate is a suitable person to be the director of a body corporate that is a registered entity; or
 - 40 (c) if the relevant Chief Officer considers that any requirements for biosecurity registration relating to standards, codes of practice, protocols or operational procedures have not been followed; or

Biosecurity Bill 2023

Part 5—Registration scheme

Division 3—Renewal of biosecurity registration

- (d) if the relevant Chief Officer considers that it would not be appropriate to renew the biosecurity registration due to the occurrence of an emergency; or
- (e) on any prescribed ground; or
- (f) for any other reason that the relevant Chief Officer considers to be sufficient reason for refusing to renew the biosecurity registration.
- (4) If the relevant Chief Officer refuses to renew a registered entity's biosecurity registration, the relevant Chief Officer must, by written notice—
- (a) notify the registered entity of the decision; and
- (b) provide the registered entity with the reasons for the decision; and
- (c) notify the registered entity that the registered entity may apply for a review of the decision under Part 13.

Division 4—Conditions of biosecurity registration**60—Conditions of biosecurity registration**

- (1) The relevant Chief Officer may impose conditions on a registered entity's biosecurity registration—
- (a) at the time of the grant, or renewal, of the biosecurity registration; and
- (b) at any other time by variation to the biosecurity registration under section 57.
- (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 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 type of conditions that may be imposed on the biosecurity registration.

61—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.

62—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 to put in place specified measures, to prevent, eliminate, minimise, control or manage the biosecurity risk of a biosecurity dealing.

63—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 relevant Chief Officer.
- 5 (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
- 10 (b) the registered entity is unable, for any reason, to continue to engage in the regulated dealing.

64—Conditions for insurance cover

15 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.

65—Conditions requiring biosecurity audits

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

66—Conditions requiring financial assurances

- (1) In this section—
- secured event*, in relation to a registered entity's biosecurity registration, includes the following events:
- 25 (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 Chief Executive;
- 30 (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.
- 35 (2) A condition imposed on a registered entity's biosecurity registration may require the registered entity—
- (a) to provide financial assurance to secure, or guarantee, funding for or towards the doing of anything required as a result of a secured event; and
- 40 (b) to provide evidence of such financial assurance before the relevant Chief Officer grants, renews, varies, suspends or cancels the biosecurity registration.

Biosecurity Bill 2023

Part 5—Registration scheme

Division 4—Conditions of biosecurity registration

(3) A condition imposing a financial assurance may specify the assurance to be in 1 or more of the following forms:

- (a) a bank guarantee;
- (b) a bond;
- 5 (c) a prescribed form'
- (d) any other form that is approved by the relevant Chief Officer.

(4) A financial assurance—

- (a) may be claimed and realised, despite and without affecting—
 - 10 (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
- 15 (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 it relates.

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

- 20 (a) the method of calculating the amount of the financial assurance required;
- (b) the circumstances in which all, or any part, of the financial assistance may be claimed, or realised, and the procedure for claiming or realising the financial assurance;
- 25 (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, a relevant Chief Officer; and
 - (ii) the circumstances when the relevant Chief Officer, or a person authorised by the relevant Chief Officer, may enter land to take those
- 30 (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 administrative requirements in relation to the financial assurance;
- 35 (g) the release of the financial assurance.

67—Conditions for record keeping and the provision of information

A condition imposed on a registered entity's biosecurity registration may require the registered entity—

- 40 (a) to keep records or other information specified in the condition or determined from time to time by the relevant Chief Officer; and

- (b) to provide, in a manner and form determined by the relevant Chief Officer, such records or other information as the relevant Chief Officer may from time to time require.

68—Conditions to take effect later

- 5 (1) A condition 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.
- 10 (2) Without limiting subsection (1), the conditions may provide that an authorisation or variation will not take effect until a financial assurance is provided in accordance with a condition.

69—Failure to comply with condition

- (1) A registered entity must not contravene a condition of the registered entity's biosecurity registration.
- 15 Maximum penalty:
- (a) for a body corporate—\$250 000;
- (b) for a natural person—\$50 000.
- (2) A person who commits an offence against subsection (1) because the person contravenes a condition—
- 20 (a) continues, until the contravention ceases, to be liable for a contravention of that subsection; and
- (b) is guilty of a continuing offence for each day that the contravention continues.
- (3) 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.

25 Division 5—Suspension, cancellation or surrender of biosecurity registration

70—Grounds for suspension or cancellation of biosecurity registration

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

- 30 (a) the registered entity has ceased to undertake the regulated dealing authorised by the biosecurity registration;
- (b) the registered entity has contravened this Act or a corresponding law;
- (c) without limiting paragraph (b), the registered entity has contravened a condition of the registered entity's biosecurity registration;
- 35 (d) the registered entity is not a suitable person to engage in the regulated dealing authorised by the biosecurity registration or, in the case of a body corporate, a director is not a suitable person to be a director of a body corporate that is engaged in the regulated dealing authorised by the biosecurity registration;
- 40 (e) an application relating to the biosecurity registration of the registered entity was false or misleading in a material particular;

Biosecurity Bill 2023

Part 5—Registration scheme

Division 5—Suspension, cancellation or surrender of biosecurity registration

- (f) the registered entity has failed to pay fees or charges payable by the registered entity under this Act;
- (g) it is in the interests of public safety to suspend or cancel the registration;
- 5 (h) the relevant Chief Officer receives information about the registered entity and the relevant Chief Officer is of the opinion that, had the information been received at the time when the application for biosecurity registration was made in respect of the registered entity, the relevant Chief Officer would have refused the application;
- (i) the suspension or cancellation is necessary in an emergency;
- 10 (j) any other prescribed ground.

71—Suspension of biosecurity registration

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

15 (2) A notice under subsection (1) must specify—

- (a) the grounds for the suspension; and
- (b) the date or time from which the suspension takes effect; and
- (c) the period of suspension; and
- (d) the actions required, if any, for the suspension to be lifted.

20 (3) Before suspending the biosecurity registration of a registered entity, the relevant Chief Officer must—

- (a) give written notice to the registered entity of the relevant Chief Officer's intention to suspend the biosecurity registration and the proposed grounds for doing so; and
- 25 (b) allow the registered entity at least 14 days to make a submission to the relevant Chief Officer about the proposed suspension before the suspension is to occur; and
- (c) take into account any submission made to the relevant Chief Officer by the registered entity before the deadline for the making of a submission.

30 (4) The relevant Chief Officer is not required to give notice under subsection (3) of a proposed suspension if the relevant Chief Officer 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.

35 (5) However, if the relevant Chief Officer suspends a registered entity's biosecurity registration without giving notice under subsection (3), the relevant Chief Officer must—

- (a) give the registered entity written notice of the grounds of the suspension as soon as practicable after the suspension occurs; and
- 40 (b) invite the registered entity to make a submission to the relevant Chief Officer 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 relevant Chief Officer about the suspension before the specified deadline, the relevant Chief Officer 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.
- (7) A notice under subsection (1) or (6) must also provide information about the right to apply for a review of the decision to suspend the registration under Part 13.

72—Cancellation of biosecurity registration

- (1) The relevant Chief Officer may, by written notice to a registered entity, cancel the biosecurity registration of the registered entity if the relevant Chief Officer is satisfied that there are grounds for the cancellation of registration.
- (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) Before cancelling the biosecurity registration of a registered entity, the relevant Chief Officer must—
- (a) give written notice to the registered entity of the relevant Chief Officer'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 relevant Chief Officer about the proposed cancellation before the cancellation is to occur; and
 - (c) take into account any submission made to the relevant Chief Officer by the registered entity before the deadline for the making of a submission.
- (4) The relevant Chief Officer 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 for making that submission has ended.
- (5) A notice under subsection (1) must also provide information about the right to apply for a review of the decision to cancel the registration under Part 13.

73—Voluntary suspension of biosecurity registration

- (1) A registered entity may surrender the registered entity's biosecurity registration in respect of a regulated dealing.
- (2) The surrender of a registered entity's biosecurity registration must—
- (a) be made in the approved form; and
 - (b) be made to the relevant Chief Officer; and

Biosecurity Bill 2023

Part 5—Registration scheme

Division 5—Suspension, cancellation or surrender of biosecurity registration

- (c) be accompanied by the relevant prescribed fee; and
- (d) include or be accompanied by any information or evidence required by the relevant Chief Officer to determine the consequences that may result from the surrender of the biosecurity registration.

- 5 (3) The surrender of a registered entity's biosecurity registration does not take effect until the relevant Chief Officer has given the registered entity written notice that the relevant Chief Officer is satisfied that all biosecurity matter and carriers will be dealt with appropriately by the registered entity.
- 10 (4) On the surrender of a registered entity's biosecurity registration taking effect, the biosecurity registration is cancelled.

74—Effect of suspension, cancellation or surrender

- 15 (1) A registered entity's biosecurity registration may be suspended, cancelled or surrendered under this Division unconditionally or subject to such conditions as the relevant Chief Officer may impose.
- 20 (2) A condition under this section—
- (a) may 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.
- 25 (3) The relevant Chief Officer may, by written notice given to the registered entity or former registered entity, vary a condition imposed under this section.
- (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.
- Maximum penalty:
- (a) for a body corporate—\$250 000;
 - 30 (b) for a natural person—\$50 000.

Division 6—Identification codes**75—Identification codes**

- 35 (1) The regulations may provide for 1 or more schemes for the allocation by a Chief Officer of codes identifying—
- (a) biosecurity matter; or
 - (b) places where biosecurity matter of a specified class may be kept or handled; or
 - (c) persons who may be authorised to keep or handle biosecurity matter under a particular scheme.

- (2) Without limiting the generality of subsection (1), the regulations may provide for—
- (a) the period for which an identification code remains active and the renewal of an identification code; and
 - (b) the persons who may apply for the allocation or renewal of an identification code or who may make other applications relating to an identification code; and
 - (c) the cancellation of an identification code; and
 - (d) the association of other codes identifying biosecurity matter with an identification code; and
 - (e) the determination at the discretion of a Chief Officer of the boundaries of a place allocated an identification code and the variation of those boundaries; and
 - (f) the keeping of a record of identification codes and other information and the circumstances in which information may or may not be made available.
- (3) If a person does not have a current identification code as required by the regulations, the person is guilty of an offence.
- Maximum penalty:
- (a) for a body corporate—\$50 000;
 - (b) for a natural person—\$10 000.

Part 6—Biosecurity accreditation, auditing and certification—administration

Division 1—Preliminary

76—Interpretation

In this Part—

amendment of an appointment policy or an accreditation policy includes an addition, revocation or substitution;

relevant authorisation means—

- (a) in relation to an accreditation authority, the approval of a person as an accreditation authority; and
- (b) in relation to a biosecurity auditor, the appointment of a person as a biosecurity auditor; and
- (c) in relation to a biosecurity certifier, the accreditation of a person as a biosecurity certifier;

relevant decision-maker means—

- (a) in the case of an application relating to an accreditation authority—the Chief Executive; and
- (b) in the case of an application relating to a biosecurity auditor—an accreditation authority; and

Biosecurity Bill 2023

Part 6—Biosecurity accreditation, auditing and certification—administration
Division 1—Preliminary

- (c) in the case of an application relating to a biosecurity certifier—an accreditation authority.

77—Appointment policy for biosecurity auditors

- 5 (1) An accreditation authority that is authorised to appoint biosecurity auditors under this Act must adopt a policy in relation to the appointment of biosecurity auditors (an *appointment policy*).
- (2) An appointment policy may make provision for, or in respect to, the following matters:
- 10 (a) the qualifications, skills, knowledge and experience required for a person to be appointed as a biosecurity auditor by the accreditation authority;
- (b) the suitability of a person to carry out the function of performing biosecurity audits as a biosecurity auditor appointed by the accreditation authority;
- (c) any other prescribed matter.
- 15 (3) An appointment policy adopted by an accreditation authority (other than the Chief Executive) has no effect unless it, and any amendment to it, have been approved by the Chief Executive.
- (4) However, subsection (3) does not apply to an amendment if the accreditation authority certifies that the amendment—
- 20 (a) is minor in nature or for the purposes of correcting an error; or
- (b) is necessary to reflect a change of—
- (i) a course of study (including a professional development course); or
- (ii) a required qualification; or
- (iii) the provider of a course or qualification; or
- (c) is authorised by the regulations.
- 25 (5) An accreditation authority must ensure that an appointment policy is publicly available.
- (6) An accreditation authority may adopt different appointment policies for different types or classes of—
- 30 (a) biosecurity auditors; or
- (b) biosecurity audits.
- (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.

78—Accreditation policy for biosecurity certifiers

- 35 (1) An accreditation authority that is authorised to accredit biosecurity certifiers under this Act must adopt a policy in relation to the accreditation of biosecurity certifiers (an *accreditation policy*).

- (2) An accreditation policy may make provision for, or in respect to, the following matters:
- (a) the qualifications, skills, knowledge and experience required for a person to be accredited as a biosecurity certifier by the accreditation authority;
 - 5 (b) the suitability of a person to carry out the function of issuing biosecurity certificates as a biosecurity certifier accredited by the accreditation authority;
 - (c) any other prescribed matter.
- (3) An accreditation policy adopted by an accreditation authority (other than the Chief Executive) has no effect unless it, and any amendment to it, have been approved by the Chief Executive.
- 10 (4) However, subsection (3) does not apply to an amendment if the accreditation authority certifies that the amendment—
- (a) is minor in nature or for the purposes of correcting an error; or
 - (b) is necessary to reflect a change of—
 - 15 (i) a course of study (including a professional development course); or
 - (ii) a required qualification; or
 - (iii) the provider of a course or qualification; or
 - (c) is authorised by the regulations.
- (5) An accreditation authority must ensure that an accreditation policy is publicly available.
- 20 (6) An accreditation authority may adopt an accreditation policy for each 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.
- 25

Division 2—Accreditation authorities

79—Accreditation authorities

- (1) For the purposes of this Act, an accreditation authority includes—
- (a) the Chief Executive; and
 - 30 (b) a person approved by the Chief Executive to be an accreditation authority.
- (2) An accreditation authority is authorised under this Act—
- (a) to appoint persons as biosecurity auditors or to accredit persons as biosecurity certifiers; and
 - (b) to require biosecurity audits to be performed in certain circumstances.
- 35 (3) An approval by the Chief Executive under subsection (1)(b) may authorise the accreditation authority to act as an accreditation authority in respect of—
- (a) a specified class of biosecurity auditors or biosecurity audits; or
 - (b) a specified class of biosecurity certifiers or biosecurity certificates.

Biosecurity Bill 2023

Part 6—Biosecurity accreditation, auditing and certification—administration
Division 2—Accreditation authorities

- (4) An approval by the Chief Executive under subsection (1)(b) may be subject to such conditions and limitations as the Chief Executive thinks fit.
- (5) For the purposes of this Act, a reference to an accreditation authority in respect of a function or power of an accreditation authority only includes a reference to a person approved by the Chief Executive under subsection (1)(b) if the person has been approved to perform the function or to exercise the power.

80—Responsible accreditation authority

- (1) Subject to this section, 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 (as the case may be).

- (2) If an accreditation authority other than the responsible accreditation authority under subsection (1)—

(a) renews a biosecurity auditor's appointment as a biosecurity auditor; or

(b) renews a biosecurity certifier's appointment 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 Chief Executive may, but is not required to, perform or exercise any of the functions or powers 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 and powers of a responsible accreditation authority in respect of the appointment may be performed by—

(i) an accreditation authority approved by the Chief Executive to perform or exercise those functions or powers in respect of the appointment or accreditation; or

(ii) an accreditation authority approved by the Chief Executive 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 Chief Executive.

Division 3—Applications

81—Applications

- (1) A person may apply to the relevant decision-maker for—
- (a) approval as an accreditation authority; or
 - 5 (b) appointment as a biosecurity auditor; or
 - (c) accreditation as a biosecurity certifier.
- (2) An application must—
- (a) be made in a form approved by the relevant decision-maker; and
 - (b) include, or be accompanied by, any prescribed information or evidence; and
 - 10 (c) include, or be accompanied by, any other information or evidence that the relevant decision-maker reasonably requires in connection with the application; and
 - (d) be accompanied by the relevant application fee specified in subsection (3), if any.
- 15 (3) The amount of the application fee is—
- (a) if the relevant decision-maker is the Chief Executive, 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 Chief Executive, the application fee in relation to the application is payable to, and is to be retained by, the relevant decision-maker.
- 20 (5) The relevant decision-maker may, by written notice, require an applicant to provide further information, documents or records relevant to the application.
- (6) A person who is applying under subsection (1)(b) or (c) must allow an authorised officer or a biosecurity auditor, acting at the request of the relevant decision-maker, to inspect any premises, vehicles, facilities, plant or equipment, or any other thing, proposed to be used by the person in connection with the performance of the functions or the exercise of the powers of a biosecurity auditor or biosecurity certifier (as the case may be).
- 25 (7) The applicant may, with the approval of the relevant decision-maker or at the request of the relevant decision-maker, amend the application before the relevant decision-maker has finished considering it.
- 30

82—Grant or refusal of application

- 35 (1) The relevant decision-maker may, after considering an application under this Division, grant the relevant authorisation with or without conditions, or refuse to grant the relevant authorisation, to the applicant.
- (2) The relevant decision-maker must refuse to grant the relevant authorisation in prescribed circumstances.

Biosecurity Bill 2023

Part 6—Biosecurity accreditation, auditing and certification—administration

Division 3—Applications

- (3) The relevant decision-maker may refuse to grant the relevant authorisation to the applicant—
- (a) if the application does not comply with any requirement imposed by or under this Act, including the payment of the relevant application fee; or
 - 5 (b) if the relevant decision-maker is not satisfied that the applicant has the qualifications, skills, knowledge and experience required under this Act for the relevant authorisation; or
 - (c) if the relevant decision-maker is not satisfied—
 - 10 (i) that the applicant is a suitable person to be granted the relevant authorisation; or
 - (ii) if the applicant is a body corporate—that each director of the body corporate is a suitable person to be a director of a body corporate that is to be granted the relevant authorisation; or
 - (d) on any prescribed ground; or
 - 15 (e) for any other reason that the relevant decision-maker considers to be sufficient reason for refusing the application.
- (4) If the relevant decision-maker grants an application under this Division, the relevant decision-maker must—
- 20 (a) by written notice, notify the applicant of the decision; and
 - (b) issue the applicant with a certificate or identity card in an approved form.
- (5) If the relevant decision-maker refuses to grant the relevant authorisation, the relevant decision-maker must, by written notice—
- 25 (a) notify the applicant of the decision; and
 - (b) provide the applicant with reasons for the decision; and
 - (c) notify the applicant that the applicant may apply for a review of the decision under Part 13.
- (6) If the relevant decision-maker fails to give an applicant notice of a decision to grant or to refuse the relevant authorisation within the prescribed period, the relevant decision-maker is taken to have refused to grant the relevant authorisation.

83—Scope of appointment or accreditation

- (1) In relation to the appointment of a person as a biosecurity auditor, the responsible accreditation authority, in the instrument of appointment (and as part of the relevant authorisation)—
- 35 (a) may specify a class or classes of biosecurity audits that the biosecurity auditor is authorised to perform; and
 - (b) may specify other limitations that apply in relation to the appointment of the biosecurity auditor.

- (2) In relation to the accreditation of a person as a biosecurity certifier, the responsible accreditation authority, in the instrument of accreditation (and as part of the relevant authorisation)—
- (a) must specify—
 - (i) the class or classes of biosecurity certificates that the biosecurity certifier is accredited to issue; and
 - (ii) the class or classes of biosecurity matter or carriers in respect of which the biosecurity certifier is authorised to act; and
 - (b) may specify other limitations that apply in relation to the accreditation of the biosecurity certifier.
- (3) To avoid doubt, nothing in this Act authorises or requires a biosecurity auditor or biosecurity certifier to act in contravention of a condition or limitation of the biosecurity auditor's appointment as a biosecurity auditor or the biosecurity certifier's accreditation as a biosecurity certifier (as the case may be).

84—Duration of relevant authorisation

- (1) A relevant authorisation remains in force for a period, not exceeding 5 years, specified by the relevant decision-maker, unless sooner cancelled or suspended.
- (2) A relevant authorisation has no effect during any period during which the relevant authorisation is suspended.
- (3) A relevant authorisation may be renewed in accordance with Division 4.

85—Variation of relevant authorisation

- (1) A relevant decision-maker may, at any time, by written notice, vary 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 may be made—
 - (a) on the relevant decision-maker's own initiative; or
 - (b) on the application of the holder of the relevant authorisation.
- (3) A variation of a relevant authorisation may include the variation of a condition of the relevant authorisation.
- (4) The regulations may make further provision for a variation under this section, including—
 - (a) the form and procedure for an application for a variation; and
 - (b) matters to be included in a notice of variation, or in a notice of a decision to refuse an application for a variation.
- (5) A prescribed fee may be payable in relation to an application for a variation.

Division 4—Renewal of relevant authorisation**86—Applications to renew**

- (1) The holder of a relevant authorisation may apply to the relevant decision-maker for renewal of the relevant authorisation.
- 5 (2) An application must—
- (a) be made at least 28 days before the expiry of the relevant authorisation, or within such shorter period as the relevant decision-maker may, in its absolute discretion, allow; and
 - (b) be made in a form approved by the relevant decision-maker; and
 - 10 (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 in connection with the application; and
 - (e) be accompanied by the relevant application fee specified in subsection (3), if any.
- 15 (3) The amount of the application fee is—
- (a) if the relevant decision-maker is the Chief Executive, the prescribed amount; or
 - (b) in any other case, the amount required by the relevant decision-maker.
- 20 (4) If an application is made to a relevant decision-maker other than the Chief Executive, the application fee in relation to the application is payable to, and is to be retained by, the relevant decision-maker.
- (5) The relevant decision-maker may, by written notice, require an applicant to provide further information, documents or records relevant to the application.
- 25 (6) If an application for renewal of a relevant authorisation is duly made to the relevant decision-maker within the period applying under subsection (2)(a), the relevant authorisation is taken to continue in force until the relevant decision-maker notifies the applicant of a decision to grant or refuse the application.
- 30 (7) Nothing in subsection (6) prevents the relevant authorisation from being suspended or cancelled in accordance with this Act before the expiry of the relevant authorisation.

87—Grant or refusal of renewal of relevant authorisation

- (1) The relevant decision-maker may, after considering an application for renewal of a relevant authorisation, renew the relevant authorisation with or without conditions, or refuse to renew the relevant authorisation.
- 35 (2) The relevant decision-maker must refuse to renew the relevant authorisation in prescribed circumstances.
- (3) The relevant decision-maker may refuse to renew the relevant authorisation—
- (a) if the application does not comply with any requirement imposed by or under this Act, including the payment of the relevant application fee; or

- (b) if the relevant decision-maker is not satisfied that the applicant has the qualifications, skills, knowledge and experience required under this Act to continue to hold the relevant authorisation; or
- (c) if the relevant decision-maker is not satisfied—
 - 5 (i) that the applicant is a suitable person to continue to hold the relevant authorisation; or
 - (ii) if the applicant is a body corporate—that each director of the body corporate is a suitable person to be a director of a body corporate that is the holder of the relevant authorisation; or
- 10 (d) on any prescribed ground; or
- (e) for any other reason that the relevant decision-maker considers to be sufficient reason for refusing the application.
- (4) If the relevant decision-maker refuses to renew a relevant authorisation, the relevant decision-maker must, by written notice—
 - 15 (a) notify the applicant of the decision; and
 - (b) provide the applicant with reasons for the decision; and
 - (c) notify the applicant that the applicant may apply for a review of the decision under Part 13.

Division 5—Conditions of relevant authorisation

20 88—Conditions of relevant authorisation

- (1) A relevant decision-maker (including such an entity acting as the responsible accreditation authority) may impose conditions on a person's relevant authorisation—
 - (a) at the time of the grant, or renewal, of the relevant authorisation; or
 - (b) at any other time by variation to the relevant authorisation under section 85.
- 25 (2) In addition to any condition imposed on a person's relevant authorisation under subsection (1), the relevant authorisation may be subject to prescribed conditions.
- (3) Unless expressly provided under this Act, a section of this Division that authorises a type of condition to be imposed on a person's relevant authorisation does not—
 - (a) prevent other conditions being imposed on the relevant authorisation; or
 - 30 (b) limit the type of condition that may be imposed on the relevant authorisation.

89—Conditions of approval as accreditation authority

- (1) Approval as an accreditation authority is subject to the condition that the functions of the accreditation authority under this Act will be carried out only by individuals who are notified to the Chief Executive (in such manner as the Chief Executive thinks fit) as individuals who are to carry out those functions for the accreditation authority.
- 35 (2) A condition imposed on an approval as an accreditation authority may require the accreditation authority to perform the functions of an accreditation authority in accordance with all of, or part of, a specified standard, code, guideline, protocol, program or other similar instrument.

Biosecurity Bill 2023

Part 6—Biosecurity accreditation, auditing and certification—administration
 Division 5—Conditions of relevant authorisation

90—Conditions of appointment as a biosecurity auditor

(1) Appointment as a biosecurity auditor is subject to the condition that the conduct of biosecurity audits by the biosecurity auditor will be carried out only by an individual—

- 5 (a) who has the qualifications, skills, knowledge and experience required by the relevant decision-maker appointment policy; and
- (b) who is the biosecurity auditor or an identified individual with respect to the conduct of biosecurity audits by the biosecurity auditor.

(2) A condition imposed on an appointment as a biosecurity auditor may—

- 10 (a) require the biosecurity auditor to perform the functions of a biosecurity auditor in accordance with all of, or part of, a specified standard, code, guideline, protocol, program or other similar instrument;
- (b) limit the area of the State in which the biosecurity auditor may perform the functions of a biosecurity auditor;
- 15 (c) fix fees to be paid to the responsible accreditation authority.

91—Conditions of accreditation as a biosecurity certifier

A condition imposed on the accreditation of a biosecurity certifier may—

- 20 (a) require the biosecurity certifier to perform the functions of a biosecurity certifier in accordance with all of, or part of, a specified standard, code, guideline, protocol, program or other similar instrument;
- (b) require the biosecurity certifier to take out and maintain a policy of insurance that indemnifies the biosecurity certifier against any liability to which the biosecurity certifier may become subject in connection with the performing, or purporting to perform, the functions of a biosecurity certifier;
- 25 (c) require the biosecurity certifier to keep specified records and to provide to the responsible accreditation authority, in a manner and form determined by the responsible accreditation authority, such information as the responsible accreditation authority may specify from time to time;
- 30 (d) provide for an audit to be conducted from time to time of all or part of the biosecurity certifier's operations (at a cost to be charged to the biosecurity certifier) and for the reporting of the results of the audit to the responsible accreditation authority or the Chief Executive (or both).

92—Failure to comply with condition

35 (1) An accreditation authority must not contravene a condition of the accreditation authority's approval as an accreditation authority.

Maximum penalty:

- (a) for a body corporate—\$125 000;
- (b) for a natural person—\$25 000.

40 (2) A biosecurity auditor must not contravene a condition of the biosecurity auditor's appointment as a biosecurity auditor.

Maximum penalty:

- (a) for a body corporate—\$125 000;
 - (b) for a natural person—\$25 000.
- (3) A biosecurity certifier must not contravene a condition of the biosecurity certifier's accreditation as a biosecurity certifier.

5 Maximum penalty:

- (a) for a body corporate—\$125 000;
 - (b) for a natural person—\$25 000.
- (4) A person who commits an offence under this section because the person contravenes a condition—
- (a) continues, until the contravention ceases, to be liable for a contravention of the relevant subsection; and
 - (b) is guilty of a continuing offence for each day that the contravention continues.
- (5) A penalty imposed in respect of an offence under this section is in addition to any action taken under Division 6 for the contravention of the condition.

15 **Division 6—Suspension, cancellation or surrender of relevant authorisation**

93—Grounds for suspension or cancellation of relevant authorisation

Each of the following is grounds for suspending or cancelling a relevant authorisation:

- 20 (a) the holder of the relevant authorisation has contravened this Act or a corresponding law;
- (b) without limiting paragraph (a), the holder of the relevant authorisation has contravened a condition of the relevant authorisation;
- 25 (c) the holder of the relevant authorisation no longer has the qualifications, skills, knowledge or experience required under this Act to continue to hold the relevant authorisation;
- (d) the holder of the relevant authorisation is not a suitable person to continue to hold the relevant authorisation or, in the case of a body corporate, a director is not a suitable person to be a director of a body corporate that is the holder of the relevant authorisation;
- 30 (e) an application relating to the relevant authorisation was false or misleading in a material particular;
- (f) 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 the application for the relevant authorisation was made in respect of the holder of the relevant authorisation, the relevant decision-maker would have refused the application;
- 35 (g) the holder of the relevant authorisation has ceased to undertake the activity authorised under the relevant authorisation;
- 40 (h) the holder of the relevant authorisation has failed to pay a fee or charge under this Act within the time required for payment;

Biosecurity Bill 2023

Part 6—Biosecurity accreditation, auditing and certification—administration
Division 6—Suspension, cancellation or surrender of relevant authorisation

- (i) any other prescribed ground.

94—Suspension of relevant authorisation

- 5 (1) The relevant decision-maker may, by written notice to the holder of a relevant authorisation, suspend the relevant authorisation if the relevant decision-maker is satisfied that there are grounds for the suspension of the relevant authorisation.
- (2) A notice under subsection (1) must specify—
- (a) the grounds for the suspension; and
- (b) the date or time from which the suspension takes effect; and
- 10 (c) the period of suspension; and
- (d) the actions required, if any, for the suspension to be lifted.
- (3) Before suspending the relevant authorisation, the relevant decision-maker must—
- (a) give written notice to the holder of the relevant authorisation of the relevant decision-maker's intention to suspend the relevant authorisation and the proposed grounds for doing so; and
- 15 (b) allow the holder of the relevant authorisation at least 14 days to make a submission to the relevant decision-maker about the proposed suspension; and
- (c) take into account any submission made to the relevant decision-maker by the holder of the relevant authorisation before the deadline for the making of a submission.
- 20 (4) 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 proceed, having regard to that submission; and
- 25 (b) give written notice of that decision to the holder of the relevant authorisation.
- (5) A notice under subsection (1) or (4) must also provide information about the right to apply for a review of the decision to suspend the relevant authorisation under Part 13.

95—Cancellation of relevant authorisation

- 30 (1) The relevant decision-maker may, by written notice to the holder of a relevant authorisation, cancel the relevant authorisation if the relevant decision-maker is satisfied that there are grounds for the cancellation of the relevant authorisation.
- (2) A notice under subsection (1) must specify—
- (a) the grounds for the cancellation; and
- 35 (b) the date or time from which the cancellation takes effect.
- (3) Before cancelling the relevant authorisation, the relevant decision-maker must—
- (a) give written notice to the holder of the relevant authorisation of the relevant decision-maker's intention to cancel the relevant authorisation and the proposed grounds for doing so; and

- (b) allow the holder of the relevant authorisation at least 14 days to make a submission to the relevant decision-maker about the proposed cancellation; and
 - (c) take into account any submission made to the relevant decision-maker by the holder of the relevant authorisation before the deadline for the making of a submission.
- (4) If the holder of the relevant authorisation makes a submission to the relevant decision-maker about the cancellation before the specified deadline, the relevant decision-maker must—
- (a) decide whether the cancellation should proceed, having regard to that submission; and
 - (b) give written notice of that decision to the holder of the relevant authorisation.
- (5) The relevant decision-maker is not required to give notice under this section of a proposed cancellation if the relevant authorisation is suspended and either—
- (a) the holder of the relevant authorisation was given an opportunity to make a submission about the suspension before the suspension took effect; or
 - (b) the holder of the relevant authorisation was given an opportunity to make a submission about the suspension after the suspension took effect, and the period specified for making that submission has ended.
- (6) A notice under subsection (1) or (4) must also provide information about the right to apply for a review of the decision to cancel the relevant authorisation under Part 13.
- (7) If a relevant authorisation is cancelled under this section, the person who held the relevant authorisation must return immediately to the relevant decision-maker any identity card or similar document that was issued to the person in connection with the relevant authorisation.

Maximum penalty: \$1 000.

96—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 is of such significance that the relevant authorisation should be suspended; or
 - (c) the holder of the relevant authorisation has engaged in fraudulent behaviour under the relevant 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

Biosecurity Bill 2023

Part 6—Biosecurity accreditation, auditing and certification—administration

Division 6—Suspension, cancellation or surrender of relevant authorisation

- (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 14 days after the notice is given to the holder of the relevant authorisation.
- 5 (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
- 10 (b) give written notice of that decision to the holder of the relevant authorisation.

97—Voluntary suspension of relevant authorisation

- (1) The holder of a relevant authorisation may surrender the relevant authorisation.
- (2) The surrender of a relevant authorisation must—
- 15 (a) be made to the relevant decision-maker; and
- (b) be made in a form approved by the relevant decision-maker; and
- (c) be accompanied by the applicable application fee specified in subsection (3), if any; and
- 20 (d) 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 relevant authorisation.
- (3) The amount of the application fee is—
- (a) of the relevant decision-maker is the Chief Executive, the prescribed amount; or
- (b) in any other case, the amount required by the relevant decision-maker.
- 25 (4) The surrender of a relevant authorisation does not take effect until the relevant decision-maker has given the holder of the relevant authorisation written notice that the surrender of the relevant authorisation is approved.
- (5) On the surrender of a registered entity's biosecurity registration taking effect, the biosecurity registration is cancelled.

98—Effect of suspension, cancellation or surrender

- (1) A relevant authorisation may be suspended, cancelled or surrendered under this Division unconditionally or subject to such conditions as the relevant decision-maker may impose.
- (2) A condition under this section—
- 35 (a) may 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 relevant authority; 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, cancelled or surrendered.

5 (3) The relevant decision-maker may, by written notice given to the holder or former holder of the relevant authorisation, vary a condition imposed under this section.

(4) A holder or former holder of the relevant authority must comply with a condition attached to the suspension, cancellation or surrender of the relevant authorisation.

Maximum penalty:

10 (a) for a body corporate—\$125 000;

(b) for a natural person—\$25 000.

Part 7—Biosecurity audits and certification

Division 1—Biosecurity audits

Subdivision 1—Preliminary

99—Interpretation

15 In this Division—

designated authority means—

(a) the Chief Executive; or

(b) a Chief Officer; or

(c) an accreditation authority.

20 Subdivision 2—Authority to act

100—Biosecurity auditors

(1) 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.

25 (2) The authorisation of a biosecurity auditor to perform biosecurity audits is subject to—

(a) any provision made by the responsible accreditation authority as to the class (or classes) of biosecurity audits that the biosecurity auditor is authorised to perform; and

30 (b) any conditions or limitations that apply in relation to the appointment of the biosecurity auditor.

101—Approval of authorised officer to perform functions of biosecurity auditor

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

Biosecurity Bill 2023

Part 7—Biosecurity audits and certification

Division 1—Biosecurity audits

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- (2) An approval under subsection (1)—
- (a) may apply to a specified authorised officer or to any 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 Chief Executive.
- (4) The Chief Executive may, by written instrument, revoke or vary 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.

102—Entry to premises by biosecurity auditor

- (1) A biosecurity auditor who is also an authorised officer may perform their functions as a biosecurity auditor on premises entered under their 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 their functions as an authorised officer.
- (3) Nothing in this section prevents a biosecurity auditor from—
- (a) entering or remaining on premises or doing something else on premises, with the consent of an occupier of the premises; or
 - (b) entering or remaining on any public place while the place is open to the public; or
 - (c) entering or remaining on premises or any public place in circumstances prescribed by the regulations.

103—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 in the circumstances (subject to any conditions of appointment as a biosecurity auditor).

Subdivision 3—Biosecurity audits generally

104—Biosecurity audits

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

- 5 (a) an accreditation audit;
- (b) a compliance audit.

105—Biosecurity audit mandatory in certain circumstances

- (1) A biosecurity audit is mandatory if a designated authority has required the audit to be performed.
- 10 (2) Nothing in this section prevents a biosecurity audit from being voluntarily performed at any time.

106—Reporting requirements

- (1) A biosecurity auditor must prepare a written report about each biosecurity audit performed by the biosecurity auditor.
- 15 (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—
 - 20 (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:
 - 25 (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 auditor indicates contravention of this Act or other deficiencies—
 - 30 (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;
 - 35 (e) such other matters as may be prescribed.
- (5) A biosecurity auditor must provide a copy of a report to the Chief Executive or the relevant Chief Officer if so directed to do so by the Chief Executive or relevant Chief Officer.

Biosecurity Bill 2023

Part 7—Biosecurity audits and certification

Division 1—Biosecurity audits

107—Biosecurity auditor to provide immediate report in certain circumstances

- (1) A biosecurity auditor must report to the relevant Chief Officer if, during a biosecurity audit, the biosecurity auditor becomes aware of, or suspects, any of the following occurrences:
- 5 (a) any incidence 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;
 - 10 (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 relevant Chief Officer—
- (a) as soon as possible; and
 - 15 (b) no later than 24 hours after the biosecurity auditor becomes aware of the occurrence.
- (3) A biosecurity auditor must give the relevant Chief Officer a written report under subsection (1) within 5 days after becoming aware of the occurrence.
- (4) For the purposes of this Act, the requirement to make a report under this section is taken to be a condition of appointment of each biosecurity auditor.

Subdivision 4—Accreditation audits**108—Accreditation audits**

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

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

109—Imposition of requirement to perform accreditation audit

- (1) The Chief Executive may require an accreditation audit to be performed in relation to an application for the grant or renewal of, or variation to, approval to perform any of the functions of an accreditation authority under this Act.
- 35 (2) A Chief Officer may require an accreditation audit to be performed in relation to an application for the grant or renewal of, or variation to, biosecurity registration under this Act.

- (3) A Chief Officer or an authorised officer may require an accreditation audit to be performed in relation to an application for the grant or renewal of, or variation to, a permit under this Act.
- 5 (4) 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, appointment as a biosecurity auditor;
 - (b) an application for the grant or renewal of, or a variation to, accreditation as a biosecurity certifier.
- 10 (5) An accreditation authority, other than the Chief Executive, must require an accreditation audit to be performed in relation to an application—
- (a) if directed to do so by the Chief Executive; or
 - (b) if required to do so under the conditions of its approval as an accreditation authority.
- 15 (6) If an accreditation audit is required to be performed under this section, the audit target must be notified in accordance with the regulations.

110—Engagement of auditor

A designated authority that requires an accreditation audit to be performed may—

- (a) engage a biosecurity auditor to perform the audit; or
- 20 (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.

111—Functions of biosecurity auditors - accreditation audits

- 25 (1) A biosecurity auditor has the following functions in connection with a biosecurity audit, subject to any limitations specified in the biosecurity auditor's instrument of engagement as a biosecurity auditor:
- (a) to assess the audit target's suitability for the grant, renewal or variation of the biosecurity registration, approval as an accreditation authority, appointment
30 as a biosecurity auditor, accreditation as a biosecurity certifier, or a permit (as the case requires);
 - (b) to assess whether the audit target has the qualifications, skills, knowledge and experience (if any) required for biosecurity registration, approval as an accreditation authority, appointment as a biosecurity auditor, accreditation as
35 a biosecurity certifier, or a permit (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.

Biosecurity Bill 2023

Part 7—Biosecurity audits and certification

Division 1—Biosecurity audits

- (2) A biosecurity auditor has such other functions in connection with a biosecurity audit as are—
- (a) prescribed by the regulations; or
 - (b) subject to the regulations, conferred on the biosecurity auditor by the biosecurity auditor's instrument of engagement for the accreditation audit.

112—Recovery of fee for accreditation audits

- (1) If an accreditation audit is carried out by a biosecurity auditor who is an authorised officer, a fee for the performance of the accreditation audit prescribed under this Act or calculated in accordance with a fee notice made under section 301(9) is payable by the audit target in accordance with the regulations (and may be recovered in accordance with the regulations).
- (2) An audit target is responsible for any fee payable in connection with an accreditation audit performed by a biosecurity auditor who is not an authorised officer (being a fee specified by the biosecurity auditor for the conduct of the audit and recoverable by the biosecurity auditor as a debt).

113—Use of biosecurity audits

The person who requires an accreditation audit must have regard to that accreditation audit in performing the person's functions under the Act in relation to the audit target.

Subdivision 5—Compliance audits**114—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 audit);
- (c) to identify measures for improved compliance with this Act.

115—Imposition of requirement to perform compliance audit

- (1) The Chief Executive or a Chief Officer may require a compliance audit to be performed in relation to any person at any time.
- (2) An accreditation authority, other than the Chief Executive, may require a compliance audit to be performed in relation to a person who is, or has been, a biosecurity auditor or biosecurity certifier at any time, but only if the accreditation authority is, or was, the responsible accreditation authority for the appointment or accreditation of the person.
- (3) An accreditation authority that requires a compliance audit to be performed must 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.

116—Decision to require compliance audits

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

117—Audit frequency policy

- (1) A designated authority must adopt a policy (an *audit frequency policy*) in relation to the frequency of audits which may be performed for the purposes of this Act.
- (2) An audit frequency policy may make provision for, or with respect to, the following matters:
- 25 (a) the frequency of compliance audits;
 - (b) any other matters that are prescribed by the regulations.
- (3) An audit frequency policy adopted by an accreditation authority, other than the Chief Executive, has no effect unless it, and any amendment to it, has been approved by the Chief Executive.
- 30 (4) However, subsection (3) does not apply to an amendment 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—
 - 35 (i) a course of study (including a professional development course); or
 - (ii) a required qualification; or
 - (iii) the provider of a course or a qualification; or
 - (c) is authorised by the regulations.
- (5) A designated authority must ensure that an audit frequency policy is publicly available.

Biosecurity Bill 2023

Part 7—Biosecurity audits and certification

Division 1—Biosecurity audits

- (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 relevant).
- (7) A designated authority may adopt an audit frequency policy for each type of accreditation.
- (8) A reference in this Act to an audit frequency policy is a reference to the audit frequency policy that is relevant to the audit concerned.

118—Engagement of auditor

- (1) A designated authority that requires a compliance audit may—
- (a) engage or appoint the 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) A direction may only be given under subsection (1)(b) if the audit target is—
- (a) a registered entity; or
 - (b) an accreditation authority other than the Chief Executive; or
 - (c) a biosecurity auditor; or
 - (d) a biosecurity certifier; or
 - (e) the holder of a permit; or
 - (f) an entity responsible for preparing a draft biosecurity program; or
 - (g) a person who has entered into a biosecurity control agreement; or
 - (h) a prescribed person or a person of a prescribed class.

119—Functions of biosecurity auditor—compliance audits

- (1) A biosecurity auditor has the following functions in connection with a compliance audit, subject to any limitations specified in the biosecurity auditor's instrument of appointment:
- (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 designated entity that requires the audit, on the biosecurity auditor's assessment of those matters.

- (2) A bioresecurity auditor has such other functions in connection with a compliance audit as are—
- (a) prescribed by the regulations; or
 - (b) subject to the regulations, conferred on the bioresecurity auditor by the bioresecurity auditor's instrument of engagement for the compliance audit.

120—Recovery of fee for compliance audit

- (1) If a compliance audit is carried out by a bioresecurity auditor who is an authorised officer, a fee for the performance of the compliance audit prescribed under this Act or calculated in accordance with a fee notice under section 301(9) is payable by the audit target in accordance with the regulations (and may be recovered in accordance with the regulations).
- (2) An audit target is responsible for any fee payable in connection with a compliance audit performed by a bioresecurity auditor who is not an authorised officer (being a fee specified by the bioresecurity auditor for the conduct of the audit and recoverable by the bioresecurity auditor as a debt).

121—Use of compliance audits

A designated authority that requires a compliance audit must have regard to the compliance audit in performing the designated authority's functions under this Act in relation to the audit target.

Subdivision 6—Related matters

122—Audit agreements

- (1) The Chief Executive may enter into an agreement (an *audit agreement*) with another accreditation authority that relates to—
- (a) the functions and powers of the accreditation authority under this Part; and
 - (b) without limiting paragraph (a), the conduct of accreditation audits, bioresecurity audits and compliance audits; and
 - (c) any other matter determined by the Chief Executive to be appropriate in the circumstances.
- (2) An audit agreement may be varied from time to time by agreement between the Chief Executive and the other accreditation authority.

123—Hindering etc bioresecurity auditors

A person who—

- (a) without reasonable excuse hinders or obstructs a bioresecurity auditor, or a person assisting a bioresecurity auditor, in the performance of a function or the exercise of a power under this Act; or
- (b) fails to answer a question put by a bioresecurity auditor to the best of the person's knowledge, information or belief; or
- (c) provides an answer to a question put by a bioresecurity auditor that the person knows to be false or misleading in a material particular; or

Biosecurity Bill 2023

Part 7—Biosecurity audits and certification

Division 1—Biosecurity audits

-
- (d) produces a document or record that the person knows to be false or misleading in a material particular; or
- (e) fails without reasonable excuse to comply with a requirement or direction of a biosecurity auditor in the performance of a function or the exercise of a power under this Act; or
- (f) uses abusive, threatening or insulting language to a biosecurity auditor, or a person assisting a biosecurity auditor, in the performance of a function or the exercise of a power under this Act; or
- (g) falsely represents, by words or conduct, that the person is a biosecurity auditor,

is guilty of an offence.

Maximum penalty: \$25 000.

Division 2—Biosecurity certificates**124—Biosecurity certifier may issue biosecurity certificates**

- (1) A biosecurity certifier may—
- (a) issue a biosecurity certificate under this Act; and
- (b) verify biosecurity certificates or other documents, or the packaging or labelling of biosecurity matter.
- (2) The authorisation of a biosecurity auditor to act as envisaged by subsection (1) is subject to—
- (a) the provisions of the instrument of accreditation under section 83(2)(a); and
- (b) any conditions or limitations that apply in relation to the accreditation of the biosecurity auditor.

125—Content, form and duration of biosecurity certificates

- (1) A biosecurity certificate is a certificate that certifies 1 or more of the following matters in respect of a specified biosecurity matter or carrier, or any other specified thing or specified area, for the purposes of this Act:
- (a) that the biosecurity matter, carrier, thing or area is free from, or contains, a specified level of any stated biosecurity matter (such as a specified pest, disease, contaminant, pest infestation or infection or condition);
- (b) that the biosecurity matter, carrier, thing or area is free from, or contains, a specified level of any stated biosecurity matter (such as a specified pest, disease, contaminant, pest infestation or infection or condition) within the meaning of a corresponding law;
- (c) that the biosecurity matter, carrier, thing or area is in a specified condition;
- (d) that the biosecurity matter or carrier is from a specified area;
- (e) that the biosecurity matter, carrier, thing or area has been the subject of a specified treatment measure or specified way of treatment;
- (f) that the biosecurity matter, carrier or thing has been transported in a specified manner or via a specified route;

- (g) that the biosecurity matter, carrier or thing complies with specified biosecurity certification requirements;
- (h) that the biosecurity matter, carrier, thing or area meets other specified requirements;
- 5 (i) any other prescribed matter or circumstance.
- (2) A biosecurity certificate must—
 - (a) be in an approved form; and
 - (b) comply with any requirements prescribed by the regulations.
- 10 (3) The verification of a biosecurity certificate or other relevant document, or the packaging or labelling of biosecurity matter, may be evidenced in a manner and form approved by the responsible accreditation authority.
- (4) A biosecurity certificate may relate to—
 - (a) biosecurity matter or a carrier—
 - 15 (i) grown, produced, processed, packed, used, treated or tested in the State; or
 - (ii) to be brought into the State; and
 - (b) specified requirements of this Act or a corresponding law.
- (5) A biosecurity certificate issued under this section remains in effect for the period specified in the certificate.

20 **126—Specific powers of biosecurity certifiers**

A biosecurity certifier may do any or all of the following before issuing a biosecurity certificate in relation to any biosecurity matter, carrier, thing or area:

- (a) inspect the biosecurity matter, carrier, thing or area;
- (b) take samples of the biosecurity matter, carrier or thing;
- 25 (c) supervise the treatment or grading of biosecurity matter or a carrier;
- (d) inspect or test materials, chemicals or equipment used to treat or grade the biosecurity matter or carrier;
- (e) exercise any power prescribed by the regulations;
- 30 (f) do anything else that the biosecurity certifier considers necessary to be done for the purposes of determining whether to issue a biosecurity certificate and, if so, the contents of the biosecurity certificate.

127—Fees

- 35 (1) If a biosecurity certificate is prepared by an authorised officer, a fee authorised or determined by or under a fee notice under section 301(9) is payable by the person seeking the biosecurity certificate.
- (2) Except as provided by subsection (1), the fee for the preparation of a biosecurity certificate is the fee agreed between the biosecurity certifier and the person seeking the biosecurity certificate.

Biosecurity Bill 2023

Part 7—Biosecurity audits and certification

Division 2—Biosecurity certificates

128—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 the thing.
- (3) A reference in this Act to a biosecurity certificate includes a reference to an interstate biosecurity certificate.

129—Approval of authorised officers to perform functions of biosecurity certifiers

- (1) The Chief Executive may, by written instrument, approve any authorised officer to perform any specified function or power of a biosecurity certifier.
- (2) An approval under subsection (1)—
- (a) may apply to a specified authorised officer or to any 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 Chief Executive.
- (4) The Chief Executive may, by written instrument, revoke or vary 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—
- (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 certifier accredited under this Act; or
 - (b) a person accredited as a biosecurity certifier under this Act,
- includes a reference to a person approved to perform the functions of a biosecurity certifier under this section.

130—Use of assistance

A biosecurity certifier performing a function conferred by or under this Act may perform the function with the assistance of such other persons as the biosecurity certifier considers necessary in the circumstances (subject to any conditions of accreditation as a biosecurity certifier).

131—Offences

- (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.

Maximum penalty:

- (a) for a body corporate—\$250 000;
- (b) for a natural person—\$50 000.

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

Maximum penalty:

- (a) for a body corporate—\$250 000;
- (b) for a natural person—\$50 000.

- (3) A person must not issue, or purport to issue, 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.

Maximum penalty:

- (a) for a body corporate—\$250 000;
- (b) for a natural person—\$50 000.

- (4) A person must not alter or amend a biosecurity certificate or purported biosecurity certificate unless—

- (a) the person is a biosecurity certifier authorised to do so under this Act or a corresponding law; or
- (b) the alteration or amendment—

- (i) relates to the splitting of a consignment to which the biosecurity certificate relates; and
- (ii) the person is authorised in writing to make the alteration or amendment by a biosecurity certifier authorised to split consignments under this Act or a corresponding law.

Maximum penalty:

- (a) for a body corporate—\$250 000;
- (b) for a natural person—\$50 000

- (5) A person must not, in connection with obtaining or the issue of a biosecurity certificate, furnish any information or material that the person knows to be false or misleading in a material particular.

Maximum penalty: \$25 000.

Biosecurity Bill 2023

Part 7—Biosecurity audits and certification

Division 2—Biosecurity certificates

- (6) Without limiting a preceding subsection, a person who—
- (a) without reasonable excuse hinders or obstructs a biosecurity certifier, or a person assisting a biosecurity certifier, in the performance of a function or the exercise of a power under this Act; or
 - 5 (b) removes, damages or interferes with any notice, sign, identification mark, label, tape, seal, lock or other device used for the purposes of this Act; or
 - (c) fails to answer a question put by a biosecurity certifier to the best of the person's knowledge, information or belief; or
 - 10 (d) provides an answer to a question put by a biosecurity certifier that the person knows to be false or misleading in a material particular; or
 - (e) produces a document or record that the person knows to be false or misleading in a material particular; or
 - 15 (f) fails without reasonable excuse to comply with a requirement or direction of a biosecurity certifier in the performance of a function or the exercise of a power under this Act; or
 - (g) uses abusive, threatening or insulting language to a biosecurity certifier, or a person assisting a biosecurity certifier, in the performance of a function or the exercise of a power under this Act; or
 - 20 (h) falsely represents, by words or conduct, that the person is a biosecurity certifier,

is guilty of an offence.

Maximum penalty: \$25 000.

- (7) For the purposes of this section, a certificate is false or misleading in a material particular if it—
- 25 (a) includes information that is false or misleading in a material particular; or
 - (b) omits material information.
- (8) In this section—
- biosecurity certifier* includes an identified individual with respect to the issuing of biosecurity certificates by a biosecurity certifier.

Part 8—Permits**Division 1—Preliminary****132—Interpretation**

- (1) In this Part—
- relevant decision-maker*, in relation to a permit, means—
- 35 (a) the Chief Executive; or
 - (b) a Chief Officer; or
 - (c) an authorised officer.

- (2) Despite subsection (1), the following types of permits may only be issued by the Chief Executive or a Chief Officer:
- (a) an emergency permit;
 - (b) a prohibited matter permit;
 - (c) a prohibited dealing permit.

133—Types of permit

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 the permit, would be otherwise unlawful under this Act.

134—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 another Act.
- (4) To avoid 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 accordance with the permit.

Division 2—Applications**135—Application for permit**

- (1) A person may apply to a relevant decision-maker for a permit under this Act.

- (2) An application must—
- (a) be made in the approved form; 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 in connection with the application; and
 - (d) be accompanied by the prescribed fee.
- (3) A relevant decision-maker may, by written notice, require an applicant for a permit to provide further information, documents or records relevant to the application.
- (4) The applicant may, with the approval of the relevant decision-maker or at the request of the relevant decision-maker, amend the application before the relevant decision-maker has finished considering it.

136—Grant or refusal of permit

- (1) A relevant decision-maker may, after considering an application for a permit, grant a permit with or without conditions, or refuse to grant a permit, to the applicant.
- (2) A permit granted under subsection (1) must be in the approved form.
- (3) Without limiting subsection (2), a permit must specify the type of permit that has been granted.
- (4) A relevant decision-maker must refuse to grant a permit if the relevant decision-maker considers that the granting of the permit would create a biosecurity risk that is inconsistent with the objects of this Act.
- (5) A relevant decision-maker may refuse to grant a permit to an applicant—
- (a) if the application for the permit does not comply with any requirement imposed by or under this Act, including the payment of the relevant application fee; or
 - (b) if the relevant decision-maker is not satisfied that the applicant is a suitable person to engage in conduct to be authorised under the permit; or
 - (c) in an emergency, it would not be appropriate to grant the permit; or
 - (d) on any prescribed ground; or
 - (e) for any other reason that the relevant decision-maker considers to be sufficient reason for refusing the application.
- (6) If a relevant decision-maker refuses to grant a permit, the relevant decision-maker must, by written notice—
- (a) notify the applicant of the decision; and
 - (b) provide the applicant with reasons for the decision; and
 - (c) notify the applicant that the applicant may apply for a review of the decision under Part 13.
- (7) If a relevant decision-maker fails to give an applicant notice of a decision to grant or to refuse a permit within the prescribed period, the relevant decision-maker is taken to have refused to grant the permit.

137—Duration of permit

- (1) A permit remains in force for a period, not exceeding 5 years, specified on the permit, unless sooner cancelled or suspended.
- (2) A permit has no effect during any period during which the permit is suspended.
- 5 (3) A permit may be renewed in accordance with Division 3.

138—Variation of permit

- (1) A relevant decision-maker may, at any time, vary a permit by written notice to the permit holder.
- (2) A variation may be made—
 - 10 (a) on the relevant decision-maker's own initiative; or
 - (b) on the application of the permit holder.
- (3) A variation of a permit may include the variation of a condition of the permit.
- (4) The regulations may make further provision for a variation under this section, including—
 - 15 (a) the form and procedure for an application for a variation; and
 - (b) matters to be included in a notice of variation, or in a notice of a decision to refuse an application for a variation.
- (5) A prescribed fee may be payable in relation to an application for a variation.

Division 3—Renewal of permit

139—Renewal of permit

- (1) A permit holder may apply to a relevant decision-maker for the renewal of the permit.
- (2) An application must—
 - 25 (a) be made at least 28 days before the expiry of the relevant permit, or within such shorter period as the relevant decision-maker may, in its absolute discretion, allow; and
 - (b) be made in the approved form; 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 in connection with the application; and
 - 30 (e) be accompanied by the prescribed fee.
- (3) The relevant decision-maker may, by written notice, require an applicant to provide further information, documents or records relevant to the application.
- (4) If an application for renewal of a permit is duly made to a relevant decision-maker within the period applying under subsection (2)(a), the permit is taken to continue in force until the relevant decision-maker notifies the applicant of a decision to grant or refuse the application.
- 35

- (5) Nothing in subsection (4) prevents the permit from being suspended or cancelled in accordance with this Act before the expiry of the permit.

140—Grant or refusal of renewal of permit

- 5 (1) A relevant decision-maker may, after considering an application for renewal of a permit, renew the permit with or without conditions, or refuse to renew the permit.
- (2) A relevant decision-maker must refuse to renew the permit in prescribed circumstances.
- (3) A relevant decision-maker may refuse to renew the permit—
- 10 (a) if the application does not comply with any requirement imposed by or under this Act, including the payment of the relevant application fee; or
- (b) if the relevant decision-maker is not satisfied that the applicant is a suitable person to continue to hold the permit; or
- (c) if the relevant decision-maker considers that it would not be appropriate to renew the permit due to the occurrence of an emergency; or
- 15 (d) on any prescribed ground; or
- (e) for any other reason that the relevant decision-maker considers to be sufficient reason for refusing the application.
- (4) If a relevant decision-maker refuses to renew a permit, the relevant decision-maker must, by written notice—
- 20 (a) notify the applicant of the decision; and
- (b) provide the applicant with reasons for the decision; and
- (c) notify the applicant that the applicant may apply for a review of the decision under Part 13.

Division 4—Conditions of permit

141—Conditions of permit

- 25 (1) A relevant decision-maker may impose conditions on a permit—
- (a) at the time of the grant, or renewal, of the permit; and
- (b) at any other time by variation to the permit under section 138.
- (2) In addition to any condition imposed on a permit under subsection (1), the permit may
- 30 be subject to prescribed conditions.
- (3) Unless expressly provided under this Act, a section of this Division 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 type of conditions that may be imposed on the permit.

142—Conditions relating to insurance

- 35 (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
 - 5 (d) the period for which the insurance must be maintained, including that the insurance be maintained beyond the duration of the permit; and
 - (e) any other requirements the relevant decision-maker thinks fit.

143—Conditions requiring biosecurity audits

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

144—Conditions requiring financial assurances

- (1) In this section—

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

- 15 (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 Chief Executive;
- (c) the permit holder engaging in conduct that the permit holder is not, or is no longer, authorised to engage in under the permit;
- 20 (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—

- 25 (a) to provide 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; and
- (b) to provide evidence of such financial assurance before a relevant decision-maker grants, renews, varies, suspends or cancels the permit.

- (3) A condition imposing a financial assurance may specify the assurance to be in 1 or more of the following forms:

- 30 (a) a bank guarantee;
- (b) a bond;
- (c) a prescribed form'
- (d) any other form that is approved by the relevant decision-maker.

- (4) A financial assurance—

- 35 (a) may be claimed and realised, despite and without affecting—
 - (i) any liability of the permit holder 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 permit, in respect of the contravention to which it 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, Chief Executive; and
- (ii) the circumstances when the Chief Executive, or a person authorised by the Chief Executive, 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 administrative requirements in relation to the financial assurance;
- (g) the release of the financial assurance.

145—Conditions to take effect later

- (1) A condition of a permit may provide that all or a part of the permit 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 subsection (1) the conditions may provide that the permit will not take effect until a financial assurance is provided in accordance with a condition.

146—Failure to comply with condition

- (1) A permit holder must not contravene a condition of the permit.
- Maximum penalty:
- (a) for a body corporate—\$250 000;
- (b) for a natural person—\$50 000.
- (2) A person who commits an offence against subsection (1) because the person contravenes a condition—
- (a) continues, until the contravention ceases, to be liable for a contravention of that subsection; and
- (b) is guilty of a continuing offence for each day that the contravention continues.
- (3) 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 permit**147—Grounds for suspension or cancellation of permit**

- (1) Each of the following is grounds for suspending or cancelling a permit:
- (a) the permit holder has contravened this Act or a corresponding law;
 - 5 (b) without limiting paragraph (a), the permit holder has contravened a condition of the permit;
 - (c) the permit holder is not a suitable person to engage in the conduct authorised by the permit;
 - 10 (d) an application relating to the permit was false or misleading in a material particular;
 - (e) the permit holder has failed to pay fees or charges payable by the permit holder under this Act;
 - (f) it is in the interests of public safety to suspend or cancel the permit;
 - 15 (g) information has been provided that, if it had been received at the time that an application relating to the permit was made, may have resulted in an application for the permit being refused;
 - (h) the suspension or cancellation is necessary in an emergency;
 - (i) any other prescribed ground.
- (2) Subsection (1)(h) does not apply in respect of an emergency permit that was expressly granted in respect of the emergency.
- 20

148—Suspension of permit

- (1) A relevant decision-maker may, by written notice to a permit holder, suspend the permit of a permit holder if the relevant decision-maker is satisfied that there are grounds for the suspension of the permit.
- 25 (2) A notice under subsection (1) must specify—
- (a) the grounds for the suspension; and
 - (b) the date or time from which the suspension takes effect; and
 - (c) the period of suspension; and
 - (d) the actions required, if any, for the suspension to be lifted.
- 30 (3) Before suspending the permit, the 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) allow the permit holder at least 14 days to make a submission to the relevant decision-maker about the proposed suspension; and
 - 35 (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.

Biosecurity Bill 2023

Part 8—Permits

Division 5—Suspension, cancellation or surrender of permit

- (4) The relevant decision-maker is not required to give notice under subsection (3) of a proposed suspension 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 in an emergency.
- 5 (5) However, if the relevant decision-maker suspends a permit without giving notice under subsection (3), the relevant decision-maker must—
- (a) give the permit holder written notice of the grounds of the suspension as soon as practicable after the suspension occurs; and
 - 10 (b) invite the permit holder to make a submission to the relevant decision-maker about the suspension by a specified deadline (being at least 14 days after the notice is given to the permit holder)
- (6) If the permit holder makes a submission to the relevant decision-maker about the suspension before the specified deadline, the relevant decision-maker must—
- 15 (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.
- (7) A notice under subsection (1) or (6) must also provide information about the right to apply for a review of the decision to suspend the permit under Part 13.

149—Cancellation of permit

- 20 (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—
- 25 (a) the grounds for the cancellation; and
 - (b) the date or time from which the cancellation takes effect.
- (3) Before cancelling the permit, the relevant decision-maker must—
- 30 (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) allow the permit holder at least 14 days to make a submission to the relevant decision-maker about the proposed cancellation; 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.
- (4) The relevant decision-maker is not required to give notice under this section of a proposed cancellation if the permit of the permit holder is suspended and either—
- 35 (a) the permit holder was given an opportunity to make a submission about the suspension before the suspension took effect; or
 - (b) the permit holder was given an opportunity to make a submission about the suspension after the suspension took effect, and the period specified for making that submission has ended.
- 40 (5) A notice under subsection (1) must also provide information about the right to apply for a review of the decision to cancel the permit under Part 13.

150—Voluntary surrender of permit

- (1) A permit holder may surrender the permit holder's permit.
- (2) The surrender of a permit must—
 - (a) be made in the approved form; and
 - 5 (b) be made to a relevant decision-maker; and
 - (c) be accompanied by the relevant prescribed fee; and
 - (d) 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.
- 10 (3) The surrender of a 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 a permit taking effect, the permit is cancelled.

151—Effect of suspension, cancellation or surrender

- (1) A permit may be suspended, cancelled or surrendered under this Division unconditionally or subject to such conditions as a relevant decision-maker may impose.
- (2) A condition under this section—
 - 20 (a) may 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
 - 25 (b) may include, but is not limited to, any conditions to which the permit was subject immediately before it was suspended, cancelled or surrendered.
- (3) A relevant decision-maker may, by written notice given to the permit holder or former permit holder, vary a condition imposed under this section.
- (4) A permit holder or former permit holder must comply with a condition attached to the suspension, cancellation or surrender of the permit

Maximum penalty:

- (a) for a body corporate—\$250 000;
- (b) for a natural person—\$50 000.

Part 9—Biosecurity programs and agreements

Division 1—Approved biosecurity programs

152—Preparation of draft biosecurity program

- 5 (1) An entity representing the interests of any industry, or 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) must specify the following:
- (a) the name of the entity preparing the program;
 - (b) the intended scope of the program;
 - 10 (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 a management committee for the program;
 - (f) the objectives of the program;
 - 15 (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;
 - 20 (k) the persons or classes of persons able to perform functions in relation to the prevention, elimination, minimisation, control or management 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
25 property is to be payable under the program to the owner of the animal, plant or property;
 - (n) if reimbursement is proposed 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
 - 30 (iii) the manner of claiming the reimbursement;
 - (o) the manner in which any proceeds obtained from the implementation of the program are to be disposed of;
 - 35 (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 1 or more of the following:
- (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;
 - 5 (c) the destruction or other disposal of any biosecurity matter, carrier or other thing if necessary to prevent, eliminate, minimise, control or manage a biosecurity risk or biosecurity impact;
 - (d) measures to—
 - (i) eradicate specified matter from an area;
 - 10 (ii) restrict or reduce the spread of specified biosecurity matter in a particular area.

153—Approval of draft biosecurity program

- (1) An entity that has prepared a draft program under section 152 may apply to the Minister for approval of the program.
- 15 (2) An application must—
- (a) be made in a manner and form approved by the Minister; and
 - (b) be 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—
- 20
- (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
 - 25 (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
 - 30 (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—
- (a) if it does not provide that the Chief Executive, or a person nominated by the Chief Executive, is a member of a management committee for the program; or
 - 35 (b) if it provides for the destruction or other disposal of any biosecurity matter or other property without the written approval of the Chief Executive, or the owner of the biosecurity matter or property; or
 - 40 (c) in prescribed circumstances.

Biosecurity Bill 2023

Part 9—Biosecurity programs and agreements

Division 1—Approved biosecurity programs

- (5) An approved biosecurity program takes effect on a date specified by the Minister in the notice of approval of the program.

154—Amendment of approved biosecurity program

- 5 (1) The Minister may, on application from the entity that prepared an approved biosecurity program—

- (a) amend the approved biosecurity program; or
(b) refuse to amend the approved biosecurity program.

- (2) An application to amend an approved biosecurity program must—

- 10 (a) be made in a manner and form approved by the Minister; and
(b) be accompanied by a copy of the program as amended and any other information or material required by the Minister.

155—Termination of approved biosecurity program

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

- 15 (a) on the Minister's own initiative; or
(b) on the application of the entity that prepared the approved biosecurity program.

- (2) An application to terminate an approved biosecurity program must—

- (a) be made in a manner and form approved by the Minister; and
(b) be accompanied by any information or material required by the Minister.

- 20 (3) If the Minister terminates an approved biosecurity program under subsection (1)(a), the Minister must 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.

156—Cost of implementing approved biosecurity program

- 25 (1) The Minister may, by written notice, agree that the Crown will reimburse the management committee for an approved biosecurity program for any specified costs incurred by the committee in implementing the program.

- (2) The notice must—

- 30 (a) specify the costs or proportion 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)—

- 35 (a) any other costs incurred by a management committee for an approved biosecurity program are to be met as provided in the program; and
(b) the Crown is not liable in respect of those costs.

Division 2—Government biosecurity programs

157—Government biosecurity programs

- 5 (1) The Minister may direct the Chief Executive to implement a program relating to the prevention, elimination, minimisation, control or management of a biosecurity risk or biosecurity impact.
- (2) The Minister must not give a direction under subsection (1) unless the Minister—
- 10 (a) has consulted with any persons (including a council) who, in the opinion of the Minister, are likely to be affected by the implementation of the program, or an entity representing such persons; and
- (b) is satisfied that implementation of the program will further the objects of this Act.
- (3) The Minister may give a direction without consultation under subsection (2) if the Minister is satisfied that the interests of the State require implementation of the program with minimal delay.
- 15 (4) A program implemented under this section must 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;
- 20 (d) the strategies and methods to be applied under the program to prevent, eliminate, minimise, control or manage 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;
- 25 (g) the persons or classes of persons able to perform functions in relation to the prevention, elimination, minimisation, control or management 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 is to be payable under the program to the owner of the animal, plant or property;
- 30 (j) if reimbursement is payable under the program, the manner in which the amount of reimbursement is to be determined.
- (5) A program implemented under this section may also specify 1 or more of the following matters:
- 35 (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 other disposal of any biosecurity matter, carrier or other thing if necessary to control a biosecurity risk or biosecurity impact;

Biosecurity Bill 2023

Part 9—Biosecurity programs and agreements

Division 2—Government biosecurity programs

- (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.
- (6) The Chief Executive may, by notice published in the Gazette, amend or terminate a government biosecurity program on the Chief Executive's own initiative or at the request of the Minister.

Division 3—Biosecurity control agreements**158—Biosecurity control agreements**

- (1) The Chief Executive 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 Chief Executive considers appropriate; and
 - (b) may provide for the recovery by the Chief Executive of any costs incurred by the Crown in carrying out the agreement.
- (3) A person must not contravene a biosecurity control agreement.
Maximum penalty:
- (a) for a body corporate—\$125 000;
 - (b) for a natural person—\$25 000.
- (4) The Chief Executive may, by written notice to the other party to a biosecurity control agreement, suspend or revoke the agreement if—
- (a) the Chief Executive reasonably believes that any condition of the agreement has not been complied with; or
 - (b) the Chief Executive is exercising a power conferred by the agreement.

Part 10—Biosecurity zones**Division 1—General scheme****159—Biosecurity zones**

- (1) The regulations may prescribe 1 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 South Australia.

- (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 must 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.
- (4) A regulation under this Division may only be made on the recommendation of the Minister.

160—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 1 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 (including so as to require a person to arrange for something to be done);
 - (c) 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 zone measure may prohibit, regulate or control, or require or authorise, any of the things specified in Schedule 3.

161—Failure to comply with a biosecurity zone measure

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

Maximum penalty:

- (a) for a body corporate—\$250 000;

- (b) for a natural person—\$50 000.
- (2) A person who commits an offence under subsection (1) because the person contravenes a requirement of a biosecurity zone measure—
- 5 (a) continues, until the requirement is complied with and despite the fact that any specified period or time for compliance has expired or passed, to be liable to comply with the requirement; and
- (b) is guilty of a continuing offence for each day that the contravention continues.
- (3) Subsection (2) does not apply to the extent that a requirement of a biosecurity zone measure has been revoked.

10 **162—Chief Officer may authorise required action and recover costs**

- (1) In addition to any penalty imposed under this Act, if a person contravenes a biosecurity zone measure, the relevant Chief Officer may authorise a person to enter premises and take action necessary to ensure the biosecurity zone measure is complied with or otherwise to remedy the contravention.
- 15 (2) The relevant Chief Officer may not authorise a person to enter residential premises unless, at least 24 hours before the person enters the premises, an occupier of the premises is given written notice of—
- (a) the intention to enter the premises; and
- (b) the proposed date on which the premises are intended to be entered.
- 20 (3) Notice is not required to be given under subsection (2) 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.
- (4) The relevant Chief Officer may charge the person who has contravened the biosecurity zone measure a fee for the reasonable costs and expenses incurred in taking action under this section in respect of the contravention.
- 25 (5) A fee charged under subsection (4) is a debt due to the Crown.

Division 2—Accreditation of biosecurity zones

163—Accreditation of biosecurity zones

- 30 (1) If the Minister is satisfied that through the exercise of good management by the producers or processors of animals or plants, or animal products or plant products, in a specified biosecurity zone, the biosecurity zone is free of a specified pest or disease, or specified pests or diseases, the Minister may, by notice in the Gazette, declare the biosecurity zone to be free of the pest or disease, or pests or diseases, specified in the
- 35 notice and authorise the use of specified statements in respect of animals or plants, or animal products or plant products, produced or processed in the biosecurity zone when advertising, packaging or selling those animals or plants, or animal products or plant products.
- (2) The Minister may, by notice in the Gazette, vary or revoke a notice under this section.

- (3) A person must only use a statement specified in a notice under this section in respect of animals or plants, or animal products or plant products, produced or processed in the biosecurity zone specified in the notice.

Maximum penalty: \$25 000.

5 **Division 3—Limitations on regulation-making power**

164—Interpretation

In this Division—

biosecurity zone regulation means a regulation under Division 1.

165—Detention or treatment of persons

- 10 (1) A biosecurity zone regulation may not—
- (a) prohibit, regulate or control the movement of a person; or
 - (b) require treatment measures to be carried out on a person.
- (2) A biosecurity zone regulation may not require a person to provide samples of the person's blood, hair, saliva or any other body part or body fluid.
- 15 (3) Subsection (1)(a) does not prevent a biosecurity zone regulation being imposed in relation to any biosecurity matter, premises, vehicle, area, activity or other thing that has an impact on the movement of a person but that is not imposed for the purpose of restricting the movement of a person.

166—Destruction requirements

- 20 (1) A biosecurity zone regulation 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
 - 25 (c) the thing is a pest to which the biosecurity zone relates; or
 - (d) the thing is, or is reasonably suspected of being, infected or infested with, or of harbouring, the biosecurity matter to which the regulations relate and there are no other reasonably practicable treatment measures that could prevent, eliminate, minimise, control or manage the biosecurity risk posed by the
 - 30 biosecurity matter; or
 - (e) the thing is, or is reasonably suspected of being—
 - (i) abandoned; and
 - (ii) biosecurity matter to which the regulations relate or a carrier of biosecurity matter to which the regulations relate.
- 35 (2) In this section—
- reasonably practicable* means reasonably practicable in the opinion of the relevant Chief Officer or an authorised officer;

reasonably suspected means reasonably suspected by the relevant Chief Officer or an authorised officer.

167—Consultation requirements

- (1) The Minister must, before recommending to the Governor the making of a biosecurity zone regulation that would adversely affect a protected species or an aquatic reserve under the *Fisheries Management Act 2007*, consult with the Minister for the time being administering that Act.
- (2) The Minister must, before recommending to the Governor the making of a biosecurity zone regulation that would adversely affect any native animal or native plant that is subject to any form of protection under the *National Parks and Wildlife Act 1972*, consult with the Minister for the time being administering that Act.
- (3) The Minister must, before recommending to the Governor the making of a biosecurity zone regulation that would adversely affect any native vegetation that is subject to any form of protection under the *Native Vegetation Act 1991*, consult with the Minister for the time being administering that Act.
- (4) The Minister must, before recommending to the Governor the making of a biosecurity zone regulation that would adversely affect any place, object, specimen, artefact or other thing that is subject to any form of protection under the *Heritage Places Act 1993*, consult with the Minister for the time being administering that Act.
- (5) The Minister must, before recommending to the Governor the making of a biosecurity zone regulation that would adversely affect any Aboriginal site, object or remains that are the subject of any form of protection under the *Aboriginal Heritage Act 1988*, consult with the Minister for the time being administering that Act.
- (6) A failure to comply with this section does not affect the validity of any regulation.

Division 4—Warrants

168—Warrants

- (1) A warrant required for the purposes of this Part in relation to premises is a warrant issued by a magistrate.
- (2) A magistrate must not issue a warrant that will allow entry into premises unless satisfied that there are reasonable grounds to believe that the circumstances require entry to the premises without giving the notice otherwise required under this Part.
- (3) A warrant may authorise the use of reasonable force to break into premises.
- (4) An application for the issue of a warrant under this section—
 - (a) may be made personally, by telephone or by any other method prescribed by the regulations; and
 - (b) must be made in accordance with any procedures prescribed by the regulations.

Part 11—Orders and directions

Division 1—Emergency orders

169—Emergency orders

- (1) The Chief Executive may, by order—
- 5 (a) declare a biosecurity emergency; and
- (b) establish measures to respond to that biosecurity emergency.
- (2) Subject to this Division, an order under subsection (1) must specify each of the following:
- 10 (a) the purpose of the order;
- (b) the biosecurity matter, biosecurity risk or biosecurity impact that is the subject of the emergency;
- (c) the emergency zone or zones to which the order relates;
- (d) the emergency measures to be followed;
- (e) the persons or class of persons to whom the emergency measures apply;
- 15 (f) when the emergency order takes effect;
- (g) the duration of the emergency order.
- (3) The Chief Executive may only make an order under subsection (1) if the Chief Executive is satisfied, or reasonably suspects, that there is a current or imminent biosecurity risk that may have a significant biosecurity impact.
- 20 (4) An order under subsection (1) may be made for 1 or more of the following reasons:
- (a) to isolate an emergency zone or biosecurity matter;
- (b) to prevent the spread of biosecurity matter;
- (c) to eradicate biosecurity matter (if practicable or insofar as is reasonably practicable);
- 25 (d) for any other reason the Chief Executive considers necessary.

170—Duration of emergency order

- (1) An emergency order remains in force for the period specified in the order, not exceeding 12 months from the date on which the order is published or served under this Division.
- 30 (2) The Chief Executive 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 Chief Executive considers necessary.
- 35 (4) If the Chief Executive extends the duration of an emergency order so that it will be in force for more than 18 months, the Chief Executive must provide to the Minister a written report on the making and extension of the emergency order.

- (5) The Minister must cause a copy of a report provided to the Minister under subsection (4) to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

171—Notice of emergency order generally

- 5 (1) The Chief Executive is to give notice of an emergency order by causing a copy of the order to be published—
- (a) unless paragraph (b) applies—in the Gazette; or
 - (b) in the case of an emergency—on the Department website and then in the Gazette within 7 days after its publication on the website.
- 10 (2) The Chief Executive must 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.
- (3) This section does not apply if notice is given under section 172.

172—Notice of emergency order relating to specific property

- 15 (1) If the Chief Executive makes an emergency order that is property-specific, the Chief Executive 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, specified biosecurity matter or any other specified thing.

173—Emergency zones

- 20 (1) For the purposes of this Act, an area is an emergency zone if the Chief Executive 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 1 or more of the following, as specified in an emergency order:
- 25 (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 South Australia.
- (3) An emergency order may provide for more than 1 emergency zone and for different classes of emergency zones.

174—Emergency measures

- 30 (1) For the purposes of this Act, a measure to be followed that is specified by the Chief Executive in an emergency order is an emergency measure.
- (2) The Chief Executive may specify in an emergency order any measures that the Chief Executive considers are reasonably necessary to respond to the biosecurity emergency to which the order relates.
- 35 (3) An emergency measure specified in an emergency order is to be no more onerous than the Chief Executive considers reasonably 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 Chief Executive must have regard to the matters referred to in section 169 and any other matters that the Chief Executive considers relevant.
- (5) The emergency measures may apply—
- 5 (a) within an emergency zone; and
- (b) outside an emergency zone, but only if the Chief Executive considers that to be reasonably necessary having regard to the nature of the biosecurity emergency to which the emergency order relates.
- (6) An emergency measure may—
- 10 (a) prohibit, regulate or control the doing of any thing; or
- (b) require or authorise the doing of any thing (including so as to require a person to arrange for something to be done).
- (7) Without limiting the generality of this section, an emergency measure may prohibit, regulate or control, or require or authorise, any of the things specified in Schedule 3.

15 **175—Additional emergency measures**

- (1) In addition to section 174, emergency measures may do 1 or more of the following:
- (a) prohibit, regulate or control entry into, or exit from, any specified area or premises;
- 20 (b) prohibit, regulate or control the use of any road within, or going into or out of, any specified area or premises (including by closing roads);
- (c) require persons entering or leaving any specified area or premises in a vehicle to stop and, if required by an authorised officer—
- (i) to allow the vehicle to be inspected; and
- 25 (ii) to allow treatment measures to be carried out in relation to the vehicle;
- (d) require persons entering or leaving any specified area or premises to stop and, if required by an authorised officer—
- (i) to allow the person and any thing in their care, custody or control to be inspected; and
- 30 (ii) to 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;
- (e) prohibit persons from entering or leaving any specified area or premises unless the person has done either or both of the following:
- (i) carried out, in relation to themselves, any specified external
- 35 treatment measure;
- (ii) carried out, in relation to any thing in the person's care, custody or control, any specified treatment measure.
- (2) An emergency order may not prohibit, regulate or control the movement of a person, except as expressly authorised by this section.

- (3) Subsection (2) does not prevent an emergency measure being imposed, in relation to any biosecurity matter, premises, vehicle, area, activity or other thing, that has an impact on the movement of a person but that is not imposed for the purpose of restricting the movement of a person.

176—Measures which may not be emergency measures

- (1) An emergency order may not include the following measures:
- (a) a requirement for a treatment measure, other than an external treatment measure, to be carried out on a person;
 - (b) a requirement for a person 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 Chief Executive 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 Chief Executive, 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 must 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 Chief Executive considers that, in the circumstances, the order must be carried out without delay or prior notice to the owner or person in charge.

177—Inspection of persons

A requirement in an emergency order that a person is to allow themselves to be inspected by an authorised officer only authorises the authorised 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;
- (c) to make available for inspection any thing in the person's possession.

178—Emergency order prevails

(1) In this section—

designated Act means any of the following:

- (a) the *Aboriginal Heritage Act 1988*;
- 5 (b) the *Animal Welfare Act 1985*;
- (c) the *Aquaculture Act 2001*;
- (d) the *Dog and Cat Management Act 1995*;
- (e) the *Environment Protection Act 1993*;
- (f) the *Fisheries Management Act 2007*;
- 10 (g) the *Heritage Places Act 1993*;
- (h) the *Landscape South Australia Act 2019*;
- (i) the *Local Government Act 1999*;
- (j) the *Marine Parks Act 2007*;
- (k) the *Mining Act 1971*;
- 15 (l) the *National Parks and Wildlife Act 1972*;
- (m) the *Native Vegetation Act 1991*;
- (n) the *Pastoral Land Management and Conservation Act 1989*;
- (o) the *Phylloxera and Grape Industry Act 1991*;
- (p) the *Veterinary Practice Act 2003*;
- 20 (q) the *Wilderness Protection Act 1992*;
- (r) any other Act specified by the regulations as being included within the ambit of this definition.

(2) An emergency order prevails, to the extent of any inconsistency, over the following:

- (a) the regulations;
- 25 (b) a 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 biosecurity program or biosecurity control agreement made, or in effect,
30 under this Act;
- (e) a control order;
- (f) a biosecurity direction, other than an emergency biosecurity direction given in relation to the emergency that is the subject of the emergency order;
- (g) a provision of a designated Act.

35 (3) Subsection (2)(g) applies despite the provisions of the designated Act.

179—Offences

- (1) A person must not contravene an emergency order.

Maximum penalty:

- (a) for a body corporate—\$500 000;
(b) for a natural person—\$100 000.

- (2) A person who commits an offence against subsection (1)—

- (a) continues, until the contravention ceases, to be liable for a contravention of that subsection; and
(b) is guilty of a continuing offence for each day that the contravention continues.

- (3) The owner of premises in relation to which an emergency order is in force must notify the relevant Chief Officer of an intended sale of the premises or part of the premises—

- (a) unless paragraph (b) applies—within 28 days before the date of settlement; or
(b) if the date of settlement is less than 28 days from the date on which the emergency order applied in relation to the premises (the *relevant date*)—within 7 days from the relevant date.

Maximum penalty: \$10 000.

- (4) It is a defence in proceedings for an offence against subsection (1) or (3) if the defendant establishes that, at the time of the alleged offence—

- (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.

- (5) A person must not, without reasonable excuse, hinder or obstruct another person complying with an emergency order.

Maximum penalty: \$25 000.

180—Variation or revocation of emergency order

- (1) The Chief Executive may vary or revoke an emergency order.
(2) A variation to an emergency order may make provision for any matter for which an emergency order may make provision.
(3) A variation to, or revocation of, an emergency order takes effect, and must be notified, in the same way as an emergency order.

181—SA Police

A member of SA Police (within the meaning of the *Police Act 1998*) has all the powers of an authorised officer during the declaration of a biosecurity emergency in relation to the emergency (and, without limiting this provision, a reference to an authorised officer in this Division will be taken to include a reference to a member of SA Police).

Division 2—Control orders

182—Control orders

- (1) The relevant Chief Officer may, by order—
- (a) establish 1 or more control zones; and
 - 5 (b) establish control measures, in connection with a control zone, to prevent, eliminate, minimise, control or manage a biosecurity risk or suspected biosecurity risk, or a biosecurity impact.
- (2) The relevant Chief Officer may make an order under subsection (1) if the Chief Officer is satisfied that the order is necessary to guard against, prevent, eliminate, 10 minimise, control or manage a biosecurity risk or suspected biosecurity risk, or a biosecurity impact.

183—Content of control orders

Subject to this Division, a control order must specify each of the following:

- (a) the purpose of the order;
- 15 (b) the biosecurity matter, biosecurity risk or suspected biosecurity risk, or biosecurity impact, to which the control order relates;
- (c) the control zone or zones;
- (d) the control measures;
- (e) the persons or class of persons to whom the control measures apply;
- 20 (f) when the control order takes effect, or the circumstances under which the control order takes effect.

184—Duration of control orders

- (1) A control order remains in force for the period specified in the order, not exceeding 5 years from the date on which the order takes effect.
- 25 (2) The relevant Chief Officer may, by making an order that amends a control order, extend the period during which a control order remains in force 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 relevant Chief Officer considers necessary.
- 30 (4) If the relevant Chief Officer extends the duration of a control order so that it will be in force for more than 10 years, the Chief Officer must provide to the Minister a written report on the making and extension of the control order.
- (5) The Minister must cause a copy of a report provided to the Minister under subsection (4) to be laid before both Houses of Parliament within 12 sitting days after 35 receiving the report.

185—Notice of control orders generally

- (1) The relevant Chief Officer must give notice of a control order by causing a copy of the order to be published—
 - (a) unless paragraph (b) applies—in the Gazette; or
 - (b) in the case of an emergency—on the Department website and then in the Gazette within 7 days after its publication on the website.
- (2) The relevant Chief Officer must 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.
- (3) This section does not apply if notice is given under section 186.

186—Notice of control orders relating to specific property

- (1) If the relevant Chief Officer makes a control order that is property-specific, the Chief Officer 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.

187—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 relevant Chief Officer, control measures are required to be established.
- (2) A control zone may be made up of 1 or more of the following, as specified in a control 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 South Australia.
- (3) A control order may provide for more than 1 control zone and for different classes of control zones.

188—Control measures

- (1) For the purposes of this Act, a control measure is a measure that the relevant Chief Officer establishes to guard against, prevent, eliminate, minimise, control or manage the biosecurity risk or suspected biosecurity risk, or biosecurity impact, to which the order relates.
- (2) The relevant Chief Officer may specify, as control measures under a control order, any measures that the Chief Officer considers are reasonably necessary to prevent, eliminate, minimise, control or manage the biosecurity risk or suspected biosecurity risk, or biosecurity impact, to which the order relates.
- (3) The control measures are to be no more onerous than the relevant Chief Officer considers reasonably necessary in the circumstances.

- (4) In deciding on the control measures to be specified in a control order, the relevant Chief Officer is to have regard to the principal objects of the order and any other matters that the Chief Officer considers relevant.
- (5) A control measure may apply—
- 5 (a) within a control zone; and
- (b) outside a control zone, but only if the relevant Chief Officer considers that to be reasonably necessary having regard to the nature of the biosecurity risk or suspected biosecurity risk, or biosecurity impact.
- (6) A control measure may—
- 10 (a) prohibit, regulate or control the doing of any thing; or
- (b) require or authorise the doing of any thing (including so as to require a person to arrange for something to be done).
- (7) Without limiting the generality of this section, a control measure may prohibit, regulate or control, or require or authorise, any of the things specified in Schedule 3.

189—Measures which may not be control measures

- 15 (1) A control order may not—
- (a) prohibit, regulate or control the movement of a person; or
- (b) require any treatment measure to be carried out on a person.
- (2) A control order may not require a person to provide samples of the person's blood, hair, saliva or any other body part or body fluid.
- 20 (3) Subsection (1)(a) does not prevent a control measure being imposed, in relation to any biosecurity matter, premises, vehicle, 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.

25 190—Destruction requirements

- (1) 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
- 30 (c) the thing is, or is reasonably suspected of being, a pest to which the control order relates; or
- (d) the thing is, or is reasonably suspected of being, infected or infested with, or of harbouring, biosecurity matter to which the control order relates and there are no other reasonably practicable and available—
- 35 (i) treatment measures that could eliminate, minimise, control or manage the biosecurity risk or potential 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
- 40 (e) the thing is reasonably suspected of being—

- (i) abandoned; or
- (ii) biosecurity matter to which the control order relates or a carrier of biosecurity matter to which the control order relates.

(2) In this section—

reasonably practicable means reasonably practicable in the opinion of the relevant Chief Officer or an authorised officer;

reasonably suspected means reasonably suspected in the opinion of the relevant Chief Officer or an authorised officer.

191—Consultation requirements

- (1) The relevant Chief Officer must undertake any consultation requirements required by the regulations in connection with the making or operation of a control order.
- (2) A failure to comply with a regulation under this section does not affect the validity of a control order.

192—Offences

- (1) A person must not contravene a control order.

Maximum penalty:

- (a) for a body corporate—\$125 000;
- (b) for a natural person—\$25 000.

- (2) A person who commits an offence against subsection (1)—

- (a) continues, until the contravention ceases, to be liable for a contravention of that subsection; and
- (b) is guilty of a continuing offence for each day that the contravention continues.

- (3) The owner of premises in relation to which a control order is in force must notify the relevant Chief Officer of an intended sale of the premises or part of the premises—

- (a) unless paragraph (b) applies—within 28 days before the date of settlement; or
- (b) if the date of settlement is less than 28 days from the date on which the control order applied in relation to the premises (the *relevant date*)—within 7 days from the relevant date.

Maximum penalty: \$10 000.

- (4) A person must not, without reasonable excuse, hinder or obstruct another person complying with a control order.

Maximum penalty: \$25 000.

193—Variation or revocation of control order

- (1) The relevant Chief Officer may vary or revoke a control order.
- (2) A variation to a control order may make provision for any matter for which a control order may make provision.
- (3) A variation to, or revocation of, a control order takes effect, and must be notified, in the same way as a control order.

Division 3—Biosecurity directions

Subdivision 1—Preliminary

194—Types of biosecurity direction

- (1) A direction under this Division (a *biosecurity direction*) may be given as—
- 5 (a) a general biosecurity direction; or
- (b) 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.
- 10 (3) An individual biosecurity direction is a direction that applies to a particular person.

195—Period for which biosecurity direction has effect

A biosecurity direction must specify—

- (a) the period for which the direction has effect; or
- 15 (b) the time within which a requirement under the direction must be complied with (which must be reasonable).

196—Related provision

A power to give a biosecurity direction may be exercised whether or not any other power, including a power of entry under Part 14, is being exercised.

Subdivision 2—General biosecurity directions

197—General biosecurity direction

- (1) The relevant Chief Officer may give a general biosecurity direction if the relevant Chief Officer reasonably believes it is necessary to do so for any of the following reasons:
- 25 (a) to assess, prevent, eliminate, minimise, control, manage or monitor a biosecurity risk or suspected biosecurity risk, or a biosecurity impact;
- (b) to support a market access arrangement;
- (c) to enforce, administer or implement this Act, the regulations or any instrument made under this Act.
- (2) The relevant Chief 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.
- 30 (3) Without limiting the generality of this section, a general biosecurity direction may prohibit, regulate or control, or require or authorise, any of the things specified in Schedule 3.
- 35 (4) A general biosecurity direction may be subject to such conditions as the relevant Chief Officer considers reasonable in the circumstances.

Biosecurity Bill 2023

Part 11—Orders and directions

Division 3—Biosecurity directions

(5) In an emergency, the relevant Chief Officer may also do 1 or more of the following in a general biosecurity direction:

(a) prohibit, regulate or control entry into, or exit from, any specified area or premises;

(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).

(6) This section is in addition to, and does not limit, any other functions or powers of the relevant Chief Officer or an authorised officer under this Act.

(7) In this section—

market access arrangement means an arrangement or process for establishing the condition of any—

(a) animal, plant or organism; or

(b) part of an animal, plant or organism; or

(c) animal product or plant product; or

(d) property; or

(e) thing prescribed by the regulations,

as a requirement for access to a market, commercial arrangement, service or facility.

198—How general biosecurity direction is given

(1) Subject to subsection (2), a general biosecurity direction may be given by causing a copy of the direction to be published—

(a) unless paragraph (b) applies—in the Gazette; or

(b) in the case of an emergency—on the Department website and then in the Gazette within 7 days after its publication on the website.

(2) If the relevant Chief Officer considers that giving a general biosecurity direction under this subsection is reasonably necessary, 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 under subsection (2), notice of the direction must be published on the Department website or in the Gazette (or both) as soon as practicable after the direction is made.

(4) If a general biosecurity direction is given in an emergency, the direction must include a statement 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.

Subdivision 3—Individual biosecurity directions**199—Individual biosecurity direction**

- 5 (1) An authorised 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 direction is given, if the authorised officer reasonably believes that the direction is necessary for any of the following reasons:
- (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 suspected biosecurity risk, or biosecurity impact;
 - 10 (c) to enforce, administer or implement this Act, the regulations or any instrument made under this Act.
- (2) An authorised officer may also give an individual biosecurity direction that requires a person to do a thing (including so as to require the person to arrange for something to be done) if the authorised officer reasonably believes that the direction is necessary for 15 1 or more of the following reasons:
- (a) to ensure that the person discharges a biosecurity duty imposed on the person by or under this Act;
 - (b) to require or ensure that the person remedies a contravention, suspected contravention or likely contravention by the person of this Act;
 - 20 (c) to prevent, eliminate, minimise, control or manage a biosecurity risk or suspected 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 implement this Act, the regulations or any instrument made under this Act.
- 25 (3) Without limiting the generality of this section, an individual biosecurity direction may prohibit, regulate or control, or require or authorise, any of the things specified in Schedule 3.
- (4) An individual biosecurity direction may be subject to such conditions as the authorised officer giving the direction considers reasonable in the circumstances.

200—How individual biosecurity direction is given

- 30 (1) An authorised 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—
 - 35 (i) the authorised officer is authorised, under their instrument of appointment as an authorised officer, to give such a direction orally; or
 - (ii) the authorised officer is giving the direction in an emergency; or
 - (b) by written notice served on the person.
- (2) An authorised officer may, in an emergency, give an individual biosecurity direction 40 to an occupier of premises by displaying notice of the direction in a prominent place on or adjacent to the premises.

Biosecurity Bill 2023

Part 11—Orders and directions

Division 3—Biosecurity directions

- (3) If an individual biosecurity direction is given orally or in the manner referred to in subsection (2), written confirmation of the direction must be served on the person who is the subject of the direction within 72 hours after it is so given, unless the direction has already been complied with.
- 5 (4) If an individual biosecurity direction is given in an emergency, the direction must include a statement that the direction is being given in an emergency.
- (5) A failure to comply with this section does not affect the validity of an individual biosecurity direction.

201—Special emergency powers—inspection and treatment measures

- 10 (1) An authorised officer who gives an individual biosecurity direction in an emergency may direct a person to do any of the following:
- (a) to permit the authorised officer to inspect the person for biosecurity matter, a carrier or a potential carrier;
 - 15 (b) to permit the authorised officer to inspect any thing in the person's possession, care, custody or control, for biosecurity matter, a carrier or a potential carrier;
 - (c) without limiting a preceding paragraph—to require the person, if in control or apparently in control of a vehicle—
 - 20 (i) to stop or secure the vehicle;
 - (ii) to permit the vehicle to be inspected for biosecurity matter, a carrier or a potential carrier;
 - (iii) to carry out treatment measures or permit treatment measures to be carried out in relation to the vehicle;
 - 25 (d) to carry out or permit an external treatment measure to be carried out in relation to the person;
 - (e) to carry out a treatment measure or permit a treatment measure to be carried out in relation to any thing in the person's possession, care, custody or control.
- 30 (2) This section is in addition to, and does not limit, any other functions or powers of an authorised officer under this Act.

202—Recovery of costs

- (1) An authorised officer may charge the 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 authorised officer as part of preparing the direction.
- 35 (2) Any costs charged under subsection (1) are recoverable in accordance with the regulations.

Subdivision 4—Related provisions**203—Measures which may not be included in biosecurity direction**

- 5 (1) The relevant Chief Officer or an authorised officer (as the case may be) may not include any of the following measures in a biosecurity direction, except as authorised by this Act in an emergency:
- (a) prohibit, regulate or control the movement of a person;
 - (b) require a treatment measure, other than an external treatment measure, to be carried out on a person.
- 10 (2) A biosecurity direction may not require a person 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 emergency measure being imposed, in relation to any biosecurity matter, premises, vehicle, area, activity or other thing, that has an impact on the movement of a person but that is not imposed for the purpose of restricting the movement of a person.
- 15 (4) A power conferred by this Division to require a person to submit to an inspection is a power 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;
 - 20 (c) to make available for inspection any thing in the person's possession.
- (5) The relevant Chief Officer or an authorised 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
 - 25 (b) the thing is a carrier of, or reasonably suspected of being a carrier of, prohibited matter; or
 - (c) the thing is a pest; or
 - (d) the thing is, or is reasonably suspected of being, infected or infested with, or of harbouring, biosecurity matter and there are no other reasonably practicable and available treatment measures that could eliminate, minimise, 30 control or manage the biosecurity risk posed by the biosecurity matter; or
 - (e) the destruction is authorised or required by—
 - (i) an emergency order; or
 - (ii) a control order; or
 - (iii) any regulation; or
 - 35 (f) the destruction is authorised by a warrant issued by a magistrate.
- (6) A magistrate must not issue a warrant under subsection (5)(f) unless satisfied that the warrant is reasonably required in the circumstances of the case.

Biosecurity Bill 2023

Part 11—Orders and directions

Division 3—Biosecurity directions

- (7) An application to issue a warrant under subsection (5)(f)—
- (a) may be made personally, by telephone or by any other method prescribed by the regulations; and
 - (b) must be made in accordance with any procedures prescribed by the regulations.

- (8) In this section—

reasonably practicable means reasonably practicable in the opinion of an authorised officer;

reasonably suspected means reasonably suspected in the opinion of an authorised officer.

204—Interaction with other Acts

- (1) An authorised officer, other than an authorised officer acting with the approval of a Chief Officer, must not in the exercise of a power under this Division—
- (a) destroy a fish that is an aquatic resource of a protected species under the *Fisheries Management Act 2007*; or
 - (b) destroy a living thing that is a native animal or plant that is subject to any form of protection under the *National Parks and Wildlife Act 1972*; or
 - (c) clear any native vegetation that is subject to any form of protection under the *Native Vegetation Act 1991*; or
 - (d) damage, destroy or disturb any place, object, specimen, artefact or other thing that is subject to any form of protection under the *Heritage Places Act 1993*; or
 - (e) damage, destroy or disturb any Aboriginal site, object or remains that are subject to any form of protection under the *Aboriginal Heritage Act 1988*.
- (2) This section does not limit the power of an authorised officer to do a thing where that action is expressly authorised by—
- (a) an emergency order; or
 - (b) a control order; or
 - (c) any regulation.

- (3) This section applies despite the provisions of any Act referred to in subsection (1).

205—Variation or revocation of biosecurity direction

- (1) The relevant Chief Officer or an authorised officer (as the case requires) may vary or revoke a biosecurity direction.
- (2) A variation to a biosecurity direction may make provision for any matter for which a biosecurity direction may make provision.
- (3) Without limiting subsection (2), a biosecurity direction may be varied by extending the time for complying with the direction.
- (4) A variation to, or revocation of, a biosecurity direction takes effect, and must be notified, in the same way as a biosecurity direction.

206—Offences

- (1) A person must not contravene a biosecurity direction.
Maximum penalty:
5 (a) for a body corporate—\$125 000;
(b) for a natural person—\$25 000.
- (2) A person who commits an offence against subsection (1)—
(a) continues, until the contravention ceases, to be liable for a contravention of that subsection; and
(b) is guilty of a continuing offence for each day that the contravention continues.
- 10 (3) It is a defence in proceedings for an offence against subsection (1) if the defendant establishes—
(a) that the defendant had a reasonable excuse for the contravention; or
(b) in the case of a general biosecurity direction—that, at the time of the alleged offence—
15 (i) notice of the direction had not been published in accordance with this Division; and
(ii) the relevant Chief Officer, or an authorised officer acting on behalf of the relevant Chief Officer, had not notified the person orally, or in writing or otherwise, of the making of the direction.
- 20 (4) A person must not act in contravention of the terms of any sign that has been erected by an authorised officer for the purposes of a biosecurity direction.
Maximum penalty: \$25 000.
- (5) A person must not, without reasonable excuse, hinder or obstruct another person complying with a biosecurity direction.
25 Maximum penalty: \$25 000.

Division 4—Action on default

207—Action on default

- (1) In this section—
designated entity, in relation to a designated instrument, means—
30 (a) in the case of an emergency order—the Chief Executive; and
(b) in the case of a control order—the relevant Chief Officer; and
(c) in the case of a biosecurity direction—the relevant Chief Officer;
designated instrument means—
(a) an emergency order; or
35 (b) a control order; or
(c) a biosecurity direction.

- (2) If a person fails to comply with a designated instrument—
- (a) in the case of an emergency order—the Chief Executive may authorise a person to enter premises and to take action required by the order; and
 - (b) in the case of a control order—the relevant Chief Officer may authorise a person to enter premises and take action required by the order; and
 - (c) in the case of a biosecurity direction—an authorised officer may enter, or authorise a person to enter, premises and take any action in relation to those premises or anything on those premises that was required under the direction or that is otherwise necessary to remedy the failure.
- (3) The designated entity may charge the person who failed to comply with the designated instrument a fee for the reasonable costs and expenses incurred in taking action under this section.
- (4) A fee charged under subsection (3) is a debt due to the Crown.
- (5) If, as part of action taken under this section, a person intends to enter residential premises for the purposes of taking the action, notice must be given to an occupier of the premises in accordance with the regulations before the person enters the residential premises.
- (6) A notice under subsection (5) must—
- (a) specify the day on which the residential premises are intended to be entered; and
 - (b) be given to an occupier of the residential premises at least 24 hours before the person enters the residential premises.
- (7) Notice is not required under this section in relation to residential premises if—
- (a) entry into the premises is made with the consent of an owner, or occupier, of the premises; or
 - (b) entry into the premises is made under the authority of a warrant.
- (8) Any action under this section for failure to comply with a designated instrument is in addition to the taking of proceedings for an offence of failing to comply with such an instrument.

Division 5—Warrants

208—Warrants

- (1) A warrant required for the purposes of this Part in relation to premises is a warrant issued by a magistrate.
- (2) A magistrate must not issue a warrant that will allow entry into premises unless satisfied that there are reasonable grounds to believe that the circumstances require entry to the premises without giving the notice otherwise required under this Part.
- (3) A warrant may authorise the use of reasonable force to break into premises.
- (4) An application for the issue of a warrant under this section—
- (a) may be made personally, by telephone or by any other method prescribed by the regulations; and

- (b) must be made in accordance with any procedures prescribed by the regulations.

Part 12—Reimbursement and compensation

Division 1—Reimbursement

209—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 if—
 - (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; or
 - (b) the animal, plant or property is covered by an approved biosecurity program, and the program provides for reimbursement in respect of that death or destruction; or
 - (c) the animal, plant or property is covered by a Government biosecurity program, and the program provides for reimbursement in respect of that death or destruction; or
 - (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).

210—Claims for reimbursement

- (1) Subject to subsection (2), a claim for reimbursement under this Division must—
 - (a) be made in the approved form; and
 - (b) lodged with the Chief Executive; and
 - (c) include, or be accompanied by, any information or evidence that the Chief Executive reasonably requires in connection with the application; and
 - (d) be made within 3 months after the death or destruction of the animal, plant or other property (as the case may be), or such longer period as the Chief Executive may, in the Chief Executive's absolute discretion, allow.
- (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 must be made in the manner specified in that program.

Biosecurity Bill 2023

Part 12—Reimbursement and compensation

Division 1—Reimbursement

- (3) The Chief Executive may, by written notice, require a person claiming reimbursement to provide further information, documents or records relevant to the claim.

211—Amount of reimbursement

The amount of reimbursement payable under this Division is—

- 5 (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 an approved biosecurity program, the amount allowed by, or determined in accordance with, that program;
- 10 (c) 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;
- (d) in prescribed circumstances that allow for reimbursement under this Division, the amount allowed by, or determined in accordance with, the regulations
- 15

212—Determination of value

- (1) The calculation of the value of any animal, plant or other property that may be the subject of a claim for reimbursement under this Division must be made in accordance with the regulations.
- 20 (2) A regulation made for the purposes of this Division may apply retrospectively, but only if the Minister has certified 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) The regulations may provide for a calculation based on the market value or the replacement value of any animal, plant or other property.
- 25 (4) This section (and any regulations made under this section) do not apply to the extent that a biosecurity emergency (response and cost-sharing) agreement, an approved biosecurity program or a Government biosecurity program (as the case may be) provides for the calculation of the value of any animal, plant or other property covered
- 30 by the relevant agreement or program.

213—Reimbursement may be withheld

- (1) The Chief Executive 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.
- 35 (2) The Chief Executive should seek to ensure that any doubt or dispute is resolved within the period prescribed by the regulations.

214—Payment of reimbursement

A reimbursement under this Division is payable—

- 40 (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 period specified in the program in respect of reimbursements; or

(b) in any other case—

(i) by the Crown; and

5 (ii) within 1 month, unless another period is prescribed, after both the eligibility of the person for reimbursement, and the amount of reimbursement payable, has been determined.

215—Recovery of reimbursement

10 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 Chief Executive (on behalf of the Crown) within 3 months after receiving a written demand for repayment from the Chief Executive, or such other period as may be agreed between the parties.

15 216—Offence to make false claim

A person must not—

(a) make a claim for reimbursement under this Division that is false or misleading; or

20 (b) fraudulently do, or omit to do, any act for the purpose of obtaining reimbursement under this Division.

Maximum penalty:

(a) for a body corporate—\$50 000;

(b) for a natural person—\$10 000.

Division 2—Compensation

25 217—Compensation for loss or damage as consequence of a biosecurity order or direction

(1) A person who has suffered loss or damage as a direct result of an order or direction under Part 11 may apply to the Minister for compensation under this section.

(2) An application for compensation under this section must—

30 (a) be made in the manner and form determined by the Minister; and

(b) include, or be accompanied by, any information or evidence that the Minister reasonably requires in connection with the application.

(3) The Minister may, by written notice, require a person seeking compensation to provide the Minister with further information, documents or records relevant to the application.

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(4) The Minister is not required to pay compensation on an application under this section and no action lies against the Minister to compel the Minister to make a payment of compensation.

Part 13—Review

Division 1—Preliminary

218—Interpretation

In this Part—

authorisation means a relevant authorisation under Part 6;

relevant person means—

- (a) in relation to a biosecurity registration—a person who has applied for, or who is the holder of, the biosecurity registration;
- (b) in relation to an authorisation—a person who has applied for, or who is the holder of, the authorisation;
- (c) in relation to a permit—a person who has applied for, or who is the holder of, the permit;
- (d) in relation to an individual biosecurity direction—the person to whom the direction was issued;
- (e) in relation to a claim for reimbursement under Part 12 Division 1—the person who made the claim;

reviewable decision means any of the following:

- (a) a decision to refuse to grant a biosecurity registration;
- (b) a decision to refuse to renew a biosecurity registration;
- (c) a decision to suspend or cancel a biosecurity registration;
- (d) a decision to refuse to revoke a suspension of a biosecurity registration following the making of a submission under this Act in respect of the suspension, being a suspension in relation to which prior notice was not given;
- (e) a decision to impose any condition on a biosecurity registration, or on the suspension, cancellation or surrender of a biosecurity registration;
- (f) a decision to vary a biosecurity registration or any condition on a biosecurity registration;
- (g) a decision to refuse to grant an authorisation;
- (h) a decision to refuse to renew an authorisation;
- (i) a decision to suspend or cancel an authorisation;
- (j) a decision to refuse to revoke a suspension of an authorisation following the making of a submission under this Act in respect of the suspension, being a suspension in relation to which prior notice was not given;
- (k) a decision to impose any condition on an authorisation, or on the suspension, cancellation or surrender of an authorisation;
- (l) a decision to vary an authorisation or any condition on an authorisation;

- (m) a decision to refuse to grant a permit;
- (n) a decision to refuse to renew a permit;
- (o) a decision to suspend or cancel a permit;
- 5 (p) a decision to refuse to revoke a suspension of permit following the making of a submission under this Act in respect of the suspension, being a suspension in relation to which prior notice was not given;
- (q) a decision to impose any condition on a permit, or on the suspension, cancellation or surrender of a permit;
- (r) a decision to vary a permit or any condition on a permit;
- 10 (s) a decision to issue or vary an individual biosecurity direction;
- (t) in relation to a claim for reimbursement under Part 12 Division 1—
 - (i) a decision not to pay reimbursement to the person who made the claim;
 - 15 (ii) a decision to recover any amount of reimbursement paid to the person under that Part;
 - (iii) a decision as to the amount of reimbursement that is payable.

Division 2—Internal review

219—Application for internal review

- 20 (1) The relevant person may apply to the Chief Executive for an internal review of a reviewable decision.
- (2) The application must—
 - (a) be in the approved form; and
 - (b) be accompanied by the prescribed fee.
- 25 (3) An application must be made within 28 days after the relevant person received notice of the decision or within such longer period as the Chief Executive may, in the Chief Executive's absolute discretion, allow.

220—Consideration of application for internal review

- (1) In dealing with an application for review, the Chief Executive—
 - 30 (a) must give the applicant a reasonable opportunity to make a submission in relation to the application (in such manner as the Chief Executive considers to be appropriate in the circumstances); and
 - (b) may consider new material, whether or not it existed at the time that the reviewable decision was made; and
 - 35 (c) may exercise any power that was able to be exercised in relation to the matter that gave rise to the reviewable decision (and any relevant provisions of this Act apply accordingly); and
 - (d) subject to the regulations, may adopt such other procedures and processes as the Chief Executive thinks fit.

Biosecurity Bill 2023

Part 13—Review

Division 2—Internal review

- (2) The Chief Executive may—
- (a) confirm or vary the reviewable decision; or
 - (b) set aside the reviewable decision and substitute another decision for it.
- (3) The Chief Executive must take reasonable steps to make a decision under subsection (2) within the period prescribed by the regulations.
- (4) As soon as practicable after making a decision under subsection (2), the Chief Executive must give written notice to the applicant of the Chief Executive's decision.
- (5) In the case of a decision that is adverse to the applicant, the notice must—
- (a) set out the reasons for the decision; and
 - (b) state that the applicant may apply to the Tribunal within 28 days after the date of the notice to have the decision reviewed; and
 - (c) explain how an application for review is made.

221—Operation and implementation of decision or direction subject to review

- (1) Subject to subsection (2), an application under this Division does not affect the operation of the decision or direction to which the application relates or prevent the taking of action to implement or enforce the decision or direction.
- (2) The Chief Executive may, on the Chief Executive's own initiative or on application by the relevant person, suspend the operation of a decision or direction until the determination of a review under this Division.
- (3) A suspension under subsection (2) may be made subject to specified conditions, and may be varied or revoked by the Chief Executive at any time.

Division 3—External review**222—Application to Tribunal**

- (1) Subject to subsection (3), a person who made an application for the review of a reviewable decision by the Chief Executive under Division 2 and who is not satisfied with the decision of the Chief Executive on that review may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the Chief Executive's decision in relation to the reviewable decision.
- (2) An application for review must be made within 28 days after notification of the decision to the person (or within such longer period as the Tribunal may allow).
- (3) There is no right of review under this Division in relation to—
- (a) a decision to—
 - (i) refuse to renew a biosecurity registration, authorisation or permit; or
 - (ii) suspend or cancel a biosecurity registration, authorisation or permit, in the interests of public safety or in an emergency; or
 - (b) a decision that relates to—
 - (i) an emergency permit; or
 - (ii) a prohibited matter permit; or

- (iii) a prohibited dealing permit; or
- (c) a decision that relates to an emergency biosecurity direction.

Part 14—Functions and powers of authorised officers

Division 1—Preliminary

223—Purposes for which functions and powers under Part may be exercised

- (1) An authorised officer may perform the functions and exercise the powers conferred by this Part for any of the following purposes:
- (a) for the purpose of investigating, monitoring or enforcing compliance with a requirement imposed by or under this Act;
 - (b) for the purpose of obtaining information or records for purposes connected with the administration, operation or enforcement of this Act;
 - (c) if the authorised officer is an authorised auditor, for the purpose of performing functions or exercising powers in connection with a biosecurity audit;
 - (d) for the purpose of assisting a biosecurity auditor to perform or exercise the biosecurity auditor's functions or powers in connection with a biosecurity audit;
 - (e) for the purpose of preventing, eliminating, minimising, controlling or managing a biosecurity risk or suspected biosecurity risk;
 - (f) for the purpose of preventing, eliminating, managing, controlling or managing a biosecurity impact;
 - (g) for the purpose of enforcing, administering or implementing this Act (including an instrument made under this Act).
- (2) To avoid doubt, an authorised officer who is also a biosecurity auditor may perform the functions or exercise the powers of an authorised officer while also performing the functions or exercising the powers of a biosecurity auditor.
- (3) In this Part, a reference to an *authorised purpose* is a reference to any purpose referred to in subsection (1).

Division 2—Information gathering

224—Exercise in conjunction with other powers

A power conferred by this Division may be exercised whether or not a power of entry is being exercised under another part of this Act.

225—Power to require information and records

- (1) An authorised officer may, by written notice, require a person to furnish to the authorised officer such information or records as the authorised officer may require for an authorised purpose.

Biosecurity Bill 2023

Part 14—Functions and powers of authorised officers

Division 2—Information gathering

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- (2) A notice under this Division must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.
- (3) A notice under this Division may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (4) The authorised officer to whom any information or record is furnished under this Division may—
- (a) take copies of the information or record; and
 - (b) retain the information or record for such time as is reasonably necessary.
- (5) If any information or record required to be furnished under this Division is in electronic, mechanical or other form, the notice requires the information or record to be furnished in written form, unless the notice otherwise provides.

226—Power to require answers to questions

- (1) An authorised officer may require a person to answer questions in relation to a matter if the authorised officer reasonably believes that the questions may assist in the performance of an authorised purpose.
- (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 under this Division.
- (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.

227—Recording of evidence

- (1) An authorised officer may cause any questions and answers to questions given under this Division to be recorded if the authorised officer has informed the person who is to be questioned that the record is to be made.
- (2) A recording may be made by using any method determined by the authorised officer.
- (3) A copy of any such recording must be provided by the authorised officer to the person who is questioned as soon as practicable after it is made.
- (4) A recording may be made under this section despite the provisions of any other law.

228—Power of authorised officer to demand name and address

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have committed, or to be committing, an offence under this Act or the regulations to state the person's full name and residential address.
- (2) An authorised officer may require a person who is required under this section to state the person's name and address to provide proof of the name and address.

229—Requiring information in case of an emergency

- 5 (1) A person is not excused from a requirement made by an authorised officer to furnish information or records or to answer a question on the ground that the information, record or answer might incriminate the person or make the person liable to a penalty if—
- (a) the authorised officer makes the requirement in the case of an emergency; and
 - (b) the authorised officer warns the person that the authorised officer is making the requirement in the case of an emergency.
- 10 (2) However, any information or record, or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in any criminal proceedings, other than proceedings designated under subsection (3), if—
- (a) the person objected at the time to doing so on the ground that it might incriminate the person; or
 - 15 (b) the person was not warned on that occasion that the person may object to furnishing the information or record, or giving the answer, on the ground that it might incriminate the person.
- (3) The following proceedings are designated under this subsection:
- (a) proceedings for an offence under section 33; or
 - 20 (b) proceedings for an offence under this Act that involves furnishing false or misleading information or failing to furnish material information.

Division 3—Power to enter

230—Power to enter

- 25 (1) An authorised officer may enter any premises or vehicle—
- (a) at any reasonable time; or
 - (b) in the case of an emergency, at any time.
- (2) Subject to section 231, entry to any premises or vehicle may be effected with or without the authority of a warrant.

231—Entry to residential premises

- 30 (1) An authorised officer may only enter a dwelling under this Part if the authorised officer—
- (a) is entering the dwelling with the consent of an occupier of the relevant premises; or
 - (b) is acting under the authority of a warrant; or
 - 35 (c) is acting in the case of an emergency.
- (2) An authorised office may only enter any other part of residential premises under this Part if the authorised officer—
- (a) is entering the premises with the consent of an occupier of the premises; or

Biosecurity Bill 2023

Part 14—Functions and powers of authorised officers

Division 3—Power to enter

- (b) is acting under the authority of a warrant; or
- (c) is acting in the case of an emergency; or
- (d) in relation to the premises that are within a biosecurity zone, or under a control order or an emergency order that provides for a power to enter premises—has given at least 24 hours notice of an intention to enter the premises to an occupier of the premises; or
- (e) is entering the premises in circumstances prescribed by the regulations.

(3) In this section—

dwelling means the building, or a part of a building, in which a person resides.

Division 4—Investigation powers**232—Powers that can be exercised on premises or in relation to a vehicle**

(1) An authorised officer may do anything that in the opinion of the authorised officer is reasonably necessary to be done for an authorised purpose, including (but not limited to) the things specified in subsection (2).

(2) An authorised officer may do any or all of the following:

- (a) enter, inspect and search and, if necessary, use reasonable force to break into or open—
 - (i) any premises or vehicle; or
 - (ii) part of, or anything in or on, any premises or vehicle;
- (b) require a vehicle to stop, or to be presented at a place and time specified by the authorised officer, and board any vessel or craft;
- (c) give directions with respect to the stopping, securing or movement of a vehicle, plant, equipment or other thing;
- (d) as part of an inspection, require a person to produce a document, record or other information, including a document, record or other information that is stored by in an electronic or other form;
- (e) examine, copy or take extracts from a document, record or other information so produced or require a person to provide a copy of any such document, record or other information;
- (f) bring any vehicle onto any premises;
- (g) bring any equipment or other thing onto any premises or onto or into any vehicle, and use that equipment;
- (h) examine and inspect any thing;
- (i) take and remove samples of any thing (including any thing under land);
- (j) make any examinations, inquiries or tests;
- (k) carry out measures in relation to any biosecurity matter, carrier, potential carrier, premises, vehicle or other thing, including to cleanse, disinfect or otherwise treat any such thing or to subject any such thing to any treatment measure;

- 5
- (l) isolate, confine or detain any biosecurity matter, carrier or other thing;
- (m) construct, reinforce or repair any building, fencing, gates, structures, barriers or other methods of enclosure, or carry out any other security or containment measures in relation to any premises, biosecurity matter, carrier or other thing;
- 10
- (n) erect signs;
- (o) move any biosecurity matter, carrier or other thing;
- (p) apply, install, inspect, use or retrieve any device, bait, lure, trap or other equipment for the purpose of detecting, identifying, monitoring, controlling, capturing, suppressing, destroying or eradicating any biosecurity matter, carrier or other thing;
- 15
- (q) carry out any activity, work or operation as may be necessary for the detection, identification, monitoring, controlling, capture, suppression, disposal, destruction or eradication of any biosecurity matter, carrier or other thing;
- (r) verify that the packaging or labelling of any animal or plant, or animal product or plant product, complies with this Act or a corresponding law;
- 20
- (s) evaluate any facilities or equipment used in or in connection with, or processes or procedures carried out at or on, any premises or vehicle, including at any artificial breeding centre or veterinary diagnostic laboratory;
- (t) take any photographs, films or audio, video or other recordings;
- 25
- (u) seize any biosecurity matter, carrier or other thing if the authorised officer has reasonable grounds for believing that seizure of the biosecurity matter, carrier or other thing is necessary to prevent, eliminate, minimise, control or manage a biosecurity risk posed by or in relation to the biosecurity matter, carrier or thing;
- (v) seize any thing that the authorised officer has reasonable grounds for believing—
- 30
- (i) is connected with an offence under this Act or the regulations; or
- (ii) without limiting subparagraph (i), is being held or maintained contrary to any requirement of this Act, or is prohibited from being in the State or a relevant part of the State under this Act;
- (w) 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;
- 35
- (x) direct an occupier of premises where a thing is seized to retain it at those premises or at another place under the control of the occupier;
- (y) require a person to deliver any biosecurity matter or carrier to a quarantine station, or to any other place specified by the authorised officer;
- 40
- (z) identify, by marking, branding, tagging, implanting microchips or otherwise, any premises, vehicle, biosecurity matter, carrier or other thing;
- (za) use reasonable force to prevent the commission of an offence under this Act;
- (zb) do anything else authorised by or under this Act;

Biosecurity Bill 2023

Part 14—Functions and powers of authorised officers

Division 4—Investigation powers

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- (zc) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act.
- 5 (3) An authorised officer may only use force under subsection (2)(a) to break into premises or a vehicle on the authority of a warrant or in circumstance where the authorised officer is acting in the case of an emergency.
- (4) Subject to subsection (5), if an authorised officer seizes any biosecurity matter, carrier or other thing under subsection (2)(u), the authorised officer may do 1 or more of the following in relation to the biosecurity matter, carrier or other thing:
- 10 (a) retain it;
- (b) cleanse, disinfect or otherwise treat it or subject it to any treatment measure;
- (c) submit it for testing and analysis;
- (d) return it to its owner subject to any specified conditions.
- 15 (5) If an authorised officer seizes anything under subsection (2)(v) or acts in the circumstances described in subsection (2)(u) and has (at the time of so acting or subsequently) reasonable grounds for believing that the thing is or was also liable to seizure under subsection (2)(v)—
- (a) the authorised officer may retain it and do 1 or both of the following in relation to the biosecurity matter, carrier or other thing:
- 20 (i) cleanse, disinfect or otherwise treat it or subject it to any treatment measures;
- (ii) submit it for testing and analysis; and
- (b) section 234 applies in relation to the seizure.
- 25 (6) Despite a preceding subsection, if any biosecurity matter, carrier or other thing has been seized by an authorised officer, the biosecurity matter, carrier or other thing may be destroyed or disposed of in such manner as the Chief Executive approves if the Chief Executive believes on reasonable grounds that such action should be taken.
- (7) The power to seize any thing in connection with an offence includes the power to seize—
- 30 (a) a thing with respect to which the offence has been committed;
- (b) a thing that will afford evidence of the commission of the offence;
- (c) a thing that was used for the purpose of committing the offence.
- (8) In this section, a reference to an offence includes a reference to an offence that there are reasonable grounds for believing has been committed.
- 35 (9) A power to do something under this section in relation to a thing may be exercised without the consent of the owner of the thing.
- (10) The power to do a thing under this section includes the power to arrange for that thing to be done.

- (11) An authorised officer who is not a veterinary surgeon must not carry out any veterinary treatment within the meaning of the *Veterinary Practice Act 2003* unless authorised to do so by the Chief Veterinary Officer to carry out veterinary treatment of that kind.

233—Recovery of fee for action taken

- (1) The Chief Executive may determine that a person (the *liable person*) should pay a fee for any action taken by an authorised officer under a power conferred by this Division if, in the opinion of the Chief Executive, it is reasonable to do so having regard to—
- (a) any biosecurity duty of the liable person under this Act; and
 - (b) any contravention or likely contravention by the liable person of a requirement imposed by or under this Act.
- (2) The fee is to be no more than is reasonable to cover the costs and expenses incurred in connection with the action.
- (3) Costs and expenses incurred include costs and expenses incurred by or on behalf of Crown or, if the authorised officer is not a public sector employee, by or on behalf of the authorised officer's employer.
- (4) The fee is—
- (a) a debt due to—
 - (i) in the case of action taken by an authorised officer who is a public sector employee—the Crown; or
 - (ii) in any other case—the employer of the authorised officer who took the action; and
 - (b) recoverable from the liable person.

Division 5—Provisions relating to seizure

234—Provisions relating to seizure

- (1) If a thing is subject to the operation of section 232(5), the following provisions apply:
- (a) the thing must be held pending a decision on whether to institute proceedings for an offence related to the thing seized, unless the Chief Executive, on application, authorises its release to the person from whom it was seized, or to any person who had legal title to it at the time of its seizure, subject to such conditions as the Chief Executive thinks fit (including as to the giving of security for satisfaction of an order under paragraph (b)(ii));
 - (b) if proceedings for an offence relating to the thing are instituted within the prescribed period after its seizure and the defendant is convicted or found guilty of an offence, the court may—
 - (i) order that it be forfeited to the Crown; or
 - (ii) where it has been released pursuant to paragraph (a)—order that it be forfeited to the Crown or that the person to whom it was released or the defendant pay to the Crown an amount equal to its market value at the time of its seizure, as the court thinks fit;

Biosecurity Bill 2023

Part 14—Functions and powers of authorised officers

Division 5—Provisions relating to seizure

(c) if—

- (i) proceedings are not instituted for an offence relating to the thing within the prescribed period after its seizure; or
- (ii) proceedings have been so instituted and—

5 (A) the defendant is found not guilty of the offence; or

(B) the defendant is convicted or found guilty of an offence but no order for forfeiture is made under paragraph (b),

10 then the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Crown (if necessary, by action in a court of competent jurisdiction) the thing itself, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of its seizure, unless possession of the thing is (or would be) contrary to another provision of this or any other Act;

(d) if—

15 (i) possession of the thing by the person from whom the thing was seized is (or would be) contrary to another provision of this Act; or

20 (ii) a thing is not liable for forfeiture under a preceding paragraph and the Chief Executive has, after taking reasonable steps in the circumstances, been unable to return the thing to the person from whom it was seized,

the Chief Executive may deal with or dispose of the thing in such manner as the Chief Executive thinks fit.

(2) Subsection (1) does not limit the operation of section 232(6).

(3) In subsection (1)—

25 *prescribed period* means 12 months or such longer period as may be prescribed by the regulations.

Division 6—Warrants

235—Warrants

30 (1) A warrant required for the purposes of this Part in relation to premises or a vehicle is a warrant issued by a magistrate.

(2) A magistrate must not issue a warrant that will allow entry into premises or a vehicle under this Part unless satisfied that there are reasonable grounds to believe—

(a) that a contravention of this Act has been, is being, or is about to be, committed in or on the premises or vehicle; or

35 (b) that something may be found in or on the premises or vehicle that has been used in, or constitutes evidence of, a contravention of this Act; or

(c) that the circumstances require such action to be taken.

(3) A warrant may authorise the use of reasonable force to break into the premises or vehicle.

- (4) An application for the issue of a warrant under this section—
- (a) may be made personally, by telephone or by any other method prescribed by the regulations; and
 - (b) must be made in accordance with any procedures prescribed by the regulations.

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Division 7—Related matters

236—Care to be taken

In the exercise of a power of entering or searching premises under this Part, or doing anything else on premises under this Act, an authorised officer must do as little damage as is reasonably possible.

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237—Detention or treatment of persons

- (1) An authorised officer cannot do any of the following except as expressly authorised by an emergency order, control order, biosecurity direction or any regulation:
- (a) prohibit, regulate or control the movement of a person;
 - (b) examine or inspect a person;
 - (c) require a person to undergo treatment measures or require treatment measures to be carried out in relation to a person.
- (2) An authorised officer may not require a person to—
- (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, vehicle, area, activity or thing that has an impact on the movement of a person but that is not done for the purpose of restricting the movement of a person.

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238—Destruction requirements

- (1) An authorised officer may destroy a thing under this Part only if—
- (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 the carrier of, prohibited matter; or
 - (c) the thing is, or is reasonably suspected of being, a pest; or
 - (d) the thing is, or is reasonably suspected of being, infected or infested with, or of harbouring, the biosecurity matter that poses a biosecurity risk and there are no other reasonably practicable and available—
 - (i) treatment measures that could eliminate, minimise, control or manage 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

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Biosecurity Bill 2023

Part 14—Functions and powers of authorised officers

Division 7—Related matters

(e) the destruction is expressly authorised or required by—

- (i) an emergency order; or
- (ii) a control order; or
- (iii) a biosecurity direction; or
- (iv) a Government biosecurity program; or
- (v) a biosecurity control agreement; or
- (vi) any regulation.

(2) This section does not prevent an authorised officer destroying a thing that has been forfeited to the Crown.

(3) An authorised officer may destroy a thing in the exercise of powers under this Act despite the fact that the action may constitute a trespass or cause loss or damage to property.

(4) In this section—

reasonably practicable means reasonably practicable in the opinion of the authorised officer;

reasonably suspected means reasonably suspected in the opinion of the authorised officer.

239—Destruction proposal

(1) An authorised officer must not destroy any thing in the exercise of a power under this Part unless—

- (a) before taking the action, 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) Notice must be given at least 24 hours before the power is exercised.

(3) A requirement to give notice under this section does not apply to the destruction of a thing if—

(a) the destruction is expressly authorised by—

- (i) an emergency order; or
- (ii) a control order; or
- (iii) a biosecurity direction; or
- (iv) a Government biosecurity program; or
- (v) a biosecurity control agreement; or
- (vi) any regulation; or

(b) —

- (i) there appears to be no one immediately in control of it; and

- (ii) the owner or person in charge cannot, after such search and inquiry as is reasonable in the circumstances, be located; and
- (iii) the authorised officer is satisfied that, in the circumstances, the power must be exercised without prior notice to the owner or person in charge.

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

240—Interaction with other Acts

- (1) An authorised officer, other than a Chief Officer or an authorised officer acting with the approval of a Chief Officer, must not in the exercise of a power under this Part—
 - (a) destroy a fish that is an aquatic resource of a protected species under the *Fisheries Management Act 2007*; or
 - (b) destroy a living thing that is a native animal or plant that is subject to any form of protection under the *National Parks and Wildlife Act 1972*; or
 - (c) clear any native vegetation that is subject to any form of protection under the *Native Vegetation Act 1991*; or
 - (d) damage, destroy or disturb any place, object, specimen, artefact or other thing that is subject to any form of protection under the *Heritage Places Act 1993*; or
 - (e) damage, destroy or disturb any Aboriginal site, object or remains that are subject to any form of protection under the *Aboriginal Heritage Act 1988*.
- (2) This section does not limit the power of an authorised officer to do a thing where that action is expressly authorised by—
 - (a) an emergency order; or
 - (b) a control order; or
 - (c) a biosecurity direction; or
 - (d) any regulation.
- (3) This section applies despite the provisions of any Act referred to in subsection (1).

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241—Interference with device, trap or equipment

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

Maximum penalty:

- (a) for a body corporate—\$20 000;
- (b) for a natural person—\$4 000.

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Part 15—Specific biosecurity offences

242—Interpretation

In this Part—

prescribed agent means a disease, disease agent, contaminant, toxin or other harmful agent, organism, substance or material;

release includes to inject, feed to, expose to or apply.

243—Act to cause serious or material harm or risk

- 5 (1) A person commits an offence if—
- (a) the person releases a prescribed agent; and
 - (b) the person, in releasing the prescribed agent, intends—
 - 10 (i) to kill, harm, damage, infect or infest 1 or more animals or plants; and
 - (ii) in so doing, to cause substantial harm, or a risk of substantial harm, to—
 - (A) the community or the environment; or
 - (B) an industry or part of an industry in the State; or
 - (C) the economy or part of the economy of the State.

15 Maximum penalty: \$1 000 000 or imprisonment for 10 years or both.

- (2) A person commits an offence if—
- (a) the person releases a prescribed agent; and
 - (b) the person, in releasing the prescribed agent, intends—
 - 20 (i) to kill, harm, damage, infect or infest 1 or more animals or plants; and
 - (ii) in so doing, to cause material harm, or a risk of material harm, to—
 - (A) the community or the environment; or
 - (B) an industry or part of an industry in the State; or
 - (C) the economy or part of the economy of the State.

25 Maximum penalty: \$500 000 or imprisonment for 5 years or both.

- (3) A person commits an offence against subsection (1) or (2)—
- (a) whether or not any harm is caused to—
 - (i) the community or the environment; or
 - (ii) an industry or part of an industry in the State; or
 - 30 (iii) the economy or part of the economy of the State; and
 - (b) whether or not any risk actually arises or eventuates.

- (4) A person commits an offence if the person, without lawful excuse, releases a prescribed agent with intent to cause harm, or a risk of harm, to an animal or plant.
Maximum penalty: \$250 000.

- 35 (5) A person commits an offence against subsection (4)—
- (a) whether or not any harm is caused to an animal or plant; and

- (b) whether or not any risk actually arises or eventuates.

244—Act that may cause harm or risk

- (1) A person commits an offence if—

- 5 (a) the person, without lawful excuse, releases a prescribed agent that may kill, harm, damage, infect or infest 1 or more animals or plants; and
- (b) in so doing, causes substantial or material harm, or a risk of substantial or material harm, to—
- 10 (i) the community or the environment; or
- (ii) an industry or part of an industry in the State; or
- (iii) the economy or part of the economy of the State.

Maximum penalty: \$250 000.

- (2) A person commits an offence if—

- 15 (a) the person releases a prescribed agent intentionally or recklessly; and
- (b) the person ought reasonably to know that the release of the prescribed agent will—
- (i) kill, harm, damage, infect or infest 1 or more animals or plants; and
- (ii) in so doing, cause substantial or material harm, or a risk of substantial or material harm, to—
- 20 (A) the community or the environment; or
- (B) an industry or part of an industry in the State; or
- (C) the economy or part of the economy of the State.

Maximum penalty: \$125 000.

- (3) A person commits an offence against subsection (1) or (2)—

- 25 (a) whether or not any harm is caused—
- (i) to an animal or plant; or
- (ii) to—
- (A) the community or the environment; or
- (B) an industry or part of an industry in the State; or
- (C) the economy or part of the economy of the State; and

- 30 (b) whether or not any risk actually arises or eventuates.

- (4) A person commits an offence if the person, without lawful excuse, releases a prescribed agent that may kill, harm, damage, infect or infest 1 or more animals or plants.

Maximum penalty: \$25 000.

- 35 (5) A person commits an offence against subsection (4) whether or not any harm is caused to an animal or plant.

245—Substantial harm and material harm

- (1) For the purposes of this Part, in determining whether harm is (or would be) substantial, the following matters are relevant (but not exclusive):
- (a) the nature, scale and effects of the harm that may arise;
 - (b) the immediacy and seriousness of any threat caused by a relevant act;
 - (c) the number of animals or plants (as the case may be) affected, or at risk of being affected;
 - (d) the availability and effectiveness of any treatment or measures that may be available to be used to eliminate or reduce the harm.
- (2) For the purposes of this Part, in determining whether any harm is (or would be) material, it is relevant to consider any impact or potential impact, and the risk of any impact, other than an impact that is or would be trivial or negligible.

246—Alternative finding

If in proceedings for an offence against this Part the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against this Part that carries an equal or lower maximum penalty (determined according to the relative maximum monetary penalties), the court may find the defendant guilty of the latter offence.

Part 16—Legal proceedings**Division 1—Offences generally****247—Classification of offence**

All offences under this Act, other than an offence against section 243, are classified as summary offences.

248—Proceedings for offences

- (1) Proceedings for an offence under this Act may be commenced by (and only by)—
- (a) the Minister; or
 - (b) the Director of Public Prosecutions; or
 - (c) the Chief Executive; or
 - (d) a Chief Officer; or
 - (e) an authorised officer; or
 - (f) in the case of an offence against Schedule 2, the Dog Fence Board;
 - (g) a prescribed person or a person of a prescribed class; or
 - (h) a person acting with the written authorisation of the Minister
- (2) A prosecution for an offence under this Act may be commenced at any time within 5 years after the date of the alleged commission of the offence or, with the authorisation of the Minister after consultation with the Attorney-General, at any later time within 7 years after the date of the alleged commission of the offence.

- (3) An apparently genuine document purporting to be signed by the Minister and to authorise a person to act under subsection (1)(h) or the commencement of a prosecution under subsection (2) will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

5 **249—Offences by employers (vicarious liability)**

- (1) If an employee or agent commits an offence under this Act, the employer or principal is taken to have committed the same offence.

- (2) It is a defence in proceedings for an offence to which subsection (1) applies if the defendant establishes—

10 (a) that the employer or principal (as the case may be) could not by the exercise of due diligence have prevented the commission of the offence; or

(b) that the offence did not occur in the course of the employment or agency.

- (3) An employer or principal may be prosecuted and convicted of an offence to which subsection (1) applies whether or not the employee or agent has been prosecuted or convicted of the principal offence.

15 **250—Offences by bodies corporate**

- (1) If a body corporate is guilty of a prescribed offence, each director and the chief executive officer of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person unless the director or the chief executive officer (as the case may be) proves that they could not by the exercise of due diligence have prevented the commission of the offence.

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- (2) If a body corporate is guilty of any other offence under this Act (other than an offence under the regulations), each director and the chief executive officer of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—

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(a) the director or chief executive officer (as the case may be) knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and

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(b) the director or chief executive officer (as the case may be) was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and

(c) the director or chief executive officer (as the case may be) failed to exercise due diligence to prevent the commission of the offence.

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- (3) Subsection (2) does not apply if the principal offence is an offence against a section prescribed by the regulations for the purposes of this subsection.

- (4) A person referred to in this section may be prosecuted and convicted of an offence against this section whether or not the body corporate has been prosecuted or convicted of the principal offence committed by the body corporate.

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- (5) The regulations may make provision in relation to the criminal liability of a director or the chief executive officer of a body corporate that is guilty of an offence under the regulations.

251—Offences by employees and 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 an offence, an employee or agent of another person and was acting for, or on behalf of, the other person.
- 5 (2) Despite subsection (1), it is a defence in proceedings for an offence under this Act if the defendant establishes—
- (a) that at the time of the commission of the offence, the defendant was acting under the direction or supervision of—
- 10 (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 referred to in a preceding subparagraph; and
- 15 (b) that the defendant's actions were as a direct result of that direction or supervision; and
- (c) that the defendant could not have reasonably known that the defendant's actions would constitute an offence under this Act.

252—Continuing offences

20 If a person commits an offence which is a continuing offence under this Act—

- (a) the person is liable to a penalty for each day during which the offence continues of not more than one-tenth of the maximum penalty prescribed for the offence to which the continuing offence relates (the *principal offence*); and
- 25 (b) if the act or omission giving rise to the offence continues after a conviction for the principal offence, subject to any determination of a court, the person is guilty of a further offence against the principal offence and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the offence continues of not more than one-tenth of
- 30 the maximum penalty prescribed for the principal offence.

253—General 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

35 the direction, or the supervision, of the defendant.

254—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.

255—Actions done under direction of an authorised person

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 of, or under the direction of—

- (a) the Chief Executive; or
- (b) a Chief Officer; or
- (c) an authorised officer.

256—Common carriers

(1) A person is not guilty of an offence under this Act because of a dealing with any biosecurity matter, carrier or potential carrier in the ordinary course of business as a common carrier.

(2) The regulations may—

- (a) declare that a person or a class of persons is a common carrier for the purposes of this section; and
- (b) declare that a person or a class of persons is not a common carrier for the purposes of this section.

(3) This section does not apply in relation to—

- (a) an offence against section 33, section 123, section 179(5), section 192(4) or section 206(5); or
- (b) an offence of contravening an individual biosecurity direction; or
- (c) an offence against Part 15; or
- (d) an offence excluded from the operation of this section by the regulations.

257—Burden of proof in certain circumstances

In proceedings for an offence under this Act, the burden 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.

258—Expiation of offences

(1) Despite section 6 of the *Expiation of Offences Act 1996*, an expiation notice for an offence which is expiable under this Act may be given after the expiration of the period of 6 months from the date on which the offence was alleged to have been committed.

(2) However, an expiation notice for an expiable offence of a prescribed class cannot be given after the expiry of the period of 2 years from the date on which the offence was alleged to have been committed.

Division 2—Evidentiary provisions

259—Evidentiary certificates

(1) In this section—

designated official means—

- (a) the Minister; or
- (b) the Chief Executive; or
- (c) a Chief Officer;

given includes served;

instrument includes, but is not limited to, an emergency order, a control order, a biosecurity direction or a biosecurity certificate.

(2) A certificate issued by a designated official and that states any of the following matters is admissible as evidence in any legal proceedings as evidence of the matters so certified:

- (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, varied or revoked, the day on which it was amended, varied or revoked, and the terms of any amendment or variation;
- (d) that a person was, on a specified day or during a specified period—
 - (i) a Chief Officer; or
 - (ii) a Deputy Chief Officer; or
 - (iii) an authorised officer; or
 - (iv) an authorised analyst;
- (e) 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;
 - (ii) an approval that authorises an authorised officer to perform the functions of a biosecurity auditor or biosecurity certifier;
- (f) that a function or power was delegated under this Act, including the following:
 - (i) the person or persons to whom the function or power 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 conditions or limitations on the delegation;
- (g) that a specified instrument was or was not, on a specified day, registered under Part 3 Division 6;
- 5 (h) that a person who issued, made, granted or gave, or purported to issue, make, grant or give, an instrument under this Act was the holder of a specified office on a specified day or during a specified period;
- (i) the terms of any approved form, on a specified day or during a specified period;
- 10 (j) the terms of any application made under this Act;
- (k) that a person was or was not, on a specified day or during a specified period—
 - (i) a registered entity; or
 - (ii) an accreditation authority; or
 - 15 (iii) a biosecurity auditor; or
 - (iv) a biosecurity certifier;
- (l) 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;
 - 20 (ii) a person's approval as an accreditation authority;
 - (iii) a person's appointment as a biosecurity auditor;
 - (iv) a person's accreditation as a biosecurity certifier;
- (m) the suspension or cancellation of any of the following on a specified day:
 - (i) a person's biosecurity registration;
 - 25 (ii) a person's approval as an accreditation authority;
 - (iii) a person's appointment as a biosecurity auditor;
 - (iv) a person's accreditation as a biosecurity certifier;
- (n) that a person was or was not, on a specified day or during a specified period, the holder of a permit under this Act;
- 30 (o) the terms of, and any conditions of or limitations on, a permit, as in force on a specified day or during a specified period;
- (p) the suspension or cancellation of any permit;
- (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;
- 35 (r) that a report or document on a biosecurity audit was received by the Chief Executive on a particular day, and the particulars of any report or document so received;

Biosecurity Bill 2023

Part 16—Legal proceedings

Division 2—Evidentiary provisions

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- (s) that a notice or other information was provided by a person to the Chief Executive, 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 so provided;
- 5 (t) that a notice or other information had not been received by the Chief Executive, a Chief Officer, a Deputy Chief Officer, or an authorised officer, by a specified date;
- (u) that a person was, on a specified date, directed to engage a biosecurity auditor to perform a biosecurity audit;
- 10 (v) that a particular code or other traceability system, as recognised under the regulations, had been issued or applied in respect of a particular person, property, animal or plant, and whether the code or other traceability system was active on a specified day;
- (w) the amount of costs or expenses incurred in taking specified action;
- 15 (x) 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 of a designated official issued under this section is, unless the contrary is proved, to be taken to be such a certificate.

260—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:

- 25 (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 a specified person was, at the specified time, the person apparently in charge of a vehicle;
- 30 (c) 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;
- (d) that any specified thing was, at the specified time, infected or infested with or harbouring any specified biosecurity matter;
- (e) that something was done without the approval of the Chief Executive, a Chief Officer or an authorised officer.

261—Evidence of authorised analyst

- 35 (1) A certificate of an authorised analyst certifying the result of an analysis, or examination, is admissible in any legal proceedings and as 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—

- 5 (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.

10 (3) For the purposes of this section, a document purporting to be a certificate of an authorised analyst is, unless the contrary is proved, to be taken to be such a certificate.

262—Evidence of state of mind of body corporate

15 (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a body corporate (while acting in their capacity as such)—

- (a) was responsible for a particular act or omission, is evidence that the body corporate was responsible for that act or omission; or
 (b) had at any particular time a particular state of mind, is evidence that the body corporate had that state of mind.

20 (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.

263—Evidence of publication of instruments on website

25 (1) In any legal proceedings, a certificate issued by the Chief Executive stating that a notice, order, direction, declaration or other instrument 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.

30 (2) For the purposes of this section, a document purporting to be a certificate of the Chief Executive issued under this section is, unless the contrary is proved, to be taken to be such a certificate.

264—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—

- 35 (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 or exercise of a function or power under 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).

265—Evidence in relation to bees

In any legal proceedings, evidence that a hive was found on specified premises is evidence that the bees were kept by the occupier of those premises.

Division 3—Court orders

266—Preliminary

- (1) A court may make 1 or more orders under this Division if the court finds an offence against this Act or the regulations proved.
- (2) An order 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 or on account of a contravention of this Act.
- (3) An order may be made under this Division regardless of whether any penalty is imposed, or any other action is taken, in relation to the offence or on account of a contravention of this Act.
- (4) In this Division—

the court means the court that finds the offence proved;

the offender means the person who is found to have committed the offence.

267—Orders for restoration and prevention

The 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 as the court, on application, may allow)—

- (a) to prevent, eliminate, minimise, control or manage any biosecurity impact caused by the commission of the offence; or
- (b) to take any other action on account of the commission of the offence, including to rectify or make good any resulting biosecurity impact or other consequences associated with the commission of the offence; or
- (c) to prevent the continuance or recurrence of the offence or otherwise to ensure that a further contravention of this Act does not occur.

268—Orders for costs, expenses and compensation at time offence proved

The court may order the offender to pay to a government agency or person costs and expenses incurred, or compensation for loss or damage suffered, as the case may be, in such amount fixed by the court, if the court is satisfied (on the balance of probabilities) that—

- (a) a government agency has incurred costs and expenses in connection with—
 - (i) the prevention, elimination, minimisation, control or management of any biosecurity impact caused by the commission of the offence; or
 - (ii) making good any resulting biosecurity impact; or

- (b) a person (including a government agency) has, by reason of the commission of the offence, suffered loss or damage or has incurred costs or expenses in preventing, eliminating, minimising, controlling or managing any such loss or damage, or attempting to do so.

269—Recovery of costs, expenses and compensation after offence proved

- (1) If, after the court finds the offence proved—
- (a) a government agency has incurred costs and expenses in connection with—
- (i) the prevention, elimination, minimisation, control or management of any biosecurity impact caused by the commission of the offence; or
- (ii) making good any resulting biosecurity impact; or
- (b) a person (including a government agency) has, by reason of the commission of the offence, suffered loss or damage or has incurred costs or expenses in preventing, eliminating, minimising, controlling or managing any such loss or damage, or attempting to do so,
- the government agency or person may recover from the offender the costs and expenses incurred or the amount of the loss or damage in a court of competent jurisdiction.
- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

270—Orders regarding costs and expenses of investigation

- (1) The court may, if satisfied (on the balance of probabilities) that a government agency has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the government agency the costs and expenses so incurred in such amount as is fixed by the order.
- (2) In this section—
- costs and expenses*, in relation to the investigation of an offence, includes the costs and expenses of or incidental to—
- (a) taking any sample or conducting any inspection, examination, test, measurement or analysis of any thing; or
- (b) seizing, transporting, storing, destroying or disposing of any thing; or
- (c) taking any other action associated with the investigation of the offence.

271—Orders regarding financial benefits

- (1) The court may order the offender to pay an amount which the court is satisfied, on the balance of probabilities, represents the amount of any financial benefits acquired by the offender or an associate of the offender, or accrued or accruing to the offender or an associate of the offender, as a result of the commission of the offence.
- (2) For the purposes of this section, a person is an *associate* of an offender if—
- (a) they are partners; or
- (b) one is a spouse, domestic partner, parent or child of another; or

(c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or

(d) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director of the body corporate or other entity; or

5 (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5% or more of the share capital of the body corporate or other entity; or

(f) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or

10 (g) a chain of relationships can be traced between them under any one or more of the preceding paragraphs.

(3) For the purposes of subsection (2), a **beneficiary** of a trust includes an object of a discretionary trust.

(4) In this section—

15 **financial benefit** means monetary, financial or economic benefit.

272—Prohibition orders

(1) The court may do 1 or more of the following in respect of the 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;

20 (b) cancel, suspend or vary any biosecurity registration, permit, approval as an accreditation authority, appointment as a biosecurity auditor or accreditation as a biosecurity certifier held by the offender under this Act;

25 (c) order that the offender not be eligible for biosecurity registration, a permit, approval as an accreditation authority, appointment as a biosecurity auditor or accreditation as a biosecurity certifier.

(2) The court may, in an order under this section, fix a period during which the order applies and impose any other requirements that the court considers necessary or expedient for enforcement of the order.

273—Forfeiture

30 (1) The court may order forfeiture to the Crown of any biosecurity matter or other thing to which the offence relates.

(2) If an order is made under subsection (1), the biosecurity matter or other thing becomes the property of the Crown.

35 (3) The Chief Executive may deal with the biosecurity matter or other thing in any way the Chief Executive considers appropriate.

(4) Without limiting subsection (3), the Chief Executive may destroy, sell or dispose of the biosecurity matter or other thing or authorise its destruction, sale or disposal.

274—Publication order

- (1) The court may order the offender to take specified action to publicise 1 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 court may, in an order under this section, fix a period for compliance and impose other requirements that the court considers necessary or expedient for enforcement of the order.
- (3) If the offender fails to comply with an order under subsection (1), the Chief Executive or a person authorised by the Chief Executive may take action to carry out the order.
- (4) The reasonable cost of taking action under subsection (3) is recoverable in a court of competent jurisdiction from the offender as a debt due to the Crown.

275—Failure to comply with orders

A person must not contravene an order under this Division that is made in respect of the person.

Maximum penalty:

- (a) for a body corporate—\$50 000;
- (b) for a natural person—\$10 000.

Part 17—Miscellaneous

276—Reasonable suspicion of carrier

- (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 relevant Chief Officer, an authorised officer or any other person from using any other evidence or consideration available to the relevant Chief Officer, authorised officer or other person to form a reasonable suspicion that an animal, plant, place or other thing is a carrier of biosecurity matter.

277—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 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 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 relevant Chief Officer, an authorised officer or any other person from using any other evidence or consideration available to the relevant Chief Officer, authorised officer or other person to form a reasonable suspicion that an animal, plant, place or other thing is infected with a disease.

278—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 that—
- (a) the pest is present in or on the animal, plant, place or other thing; or
 - (b) 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 relevant Chief Officer, an authorised officer or any other person from using any other evidence or consideration available to the relevant Chief Officer, authorised officer or other person to form a reasonable suspicion that an animal, plant, place or other thing is infested with a pest.

279—Public warning statements

- (1) If, in the opinion of a Chief Officer, it is in the public interest to do so, the Chief Officer may make a public statement or erect signs at any public place identifying and giving warnings or information about any of the following:
- 5 (a) any biosecurity matter, premises or other thing that, in the opinion of the Chief Officer, is affected with, or in danger of becoming affected with, a pest, disease, contaminant, pest infestation or infection;
- (b) the presence, or suspected presence, of a biosecurity risk or suspected biosecurity risk, or biosecurity event;
- 10 (c) practices that, in the opinion of the Chief Officer, pose a biosecurity risk;
- (d) any other matter that, in the opinion of the Chief Officer, should be included in a statement or sign under this section.
- (2) A statement or sign under this section may identify any particular biosecurity matter, premises, thing, practices, persons or other matters.
- 15 (3) The Crown incurs no liability for a statement made by the Chief Officer in good faith in the exercise or purported exercise of a power under this section.

280—Management of stray stock

- (1) An owner or occupier of land may detain any stray stock—
- (a) that is present on the land or in the vicinity of the land; and
- 20 (b) that—
- (i) is known to be a biosecurity risk; or
- (ii) the owner or occupier has reason to suspect is a biosecurity risk.
- (2) If stock is detained under this section—
- (a) the owner or occupier must manage the stock in accordance with requirements prescribed by the regulations; and
- 25 (b) if the stock poses a biosecurity risk, the owner or occupier must comply with any requirements of this Act that apply in the circumstances; and
- (c) the owner or occupier must take steps to identify and make contact with the owner of the stock as required by the regulations; and
- 30 (d) if the owner or occupier cannot identify or make contact with the owner of the stock within a period prescribed by the regulations, the owner or occupier may, with the approval of the Chief Veterinary Officer, sell or destroy the stock; and
- (e) the owner or occupier may recover their reasonable costs and expenses of acting under this section from the owner of the stock, by retaining the
- 35 proceeds of any sale under paragraph (d), or both.

281—Facilities for temporary detention of stray stock

- (1) The Chief Veterinary Officer may enter into an agreement with the owner or occupier of land to establish a facility for the temporary detention of stray stock that poses, or
- 40 may pose, a biosecurity risk.

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- (2) Any stock taken to a facility established under this section may be detained and managed in accordance with the regulations.
- (3) A person who is detaining stock under this section must—
- 5 (a) take steps to identify or make contact with the owner of the stock as required by the regulations; and
- (b) if the stock poses a biosecurity risk, comply with any requirements of this Act that apply in the circumstances; and
- (c) comply with any terms, conditions or requirements set out in an agreement under subsection (1).
- 10 (4) A person who has established a facility under this section may, with the approval of the Chief Veterinary Officer, sell or destroy stock detained at the facility and recover any costs in accordance with a scheme prescribed by the regulations.

282—Implied contractual terms and conditions

- 15 (1) The regulations may prescribe contractual terms and conditions providing for the rights and liabilities of purchasers and vendors of biosecurity matter, animal food or fertiliser of a prescribed class in relation to the health, quality or condition of the biosecurity matter, animal food or fertiliser.
- 20 (2) Contractual terms and conditions prescribed by regulations under this section in relation to a class of biosecurity matter, class of animal food or class of fertiliser will be implied into each contract for the sale of the biosecurity matter, animal food or fertiliser of that class entered into while the regulations are in force.
- (3) However, the parties to such a contract may agree to exclude or modify the implied terms and conditions.

283—False or misleading information

25 A person who furnishes information to the Chief Executive, a Chief Officer or other authority under this Act (or in purported compliance with this Act) that is false or misleading in a material particular is guilty of an offence.

Maximum penalty:

- 30 (a) for a body corporate—\$125 000;
- (b) for a natural person—\$25 000.

284—Self-incrimination

- 35 (1) It is not a reasonable excuse for a person to fail to answer a question or to produce, or provide a copy of, a document or other information as required under this Act on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (2) However, if compliance by a natural person with a requirement might tend to incriminate the person or make the person liable to a penalty, then—
- 40 (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of, the document or information (as distinct from the contents of the document or information); or

(b) in any other case—the answer given in compliance with the requirement, is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of making a false or misleading statement or providing false or misleading information).

5 **285—Vicarious liability**

- (1) For the purposes of this Act, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.
- (2) This section operates subject to section 249.

10 **286—Service of orders, notices, directions and other instruments and documents**

- (1) If this Act requires or authorises an order, notice, direction or other instrument or document (a *prescribed instrument*) to be served on, or given to, a person, the prescribed instrument may—
 - 15 (a) be served on, or given to, the person or an agent of the person; or
 - (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
 - (c) be sent by post to the person or an agent of the person at the person's or agent's last known address; or
 - 20 (d) if the prescribed instrument is to be served on or given to the owner of land, the land is unoccupied, and the person seeking to serve or give the prescribed instrument has taken reasonable steps to effect service under the other paragraphs of this subsection but has been unsuccessful—be served on or given to the owner by fixing it to some conspicuous part of the land; or
 - 25 (e) if the prescribed instrument is to be served on or given to the occupier of land—be sent by post to the occupier at the address of the land; or
 - (f) be served on or given to the person by fixing it to, or leaving it on, a vehicle that the person is apparently in possession of, if the person serving or giving the prescribed instrument has reasonable grounds to believe that service in
30 this matter will bring the prescribed instrument to the attention of the person to be served; or
 - (g) be sent to an email address known to be used by the person (in which case the prescribed instrument will be taken to have been served or given at the time of transmission); or
 - 35 (h) be served or given in some other manner prescribed by the regulations.
- (2) Without limiting subsection (1), a prescribed instrument to be served on or given to a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth may be served or given in accordance with that Act.
- (3) Subject to the regulations, a prescribed instrument required or authorised to be served
40 on, or given to, an owner or occupier of land may, if it is being served personally, be served on or given to the owner or occupier, or 1 of any joint owners or occupiers, as the case may be.

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- (4) In addition, if a provision requires or authorises a notice to be given to the owner or occupier of premises, the notice may be given by leaving the notice—
- (a) in a letter box for the premises; or
 - (b) at a prominent place on the relevant land.

5 **287—Description of land in instruments**

Any land or premises are sufficiently described in an order, notice, direction or other instrument or document (a *prescribed instrument*) under this Act if the description of the land or premises allows no reasonable doubt as to the land or premises to which the prescribed instrument relates.

10 **288—Statutory declarations**

- (1) In this section—
- designated official* means—
- (a) the Minister; or
 - (b) the Chief Executive; or
 - 15 (c) a Chief Officer; or
 - (d) an authorised officer.
- (2) If a person is required by or under this Act or furnish information to a designated official, the designated official may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the designated official.

289—Protection from liability

- (1) In this section—
- designed person* means—
- 25 (a) the Minister; or
 - (b) the Chief Executive; or
 - (c) a Chief Officer; or
 - (d) an authorised officer; or
 - (e) a public sector agency; or
 - 30 (f) any other person or body engaged in the administration or enforcement of this Act.
- (2) This section applies to the disclosure or provision of information to a designated person about—
- 35 (a) a biosecurity risk or suspected biosecurity risk, or a biosecurity impact; or
 - (b) a biosecurity event; or
 - (c) any biosecurity matter or carrier, or any dealing with any biosecurity matter or carrier; or

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- (d) any other matter that is relevant to the administration, operation or enforcement of this Act.
- (3) In a case where this section applies, information may be disclosed or provided despite any other enactment, law, policy, principle or agreement that prohibits or restricts the disclosure or provision of the information.
- (4) If information is disclosed or provided by a person in good faith in a case where this section applies, the person—
- (a) does not incur any civil or criminal liability; and
 - (b) is not to be taken to have breached any duty of confidentiality; and
 - (c) is not to be taken to have breached any professional ethics or standards or any principles of conduct applicable to the person's employment or to have engaged in unprofessional conduct.

290—Collection, use and disclosure of information

- (1) In this section—
- designated person* means—
- (a) the Minister; or
 - (b) the Chief Executive; or
 - (c) a Chief Officer; or
 - (d) an authorised officer; or
 - (e) a public sector agency; or
 - (f) any other person or body engaged in the administration or enforcement of this Act;
- public authority* means—
- (a) a public sector agency; or
 - (b) a public sector employee.
- (2) A designated person may collect and use information (including personal information and health information) in connection with the administration, operation or enforcement of this Act.
- (3) A designated person may, in connection with the administration, operation or enforcement of this Act, 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 in connection with the administration, operation or enforcement of this Act.
- (4) A public authority may disclose to a designated person, at the request of the designated person, any information (including personal information and health information) about a person that the public authority holds, without the consent of the person, if the designated person believes that the information is reasonably necessary in connection with the administration, operation or enforcement of this Act.

- (5) Information may be disclosed or provided under this section despite any other enactment, law, policy, principle or agreement that prohibits or restricts the disclosure or provision of the information.
- (6) If information is disclosed or provided by a person in good faith under this section, the person—
- (a) does not incur any civil or criminal liability; and
 - (b) is not to be taken to have breached any duty of confidentiality; and
 - (c) is not to be taken to have breached any professional ethics or standards or any principles of conduct applicable to the person's employment or to have engaged in unprofessional conduct.
- (7) Nothing in this section prevents or limits the release or publication of any public information held, collected or used under this Act.

291—Immunity

- (1) In this section—
- designated person* means—
- (a) the Minister; or
 - (b) the Chief Executive; or
 - (c) a Chief Officer; or
 - (d) an authorised officer; or
 - (e) any other person engaged in the administration or enforcement of this Act.
- (2) No civil or criminal liability attaches to the Crown or a designated person in respect of an act done or omitted in good faith—
- (a) in the performance or exercise, or purported performance or exercise, of a function or power under this Act; or
 - (b) in the administration or enforcement, or purported administration or enforcement, of this Act; or
 - (c) in carrying out, or purportedly carrying out, any requirement imposed, or purportedly imposed, in accordance with this Act.
- (3) Subsection (2) extends to an entity that is responsible for the acts or activities of a designated person.

292—Planning or other requirements for authorised actions excluded

- (1) In this section—
- designated Act* means—
- (a) the *Environment Protection Act 1993*; or
 - (b) the *Planning, Development and Infrastructure Act 2016*.
- (2) The following may be taken on land despite the requirements for a consent, approval or other authorisation under a designated Act or any other Act:
- (a) an action authorised, required or taken under—

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- (i) an emergency order; or
 - (ii) a control order; or
 - (iii) an emergency biosecurity direction; or
 - (iv) an emergency permit; or
 - 5 (v) a specific provision of this Act;
- (b) an action taken by the Chief Executive, a Chief Officer or an authorised officer.

293—Requirements may continue to have effect

- 10 (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.
- 15 (3) Nothing in this section affects the powers of the Chief Executive, a Chief Officer or an authorised officer in respect of the enforcement of any requirement imposed by or under this Act.

294—Civil proceedings by the Crown

- 20 Any civil right of action or recovery under this Act vested in a Minister, government department, public sector employee or other agency or instrumentality of the Crown may be instituted and exercised by the Crown in right of South Australia and in accordance with the *Crown Proceedings Act 1992*.

295—Application of *Personal Property Securities Act 2009* of the Commonwealth

- 25 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;
- 30 (c) approval to perform the functions of an accreditation authority;
- (d) appointment as a biosecurity auditor;
- (e) accreditation as a biosecurity certifier.

296—Establishment of biosecurity advisory groups

- 35 (1) The Minister may establish 1 or more biosecurity advisory groups in relation to any sector of an industry that has an interest in the operation of this Act.
- (2) The Minister may establish a biosecurity advisory group to represent—
 - (a) participants in the relevant sector of industry; or
 - (b) a particular group of persons within the community who have an interest in the relevant sector; or

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- (c) 1 or more groups or organisations that are interested in the environment.
- (3) The Minister should, before acting under this section to establish a biosecurity advisory group, consult with members or representatives of the relevant sector about the establishment and composition of the biosecurity advisory group.
- 5 (4) The Minister will assign a distinctive name to each biosecurity advisory group.
- (5) The main function of a biosecurity advisory group is to advise the Minister, on its own initiative or at the request of the Minister—
- (a) on the operation of this Act in relation to the relevant sector and in particular—
- 10 (i) the establishment and review of a code of practice for the sector; and
- (ii) the application to the sector of the provisions requiring registration of a person who engages in a regulated dealing; and
- 15 (iii) the application to the sector of the provisions for implied terms and conditions of contracts for the sale of any biosecurity matter, animal food or fertiliser relating to the health, quality or condition of the biosecurity matter, animal food or fertiliser; and
- (iv) the making of regulations relevant to the sector; and
- (b) on other issues directly related to the relevant sector.
- (6) Schedule 4 contains other provisions that are relevant to a biosecurity advisory group under this section.
- 20

297—Charges on land

- (1) If a charge on land is created by another provision of this Act or under the regulations, the person in whose favour the charge is created may deliver to the Registrar-General a notice, in a form determined by the Registrar-General, setting out the amount of the charge and the land over which the charge is claimed.
- 25
- (2) On receipt of a notice under subsection (1), the Registrar-General must, in relation to any land referred to in the notice, enter a note of the charge against the relevant instrument of title or, in the case of land not under the provisions of the *Real Property Act 1886*, against the land.
- 30
- (3) Where a note has been entered under subsection (2), the Registrar-General must not register an interest affecting the land to which the entry relates unless—
- (a) the instrument—
- (i) was executed before the entry was made; or
- (ii) has been executed under or pursuant to an agreement entered into before the entry was made; or
- 35 (iii) relates to an instrument registered before the entry was made; or
- (b) the instrument is an instrument of a prescribed class; or
- (c) the instrument is expressed to be subject to the operation of the charge; or

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- (d) the instrument is a duly stamped conveyance that results from the exercise of a power of sale under a mortgage, charge or encumbrance in existence before the entry was made.
- 5 (4) An instrument registered under subsection (3)(a) or (b) has effect, in relation to the entry, as if it had been registered before the entry was made.
- (5) If an instrument is registered under subsection (3)(d), the charge will be taken to be cancelled by the registration of the instrument and the Registrar-General must make the appropriate entries to give effect to the cancellation.
- 10 (6) The person in whose favour a charge exists must, if the amount to which the charge relates is paid, by notice in a form determined by the Registrar-General, apply for the discharge of the charge.
- (7) The Registrar-General must then cancel the relevant entry.

298—Use of equipment or computers to make decisions

- 15 (1) Any equipment, computer, software or other mechanical or electronic device or process of a class or kind approved by the Minister may be used—
- (a) to make a decision or determination under this Act; or
- (b) to perform a function under this Act; or
- (c) to create reasonable grounds for suspecting that any matter exists in relation to the operation of a provision of this Act; or
- 20 (d) to give notice of any decision, determination or other thing under this Act; or
- (e) to do anything else related to a matter referred to in a preceding paragraph.
- (2) Anything done, determined or created by any equipment, computer, software or other mechanical or electronic device or process approved by the Minister under subsection (1) in relation to a matter referred to in that subsection (the **relevant matter**) will be taken to have been done, determined or created by a person who may otherwise act under the provision to which that subsection relates (a **relevant person**).
- 25 (3) The use of any equipment, computer, software or other mechanical or electronic device or process under this section in relation to a relevant matter does not derogate from—
- 30 (a) the power of a relevant person to act in relation to that matter instead of relying on the equipment, computer, software or other mechanical or electronic device or process; or
- (b) the power of a relevant person to substitute their own decision in relation to that matter.
- 35 (4) A certificate issued by the Minister and that states either or both of the following is admissible in evidence in any legal proceedings as evidence of the matters so certified:
- (a) that any equipment, computer, software or other mechanical or electronic device or process was of a class or kind approved by the Minister under this section;
- 40 (b) that any equipment, computer, software or other mechanical or electronic device or process was operating correctly.

- (5) For the purposes of subsection (4), a document purporting to be a certificate of the Minister issued under that subsection is, unless the contrary is proved, to be taken to be such a certificate.

299—Defence if act authorised under another Act

- 5 (1) In proceedings for an offence against this Act, it is a defence if the defendant proves that the act alleged to constitute the offence was authorised by or under—
- (a) the *Fisheries Management Act 2007*; or
 - (b) an Act, or a provision of an Act, prescribed by the regulations.
- (2) Subsection (1) does not apply—
- 10 (a) in relation to an offence prescribed by the regulations; or
- (b) in circumstances prescribed by the regulations.

300—Exemption from Act

- (1) The Minister may, by notice in the Gazette, confer exemptions from this Act or specified provisions of this Act—
- 15 (a) on specified persons or persons of a specified class; or
- (b) in relation to—
- (i) specified biosecurity matter, carriers or premises, or biosecurity matter, carriers or premises of a specified class; or
 - (ii) any other specified thing, or thing of a specified class.
- 20 (2) An exemption under subsection (1) may be granted by the Minister on such conditions as the Minister thinks fit.
- (3) The Minister may, by further notice in the Gazette—
- (a) vary or revoke an exemption; or
 - (b) vary or revoke a condition of an exemption.
- 25 (4) A person must not contravene a condition of an exemption.
- Maximum penalty:
- (a) for a body corporate—\$500 000;
 - (b) for a natural person—\$100 000.

301—Regulations, notices and instruments

- 30 (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made with respect to any of the matters specified in Schedule 5.
- (3) A regulation made for the purposes of this Act may operate subject to prescribed
- 35 conditions.
- (4) The regulations may adopt, wholly or partially and with or without modifications—
- (a) an instrument relating to matters in respect of which regulations may be made under this Act or otherwise relating to any aspect of biosecurity; or

- (b) an amendment to such an instrument.
- (5) The regulations adopting an instrument, or an amendment to an instrument, may contain such incidental, supplementary and transitional provisions as appear to be necessary.
- 5 (6) The regulations, an instrument adopted by the regulations, or a designated instrument, may—
- (a) apply, adopt or incorporate, wholly or partially and with or without modification, a standard, rule, code, specification, program, procedure, guideline or other document prepared or published by a prescribed or
10 specified body, either as in force at the time the regulations, instrument or designated instrument are made or as in force from time to time; and
- (b) be of general or limited application; and
- (c) make different provision according to the circumstances or entities to which they are expressed to apply; and
- 15 (d) provide that any matter or thing may be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Chief Executive, a Chief Officer, an authorised officer or any other specified body or person.
- (7) If a standard, rule, code, specification, program, procedure, guideline or other document is applied, adopted or incorporated as envisaged by subsection (6)(a)—
- 20 (a) a copy of the standard, rule, code, specification, program, procedure, guideline or other document must be kept available for inspection by members of the public on the Department's website, or at the principal office of the Department (during normal office hours); and
- 25 (b) in any legal proceedings, evidence of the contents of the standard, rule, code, specification, program, procedure, guideline or other document may be given by production of a document apparently certified by or on behalf of the Minister as a true copy of the standard, rule, code, specification, program, procedure, guideline or other document.
- (8) Without limiting a preceding subsection, the regulations may—
- 30 (a) provide for the effect of failing to comply with any requirement prescribed by the regulations, including by providing that any action taken in a manner inconsistent with any such requirement will not have effect under this Act; and
- 35 (b) specify circumstances where a notice may be taken to have been given or served for the purposes of this Act.
- (9) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.
- (10) In this section—
- 40 **designated instrument** means a notice, order, direction or other instrument issued or given by—
- (a) the Minister; or
- (b) the Chief Executive; or

- (c) a Chief Officer; or
- (d) an authorised officer.

Schedule 1—Statutory corporations

Part 1—Interpretation

5 1—Interpretation

In this Schedule—

board means the board of management of a statutory corporation;

member means a member of a board;

modification includes an addition, deletion or substitution.

10 Part 2—Boards

2—Conditions of office

A member of a board will hold office on terms and conditions determined by the Minister.

3—Allowances and expenses

15 A member of a board is entitled to remuneration, allowances and expenses determined by the Minister.

4—Validity of acts

An act or proceeding of a board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

20 5—Proceedings

- (1) The member appointed as a board's presiding member will preside at meetings of the board or, in the absence of that member, a member chosen by those present will preside.
- (2) A quorum of a board consists of a number ascertained by dividing the total number of members by half, ignoring any fraction resulting from the division, and adding 1 (and no business may be transacted at a meeting of the board unless a quorum is present).
- (3) A decision carried by a majority of votes cast by members at a meeting of a board is a decision of the board.
- (4) Each member present at a meeting of a board has 1 vote on a question arising for decision and, if the votes are equal, the member presiding at the meeting has a second or casting vote.
- (5) A conference between members constituting a quorum by telephone, audio-visual or electronic means is a valid meeting of a board if—
 - (a) notice of the meeting is given to all members in the manner determined by the board for that purpose; and
 - (b) the system of communication allows a participating member to communicate with any other participating member during the conference.

-
- (6) A resolution of a board—
- (a) of which notice was given to members in accordance with procedures determined by the board; and
 - (b) in which at least a majority of members of the board express their concurrence in writing or by electronic communication,
- 5 will be taken to be a decision of the board made at a meeting of the board.
- (7) A board must have accurate minutes kept of its proceedings.
- (8) Subject to this clause and to any other provision made by a regulation under Part 3
10 Division 4 in relation to a particular statutory corporation, a board may determine its own procedures.

6—General management duties of board

As part of its function in overseeing the operations of the statutory corporation, a board must ensure as far as practicable—

- (a) that appropriate strategic and operational plans are established; and
- 15 (b) that the statutory corporation has appropriate management structures and systems for monitoring performance against plans and targets and that corrective action is taken when necessary; and
- (c) insofar as may be relevant to the particular statutory corporation, that
20 appropriate systems and practices are in place for management and financial planning and control, including systems and practices for the maintenance of financial and related records and the production of financial statements; and
- (d) that all such plans, structures, systems and practices are regularly reviewed
and revised as necessary to address changing circumstances and reflect best
25 current practices; and
- (e) that the Minister receives regular reports on the performance of the statutory
corporation, and on the initiatives of the board; and
- (f) that the Minister is advised, as soon as practicable, of any material
development that affects the financial or operating capacity of the statutory
corporation.

Part 3—Staff

7—Staff

- (1) The Minister will, after consultation with the Chief Executive and the statutory
corporation, determine the staffing arrangements for a statutory corporation (and the
35 staff will, subject to this clause or the regulations or unless otherwise determined by the Minister, be public service employees).
- (2) A statutory corporation may, with the approval of the Minister or under an
authorisation conferred by regulation, engage contract staff, agents and consultants,
and enter into other forms of contract or arrangements for the provision of services.
- (3) A statutory corporation may, by arrangement with the appropriate authority, make use
40 of the services, facilities or staff of a government department, agency or authority.

Part 4—Committees

8—Committees

- (1) A board must establish such committees (including advisory or industry committees, or subcommittees) as the Minister may require.
- 5 (2) A board may establish such committees (including advisory or industry committees, or subcommittees) as the board thinks fit.
- (3) Subject to a direction of the Minister, the membership of a committee will be determined by the board and may, but need not, consist of or include members of the board.
- 10 (4) The procedures to be observed in relation to the conduct of the business of a committee will be—
- (a) as determined by the Minister; or
 - (b) insofar as a procedure is not determined under paragraph (a), as determined by the committee.

Part 5—Operational, property and financial matters

9—Common seal

A statutory corporation must have a common seal and if a document appears to bear the common seal of the statutory corporation, it will be presumed, in the absence of proof to the contrary, that the common seal of the statutory corporation was properly affixed to the document.

10—Specific powers

Without limiting Part 3 Division 4 or any regulation made under that Division, a statutory corporation may—

- (a) sue and be sued; and
- 25 (b) acquire, hold, deal with and dispose of real and personal property (or an interest in real or personal property), and grant or hold a lease or licence; and
- (c) with the approval of the Minister or as authorised by regulation—acquire, hold, deal with and dispose of shares in, or securities issued by, another body corporate, or participate in the formation of another body; and
- 30 (d) with the approval of the Minister or as authorised by regulation—borrow money and obtain other forms of financial accommodation; and
- (e) establish and operate ADI accounts and invest money; and
- (f) enter into any kind of contract or arrangement; and
- (g) exercise other powers conferred by regulation; and
- 35 (h) exercise other powers that are necessary, expedient or incidental to the functions of the statutory corporation.

11—Property to be held on behalf of Crown

Unless otherwise prescribed by regulation, a statutory corporation holds its property on behalf of the Crown.

12—Transfer of property

- (1) The Minister may, with the concurrence of the Treasurer, by notice in the Gazette—
- (a) transfer an asset, right or liability of the Minister to a statutory corporation;
 - (b) transfer an asset, right or liability of a statutory corporation—
 - (i) to the Minister; or
 - (ii) to another statutory corporation; or
 - (iii) to the Crown, or to another agency or instrumentality of the Crown; or
 - (iv) in prescribed circumstances, subject to conditions (if any), and with the agreement of the person or body—to a person or body that is not an agency or instrumentality of the Crown.
- (2) A notice under subclause (1) may make other provisions that in the opinion of the Minister are necessary or expedient in connection with the relevant transfer.

13—Effect of transfers

- (1) The transfer of an asset, right or liability under Part 3 Division 4 or this Schedule operates by force of this Act and despite the provisions of any other law.
- (2) The transfer of a liability under Part 3 Division 4 or this Schedule operates to discharge the body from which the liability was transferred from the liability.

14—Registering authorities to note transfer

- (1) The Registrar-General of another authority required or authorised under a law of the State to register or record transactions affecting assets, rights or liabilities, or documents relating to such transactions, must, on application under this clause, register or record in an appropriate manner the transfer to the Minister or another body of an asset, right or liability under Part 3 Division 4 or this Schedule.
- (2) An instrument relating to an asset, right or liability that has been transferred under Part 3 Division 4 or this Schedule must, if the instrument is executed by the Minister in an appropriate form, be registered or recorded by the Registrar-General or another appropriate authority despite the fact that the Minister has not been registered or recorded as the proprietor of the property.
- (3) The vesting of property under Part 3 Division 4 or this Schedule, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

15—Audit and accounts

- (1) A statutory corporation must, unless exempted by the Minister, establish and maintain effective internal auditing of its operations.
- (2) A statutory corporation must keep proper accounting records in relation to its financial affairs and must have annual statements of accounts prepared in respect of each financial year.
- (3) The accounting records and statements of accounts must comply with any applicable instructions of the Treasurer under section 41 of the *Public Finance and Audit Act 1987*.

- (4) The Auditor-General may at any time audit the accounts of a statutory corporation and must audit the annual statement of accounts.

Part 6—Performance and reporting obligations

16—Objectives

- 5 (1) The Minister may, after consultation with a statutory corporation, prepare a statement setting out various objectives, targets or goals that the statutory corporation is to pursue over the period specified in the statement and dealing with such other matters as the Minister considers appropriate.
- 10 (2) The statutory corporation must review the statement whenever it is necessary to do so on account of a direction of the Minister under this Schedule and, in any event, at least once in every 12 month period.
- (3) The Minister may, after consultation with the statutory corporation, amend a statement issued in relation to the statutory corporation at any time.

17—Provision of information and reports to Minister

- 15 (1) A statutory corporation must, at the request of the Minister, furnish the Minister with such information or records in the possession or control of the statutory corporation as the Minister may require in such manner and form as the Minister may require.
- 20 (2) If the statutory corporation considers that information or a record furnished to the Minister under this section contains matters that should be treated for any reason as confidential, the statutory corporation may advise the Minister of that opinion giving the reasons for the opinion, and the Minister may, subject to subclause (3), act on that advice as the Minister thinks fit.
- 25 (3) if the Minister is satisfied on the basis of the statutory corporation's advice that the statutory corporation owes a duty of confidence in respect of a matter, the Minister must ensure the observance of that duty in respect of the matter, but this subclause does not prevent the Minister from disclosing the matter as required for the proper performance of ministerial functions or duties.

18—Annual report

- 30 (1) A statutory corporation must, on or before 30 September in each year, forward to the Minister a report on its activities for the preceding financial year.
- (2) The report must incorporate the audited accounts and financial statements of the statutory corporation.
- 35 (3) The Minister must cause a copy of a report provided to the Minister under this clause to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

Schedule 2—Dog Fence Board

Part 1—Preliminary

1—Interpretation

- 40 In this Part, unless the contrary intention appears—
board means the Dog Fence Board;

Crown land means Crown land as defined in the *Crown Land Management Act 2009*;

dog fence means the primary dog fence, or a secondary dog fence, established under this Act or the repealed Act;

inside a dog fence means—

- (a) in relation to the primary dog fence—land that is within the portion of the State bounded by the primary dog fence, the eastern border of the State and the coast of the State; or
- (b) in any other case—land within the State to which entry by wild dogs is further restricted by a secondary dog fence;

local board means a local dog fence board established under Part 5;

outside a dog fence means—

- (a) in relation to the primary dog fence—land that is outside the portion of the State bounded by the primary dog fence, the eastern border of the State and the coast of the State; or
- (b) in any other case—land within the State outside of an area to which entry by wild dogs is further restricted by a secondary dog fence;

primary dog fence—see clause 9;

ratable land means ratable land under clause 18;

repealed Act means the *Dog Fence Act 1946*;

secondary dog fence means a dog fence other than the primary dog fence;

wild dog means—

- (a) a dingo or a dog that is any cross of a dingo; or
- (b) a feral dog.

Part 2—Dog Fence Board

2—Members of board

- (1) The board consists of 5 members appointed by the Minister of whom—
 - (a) 1 will be a person nominated by the Minister; and
 - (b) 3 will be persons nominated by Livestock SA Incorporated, subject to the following requirements:
 - (i) each person must be an occupier of ratable land;
 - (ii) at least 1 person must be an occupier of ratable land located in an area on the western side of the State identified by the regulations for the purposes of this provision; and
 - (c) 1 will be a person nominated by the Minister responsible for the administration of the *Landscape South Australia Act 2019*, being an occupier of ratable land but not a Public Service employee.
- (2) The Minister must appoint a member of the board as the board's presiding member.

(3) If a nominating body referred to in subclause (1) fails to make a nomination within 60 days of being requested by the Minister to make the nomination, the Minister may appoint a person to the relevant position.

(4) The appointment of a member must be notified in the Gazette and will take effect from the date specified in the notification.

(5) In this clause—

occupier of ratable land means—

(a) an occupier of land that is ratable land under clause 18; or

(b) an occupier of land in relation to which a contribution has been declared under clause 21 to be payable for the current financial year,

and includes a shareholder of a company that is an occupier of land referred to paragraph (a) or (b).

3—Term of office

(1) Except as provided under this Act, a member of the board will hold office for a term, not exceeding 4 years, specified in the instrument of appointment.

(2) A member of the board is, at the expiration of a term of office, eligible for reappointment.

(3) A retiring member who is not reappointed will hold office until their successor is appointed.

4—Remuneration

The remuneration payable to a member of the board under Schedule 1 Part 2 clause 3 is payable from the funds of the board.

5—Conflict of interest

A member of the board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter shared in common with those engaged in or associated with animal or plant control generally or primary industry generally, or a substantial section of those engaged in or associated with animal or plant control or primary industry.

6—Removal from office and vacancies

(1) The Minister may remove a member of the board from office—

(a) for breach of, or non-compliance with, a condition of office; or

(b) for mental or physical incapacity to carry out duties of office satisfactorily; or

(c) for serious misconduct which, in the opinion of the Minister, makes it undesirable that the person should remain a member of the Board; or

(d) if serious irregularities have occurred in the conduct of the board's affairs or the board has failed to carry out its functions satisfactorily and the Minister considers the board should be reconstituted for that reason.

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- (2) The office of a member of the board becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice addressed to the Minister; or
 - 5 (d) is found guilty of an indictable offence; or
 - (e) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (f) is absent from 3 consecutive ordinary meetings of the board without leave of the Minister; or
 - 10 (g) is removed from office by the Minister under subclause (1).

7—Meetings

The board must meet at least 4 times in each calendar year.

8—Staff

- 15 (1) The board may appoint a secretary and such other employees as are necessary for the purposes of the board as such remuneration as the board from time to time fixes.
- (2) An employee of the board is not a Public Service employee.
- (3) This clause applies instead of Schedule 1 Part 3.

Part 3—Provisions as to dog fences

9—Primary dog fence

- 20 (1) A dog-proof fence known as the *primary dog fence* must continue to be maintained in the northern areas of the State.
- (2) The Minister may, by notice made on the recommendation of the board, declare that a fence, or the site of a fence, is the primary dog fence, or the site of the primary dog fence.
- 25 (3) The Minister may, by notice made on the recommendation of the Board—
 - (a) vary a notice previously made under this clause;
 - (b) without limiting paragraph (a), authorise the alteration, moving or removal of a part of the primary dog fence.
- 30 (4) The Minister must, before making a notice under this clause, consult with an occupier of land, or an owner of part of the fence, to which the notice relates (to the extent determined by the Minister).
- (5) The Minister must ensure that a notice under this clause is published in a manner determined by the Minister.

10—Secondary dog fences

- 35 (1) For the purpose of further restricting the movement of wild dogs within the pastoral and agricultural areas of the State, further dog proof fences (*secondary dog fences*) may be established and maintained in the area inside the primary dog fence.

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- (2) The Minister may, by notice made on the recommendation of the board, declare that a fence, or the site of a fence, is a secondary dog fence, or the site of a secondary dog fence.
- (3) The Minister may, by notice made on the recommendation of the board—
- 5 (a) vary or revoke a notice previously made under this clause;
- (b) without limiting paragraph (a), authorise the alteration, moving or removal of a secondary dog fence, or part of a secondary dog fence.
- (4) The Minister must, before making a notice under this clause, consult with an occupier of land, or an owner of the fence or part of the fence, to which the notice relates (to the extent determined by the Minister).
- 10 (5) The Minister must ensure that a notice under this clause is published in a manner determined by the Minister.

11—Construction work

- (1) If, in order to—
- 15 (a) construct, move or complete a portion of a dog fence, it is necessary to move or complete a fence on any land; or
- (b) make dog-proof a part of a dog fence situated on land, it is necessary that the fence be altered for that purpose,
- 20 the board may, by notice given to the occupier of the land or to the owner of the fence, require the occupier to construct, move or complete a fence or the owner to alter the fence (as the case may be), within the time and in accordance with the directions specified in the notice.
- (2) If a person (the *liable person*) fails to comply with a notice under subclause (1), a person authorised by the board may enter land and carry out the work required by the notice.
- 25 (3) The board may charge the liable person for the reasonable costs and expenses incurred by the board in taking action as provided by subclause (2).
- (4) The amount payable to the board is a debt due to the board.
- (5) The board must not issue a notice under subclause (1) except after consultation with the occupier of land or the owner of the fence (as the case may require).
- 30

12—General authorisation

- (1) The board may carry out work, or approve the carrying out of work, for the purposes of this Part.
- (2) The board may enter into an agreement for contributions to be made to the board, or by the board, towards the cost of work carried out under subclause (1).
- 35 (3) If—
- (a) the board carries out work to alter or replace an existing part of a dog fence with another fence that would, as part of a dog fence, be under the same ownership; and

- (b) the fence to be altered or replaced is in disrepair and, in the opinion of the board, in such a condition, or on such land, that it is not reasonably practicable to make it good as dog-proof fencing,

the board may recover the cost of the work from the owner of the existing part of a dog fence as a debt due to the board by the owner.

- (4) On the recommendation of the board, the Minister may, by notice under this clause, declare a specified dog-proof fence to be part of the dog proof fence in place of an existing part of the dog fence specified in the notice.

13—Duty of owner to maintain dog fence and destroy wild dogs

- (1) The owner of any part of a dog fence—

- (a) must at all times keep it in a dog-proof condition and properly maintained as a dog-proof fence; and
- (b) must, for the purpose of keeping it in that condition and so maintained, cause it to be inspected at intervals of not more than 14 days; and
- (c) must take all reasonable steps to destroy all wild dogs in the vicinity of the part of a dog fence owned by the owner by shooting or trapping the dogs or by laying poisoned baits for them; and
- (d) must take any other action, or comply with any other requirement, prescribed by the regulations.

- (2) An owner of any part of a dog fence who fails to comply with subclause (1) is guilty of an offence.

Maximum penalty: \$10 000.

- (3) If the board is satisfied that an owner of any part of a dog fence has failed to comply with subclause (1), a person authorised by the board may enter land and carry out the necessary work for the purpose of—

- (a) maintaining or inspecting the dog fence; or
- (b) making the dog fence dog-proof; or
- (c) destroying wild dogs in the vicinity of the dog fence.

- (4) The board may charge the owner for the reasonable costs and expenses incurred by the board in taking action as provided by subclause (3).

- (5) The amount payable to the board is a debt due to the board.

14—Powers and duties of board as to dog fences

- (1) The board has the following powers and duties with respect to dog fences:

- (a) the board must ensure that all dog fences are properly maintained and are at all times dog-proof;
- (b) the board must ensure that dog fences are properly inspected;
- (c) the board must ensure that wild dogs are destroyed in the vicinity of a dog fence by the owners of the dog fence.

- (2) For the purposes of this clause, a person authorised by the board may, at any reasonable time, enter and remain on land on which a dog fence is situated.

15—Dog fences on Crown land

- (1) The board may—
- (a) for the purpose of completing or replacing a portion of a dog fence, erect a fence on any Crown land; or
 - (b) make dog-proof any fence on Crown land; or
 - (c) maintain a fence on Crown land.
- (2) The board may, for the purpose of carrying out any work authorised under this clause—
- (a) authorise a person, at any reasonable time, to enter and remain on Crown land;
 - (b) enter into any arrangement with the occupier of Crown land.

16—Payments to owners of dog fences

- (1) The board must, in each financial year, pay to each owner of part of a dog fence an amount, not exceeding a prescribed amount of each kilometre of fence, to enable the owner to maintain and inspect that part of the fence and to destroy wild dogs in the vicinity of that part of the fence.
- (2) For the purpose of determining the amount to be paid under subclause (1), the board may fix differential rates of payment in respect of different parts of a fence.
- (3) If any part of a dog fence is owned jointly by 2 or more owners, the board must pay the amount referred to in subclause (1) to such owners as the board is satisfied will undertake the liability of carrying out the work referred to, and the board may require the joint owners to enter into an agreement relating to that liability.
- (4) Subclause (3) does not derogate from clause 13 or 14.
- (5) An amount paid to an owner must be applied by the owner for the purpose of the maintenance and inspection of a fence and the destruction of wild dogs in the vicinity of the fence.
- (6) With the consent in writing of the board, the owner may apply any such amount or any part of it for the payment of interest payable in respect of any capital liability incurred by the owner in respect of a fence.
- (7) A consent may be given under subclause (6) for a period and on conditions fixed by the board.
- (8) The board may pay an amount payable under this clause in instalments.
- (9) An amount paid to an owner under this clause must be applied during the financial year in respect of which it is paid or during such other period as may be directed in writing by the board and in accordance with any other directions in writing given by the board at the time of payment to the owner.
- (10) If an amount is payable to the board by the owner, that amount must be set off against any amount payable to the owner under this clause.

- (11) If satisfied that an owner will not properly carry out the duties imposed on the owner under this Schedule, the board may refuse to pay to the owner the balance of the amount payable to the owner under this clause or any other amount payable to the owner under this clause.
- 5 (12) The board may, by notice in writing given to an owner to whom an amount is paid under this clause, require the owner to supply to the board within the time specified in the notice a statement in writing showing how any amounts so paid have been expended during the period specified in the notice and during the financial year in which the notice is given or during the preceding financial year.
- 10 (13) A person who fails to apply an amount in accordance with subclause (5) is guilty of an offence.
Maximum penalty: \$10 000.
- (14) A person who fails to comply with a requirement under subclause (12) within the period specified in the notice is guilty of an offence.
- 15 Maximum penalty: \$5 000.

17—Ownership of dog fences

- (1) Subject to subclause (2), if part of a dog fence stands or is erected or constructed on land comprised in a Crown lease, the lessee of the land under the lease will, for the purposes of this Part, be taken to be the owner of such part of the fence on that land as is not vested in a local board.
- 20 (2) If a dog fence divides contiguous land of adjoining owners, the owner of the land inside the dog fence will, for the purposes of this Part, be taken to be—
- (a) the owner of the land on which that part of the fence is situated; and
 - (b) the owner of so much of that part of the fence as is not vested in a local board.
- 25 (3) If a part of a dog fence adjoins the area in relation to which a local board is established, the ownership of that part of the dog fence is vested in that local board.
- (4) However, the Minister may, by instrument made on the recommendation of the board and with the agreement of the relevant owner of the land—
- (a) where subclause (3) applies—vest the ownership any part of the fence vested by that subclause in the owner of the land on which the fence is situated, or in the board; or
 - (b) in any other case—vest the ownership of any part of a dog fence in the board.
- 30 (5) The Minister may, by subsequent instrument made on the recommendation of the board, revest any part of the fence vested by subclause (4) in a local board or any other person.
- 35

Part 4—Financial provisions

18—Rates on ratable land

- (1) The board may, by notice published in the Gazette, declare that any holding of more than 10 square kilometres of land that is situated within an area inside a dog fence specified in the notice is ratable land and, by further notice, amend or vary that notice.
- 40

(2) The board may, with the approval of the Minister, by notice published in the Gazette, declare in respect of each financial year—

- (a) a rate on ratable land; and
- (b) a minimum amount payable by way of rates.

5 (3) The rate must be expressed as an amount per square kilometre of ratable land, not exceeding the prescribed amount per square kilometre.

(4) If the amount of rate payable by a person would be less than the minimum amount for the time being declared under this clause, the amount payable by the person is the minimum amount.

10 (5) In this clause—

holding includes 2 or more parcels of land that—

- (a) are used as a single enterprise; and
- (b) are occupied by the same person or persons, whether or not the parcels of land are contiguous.

15 **19—Special rate in respect of local board areas**

(1) The board may, by notice published in the Gazette, in respect of each financial year, declare a special rate on any holding of more than 100 hectares that is situated within an area in relation to which a local board is established.

20 (2) The special rate must, unless the Minister and each occupier of land on which the special rate is declared agree otherwise, be expressed as an amount per square kilometre of the land on which it is declared, not exceeding the prescribed amount per square kilometre.

25 (3) The amount collected or recovered by the board in consequence of the declaration of a special rate under this clause, less the cost to the board of collection and recovery of that amount, must be paid to the local board.

20—Payment and recovery of rates and special rates

30 (1) The board must, as soon as practicable after the declaration of a rate or special rate under this Part, serve on the occupier of ratable land or on the occupier of land on which the special rate is declared, as the case may be, a notice stating the amount the occupier is liable to pay by way of rates or special rates, as the case may be.

(2) Subject to subclause (3), the amount of the rate or special rate is due and payable on the expiration of 28 days from the day on which the notice is served under subclause (1).

35 (3) The board may, in such cases and with such conditions as it thinks fit, extend the time for payment of a rate or special rate.

(4) A rate or special rate imposed under this Part is, when it becomes due and payable, a debt due to the board and may be recovered by the board in a court of competent jurisdiction.

21—Contributions by councils as alternative to rating by board

(1) The board may, with the approval of the Minister and after consultation with the Local Government Association of South Australia, by notice published in the Gazette—

(a) declare a council, other than a council whose area is comprised of or includes ratable land under clause 18, to be a participating council for the purposes of this clause; and

(b) before 31 December in any year, declare that a contribution for the next financial year must be paid to the board by each participating council consisting of—

(i) in respect of the portion of the council area that is rural land—a specified percentage, not exceeding 1%, of the general rate revenue to be derived by the council for that next financial year in respect of that rural land; and

(ii) in respect of the portion of the council area that is urban land—a specified percentage, not exceeding 0.25%, of the general rate revenue to be derived by the council for that next financial year in respect of that urban land.

(2) The board may, by further notice published in the Gazette, amend or vary a notice under subclause (1).

(3) The board must cause notice in writing of a declaration under subclause (1)(b) to be served on each council to which it applies not later than 31 December of the year in which the declaration is made.

(4) A council to which a declaration under subclause (1)(b) applies must pay the contribution specified in the declaration to the board for the credit of the Dog Fence Fund not later than 31 May in the financial year next following the making of the declaration.

(5) In this clause—

rural land means land that is ratable land under the *Local Government Act 1999* and does not lie within a municipality or township within the meaning of that Act;

urban land means land that is ratable land under the *Local Government Act 1999* and lies within a municipality or township within the meaning of that Act.

22—Charge payable by occupiers of land outside dog fence

(1) This clause applies to land of 1 occupier, being land situated outside a dog fence, that is divided from land of another occupier by the dog fence.

(2) The board may, in respect of a financial year, levy a charge on the occupier of land to which this clause applies.

(3) The amount of a charge levied against an occupier under this clause is to be calculated by multiplying the length of that part of a dog fence that is adjacent to the occupier's land, expressed in kilometres, by the prescribed rate.

(4) Subject to subclause (5), the amount of a charge under this clause is due and payable on the expiration of 28 days from the day on which the notice of the charge is served on the occupier.

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- (5) The board may, in such cases and with such conditions as it thinks fit, extend the time for payment of a charge under this clause.
- (6) A charge under this clause is, when it becomes due and payable, a debt due to the board and may be recovered by the board in a court of competent jurisdiction.
- 5 (7) Amounts received by the board under this clause must be paid to the owners of those parts of a dog fence that are contiguous to land occupied by persons against whom the charges are levied.
- (8) Payments under subclause (7) must be proportioned amongst the owners according to the length of dog fence that divides their land from the land occupied by the persons charged under this clause, and are in addition to other payments that may be made by
10 the board under other provisions of this Schedule.
- (9) The board must, at the expiration of each successive period prescribed by the regulations, in consultation with Livestock SA Incorporated, review the prescribed rate and may, on the completion of the review, recommend to the Minister that the
15 prescribed rate be increased or reduced.
- (10) In this clause—
prescribed rate means a rate fixed by regulation made on the recommendation of the board.

23—Subsidy

20 The Treasurer must, out of money to be provided by Parliament for the purpose, as soon as practicable after the commencement of each financial year, pay to the board a subsidy at the rate of \$1 for every dollar of the rates and contributions by councils declared by the board for each such financial year and payable in respect of each such financial year.

24—Borrowing and investment powers of board

- 25 (1) The board may, for the purposes of this Schedule, borrow money from the Treasurer or, with the consent of the Treasurer, from any other person.
- (2) Liabilities incurred by the board under subclause (1) with the consent of the Treasurer are guaranteed by the Treasurer.
- 30 (3) A liability of the Treasurer under a guarantee arising by virtue of subclause (2) is to be satisfied out of the Consolidated Account which is appropriated by this clause to the necessary extent.
- (4) Any money of the board that is not immediately required for the purposes of this Schedule may be invested in such manner as the Treasurer may approve.

25—Dog Fence Fund

- 35 (1) The money of the board is to be held by the Treasurer in a fund called the *Dog Fence Fund*.
- (2) The fund will consist of—
- 40 (a) money received by the board as rates or contributions by councils; and
- (b) money paid to the board as a subsidy on rates or contributions by councils declared by the board and

- (c) any other money received by the board.
- (3) The fund may be expended by the board for purposes associated with the administration of this Schedule.

Part 5—Local dog fence boards

5 26—Establishment of local dog fence boards

- (1) The Minister may, on the recommendation of the board, by notice in the Gazette, establish a local dog fence board.
- (2) A local dog fence board is established for the purpose of defraying the cost of erecting and maintaining part of a dog fence, or a fence that the board proposes to substitute as part of a dog fence instead of an existing part.
- (3) A local dog fence board will be constituted by persons specified in the notice.
- (4) A local dog fence board will have the powers and duties specified in the notice.
- (5) The Minister may, on the recommendation of the board, by further notice in the Gazette—
 - (a) alter the constitution, or the powers or duties, of a local dog fence board; or
 - (b) abolish a local dog fence board and make provision for incidental matters.

27—Borrowing and investment powers of local dog fence boards

- (1) A local board may, for the purposes of this Schedule, with the consent of the board—
 - (a) borrow money from the Treasurer; or
 - (b) borrow money, with the additional consent of the Treasurer, from any other person.
- (2) Liabilities incurred by a local board under subclause (1) with the consent of the Treasurer are guaranteed by the Treasurer.
- (3) A liability of the Treasurer under a guarantee arising by virtue of subclause (2) is to be satisfied out of the Consolidated Account which is appropriated by this clause to the necessary extent.
- (4) Any money of a local board that is not immediately required for the purposes of this Schedule may be invested in such manner as the Treasurer may approved.

Part 6—Related matters

30 28—Inspection of fences

- (1) The Minister may arrange for the inspection of a dog fence by a Public Service employee at such intervals as are determined by the Minister on the recommendation of the board.
- (2) For the purposes of subclause (1), a Public Service employee may enter land and remain on land on which the fence is situated.

29—Effect of notice

If a notice required to be given under this Schedule by the board is given to an occupier or to the owner of a fence, that notice will be taken to have been given to any successor in occupation or ownership of that occupier or owner.

30—Recovery of amounts payable to board

- (1) If the board is empowered to recover the cost of any work from a person under this Schedule, the board must first serve notice on the person of the amount of the cost and the amount becomes due and payable on the expiration of 28 days from the day on which the notice is so served.
- (2) If an amount is due and payable by a person to the board under this Schedule, the following provisions apply:
- (a) the person will, if the amount is not paid to the board within 28 days after the day on which the amount became due and payable, be liable to pay, in addition, a fine of 10% on the amount unpaid by the person;
 - (b) any such fine may be recovered (together with the amount to which the fine relates) as a debt due to the board by action in a court of competent jurisdiction;
 - (c) the amount together with any such fine is until paid—
 - (i) in the case of an amount payable for the cost of work carried out in respect of a fence—a first charge in favour of the board on the land of which that person is owner adjoining the fence or on which the fence is situated; or
 - (ii) in any other case—a first charge in favour of the board on the land in respect of which the amount is payable.
- (3) The board may, in its discretion, on grounds of hardship or otherwise, remit the whole or a part of an amount payable to the board under this Act, or postpone payment or allow payment by instalments.
- (4) In any legal proceedings, an apparently genuine document purporting to be executed by the board and certifying as to any amount payable to the board by a person under this Act is, in the absence of proof to the contrary, to be accepted as proof of the matters so certified.
- (5) If an amount is payable to the board by a local board, that amount is to be set off against any amount payable to the local board by way of rates collected or recovered for that local board by the board under this Schedule.

31—Penalty for damaging or removing a dog fence

- (1) A person who, without lawful excuse, damages or does any act or makes any omission of such a nature as to be likely to cause damage to, any part of a dog fence is, whether or not the person is the owner of that part of the fence, guilty of an offence.
Maximum penalty: \$10 000.
- (2) A person who, without the consent in writing of the board—
- (a) removes any part of a dog fence; or
 - (b) does any act whereby any part of a dog fence ceases to be dog-proof,

is, whether or not the person is the owner of that part of the fence, guilty of an offence.
Maximum penalty: \$10 000.

- 5 (3) On the conviction of a person for an offence involving the removal of or any damage to any part of a dog fence, the court may, if the convicted person is not the person responsible for the maintenance of that part of the fence, in addition to or in lieu of any penalty that may be imposed under this clause, order the convicted person to pay to the person so responsible such sum as the court thinks appropriate as compensation for the removal or damage.
- 10 (4) For the purposes of this clause, a gate or ramp pertaining to a dog fence will be taken to be part of the dog fence.

32—Leaving gate open

A person who—

- (a) passing through a gateway in a dog fence leaves the gate open; or
(b) opens and leaves open a gate in a dog fence,

15 is guilty of an offence.

Maximum penalty: \$5 000.

Schedule 3—Specific measures and provisions to deal with biosecurity risk or biosecurity impact

- 1 The movement of any biosecurity matter, carrier, potential carrier or other thing.
- 20 2 Without limiting item 1, the documentation required to accompany any biosecurity matter, carrier, potential carrier or other thing and the period for which the documentation must be retained.
- 3 The examination, testing or inspection of any biosecurity matter or other thing at specified intervals.
- 25 4 The isolation, confinement or detention of any biosecurity matter or other thing at a specified place for a specified period (which may be extended or renewed from time to time).
- 5 The treatment measures to be carried out in relation to any biosecurity matter, carrier, potential carrier, premises or other thing.
- 30 6 The placing of any real or personal property in the possession of, or under the supervision of, a specified person and requiring compliance with any reasonable direction of that person in connection with that possession or supervision.
- 7 The requirement that any biosecurity matter or other thing be kept, managed or transported in a specified manner.
- 35 8 The requirement that any biosecurity matter or other thing be identified by marking, tagging or other means.
- 9 The destruction, disposal or eradication of any thing (including by specifying the manner of destruction, disposal or eradication).
- 40 10 A prohibition or restriction on the sale or supply of any biosecurity matter or other thing.

Biosecurity Bill 2023

Schedule 3—Specific measures and provisions to deal with biosecurity risk or biosecurity impact

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- 11 A restriction on the purposes for which any biosecurity matter or other thing may be used.
- 12 A prohibition or restriction on the carrying out of any artificial breeding procedure.
- 13 A requirement that land—
- 5 (a) be examined or tested, including a continuing program of examination or testing at specified intervals; or
- (b) be subjected to treatment or a course of treatment.
- 14 The use of any premises, vehicle, equipment or other thing for an activity that involves any biosecurity matter, carrier, potential carrier or other thing, including a prohibition on such use.
- 10
- 15 The erection of signs and notices, including as to their format, content, material to be used and placement.
- 16 The construction, reinforcement or repair of any building, fencing, gates, structures, barriers or other methods of enclosure, or carrying out any other security or containment measures in relation to any premises, biosecurity matter, carrier or other thing.
- 15
- 17 A requirement that an owner or occupier of land take action to examine, test, treat, destroy, dispose of, eradicate or decontaminate native or feral animals (including mammals, amphibians, molluscs, reptiles, birds, fish or insects), native plants or other thing on the land (including by specifying the manner in which the required action is to be carried out).
- 20
- 18 A requirement that the owner of any biosecurity matter or other thing (including land) in respect of which an order, direction or other requirement applies to notify a Chief Officer or authorised officer of any intended sale of the biosecurity matter or other thing (including land).
- 25
- 19 Without limiting any other item, in the case of a disease—
- (a) a prohibition or restriction on the movement into, out of or within an area of persons or vehicles; and
- (b) a requirement as to the cleansing or disinfecting of a person, place or property.
- 30
- 20 A requirement as to the muzzling of dogs.
- 21 A prohibition or restriction with respect to—
- (a) the holding of any market, fair, sale, show, parade, race-meeting or other gathering or competition involving biosecurity matter; and
- 35 (b) the delivery of biosecurity matter to any place.
- 22 The ability of an authorised officer to destroy or dispose of biosecurity matter if—
- (a) the biosecurity matter is not under the direct control of a person; or
- (b) the provisions of an order, direction or other requirement have apparently not been complied with; or
- 40 (c) the authorised officer has any other reasonable ground on which to take such action.
- 23 The requirement that any biosecurity matter that has been sold or supplied be recalled.

- 24 A prohibition as to the planting, propagation, harvesting or collection of plants, or plants of a specified species or kind, on specified land during a specified period (which may be extended or renewed from time to time).
- 5 25 The prohibition or restriction of any activity that involves any biosecurity matter, carrier, potential carrier or other thing.
- 26 The provision or taking of samples of any biosecurity matter or other thing.
- 27 The installation or use of a device or equipment at any premises for the purpose of detecting or monitoring the presence of any biosecurity matter or other thing, or for capturing or containing any biosecurity matter or other thing.
- 10 28 The obtaining of a biosecurity certificate in relation to any biosecurity matter or other thing.
- 29 The requirement that a person who is in a position to do so stop any work or operation, or to close any place.
- 30 Any other measure, step, action or requirement prescribed by the regulations.
- 15 31 Any other measure, step, action or requirement specifically authorised or required by a Chief Officer (including a requirement to comply with any standard, rule, code, specification, program, procedure, guideline or other document prepared or published by a specified body).

Schedule 4—Biosecurity advisory groups

20 1—Composition of a biosecurity advisory group

- (1) A biosecurity advisory group consists of up to 9 persons appointed by the Minister.
- (2) A biosecurity advisory group will include at least 1 representative of the Minister.
- (3) The Minister may appoint a suitable person to be the deputy of a member of a biosecurity advisory group.
- 25 (4) A deputy may act as a member of biosecurity advisory group during any period of absence of the member in relation to whom the deputy has been appointed.

2—Conditions of membership

- (1) A member of a biosecurity advisory group will hold office on terms and conditions determined by the Minister for a term specified in the instrument of appointment and will, at the expiration of a term of office, be eligible for reappointment.
- 30 (2) The Minister may remove a member of a biosecurity advisory group from office on any ground specified in the member's instrument of appointment.
- (3) The office of a member of a biosecurity advisory group becomes vacant if the member—
- 35 (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice addressed to the Minister; or
- (d) is removed from office under subclause (2).

3—Validity of acts

An act or proceeding of a biosecurity advisory group is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

4—Conflict of interest under the Public Sector (Honesty and Accountability) Act

A member of a biosecurity advisory group will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with those engaged or associated with the sector of the industry in relation to which the biosecurity advisory group has been established generally, or a substantial section of those engaged or associated with that sector of the relevant industry.

5—Proceedings

- (1) The quorum for a meeting of a biosecurity advisory group is determined by dividing the number of members by 2, ignoring any fraction and adding 1.
- (2) Subject to the regulations, a biosecurity advisory group may determine its own proceedings.

6—Annual report

- (1) A biosecurity advisory group must, on or before 30 September in each year, forward to the Minister a report for the preceding financial year.
- (2) A report must contain—
 - (a) a report on the operation of this Act in relation to the sector of the industry in relation to which the biosecurity advisory group has been established; and
 - (b) any other information required by the regulations.
- (3) The Minister must cause a copy of a report provided to the Minister under this clause to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

Schedule 5—Regulations

- 1 Any matter relating to the prevention, elimination, minimisation, control or management of any biosecurity risk or suspected biosecurity risk, or biosecurity impact.
- 2 The provision of any report, statement, document, return or other form of information to any person or body that performs a function under or pursuant to this Act, or to any other prescribed person or body (including periodic returns that must be accompanied by a prescribed fee).
- 3 The keeping of records and other information by any person who may hold or deal with any biosecurity matter, carrier or other item or thing relevant to the operation of this Act.
- 4 The testing, analysis, diagnostics, vaccination, inoculation or other treatment of any biosecurity matter or carrier (other than a human), including (but not limited to)—

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- (a) the accreditation, registration or other authorisation of a person or entity to carry out any testing, analysis, diagnostics, vaccination, inoculation or other treatment; and
- (b) the possession, use, manufacture, testing, distribution, storage, display or supply of any substance or equipment used for testing, analysis, diagnostics, vaccination, inoculation or other treatment.
- 5 The use of hormonal growth promotants on animals and the making of declarations and the keeping of records in relation to their use.
- 6 The classification and identification of any premises, biosecurity matter, carrier or other thing, including the marking, branding, tagging, tracing, implanting microchips or other means of recording the location, movement or status of any premises, biosecurity matter, carrier or other thing, or class of premises, biosecurity matter, carrier or other thing, whether on a voluntary basis or as mandatory requirements.
- 7 Any matter relating to the registration of persons, entities, premises, biosecurity matter, carriers, dealings or other matters or things.
- 8 The publication or provision of information contained on a register established or administered under this Act, including exclusions, restrictions or limitations with respect to the publication of such information or the provision of such information on conditions prescribed by or under the regulations.
- 9 The destruction and disposal of any biosecurity matter, carrier or other thing.
- 10 Requirements as to waybills or other documents to accompany biosecurity matter whenever it is moved from 1 place to another, and the ability of authorised officers to detain, deal with and dispose any biosecurity matter that is not accompanied by the required waybill or other document.
- 11 Any matter relating to animal feed or fodder, including (but not limited to)—
- (a) the amount or proportion of any specified ingredient or other thing that may be added or contained in animal feed or fodder, including prohibiting a substance from being added to or used as animal food or specifying the amount of a substance that may be contained in animal food; and
- (b) the use, manufacture, testing, distribution, storage, display, packaging, labelling, sale or supply of animal food or fodder; and
- (c) the feeding of animals with particular products or substances or otherwise so as to regulate the feeding of animals.
- 12 Any matter relating to fertilisers, liming materials, trace element products or other similar materials or products, including (but not limited to)—
- (a) the amount or proportion of any specified ingredient or other thing that may be added to fertilisers, liming materials, trace element products or other similar materials or products, including prohibiting a substance to be added to or used as fertilisers, liming materials, trace element products or other similar materials or products; and
- (b) the use, manufacture, testing, distribution, storage, display, packaging, labelling, sale or supply of fertilisers, liming materials, trace element products or other similar materials or products.
- 13 The information to be given to, or provided by, a common carrier or other form of commercial carrier.

- 14 The conferral of additional functions or powers on authorised officers and other persons.
- 15 Evidentiary provisions and presumptions in respect of any biosecurity matter, carrier, dealing, biosecurity risk, biosecurity impact or other matter or thing to which this Act relates in connection with any proceedings or other action, or potential proceedings or other action, under this Act.
- 16 The conferral of jurisdiction on the Tribunal to review any determination, decision or action made or taken under the regulations.
- 17 Without limiting section 301(9), fees, charges and costs in respect of any matter under this Act (including, but not limited to, fees and charges for the provision of information, or for the carrying out of any inspection, analysis or other function under this Act) and the payment, recovery, enforcement, reduction or waiver of fees, charges and costs and including by providing for—
- (a) fees, charges and costs to be recoverable as a debt; and
 - (b) the imposition of interest on any amount that is not paid within a period prescribed or determined under the regulations; and
 - (c) the imposition of penalties for the late payment of any fees, charges or costs; and
 - (d) the creation of a charge over land for the purposes of the recovery or enforcement of unpaid fees, charges or costs.
- 18 Without limiting item 17, the imposition of levies to fund the establishment or operation of any body, facility, program or activity for any purpose under this Act and for the payment, recovery, enforcement, reduction or waiver of any such levy as if it were a charge under that item.
- 19 The imposition of penalties, not exceeding \$25 000, for breaches of the regulations.
- 20 The fixing of an expiation fee—
- (a) not exceeding \$5 000 in respect of any offence against this Act; and
 - (b) not exceeding \$2 500 in respect of any offence against the regulations.
- 21 The designation of persons who are authorised to give expiation notices.

Schedule 6—Related amendments, repeals and transitional provisions

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Fisheries Management Act 2007*

2—Amendment of long title

Long title—delete ", the protection of aquatic habitats, aquatic mammals and aquatic resources and the control of exotic aquatic organisms and disease in aquatic resources" and substitute:

and the protection of aquatic habitats, aquatic mammals and aquatic resources

3—Amendment of section 78—Unauthorised activities relating to exotic organisms or noxious species prohibited

Section 78—after subsection (3) insert:

- (4) In proceedings for an offence against this section, it is a defence if the defendant proves that the act alleged to constitute the offence was authorised by or under the *Biosecurity Act 2023*.

4—Repeal of section 83

Section 83—delete the section

5—Repeal of section 130

Section 130—delete the section

Part 3—Repeal of Acts

6—Repeal of Acts

The following Acts are repealed:

- (a) the *Dog Fence Act 1946*;
- (b) the *Impounding Act 1920*;
- (c) the *Livestock Act 1997*;
- (d) the *Plant Health Act 2009*.

Part 4—Transitional provisions

Note—

Transitional provisions will be included after consultation on the Bill has concluded and before the Bill is introduced to Parliament.