Biosecurity Bill 2013

Explanatory Notes

Short title
The short title of the Bill is the Biosecurity Bill 2013.

Policy objectives and reasons for the Bill
The objective of the Bill is to provide for a comprehensive biosecurity framework to manage the impacts of animal and plant diseases and pests in a timely and effective way and ensure the safety and quality of animal feed, fertilisers and other agricultural inputs. The Bill will repeal the *Agricultural Standards Act 1994*, the *Apiaries Act 1982*, the *Diseases in Timber Act 1975*, the *Exotic Diseases in Animals Act 1981*, the *Plant Protection Act 1989* and the *Stock Act 1915*, amend the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*, the *Fisheries Act 1994* and the *Land Protection (Pest and Stock Route Management) Act 2002*, and make minor and consequential amendments to a number of other Acts.

Queensland's current biosecurity legislation comprises eight Acts and eleven subordinate instruments which were developed independently of one another in response to specific but narrow events. As a result, it includes obsolete and obscure provisions as well as overlapping and inconsistent approaches.

The current legislation is largely reactive and prescriptive and lacks the flexibility to enable efficient responses to Queensland's changing risk profile. The legislation is also difficult for stakeholders to navigate and results in inefficient administration.

The effectiveness of biosecurity systems is continually challenged by increases in international tourists, increases in the volume and diversity of trade in animal and plant products, changing transport procedures, entry of pests and diseases through natural routes and changing land and water use.

Without this Bill, the current legislation would impede growth to agriculture, a core pillar of Queensland's economy.

Achievement of policy objectives
Biosecurity involves the protection of the economy, environment, social amenity and human health from the negative impacts associated with entry, establishment or spread of animal and plant pests and diseases and other matter including contaminants.

The Bill will provide a cohesive legislative framework that provides proportionate powers and flexibility to respond in a timely and effective way to animal and plant diseases and pests. It will also manage risks of contaminants in carriers and ensure the safety and quality of animal feed, fertilisers and other agricultural inputs. By aligning responses with national and international market access obligations, it will provide confidence that market access requirements of our customers are being met.

The Bill applies generally to all biosecurity matter which is defined to mean any living thing other than a human, a pathogenic agent that causes disease in a living thing other than a human or, pathogenic agent that causes disease in a human by transmission of the organism or agent from an animal to a human, a disease or contaminant.

Prohibited matter is biosecurity matter that is not present or known to be present in Queensland, but if it did enter the state would have a significant adverse effect on a biosecurity consideration. Prohibitions apply to any unlawful dealing with prohibited matter.

Restricted matter is biosecurity matter that is present in Queensland, but would have adverse effects if restrictions were not imposed to reduce, control or contain it under the Bill.

The Bill, through the general biosecurity obligation, will require all stakeholders to take an active role in managing and responding to biosecurity risks. A person can discharge their biosecurity obligation by complying with relevant requirements of the Act, a Regulation, a code of practice, guideline, or entering into and meeting the terms of a compliance agreement.

It establishes obligations in relation to reporting and dealing with biosecurity matters that potentially have an adverse impact on the economy, human health, natural environment and social amenity. It also establishes disease tracing obligations in relation to the identification and movement of animals.

The legislation adopts the precautionary principle that a lack of scientific certainty should not postpone action to manage emergency biosecurity events where serious or irreversible damage is plausible. This acknowledges that the costs of not taking action to a potential threat, such as a highly infectious zoonotic disease transmitted between animals and humans, can be more significant than the cost of taking early and definitive action which subsequently proves to be unnecessary.

Comprehensive regulatory tools including emergency powers and orders, movement control orders, biosecurity zones, biosecurity programs and co-regulatory mechanisms can be tailored to meet the unique nature of the risks and the tactical challenges of addressing them.

The Bill does not require the identification and scheduling of specifically identified pests and diseases before action can be taken. The scope of the Bill applies to both biosecurity matter that is listed under the Act or declared by the chief executive and also allows for government to respond quickly to any biosecurity matter that is found to be affecting plants or animals.

The Bill will provide for the State to enter into intergovernmental agreements with the Commonwealth or another State to recognise biosecurity (assurance) certificates which allow a business to self-certify that its produce meets the quarantine requirements of its destination.

The Bill also provides a statutory basis for the Minister or chief executive to enter into a government-industry agreement, similar to the Emergency Animal Disease Response Agreement, Emergency Plant Pest Response Deed and National Environmental Biosecurity Response Agreement. These agreements between the State and other jurisdictions, local governments, industry bodies or natural resource management bodies establish arrangements for rapid responses to pests and diseases and define how costs related to management of a biosecurity event are shared. This enables Queensland to meet its obligations as a signatory

to the national biosecurity system.

The Bill repeals the following Acts in full:
Agricultural Standards Act 1994
Apiaries Act 1982
Diseases in Timber Act 1975
Exotic Diseases in Animals Act 1981
Plant Protection Act 1989 and
Stock Act 1915.

The Bill amends parts of the following Acts:
Chemical Usage (Agricultural and Veterinary) Control Act 1988
Fisheries Act 1994 (Part 5, Divisions 5 – 7)
Land Protection (Pest and Stock Route Management) Act 2002.

It also makes minor and consequential amendments of other Acts in schedule 4.

Alternative ways of achieving policy objectives

The alternative to the Bill is to extensively amend and modernise the suite of existing primary industry legislation. This would fail to adequately address community expectations of a single biosecurity regulatory framework that is comprehensive and simple to navigate. Continuing with the suite of existing legislation would also not address the overlapping provisions and duplication that would continue to be necessary to ensure the proper functioning of those individual pieces of legislation.

Estimated cost for government implementation

The comprehensive regulatory tools and powers, will provide enhanced capability and flexibility for frontline resources, enable more cost effective responses and reduce burdens for stakeholders.

Regulations and Codes of Practice will be developed to provide technical and more specific details on how certain sections of the Act are to be implemented. Peak industry representative bodies will be invited to participate in a Biosecurity Regulations Reference Group (BRRG) to develop innovative alternative regulatory reform options and solutions during the development of the Regulatory Impact Statement and Biosecurity Regulation. In addition to consultation through the BRRG, relevant animal-specific and crop-specific representatives will be engaged to identify reforms that will deliver the most efficient use of resources with limited or no adverse impact on the industries involved:

A range of guidelines will be prepared regarding administration of the Act, ways of discharging obligations and compliance with requirements under the Act. The Department of Agriculture, Fisheries and Forestry will continue to offer briefings on the Bill leading up to proclamation.

Implementation costs will be less than $0.6 million and met from existing budget allocations.

Consistency with fundamental legislative principles

The Bill potentially departs from fundamental legislative principles (FLPs) as outlined in section 4 of the *Legislative Standards Act 1992* (LSA). Any such departure occurs in the

context of balancing FLPs with a competing policy objective of ensuring rapid and decisive responses, which minimise the adverse impacts from significant biosecurity threats.

The Office of the Queensland Parliamentary Counsel has been consulted throughout the drafting process to reduce the impact of these potential breaches.

Rights and Liberties of individuals - section 4(2)(a) LSA

The Bill contains a number of offence provisions which carry significant penalties. Clause 24 imposes a general biosecurity obligation on any person dealing with biosecurity matter. It is an offence if a person on whom a general biosecurity obligation is imposed fails to discharge the obligation. The maximum penalty for this offence is up to 1000 penalty units or 1 year's imprisonment for a breach in relation to prohibited matter. For a breach in relation to restricted matter the maximum penalty is 750 penalty units or 6 months imprisonment. An aggravated offence (if the commission of the offence causes significant damage, or is likely to cause significant damage to the health and safety of people or to the economy or the environment) carries a maximum penalty of 3000 penalty units or 3 years imprisonment.

Imposing a general biosecurity obligation promotes individual responsibility for the careful management and control of biosecurity matter and is underpinned by the principle that those who are responsible for the risk should manage the risk. The provisions offer safeguards by requiring a person to be a in a position to know or reasonably know of the biosecurity risks associated with biosecurity matter, carrier or activity.

It is considered the penalties are proportionate to the seriousness of the offences. Biosecurity events have the potential to significantly impact on human and animal health including causing serious illness and death in humans and animals. They can have serious economic impact, cause significant damage to the environment and result in severe adverse impact on social amenity. Deliberate or reckless acts or omissions may result in accelerated or increased spread of biosecurity matter or delays in eradicating an incursion.

Legislation makes rights and liberties, or obligations dependent on administrative power only if the power is sufficiently defined and subject to appropriate review - section 4(3)(a) LSA

The Bill provides power for the chief executive to make a number of orders in relation to responding to a biosecurity emergency. These orders include an emergency biosecurity order, movement control order and emergency prohibited matter declaration. The imposition of these orders could have significant impact on the rights and liberties of individuals. Significant penalties apply where there are infringements of these orders. The Bill provides only limited review of chief executive decisions to make an emergency declaration or biosecurity emergency order or movement control order. There is no merit or internal review and judicial review is limited to an appeal to the Supreme Court on jurisdictional error only.

There is an imperative to take decisive action in emergency situations to protect the community against the grave outcomes to a biosecurity consideration from known or exotic biosecurity matter. For example, swift action would be required to address highly pathogenic zoonotic diseases (diseases that spread from animals to humans) like the H5N1 strain of avian influenza or bovine spongiform encephalopathy BSE, commonly known as 'mad cow disease'.

Delays in responding to an incursion caused by legal challenges can have profound negative effects on a biosecurity consideration. The efficacy of responses to emergent situations will be greatly hampered if delays were caused through legal challenges to a decision to declare new threats as prohibited matter or limit the movement of carriers. In these situations, it is considered the balance favours the general rights of the community over an individual's right to be heard. However, in view of the decision in *Kirk v Industrial Relations Commission [2010]* HCA1, the court may still determine what factors are within ambit for review if assessing whether the chief executive has acted outside of the prescribed power.

Safeguards for the exercise of these powers are provided under the Bill. Statutory provisions limit the decision making in relation to these instruments. Such decisions can only be made on reasonable grounds where the chief executive is satisfied such an order is warranted and after having regard to the seriousness or potential seriousness of the biosecurity event and its impact or likely impact. These provisions do not exclude a person from claiming damages caused through negligence or an unlawful act or from any entitlements to compensation which, may be provided under the Bill.

In relation to the declaration of an emergency by the chief executive, the Bill requires the Minister to table in the Legislative Assembly a report on a declared emergency within six months after the biosecurity emergency ends.

The Bill provides the chief executive, local government and invasive animal boards with powers to make surveillance programs and prevention and control programs. The purpose of these programs is to take measures to prevent, control, eradicate or manage biosecurity risks. Restrictions may be put in place and penalties apply for non-compliance with these provisions.

There is a requirement for consultation with industry or community groups (each an interested entity) where the proposed measures may have a significant effect on members of the interested entity. The relevant authorising authority must give notice of the program at least 14 days prior to the biosecurity program starting. The notice must be published on the department's website, local government's website or relevant board's website.

Under clause 246, the chief executive may appoint a person as an inspector if the person has a contract with, or is employed by, an entity that has a contract with the chief executive to perform a function under the Act. There are no restrictions on the type or terms of the contract. The chief executive may also appoint a person as an inspector from a class of persons prescribed under a Regulation.

The Bill provides an inspector with significant powers including extensive powers while an emergency order is in place. These powers include the power to enter without warrant or consent of the occupier.

The purpose of allowing the appointment of persons employed under contract as inspectors is to provide flexibility in the employment of persons who may assist in an emergency response or in day-to-day compliance matters where it is more feasible to employ contract staff on a short or long-term basis. It also allows for industry partnering in co-regulation where industries may nominate staff that may assist in compliance arrangements. This allows the regulatory burden to be shared between government and industry.

It is considered appropriate safeguards are provided under the Bill. Under clause 242 the chief executive may only appoint a person, as an inspector, if the chief executive considers the person is appropriately qualified. Appropriately qualified can include training in ethical standards and conduct.

Clause 243 provides conditions may be placed on the appointment of an inspector through an instrument of appointment, regulation made under clause 251 or a notice under clause 252. Also the notice, instrument or regulation may limit the powers of an inspector. Conditions may also be placed on the contract of the person to ensure the person undergoes appropriate training as a condition of their employment and termination clauses can be linked to performance criteria including performance of duties as an inspector.

Legislation confers powers to enter premises and search for or seize documents, only with a warrant issued by a judge or other judicial officer – section 4(3)(e) LSA

The Bill provides for the power of entry to places without a warrant or in limited circumstances without consent of the owner. These provisions relate to the exercise of powers during an emergency and are in addition to the powers usually exercised by an inspector or authorised person. The Bill provides a number of safeguards by placing constraints on the exercise of these powers.

Clause 119 allows entry and re-entry by an inspector or an authorised person acting under the direction of an inspector to a place with or without consent. Under these provisions the place must be within a biosecurity emergency area for a biosecurity emergency order and to the extent reasonably necessary for managing the biosecurity emergency the subject of the order. Place is defined in the dictionary to include premises. Premises includes a building, caravan or vehicle, cave or tent. This clause does not authorise the entry of a residence.

The powers under clause 119 may only be exercised to the extent reasonably necessary for managing the biosecurity emergency. The power to demolish any structure including an outbuilding cage or pen may only be done with the written approval of the chief executive.

Clause 279 provides power for an inspector to enter a place, other than a place or part of a place used for residential purposes. An inspector may only enter the place without a warrant or the consent of the occupier if an inspector is satisfied on reasonable grounds it is necessary to exercise powers to avoid an imminent and significant biosecurity risk. In the absence of an imminent and significant risk from an activity being carried out or where there is biosecurity matter at the place, before entering, the inspector is required to make reasonable attempts to show their identification card and tell the occupier the inspector is permitted to enter the place under the Act. An inspector must take all reasonable steps to ensure the inspector causes as little inconvenience to any person at the place and does as little damage as is practicable in the circumstances. As soon as practicable after exercising the powers the inspector must notify the chief executive of the fact the powers have been used. The ability to exercise the powers under clause 279 is limited by time. Under clause 283 an inspector may only exercise the powers until the earlier of the following: until the imminent and significant biosecurity risks from the activity being carried out or from the biosecurity matter at a place have been avoided or after 96 hours has elapsed since the inspector first exercised the powers.

These emergency powers are justified on the basis there is a community expectation that immediate and decisive action needs to be taken in the event of a biosecurity emergency, such as a highly pathogenic exotic animal disease. Any infringement on the freedom and

liberty of a person affected by the exercise of these powers can be appropriately balanced with the unacceptable impact a delay in taking such action would have on a biosecurity consideration.

Clauses 260-264 and 294 allow authorised officers entry to places, other than where a person resides, without consent or a warrant. Clause 260 provides entry to an authorised officer if the officer reasonably believes there may be a biosecurity risk at the place. Clause 261 allows entry by an authorised officer to take action where there is a biosecurity program for the place. Clause 294 allows entry by an authorised officer to carry out an aerial control measure under a biosecurity program. Clause 262 provides power to an authorised officer to enter a place where a person has been given a biosecurity order and the officer needs to check compliance with the order. Where a person has failed to take steps under a biosecurity order, clause 263, allows for an authorised officer to enter a place to take the steps mentioned in the order.

Clause 264 provides an authorised officer with the power to enter a place, other than where a person resides, and take action where the person has failed to take the action required under a direction under the Act, other than a biosecurity order. If the direction is given under a biosecurity program, the issuing authority must, before taking action provide reasonable notice of the intention to enter the place, the reason for entry and that the authorised officer is authorised to enter the place without the permission of the occupier.

The Bill provides safeguards on the exercise of these powers. In each case the authorised officer must before entering the place make reasonable attempts to locate an occupier and obtain the occupier's consent to enter.

If entry is made under clause 260 and the occupier refuses consent to enter, the authorised officer must not enter unless entry is made under a warrant.

If entry is made under clause 294 for the purpose of carrying out aerial control the authorised officer must give written notice to the occupier at least 48 hours before carrying out the aerial control. However, the authorised officer is not required to give the written notice if the control measure to be taken would be ineffective after the notice ends. In this case the authorised officer must make a reasonable attempt to contact the occupier to advise them of the aerial control measure.

If entry is made under clauses 260-264 and the authorised officer is unable to find an occupier to obtain consent, the authorised office may enter the place. However, the authorised officer must leave a notice in a conspicuous position and in a reasonably secure way stating the date, time and purpose of entry.

If entry is made under clauses 260-264 and an occupier is present at the time the authorised officer must immediately after entering the place produce the officer's identity card and inform the occupier of the reason for entering the place and the fact the authorised officer is able to enter the place without consent.

It is considered the prevailing public interest in protecting human health, the environment and public amenity from biosecurity risks far outweighs any infringement on personal liberties and rights which may arise under these powers. The safeguards provided under the Bill

ensure any action taken under these provisions will be part of a measured response to biosecurity risks.

Legislation provides appropriate protection against self-incrimination - section 4(3)(f) LSA
Non-disclosure of information may jeopardise the tracing of contagious biosecurity matter and inhibit the effectiveness of responding to a significant biosecurity threat. It is vital that information which may assist in tracing and halting the spread of prohibited biosecurity matter is obtained in a timely manner.

Clauses 120 (Requirement to answer question or give information), 298 (Offence to contravene help requirement), 324 (Offence to contravene document production requirement) and 325 (Offence to contravene document certification requirement) removes self-incrimination as a reasonable excuse for a person who fails to provide a document or information required to be held or kept under the Act.

Clause 120 provides a power to an inspector to obtain vital information such as a vehicle log book which may assist in tracing infected animals. Under this power a person is not compelled to answer a question or give information or a document (other than a "required document") which may incriminate them. However, it is not a reasonable excuse to fail to give a "required document" as directed by an inspector on the basis that it might tend to incriminate. A "required document" is defined as a document that has been issued to the person, or that the individual is required to keep under the Act. Primary evidence and derived evidence given by a person to an inspector under this part is not admissible in evidence against an individual in any civil or criminal proceeding, unless it pertains to the falsity or misleading nature of the primary evidence. The public interest in protecting against serious biosecurity risks is best served by ensuring the full and frank disclosure of information pertinent to containing biosecurity risks. Any infringement on the rights of a person in obtaining documents is justified on the basis of the prevailing public interest in limiting the adverse impact of biosecurity matter by taking swift action to halt the spread.

Whether the Bill has sufficient regard to the Institution of Parliament by only authorising the amendment of the Act only by another Act - section 4(4)(c) LSA
The Bill includes provisions empowering the chief executive to declare biosecurity matter as prohibited matter, or no longer prohibited matter, and to establish particular areas within a biosecurity zone. The Bill also allows an emergency control order to prevail over other provisions of the Act including the power to suspend certain exemptions.

It is impractical to predict every pest and disease which may impact on a biosecurity consideration. Also it is not possible to have a complete list of biosecurity matter which may have an adverse effect on a biosecurity consideration. The Bill provides the flexibility required to accommodate new emergent biosecurity matter which may require immediate action to deal with the impact.

Safeguards are contained in the Bill for the use of these powers. Most prohibited and restricted matter will be listed in schedules and any listing about both categories must be kept on the Department's website. The power may only be used if the chief executive considers the situation urgent and involves biosecurity matter that will have a significant adverse impact on a biosecurity consideration.

The chief executive will have the capacity to take urgent action and remove the prohibited status associated with the biosecurity matter. This provides safeguards to ensure people are not exposed to prosecution under the Bill for dealing with the prohibited matter which has become endemic.

The Bill provides the chief executive with the ability to establish particular areas within zones. This power enables the chief executive to make changes to restrictions in response to evolving changes to risks related to biosecurity matter. Without this ability, considerable amendments to biosecurity zone regulatory provisions would be required with a consequent loss in responsiveness. Safeguards are contained in the Bill to limit the chief executive's power. These limits mean the chief executive may only impose restrictions in particular areas which are lesser than those which would otherwise apply under a biosecurity zone regulatory provision.

The Bill provides the chief executive with the power to make an emergency biosecurity order for responding to a biosecurity event. A biosecurity order is only to be used in the event of a significant incursion and is primarily directed at taking emergency action to isolate the biosecurity emergency area identified in the order, stop the spread of any biosecurity matter associated with the biosecurity event and, if practicable, eradicate the biosecurity matter. Under an emergency biosecurity order the chief executive has the power to require something be done, or not be done, even if that requirement is inconsistent with the Bill. For example, a biosecurity emergency order prohibiting a person from dealing with biosecurity matter that is animal matter may prevent a person from feeding the matter to a designated animal even if the feeding may happen in a way mentioned under clause 45.

Certain exotic animal diseases would pose a major threat to animal and human health if introduced into Australia. For example BSE is a disease of cattle which can be transmitted to humans and cause variant Creutzfeldt-Jakob disease via the consumption of BSE contaminated food. Currently, there is no cure for BSE. Ingestion of animal matter contaminated with the BSE disease agent is recognised as the major cause of BSE spread in outbreaks overseas. A further example would be an outbreak of foot and mouth disease (FMD) in Australia which would cause devastation to livestock industries. In 2001, an outbreak of FMD in the United Kingdom resulted in five million sheep, cattle, pigs and goats being destroyed. It is estimated such an outbreak in Australia would cost between $7.1 to $16 billion depending how long it took to control and eradicate the disease.

Under the Bill animals prescribed as designated animals are those most at risk of contracting zoonotic diseases. To minimise the spread of BSE or FMD through the feeding of animal matter, it is an offence under the Bill for a person to feed animal matter to a designated animal or not take reasonable steps to ensure designated animals are not feed on animal matter. The Bill provides several exemptions which allow for the feeding of some designated animals with animal matter or animal contaminated matter. This includes the feeding of treated animal and animal contaminated matter such as used cooking oil, rendered fat and where the feeding is done under the direction of a veterinary surgeon for the purpose of disease control. The exemptions are provided on the basis there is a low risk of spreading disease through these practices.

The Bill provides the chief executive with the power to suspend the exemptions on the feeding of animal or animal contaminated mater in the event a disease such as BSE enters the

food chain and immediate action is required to remove any risk of the disease spreading. The suspension may last only while a biosecurity emergency order is in place.

The above provisions may be considered as Henry VIII clauses. The use of Henry VIII clauses can be justified in all cases because of the prevailing community expectation that, in the event of a serous outbreak such as FMD or BSE, immediate action would be taken to protect the community, economy and environment from the potentially catastrophic impact such an outbreak would have.

Sufficient safeguards are contained in the Bill to ensure the powers are not used excessively. Provisions contained in the Bill provide time limits on biosecurity emergency orders and movement control orders. Under the Bill, a biosecurity emergency order may only stay in force for 21 days after the order is made. The order may be revoked sooner or by a movement control order. Also the Minister must table in the Legislative Assembly a report about a biosecurity emergency order within six months after the biosecurity emergency ends. Movement control orders may only stay in force until three months have elapsed after the order was made, unless sooner revoked.

Allow regulation to establish offence under the Act and stop and inspect vehicles – Rights and liberties of individuals and sufficient regard to the institution of Parliament – Sections 4(2)(a) and 4(4) LSA

The Bill includes a number of provisions that effectively allow a regulation to establish an offence under the Act. Clause 25(3), for example, provides a person fails to discharge their general biosecurity obligation (an offence) if they contravene a provision in a regulation.

There could be a number of ways of discharging a general biosecurity obligation. Given the technical and procedural nature of these requirements, it is considered these requirements are more appropriate for inclusion in subordinate legislation.

The Bill creates offences for failing to comply with broad statutory instrument making powers in emergency situations. These provisions are considered necessary to ensure there is sufficient flexibility to respond to biosecurity threats and the potentially significant adverse outcomes of biosecurity matter on a biosecurity consideration. It is considered there are sufficient checks and balances contained within the Bill to ensure these provisions do not abrogate the power of Parliament.

In controlling the spread of biosecurity matter which poses a significant risk to a biosecurity consideration, it may be necessary to stop and inspect a vehicle, or give a direction restricting a person, biosecurity matter or a carrier to within an isolated area. Clauses 286-293 provide an authorised officer with the power to stop vehicles and animals travelling on a stock route or on a reserve. Such a requirement may be considered as infringing upon the common law rights of individuals to freedom of movement and association.

However, in relation to vehicles, the powers can only be exercised if an authorised officer reasonably suspects or is aware that a thing in or on a vehicle may provide evidence of the commission of an offence against the Act, or a vehicle or things in or on the vehicles may pose a biosecurity risk. In relation to animals travelling on a stock route or reserve an inspector may only stop the animals or direct the person in control of the animal if the inspector reasonable suspects or is aware the animals pose a biosecurity risk.

Preventing the spread of biosecurity matter during a biosecurity emergency is a critical factor in protecting biosecurity considerations from significant adverse outcomes. Such powers are considered vital in protecting public health when there is a risk of disease spread by human carriers. Any imposition on the individual can be balanced against the need to protect biosecurity considerations from the impact of the biosecurity matter which is the subject of the emergency order.

There are a number of safeguards around the use of these powers included in the Bill. For example, the exercise of the powers relating to emergency orders are limited to urgent situations where the chief executive is satisfied on reasonable grounds, having regard to the seriousness or potential seriousness of the biosecurity event or the biosecurity risk is high enough, that an emergency response is necessary.

Emergency orders last for a maximum of 21 days and a movement control order for three months. Both orders require the chief executive to take all reasonable steps to ensure that a person likely to be affected by the orders is made aware of the making of the orders. For emergency orders, the chief executive must consult with both the Minister and the Chief Health Officer unless it is not practicable to do so.

Additionally, the Minister must table a report about the biosecurity emergency the subject of the biosecurity emergency order in the Legislative Assembly within six months after the biosecurity emergency ends.

Legislation does not confer immunity from proceeding or prosecution without adequate justification – Section 4(3)(h) LSA

The Bill provides protection from liability for an official (i.e. the Minister, chief executive, chief executive officer, an authorised officer, or a person acting under the authority or direction of an authorised officer and a public service officer or employee acting as an auditor or accredited certifier). However, the immunity only applies to an act done, or omission made, honestly and without negligence under the Bill.

The conferral of immunity is balanced by the fact where any civil liability would otherwise be attached to a designated person instead it attaches to the State or to a local government in instances where the liability arises because of an action of an authorised person or chief executive officer employed by the local government.

Consultation

Extensive consultation occurred with key industry and peak body groups including industry bodies, representative groups and particular interest groups from the early stages of policy development through to the release of an exposure draft in July 2011. Consultation has continued with peak industry bodies, particular interest groups and relevant government departments through 2012/13.

Notes on Provisions

Chapter 1 Preliminary

Chapter 1 outlines the purpose of the legislation, the means to achieve the purpose, key definitions including what is prohibited and restricted matter, and key concepts used throughout the Bill.

Part 1 Introduction

1 Short title

Clause 1 states that, when enacted, the bill will be cited as the *Biosecurity Act 2013*.

2 Commencement

Clause 2 provides for the Bill to commence on a date to be fixed by proclamation. If no date has been fixed by 1 July 2016 the Act will commence on that day. The clause provides that section 15DA of the *Acts Interpretation Act 1954*, does not apply which means that a regulation cannot be made to extend the commencement date of the Act.

3 Simplified outline of main provisions of Act

Clause 3 provides an outline of the main provisions under each Chapter of the Bill.

Part 2 Purposes of Act and achieving the purposes

4 Purposes of Act

Clause 4 identifies the main purpose of the Bill is to deliver a framework that facilitates timely and effective responses that protect human health, the economy, the environment and social amenity from animal and plant diseases and pests.

It will also manage risks of biological, chemical and physical contaminants associated with carriers such as livestock, plants, machinery, animal feed and fertilisers.

5 How purposes are primarily achieved

Clause 5 establishes how the purposes of the Bill are primarily achieved by providing the basic safeguards necessary to protect biosecurity considerations through a combination of:

- imposing a universal obligation (a general biosecurity obligation) on people to prevent or minimise the impacts of biosecurity risks on biosecurity considerations;
- enabling the forging of cooperative ties between all levels of government, industry and the general public and improving capacity generally to respond to biosecurity risks;
- allowing for risk-based decision-making on approaches to the management of, and response to, biosecurity risks while incorporating the precautionary principle in risk-based decision-making to allow for timely responses to biosecurity risks or to prevent a biosecurity event;
- acknowledging best practice in mitigating biosecurity risks by providing for codes of practice relating to a person's obligations; and
- providing for the effective monitoring and enforcement of compliance with the Act.

Part 3 Application and operation of Act

6 Scope of Act generally

Clause 6 identifies the scope of the Bill which extends to acts and omissions of a person relating to biosecurity matter and dealings with particular biosecurity matter or carriers that may pose a biosecurity risk.

7 Act binds all persons

Clause 7 specifies that the Bill binds all persons including the State, the Commonwealth and other States to the extent the legislative power permits. Neither the State nor the Commonwealth can be prosecuted for an offence against the Bill.

8 General application of Act to ships

Clause 8 provides that the Bill applies to ships in Queensland waters and waters outside of Queensland provided that the ship is travelling from a place in Queensland to another place in Queensland. The clause provides that the Bill does not apply to ships of the Australian Defence Force or a defence force of another country, or where the ship is in waters outside of Queensland and travelling from and to a place not in Queensland.

9 Relationship with particular Acts

Clause 9 provides that the Bill will not interfere with the operation of other relevant Acts and vice versa and that the powers of officials under the Bill are in addition to and do not limit the powers granted to the same officials under another relevant Act. For example, a person will have a biosecurity obligation not to do or omit to do something that may exacerbate the adverse effects of biosecurity matter on a biosecurity consideration. A person may therefore have a biosecurity obligation to manage invasive plants on their property. The Bill does not remove the obligation for a person to obtain a permit or such other requirements as might apply under the *Vegetation Management Act 1999* to clear native vegetation if the invasive plants are amongst the native vegetation and clearing the native vegetation is the only way to manage the invasive plants.

Subclause (2) identifies how potential inconsistencies between the Bill and other specified Acts are to be addressed. There are a number of Acts that deal with the manner in which primary production is conducted, the quality of primary production and responses to emergencies. For example, the *Food Production (Safety) Act 2000* regulates the production of primary produce to ensure that it is fit for human and animal consumption through food safety schemes, the *Food Act 2006* regulates, amongst other matters, contaminants and maximum residue limits (through adopting the Food Standards Code) and the *Gene Technology Act 2001* regulates genetically modified biosecurity matters. The Bill therefore provides that those Acts prevail only to the extent of the inconsistency.

Subclause (4) exempts a person who commits an offence against a relevant act if that offence was committed in the process of complying with a biosecurity emergency or movement control order, a direction of an inspector or a person directed by an inspector.

Subclause (5) provides that Chapter 2 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* does not apply in relation to a declared pest fence. The Bill deals with invasive animals through existing invasive animal barrier fences which are managed and controlled by the State and local governments and by pest operation boards.

10 Contravention of this Act does not create civil cause of action

Clause 10 provides that a contravention of the Bill does not, of its own, create a civil cause of action based on a contravention of any of the Bill's provisions.

11 Act does not affect other rights or remedies

Clause 11 outlines that a civil right or remedy available to a person is not affected or limited by the Bill. This ensures that a person's common law rights (for example in relation to an action against someone for negligence) are acknowledged by the Bill. The clause also provides that compliance with the Bill does not necessarily show that a civil obligation, which exists apart from the Bill, has been satisfied or has not been breached.

12 Community involvement in administration of Act

Clause 12 recognises that Queensland's biosecurity system is multi-layered and involves formal and informal relationships between the three levels of government, industry, Aborigines and Torres Strait Islanders under Aboriginal tradition and Island custom, non-government organisations, community groups and individuals. The clause requires, as far as practicable, that the administration of the Bill is undertaken in consultation with these entities.

Part 4 Interpretation

Division 1 Dictionary

13 Definitions

Clause 13 provides that the dictionary in Schedule 5 defines particular words used in the Bill.

Division 2 Key concepts and definitions

14 What is a *biosecurity event*

Clause 14 defines a 'biosecurity event' to be an event or potential event, caused or likely to be caused by biosecurity matter, which has or may have a significant adverse affect upon a biosecurity consideration.

The clause provides examples of biosecurity events, for example, death of a horse caused by Hendra virus infection or a suspected outbreak of FMD in another State that may spread to Queensland.

15 What is *biosecurity matter*

Clause 15 defines 'biosecurity matter' in part as a living thing other than a human or part of a human. Humans are excluded from the definition to ensure that the Bill does not deal with the treatment of people from diseases where public health legislation will apply. The Bill deals with the treatment of animals infected with zoonotic diseases (animal diseases such as rabies or psittacosis) that can be transmitted to humans.

The definition also includes a pathogenic agent that causes disease, for example an infectious agent composed primarily of protein that can cause disease (for example BSE or "mad cow disease").

Other types of agents that cause animal or plant disease may also be prescribed under a regulation. The definition also includes contaminants, which are further defined in clause 18.

The definition provides for biosecurity matter to include the whole lifecycle including egg, larva, pupa and adult.

16 What is a *biosecurity risk*

Clause 16 defines a 'biosecurity risk' as a risk of any adverse effect on a biosecurity consideration that is caused by, or likely to be caused by, biosecurity matter, dealing with biosecurity matter or a carrier; or carrying out an activity relating to biosecurity matter or a carrier.

The term 'deal with' is defined in Schedule 5 to include a broad range of activities undertaken by a person associated with biosecurity matter or the carriers of biosecurity matter. Activities undertaken by a person will pose varying levels of biosecurity risk. This may be because of the manner in which the activity is undertaken or the inherent risk associated with the activity. A person who deals with biosecurity matter has a direct bearing on the biosecurity risk posed by the biosecurity matter. For example, a person who disposes of an invasive plant that is in seed into the environment creates an immediate biosecurity risk because of the invasive nature of the plant.

17 What is a *carrier*

Clause 17 defines a 'carrier' as any thing that is capable of moving biosecurity matter that is attached to it, or contained in it, from one place to another place. A carrier can also contain biosecurity matter that may attach to or enter another animal or plant, or part of another animal or plant or another thing.

Carriers may be an animal or plant, or part of an animal or plant, whether alive or dead, inanimate objects, or a human.

For example, a cow may be the carrier of BSE, a banana plant may be the carrier of black Sigatoka disease.

Plants, animals, inanimate objects and agricultural commodities can be carriers of contaminants within or on them.

Inanimate objects such as farm equipment may be a carrier of FMD if that virus has attached itself to the equipment. A person may inadvertently be a carrier or potential carrier of equine influenza on their clothing if they were dealing with horses suspected of carrying the virus and the virus (through a bodily fluid of the horse) has attached to the clothing.

18 What is a *contaminant*

Clause 18 of the Bill defines a 'contaminant' as anything that may be harmful to animal or plant health or pose a risk of any adverse effect on a biosecurity consideration. The Bill regulates contaminants to minimise their harm on animals, crops, human health and the economy.

The clause provides examples of a contaminant including—

- biologicals (such as pathogenic bacteria in irrigation water);

- environmental contaminants (such as dioxins, residual organochlorin pesticides and nanoparticles);
- heavy metals, asbestos and radioactivity from wastes arising from industrial and mining activities;
- waste form industrial and mining activities, including waste containing asbestos, heavy metals or radioactive material; and
- weed seeds.

Contaminants may result from production, manufacture, processing, preparation, treatment, packing, packaging, transport or as a result of environmental contamination.

Weed seeds are contaminants when they are present in seeds for sowing or grain for stockfeed. The sowing of contaminated seeds can contribute to weed spread and can also impact on food safety where food-producing animals ingest crops infested with weeds containing harmful substances which pose a risk to human health or the economy.

19 What is *prohibited matter*

Clause 19 defines 'prohibited matter' as biosecurity matter that, for the time being, is established as prohibited matter under Chapter 2.

20 Prohibited matter criteria

Clause 20 provides the criteria for prohibited matter under the Bill. Prohibited matter is biosecurity matter that is not present, or not known to be present in the State, and it is believed on reasonable grounds that if the biosecurity matter was to enter the state it may have a significant adverse effect on a biosecurity consideration.

An example of a significant adverse effect on the economy is where a requirement for proof-of-freedom of the biosecurity matter is imposed for trade or market access for a product.

Schedule 1 of the Bill lists things that are prohibited biosecurity matter.

The list of prohibited matter will need to change over time as mutations of existing biosecurity matter occurs, new biosecurity matter emerge and the pathways for exotic biosecurity matter to Queensland increase. There are many known cases of biosecurity matter for which the risk is unknown or a risk assessment has not been undertaken. The Bill therefore provides for a regulation to prescribe things that are prohibited matter and the chief executive to make an emergency declaration declaring a thing to be prohibited matter.

21 What is *restricted matter*

Clause 21 defines 'restricted matter' as biosecurity matter that, for the time being, is established as restricted matter under Chapter 2.

Restricted matter has a category number or numbers assigned to it in Schedule 2 or in the restricted matter regulation providing for its establishment as restricted matter under Chapter 2.

22 Restricted matter criteria

Clause 22 provides the criteria for restricted matter under the Bill. Restricted matter is biosecurity matter that is currently present in the State, and it is believed on reasonable

grounds that if conditions are not imposed to reduce, control or contain the matter, it may have an adverse effect on a biosecurity consideration.

In recognition that new biosecurity matters emerge, existing ones mutate and the pathways for exotic biosecurity matters to Queensland will increase, other things can be prescribed under a regulation as restricted matter.

Chapter 2 Significant obligations and offences

Chapter 2 creates the general biosecurity obligation applying to all persons and outlines the means by which they may discharge their obligation. The chapter also creates a range of serious offences including offences about dealing with prohibited and restricted matter.

Part 1 General biosecurity obligation

23 What is a *general biosecurity obligation*

Clause 23 outlines the general biosecurity obligation.

Subclause (1) provides that a general biosecurity obligation applies to a person who deals with biosecurity matter or a carrier, or carries out an activity, and knows or ought reasonably to know that the biosecurity matter or the carrier or activity poses or is likely to pose a biosecurity risk.

Subclause (2) requires a person to take all reasonable and practical measures to minimise the likelihood of causing a biosecurity risk.

Subclause (3) requires a person to do whatever is reasonably required to minimise the adverse effects of dealing with a biosecurity matter or carrier on biosecurity considerations. For example if an animal is infected with a disease, a person could isolate the animal to minimise the risk of the disease spreading to other members of the herd and to other animals in surrounding areas owned by other people.

24 General biosecurity obligation offence provision

Clause 24 creates an offence for a person, without reasonable excuse, to fail to discharge their general biosecurity obligation.

The clause describes the maximum penalties. If the offence is an aggravated offence (as defined in clause 27 being an offence that causes significant damage, or is likely to cause significant damage, to biosecurity considerations) the maximum penalty is three years imprisonment or 3000 penalty units. If the offence is a failure for a person to discharge their general biosecurity obligation in relation to prohibited matter, the maximum penalty is one year imprisonment or 1000 penalty units. The maximum penalty for a person who fails to discharge their general obligation for restricted matter is six months imprisonment or 750 penalty units and for any other failure, the maximum penalty is 500 penalty units.

25 Effect of regulation for discharge of general biosecurity obligation

Clause 25 details the effect of a regulation in relation to a person discharging their general biosecurity obligation. Where a regulation prescribes a way of discharging a general biosecurity obligation, the person discharges their obligation by complying with the regulation.

Unless stated in the regulation, the regulation will not prescribe every common sense practice that a person must do to discharge their general biosecurity obligation. For example, a regulation may not state that a person must wash their hands after handling horses during an outbreak of equine influenza. However, there is a risk that in not washing hands after handling a horse that may be infected with equine influenza, a person could spread the disease between horses. It is no defence to a charge of failing to discharge the obligation because the regulation did not state that a person must wash their hands.

Subclause (3) provides that if a person contravenes the regulation provision, the person fails to discharge their general biosecurity obligation and the general biosecurity obligation offence provision will apply.

26 Effect of code of practice for discharge of general biosecurity obligation

Clause 26 details the effect of a code of practice in relation to a person discharging their general biosecurity obligation.

The Bill enables the chief executive to make compulsory and voluntary Codes of Practice to assist a person meet their biosecurity obligations. Codes of Practice may, for example, contain technical details or best practice measures for an agricultural activity or be of a general nature about biosecurity risk management in animal husbandry.

Similar to clause 25, a code of practice may not provide all that a person has to do to discharge their obligation. There will be common sense practices that a person should ordinarily be doing which may not be identified in a code of practice. It is not a defence for failing to discharge a biosecurity obligation if a person relies solely upon a practice not being contained in a code of practice.

A person fails to discharge their obligation by contravening or acting inconsistently with a code, or by not following another way that is at least as effective as the way stated in the code.

If a regulation prescribes mandatory compliance with the whole or stated part of a code of practice, any contravention or act inconsistent with the code of practice or stated part by a person is deemed to be a failure by the person to discharge their general biosecurity obligation.

27 Aggravated offences—significant damage to health and safety of people or to the economy or environment

Clause 27 proscribes that an offence is an aggravated offence if it causes significant damage, or is likely to cause significant damage, to human health and safety, the economy or the environment.

To secure a conviction for an aggravated offence, the prosecution must prove that the person who committed the offence intended their conduct to cause significant damage to human health and safety, the economy or the environment, or that the person was reckless as to whether their conduct would cause such significant damage.

The maximum penalty for a conviction of an aggravated offence is three years imprisonment or 3000 penalty units.

28 Defence of due diligence

Clause 28 provides that in a proceeding for an offence against the general biosecurity obligation, it is a defence to prove that the person exercised all due diligence and took all reasonable precautions to prevent the commission of the offence.

Without limiting the ways a person proves diligence, the clause provides a number of ways in which a person may show that he or she has exercised due diligence, including for example, by proving that the person took the precautions that were reasonable in all the circumstances to prevent the spread of any biosecurity matter.

The clause also provides that a person can prove that they acted diligently if they prove that they followed a way that was either stipulated in a regulation or code of practice made in relation to the particular biosecurity matter or activity.

Part 2 Prohibited matter

Division 1 Establishing what is prohibited matter

29 Basic prohibited matter declaration provision

Clause 29 provides that biosecurity matter mentioned in Schedule 1 or prescribed in a regulation or declared by the chief executive under an emergency prohibited matter declaration is prohibited matter.

30 Prohibited matter regulation

Clause 30 allows the Minister to recommend to the Governor in Council that a regulation be made prescribing particular biosecurity matter as prohibited matter or that prohibited matter in Schedule 1 or made under an emergency prohibited matter declaration to be no longer prohibited matter.

The list of prohibited matter will need to change over time as new biosecurity matter emerge and the pathways for exotic biosecurity matter to Queensland increase. In addition, prohibited matter may need to be removed from the list if it establishes in Queensland.

Subclause (2) outlines the issues that must be considered by the Minister in making a recommendation to the Governor in Council to prescribe particular biosecurity matter as prohibited matter. These provisions ensure that any required action is undertaken promptly to reduce the adverse effects on a biosecurity consideration.

Subclause (3) lists the criteria the Minister must be satisfied before recommending that particular biosecurity matter identified in Schedule 1 or declared under an emergency prohibited matter declaration, no longer be identified as prohibited matter.

The criteria include whether it is no longer appropriate for the biosecurity matter to be subject to the provision of the Act relating to prohibited matter. For example, if a subsequent risk assessment of an invasive plant that is present in another State and grown for the cut flower market reveals that the species poses a lesser threat to a biosecurity consideration than an original assessment revealed, the species could be removed from the prohibited matter list and might be included on the restricted matter list in Schedule 2 where it can be more appropriately regulated.

31 Chief executive may make emergency prohibited matter declaration

Clause 31 empowers the chief executive to make emergency prohibited matter declarations about prohibited matter.

A situation could arise where an unknown, unexpected or unlisted exotic pest or disease could potentially enter Queensland. Subclause (1)(a) provides for immediate action to be taken by empowering the chief executive to declare by gazette notice that the biosecurity matter is prohibited matter.

Situations may also arise where it is no longer appropriate to list biosecurity matter as a prohibited matter, for example where it has become established in a part of Queensland and the requirements not to deal with prohibited matter are no loner appropriate. In these cases Subclause (1)(b) provides that the chief executive can declare biosecurity matter listed in Schedule 1 or prescribed in a regulation as prohibited matter to no longer be prohibited matter. The chief executive could list the matter as restricted matter where this enables a more appropriate response.

Subclause (2) provides that the chief executive may only make an emergency prohibited matter declaration to declare matter as prohibited matter if the biosecurity matter satisfies the prohibited matter criteria and it is necessary to make the declaration to prevent or limit the adverse effects.

For example, an occasion may arise where a previously unknown pest or disease is identified in another jurisdiction and is suspected of being the cause of stock losses in those jurisdictions. With the frequency of movement of goods between States and from overseas, there may be heightened risk that the pest or disease could be introduced into Queensland within a short period of time. Allowing the chief executive to make an emergency prohibited matter declaration in this type of situation will enable enhanced prevention, surveillance and eradication action to be taken in relation to the matter and will assist in mitigating biosecurity risks associated with the particular biosecurity matter. In urgent situations, emergency prohibited matter declarations avoid delays in listing the matter through a regulation making process.

Subclause (3) allows the chief executive to declare any prohibited matter, no longer prohibited matter. The chief executive may only make this declaration if satisfied that the biosecurity matter is no longer contained and can not be eradicated, or the biosecurity matter has spread and is in a large area of the State, or the rate of spread of the biosecurity matter means that it is likely to spread over a large area of the State or for another reason, such as it is no longer practical, or it is otherwise no longer appropriate for the biosecurity matter to be subject to the provisions of this Act relating to prohibited matter.

This provision is necessary as the Bill imposes obligations on a person to report the presence of prohibited matter to an inspector (Clause 36) and not to deal with prohibited matter (Clause 37). A failure to comply with these clauses is an offence. Where attempts to eradicate particular prohibited matter have failed and the prohibited matter has spread quickly throughout Queensland affecting many Queenslanders, it would be unreasonable to impose these prohibited matter obligations on the public and expose members of the public to prosecution for failing to comply with these obligations. The removal of matter from the

prohibited list ensures that a person is not unreasonably penalised under the relevant offence provisions relating to prohibited matter.

Subclauses (4), (5) and (6) detail matters about publishing the emergency prohibited matter declaration. To avoid any consequences from possible delays in the gazettal process, the chief executive may give notice of the declaration in newspapers, radio, or television in the areas affected by the biosecurity matter or by alternate electronic means, for example, SMS message texting. The chief executive is required to gazette the declaration as soon as practicable after the declaration and any actions taken under the declaration prior to the gazettal are not affected by the non-gazettal.

32 Matters for inclusion in emergency prohibited matter declaration

Clause 32 provides that an emergency prohibited matter declaration must include provisions providing a description of the biosecurity matter, the emergency declaration area, when the declaration begins and when it expires.

33 Effect and duration of emergency prohibited matter declaration

Clause 33 provides that an emergency prohibited matter declaration has effect from when it is made and unless sooner revoked, will stay in force until 3 months after it comes into force under a regulation.

34 Requirement for both prohibited matter regulation and emergency prohibited matter declaration to classify new prohibited matter

Clause 34 provides that a prohibited matter regulation or emergency prohibited matter declaration that declares biosecurity matter to be prohibited matter must also declare in which particular section of Schedule 1 (grouped according to specific matter), the prohibited matter is to be included. For example, if a new noxious fish has been declared prohibited, it will be classified under Part 6 (Noxious fish) of Schedule 1.

35 Up-to-date listing of all prohibited matter to be available on the department's website

Clause 35 obliges the Minister to keep an up-to-date list of all biosecurity matter that is currently prohibited matter on the department's website.

Division 2 Obligations relating to prohibited matter

36 Reporting presence of prohibited matter

Clause 36 requires a person to report the presence of prohibited matter to an inspector. Early notification of the detection of prohibited matter and a swift response minimises the impacts of a biosecurity event. The reporting obligation is imposed upon a person if the prohibited matter is, on its own or in or on a carrier at their place, or in their possession.

Subclause (2) provides that if a person is not aware that an inspector has already been advised, the person must not delay in advising an inspector of the presence of biosecurity matter. It is an offence to fail to comply with this provision carrying a maximum penalty of 1000 penalty units or one year's imprisonment.

Subclause (3) excuses a person from liability for failing to advise an inspector of an offence against the clause if the dealing with the prohibited matter is authorised under a prohibited

matter permit or otherwise under their lawful control under another Act or a law of the Commonwealth.

Subclause (4) excuses a person from the notification requirement if another person has already advised an inspector of the presence of the prohibited matter.

Subclause (5) requires a person not to take any action likely to exacerbate the spread of the biosecurity matter, but to take action to minimise the risk posed by the prohibited matter. A failure to comply with this provision is to be an offence with a maximum penalty of 1500 penalty units or one year's imprisonment.

37 Dealing with prohibited matter

Clause 37 prohibits a person from dealing with prohibited matter. Failure to comply with this provision is an offence carrying a maximum penalty of 1000 penalty units or one year's imprisonment.

The definition of 'deal with' in Schedule 5 includes a broad range of activities including possession or sale. A person's dealing with biosecurity matter may have the potential to increase the risk posed by the biosecurity matter. Because of the heightened biosecurity risks associated with prohibited matter, the clause prohibits all dealings with prohibited matter by a person. For example, the stinging catfish is a rapid and successful reproducer and would compete with native species for breeding sites and similar resources if it were to be introduced into Queensland. These fish are currently listed as prohibited matter and therefore the possession or sale of such species is prohibited.

Subclause (2) clarifies that a person does not commit an offence only because the person advises an inspector about the discovery of prohibited matter. It would be unreasonable for a person to be prosecuted for dealing with the prohibited matter when the person, upon discovery of the prohibited matter, reported its presence to an inspector.

Subclause (3) provides that a person does not commit an offence of dealing with prohibited matter if it is done under a prohibited matter permit, a biosecurity emergency order or the authority of another Act or law of the Commonwealth. Additionally, the subclause provides that a person does not commit an offence under this clause if the dealing with the prohibited matter is for the purposes of its seizure under Chapter 10, or that the person has a reasonable excuse for the dealing.

Part 3 Restricted matter

Division 1 Establishing what is restricted matter

38 Basic restricted matter declaration provision

Clause 38 provides that biosecurity matter mentioned in Schedule 2 or prescribed as restricted matter in a regulation is restricted matter.

39 Restricted matter regulation

Clause 39 empowers the Minister to recommend to the Governor in Council that a regulation be made declaring particular biosecurity matter as restricted matter. The clause also enables a declaration stating particular biosecurity matter listed in Schedule 2 of the Bill to no longer be restricted matter.

Subclause (2) provides that before the Minister recommends the prescribing of particular biosecurity matter as restricted matter, the Minister must first be satisfied that the biosecurity matter poses a biosecurity risk. The Minister must be satisfied that prompt action is required to declare it as restricted matter and there are reasonable grounds to believe that, if it was not made a restricted matter to reduce, control and contain it, it may have an adverse effect on a biosecurity consideration.

Subclause (3) allows the Minister to make a recommendation to the Governor in Council to remove particular biosecurity matter from Schedule 2 as restricted matter. The Minister may make such a recommendation if satisfied that prompt action is required to declare it not to be restricted matter and that it is no longer practical or appropriate for the biosecurity matter to be subject to the restricted matter provisions of the Act.

40 Requirement for restricted matter regulation to classify new restricted matter

Clause 40 provides that a restricted matter regulation must also assign a category number to the restricted matter and declare in which particular section of Schedule 2 (grouped according to specific matter), the restricted matter is to be included.

For example, a new restricted invasive plant would be classified under Part 2 (Restricted matter – invasive biosecurity matter) of Schedule 2.

41 Up-to-date listing of all restricted matter to be available on the department's website

Clause 41 obliges the Minister to keep, on the department's website, an up-to-date list of all biosecurity matter that is for the time being restricted matter.

Division 2 Obligations relating to restricted matter

42 Reporting presence of category 1 or 2 restricted matter

Clause 42 requires a person to notify an appropriate authorised officer of the presence of restricted matter that has been assigned Category 1 or 2.

Schedule 2 lists restricted matter and assigns category numbers to each restricted matter. Each category imposes a requirement or a restriction on a person's dealing with the biosecurity matter. It is an offence not to comply with that requirement or restriction designated by the category number. For example, Hendra virus, Red Imported Fire Ant and banana bunchy top virus are restricted matter assigned as category 1. Category 2 includes red-eared slider turtles and the four tropical weeds: Koster's curse; Limnocharis or Yellow bur-head; Miconia and Mikania vine.

Subclause (1) requires a person who is aware of, believes, or should reasonably believe that restricted matter is, whether by itself, or in or on a carrier, at their place, in their possession or under their control, to notify an appropriate authorised officer of the presence.

Subclause (2) requires a person to notify an appropriate authorised officer of the presence as soon as possible but no more than 24 hours after becoming aware of the presence. A penalty of 750 penalty units or six months imprisonment applies for a breach of the obligation as it

relates to category 1 restricted matter and a fine of 200 penalty units for a category 2 restricted matter.

Subclause (3) excuses a person from liability if the person possesses the restricted matter under a permit or is otherwise in the lawful possession or control of the restricted matter.

Subclause (4) provides that a person is not required to advise an appropriate authorised officer of the presence of biosecurity matter if another person has already advised an authorised officer. The subclause provides an example of not being required to report if a veterinary surgeon who diagnosed the presence of restricted matter (e.g. Hendra virus) advised an authorised officer as soon as the diagnosis was made.

Subclause (5) requires a person to refrain from taking action that is likely to exacerbate the biosecurity risk and obliges the person to take reasonable action to minimise the biosecurity risk posed by the restricted matter. Failure to comply with this provision is an offence and a penalty of 750 penalty units or 6 months imprisonment applies.

Subclause (6) clarifies that an appropriate authorised officer for the purposes of notifying category 1 restricted matter is an inspector and for category 2 restricted matter an authorised person appointed by the chief executive.

43 Distributing or disposing of category 3 restricted matter

Clause 43 states what a person must do if they have in their possession or under their control, category 3 restricted matter.

Certain invasive weeds have the capacity to repopulate an area even though they have been killed because their seeds may still be viable. Consequently, it is an offence to distribute or dispose of the restricted matter or anything infected or infested with restricted matter assigned a category 3 unless the distribution or disposal is performed in the way prescribed under a regulation, authorised under a restricted matter permit, or performed by an authorised officer in accordance with the authorised officer's functions under the Act.

The term 'distribution' is defined to mean giving, selling or releasing into the environment.

The unlawful release or disposal of category 3 restricted matter carries a penalty of 500 penalty units.

44 Requirement to kill and dispose of category 7 restricted matter

Clause 44 requires a person who has category 7 restricted matter in their possession or under their control, to kill the restricted matter as soon as practicable. Category 7 restricted matter relates only to noxious, non-native fish.

Some noxious fish are mouth breeders and have the capacity to repopulate, even though they are dead, through their live young kept in their mouths. Consequently, Subclause (2) requires a person to dispose of a thing infected or infested with a category 7 restricted matter in the manner prescribed by a regulation. This allows a regulation to be made about how the category 7 restricted matter fish should be disposed of. A penalty of 500 penalty units applies if a person does not comply with the requirement of a category 7 restricted matter.

Subclause (3) excuses a person from liability if the person possesses the restricted matter under a permit issued under Chapter 8 or the restricted matter is otherwise in the lawful possession or control of a person under another Act or law of the Commonwealth.

45 Offences about other categories of restricted matter

Clause 45 prohibits certain activities associated with certain restricted matter. Subclause (1) prohibits:

- the moving of category 4 restricted matter. Category 4 restricted matter are certain invasive plants and animals. The restriction on the movement of these particular invasive plants and animals is to stop their spread into new areas of the State.
- keeping category 5 restricted matter. Category 5 restricted matter are noxious fish and invasive animals. Due to their high pest potential, these noxious fish and invasive animals are not to be kept by anyone.
- the feeding of restricted matter assigned category 6. Category 6 restricted matter are invasive animals and noxious fish. Invasive animals may be encouraged into urban fringes or settled areas by people deliberately feeding them. Feeding foxes, wild dogs, feral cats and feral pigs can lead to the colonisation of populations of these invasive animals in an area and cause undesirable outcomes, for example, injury to stock caused from an attack by wild dogs, predation of natural wildlife by foxes and feral cats and damage to the environment caused by feral pigs.

Subclause (2) excuses a person from liability for an offence committed against subclause (1) if their actions were authorised under a permit issued under Chapter 8 or otherwise authorised under another Act or law of the Commonwealth.

Subclause (3) excuses a person from being liable of the prohibitions under section 1 if their action is for the purposes of the restricted matter's seizure under chapter 10 as evidence of the commission of an offence.

Subclause (4) excuses a person from committing an offence relating to moving category 4 matter if it were moved to identify it or it was a request of the Board of the Queensland Museum, the department (including the Queensland Herbarium) or another government entity with expertise in the restricted matter in question.

Subclause (5) excuses a person from committing an offence relating to keeping category 5 matter if it were moved to identify it or it was a request of a Queensland Museum, Queensland Herbarium or another government entity with expertise in the restricted matter in question.

Subclause (6) excuses a person from committing an offence relating to the feeding of category 6 matter if it were for the lawful baiting, trapping or shooting the category 6 restricted matter.

Part 4 Other offences

46 Designated animals feeding on animal matter

Clause 46 makes it an offence for a person to feed animal matter to a designated animal (other than bees) and subclause (2) provides that it is an offence to not take reasonable steps to ensure designated animals do not feed on animal matter. Both offences carry a maximum penalty of 400 penalty units.

BSE or 'mad cow disease' is a disease of cattle which can be transmitted to humans and cause variant Creutzfeldt-Jakob disease via the consumption of BSE contaminated food. Currently, there is no cure for BSE. Ingestion of animal matter contaminated with the BSE disease agent or FMD is recognised as a major cause of spread of BSE and FMD respectively.

Designated animals are defined in clause 134 as cattle; sheep; goats; pigs; bison, buffalo; deer; the family *Camelidae*; the family *Equidae*; captive birds; bees; or an animal prescribed under a regulation as a designated animal. Schedule 5 defines animal matter as animal material or tissues derived from animal origin including fish and birds.

Subclause (3) provides exemptions to the offences in certain circumstances. A person does not commit the offences if there is a prescribed way to feed them under a regulation or if it is authorised under another Act or a law of the Commonwealth. Additionally, a person does not commit an offence against the provisions if the person is given permission by the chief executive to carry out the prohibited activity for scientific purposes under the *Animal Care and Protection Act* 2001 (in this case the animal matter must only be fed to the animal as required by the chief executive), or uses animal matter in poisoned bait for killing a feral pig. It is a further exemption to the offence if the feeding of animal matter is by an entity to designated animals kept primarily for use in a circus or zoo or for some other form of exhibition, and the animals are not pigs, ruminants, or captive birds other than raptors. Also it is an exemption if the feeding is done under the direction of a veterinary surgeon for the purpose of disease control provided the animal matter is derived from the same species and comes from the same designated place as the designated animal.

47 Notifiable incidents

Clause 47 requires a person to notify an inspector of a notifiable incident where there are symptoms or conditions in plant or animal stock that indicate the presence or suspected presence of a prohibited, restricted or unknown biosecurity matter which may result in adverse impacts upon a biosecurity consideration. For example, symptoms or conditions could include blisters on the mouths or feet of certain animals, abnormally high mortality rate or morbidity in animals or plants. A person is obligated to notify an inspector of the notifiable incident arises when they:

- become aware of the incident, and
- believe or ought reasonably to believe the incident is a notifiable incident, and
- have no grounds for believing an inspector has already been notified.

Subclause (2) makes it an offence if a person, without a reasonable excuse, fails to notify an inspector of an incident and fails to comply with the requirements of the clause. The offence carries a penalty of 1000 penalty units.

Subclause (3) requires, if practicable, the person to notify their local inspector of the incident.

Subclause (4) outlines how the incident is to be communicated to the inspector. The giving of a notice can be by telephone, email or other electronic means. If the notice is given orally, it must be followed by a written notice, including any documents that pertain to the notifiable incident (for example, an analyst’s report of analysis showing the results of testing for contaminants).

Subclause (5) states that any relevant documents should be forwarded to the relevant inspector as soon as possible after notification has been made.

Subclause (6) states that a person must take any action to minimise the biosecurity risk posed and not take any action that is likely to exacerbate the biosecurity risk posed by the biosecurity matter or carrier that is the subject of the incident.

Chapter 3 Matters relating to local governments

Chapter 3 provides for the functions and obligations of local governments under the Bill. Local governments' main purpose is to manage invasive biosecurity matter within their jurisdictions.

Part 1 Provisions about functions and obligations of local governments

48 Main function of local government

Clause 48 identifies the main function of a local government under the Bill is to ensure invasive biosecurity matter is managed within a local government's area in compliance with the Act. The clause identifies invasive biosecurity matter to be:

- prohibited matter mentioned in schedule 1 (parts 3 & 4);
- prohibited matter taken to be included in schedule 1 (parts 3 & 4) under a prohibited matter regulation or emergency prohibited matter declaration;
- restricted matter mentioned in schedule 2, part 2;
- restricted matter taken to be included in schedule 2, part 2 under a restricted matter regulation.

Subclause (2) provides that if an invasive animal board has the responsibility of managing an animal then the local government does not also have responsibility for that animal within the area of jurisdiction that the board has within the local government area.

Subclause (3) allows local governments to make local laws about the management of invasive animals and plants.

49 When State and local government act in partnership

Clause 49 enables the chief executive (on behalf of the State) and the chief executive officer (on behalf of a local government) to agree to enter into a collaborative arrangement whereby the State may assist local government in relation to the administration or enforcement of its responsibility under the Bill. The arrangement may be directed at ensuring a coordinated way to respond to a biosecurity event or sharing of costs between the parties for a biosecurity event.

50 Minister may direct local government to perform function or obligation

Clause 50 provides that the Minister may, if the Minister reasonably believes a local government is not performing its functions or obligations under the Act, direct the local government through a local government compliance notice to perform the function or obligation. The notice must state the function or obligation that has not been met, what action must be taken to redress the matter and when the action is required to commence.

Before issuing the compliance notice, the Minister must consult with the local government and consider the local government's views about the performance of the function or obligation. The local government is required under the clause to comply with the Minister's direction.

51 Chief executive may act to perform local government's functions

Clause 51 provides for the chief executive, on behalf of the State, to perform the local government's functions if the local government did not comply with the direction of the Minister under clause 50.

Where the chief executive is satisfied that a local government has not achieved substantial compliance with the notice, the chief executive may by gazette notice, perform the function or obligation and take stated action. The chief executive may also perform the function or obligation and take stated action where the chief executive and the local government agree that the local government is unable to achieve substantial compliance with the notice.

The chief executive has the powers of the local government while performing the functions or obligations of the local government. Any costs incurred by the chief executive in performing or taking action under this clause are a debt payable by the local government to the State.

52 Minister may ask for particular information from local government

Clause 52 provides that the Minister may request a local government to provide a written report about any function performed, or expected to be performed, or power exercised by the local government under the Act. The local government is required under the clause to comply with the direction of the Minister.

Part 2 Biosecurity plans for local government areas

53 Local governments to have biosecurity plan

Clause 53 provides that a local government must have a biosecurity plan for dealing with biosecurity matter for its area. The clause sets out what may be included in a biosecurity plan including objectives, strategies to meet the objectives, communication strategies how the plan is to be evaluated and other matters that the local government considers appropriate for managing invasive biosecurity matter within its area.

54 Plan to be available for inspection

Clause 54 provides that a local government must keep either a written or electronic copy of its biosecurity plan available for inspection free of charge to members of the public at the local government's office.

55 Local governments acting concurrently for biosecurity plan

Clause 55 states that two or more local governments can propose and adopt the same biosecurity plan. Each local government must implement the plan in its own local government area to the extent the plan relates to that area.

Part 3 Land Protection Fund

56 Continuation of Land Protection Fund

Clause 56 provides for the continuation of the Land Protection Fund that was established under the *Stock Route Management Act 2002.*

57 Purpose and administration of fund

Clause 57 sets out that the purpose of the Fund is to provide for activities that support local governments in meeting their biosecurity responsibilities of managing invasive animals and plants through—

- research about managing invasive animals and plants for the local government's area;
- educational and training programs about invasive animals or plants in the local government's area;
- the maintenance by an invasive animal board of any parts of the barrier fence included in, or that benefits, the local government's area;
- taking action under a biosecurity program for invasive animals or plants in the local government's area.

The clause also describes the financial collections expected for the fund which include those amounts made available by the chief executive, or given to the chief executive by another entity, the proceeds of the sale or hire of any buildings, equipment or machinery acquired by the Minister or chief executive in relation to the fund, the amount of any costs incurred and recovered by the chief executive in relation to invasive animals and plants, an annual amount paid by the local government as required by the Minister and any other amounts received under this Act and prescribed under a regulation.

58 Payments from fund

Clause 58 provides that expenditure from the Land Protection Fund shall only be for expenses incurred by the chief executive, amounts necessary for the operation of the invasive animal board, or for any payment permitted under the Act or authorised by the chief executive to be paid from the Fund.

59 Consultation with local government about activities

Clause 59 requires the chief executive to consult with the relevant local government regarding suitability and priority of activities, before paying an amount from the fund for services to be provided by the chief executive that help to achieve the local government's responsibilities.

60 Minister may require local government to make annual payment

Clause 60 empowers the Minister to require, by notice and within a stated period, a local government to pay an amount (for a financial year) to the chief executive for activities in its area that help the local government meet its responsibilities relating to invasive animals and plants for its area or maintenance of a barrier fence. The amount must not be more than the maximum amount prescribed under local government regulation. The clause provides that the notice must state the period in which the amount must be paid by the local government and the local government must pay within that period.

The Minister must have regard to the nature and extent of the services provided and whether the land would benefit from the action taken. Examples of services provided to the local government area including research, education, planning, mapping, training and strategic and preventative control.

61 Minister must give local government report about activities

Clause 61 provides that the Minister must issue each local government that has contributed to the fund under clause 60, a written report for the financial year detailing outcomes of services provided by the chief executive under this Act in the local government's area.

Chapter 4 Invasive animal barrier fencing

Chapter 4 deals with invasive animal management through maintaining the existing invasive animal barrier fences and undertaking other pest animal management activities. The chapter establishes building authorities that are the responsibility of an invasive animal board, one or more local governments or the chief executive. The chapter also establishes the functions of an invasive animal board.

Part 1 Invasive animal boards

Division 1 Establishment

62 What is an invasive animal board and what is its operational area

Clause 62 establishes that an invasive animal board is declared by regulation that includes the board name, the invasive animal to be managed by the board, the barrier fence the board is responsible for, the number of board directors and the operational area.

63 Legal status

Clause 63 provides that an invasive animal board is to be a body corporate, have its own seal and may sue or be sued in its corporate name. An invasive animal board represents the State and has the privileges and immunities of the State.

64 Application of other Acts

Clause 64 specifies that invasive animal board is a statutory body under the *Financial Accountability Act 2009* and *Statutory Bodies Financial Arrangements Act 1982* and sets out the way the board's powers are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

65 Board's function

Clause 65 establishes that the responsibility of an invasive animal board is to keep the part of a barrier fence for which it is responsible maintained so that it is an effective barrier against the invasive animal that the board is managing. The clause provides that maintaining the fence may include repairing or replacing damaged sections of the fence, clearing obstructions away from the fence for the purposes of ensuring the integrity of the fence, and inspecting the condition of the fence. The clause states that if invasive animal board has an operational area, it also has a function of managing the invasive animal for which it was established in the operational area.

66 Board's powers

Clause 66 provides that an invasive animal board has all the powers of an individual. The board may, for example, enter into contracts, appoint and act through agents and attorneys, acquire, hold, deal with and dispose of property, charge and fix terms for goods, services and information t supplies and employ staff and engage consultants. The board may also do anything else necessary or convenient to perform its functions.

67 Minister may give direction to board

Clause 67 provides the Minister with the power to issue a direction to an invasive animal board about the performance of a function or exercise of its powers if it is necessary and in the public interest. Before issuing a direction the Minister must consult with the board. If a direction is given the board must comply with it. The Minister must publish in the gazette a copy of the direction within 21 days after it is given.

Division 2 Board directors

68 Control of board

Clause 68 establishes that the directors of an invasive animal board control the board.

69 Role of directors

Clause 69 provides that the directors of an invasive animal board are responsible for the way the board performs its functions and exercises its powers. The role of the directors is to ensure that the board performs its functions in an appropriate, effective and efficient way.

70 Appointment of directors

Clause 70 establishes that the directors of an invasive animal board are to be appointed by the Minister. The clause also provides for a regulation to prescribe the number of directors that must be appointed to represent a local government for the area within which an invasive animal board has responsibility for a part of the barrier fence and the minimum qualifications a person must have to be appointed as a director. The clause provides an example that the regulation may require a person to have legal or business qualifications to be appointed.

71 Chairperson

Clause 71 provides that the directors of an invasive animal board will choose one of them to be the chairperson of the board. However, if the chairperson is not chosen within one month after the first meeting of the board, the chief executive will then choose one of the directors to be the chairperson. The director chosen as chairperson remains in that position until the first meeting after one year of being in that position.

72 Disqualification for directorship

Clause 72 establishes that person cannot be a director or continue to be a director of an invasive animal board if they are an insolvent under administration within the meaning of section 9 of the Corporations Act; or they have been convicted of an indictable offence whether on indictment or summarily; or an offence against this Act.

73 Term of appointment

Clause 73 sets out that a director of an invasive animal board is appointed for no more than three years. However, the term of a director may be extended beyond three years until the director's successor is appointed. Also if a person is appointed as a director to fill in for the remainder of another director's term the person is appointed only for the remainder of the appointed director's term.

74 Termination of appointment

Clause 74 establishes that the Minister may remove a person from office as a director of an invasive animal board if the director ceases to be necessarily qualified, or is absent from three consecutive meetings of the board without the board's leave and without reasonable excuse; or if the Minister is satisfied the director is incapable of performing the necessary duties

because of physical or mental incapacity; or has performed the duties carelessly, incompetently or inefficiently; or has committed misconduct of a kind that could justify dismissal from the public service if the director were a public service officer.

75 Vacation of office

Clause 75 provides that the position of a director of an invasive animal board becomes vacant if the director resigns by signed notice and the resignation is given to the board, or if the director is removed by the Minister.

76 Disclosure of interests

Clause 76 provides that a director must not have an interest that could conflict with the proper performance of duties when an issue about that interest comes before the board. As soon as practicable after a director becomes aware they have a conflict of interest they must disclose that conflict of interest to the board. Unless the board directs otherwise, the director is not to be present for consideration to take part in a decision. The disclosure is to be recorded in the board's minutes. Offence penalties are provided and interest does not include an interest that the director has in common with others of any nominating entity.

Another director who also has a direct or indirect financial or personal interest in the matter must not be present when the board of directors is considering its decision or take part in making the decision.

77 Director to act in board's interest

Clause 77 removes any doubt that the director is required to act in the best interests of the board.

Division 3 Business and meetings

78 Conduct of business

Clause 78 enables an invasive animal board to conduct its business and meetings in the way it considers appropriate.

79 Times and places of meetings

Clause 79 specifies an invasive animal board's meeting arrangements and when a meeting is to be called. The time and place of the first meeting is to be decided by the chief executive and there must be at least one per year.

The chairperson a board can call a board meeting at any time and must call a meeting if asked by at least one-half of the directors comprising the board.

80 Quorum

Clause 80 sets out that a quorum for an invasive animal board is half of the directors plus one or, if the number is not a whole number, the next highest whole number.

81 Presiding at meetings

Clause 81 provides that the board's chairperson must preside at all meetings at which the chairperson is present. If the chairperson is absent, the director chosen by the directors will preside as chairperson.

82 Conduct of meetings

Clause 82 specifies that a question at an invasive animal board meeting is decided by a majority of the votes of the directors present at the meeting and voting. However, if the votes are equal, the chairperson has a casting vote. If a director present at the meeting abstains from voting then that director's vote is taken to have been for the negative.

The board may hold meetings, or allow directors to take part in its meetings by using any technology reasonable available, such as teleconferencing and videoconferencing.

A resolution is validly made by the board, even if it is not passed at the board meeting if a majority of the board's directors gives written agreement to the resolution and notice of the resolution is given under procedures approved by the board.

83 Minutes

Clause 83 specifies that an invasive animal board is to record proceedings of its meetings and keep a record of its resolutions.

84 Fees and allowances

Clause 84 provides that a director of an invasive animal board is entitled to be paid the fees and allowances approved by the Minister.

Division 4 Financial matters

85 Estimate of board's operational costs

Clause 85 requires an invasive animal board to provide written estimates of operational costs for each financial year at least two months before the start of the financial year to which the estimate relates. The estimates must be accompanied by details, including a works program, for the items to which the costs relates and an amount for each item.

86 Approval for carrying out board's operations

Clause 86 provides the board must obtain the approval of the Minister for its financial year's cost estimates, for example a work program or the purchase of machinery or fencing supplies. In deciding whether to approve the works program the Minister must have regard to the board's function and the expenditure involved in carrying out the works program or doing the other things.

Division 5 Miscellaneous

87 Delegation

Clause 87 empowers an invasive animal board to delegate its functions or powers to an appropriately qualified person.

88 Annual report

Clause 88 obliges the board to prepare an annual report at the end of each financial year and give it to the Minister as soon as practicable. The Minister must table a copy of the report in the Legislative Assembly as soon as practical after receiving it.

Part 2 Barrier fences

Division 1 Identification of the barrier fence

89 What is the *barrier fence*

Clause 89 specifies that a barrier fence is made up of sections of fencing known as the wild dog barrier fence, the wild dog check fence or the rabbit fence. The clause explains that those sections of fencing are mapped (see clause 91).

90 Who is the *building authority* for a barrier fence part

Clause 90 describes that a building authority for a barrier fence is either: an invasive animal board; one or more local governments; or the chief executive.

91 Barrier fence map and amendment of map

Clause 91 explains that the barrier fence is shown on the electronic map held by the department and called 'Barrier Fence Map for Queensland'. The clause provides for the chief executive to amend the barrier fence map to make it more accurate in showing the location of the barrier fence. However, to amend the map, the chief executive must consult with any relevant building authority or an owner of the land. If the barrier fence map is amended it must be given a new version number and the relevant invasive animal board, any relevant land owner, any local government responsible for the fence or any local government within which the barrier fence is located must be notified of the amendment. The new barrier fence map may, without charge, be accessed electronically on the department's website or inspected at the department's head office during business hours.

Division 2 Maintaining barrier fences

92 Building gates and grids in barrier fence

Clause 92 requires the barrier fence board to build and pay for a gate or grid in the fence to allow movement where the fence causes operational interference to a landowner.

93 Maintaining barrier fence

Clause 93 requires the barrier fence board to maintain the fence in a condition that stops the movement of the stated invasive animals from one side of the fence to the other. To enable the board to maintain the fence, the board is given powers to clear a line of up to 20 metres along either side of the fence of vegetation or obstructions and to enter the land to clear obstructions or inspect or maintain the fence.

94 Power to enter a place

Clause 94 enables the barrier fence board to enter a place for the purposes of building, inspecting or maintaining (including clearing of obstructions) a fence or to clear a line along it. To enter the property for these purposes, the board must either obtain the consent of the occupier, or give a written notice to the occupier of the board's intention to enter including the purpose of entry and the intended dates of entry. Where it is impractical to give notice, the board must publish its intention to enter in a newspaper circulating generally in the area or put a notice in a conspicuous place at the property. If the board needs to enter the land in urgent circumstances, the board must give the occupier notice that is reasonably practical in the circumstances.

95 Agreement to make opening in barrier fence

Clause 95 authorises the barrier fence board to enter into an agreement with another person about making an opening in the fence for a particular purpose and period, such as laying a

road or pipeline through the fence. The agreement must be subject to conditions that, as far as practical, prevent the movement of an invasive animal from one side of the fence to the other while the fence is opened.

96 Directing restoration of barrier fence

Clause 96 empowers the barrier fence board to give a person, by written notice, a direction to restore the pest fence to the condition it was in before the damage reasonably was caused by the person. The board must also give the person an information notice about the board's decision. If the person does not comply with the notice, the board may carry out the work.

Where the board has undertaken work to remedy the damage to the fence, it may recover the reasonable costs it incurred in carrying out the work from the recipient of the notice.

Division 3 Offences about barrier fence

97 Damaging, or making openings in, barrier fence

Clause 97 directs that, without a reasonable excuse, it is an offence, with a maximum penalty of 50 penalty units, for a person to damage a barrier fence or make an opening in a barrier fence, other than under an agreement under clause 95 about making the opening.

98 Obstructing inspection or maintenance of barrier fence

Clause 98 makes it an offence, with a maximum penalty of 50 penalty units, for a person, without reasonable excuse, to build a structure, excavate land or carry out an activity likely to obstruct the inspection or maintenance of the barrier fence.

99 Closing gates

Clause 99 makes it an offence, with a maximum penalty of 50 penalty units, for a person, without reasonable excuse, to fail to close a gate in a declared pest fence immediately after use.

Part 3 Barrier fence employees

100 Appointment of barrier fence employees

Clause 100 enables a building authority for a barrier fence part to appoint a person employed or engaged by the authority to exercise powers under this Act in relation to the barrier fence part. The building authority may appoint the person only if it is satisfied the person is appropriately qualified. For the purposes of the Act these people are referred to as barrier fence employees and their appointment must be by instrument in writing.

101 Powers of barrier fence employees generally

Clause 101 provides that a barrier fence employee's powers are given in the employee's instrument of appointment. In exercising those powers the barrier fence employee must follow the directions of the building authority. The powers of a barrier fence employee are limited to—

- entry onto a person's land to perform work necessary for the proper maintenance of the barrier fence; and
- properly maintaining a section of the barrier fence located on the person's land; and
- giving the person a notice to remedy damage to the barrier fence for which the person was responsible.

An employee of a building authority who has been delegated powers under the clause also has powers under Chapter 10, part 1, division 4 and part 5. These relate to additional powers and requirements for entry such as displaying an identity card.

102 Incidental entry to ask for access

Clause 102 provides that, to enable an employee of a building authority to seek consent of an owner to enter their property, the employee of a building authority may enter land around a premises without consent. The entry to seek consent should only be to the places that would ordinarily be open to members of the public when they wish to contact the occupier of the place.

103 Matters employee must tell occupier

Clause 103 provides that a building authority employee, prior to requesting consent to enter the place on behalf of the building authority, must explain to the occupier the reasons for the request, that the occupier does not have to consent and that if consent is given it can be subject to conditions set by the occupier. The occupier can withdraw consent at any time.

Chapter 5 Codes of practice and guidelines

Chapter 5 provides for the making of codes of practice and guidelines about matters relating to biosecurity. Codes of practice prescribe standards for the regulation of specific issues and are outcomes-based and measurable. Codes of practice are made or adopted under a regulation. A regulation may require a person to comply with the whole or part of a code of practice for a person to discharge their general biosecurity obligation. For other codes of practice, a person will discharge their general biosecurity obligation if the person follows the way stated in the code of practice or follows a way that is as effective as or more effective than the code's way.

Codes of practice are made by the chief executive in consultation with relevant entities and codes or parts of codes that have been made by other entities, for example codes made by national bodies, may be adopted.

If a regulation requires strict compliance with the code of practice and the person does not follow the code's stated way, the person will be taken to have failed to discharge their general biosecurity obligation. If a regulation does not require a person to comply with a code, a person must still address the biosecurity risk by following the code's stated way or another way which is at least as effective.

A guideline outlines procedures which can help a person discharge their obligations under the Act. Guidelines, like codes of practice, are made by the chief executive in consultation with relevant entities. However, unlike codes of practice, a person will not be presumed to have failed to discharge their general biosecurity obligation because they failed to follow a guideline.

Part 1 Codes of practice

104 Making codes of practice

Clause 104 provides that a regulation may make codes of practice about matters relating to biosecurity. The purpose of codes of practice made under a regulation is to assist individuals

to discharge their statutory obligations. Codes of practice may be made about, but are not limited to:

(a) ways to minimise biosecurity risks associated with agricultural or animal husbandry practices, land use practices that may spread invasive animals or plants, dealing with carriers of biosecurity matter, or manufacturing processes for animal feed;
(b) how to manage invasive plants and animals and their impacts;
(c) implementing best practice in maintaining hygiene and standards of cleanliness within the plant and designated animal industries to prevent the spread of disease;
(d) ways to prevent, control and stop the spread of biosecurity matter by a carrier including managing the spread of cattle ticks; procedures for treating and disinfecting carriers to prevent, control and stop the spread of biosecurity matter by a carrier, such as cattle tick dipping stations or vaccination programs;
(e) the carrying out of any process or the use of particular technologies in an industry or other activity; and
(f) requirements for the content and labelling of animal feed, fertilisers and other agricultural inputs.

105 Consultation about codes of practice

Clause 105 requires the chief executive to consult with a number of bodies including local governments, industry associations or community groups, before the making of the code of practice is recommended to the Governor in Council. However, while the clause requires the chief executive to consult with relevant bodies, if that consultation does not occur it does not invalidate the code of practice.

106 Tabling and inspection of documents adopted in codes of practice

Clause 106 requires the Minister to table in Parliament a copy of all adopted provisions of codes of practice if they are not part of or attached to the regulation. These must be tabled within 14 days of the regulation being notified. If any amendments are made to the adopted provisions these must also be tabled in Parliament within 14 days of the amendments being made. A failure to table the adopted provisions or keep a copy available for inspection does not invalidate or otherwise affect the regulation.

To ensure the public is aware of and has access to the provisions of any code of practice that are adopted, a copy of the adopted provisions, either in written or electronic form, must be made available by the chief executive, free of charge, to the public for inspection at the department's head office and other places considered appropriate.

Part 2 Guidelines

107 Chief executive may make guidelines

Clause 107 enables the chief executive to make guidelines to provide guidance to local governments, relevant industries and the general public about matters relating to the administration of the Act. The Clause also allows the chief executive to make guidelines about ways a person may discharge their biosecurity obligation and comply with other requirements under the Act. Guidelines may be made about, but are not limited to:

(a) how the monitoring and enforcement of provisions of the Bill are undertaken;
(b) ways of complying with requirements imposed under the Bill in relation to restricted matter, such as ways to humanely kill and dispose of noxious fish, steps to manage invasive plants and their impact on an occupier's land or ways to avoid moving fire ants in soil;

(c) on-farm procedures for keeping and caring for horses to minimise the risk of horses being infected with the Hendra virus, such as ensuring food and water are kept under a roofed structure and away from trees where fruit bats may inhabit; and

(d) raising designated animals on land for the domestic needs of the occupants of the land. For example, a guideline may be made about regulatory requirements for the keeping and moving of designated animals under the Act.

A guideline may be made by adopting another entity's guideline with or without changes. The clause also provides that before making or amending a guideline, the chief executive must consult with relevant entities who have sufficient interest in the making or amending of the guideline. However, while the clause requires the chief executive to consult with relevant bodies, a guideline does not become invalid if the consultation does not occur.

108 Availability of guidelines

Clause 108 requires the chief executive to publish each guideline and make them available to the public free of charge.

109 Obligation to have regard to guidelines

Clause 109 provides that in deciding whether a person has discharged their general biosecurity obligation, a guideline may be taken into account. However, it must not be presumed that because a person has failed to follow a guideline that the person has failed to discharge their general biosecurity obligation. For example, a person may fail to follow general guidelines about on-farm procedures for keeping and caring for horses. If the horses become infected with a disease, the fact that the person did not follow the guidelines will not, of its own, be suggestive that the person has breached their general biosecurity obligation under the Act.

Chapter 6 Managing biosecurity emergencies and risks

Situations may arise where biosecurity matter has an immediate adverse impact on a biosecurity consideration. Given that significant economic, environmental or social impacts may result through the spread of some biosecurity matter, immediate action is required to isolate the affected area, stop the spread of, and eradicate the matter. To achieve this, powers are provided in this chapter that restrict the movement of people and biosecurity matter and carriers of biosecurity matter. A biosecurity emergency order is an order made by the chief executive directed at isolating and stopping the spread of particular biosecurity matter and, if achievable, to eradicate the matter. The chief executive may make a biosecurity emergency order if satisfied on reasonable grounds that an emergency response is necessary.

Part 3 provides for Biosecurity Zones to eradicate, contain, or otherwise restrict the spread of biosecurity matter. A Biosecurity Zone could be as large as the whole of the State or as small as a local government area or a number of properties. Biosecurity Zones are designed to be in place for an extended period.

Part 1 Biosecurity emergencies

Division 1 Preliminary

110 Relationship to other Acts

Clause 110 provides that this Part does not interfere with emergency provisions under other Acts and vice versa.

111 Other Acts not affected

Clause 111 specifically provides that the Bill does not limit the *Disaster Management Act 2003*, Chapter 8 of the *Public Health Act 2005* or the chemical, biological and radiological emergency provisions of the *Public Safety Preservation Act 1986*.

112 Powers under this part and powers under other Acts

Clause 112 provides that the powers under this part are in addition to and do not limit powers under this Bill or another Act.

Division 2 Declaring a biosecurity emergency

113 Chief executive may make biosecurity emergency order

Clause 113 enables the chief executive to make a biosecurity emergency order, by notice and published on the department's website, to respond to a biosecurity event (clause 14 defines the term 'biosecurity event'). In making the order, the chief executive must have regard to the seriousness or potential seriousness of the event and the extent of its impact on the economy, the environment, human health, and social amenity. Before making the order, the chief executive must consult with the Minister and, if the event is likely to have a significant impact on human health, the Chief Health Officer.

Subclause (2) requires the chief executive to take all reasonable steps to ensure that persons likely to be directly affected by the order are made aware of the making of the order and this may be done through media advertising or telephone messaging. After making the declaration, the chief executive must publish the emergency declaration in the gazette and by any other reasonable means to bring the matter to the attention of the public.

Subclause (3) provides that a biosecurity emergency order must be primarily directed at isolating and stopping the spread of particular biosecurity matter and, if practical, to eradicate the matter.

Subclause (4) provides that the chief executive may only make a biosecurity emergency order if satisfied on reasonable grounds that an emergency response is necessary. In making the order, the chief executive must have regard to the seriousness or potential seriousness of the event and the extent of its impact on the economy, the environment, human health, and social amenity. For example the chief executive may make a biosecurity emergency order to limit a biosecurity matter or ensure that a biosecurity event does not occur at all.

Subclause (5) obliges the chief executive, before making the order, to consult with the Minister and, if the event is likely to have a significant impact on human health, the Chief Health Officer.

Subclause (6) provides that if it is not practical to undertake the consultation under subclause (5) prior to making the order, then the consultation must be undertaken as soon as practical after the making of the order.

Subclause (7) provides that an emergency order is not invalid only because the chief executive has not complied with Subclause (2), (5) or (6).

To remove any doubt, Subclause (8) declares that subclauses (2) to (6) also apply for the amendment or revocation of a biosecurity order.

114 Matters for inclusion in biosecurity emergency order

Clause 114 prescribes that a biosecurity emergency order must state:

- the nature and apparent extent of the biosecurity emergency;
- the area to which the order relates;
- the duties and obligations imposed on those occupiers and other persons within the emergency area;
- the duration of the order; and
- any conditions relating to the conduct of the declared biosecurity emergency.

The clause identifies other matters that may be included in a biosecurity emergency order including:

- the requirement for a person to publish warnings about the effect a biosecurity matter or carrier is having on a biosecurity consideration;
- prohibitions on dealing with, and prohibitions or restrictions on movement of, biosecurity matter or a carrier;
- necessary actions that a person is required to take to prevent the introduction, establishment or spread of biosecurity matter;
- recall of biosecurity matter if sold, consigned or distributed;
- requirements for persons to notify an inspector;
- a direction to impound, isolate or destroy biosecurity matter that is intended to be used for human or animal consumption or plant production; and
- a requirement to provide samples of biosecurity matter by a particular method.

The clause provides for an emergency order to establish checkpoints to allow for the stopping and checking of vehicles to ensure that biosecurity matter is not deliberately or inadvertently spread. The clause also identifies several ways in which the area of a biosecurity order may be identified.

115 Effect and duration of biosecurity emergency order

Clause 115 provides that a declared biosecurity emergency order starts from when the chief executive makes a declaration under clause 113 (Chief executive may make a biosecurity emergency order) or a time stated in the order and ends 21 days after it is declared, unless it is revoked sooner by the chief executive or a later time is provided for in the order. A movement control order may also revoke a biosecurity emergency order.

The clause provides that if the biosecurity emergency order is inconsistent with another provision of the act or its associated regulation, a biosecurity zone regulatory provision, a movement control order (discussed at clause 124) or a code of practice, the biosecurity emergency order will prevail to the extent of the inconsistency.

For example, if a movement control order allows the movement of mangoes in an area of north Queensland and a biosecurity emergency order is made regarding mangoes throughout the whole of Queensland, then the emergency order prevails and the mangoes cannot be

moved until the emergency order has ended. A permit or other authorisation given under another Act, such as a permit to travel stock along a stock route, that is inconsistent with a biosecurity emergency order, will have no effect to the extent of the inconsistency while the biosecurity emergency order is in force.

Division 3 Enforcement of biosecurity emergency order

116 Compliance with biosecurity emergency order

Clause 116 provides that it is an offence for a person to fail to comply with a biosecurity emergency order unless the person has a reasonable excuse or did not have a reason to know of the existence of the order. The offence has a maximum penalty of 2000 penalty units or two years imprisonment.

117 Power to stop vehicles

Clause 117 provides that an inspector who is also a police officer, or an authorised transport officer, may require a person in control of a vehicle to stop the vehicle at a biosecurity emergency checkpoint. In stopping the vehicle, the inspector must have regard to objective criteria for the stopping and checking of vehicles at the checkpoint. For example, in the case of equine influenza, it may be that all vehicles carrying horse floats must be stopped and checked.

The clause provides that if the inspector is a police officer, the inspector may require a person to stop a vehicle other than at a biosecurity emergency checkpoint if it is suspected the vehicle may be being used in contravention of the emergency order. It is an offence to fail to comply with the requirement to stop a vehicle under this provision and has a maximum penalty of 500 penalty units.

118 Inspection of stopped vehicle

Clause 118 empowers an inspector, or an authorised person acting under the direction of an inspector, to inspect a vehicle that has been stopped pursuant to a biosecurity emergency order. The inspection is for the purposes of ensuring that the vehicle is not carrying biosecurity matter or a carrier in contravention of the biosecurity emergency order.

The clause empowers an inspector or authorised person acting under the direction of an inspector to take reasonable steps, including by giving a direction to a person to restrict biosecurity matter or a carrier within an isolated area.

It is an offence to fail to comply, without a reasonable excuse, with a direction given under this provision. It is also an offence under this provision to move a vehicle from where it was stopped until an inspector or authorised person acting under the direction of an inspector has inspected the vehicle and given approval for the vehicle to be moved. Both offences have a maximum penalty of 1000 penalty units.

The clause further provides that an inspector or an authorised person may also exercise non-emergency powers under this Act if required, despite the vehicle being stopped under the provisions of a biosecurity emergency order.

119 Additional powers of inspector for place within a biosecurity emergency area

Clause 119 identifies additional powers of an inspector, or an authorised person acting under the direction of an inspector within a biosecurity emergency area. The use of these additional powers is limited to those powers reasonably necessary for managing the biosecurity emergency that is subject of the order and includes;

- entering and re-entering a place with or without consent;
- inspection of vehicles at a private property;
- establish an isolation area;
- give a direction restricting a person, biosecurity matter or a carrier to remain in the isolated area, remove them, or move them to another place;
- direct a person to answer questions or provide any information or documents;
- demolish, or direct a person to demolish, a property such as an outbuilding, barn, cage or yard subject to written approval from the chief executive and without a compliance permit under 575 of the *Sustainable Planning Act 2009*;
- clean or disinfect, or direct a person to clean or disinfect, a thing;
- destroy, dispose of, vaccinate or treat, or to direct a person to do the same, for a biosecurity matter or carrier; and
- direct a person to make equipment inoperable.

Entry to a residence is not authorised under this clause.

120 Requirement to answer question or give information

Clauses 120 provides that it is a reasonable excuse for an individual to fail to answer a question or give information or a document if answering the question or giving the information or document might tend to incriminate the individual or make the individual liable to penalty. This clause applies only to individuals and not to a corporation.

Subclause (2) provides that self-incrimination is not a reasonable excuse for a person to fail to give a document to an inspector if that document is one that has been issued to the person or required to be kept under the Act, for example, a registration certificate. While subclause (2) removes self-incrimination as a reasonable excuse, subclause (4) provides that primary and derived evidence given by a witness is not admissible in a civil or criminal proceeding. Further, any information or thing obtained as a direct or indirect result of evidence is also not admissible. Subclause (5) clarifies that primary or derived evidence is not prevented from being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

Division 4 Biosecurity emergency order permits

121 Biosecurity emergency order permit

Clause 121 empowers an inspector to issue a permit (a biosecurity emergency order permit) on the application of a person, who is subject to the operation of a biosecurity emergency order. The biosecurity emergency order permit authorises the person to perform a stated activity or activities of a stated description that would otherwise be in breach of the biosecurity emergency order. The clause authorises the inspector to grant the permit if the inspector is satisfied that granting the permit will not worsen the effects of the biosecurity emergency or be detrimental to the effectiveness of the biosecurity emergency order. The

inspector may refuse to grant, grant on conditions, amend or cancel the permit by way of an information notice.

122 Offences relating to biosecurity emergency order permits

Clause 122 provides that it is an offence for the holder of a biosecurity emergency order permit to fail to comply with the conditions of the permit (maximum penalty of 1000 penalty points), fail to carry the permit on their person during the period of the order (maximum penalty of 100 penalty points) or fail to produce the permit when requested (maximum penalty of 100 penalty points).

Division 5 Reports about biosecurity emergencies

123 Tabling of report

Clause 123 requires the Minister to table a report in the Legislative Assembly about a biosecurity emergency order within 6 months after the biosecurity emergency ends. The clause details what the report must state including the subject matter, nature and extent of the order, when and why the order was made, the area it applied to, the period it applied for, duties and obligations imposed, as well as any other matters the Minister believes is relevant to ensure that the Legislative Assembly is appropriately informed.

Part 2 Movement control orders

124 Chief executive may make movement control order

Clause 124 enables the chief executive, by notice, to make a movement control order prohibiting or restricting movement of biosecurity matter for the purposes of managing, reducing or eradicating the stated biosecurity matter. The chief executive may make a movement control order only if satisfied that the biosecurity matter under the order poses a biosecurity risk of enough seriousness to justify making the order. The clause details the process for making the movement control order including obliging the chief executive to publish in the gazette notice of the movement control order together with the subject matter generally and where a copy of the order may be obtained.

The chief executive must also take all reasonable steps to ensure that persons likely to be directly affected by the order are made aware of the making of the order, and this may be done through media advertising, or telephone messaging.

Subclause (7) provides that a movement control order may be preventative in nature, for example to prevent a disease from entering the State from another State, and under subclause (8) it remains in force for three months unless it is sooner revoked. Further, subclause (9) provides that, if the movement control order is inconsistent with biosecurity zone provisions under a regulation, the biosecurity zone provisions prevail to the extent of the inconsistency. A regulation may revoke a movement control order.

125 Matters for inclusion in movement control order

Clause 125 sets out the matters that must be included in a movement control order including the reason for the order, the objective of the order, the applicable area, what the controlled biosecurity matter it relates to, the carriers and the prohibitions and restrictions that must be complied with.

A movement control order may prohibit or restrict the movement of biosecurity matter or a carrier into or out of the State or stated areas of the State, or into or out of an area adjacent to a stated area. Conditions may be imposed on the restricted movements. A movement control order may direct action by a person to manage, reduce or eradicate controlled biosecurity matter. It can also impose requirements on a person to do certain things, like disinfecting, treating or destroying biosecurity matter or a carrier, or notifying an inspector about the presence or suspected presence of controlled biosecurity matter.

126 Compliance with movement control order

Clause 126 provides that it is an offence for a person to fail to comply with a movement control order with a maximum penalty of 2000 penalty units or one year's imprisonment.

127 Effect of movement control order

Clause 127 specifies that a movement control order takes precedence over a permit or other authorisation given under an Act, and that such permit or authorisation has no effect to the extent it is inconsistent to with a movement control order. For example, a permit to travel designated animals along a stock route given under legislation relating to the control and management of stock routes would not be effective to authorise travel that is prohibited under a movement control order while the order is in force.

Part 3 Biosecurity zone regulatory provisions

128 Regulation may include provisions for biosecurity zones

Clause 128 provides for a regulation to be made to include provisions establishing the whole or part of the State for a stated biosecurity matter as a biosecurity zone.

For example an area of the State may have across it a particular restricted matter and there is need to protect the rest of the State from that restricted matter. A biosecurity zone could be established in the area of the State that has the particular restricted matter to prevent its transmission or spread outside the zone.

129 Matters for inclusion in biosecurity zone regulatory provisions

Clause 129 provides the matters that may be included in biosecurity zone regulatory provisions which include:

- prohibiting or regulating how a person deals with a stated biosecurity matter;
- directing the eradication of a stated biosecurity matter;
- prohibiting, regulating or requiring the movement of a stated biosecurity matter into, out of, or within a biosecurity zone;
- taking steps to prevent the introduction, establishment or spread of a stated biosecurity matter;
- requiring the inspection or testing of a stated biosecurity matter; and
- requiring records be kept about movement of biosecurity matter in the course of carrying on a business.

Subclause (1)(c) enables the chief executive, by notice and published on the department's website, to establish a particular area within a biosecurity zone to provide for different requirements to apply to that area than those of the biosecurity zone.

Subclause (2) provides for the type of ways that biosecurity zones may be identified, for example, by an area outlined on a map or real property descriptions.

Subclause (3) clarifies that the requirements that may be imposed by the chief executive cannot be greater than those otherwise applying under the biosecurity zone regulatory provisions. By its nature, some biosecurity matter has the ability to spread some distance by natural (non-human assisted) means, for example fire ants, plant diseases like citrus canker or animal disease such as equine influenza. By establishing these areas within a biosecurity zone, it provides a level of flexibility to address the changing circumstances presented by biosecurity matter and quickly limit the imposition of regulatory measures only to those areas where a biosecurity risk may reasonably be present within a point in time.

130 Effect of biosecurity zone regulatory provisions

Clause 130 specifies that biosecurity zone regulatory provisions take precedence over a permit or other authorisation given under an Act, and that such permit or authorisation has no effect to the extent it is inconsistent with the biosecurity zone regulatory provisions. For example, a permit to travel designated animals along a stock route given under legislation relating to the control and management of stock routes would not be effective to authorise travel that is prohibited under biosecurity zone regulatory provisions while the provisions are in force.

Part 4 Biosecurity instrument permits

131 Definition

Clause 131 defines biosecurity instrument to mean a movement control order or biosecurity zone regulatory provisions.

132 Biosecurity instrument permit

Clause 132 empowers an inspector to issue a biosecurity instrument permit on the application of a person, who is subject to the operation of a biosecurity instrument. For example an inspector may issue a biosecurity instrument permit to a person who is affected by a movement control order or is within a biosecurity zone and has already taken remedial measures to rid their property of the controlled biosecurity matter and need to move controlled biosecurity matter into, within or out of the area or zone. The permit may authorise the person to perform a stated activity or activities of a stated description that would otherwise be in breach of the biosecurity instrument.

The inspector may only grant a permit if satisfied that the granting will not increase the level of biosecurity risk posed by the biosecurity matter or be detrimental to the effectiveness of the biosecurity instrument. The permit may be granted on the reasonable conditions the inspector considers necessary to avert the spread of the controlled or regulated biosecurity matter.

The inspector must provide an information notice for a decision to refuse to grant, grant on conditions, amend or cancel a permit.

A permit can not authorise a person to do a thing, or refrain from doing a thing, other than in compliance with a biosecurity emergency order.

133 Offences relating to biosecurity instrument permits

Clause 133 provides that it is an offence to fail to comply with the conditions of a biosecurity instrument permit (maximum penalty of 2000 penalty units or 1 year's imprisonment), fail to carry the biosecurity instrument permit with the person (maximum penalty of 100 penalty units), or fail to produce the biosecurity instrument permit when it is required by an authorised officer for inspection (maximum penalty of 100 penalty units).

Chapter 7 Registration of biosecurity entities and designated animal identification

Chapter 7 provides for registration of entities that keep a threshold number of designated animals or hold designated biosecurity matter and provides for traceability of special designated animals through the National Livestock Identification System (NLIS). The Chapter imposes obligations on persons to keep records about the keeping and movement of designated or special designated animals. Provisions are also made for restricting activities at places identified as posing a biosecurity risk because of past activities carried out at places.

Part 1 Preliminary

134 What is a *designated animal*

Clause 134 defines the term 'designated animal' and lists the animals included in that definition. A regulation may also prescribe an animal to be a prescribed designated animal.

135 What is a *special designated animal*

Clause 135 defines the term 'special designated animal' and lists the animals included in that definition. A regulation may prescribe a designated animal as a special designated animal.

136 What is *designated biosecurity matter*

Clause 136 defines the term 'designated biosecurity matter' as biosecurity matter prescribed under a regulation. However, the clause provides that a designated animal, a disease or a pathogenic agent that can cause disease or a contaminant cannot be prescribed as designated biosecurity matter.

137 What is the *threshold number* of designated animals

Clause 137 prescribes the threshold, (minimum) numbers of designated animals that a person can hold at a place to be a registrable biosecurity entity (under clause 141).

138 What is the *threshold amount* of designated biosecurity matter

Clause 138 provides that the threshold amount of designated biosecurity matter is that amount prescribed under a regulation.

139 Who *keeps* a designated animal

Clause 139 identifies the keeper of designated animals. A person keeps designated animals if the person has responsibility for the animal's care and control, regardless of whether that control is exercised via an agent or their employee.

However, if the keeper cannot be reasonably identified, then the person who has title of the animal is the keeper. Further, a person keeps a designated animal (other than a bee) if the animal is held at a holding facility (defined in Schedule 5) and the person has final

responsibility for the operation of the facility, or the animal is being travelled on a stock route and the person has final responsibility for the travelling of the animal. For example, a farmer has sold his cattle to another person and employs a drover to travel the cattle along the stock route to the purchaser's property. The purchaser is the keeper of the cattle as the purchaser has title to the cattle and has final responsibility for the cattle.

140 Who *holds* designated biosecurity matter

Clause 140 establishes that a person who has the daily control of designated biosecurity matter, holds the designated biosecurity matter. However, if the holder cannot be reasonably identified, then the person who has title to the designated biosecurity matter holds the biosecurity matter.

141 What is a *registrable biosecurity entity*

Clause 141 provides that a person is a registrable biosecurity entity if the person keeps designated animals across one or more places at or above the threshold level, or holds the threshold amount or more of designated biosecurity matter.

The clause establishes that two or more people acting in partnership can be regarded as a registrable biosecurity entity. Additionally, if one of the partners were to separately own other designated animals at or above the threshold limit, that partner is to be regarded as a separate registrable biosecurity entity.

142 What is a *biosecurity circumstance*

Clause 142 defines a biosecurity circumstance as the keeping of designated animals or the holding of designated biosecurity matter.

143 Who is the *occupier* of a place

Clause 143 defines an occupier of a place as the person who is in daily control of the place. Where it is impracticable to determine who the occupier is, the provision deems the person who owns the place as the occupier of the place.

144 Who is the *NLIS administrator*

Clause 144 provides that the NLIS administrator is approved under a gazette notice by the chief executive as the administrator of the database.

Part 2 Registration and related requirements

Division 1 Registration of registrable biosecurity entities

145 Registrable biosecurity entity must apply for registration

Clause 145 requires that unless exempted by the chief executive, a registrable biosecurity entity must apply for registration with the chief executive. It is an offence to fail to register unless the person has a reasonable excuse with a penalty of 100 penalty units.

A person must apply for registration within 14 days of becoming a registrable biosecurity entity. A person may seek an extension on the 14 day period from the chief executive under subclause (5). The chief executive may approve the extension, approve a shorter period to that sought, a longer period to that sought, on conditions, or refuse the application. The chief executive is required to give the person an information notice about the chief executive's decision to refuse the application, approve a shorter period or a period subject to conditions.

A registrable biosecurity entity must apply for registration for each biosecurity circumstance. For example, a person who keeps the threshold number of designated animals must apply for registration for the keeping of those animals. If a person holds the threshold amount of designated biosecurity matter the person must apply for registration for the holding of that designated biosecurity matter. However if a person keeps the threshold amount of designated animals and holds the threshold amount of designated biosecurity matter subclause (4) provides that the person can combine the applications into the one application document.

146 Approval for registrable biosecurity entity to remain unregistered

Clause 146 sets out the circumstances in which a registrable biosecurity entity may apply for exemption from the registration requirement under clause 146. The approval may be given only if the chief executive is satisfied there is no biosecurity risk from being unregistered. If the application for exemption is refused by the chief executive the applicant is entitled to receive an information notice.

147 Application for registration before becoming a registrable biosecurity entity

Clause 147 enables a person to apply for registration if they reasonably expect that they will be a registrable biosecurity entity in the future. For example, a person does not currently keep designated animals but intends to purchase designated animals that will be delivered to their place following the sale. The person may apply for registration before the purchase and arrival of the animals at their place.

Subclauses (3) to (5) provide for a situation where a person who is currently not registered under the Act and intends to hold an event (for example, a cattle sale at their property) involving the keeping of designated animals at a place. That person must apply for registration for the particular biosecurity circumstance (the keeping of the cattle at the person's property) if they expect, on a relevant day, to keep a threshold number of designated animals. The application for registration must be made as soon as practicable, but if not practicable, it must be made before the commencement of the event period. A failure to do so will constitute an offence with a penalty of 100 penalty units.

148 Application requirements for registration of registrable biosecurity entity

Clause 148 outlines the details required on an application for registration of a registrable biosecurity entity.

149 Registration of biosecurity entity

Clause 149 requires the chief executive to consider duly made applications for registration of a person as registrable biosecurity entity.

Subclause (1) specifies that in cases of applications for registration, the chief executive must register the person and decide the risk status details for the entity. The chief executive must provide details of the registration to the person together with an information notice about the registration details. The information notice must also include details of the biosecurity risk assigned by the chief executive to the designated place or the designated animal or designated biosecurity matter to which the entity's registration relates.

150 Chief executive may register person without application

Clause 150 provides that the chief executive may register a person as a biosecurity entity if the chief executive considers that person is or is likely to become a registrable biosecurity entity, regardless of whether the person has applied for registration or if the situation will be on a temporary basis. Before registering the person the chief executive must give the person a notice of proposal to register the person and specify a time for the person to make a written submission on the proposal. If the chief executive registers the person, the chief executive must give the person an information notice about the decision, including the entity's biosecurity risk status details.

151 Allocation of PICs

Clause 151 specifies that the chief executive must allocate a property identification code (a ***PIC***) to any designated place if a person is registered under this part to keep designated animals, other than bees. This clause does not apply if a PIC has already been allocated to the place because of another registration under this part of the Bill. A PIC may take any form the chief executive considers appropriate, subject to the other requirements of this chapter.

Under this clause the chief executive may take any appropriate action (including cancelling or replacing a PIC) to ensure that any one place recorded in the biosecurity register has only one PIC that is unique to that place. In taking action to ensure that only one PIC is recorded, the chief executive must give the registered biosecurity entity an information notice about the action that affects the registration of that entity.

152 Registered biosecurity entity may apply for deregistration

Clause 152 provides for application for deregistration to be made to the chief executive if a person who is a registered biosecurity entity ceases to be a registrable biosecurity entity for a biosecurity circumstance. For example, the person has sold all the cattle they kept on their property and has no intention of re-stocking the property. The person may apply to the chief executive to de-register him or herself as a registrable biosecurity entity. If satisfied that the person is no longer a registrable biosecurity entity for the biosecurity circumstance then the chief executive must remove the person from the register, or otherwise refuse the application. If the application is refused, the chief executive must give the applicant for deregistration an information notice for the decision to refuse.

153 Registered biosecurity entity to be given proof of registration

Clause 153 specifies that the chief executive may give a registered biosecurity entity proof of the entity's registration in the form approved for this purpose. Proof of registration must be supplied to the registered biosecurity entity upon request by the person.

154 No transfer of registration

Clause 154 specifies that a registered biosecurity entity's registration can not be transferred.

155 Term of registration

Clause 155 provides that the term of registration of a registered biosecurity entity is the term decided by the chief executive having regard to the circumstances of the entity. The term must not be more than three years even if the period is made up of two or more separate periods.

156 Renewal of registration

Clause 156 provides that unless otherwise advised by the entity the chief executive must renew the registration of a registered biosecurity entity when the term of registration ends. The entity is required to pay the prescribed fee for renewal or advise the chief executive that they no longer need to be registered including the reasons why. The chief executive can, at any time, require a biosecurity entity to supply any information reasonably required to confirm the continuing accuracy of any aspect of the entity's registration details. It is an offence, unless the person has a reasonable excuse, to not supply the requested information.

Division 2 Special provisions relating to the keeping of bees

157 Keeping of bees in a hive

Clause 157 provides that it is an offence, with a maximum penalty of 50 penalty units, for a person to keep bees unless the bees are kept in a hive.

158 Allocation of HIN

Clause 158 requires the chief executive to give a hive identification number (a ***HIN***) for the hives of a registered biosecurity entity. All HINs are entered into the biosecurity register. The clause enables the chief executive to take any appropriate action such as cancelling or replacing a HIN to ensure that each registered biosecurity entity has only one HIN that is unique to that entity. In doing so, the chief executive must give the entity an information notice for the decision that will affect the registration details of the entity.

The HIN must be marked or branded on at least one hive for each group of fifty hives in a way prescribed by a regulation. Failure to mark or brand a hive with the HIN is an offence under this clause with a maximum penalty of 50 penalty units.

159 Display of information about registered biosecurity entity

Clause 159 requires a beekeeper to display a registration notice on one of the hives or in a conspicuous place within the hives if they are not located on the beekeeper's residential land or that is adjacent to the beekeeper's residential land. It is an offence with a maximum penalty of 20 penalty units, for an entity to fail to display a registration as required.

Division 3 Restricted places

160 Requirement for restricted place notice

Clause 160 provides that it is an offence, with a maximum penalty of 50 penalty units, if a registered biosecurity entity or an owner or occupier of a designated place becomes aware of a change at the designated place that may cause a biosecurity risk and does not give the chief executive notice of that change.

161 Inclusion of restricted places in biosecurity register

Clause 161 empowers the chief executive to declare a particular place that could pose a biosecurity risk to be a restricted place and how the use of the place is to be restricted. The declarations may apply to the use or future use of designated animals at the place. For example if the place is declared to be a restricted place because of the presence of contaminants consisting of heavy metals in soil at a place, a restriction may be that a designated animal at the place must not be sent to a meat processing place to be slaughtered until it has been pastured on a place that is not a restricted place for a stated period.

The declarations are made by way of the chief executive making an appropriate entry into the biosecurity register and notifying the occupier, owner or relevant entity of the declarations by way of an information notice. Subclause (4) enables the chief executive to have regard to the biosecurity risk status details for the entity in deciding whether to declare a place a restricted place.

162 Compliance with restricted place restrictions

Clause 162 makes it an offence, without reasonable excuse, for a person to perform any activities that contravene a restriction recorded in the biosecurity register for the restricted place. It will be a defence for the person to establish that they did not know and ought not reasonably to know of the existence of the restriction or had a reasonable excuse for performing the activity that contravened the restriction.

It is also an offence for a person to use a designated animal at the place in a way that contravenes any restriction recorded in the biosecurity register about how the designated animal is to be used.

163 Removal of restricted place from biosecurity register

Clause 163 enables the chief executive to remove from the biosecurity register declarations for a particular place if the chief executive is satisfied that the place no longer poses a biosecurity risk. The removal can occur on the chief executive's own initiative or after consideration of an application for removal under this clause.

164 Application for removal of restricted place from biosecurity register

Clause 164 sets out the process for a person to make an application to the chief executive to have a place removed from the biosecurity register as a restricted place. The application must be in the prescribed form, be accompanied by the prescribed fee and provide sufficient detail to describe why the place no longer poses a biosecurity risk, for example, evidence prepared by a suitably qualified person that supports the conclusion that the place no longer poses a biosecurity risk.

165 Inquiry about application

Clause 165 enables the chief executive to require an applicant under clause 164 to provide further information or documents that are reasonably necessary to determine the application. The chief executive must request the further information by notice within 30 days after having received the application and allow 30 days for the applicant to respond. The chief executive may request in the notice that the information or document must be verified by statutory declaration. If the applicant fails to provide the required further information or documents within the stated timeframe, the application under clause 164 will be taken to have been withdrawn.

166 Decision on application

Clause 166 provides that for any application under clause 164 to remove a restricted place from the biosecurity register, the chief executive must consider the application and decide whether to grant or refuse the application. If the application is refused the applicant must be given an information notice regarding the decision. If the application is granted, the chief executive must remove the place from the biosecurity register and notify the applicant of that fact.

167 Failure to decide application

Clause 167 provides that if the chief executive fails to decide the application within 30 days, the application will be taken to have been refused. Likewise if the chief executive has sought and been given additional information under clause 165 and the chief executive has failed to decide the application within 30 days after receiving the additional information, the application will be taken to have been refused. In either case where the application was not decided on in the 30 day period the applicant is entitled to be given an information notice by the chief executive for the decision.

Division 4 The biosecurity register

168 Chief executive's obligation to keep register

Clause 168 requires the chief executive to keep a biosecurity register of registered biosecurity entities and restricted places.

169 Information required to be kept for registered biosecurity entities

Clause 169 outlines the information that must be included in the biosecurity register for each registered biosecurity entity in relation to each biosecurity circumstance (the term 'biosecurity circumstance' is defined in clause 142 and any further information the chief executive considers appropriate.

170 Requirement for change notice

Clause 170 makes it an offence for a registered biosecurity entity to fail to notify the chief executive of any change that affects or may affect the accuracy of the entity's designated details in the register.

171 Correction and updating of biosecurity register for registered biosecurity entities

Clause 171 enables the chief executive to correct the designated details, or biosecurity risk status details, for a registered biosecurity entity on the register if they are incorrect or it is necessary to ensure the traceability of designated animals or designated biosecurity matter, on the chief executive's own initiative or otherwise.

However, if the chief executive is given a change notice under clause 170, the notice may be refused if the chief executive is satisfied that a further application for registration under this Part should be made. For example, a change notice indicates the registrable biosecurity entity is attempting to transfer the registration to another person. In this case, the change notice application would be refused because transfer of registration is not permitted under clause 154. The registrable biosecurity entity would need to apply to cancel their registration and the new person would need to make a new application for registration.

172 Publication of biosecurity register

Clause 172 requires the chief executive to publish all of the information on the biosecurity register on the department's website except for the biosecurity risk status details for each biosecurity entity which is confidential and can only be given to the biosecurity entity.

173 Taking copies of biosecurity register

Clause 173 enables any person who applies to purchase a copy of all or part of the biosecurity register. However, a person would not be able to purchase the risk status details for a registered biosecurity entity except under the circumstances listed. They are that the person

was a resident of the place and the details relate to the place's declaration as a restricted place, the registered biosecurity entity gives written consent, or the details are expressly permitted or required under this Act or another Act.

The clause also provides for the chief executive to give the biosecurity risk status details for a registered biosecurity entity to a person if they are the approved NLIS administrator, are carrying out functions under an Act that provides for biosecurity matters, if the chief executive is satisfied that it is essential for the administration of a biosecurity program, if it would contribute to the traceability of a disease, designated animals or designated biosecurity matter or would contribute to compliance with a regulatory standard relating to market access or reporting or product integrity. The chief executive may impose conditions on the provision of that information.

Part 3 Special designated animal identification and tracing system

Division 1 Approved devices

174 What is an *approved device*

Clauses 174 provides that an approved device is a tag or other identifying device or mark that is used to distinguish one special designated animal to which it is fitted from all other animals.

Different specifications apply to devices fitted to different species of animals. An approved device must not be fitted to an animal other than that for which it is a suitable approved device. For example, a tag that is a suitable approved device for sheep must not be applied to cattle.

For cattle, a suitable approved device means a tag embedded with a microchip that is a radio frequency identification device (RFID). For other animals, like sheep, the suitable approved device is a tag with no embedded microchip. Other approved devices include pig brands and goat tattoos.

The tag, brand or other identification must be unique to the individual special designated animal and must contain the property identification code (PIC) of the current occupier's place and details identifying the individual special designated animal.

175 Meaning of *fit*

Clause 175 defines the term ***fit*** to also include branding or tattooing an identifying mark on an animal or the insertion of an approved device into an animal where appropriate.

176 Chief executive may approve different devices for different animals or circumstances

Clause 176 provides that the chief executive may approve different types and specifications of devices to be used in identifying special designated animals, after having regard to any code of practice in relation to identification devices for the different types of special designated animals. The chief executive must publish the specifications on the department's website.

177 What is a *suitable approved device*

Clause 177 defines a suitable approved device for a special designated animal if it is suitable to be fitted to the animal having regard to the specifications decided by the chief executive for the device.

178 Only suitable approved device to be fitted

Clause 178 makes it an offence, with a maximum penalty of 100 penalty units, to fit a device to a special designated animal that is not a suitable approved device under clause 177. The clause also provides it is a defence if the person did not know or ought reasonably to know the device was not a suitable approved device or they had a reasonable excuse for fitting the incorrect device.

Division 2 Approved device requirement and travel approvals

179 Approved device requirement

Clause 179 provides that it is an offence, with a maximum penalty of 100 penalty units, for the person who keeps a special designated animal, to move the animal from the place without it being fitted with a suitable approved device unless the person has a reasonable excuse. This clause applies whether or not the person is a registered biosecurity entity.

180 Exemptions from approved device requirement

Clause 180 outlines the circumstances in which a person will be exempt from prosecution for an offence under clause 179. The circumstances include the movement of the animal to a neighbouring property (a place where some, or the entire place, is within 20km of the place of origin) for the purposes of ordinary animal management and the animal is to be returned to the place of origin within 48 hours after the arrival at the neighbouring place. For example, cattle are moved to a neighbouring property to be dipped. The clause provides another exemption to the requirement not to move the animal from the place without it being fitted with a suitable approved device where it is to a neighbouring property where a device can be fitted.

There are special provisions for goats. An exemption to the requirement not to move a goat from the place without it being fitted with a suitable approved device is provided where a goat is moved from the wild to a sorting place and from the sorting place to a meat processing facility. An exemption is provided for the movement for goats and pigs without a device directly to and from a sporting event.

A further exemption to the identification requirement for the movement of special designated animals is where the person obtains a travel approval from the chief executive.

181 Obtaining a travel approval

Clause 181 enables a person to apply to the chief executive for a travel approval for the movement of a special designated animal without the need to have the animal identified under clause 179. The chief executive may ask the applicant for further information or documents to decide the application.

The travel approval may be granted if the movement of the animal can be traced by NLIS and the movement does not pose a biosecurity risk. The chief executive may impose conditions on the approval.

If the chief executive decides to refuse the application for a travel approval or grants the approval on conditions, the applicant must be given an information notice.

182 Failure to decide travel approval application

Clause 182 provides that if the chief executive fails to decide the application within the decision period, the failure is taken to be a decision by the chief executive to refuse to grant the application. The applicant is entitled to be given an information notice where there has been a failure to decide the application.

Division 3 Receiving special designated animals

Subdivision 1 Preliminary

183 Definitions for div 3

Clause 183 provides the definitions for the division. The term "prescribed information", relates to information prescribed under a regulation for a reporting requirement. A "reporting requirement" refers to a requirement to give the NLIS administrator information about a special designated animal. A "restricted agricultural show" is defined so less stringent reporting requirements can be applied where special designated animals are moved to them. An agricultural show is one that lasts no more than 96 hours or has no more than 500 special designated animals at any one time or the special designated animals present at the agricultural show have all come from the same place.

184 Meaning of moving from another place

Clause 184 clarifies that a reference in this division to the movement of an animal from one place to another also includes a movement of the animal by the owner of the animal that does not involve another person taking delivery of the animal. The clause provides as an example of where this situation might arise by reference to a person who travels his or her animals on a stock route and return their animals back to the place of departure.

Subdivision 2 Receiver requirement to advise NLIS administrator

185 Application of sdiv 2

Clause 185 describes that the division relates to a person that receives one or more special designated animals that have been fitted with an approved device. The receivers must be or become a registrable biosecurity entity.

186 Special designated animal delivered to meat processing facility

Clause 186 requires a responsible person at a meat processing facility to report the receipt of special designated animals to the NLIS administrator within 48 hours after having received the animals, unless the responsible person has a reasonable excuse. However, if the responsible person at a meat processing facility reasonably expects the animal/s to be slaughtered within five days after the arrival, then the responsible person need only give the NLIS administrator the prescribed information about the slaughter within 48 hours of the slaughter and not about the receiving of the animals. It is an offence, with a maximum penalty of 100 penalty units, not to report as required.

187 Special designated animal delivered to saleyard or live export holding

Clause 187 requires a responsible person at a saleyard or live export holding to report the receipt of special designated animals to the NLIS administrator within 48 hours after having received the animals, unless the responsible person has a reasonable excuse.

In addition, a responsible person at a saleyard or live export holding must report to the NLIS administrator within 48 hours after the animals have been moved from the saleyard or live export holding, unless the responsible person has a reasonable excuse.
It is an offence, with a maximum penalty of 100 penalty units, not to report as required.

188 Special designated animal delivered to restricted agricultural show

Clause 188 requires an entity that organises or otherwise holds an event that is a restricted agricultural show to report the receipt of special designated animals to the NLIS administrator within 48 hours after having received the animals, unless the responsible person has a reasonable excuse. In this case the special designated animal should only remain at the restricted agricultural show for the period of the show, unless the receiver has a reasonable excuse for keeping the animal at the show for longer. For example excessive rains may prevent the animal from being returned to the property that it travelled from.

189 Special designated animal moved from restricted agricultural show

Clause 189 requires a responsible person who receives a special designated animal from a restricted agricultural show to report the receipt of special designated animals to the NLIS administrator within 48 hours after having received the animals, unless the responsible person has a reasonable excuse. A responsible person does not need to report receiving a special designated animal if the animal was returned to the place from where it was originally sent to the restricted agricultural show.

190 Special designated animal delivered to another place

Clause 190 requires a responsible person from a place, other than a meat processing facility, saleyard, live export holding or a restricted agricultural show, to report the receipt of special designated animals to the NLIS administrator within 48 hours after having received the animals, unless the responsible person has a reasonable excuse.

The receiver of the animals is exempted from this reporting obligation if the receiver takes delivery of the special designated animal in the capacity of the owner or occupier of a place where the special designated animal is agisted, and the owner or occupier is not the owner of the animal, or if the receiver is a conveyor or drover of the animal. In this case the responsible person must report the receipt of special designated animals to the NLIS administrator within 48 hours after having received the animals unless the responsible person has a reasonable excuse. For example a cattle owner uses another farmer's land to keep their animals in the process of travelling the cattle to market. The farmer who owns the land on which the cattle are spelled is not responsible to make a receiver report to the NLIS administrator. However, the responsible person (the cattle owner) must, unless they have a reasonable excuse, report within 48 hours after the cattle were placed on the owners land that the cattle were moved there. It is an offence, with a maximum penalty of 100 penalty units, not to report as required.

The clause clarifies that a "responsible person", means the person who at law has title to the animal, or who otherwise has final responsibility for the animal.

191 Timing for reporting if receiver becomes registrable entity on taking delivery

Clause 191 explains that a receiver of special designated animals who has applied for registration as a registered biosecurity entity is not required to report to the NLIS administrator within 48 hours from having received the animals as is ordinarily required, but instead must report within 48 hours of obtaining registration.

192 Exceptions to reporting requirements

Clause 192 provides that a responsible person under clauses 186 to 190 is not required to report the receipt of a special designated animal if a person has already made the required report to the NLIS administrator before the animal movement. The clause also provides that a responsible person is not required to report under clauses 186 to 190 if a special designated animal is not fitted with an approved device before a receiver takes delivery of the animal at a place. This is because there are other reporting requirements relating to a special designated animal not being fitted with a suitable approved device.

Subdivision 3 Receiver requirement to advise inspector

193 Particular special designated animal not fitted with suitable approved device

Clause 193 requires a responsible person who receives special designated animals that have not been fitted with an approved device to notify an inspector within 24 hours of that circumstance and comply with the inspector's reasonable directions, unless the relevant person has a reasonable excuse. It is not a reasonable excuse for a person not to notify an inspector just because the person is not a registered biosecurity entity for the keeping of the special designated animal. It is an offence, with a maximum penalty of 100 penalty units, for a person not to comply with this provision. This provision does not apply to a person if they are a conveyor or drover of the animal.

Division 4 Movement records

194 Movement record requirement

Clause 194 provides that it is an offence for a person, to fail to create a record of a proposed movement of a designated animal and give a copy of the movement record to the conveyor or drover of the animal before the movement starts. This applies whether or not the person is a registered biosecurity entity for the keeping of a designated animal. It will not be an offence if the person can demonstrate a reasonable excuse for failing to comply with this provision.

Subclause (3) outlines circumstances when a movement record is not required. This will be if the movement of the animal is to or from a place that is a neighbouring property (a place within 20 km of the place of origin) and the movement is for ordinary stock management purposes and the movement does not require a biosecurity instrument permit. The term 'biosecurity instrument permit' is defined in clause 131.

Subclause (5) provides that it is an offence for a conveyor or drover of the designated animal to commence the movement without having a copy of the movement record in their possession, unless the person has a reasonable excuse.

Subclause (6) provides that a single movement record may be created for the proposed movement of two or more designated animals. For example, one movement record only

needs to be created to record the movement of a flock of sheep and a herd of goats that are to be moved together from the place of origin to the next place.

195 Appropriate form of movement record

Clause 195 identifies the details to be included in movement records for designated animals and that the report may be provided in hard copy or electronic form. The details include the places the animal is moved from and the receiver's information, the proposed date of movement, the species and breed of the animal, identification marks and the serial number that is unique for the movement record.

The clause also requires, for a special designated animal, that the form be signed by the individual completing the record unless the record is created and kept only in electronic form, bear a serial number that is unique for the record; and state the PIC shown on any approved device

The clause also provides for a person to use a single document for a movement record if it relates to a designated animal other than a special designated animal and a series of recurring movements are proposed for the designated animal for a particular period. However, if a single document is used for a movement record it must also include each proposed date of movement and the period to which it applies.

196 Relaxation of movement record requirement for multiple conveyances

Clause 196 enables the recording of the movement of more than one species of special designated animal on the one movement record, if the mixed species are travelling from the same place to the same destination. All special designated animals must leave within 24 hours of the commencement of the movement and the movement of the animals may take place by more than one conveyance of the animals. Each conveyor must carry a signed certificate by the person authorised or required to create the movement record under clause 194. The clause identifies the details that must be included in the certificate that is to be carried by the drivers of each vehicle conveying the special designated animals.

197 Keeping and producing movement record

Clause 197 provides that the relevant person who creates a movement record under clause 194 must keep a copy of the record for five years if the animal was a special designated animal or otherwise for two years. It is an offence to fail to comply with this requirement. It is also an offence for the person to fail to produce the movement record to an inspector unless the person has a reasonable excuse.

198 Movement record for receiving designated animal

Clause 198 provides that it is an offence for a person to receive a designated animal that is moved without a movement record, if they accept delivery of the animal without taking delivery of a copy of the movement record. Subclause (3) requires a person who takes delivery of a copy of a movement record to keep the copy for five years after the movement started.

Subclause (5) makes it an offence for a person who accepts delivery of an animal at the end of the movement to fail to create and keep a record for two years after the movement started. Subclause (6) specifies what the record must show. Subclause (7) provides that a movement record or a copy of a movement record must be produced to an inspector when required and failure to do so will constitute an offence, unless the person has a reasonable excuse.

Subclause(9) exempts a person from the requirement to create and keep a record under subclause (5) if the person who accepts delivery of the animal has the responsibility for the organisation and operation of an agricultural show and is required to keep a record under clause 188.

199 Show organiser to record designated animal movements

Clause 199 provides that it is an offence, with a maximum penalty of 200 penalty units, for a relevant person responsible for organising and operating an agricultural show to fail to keep for two years, a record of the relevant information for each designated animal present at the show, unless the person has a reasonable excuse.

The relevant information that is required to be kept for each animal for identification and traceability purposes includes where the animal came from, when it arrived, when it left, any identifying marks, the PIC shown on the approved device, the owners details, and the date the animal participated in an event at the agricultural show.

The provision applies to a relevant person whether or not the person is a registrable biosecurity entity for the keeping of the designated animal and whether or not the person is required to comply with the movement record requirement.

The clause establishes that a record under the clause is required despite whether an animal is used in or displayed at an agricultural show.

200 False, misleading or incomplete movement record

Clause 200 provides that it is an offence, with a maximum penalty of 200 penalty units, for a person required to create a movement record to provide information that is false, misleading or incomplete unless the person has a reasonable excuse.

Division 5 Other requirements for approved devices

201 Supply of device for use as an approved device

Clause 201 makes it an offence, with a maximum penalty of 200 penalty units, for a person to supply another person with a device that is not an approved device if they knew or should know that the device was not an approved device.

A supplier of approved devices must not supply them to a purchaser, other than the State, unless they have received a written order from the purchaser.

A purchaser must not receive from a supplier approved devices unless the purchaser has first given the supplier a written order for the supply of the device.

The clause outlines the details that a supplier is required to keep as a record for the supply of a device of any kind for use as an approved device. The clause also provides that it is an offence, with a maximum penalty of 200 penalty units, to fail to keep the record for five years after the date of supply of the device. It is also an offence, with a maximum penalty of 200 penalty units, for a person to fail to produce the record to an inspector, unless the person has a reasonable excuse.

202 Restriction on applying or removing approved device

Clause 202 imposes obligations on a person regarding the fitting and removal of devices from special designated animals. It is an offence for a person to fit a special designated animal with an approved device if the animal is already fitted with an approved device that is in the form of a tag, unless the fitting falls into one of the two exemptions under the subclause:

- if the existing approved device is first removed from the special designated animal as authorised under the clause; or
- if under the specifications decided by the chief executive for the new approved device, the new approved device is a suitable approved device for fitting to the special designated animal despite the fitting of the existing approved device.

There are circumstances in which a person may remove an approved device from a special designated animal including when an inspector authorises the removal, or the device is malfunctioning and needs to be replaced. It is an offence, with a maximum penalty of 100 penalty units, to remove an approved device except in one of these circumstances.

If an approved device is removed and another fitted in its place, the NLIS administrator must be notified within 48 hours after the removal and provided with specific details including the serial number of the new device, the RFID number of the microchip (if there is one) and the PIC of the place where the animal is kept. Failure to notify the NLIS administrator constitutes an offence, with a maximum penalty of 100 penalty units.

203 Restrictions on altering, defacing or destroying approved device

Clause 203 establishes offences, with a maximum penalty of 200 penalty units, for altering, defacing or destroying an approved device or allowing an approved device to be altered or defaced, unless it happens in the course of legally removing the device from a special designated animal under clause 202. It will be a defence for a person to establish a reasonable excuse for the alteration, defacement or destruction.

204 Requirement to destroy removed approved device

Clause 204 establishes an offence, with a maximum penalty of 100 penalty units, for failing to destroy an approved device that has been removed from a special designated animal. However, if it is practicable to recycle and re-use the approved device, according to any specifications made by the chief executive, a person may recycle and re-use that device. It is an offence, with a maximum penalty of 100 penalty units, to fail to secure the device against theft until it is recycled and re-used.

205 Approval to use different PIC for approved device for special designated animal

Clause 205 allows a registered biosecurity entity, other than a saleyard, that keeps special designated animals, to apply to the chief executive for approval to have recorded on an approved device, the PIC of a different place to the place where the animal is kept. The provision prescribes the application requirements. If the application is refused the applicant must be advised of the decision and given an information notice for the decision.

Part 4 Miscellaneous

206 Evidentiary certificates for biosecurity register and NLIS database

Clause 206 provides for certain evidentiary matters relating to the biosecurity register and the NLIS database.

207 Person must not give false or misleading information to NLIS administrator

Clause 207 makes it an offence, with a maximum penalty of 1000 penalty units, for a person to give the NLIS administrator information that they knew or should have known was false or misleading in a material particular, unless the person has a reasonable excuse.

Chapter 8 Prohibited matter and restricted matter permits

Chapter 8 addresses the issuing of permits to deal with prohibited and restricted matter. Certain dealings with prohibited and restricted matter are to be unlawful in order to avoid the biosecurity risks inherent with the particular biosecurity matter and which may be exacerbated by dealing with the matter. A person will not be liable for an offence if the dealing is in accordance with a permit issued under the Bill.

Part 1 Preliminary

208 Issue of prohibited and restricted matter permits

Clause 208 empowers the chief executive to issue prohibited and restricted matter permits.

209 What is a *prohibited matter* permit

Clause 209 defines a prohibited matter permit as a permit that authorises stated dealings with stated prohibited matter.

210 What is a *restricted matter* permit

Clause 210 defines a restricted matter permit as a permit that authorises stated dealings with state restricted matter.

211 Types of prohibited matter permits

Clause 211 provides for three types of prohibited matter permits that may be issued by the chief executive. They are a scientific research permit, a controlled dealings permit and another type prescribed under a regulation.

212 Types of restricted matter permits

Clause 212 provides for four types of restricted matter permits that may be issued by the chief executive - biological control, commercial use, scientific research (restricted matter), or another type prescribed under a regulation.

213 What is a *permit plan* for prohibited or restricted matter

Clause 213 defines the term ‘permit plan’. Permit plans detail how the applicant for a prohibited matter permit or restricted matter permit proposes to deal with the prohibited or restricted matter that is the subject of the permit. Permit plans must be given to the chief executive by the applicant for a prohibited matter or restricted matter permit.

The clause identifies what a permit plan must address including the likely biosecurity risks posed by the biosecurity matter and how those risks will be minimised.

The permit plan for restricted matter must also specify how it matter will be disposed of or destroyed when the term of the permit ends.

Part 2 Permit applications

214 Applying for permit

Clause 214 provides that a person may apply to the chief executive for a prohibited or restricted matter permit. The application must be in the approved form and be accompanied by a permit plan and the prescribed fee.

An application for a scientific research prohibited matter permit must be accompanied by a document showing that the proposed dealings with the prohibited matter will be conducted in an approved, certified or registered facility, together with a detailed research proposal. Regulations will prescribe authorities who can approve, certify or register a facility.

An applicant may withdraw their application at any time however the application fee is not refundable. The chief executive may waive payment of the application fee in certain circumstances.

215 Inquiry about application

Clause 215 provides that the chief executive, when deciding applications in relation to prohibited or restricted matter permits, may make further inquiries to determine the suitability of an applicant. A notice may be issued requiring the applicant to furnish a document or further information. Any document or further information submitted must be verified by a statutory declaration.

The clause also provides the timeframes for the issue of the notice requiring further information and the time for reply by the applicant. If the applicant does not supply the requested document or information within the stated timeframe, the applicant is taken to have withdrawn the application.

216 Suitability of person to hold permit

Clause 216 sets out the matters that the chief executive may consider when deciding whether a person is suitable to hold a prohibited or restricted matter permit. Those matters include whether the applicant has previously been refused a prohibited or restricted matter permit and whether the applicant has a conviction for a relevant biosecurity offence. The term ‘relevant biosecurity offence’ is defined in Schedule 4 of the Bill. The suitability criteria set out in this clause may be taken into account by the chief executive not only when deciding the applications for new prohibited and restricted matter permits but also when deciding applications to renew a permit under clause 225.

Part 3 Deciding application

217 Consideration of application

Clause 217 provides that the chief executive must consider the application and grant, grant with conditions, or refuse to grant the application.

218 Decision on application

Clause 218 requires the chief executive to issue a permit for prohibited matter or restricted matter if the application is granted. However, if the application is refused, or granted with conditions, the applicant must, as soon as practicable, be given an information notice outlining the decision.

219 Failure to decide application

Clause 219 provides that an application for a prohibited or restricted matter permit is taken to be refused if the chief executive fails to decide the application within 30 days of its receipt. If the chief executive has requested further information under clause 215(1)(b), the application is taken to be refused if the chief executive fails to decide the application within 30 days of receipt of the required information or document. An information notice of the decision by the chief executive must be given to the applicant if the application is taken to be refused under this clause.

220 Criteria for decision

Clause 220 provides before a prohibited or restricted matter permit is granted, the chief executive must be satisfied that the applicant is a suitable person to hold the permit and the permit plan adequately addresses the biosecurity risks posed by the biosecurity matter the subject of the permit.

If the application relates to a scientific research prohibited matter permit, the chief executive must be satisfied that the biosecurity matter being dealt with is conducted in a facility that has been approved, certified or registered to perform the dealings and by an authority prescribed under a regulation.

If the application is for a controlled dealings permit, the chief executive must be satisfied that an inspector has been advised of the presence of prohibited matter, that the proposed dealings with the prohibited matter are not likely to exacerbate the risks posed by the prohibited matter and that the proposed dealings with the prohibited matter under the permit are consistent with isolating and stopping the spread of the prohibited matter or, if practicable, eradicating the prohibited matter.

221 Particular matters for scientific research (prohibited matter) permit

Clause 221 sets out the particular matters the chief executive must have regard to in deciding a scientific research (prohibited matter) permit application. These matters may include any standards, codes of practice or guidelines identified under a regulation and the likelihood of any significant advances in scientific knowledge being gained because of the research to be conducted under the permit.

Part 4 Term and conditions of permits

222 Term of permit

Clause 222 specifies the term of a prohibited or restricted matter permit. Unless it is sooner suspended or cancelled, a permit remains in force for the term decided by the chief executive and stated in the permit. However, the term of a permit can be no longer than three years.

223 Conditions of permit decided by the chief executive

Clause 223 provides that a prohibited or restricted matter permit may be granted or renewed subject to conditions approved by the chief executive. The chief executive, when deciding on

what conditions to attach to the permit, must have regard to the prohibited or restricted matter which is the subject of the permit, and the nature of the proposed dealings with that matter.

The clause also outlines the types of conditions that may be attached to the permit, such as record-keeping and reporting requirements and the scope of the permitted dealings with the prohibited or restricted matter. Any conditions decided on by the chief executive must be set out in the permit when it is issued or renewed.

224 Other conditions applying to a permit

Clause 224 specifies that it is a condition of a prohibited or restricted matter permit that the permit holder must allow an authorised officer to enter the premises where the dealings under the permit are being undertaken to monitor compliance with the permit. A premises in this case is not a place where a person resides. A prohibited matter or restricted matter permit may also be subject to any conditions prescribed under a regulation as applying to the permit.

Part 5 Renewal of permits

225 Application for renewal

Clause 225 specifies that a permit holder must apply for renewal of registration in the approved form 60 days before the end of the term with the application to be accompanied by the prescribed fee. The chief executive is to have the discretion to waive the fee. The chief executive must consider the application and either renew or refuse to renew the permit. The clause also specifies the criteria the chief executive may consider when deciding whether to grant the application. An information notice must be given to the permit holder if the chief executive decides either to refuse to renew the permit or to impose conditions on the permit approval under clause 218.

226 Inquiry about application

Clause 226 provides that the chief executive, when making a decision for renewal of a prohibited or restricted matter permit, may issue a notice to the applicant requiring them to furnish a document or further information. The notice requiring the further information must be given to the applicant within 30 days of the chief executive receiving the application for renewal. If required, the document or further information must be verified by a statutory declaration.

The clause also requires that the applicant provide the further information within the period requested by the chief executive which should be at least 30 days. If the applicant does not supply the requested document or information within the stated timeframe the application is taken to be withdrawn.

227 Failure to decide application

Clause 227 provides that an application for a renewal of a prohibited or restricted matter permit is taken to be refused if the chief executive fails to decide the application within 30 days of its receipt. If the chief executive has requested further information under clause 226 the application is taken to be refused if the chief executive fails to decide the application within 30 days of receipt of the required information or document. An information notice for the decision by the chief executive must be given to the applicant if the application for renewal is refused under this clause.

228 Permit continues pending decision about renewal

Clause 228 provides that a permit will continue until the renewal application has been decided or taken to have been decided or is taken to have been withdrawn. If the renewal application is refused or taken to be refused, the permit will continue until the permit holder has been given an information notice outlining the decision. The continuation of a permit does not apply to a permit that was suspended or cancelled earlier.

229 Direction to dispose of prohibited or restricted matter when permit cancelled

Clause 229 makes it an offence for a permit holder to fail to comply with a notice from the chief executive directing that stated prohibited or restricted matter be disposed of upon cancellation of the permit. The maximum penalty for the offence is 1000 penalty units or 1 year's imprisonment. Compensation is not payable for the disposal of the prohibited or restricted matter.

Part 6 Transfer of permits

230 Transfer of permit

Clause 230 provides for the transfer of a prohibited or restricted matter permit, unless a non-transferability condition applies to the permit. The clause specifies that the holder of a permit and a proposed transferee of a permit may jointly apply to the chief executive in the approved form, accompanied by the prescribed fee, for the transfer of the permit to the proposed transferee. The transfer of the permit is subject to any conditions applying to the permit.

The chief executive may transfer a permit only if satisfied that, as a result of the transfer, there will not be any substantial changes in the people principally involved in dealing with the prohibited or restricted matter the subject of the permit. For example a transfer may occur where someone buys another person's business and a prohibited matter permit exists and is associated with the business dealings. However, the chief executive must be satisfied that the transferee is a suitable person to hold the permit, having regard to the matters set out in clause 216, and has the capacity to ensure the conditions of the permit are complied with. Where the holder of a prohibited or restricted matter permit is deceased, the personal representative of the deceased permit holder may apply to the chief executive in the approved form for the transfer of the permit to the personal representative as a transferee. The current permit, the subject of the transfer, will be replaced with a new permit once the transfer has been approved.

If the chief executive does not decide the transfer application within 30 days after the chief executive receives it then transfer is taken to have been refused. In this case the applicant is entitled to be given an information notice by the chief executive for the decision.

Part 7 Register of prohibited matter and restricted matter permits

231 Register of permits

Clause 231 provides that the chief executive must keep a register of prohibited and restricted matter permits. The register must contain the specific details listed in the clause and be published on the department's website. A person may apply to purchase a copy of all or part of the register.

Chapter 9 Programs for surveillance, prevention and control

An effective biosecurity system will incorporate the necessary components of surveillance, monitoring and prevention and control (including managing the spread of biosecurity matter or the eradication of the biosecurity matter). These activities may be undertaken informally through, for example, community surveillance and reporting, or formally through emergency responses or structured programs. Chapter 9 provides for the latter through the authorisation of surveillance programs and prevention and control programs by the chief executive or local government to help achieve the purposes of the Act. The chapter also makes provision for consultation and notification requirements on the making of the programs and enforcement of these programs.

Part 1 Preliminary

232 Types of biosecurity programs

Clause 232 defines a biosecurity program as a surveillance program or a prevention and control program.

233 What is a *surveillance program*

Clause 233 describes a surveillance program and lists the purposes for which such a program may be implemented. The purposes include monitoring compliance with the Act, for example, monitoring compliance with a code of practice or a biosecurity zone provision or a prohibited matter permit, confirming the presence or absence of biosecurity matter in the State to which the program relates, and monitoring the effects of measures taken in response to a biosecurity risk.

Surveillance programs are necessary to both demonstrate to our trading partners freedom from, and rapidly detect the presence of, biosecurity matter (including unlisted biosecurity matter).

234 What is a *prevention and control program*

Clause 234 describes a prevention and control program and lists the purposes for which such a program may be implemented. Prevention and control programs are designed to prevent the entry or spread of biosecurity matter that poses a significant threat to a biosecurity consideration or to manage and control any biosecurity matter that could, if current control mechanisms prove inadequate, represent a significant threat to a biosecurity consideration.

Part 2 Authorising and enforcing biosecurity programs

235 Authorising and carrying out biosecurity program

Clause 235 empowers the chief executive, a local government, the chief executive of one or more local governments if the chief executive officer of each local government agrees, two or more local governments if the chief executive officer of each local government agrees, or an invasive animal board, to authorise and carry out a biosecurity program. A local government and an invasive animal board may only authorise and carry out a biosecurity program in relation to an invasive animal for the area for which that local government or board is responsible.

A program authorisation must be authorised in writing by the chief executive, by resolution of the local government for a program authorisation made by a local government, or by board resolution in relation to an invasive animal board.

However, a prevention and control program may only be authorised by the chief executive or local government if either is satisfied there is, or is likely to be, prohibited matter in an area or there is biosecurity matter that may pose a significant biosecurity risk. This would include, for example, the presence of a colony of red imported fire ants, a plague of locusts, or an infestation of water mimosa in an area.

A prevention and control program may also be authorised if the chief executive or local government are satisfied that measures are required to prevent the entry or establishment of particular biosecurity matter. Finally, a prevention and control program may be authorised by the chief executive or a local government if, after consultation with an industry group or community, it is determined that measures carried out jointly with an industry group or community are required to control biosecurity matter in the area that may significantly affect them.

A relevant person for a program authorisation must ensure that each authorised officer acting under the biosecurity program is informed of the contents of the program authorisation.

A program authorisation is given by a local government in relation to its area only and to the relevant invasive biosecurity matter, or if given by an invasive animal board may relate only to the board's operational area.

The clause defines what a relevant person is in relation to the State, a local government and an invasive animal board.

236 What program authorisation must state

Clause 236 specifies what an authorisation for a biosecurity program must state, including the biosecurity matter to which the program relates, the purpose of the program, the parts of the State to which it applies, when the program starts, and the period over which the program is to be carried out.

For a biosecurity program that is a surveillance program that is directed at monitoring compliance with the Act, the authorisation must also state the objective criteria for selecting places to be entered and inspected, and a description of the area in which the places are situated. If the surveillance program is directed at deciding the presence or extent of the spread of biosecurity matter, the program authorisation must state the parts of the State to which the program applies and, if the program only applies to a particular type of place in the State or a part of the State, a description of the type of place.

For a biosecurity program that is a prevention and control program, the authorisation must state the nature and extent of the program, including the parts of the State to which it applies, and if the program only applies to a particular type of place, a description of the type. If a particular type of place is to be entered and inspected under the prevention and control program, the authorisation must also include a description of the type of place.

The program authorisation must also state the powers an authorised officer may exercise under the program, including the extent to which an authorised officer is to act under the program, including measures the authorised officer may take.
Subclause (2) clarifies that the period over which the program is to be carried out must be limited to the period reasonably necessary for achieving the program's purpose.

237 Giving a direction for prevention and control program

Clause 237 specifies the powers that are give to an authorised officer to use at any reasonable time and at a place situated in the control program area. The clause outlines that the powers extend to directing an occupier of a place to take reasonable steps within a reasonable period to remove or eradicate the biosecurity matter the subject of the program or require a person to destroy a biosecurity matter, or carrier, if it poses a significant biosecurity risk. When giving the direction, the authorised program person must give the occupier an offence warning for the direction. The clause specifies that actions taken under a biosecurity program must be limited to those that are reasonably necessary for achieving the program's purpose. This clause does not limit the powers of an authorised officer under Chapter 10 of the Bill.

238 Failure to comply with direction

Clause 238 provides that it is an offence for an occupier of a place to fail to comply with a direction under clause 237 unless the occupier has a reasonable excuse. However, the person does not commit an offence if the person was not given an offence warning for the direction.

Part 3 Consultation and notification

239 Consultation about proposed biosecurity program

Clause 239 specifies that the chief executive must consult as far as practicable with a local government for the area to which the program applies before authorising a biosecurity program. Subclause (2) requires a local government to consult as far as practicable with the chief executive or an invasive animal board before authorising a biosecurity program.

The clause also requires an invasive animal board to consult with the chief executive and a relevant local government before a biosecurity program is authorised.

240 Notice of proposed biosecurity program

Clause 240 requires the chief executive or chief executive officer of a local government or an invasive animal board to publish notice of the authorisation for a biosecurity program at least 14 days before the program commences.

The notice must be given to each department or government owned corporation that controls land in the area to which the program relates and be published on either the department's website, the local government's website, or the an invasive animal board's website depending upon who authorised the biosecurity program. The notice also may be published in another way including, for example, by radio or television in the area to which the biosecurity program applies. However, a failure to give or publish the notice does not invalidate the authorisation.

The notice must include why the biosecurity program is happening and how it will be run and the expected timeframe for the program. It requires that a copy of the program must be made available for viewing and that a copy of the program must be made available for purchase

from the administrative entity. However, the price charged for the purchase of a copy of the program authorisation must not be greater than its production and, if posted, its postage cost.

241 Access to authorisation

Clause 241 requires that copies of the program authorisation must be made available for inspection or purchase for the duration of the program.

Chapter 10 Appointment and powers of officers

Chapter 10 provides for the appointment of authorised persons and inspectors (collectively referred to as 'authorised officers'). Inspectors, because of their training and/or qualifications, are provided with greater powers than authorised persons and an authorised person will, in certain instances operate under the direction and control of an inspector. The chapter provides for the general and emergency powers of authorised officers and the conditions under which each may be exercised.

Part 1 General matters about inspectors and authorised persons

Division 1 Appointment of inspectors

242 Appointment and qualifications

Clause 242 empowers the chief executive to appoint inspectors. Inspectors may only be appointed by the chief executive of the department by written instrument and where the chief executive is satisfied the person has the necessary expertise or experience. The class of persons that are to be eligible for appointment as inspectors are: a public service employee; an employee of the Commonwealth, another State or another country whose employment ordinarily involves matters about biosecurity; a veterinary surgeon under the *Veterinary Surgeons Act 1936*; a person who has entered into a contract, or an employee of a person who has entered into a contract, with the chief executive to perform a function; and other people or a class of person prescribed under a regulation.

243 Appointment conditions and limit on powers

Clause 243 provides for the conditions of appointment of inspectors and allows for the imposition of limitations on their powers. The conditions, and any limitation on the inspector's powers, can be stated in the inspector's instrument of appointment or a notice given to the inspector and signed by the chief executive, or in a regulation.

244 When office ends

Clause 244 identifies that, although not limited to the following, an inspector ceases to hold office if:

- the term of office stated in a condition of office ends;
- under another condition of office, the inspector ceases to hold office;
- the inspector resigns under clause 245.

245 Resignation

Clause 245 provides that an inspector may resign by giving a signed notice to the chief executive. However, if holding office as an inspector is a condition of the inspector holding another office, the inspector may not resign as an inspector without resigning from the other office as well.

Division 2 Appointment of authorised persons

246 Appointment and qualifications

Clause 246 empowers the appointment of authorised officers by various administering executives. The chief executive may appoint a public service employee, a person or member of a class of person prescribed under a regulation to be an authorised person or a person who has entered into a contract with the chief executive to perform a function under the Act. The chief executive officer of a local government may appoint an employee of the local government or another local government or another person under contract to the local government to be an authorised person. To allow smaller local governments to share an authorised person, provision is made for the chief executive officers of two or more local governments to appoint the same person. An invasive animal board may appoint a person as an authorised person.

The clause requires the administering executives to be satisfied that the intended appointee has the necessary expertise or experience to be qualified for the appointment.

247 Appointment conditions and limit on powers

Clause 247 provides for the conditions of appointment of authorised persons and allows for the imposition of limitations on their powers. The conditions, and any limitation on the powers of the authorised person, can be stated in the instrument of appointment, or a notice given to the authorised person and signed by the administrative executive, or in a regulation.

248 When office ends

Clause 248 identifies that, although not limited to the following, an authorised person ceases to hold office if the term of office stated in a condition of office ends; under another condition of office, the authorised person ceases to hold office; the authorised person resigns under clause 249.

249 Resignation

Clause 249 provides that an authorised person may resign by giving a signed notice to the relevant administering executive. Where the authorised person is appointed by two or more chief executive officers the authorised person needs only give a signed notice to one of the chief executive officers. However, if holding office as an authorised person is a condition of the authorised person holding another office, the authorised person may not resign as an authorised person without resigning from the other office as well.

Division 3 Special provision for appointments of police officers and TORUM authorised officers

250 Purpose of division

Clause 250 provides that the purpose of this division is to allow the special appointment of police officers as inspectors, and to allow the special appointment of accredited persons and authorised officers under the *Transport Operations (Road Use Management) Act 1995* (TORUM) as authorised persons.

Both the police and Department of Transport and Main Roads authorised officers and accredited persons have specialised training in safely stopping vehicles and in particular vehicles travelling on main roads and highways. In the event of an emergency response on

the scale of that encountered during the equine influenza outbreak, a whole of government approach to utilise the skills and resources across government is appropriate and practical.

Subclause (2) clarifies that Division 3 does not limit any power the chief executive has to otherwise appoint a police officer, subject to the provisions of the *Police Powers and Responsibilities Act 2000*, as an inspector under Division 1 or to appoint TORUM accredited persons and authorised officers as authorised persons under Division 2.

251 Regulation may appoint prescribed class of police officer

Clause 251 provides that a regulation may provide that each police officer of a class prescribed in the regulation is an inspector under the Act.

For example members of the Stock Investigation Squad, a unit of the Queensland Police Service, provide valuable technical and manpower support in the monitoring and enforcement of compliance with the provisions of the Act and subordinate legislation.

Subclause (2) provides that a police officer of the class prescribed in the regulation is deemed an inspector without further appointment.

Subclause (3) provides that a regulation does not limit the operation of the *Police Powers and Responsibilities Act 2000.* The effect of section 14 of that Act to an appointment of a police officer as an inspector under this Act is that a police officer may exercise the powers of an inspector only to the extent that the Commissioner of Police first approves the exercise of the powers.

Subclause (4) provides that a regulation under subclause (1) may limit the powers of a police officer appointed as an inspector under this Act.

252 Appointment of police officer as inspector for biosecurity emergency

Clause 252 deals with the appointments of police officers as inspectors for biosecurity emergencies declared under Chapter 6. It is recognised that a specialised group of police officers provide valuable technical and manpower support in the monitoring and enforcement of compliance and are therefore an invaluable resource in emergency situations.

The chief executive may, by notice, provide that each police officer is an inspector under this Act for the purposes of implementation of the biosecurity emergency order. The term of appointment is limited to the period the biosecurity emergency order is in force or for another stated period in the notice. The appointment of a police officer of a class described in the notice is made only for the purposes of the biosecurity emergency provisions identified in the notice.

While the chief executive may appoint police officers broadly, it will still be the responsibility of the Commissioner of Police under section 14 of the *Police Powers and Responsibilities Act 2000* that will determine who has the necessary skills and therefore who will be inspectors for this purpose of this provision.

Subclause (6) provides that before making the notice the chief executive must consult with the Commissioner of Police about the contents of the proposed notice.

253 Appointment of authorised officer or accredited person under TORUM as authorised person for biosecurity emergency

Clause 253 deals with the appointment of TORUM authorised officers in emergency situations as they have the relevant skills to deal with stopping and directing traffic.

Subclauses (1) to (3) provides for the appointment of authorised officers or accredited persons under Part 2 of Chapter 3 of TORUM of a class described in a notice made and published by the chief executive as an authorised person under this Act for the purposes of implementing a biosecurity emergency order. The appointment continues for the term of the biosecurity emergency order or for another stated period in the notice and only for the purposes of the biosecurity emergency provisions identified in the notice.

Subclause (4) provides that information other than a description of the class of TORUM accredited person or authorised officer may be included in the chief executive's notice made under subclause (3).

Division 4 General matters about authorised officers

254 Powers generally

Clause 254 provides that an authorised officer has the powers given to them under the Act and that the exercise of those powers is subject to the direction of the administering executive.

255 Powers of particular authorised officers limited

Clause 255 limits the powers of an authorised person who is appointed by the chief executive officer of a local government to the local government's area or where an authorised person is appointed by two or more local governments, the person's powers are limited to those local governments' areas and to the invasive biosecurity matter in that area. Also, the powers of an authorised person appointed by an invasive animal board are limited to the board's operational area, if prescribed, or alternatively within 20km of the barrier fence for which the board is responsible.

The clause explains that an authorised officer has powers in relation to a biosecurity program only if that authorised officer is appointed by at least one of the entities that authorised the biosecurity program.

256 Functions of authorised officers

Clause 256 identifies that the functions of authorised officers.

Division 5 Miscellaneous provisions

257 References to exercise of powers

Clause 257 provides that wherever there is a reference under Part 1 of this chapter to the exercise of a power by an authorised officer and there is no reference to a specific power, the reference is to the exercise of all or any of the authorised officer's powers under this chapter or a warrant to the extent that the powers are relevant.

258 Reference to document includes reference to reproductions from electronic document

Clause 258 provides that a reference in this chapter to a document includes a reference to an image or writing produced from an electronic document, or capable of being produced from an electronic document with or without the aid of another article or device.

Part 2 Entry to places by authorised officers

Division 1 Power to enter

259 General power to enter places

Clause 259 makes provision for an authorised officer's general power to enter places.

Under subclause (1), an inspector may enter a place if—

(a) an occupier of the place consents under division 2 to the entry and clause 267 (Matters authorised officer must tell occupier) has been complied with for the occupier; or

(b) it is a public place and the entry is made when it is open to the public; or

(c) the entry is authorised under a warrant and, if there is an occupier of the place, clause 277 (Entry procedure) has been complied with for the occupier; or

(d) it is a place of business regulated under the Act and is—

(i) open for carrying on the business; or

(ii) otherwise open for entry; or

(iii) required under the Act to be open for inspection by an authorised officer.

Subclause (2) provides that for subclause (1)(d), a 'place of business' does not include a part of the place where a person resides.

Subclause (3) clarifies what does not constitute a person's residence. The subclause provides that the following do not form part of a residence:

- a carport, other than a carport to which access is restricted;
- the area of a verandah or deck, to which access is not restricted and no provision is made to restrict access;
- the area underneath a dwelling to which access is not restricted or no provision is made to restrict access;
- any other external parts of the dwelling, including, for example, the dwelling's gutters; or
- land around the residence

Subclause (4) provides that if the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.

Subclause (5) provides that if the power to enter is under a warrant, the power is subject to the terms of the warrant.

Subclause (6) provides that the consent may provide consent for re-entry and is subject to the conditions of consent, while subclause (7) provides that if the power to re-enter is under a warrant, the re-entry is subject to the terms of the warrant.

Subclause (8) defines the term 'regulated under this Act' for a place of business.

260 Power to enter place to ascertain if biosecurity risk exists

Clause 260 empowers authorised officers to enter a place at reasonable times if the officer reasonably believes a biosecurity risk exists at the place. The entry does not include entry to a part of the place where the occupier resides. The officer must make a reasonable attempt to locate the occupier and obtain the occupier's consent; where consent is refused, the officer may not enter the place without a warrant. If the officer is unable to locate the occupier, the officer must leave a notice about the entry in a conspicuous place about the date, time and purpose of entry.

261 Power to enter place under biosecurity program

Clause 261 empowers an authorised officer to enter a place at reasonable times to take action under a biosecurity program for the place. The power does not include entry to a part of the place where the occupier resides. The officer must make a reasonable attempt to locate the occupier, produce the officer's identity card for inspection by the occupier, inform the occupier of the reason for entering and advise the occupier that the occupier's consent is not required for the entry. If the occupier cannot be located, the officer must leave a notice about the entry in a conspicuous place about the date, time and purpose of entry.

The clause clarifies that it does not apply in relation to the carrying out of aerial control measures under a biosecurity program.

262 Power to enter place to check compliance with biosecurity order

Clause 262 empowers authorised officers to enter a place at reasonable times to check whether the recipient of a biosecurity order has complied with the order. However, the entry does not include entry to a part of the place where the occupier resides. The officer must make a reasonable attempt to locate the occupier, produce the officer's identity card for inspection by the occupier, inform the occupier of the reason for entering and advise the occupier that the occupier's consent is not required for the entry. If the occupier cannot be located, the officer must leave a notice about the entry in a conspicuous place about the date, time and purpose of entry.

263 Power to enter place to take steps if biosecurity order not complied with

Clause 263 empowers authorised officers to enter a place to take the steps that a person given a biosecurity order was required to take but has not taken. The provision also extends to entry by employees or agents engaged by an issuing authority to undertake the steps. The term issuing authority is defined in Schedule 4 to mean either the chief executive or a local government. For example, a landholder is issued with a biosecurity order by an authorised person appointed by the chief executive officer of a local government to dig up and dispose of Mexican feather grass on the landholder's property. The landholder fails to comply with that order. The local government may direct local government employees or a contractor to undertake the weed removal and disposal. The employees or contractors have the power under this clause to enter onto the land and undertake the required work.

264 Power to enter place to take action required under direction

Clause 264 empowers an authorised officer or an issuing authority's employees or agents to enter a place at reasonable times to take action at the place that was required to be taken under a direction issued by an authorised officer but was not complied with.

Division 2 Entry by consent

265 Application of div 2

Clause 265 outlines the operation of Division 2 in regard to the asking of an occupier of a place for consent to allow the authorised officer or another authorised officer to enter the place under clause 259(1) (a) (General power to enter places).

266 Incidental entry to ask for access

Clause 266 provides that an authorised officer may take reasonable steps to ask for an occupier's consent to enter their premises. That includes entering land around the premises to contact the occupier or enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

267 Matters authorised officer must tell occupier

Clause 267 provides that an authorised officer must give a reasonable explanation to the occupier about the purpose of the entry, including the powers intended to be exercised. The occupier is to be advised that they are not required to consent and that the consent may be subject to conditions and may be withdrawn at any time.

268 Consent acknowledgement

Clause 268 provides for an authorised officer, who has received consent from an occupier to enter their premises, to ask the occupier to sign an acknowledgement of their consent. The acknowledgement should state the purpose of entry and the powers to be exercised and that the authorised officer has explained these matters to the occupier including that the occupier does not need to consent to entry. In addition the acknowledgement should detail the time and date the consent was given and any conditions of consent. The authorised officer must give the occupier a copy of the signed acknowledgement immediately or as soon as practicable. In any proceeding about whether consent was given the onus is on the authorised officer to prove the occupier consented to entry in absence of a signed acknowledgement from the occupier.

Division 3 Entry for particular purposes

269 Entry of place under s 260

Clause 269 identifies procedural matters to be complied with by an authorised officer intending to enter a place under clause 260 (Power to enter place if biosecurity risk exists) to determine whether there is a biosecurity risk at the place. Before entering the place, the authorised officer must make a reasonable attempt to locate the occupier and obtain the occupier's consent to entry.

If the authorised officer, after making a reasonable attempt, cannot locate the occupier, the authorised officer may enter the place. In these circumstances, the authorised officer must leave a notice to the occupier about the date, time and purpose of the entry.

If the authorised officer does locate the occupier and the occupier does not consent to the entry the authorised officer must not enter the place without first obtaining a warrant.

270 Entry of place under ss 261 and 262

Clause 270 identifies procedural matters to be complied with by an authorised officer intending to enter a place, other than airspace above land, under a biosecurity program or to check compliance with a biosecurity order. Before entering the place for either of these purposes, the authorised officer must first make a reasonable attempt to locate the occupier and obtain the occupier's consent to entry.

If the authorised officer after making a reasonable attempt cannot locate the occupier, the authorised officer may enter the place. In these circumstances, the authorised officer must leave a notice to the occupier, about the date, time and purpose of the entry.

Where an occupier is present the authorised officer must, upon entering, produce their identity card, inform the occupier of the reason for entering the place, advise the occupier that they are authorised to enter the place under the Act without the consent of the occupier. The authorised officer must also advise the occupier of any steps to be taken at their place under a biosecurity program and that it is an offence to interfere in the authorised officer taking those steps.

271 Entry of place under ss 263 and 264

Clause 271 identifies procedural matters to be complied with by an authorised officer or an issuing authority's employees or agents who intend to enter a place for the purposes of taking the steps or actions that were not taken either under a biosecurity order or under a direction. Before entering the place for these purposes, the authorised officer, employee or contractor must make a reasonable attempt to locate the occupier and obtain the occupier's consent to the entry.

If, after making a reasonable attempt, the authorised officer, employee or contractor cannot locate the occupier, the person may enter the place. In these circumstances, a notice to the occupier must be left in a conspicuous place detailing the date, time and purpose of the entry.

Where an occupier is present the person must, upon entering, produce their identity card or in the case of an employee or contractor – the issuing authority's written consent and sufficient identity evidence, inform the occupier of the reason for entering the place and advise the occupier that the person is authorised to enter the place under the Act without the consent of the occupier.

Division 4 Entry under warrant

Subdivision 1 Obtaining warrant

272 Application for warrant

Clause 272 enables an authorised officer to make a sworn application to a magistrate for a warrant to enter a place. A magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires.

273 Issue of warrant

Clause 273 provides that a magistrate may issue a warrant for a place if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next seven days, a particular thing or activity that may provide evidence of an offence against the Act or there is a biosecurity risk at the place. A magistrate may also

issue a warrant for a place to allow an authorised officer to investigate, monitor, and enforce compliance with the act under clause 256(1) (a) or (b) if the magistrate is satisfied it is reasonably necessary that the authorised officer should have access to the place for the purpose of effectively performing the function at the place.

Subclause (4) lists the matters the warrant must state. Subclause (5) provides that where a warrant relates to a biosecurity risk, the warrant may allow an authorised officer to re-enter the place at a later date to check compliance with a biosecurity order if one is issued as a result of the authorised officer's entry of the place under the warrant.

The period for such re-entry stated in the warrant may be up to seven days after the date the biosecurity order sets as the end date by which the actions required under the biosecurity order must be completed or the date stated in the warrant. Warrants that do not provide for re-entry expire 14 days after the warrant's issue.

274 Electronic application

Clause 274 provides for an application for a warrant to be by electronic means in urgent or special circumstances such as an authorised officer's remote location. The clause provides that a written application must be made, but not sworn, before the authorised officer applies for the warrant electronically.

275 Additional procedure if electronic application

Clause 275 provides for additional procedures for an application made by electronic communication.

The authorised officer must as soon as practicable, send the written application to the magistrate.

The magistrate must be satisfied with the need for an electronic application before issuing the warrant. The magistrate must attempt to give the warrant immediately to the authorised officer or if not practical then convey the information contained on the warrant to the authorised officer.

In any proceeding in which it is questioned whether an exercise of power was authorised the onus is on the person operating under the warrant to prove the occupier consented to entry in absence of a signed acknowledgement from the occupier.

276 Defect in relation to a warrant

Clause 276 provides that a defect on a warrant, or duplicate of a warrant, does not invalidate the warrant unless the defect affects the substance of the warrant in a material particular.

Subdivision 2 Entry procedure

277 Entry procedure

Clause 277 sets out the procedure for entering a place under a warrant. The authorised officer must make a reasonable attempt to identify themselves to the occupier of the place. They must present their identity card or another document evidencing the appointment, give the occupier a copy of the warrant and tell the occupier that they are authorised by the warrant to enter the place. The authorised officer must give the occupier an appropriate opportunity to allow immediate entry to the place without using force.

However, an authorised officer may enter a place without attempting to identify themselves if the authorised officer believes on reasonable grounds that the action of attempting to identify themselves would compromise the execution of the warrant.

Part 3 Emergency powers of inspectors

278 Application of pt 3

Clause 278 explains that the part applies if an inspector is satisfied that it is necessary to exercise emergency powers to enter a place in order to avoid an imminent and significant biosecurity risk. The emergency power may not be used at a place or part of a place used for residential purposes.

279 Power and procedure for entry

Clause 279 provides that an inspector may enter a place without a warrant or consent of the occupier but must take reasonable steps to identify themselves, unless immediate entry is imperative to avoid an imminent and significant biosecurity risk.

280 Power in relation to activity or biosecurity matter

Clause 280 empowers an inspector to take reasonable steps, or authorise another person to take reasonable steps, to avoid an imminent and significant biosecurity risk. Subclause (2) includes a non-exhaustive list of reasonable steps that may be taken including requiring a person to remain at, not enter, or move from a place; clean or disinfect the place; or destroy, dispose or remove biosecurity matter or a carrier from a place.

The inspector may give a direction orally but must as soon as practicable, confirm the direction by written notice.

Where an inspector takes reasonable steps to address the biosecurity risk, the inspector may also exercise any of the inspector's powers under this Chapter. For example, an inspector takes reasonable steps to isolate animals affected by a prohibited matter at the place. Whilst taking those steps, the inspector may direct a person at the place to destroy a thing that is the carrier of the prohibited matter.

281 How power may be exercised

Clause 281 provides that an inspector may exercise the powers under clauses 279(1) and 280(1)(b) and (5) with the assistance of another and if needed, using reasonable force to exercise those powers. In exercising the emergency powers the inspector must ensure that as little inconvenience is caused to people on the premises and as little damage to property occurs as practicable in the circumstances. If another person is assisting the inspector then the inspector must clearly inform the person what they are to do and their powers in undertaking the action.

282 Requirement to give chief executive notice

Clause 282 requires an inspector, as soon as practicable after exercising their emergency powers, give the chief executive notice of that fact.

283 Duration of emergency powers

Clause 283 provides that an inspector's emergency power lasts until the earlier of either the imminent and significant risk has been avoided, or 96 hours has lapsed since the inspector first exercised the emergency power.

284 Failure to comply with inspector's directions in emergency

Clause 284 provides that it is an offence, with a maximum penalty of 2000 penalty units, for a person to fail to comply with a direction given by an inspector exercising emergency powers unless the person has a reasonable excuse.

285 Inspector's powers not affected

Clause 285 provides that the powers of an inspector under this Part do not limit any other powers an inspector has under the Act.

Part 4 Other authorised officers' powers and related matters

Division 1 Stopping or moving vehicles

286 Application of div 1

Clause 286 provides that Division 1 applies in circumstances where an authorised officer reasonably suspects, or is aware, that a thing in or on a vehicle may provide evidence of the commission of an offence against the Act, or may pose a biosecurity risk.

287 Power to stop or move

Clause 287 empowers an authorised officer to direct a person in charge of a motor vehicle to stop the vehicle or move it to a convenient place to allow the authorised officer to exercise their powers under the Act. Once the vehicle is stopped, an authorised officer may direct the person in control of the vehicle to not move it until they have exercised their powers; or move the vehicle to, and keep it at, a stated reasonable place to allow them to exercise their powers.

When giving the direction after the vehicle is stopped, the authorised officer must give the person in control an offence warning for the direction.

The term 'offence warning' is defined in Schedule 5 to mean a warning given by an authorised officer to a person that, without a reasonable excuse, it is an offence for the person to fail to comply with a direction or requirement given to the person by the authorised officer.

288 Identification requirements if vehicle moving

Clause 288 outlines procedural matters for an authorised officer intending to stop a moving vehicle under clause 287(1). The authorised officer must clearly identify themself as an authorised officer in exercising the officer's powers. When the vehicle stops, the authorised officer must immediately produce their identity card for the inspection of the person in control of the vehicle.

289 Failure to comply with direction

Clause 289 provides that it is an offence, with a maximum penalty of 50 penalty units, to not comply with a request, signal or direction unless the person has a reasonable excuse. It is a reasonable excuse for a person not to comply with the request or signal to stop or move the

person's vehicle immediately if the authorised officer has not identified themselves or if the stopping or moving of the vehicle would endanger someone else or cause loss or damage to property and the person complies with the request as soon as practicable.

Subclause (4) provides that a person does not commit an offence against the clause if the direction the person fails to comply with is given under clause 287(2) and the person is not given an offence warning for the direction.

Division 2 Stopping or moving travelling animals

290 Application of div 2

Clause 290 provides that Division 2 applies if an inspector reasonably suspects, or is aware, that an animal travelling on a stock route or a reserve may pose a biosecurity risk.

291 Power to stop or move

Clause 291 empowers an inspector to direct a person driving animals on the stock route or reserve to stop the animal at a place or return it to a place to allow the inspector to exercise their powers in relation to that animal. When giving the direction, the inspector must give the person an offence warning for the direction.

292 Identification requirements if animal travelling on stock route

Clause 292 provides that where an inspector intends to give a direction to a person driving an animal on the stock route to stop, the inspector must clearly identify themself as an inspector. When the animal has been stopped the inspector must immediately produce their identity card for inspection by the person in control of the animal.

293 Failure to comply with direction

Clause 293 provides that it is an offence, with a maximum penalty of 50 penalty units, for a person driving or in control of an animal to fail to comply with a direction by an inspector, unless the person has a reasonable excuse. It is a reasonable excuse for the person not to comply with the direction immediately if the inspector has not identified themself or if it would endanger someone else or cause loss or damage to property in complying with the request or direction.

Subclause (4) provides that a person does not commit an offence against the clause if the direction the person fails to comply with is given under clause 291(2) and the person is not given an offence warning for the direction.

Division 3 Aerial control measures

294 Power to carry out aerial control measures under biosecurity program

Clause 294 empowers an authorised officer to carry out, or direct another person to carry out, aerial control measures in relation to a place if such action is authorised under a biosecurity program. Aerial control measures include the use of both manned and non-manned aerial devices.

To undertake aerial control measures an authorised officer must give written notice of the proposed aerial control measure to the occupier of the place at least 48 hours before carrying out the measure. However, the requirement to notify the occupier is not necessary if the aerial control measure is undertaken from a height of more than 350 feet from the place or it is

necessary to undertake the control within 48 hours to be effective. In this case the authorised officer must make reasonable attempts to verbally advise the occupier of the place about the aerial control measure before the measure is carried out.

The clause specifies that a written notice must include a description of the biosecurity program authorising the aerial control measure, a description of the aerial control measure and the period during which the aerial control measure will be carried out.

Division 4 General powers of authorised officers after entering places

295 Application of div 4

Clause 295 identifies the powers that may be exercised by authorised officers who enter a place under clause 259(1)(a)(c)or(d) (General powers to enter places); clause 260 (Powers to enter a place to ascertain if a biosecurity risk exists); clause 261 (Power to enter a place under a biosecurity program); clause 262 (Powers to enter a place to check compliance with a biosecurity order); clause 263 (Powers to enter a place to take steps if a biosecurity order is not complied with); clause 264 (Powers to enter place to take action required under a direction); Part 3 (Emergency powers of inspectors); or Chapter 6 (Managing biosecurity emergencies and risks).

If an authorised officer enters a place with consent or under the terms of a warrant under 259(1) (a) or (c), the powers under this Division are subject to any conditions of the consent or terms of the warrant.

296 General powers

Clause 296 lists the general powers of authorised officers after entering a place which includes searching any part of the place; inspecting, examining or filming any part of the place or anything at the place; taking for examination a thing or sample of a thing; placing an identifying mark in or on anything at the place; placing a sign or notice at the place; producing an image or writing at the place from an electronic document or taking to another place to do so (for example taking a computer to another place to copy a document); use equipment and materials taken to the place or at the place and use any person to operate the equipment or materials to the extent the authorised officer reasonably requires for exercising the officer's powers under the Division; take a detection animal onto the place, destroy biosecurity matter or a carrier that is the subject of a biosecurity program if the officer reasonably believes the biosecurity matter poses a significant biosecurity risk; destroy biosecurity matter or a carrier, with the consent of the owner, if the officer believes on reasonable grounds the biosecurity matter or carrier poses a significant biosecurity risk; or remain at the place for the time necessary to achieve the purpose of the entry.

An authorised officer may take a necessary step to allow the exercise of a general power. If an authorised officer takes a document from the place to copy it, the officer must copy and return the document to the place as soon as practicable.

If an authorised officer takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the officer must produce the document and return the article or device to the place as soon as practicable.

297 Power to require reasonable help

Clause 297 empowers an authorised officer to require an occupier of the place, or a person at the place, to provide the officer with reasonable help to enable the officer to exercise a general power including, for example, to produce a document or to give information.

When making a help requirement, the authorised officer must give the person an offence warning for the requirement.

298 Offence to contravene help requirement

Clause 298 makes it an offence, with a maximum penalty of 50 penalty units, to contravene a help requirement, unless the person has a reasonable excuse. It is a reasonable excuse that providing the help might tend to incriminate the person or expose them to a penalty. The reasonable excuse does not apply if a document or information is required to be held or kept by the defendant under the Act.

Division 5 Seizure by authorised officers and forfeiture

Subdivision 1 Power to seize

299 Seizing evidence at a place that may be entered without consent or warrant

Clause 299 empowers an authorised officer who has entered a place that does not require either consent from an occupier or a warrant to seize evidence. In such a situation the authorised officer may seize a thing only if the authorised officer reasonably believes it is evidence of an offence against the Act. The power to seize a thing also applies even if the entry is under a warrant.

300 Seizing evidence at a place that may be entered only with consent or warrant

Clause 300 empowers an authorised officer who has entered a place that may only be entered with an occupier's consent or with a warrant to seize evidence. However the authorised officer may only seize a thing they reasonably believe it is evidence of an offence against the Act and is consistent with the purpose of entry told to the occupier when seeking consent to enter.

If an authorised officer enters the place under a warrant issued under clause 273(2), the officer may seize the evidence for which the warrant was issued.

An authorised officer may also seize anything else at the place if the officer reasonably believes it is evidence of an offence against the Act; is necessary to prevent the thing being hidden, lost or destroyed; or will be used to continue, or repeat, the offence; or if the thing at the place has just been used in committing an offence against the Act.

301 Seizure of property subject to security

Clause 301 empowers an authorised officer to seize a thing under this Division and exercise powers in relation to the thing despite a lien or security over the thing. However, the seizure does not affect the other person's lien or security against a person other than the authorised officer or a person acting for the authorised officer.

Subdivision 2 Powers to support seizure

302 Requirement of person in control of thing to be seized

Clause 302 empowers an authorised officer to require a person in control of a thing to be seized to take it to a stated reasonable place by a stated reasonable time and, if necessary, to remain in control of it at the stated place for a reasonable time. The requirement must be made by notice and if it is not practicable to give the notice, the authorised officer may give the requirement verbally but confirm it by notice as soon as practicable.

303 Offence to contravene seizure requirement

Clause 303 provides that it is an offence, with a maximum penalty of 50 penalty units, for a person to fail to comply with a requirement of a person in control of a thing to be seized unless the person has a reasonable excuse.

304 Power to secure seized thing

Clause 304 empowers an authorised officer to secure a seized thing at the place and take reasonable action to restrict access to it or move it from the place of seizure.

For example an authorised officer may seal the thing or the entrance to the place of seizure and mark the thing or place to show access to the thing or place is restricted. If the thing seized is equipment the authorised officer may restrict access to the thing by making it inoperable.

305 Offence to contravene other seizure requirement

Clause 305 provides that a person must comply with a requirement made of the person under clause 304(2)(c) unless the person has a reasonable excuse. A maximum penalty of 50 penalty units applies for non compliance.

306 Offence to interfere

Clause 306 makes it an offence, with a maximum penalty of 100 penalty units, to interfere with a seized thing that has been restricted. A person must not tamper with the thing or with anything used to restrict access to the thing without an authorised officer's approval or a reasonable excuse.

Subclause (2) provides that if access to a place is restricted under clause 304 a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without an authorised officer's approval or a reasonable excuse.

Subdivision 3 Safeguards for seized things

307 Receipt and information notice for seized thing

Clause 307 obliges an authorised officer to give the owner, or another person from whom a thing was seized, a receipt detailing a description of the thing seized and an information notice for the decision to seize the thing. However, this does not apply if the officer reasonably believes there is no one apparently in possession of the thing or the thing has been abandoned. A receipt is also unnecessary if, because of the condition, nature and value of the thing it would be unreasonable to require the officer to comply with the clause.

A receipt given under this clause must describe the thing and its condition and an "information notice" must also be given.

If an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.

The receipt and information notice is to be given in the same document and relate to more than one seized thing.

The authorised officer may delay giving the receipt and information notice if the officer reasonably suspects giving them may frustrate or otherwise hinder an investigation by the inspector under the Act. However, the delay may only be for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place to keep it under observation.

308 Access to seized thing

Clause 308 allows an owner access to a seized thing until it is either forfeited or returned. The owner must be allowed to inspect the thing, free of charge, at any reasonable time and from time to time and if it is a document - to copy it. However an owner's access does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

309 Return of seized thing

Clause 309 provides for the return of seized things of intrinsic value that are not forfeited or destroyed. An authorised officer must return the thing to its owner at the end of six months after the seizure; or if a proceeding for an offence involving the thing is started within the six months, at the end of the proceeding and any appeal from the proceeding; or if the thing seized posed a biosecurity risk when either it ceased to be a biosecurity risk or the authorised officer is satisfied that the biosecurity risk will not recur if the thing is returned.

If the thing was seized as evidence, the authorised officer must return the seized thing to the owner as soon as practicable after the officer is satisfied that its continued retention as evidence is no longer required; it will not be used to continue or repeat an offence against the Act; and it is lawful for the owner to possess the thing. Nothing in the clause affects a lien or other security over the seized thing.

Subdivision 4 Forfeiture

310 Forfeiture by administrator decision

Clause 310 empowers the State or local government to allow the forfeiture of a seized thing to them. The cases in which a forfeiture may occur are that the owner cannot be found after making reasonable inquiries; the thing cannot be returned to its owner, after making reasonable efforts; it is considered that the return of the seized thing may result in a recurrence of a biosecurity risk; or it is necessary to keep the thing to prevent it being used to commit an offence.

The clause outlines the matters that must be taken into consideration in determining what reasonable inquiries and efforts must be made to locate the owner of the thing or to return the thing to the owner. For example, taking into account the thing's condition, nature and value in deciding whether it is reasonable to make the inquiries or efforts.

311 Forfeiture by chief executive decision

Clause 311 provides two examples where the chief executive may decide a particular seized thing is to be forfeited to the State.

The first case where an inspector believes a seized thing can be changed so that it complies with the Act but it requires the owner to do something to change it and the owner of the thing does not comply with the requirement to change the thing. For example, a bag of seed for sowing contains weed seeds which can be separated and an inspector requests the weed seeds be separated and removed from the seed. If the owner fails to separate and remove the weed seeds within a stated time, the inspector may seize the bag of seed and it will be forfeited to the State.

The second case is where an inspector believes on reasonable grounds that a thing cannot be changed to comply with the Act and it is necessary to retain the thing to prevent its use in committing an offence against this Act.

312 Information notice for forfeiture decision

Clause 312 obliges the State or local government that decides a thing is forfeited under clause 310(1) or the chief executive who decides a thing is forfeited under clause 311 to give its owner an information notice for the decision as soon as practicable.

If the decision was made under clause 310(1)(a) or (b), the information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way. However, it is not necessary to provide an information notice under clause 310(1)(a) or (b) if the place where the thing was seized is a public place or a place where the notice is unlikely to be read by the former owner.

The information notice must state that the former owner may apply for a stay of the decision if they appeal against the decision.

313 Forfeiture on conviction

Clause 313 provides for a court to order the forfeiture of a thing on the conviction of a person for an offence against the Act. The court may order the forfeiture to the State or a local government of anything used to commit the offence or anything else that is subject to the offence.

The court may make the order whether or not the thing has been seized and, if it has been seized, whether or not the thing has been returned to the former owner of the thing.

The clause provides that, without limiting the court's power under another law, the court may make any order to enforce the forfeiture it considers appropriate.

314 Procedure and powers for making forfeiture order

Clause 314 identifies the procedure and powers for making a forfeiture order. A court may order the forfeiture of a thing on the conviction of a person for an offence against this Act, on its own initiative, or on application by the prosecution. The clause enables a court, in deciding whether to make a forfeiture order, to require notice about the matter be given to a person the court considers appropriate and to hear submissions made by persons claiming to have property in the thing.

Subdivision 5 Dealing with property forfeited or transferred to relevant entity or the State

315 When thing becomes property of relevant entity

Clause 315 provides that a thing becomes the property of a relevant entity if it is forfeited to the relevant entity under clause 310(1).

316 When thing becomes property of the State or local government

Clause 316 provides that a thing becomes the property of the State if the chief executive decides the thing is forfeited because an owner has not changed the thing, as directed by an inspector, or because it cannot be changed as required and it is necessary to retain it to prevent its use in committing an offence. The thing also becomes the property of the State if both the owner and the State transfer the ownership of the thing to the State by way of a written agreement. The thing is forfeited to either the State or the local government if it has been used in the commission of an offence against the Act.

317 How property may be dealt with

Clause 317 sets out that the State or a local government that has had property forfeited to it or had ownership transferred to it may destroy it, give it away, sell it, or deal with it in another appropriate way. If a thing is sold, the proceeds of the sale (minus costs of the sale) may be given to the former owner of the thing. The thing must not be dealt with in a way that could prejudice the outcome of an appeal against the forfeiture under the Act.

The clause is subject to any disposal order made for the thing.

318 Power of destruction

Clause 318 empowers an authorised officer to destroy a seized thing if it consists wholly or partly of contaminated or decomposed matter or the officer reasonably believes it poses an immediate biosecurity risk.

Division 6 Disposal orders

319 Disposal order

Clause 319 provides that a court may make a disposal order for a thing upon the conviction of a person for an offence against the Act. The court may make the order on its own initiative or on the application of the prosecution and it may be made against anything used to commit the offence or anything else the subject of the offence and whether or not the thing was seized under this Act or had been returned to the owner.

The court, in deciding whether to make a disposal order, may require notice to be given to any person the court considers appropriate and to hear submissions made by people claiming to have property in the thing. The clause provides that, without limiting the court's power under another law, the court may make any order to enforce the disposal order it considers appropriate.

Division 7 Power to remove or reduce biosecurity risk under a warrant

320 Power to remove or reduce biosecurity risk after entering place

Clause 320 empowers an authorised officer to take necessary steps to remove or reduce the biosecurity risk at a place that was stated in the warrant. An authorised officer may also take any necessary steps to prevent the biosecurity risk from recurring, including by seizing a thing.

Division 8 Other information-obtaining powers of authorised officers

321 Power to require name and address

Clause 321 empowers an authorised officer to require a person to state their name and address and provide proof of this if necessary. The power may be exercised if an authorised officer finds a person committing an offence or reasonably suspects the person has just committed an offence against the Act or has information that leads the officer to reasonably suspect a person has just committed an offence against the Act or a person is responsible for a biosecurity risk.

The authorised officer may require the person to prove the correctness of their stated name or address if, in the circumstances, it would be reasonable to expect the person to be in possession of, or otherwise be able to give, the evidence.

When making a personal details requirement, the authorised officer must give the person an offence warning for the requirement.

322 Offence to contravene personal details requirement

Clause 322 makes it an offence, with a maximum penalty of 50 penalty units, for a person to fail to comply with a personal details requirement unless the person has a reasonable excuse.

Subclause (2) provides that a person may not be convicted of an offence under this clause unless the person is found guilty of the offence or is responsible for the biosecurity risk in relation to which the personal details requirement was made.

323 Power to require production of documents

Clause 323 empowers authorised officers to require a person to produce documents and if required, to certify a copy of a document as being a true copy of a document or entry. An authorised officer may require a person to make available (either immediately or at some later time) a document, including a reproduction of a stored document, that was either issued to the person or required to be kept by the person under the Act. A document required to be kept under the Act would include a permit relating to biosecurity matter held by the person.

The authorised officer may keep the document to copy it, or an entry in the document, and have the person certify it as a true copy. The authorised officer must return the original document as soon as practicable. If a person fails to comply with the certification request the authorised officer may keep the document until the person complies.

324 Offence to contravene document production requirement

Clause 324 makes it an offence, with a maximum penalty of 50 penalty units, for a person to fail to comply with a requirement to produce a document under clause 323 unless the person has a reasonable excuse.

It is not a reasonable excuse for a person to fail to comply with a document production requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

The authorised officer must inform the person that the person must comply with the document production requirement and that there is a limited immunity against the future use of the information or document given in compliance with the requirement. For example, in such a situation the document may not be admissible as evidence against the person in a civil or criminal proceeding, other than where the offence relates to the falsity of the document. It is a defence for failing to comply with the requirement if the authorised officer has not informed the person of their obligations to comply.

The clause provides that where a court convicts a person of an offence against this clause, the court may also order the person to comply with the document production requirement.

325 Offence to contravene document certification requirement

Clause 325 provides that it is an offence, with a maximum penalty of 50 penalty units, for a person to fail to comply with a document certification requirement made under clause 323 unless the person has a reasonable excuse. It is not a reasonable excuse to fail to comply with a document certification requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty. In that regard, under clause 328, a person who provides information or a document under clause 323 cannot have that information or document used to incriminate them in any proceeding.

The authorised officer must inform the person that they must comply with the document certification requirement and that there is a limited immunity against the future use of the information or document given in compliance with the requirement. It is a defence for failing to comply with the requirement if the authorised officer has not informed the person of their obligations to comply.

326 Power to require information

Clause 326 empowers an authorised officer to require a person to provide information where the authorised officer reasonably believes an offence against the Act has been committed and the person may be able to give information about the offence. The authorised officer may request the information be provided at a stated reasonable time and place only by notice. This type of requirement is called an ‘information requirement’. Electronic documents must be a clear image or written version of the electronic document.

327 Offence to contravene information requirement

Clause 327 provides that it is an offence for a person to fail to comply with an information requirement unless the person has a reasonable excuse. It is a reasonable excuse for a person not to give the information if doing so might tend to incriminate the individual or expose the individual to a penalty.

Division 8 Immunity for particular compliance

328 Evidential immunity for individuals complying with particular requirements

Clause 328 makes provision for evidential immunity if a person gives or provides information or a document to a designated officer who is authorised officer under clause 297

(Power to require reasonable help), 323 (Power to require production of documents) or 326 (Power to require information).

The person who provides the information or document is assured that the information or document they provide cannot be used to incriminate them in any proceeding. However that does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

Part 5 Provisions relating to designated officers

Division 1 Identity cards

329 Issue of identity card

Clause 329 states that an administering executive must issue each official person with an identity card. The term 'official person' means an authorised person, an inspector or a barrier fence employee.

The card must include a photo of the official person, their signature, an expiry date and whether the official person is an authorised person, an inspector or a barrier fence employee.

There are certain situations where an identity card is not required including where it is impractical to issue one because immediate action is required from the official person or if the official person holds an existing identity card containing the same details as required under this clause.

330 Production or display of identity card

Clause 330 requires official persons to produce their identity card or have it clearly visible when exercising a power in the presence of a person. However, if this is not practical, the official person must produce their identity card to a person for their inspection at the first reasonable opportunity. This clause relates to all powers of the official persons and not only the general power to enter places.

331 Return of identity card

Clause 331 requires a person issued with an identity card and who ceases to be an official person to return the card to the administering executive within 21 days. A failure to comply with this requirement is an offence unless the person has a reasonable excuse.

Division 2 Damage

332 Duty to avoid inconvenience and minimise damage

Clause 332 provides that in exercising a power, a designated officer must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

333 Notice of damage

Clause 333 provides for a designated officer to give a notice if they, or an assistant, or a detection animal damages something, when exercising a power under the Act. However, this does not relate to chapter 11 (Compensation for loss or damage from biosecurity response)

nor in the case where the designated officer reasonably considers the damage is trivial, there is no one apparently in possession of the thing, or the thing has been abandoned.

The designated officer must give notice of the damage to the owner, or person in control, of the damaged thing. If it is not practicable to give the notice in person, the designated officer must leave the notice at the place where the damage happened and ensure it is left in a conspicuous position and in a reasonably secure way.

The designated officer may delay complying with providing the notice if they believe that complying with the requirement may frustrate or otherwise hinder the performance of the designated officer's functions. The delay may be only for so long as the designated officer continues to have the reasonable suspicion and remains in the vicinity of the place.

The notice must state the particulars of the damage and that the person who suffered damage may claim compensation under clause 334. However, if the designated officer believes that the damage was caused by a latent defect in the thing or circumstances beyond the control of the officer or the assistant, the designated officer may state the belief in the notice.

Division 3 Compensation

334 Compensation

Clause 334 makes provision for compensation because of a designated officer's exercise of a power under this Act, other than chapter 11 (Compensation for loss or damage from biosecurity response). A person may claim compensation from a local government or the State, where the person has incurred loss or expense because of the exercise or purported exercise of a power by a designated officer including a loss sustained under this Act.

The compensation only applies to loss arising from an accidental, negligent or unlawful act or omission. However, a loss does not include a loss arising from a lawful seizure or a lawful forfeiture.

The court may, if it is satisfied it is just, order that compensation be paid for the recovery of an amount incurred in proceedings for an alleged offence against the Act, the investigation of which gave rise to the claim. However, the court must have regard to any relevant offence committed by the claimant.

The clause provides that a regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

Compensation claimed for loss under clause 332 can only be made under this clause.

Division 4 Other offences relating to designated officers

335 Giving designated officer false or misleading information

Clause 335 makes it an offence, with a maximum penalty of 200 penalty units, for a person to give a designated officer information or a document containing information that the person knows is false or misleading in a material particular. This offence applies to information or a document given in relation to the administration of this Act whether or not the information or document was given in response to a specific power under the Act.

336 Obstructing designated officer

Clause 336 provides that it is an offence, with a maximum penalty of 100 penalty units, to obstruct a designated officer, a person helping the designated officer or a detection animal unless the person has a reasonable excuse. The designated officer, or person helping the designated officer, must warn the person that they are obstructing them or their detection animal and that it is an offence to do so unless the person has a reasonable excuse.

337 Impersonating designated officer

Clause 337 makes it an offence, with a maximum penalty of 100 penalty units, for a person to impersonate a designated officer.

Chapter 11 Compensation for loss or damage from biosecurity response

Chapter 11 addresses claims for compensation for loss or damage suffered as a result of actions from a biosecurity response. The chapter creates two exclusive avenues for compensation claims to be made: scheme compensation and statutory compensation. The chapter describes the operation of these sources of compensation and limitations that may apply to a claim for compensation under either avenue.

Part 1 Preliminary

338 What is a *biosecurity response*

Clause 340 defines that a 'biosecurity response' for the purposes of Chapter 11, is any lawful action taken by the chief executive or an authorised officer (excluding a local government authorised person) or a person acting under the authority of the chief executive or authorised officer. Examples of lawful actions taken by authorised officers include destroying a plant crop within a declared biosecurity emergency area, demolishing an outbuilding within a declared biosecurity emergency area, destroying a carrier of a disease the subject of a prevention and control program within the area specified in the prevention and control program.

A biosecurity response does not include any action taken under Chapter 13, for example, action taken by a person in compliance with a biosecurity order. A biosecurity response does not include anything that happens by accident or as a result of negligence. If damage is caused by accident or negligence, compensation may be sought under clause 333.

339 What is loss or damage arising out of a biosecurity response

Clause 339 provides that a reference to loss or damage is restricted to the loss or damage lawfully caused under the Act and where that action constituted all or part of a biosecurity response. If the loss or damage arose in the course of a biosecurity response but was not lawfully caused because it involved a negligent act, a person may either claim compensation under the previous chapter or at general law. Two examples of where a loss applies is the total destruction of a building arising out of an emergency order or the destruction of a herd of cattle to stop the spread of a disease.

340 What is *property*

Clause 340 defines property as something that is capable of being owned by a person and capable of being physically damaged or destroyed, such as an animal, a plant, equipment, or a building.

341 What is *notional value* or *notional reduction in value* of property for statutory compensation

Clause 341 defines the key terms of notional value, notional reduction in value and sold under a lawful direction that are used in Chapter 11. The notional value of property that has been lost due to a lawful action under the Act is the amount that would have been received for the sale of the property had it been lawfully sold immediately before it was destroyed. An example of this may be the value of a cow immediately before it was destroyed to prevent the spread of disease.

The notional reduction in value is the difference between the amount that would have been received for the property if it was sold under a lawful direction at the place it was damaged immediately before being damaged, and, the amount that would have been received for the property if it was sold under a lawful direction immediately after it was damaged.

If the destroyed property retains some commercial value, it is to be considered damage rather than a loss. For example, a test is carried out on an animal with a fleece. As a result of that test the animal dies. Although the animal has been destroyed, the fleece of the animal holds some commercial value. The animal is considered to be damaged rather than destroyed because it retains a commercial value.

The term sold under a lawful direction means the sale, without delay, at the highest price reasonably obtainable under the lawful direction of the person who is required to agree to and complete the sale irrespective of whether that person was willing to sell at the price obtained.

342 What is a *compensation scheme* and what is *scheme compensation*

Clause 342 defines the term ‘compensation scheme’ to be a government and industry agreement that includes provision for the payment of compensation for loss or damage arising out of a biosecurity response. An example of a current compensation scheme is the Emergency Plant Pest Response Deed. For the purposes of Chapter 11, the compensation that is provided under a ‘compensation scheme’ is named ‘scheme compensation’ and may be or not be limited to compensation for loss or damage to property. For example, scheme compensation may provide for compensation for indirect loss associated with a biosecurity response.

343 Sources of compensation available under this chapter

Clause 343 outlines that there are two different types of compensation for loss or damage arising out of a biosecurity response dealt with under Chapter 10. They are scheme compensation, outlined in clause 344 and statutory compensation discussed at clause 345.

Part 2 Scheme compensation

344 Operation of scheme compensation

Clause 344 requires that the chief executive must take all reasonable steps to ensure an applicant for compensation under a scheme receives their entitlement under the scheme. A person may be entitled to scheme compensation if they have suffered loss or damage due to a biosecurity response, a scheme exists, and that they have applied to the chief executive for compensation in compliance with the scheme.

Part 3 Statutory compensation

345 Operation of statutory compensation

Clause 345 entitles a person who suffers loss or damage to property arising out of a biosecurity response not covered by a compensation scheme to claim statutory compensation from the State to the extent provided for under Chapter 11. The person must apply to the chief executive for that compensation. Examples of loss or damage to property include:

- direct loss as a result of the destruction of property;
- loss due to a reduction in the value of property as a result of action taken (for example, taking a sample);
- loss as a result of incurring additional expenses to implement required actions;
- consequential loss (loss of income or revenue, reduced or lost capacity to earn, loss of business opportunities, loss as a result of breach of contract).

346 How scheme compensation affects entitlement to statutory compensation

Clause 346 provides that a person cannot claim statutory compensation if there is a compensation scheme that provides for their loss or damage due to a biosecurity response. The clause also clarifies that if a person's claim for compensation is one that could be made under a compensation scheme but their application fails because the person has not fulfilled necessary conditions or requirements under the scheme, the person is also excluded from statutory compensation.

An example of where a person's application for statutory compensation will fail is where a compensation scheme exists but it requires participants to make annual payments in order to be eligible for compensation. A person who fails to make the required payments may be ineligible for compensation under the compensation scheme and will also be ineligible for statutory compensation under this clause.

347 Other limitations applying to entitlement to statutory compensation

Clause 347 provides that statutory compensation is not claimable:

- to the extent that the conduct of the person contributed to the loss or damage;
- if the loss or damage would have happened in any event regardless of the happening of the biosecurity response. For example, a plant pest disease that is spread by the wind is found on one property and its presence triggers an emergency order. The plants on the property are destroyed to eradicate the pest and the plants on the neighbouring property that are in close proximity to the diseased plants are also destroyed. The plants of the neighbouring property would have been diseased through the spread of the disease;
- if the property was, but is no longer, infested or infected with the biosecurity matter which the response was aimed at eradicating. For example, an animal recovered but scientific evidence concludes that the animal will be a carrier of that disease and will at some stage shed the disease and infect other healthy animals and to avoid a future outbreak of that disease, the animal is destroyed;
- if, when the loss or damage happened, the property was likely to have become infested or infected with the biosecurity matter;
- if the destruction was necessary because of an act or omission of the owner that contributed to, or was likely to cause or contribute to, the spread of the biosecurity matter. For example, an animal owner does not isolate from the rest of the herd an

animal that the owner knows or ought reasonably to know is infected or suspected of being infected with a disease;

- if the biosecurity response was necessary because of an act or omission of the owner, or someone acting under the owner's authority, and the owner is found guilty of an offence against the Act arising from or in connection with the act or omission. For example, the owner of a herd of designated animals fails to notify an inspector that one of the animals has shown an adverse reaction to a vaccination given for a disease. An adverse reaction to a vaccination is symptomatic of the animal already carrying the disease. The owner was required under clause 47 (Notifiable incidents) to advise an inspector of this occurrence as it is a notifiable incident. A biosecurity response is subsequently initiated because of the spread of the disease. A result of the biosecurity response is the destruction of some, or all of, the person's designated animals. As the failure to advise an inspector of the notifiable incident is an offence against the Act, the owner is not entitled to claim statutory compensation; or
- if the loss or damage is recoverable under a policy of insurance held by the person. For example, an owner of a designated animal has an insurance policy covering the animal and the animal's destruction was a consequence of a biosecurity response. The animal's owner must seek compensation for the loss under the insurance policy.

The chief executive may publish on the department's website a methodology for calculating whether property was likely to become infested or infected. For example, scientific evidence establishes that certain animal and plant diseases may be transmitted by wind. The evidence also establishes the length of time that a disease will remain alive if it is carried on the wind. With this knowledge, the chief executive may consider properties within a certain radius of the initial outbreak of the disease susceptible to become infected with the disease.

348 No compensation for consequential loss

Clause 348 provides that statutory compensation is payable for loss or damage to property but not for consequential loss. Statutory compensation for loss of property is limited to the notional value of the property which is the amount that would have been received for the sale of the property had it been sold under a lawful direction immediately before it was destroyed.

Statutory compensation for damage to property compensation is payable for the notional reduction in value, which is the difference between the amount that would have been received for the property if it was sold under a lawful direction at the place it was damaged immediately before being damaged, and, the amount that would have been received for the property if it was sold under a lawful direction immediately after it was damaged.

Statutory compensation does not include compensation for any direct or indirect consequential loss such as the loss of anticipated or actual revenue or profits and loss of goodwill or business opportunity. For example if a dairy farmer had several of his dairy cows destroyed because they were diseased there would not be any provision for that farmer to claim compensation for lost revenue from lost milk production.

Statutory compensation is also unavailable for loss or damage that is in the form of, in the nature of, or analogous to reimbursement of additional expenses incurred; punitive or exemplary damages or special damages, or damages for indirect loss or damage of any nature whatsoever.

Part 4 Claiming statutory compensation

349 Application for statutory compensation

Clause 349 provides that applications for statutory compensation must be in the approved form and received by the chief executive within 90 days after the date the loss or damage happens. However, the chief executive may accept the application after 90 days if it is fair and reasonable to do so.

350 Further information may be required

Clause 350 enables the chief executive to require further information from an applicant seeking statutory compensation to assist in deciding the application. The further information must be provided to the chief executive within the specified timeframe.

351 Day for making and advising of decision

Clause 351 identifies the timeframe in which the chief executive must give an applicant for statutory compensation a decision on their application. The chief executive may also extend the timeframe for making and advising the applicant of the decision if the chief executive considers it necessary or further information from the applicant is required.

Upon making a decision the chief executive must give the applicant an information notice setting out the decision. If the decision is that the applicant is entitled to compensation, the notice must set out the amount of compensation that the applicant is entitled to be paid.

The chief executive is taken to have refused the application for compensation if the chief executive fails to make a decision within the specified timeframe. In this case the applicant is entitled to an information notice. Decisions where an information notice is given or required to be given may be reviewed under Chapter 12 of the Bill.

Chapter 12 Evidence, legal proceedings and reviews

Chapter 12 provides for evidentiary matters, legal proceedings and reviews of administrative decisions under the Act.

Part 1 Evidence

352 Application of pt 1

Clause 352 establishes that Part 1 applies to a proceeding under the Act.

353 Appointments and authority

Clause 353 identifies specific appointments and authorities that are to be presumed unless a party to the proceeding requires proof by reasonable notice.

354 Signatures

Clause 354 provides that a signature purporting to be the signature of the chief executive, a chief executive officer, an authorised officer or an accredited certifier is evidence of that signature.

355 Evidentiary aids

Clause 355 provides that a document (certificate) purporting to be signed by the chief executive or chief executive officer is evidence of the fact. The clause lists a range of matters that are stated in documents (certificates) that are evidentiary aids including an appointment,

approval or decision; a notice, direction or requirement; a permit; a record or an extract from a record; a code of practice or another document kept under the Act or an extract thereof.

When a complaint starts a proceeding, a statement that the matter came to the complainant's knowledge on a stated date is evidence of that fact.

In a proceeding in which the State or local government applies under clause 360 (Recovery of cost of investigation), a certificate stating that the costs were incurred and the way in which, and the purpose for which, they were incurred is evidence of the matters stated.

A permit for this clause only relates to a prohibited matter permit or restricted matter permit.

Part 2 Legal proceedings

356 Offences under this Act

Clause 356 sets out that an offence against the act that has a penalty of more than two years imprisonment is an indictable offence that is a misdemeanour and that any other offence is a summary offence.

The clause explains that a proceeding for an indictable offence may be taken at the prosecutions election by way of summary proceedings under the *Justices Act 1886* or on indictment.

The clause clarifies that a magistrate must not hear an indictable offence summarily if the defendant asks, at the start of the hearing, for the charge to be prosecuted on indictment or if the magistrate considers that the charge should be prosecuted on indictment. However, if these cases apply the magistrate should proceed by way of examination of witnesses for an indictable offence; a plea of the person charged at the start of the proceedings must be disregarded; evidence brought into the proceeding before it was decided that the charge should be prosecuted on indictment is taken to be evidence in the proceeding for the committal of the person for trial or sentence; before committing the person for trial or sentence the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).

The clause explains that the maximum term of imprisonment that may be summarily imposed for an indictable offence is three years.

The clause further explains that a proceeding must be before the magistrate if it is a proceeding for the summary conviction of a person on a charge for an indictable offence or for an examination of witnesses for a charge for an indictable offence. However, if the proceeding for an indictable offence is brought before a justice that is not a magistrate, jurisdiction is limited to taking or making a procedural action or order.

The clause states that proceedings for an offence against the Act that are heard in a summary way must start within one year of the offence or one year after a complainant becomes aware of an offence but no longer than two years after the commission of the offence.

357 Allegations of false or misleading information or document

Clause 357 provides that in any proceeding for an offence against the Act defined as involving false or misleading information, or a false or misleading document, it is enough for

a charge to state that the information or document was, without specifying which, 'false or misleading'.

358 Recovery of costs of investigation

Clause 358 enables a court on application by the State, a local government or an invasive animal board to order a person who is convicted of an offence against the Act to pay an amount equal to the costs incurred during an investigation of the offence. The payment must be made to the State, local government or barrier fence board that incurred the costs. An application for the recovery of costs of an investigation of an offence against the Act is to be in the court's civil jurisdiction. The civil standard of proof is to be used in deciding any issued raised on the application.

359 Responsibility for acts or omissions of representative

Clause 359 provides that an act or omission by a person's representative, relating to an offence against the Act, is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. In these circumstances, the person is to also have been taken to have committed the relevant offence unless the person can prove that the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

360 Fines payable to local government

Clause 360 provides that where a local government prosecutes an offence under the Act, any fines ordered by the court must be paid to the local government.

Part 3 Reviews

Division 1 Internal reviews

361 Internal review process

Clause 361 specifies that every external review of a decision to which an information notice relates must be in the first instance by way of an application for internal review.

362 Who may apply for internal review

Clause 362 specifies that a person who is given, or is entitled to be given an information notice for a decision, or a person in control of a thing to be seized or forfeited may apply to the issuing authority for a review of the decision.

363 Requirements for making application

Clause 363 sets out the process and timeframes for the lodgement of an application for the review of an original decision made by an issuing authority.

364 Stay of operation of original decision

Clause 364 provides for the stay of the operation of an original decision. An application for an internal review will not stay the operation of the subject of the decision unless the applicant applies to the relevant body and the relevant body agrees to stay that decision. The term 'relevant body' is defined to mean a court for an original decision to seize or forfeit a thing or QCAT for any other original decision.

365 Internal review

Clause 365 requires the issuing authority to conduct a review of the original decision and make a decision (the internal review decision) confirming, amending or substituting another decision for the original decision within 20 days of receiving the application for internal review. Where an original decision is confirmed or amended, that confirmed or amended decision is to be taken to be the internal review decision. The person conducting the review must not be the original decision maker and must not be a person in a less senior office than the original decision maker. This is not to apply if the original decision maker was the chief executive or a chief executive officer.

366 Notice of internal review decision

Clause 366 requires the issuing authority, within 10 days after making an internal review decision, give the applicant notice of the decision. The notice of decision must state if the review decision is not the decision sought by the applicant and was an original decision to seize or forfeit a thing, the applicant has 28 days to appeal to a court that decision, including a stay of that decision. For another decision the notice must be accompanied by a QCAT information notice (complying with section 157(2) of the QCAT Act) for the decision. If the issuing authority does not give the notice within the set time-frame, then the issuing authority is taken to have made an internal review decision confirming the original decision.

Division 2 External reviews by QCAT

367 Who may apply for external review

Clause 367 specifies that a person who is given, or is entitled to be given, a QCAT information notice under clause 366 (Notice of internal review decision), may apply to QCAT for an external review of the decision. QCAT may, by application or on its own initiative, stay the operation of the internal review decision.

Division 3 Appeals

368 Who may appeal

Clause 368 specifies that a person who has applied for an internal review of an original decision to seize or forfeit a thing and is dissatisfied with the internal review decision may appeal to the court against the decision.

369 Procedure for an appeal to the court

Clause 369 states that a notice of an appeal must be made within 28 days after the appellant receives notice of the decision and it must include the full grounds of the appeal. However, the court may extend the time period for filing a notice of appeal.

370 Stay of operation of internal review decision

Clause 370 provides that the court may grant a stay of the operation of an internal review decision appealed against in order to secure the effectiveness of the appeal. A stay may be granted on conditions the court considers appropriate. The stay operates for a period fixed by the court and may be amended or revoked by the court. The stay must not extend past the time when the court decides the appeal and that an appeal against a decision only affects the decision if the decision is stayed.

371 Powers of court on appeal

Clause 371 provides that in deciding an appeal, the court has the same powers as the issuing authority in making the internal review decision appealed against and the court is not bound by the rules of evidence and must comply with natural justice. The appeal is by way of rehearing, and the court may confirm the internal review decision, set aside the internal review decision and substitute another decision, or set aside the internal review decision and return the matter to the issuing authority with directions from the court.

372 Effect of decision of court on appeal

Clause 372 provides that if the court acts to set aside the internal review decision and return the matter to the issuing authority with directions, and the issuing authority makes a new decision, then the new decision is not subject to review or appeal under this part.

The clause also provides that if the court substitutes another decision, the substituted decision is taken to be the decision of the issuing authority. The issuing authority may give effect of the decision as if it were the original decision of the issuing authority and no application for review or appeal has been made.

Chapter 13 Biosecurity orders and injunctions

Occasions will arise where an authorised officer, during the normal course of their duties, will notice a biosecurity risk associated with a person's dealing with biosecurity matter or the carrier of biosecurity matter, or notice that a person has not met their statutory obligation with respect to biosecurity matter. Chapter 13 provides for the issuing of biosecurity orders by authorised officers to a person who has failed to discharge their general biosecurity obligation. Recipients of biosecurity orders are entitled to apply to a court to have a third party contribute to the cost of complying with the order if they believe the third party is wholly or partly responsible for the failure to discharge the general biosecurity obligation. The chapter also provides for injunctions against individuals to prevent individuals from committing an offence against the Act.

Part 1 Biosecurity Orders

Division 1 General matters about biosecurity orders

373 Giving biosecurity order

Clause 373 enables an authorised officer to give a person a biosecurity order if the officer reasonably believes the person has failed or may fail to discharge their biosecurity obligation. For example, an authorised officer may form a reasonable belief that soil on a person's land contains fire ants. The officer may give the person a biosecurity order which could direct the person, amongst other things, not to move the soil from that property to another place without first treating the soil to ensure that it does not contain fire ants.

The order may be given regardless of the circumstances in which the authorised officer forms the belief that the person has failed to discharge their general biosecurity obligation at a particular place. For example, if an authorised officer enters a place under an emergency order and notices something at the place that indicates that the person has failed to discharge their general biosecurity obligation relating to the dealing with biosecurity matter, a carrier or an activity not the subject of the biosecurity emergency order. The authorised officer may issue a biosecurity order directed at ensuring the recipient discharges their general biosecurity obligation in relation to the particular biosecurity matter, carrier or activity. Similarly, an

authorised officer may give a person a biosecurity order even though it is not issued in respect of the particular biosecurity matter, carrier or activity that a biosecurity program relates.

A biosecurity order may state the times or intervals when the authorised officer proposes to enter the place where the biosecurity matter or carrier, the subject of the order, is kept (including a vehicle) to check compliance with the order. The order may also state how the recipient may show that the required action has been taken. For example, to allow the recipient to go about their business without further interruption caused by an authorised officer returning to the place to check compliance with the order, the recipient may show compliance with the order by way of taking photographs before, during and after the action is taken. An authorised officer may rely on the photographs without having to return and check on the work done in compliance with the order.

374 Matters that must be included in biosecurity order

Clause 374 details that a biosecurity order must include:

- the name and address or other identifying information of the recipient that the authorised officer can reasonably obtain;
- how and where the recipient has failed or may fail to discharge their general biosecurity obligation;
- the steps the recipient must take to prevent or reduce the biosecurity risk arising from the recipient's failure or possible failure to discharge their general biosecurity obligation;
- the reasonable period for taking the steps having regard to the biosecurity risk posed by the recipient's failure or possible failure to discharge their general biosecurity obligation;
- how the recipient may show they are complying with the order and when the recipient must show this compliance;
- the authorised officer's name and details about the relevant issuing authority sufficient to identify the authority; and
- that it is an offence to fail to comply with a biosecurity order without a reasonable excuse.

The biosecurity order must also explain the effect of clauses 263 (Power to enter place to check compliance with biosecurity order) and 264 (Power to enter place to take steps if biosecurity order not complied with) as they relate to an authorised officer's power to enter the place to check compliance with the order and to take the action required under the order if the recipient fails to comply with the order.

375 What biosecurity order may require

Clause 375 identifies additional requirements for a recipient to do at a place that may be included in a biosecurity order. This includes requirements to treat (or not to treat), dispose, destroy (or cause the destruction of), control or eradicate, clean or disinfect, or remove (or prohibit or restrict the removal of) biosecurity matter or a carrier or other thing at the place. For example, a biosecurity order may be made requiring a person to destroy a weed on their property, dispose of weed seeds in an appropriate stated manner, decontaminate a carrier of biosecurity matter, or treat (including the de-fouling of boats) biosecurity matter or a carrier.

The recipient may also be required to stop using the place for a particular purpose, for a stated period, or until specific action is taken.

376 Requirements for giving biosecurity order

Clause 376 requires a biosecurity order to be given in writing. If a biosecurity order is given orally because it is not practicable to immediately give it in writing, the authorised officer must warn the recipient that it is an offence to fail to comply with the order. The authorised officer must, as soon as practicable, confirm the order in writing. For example, an authorised officer may notice animal matter being inadvertently put into a production line for feed material for ruminants. The authorised officer may give an immediate verbal order to stop the animal matter getting into the bags used to contain the ruminant feed material. The order must be complied with and the authorised officer must confirm that order in writing as soon as practicable after giving the order.

377 Compliance with biosecurity order

Clause 377 makes it an offence, with a maximum penalty of 800 penalty units, for a person to fail to comply with a biosecurity order, unless the person has a reasonable excuse.

378 Approval for particular biosecurity order

Clause 378 requires an authorised person (appointed by the chief executive officer of a local government) to obtain the chief executive officer's approval prior to giving a biosecurity order to a person in situations where taking the action required under the biosecurity order would be likely to stop a business carried on by the person.

379 Register of biosecurity orders

Clause 379 requires that the administering executive of an authorised officer must keep a register of all biosecurity orders that are issued. An example of why this is necessary is to ensure a person who is purchasing a property is able to determine any potential requirements they may have to comply with under any biosecurity order that exists for the property.
The particulars to be recorded in the register include:

- the real property description of the land to which it relates;
- the local government area in which the land was situated;
- information about the biosecurity matter or other thing the order relates and what is required to address the biosecurity risk posed by the biosecurity matter or other thing;
- when the order was given and the period within which the required action is to be taken;
- any other information prescribed by a regulation.

A person may inspect the register for a fee. The fee to inspect or buy a copy of all or part of the information held in the register may be prescribed by a regulation.

Division 2 Recovery of costs and expenses

380 Recovery of costs of taking steps under biosecurity order

Clause 380 provides that the issuing authority for a biosecurity order may recover the amount that the issuing authority properly and reasonably incurs in taking steps under clause 263 (Power to enter places or take steps if biosecurity order not complied with) or the action under clause 264 (Power to Enter place or take action required under direction).

The issuing authority must give the person a notice setting out the debt amount. The amount becomes payable 30 days after the person is given notice of the details of the amount of the

debt. If the issuing authority is a local government then the amount payable to the local government is, for the purposes of recovery, taken to be rates owing to the local government.

381 Cost under biosecurity order a charge over land

Clause 381 enables a local government to register, as a charge over a person's land, the outstanding amounts owed to the local government under clause 380. The local government may request the registrar of titles to register a charge over the recipient's land. That charge will then have priority over any encumbrance other than encumbrances in favour of the State, a government entity or rates payable to the local government. If the unpaid amount is paid after the charge is registered, the local government must request to release the charge over the recipient's land. This clause does not limit any other remedy a local government may pursue for the recovery of the unpaid amount.

Division 3 Recovery of costs from other persons

382 Recipient may apply for contribution

Clauses 382 enables the recipient of a biosecurity order who considers a third party wholly or partly responsible for the failure by the recipient to discharge their biosecurity obligation, to seek contribution from that third party for the costs incurred by the recipient in complying with the order.

383 Notice of hearing of cost recovery order must be given

Clause 383 requires 14 days notice of the hearing of the cost recovery order application be given to the third party. The third party is entitled to be heard at the hearing, however, if the third party does not attend, the matter can be heard and determined in the third party's absence.

384 When court may make cost recovery order

Clause 384 lists the matters about which the court must be satisfied before making a cost recovery order against the third party. Of principal importance is that the magistrate is satisfied that the third party is responsible for all or part of the failure to discharge the general biosecurity obligation to which the biosecurity order related.

Part 2 Injunctions

385 Application of pt 2

Clauses 385 provides that the chief executive or chief executive officer of a local government may seek a court injunction against a person who is engaged in, engaging in, proposing to engage in or omitting to engage in conduct that constitutes or would constitute an offence under Chapter 2 of this Act.

386 Who may apply for an injunction

Clause 386 provides that the chief executive or the chief executive of a local government may apply to the District Court for the injunction under clause 387. However, a chief executive officer of a local government may only apply for an injunction if the conduct relates only to invasive biosecurity matter for the local government's area.

387 District Court's powers

Clause 387 confers power on the District Court to hear and decide an application for an injunction in relation to the conduct or failure specified in clause 385 and sets out the court's powers to grant an injunction and the types of injunction that may be granted.

388 Terms of injunction

Clause 388 provides that the court may grant the injunction on the terms the court considers appropriate.

389 Undertakings as to damages or costs

Clause 389 provides that no undertakings as to damages or costs may be required to be made where the chief executive or the chief executive officer of a local government seeks an injunction under the Act.

Chapter 14 Particular agreements between State and other entities

Chapter 14 provides for the State to enter into agreements with other jurisdictions, local governments, industry bodies and natural resource management bodies to achieve the purposes of, and ensure compliance with, this Act.

Part 1 Intergovernmental agreements

390 Intergovernmental agreement for recognising biosecurity certificates

Clause 390 empowers the Minister or the chief executive, on behalf of the State, to enter into intergovernmental agreements with the Commonwealth or another State for the purposes of enhancing the objects of the Bill. Such agreements may:

- provide for recognition by Queensland of biosecurity certificates issued by another State or the Commonwealth and vice versa;
- impose audit, inspection or other requirements on a party to the agreement to ensure the integrity and mutual recognition of the biosecurity certificates; and
- provide for another matter necessary or convenient to achieve the purposes of the Bill.

Part 2 Government and industry agreements

391 Entering into government and industry agreements

Clause 391 empowers the Minister or the chief executive, on behalf of the State, to enter into an agreement with other jurisdictions (the Commonwealth or another State), local governments, industry bodies and natural resource management bodies (a government and industry agreement) for the purposes of enhancing the objects of the Bill. The purpose of the agreement may be:

- to ensure a coordinated process for responding to a biosecurity event
- sharing the costs, between the parties, related to a biosecurity event
- for providing for another matter necessary or convenient to achieve the purposes of the Bill.

392 Content of government and industry agreement

Clause 392 provides for the content of government and industry agreements. Agreements may detail the measures the parties to the agreement must undertake in preparing for a

biosecurity event including, preventing, controlling or responding to a biosecurity event. For example, parties to the Government and Livestock Industry Cost Sharing Deed in respect of Emergency Animal Disease Responses are bound to follow the procedures set out in Australian Veterinary Emergency Plan about how to respond to a biosecurity event.

These agreements may also provide for the whole or partial reimbursement of costs incurred, or losses suffered, by a person who complied with an implemented response to a biosecurity event. An example of a cost incurred by a person complying with an implemented response may be the costs of eradicating FMD. As a result of the outbreak, the loss suffered by a person may be the value of animals owned by the person that are destroyed to eradicate or control the disease.

Part 3 Compliance agreements and certificates

Division 1 Purpose and effect of compliance agreements

393 Entering into compliance agreements

Clause 393 empowers the chief executive to enter into a compliance agreement with another party that will help achieve the purposes of the Bill. Compliance agreements are voluntary, auditable, co-regulatory agreements that can be entered into by the State and other parties to manage biosecurity risks.

Compliance agreements provide for:

(a) the application of particular procedures relating to biosecurity matter that must be carried out by the other party;
(b) the records which must be kept to show compliance with the procedures; and
(c) the supervision, monitoring and testing of the other party's compliance with the procedures.

Subclause (2) provides that a compliance agreement may detail the circumstances in which the chief executive can give the other party notice for cancelling, amending or suspending the agreement.

Subclauses (3) and (4) empower an inspector, exercising their emergency powers under Chapter 10, to give the other party to the agreement notice of the application of additional procedures that are not contained in the original agreement. Such additional procedures are then deemed to form part of the compliance agreement under subclause (5).

Subclause (6) clarifies that if a compliance agreement conflicts with a biosecurity emergency order, a biosecurity zone regulatory provision or a movement control order under this Bill discussed under Chapter 6, the compliance agreement has no effect to the extent of the conflict.

394 What is a *compliance certificate*

Clause 394 defines that a compliance certificate is authorised to be given under a compliance agreement. A party who has entered into a compliance agreement with the government issues a compliance certificate to demonstrate that the measures proposed for preventing or managing exposure to all biosecurity risks relating to the biosecurity risk matter for the agreement have been carried out.

395 Effect of compliance agreement if holding compliance certificate

Clause 395 provides that a party to a compliance agreement may issue a certificate certifying that all measures to prevent biosecurity risks associated with the biosecurity matter the subject of the agreement have been complied with. An authorised officer, when exercising powers under the Act relating to the biosecurity matter specified in the agreement, may accept and without undertaking any checks, rely and act on the certificate.

For example, a biosecurity zone is established to prevent the entry of cattle ticks into a part of the State. A requirement for a person to bring cattle into that biosecurity zone is for an inspector to inspect the cattle for cattle tick immediately prior to its movement into the biosecurity zone. A cattle producer has entered into a compliance agreement with the chief executive about cattle tick and has implemented measures to prevent the producer's cattle from the risk of tick infestation. The cattle producer may show an inspector a certificate certifying that, in accordance with the compliance agreement, the cattle have been treated for cattle tick. An inspector can rely upon that certificate without requiring the producer to unload the cattle to enable the inspector to inspect the cattle for cattle tick.

Division 2 Applications for compliance agreements

396 Requirements for application

Clause 396 allows a person to apply to the chief executive to enter into a compliance agreement with the State. The clause outlines the required details an application must contain, including (but not limited to) the applicant's details, nature of the business, potential biosecurity risks associated with the applicant's business activities and detailed prevention measures to be undertaken by the applicant.

The clause also requires the applicant to disclose certain information including any previous conviction for a biosecurity offence committed by the applicant, or in the case of a corporation or unincorporated association, an executive officer or committee member. An application must also contain other prescribed information. A prescribed fee must accompany the application.

397 Consideration of application

Clause 397 requires the chief executive to consider and decide to grant or refuse the application.

398 Criteria for deciding application

Clause 398 provides that in deciding the application, the chief executive must be satisfied that all necessary measures are in place to address or mitigate any potential biosecurity risk. The chief executive must also be satisfied that the audit carried out under clause 464 (Audit of applicant's business for entering into compliance agreement) has shown that the applicant can comply with the requirements of the compliance agreement and their business has implemented procedures that prevent or manage exposure to all biosecurity risks related to the biosecurity risk matter. The chief executive must also consider whether the applicant is a suitable person to enter into a compliance agreement.

399 Inquiry about application

Clause 399 provides that the chief executive, when deciding applications in relation to compliance agreements, may make further inquiries to determine the suitability of an applicant. The clause also enables the chief executive to seek further information or

documents from the applicant to consider the application. A written notice seeking the information or documents must be given to the applicant within 30 days of the chief executive receiving the application.

If the applicant does not comply with the request for further information within the stated period of at least 30 days the application is taken to have been withdrawn.

400 Suitability of applicant to enter into compliance agreement

Clause 400 provides that the chief executive, in determining an applicant's suitability to enter into a compliance agreement, must consider previous convictions for a relevant biosecurity offence other than a conviction that is no longer recorded. The chief executive must also have regard to whether the applicant has previously had a compliance agreement suspended or cancelled.

401 Decision on application

Clause 401 requires the chief executive to determine the provisions of a compliance agreement, give the applicant an information notice, and enter into the agreement on behalf of the State.

Subclause (2) provides examples of the provisions or conditions that may be attached to a compliance agreement. Subclause (3) specifies that the term of the agreement must not exceed five years.

The clause also provides that the chief executive must, as soon as practical, give the applicant an information notice if the chief executive refuses the application.

402 Failure to decide application

Clause 402 provides that the chief executive is deemed to have refused the application if a decision has not been made within 30 days of receiving the application or within 30 days plus the time taken for the chief executive to obtain the further information requested under clause 399. The applicant is entitled to an information notice about this decision.

Division 3 Suspension and cancellation of compliance agreements

403 Grounds for suspension or cancellation

Clause 403 identifies the grounds for suspension or cancellation of a compliance agreement. The grounds include the person no longer being a suitable person, the person has been convicted of an offence for failing to comply with the agreement or where the chief executive reasonably believes the other party has not complied, or is not complying, with the agreement.

404 Show cause notice

Clause 404 requires the chief executive to issue the other party to a compliance agreement with a show cause notice if the chief executive believes a ground exists to suspend or cancel a compliance agreement. The notice must set out the relevant information pertaining to the grounds for suspension or cancellation. The show cause periods ends at least 28 days after the notice is given to the other party.

405 Representations about show cause notice

Clause 405 provides that the recipient of a show cause notice has 28 days after being given the notice to make written representations about the notice to the chief executive. The chief executive is required to consider all representations made by the other party.

406 Ending show cause process without further action

Clause 406 provides that if the chief executive, after considering the other party's accepted representations, no longer believes a ground exists to suspend or cancel the compliance agreement, the chief executive must not take any further action about the show cause notice. The chief executive is to give the other party a notice confirming that no further action will be taken.

407 Suspension or cancellation

Clause 407 provides that after considering any accepted representations, if the chief executive still believes a ground exists to suspend or cancel the agreement, the chief executive may suspend or cancel the agreement. This clause applies also to a situation where there are no accepted representations by the other party under clause 405.

The clause also provides that if the chief executive decides to suspend or cancel the agreement, the chief executive must give an information notice about the decision to the other party.

The decision will take effect on the day the information notice is given or the day stated in the notice, whichever is the later.

408 Immediate suspension of compliance agreement for biosecurity risk

Clause 408 empowers the chief executive to immediately suspend a compliance agreement if the chief executive believes a ground exists to suspend or cancel the agreement and immediate suspension is necessary because of an immediate and serious biosecurity risk. An example may be where a stock food manufacturer has a compliance agreement with the chief executive. In this case an auditor may notify the chief executive that production lines for stock feed are not adequately cleaned and samples of ruminant stock feed indicate that animal matter is present in the stock feed because of the manufacturing process. It is an offence under the Act to feed animal matter to ruminants. The feeding of this contaminated stockfeed to ruminants could cause an outbreak of mad cow disease. An outbreak of mad cow disease is a serious biosecurity risk to human health and the economy.

Subclause (2) provides that a suspension operates immediately from when the chief executive gives the other party an information notice and a show cause notice. The suspension continues until the chief executive cancels the suspension period or the show cause notice is finally dealt with or 56 days has passed since the notices were given to the other party.

Division 4 Offences about compliance agreements

409 Complying with compliance agreement

Clause 409 provides that it is an offence for a person to fail to comply with a compliance agreement unless the person can prove that he or she took all reasonable steps to comply with the compliance agreement.

410 False statements and false advertising

Clause 410 provides that it is an offence for a person to falsely claim by way of oral or written statement or publication that the person has entered into a compliance agreement.

Chapter 15 Accredited certifiers

Chapter 15 establishes a framework for the accreditation of a person to issue biosecurity certificates. The purpose of these certificates is to give assurance to other people, including interstate authorities, that biosecurity matter or a potential carrier of biosecurity matter (for example, an animal, plant, soil or machinery) to which the certificate relates is free of pests, diseases, or contaminants or comes from an area that is free of pests, diseases, or contaminants. Certifiers may be authorised officers or other individuals. These other people may be business personnel who self-certify their products are free from biosecurity matter, have been treated in a way that frees their products from certain biosecurity matter, or comes from an area free of certain biosecurity matter.

Part 1 Interpretation

411 Definitions for ch 15

Clause 411 defines certain terms used for this Chapter.

Part 2 Purpose and operation of biosecurity certificates and the accreditation system

412 What is a *biosecurity certificate*

Clause 412 defines the term 'biosecurity certificate'. A biosecurity certificate may state that biosecurity matter or another thing including a carrier of biosecurity matter:

- is free of any prohibited, restricted, regulated or any other stated biosecurity matter;
- is in a stated condition or is from a stated area;
- has received stated treatment or meets stated requirements.

413 Purpose and operation of acceptable biosecurity certificates

Clause 413 provides that an acceptable biosecurity certificate is a way in which a person may be taken to have complied with or be exempted from requirements of the Act or a corresponding law about biosecurity matter that poses a biosecurity risk.

Acceptable biosecurity certificates are those issued by a person accredited under this Chapter or issued by interstate officers acting in compliance with a corresponding law whether or not an intergovernmental agreement exists that provides for the interstate recognition of the certificates. The matters contained in the acceptable biosecurity certificates can be accepted and relied upon by an authorised officer without further checking.

For example, if an accredited certifier issued an acceptable biosecurity certificate stating that a particular load of fruit is free of fruit fly, an authorised officer monitoring compliance with a biosecurity zone established for the prohibition of the introduction of fruit fly may rely on the certificate and allow the load of fruit to enter the zone without further checking.

The term ‘corresponding law’ is defined in Schedule 5 to mean a law of the Commonwealth or another State that corresponds or substantially corresponds with the Bill or a provision of the Bill.

414 Purpose and operation of accreditation system

Clause 414 provides that the purpose of the accreditation system is to allow individuals to gain accreditation so that they may issue biosecurity certificates under the Act.

415 Giving biosecurity certificates

Clause 415 provides for the giving of biosecurity certificates. However, there are matters that an accredited certifier may need to attend to before issuing a biosecurity certificate, for example, inspect, sample, treat or grade the thing or examine materials or equipment used to treat or grade the thing.

An accredited certifier may, if accreditation conditions permit, issue a biosecurity certificate for their own or another person’s biosecurity matter or thing. Further, if accreditation conditions permit, another person acting under the direction of the accredited person may also issue a biosecurity certificate.

Part 3 Accreditation of inspector or authorised person

416 Application of part limited to authorised officers appointed by chief executive

Clause 416 identifies that this Part only applies to inspectors and authorised persons appointed by the chief executive officer under Divisions 1 and 2 of Part 1 of Chapter 10 of the Act.

417 Accreditation of inspectors

Clause 417 states that an inspector is an accredited certifier subject to conditions and limitations under the inspector’s instrument of appointment or as advised by the chief executive.

418 Accreditation of authorised persons appointed by chief executive

Clause 418 provides that a person appointed as an authorised person by the chief executive is an accredited certifier if their accreditation is provided for in the instrument of appointment or as advised by the chief executive after appointment. The accreditation of the authorised person is subject to conditions and limitations under their instrument of appointment, or as advised by the chief executive.

419 Fees

Clause 419 provides a head of power for a regulation to prescribe fees payable for the giving of a biosecurity certificate by an authorised officer who is also an accredited certifier.

Part 4 Accreditation by application

420 Application for accreditation

Clause 420 provides that a person may apply to the chief executive for the grant of an accreditation to issue biosecurity certificates. The application must be in the approved form and accompanied by the fee prescribed by regulation.

The applicant must disclose information on the application of any relevant accreditation offence which the applicant has been convicted. If the applicant is a corporation or an incorporated association, the application must disclose any conviction for a relevant accreditation offence committed by an executive officer or management committee member of the corporation or incorporated association. The term 'relevant accreditation offence' is defined in clause 411.

It is an offence, with a maximum penalty of 200 penalty units, to provide false or misleading information in a material particular in the application to the chief executive.

421 Additional application requirements for ICA scheme

Clause 421 identifies specific details that must be included in an application for a grant of accreditation under the ICA scheme. For example, the application must include details about the operational procedures under the scheme that will be complied with by the applicant and how the applicant proposes to comply with those procedures. The term 'ICA scheme' is defined in clause 411.

422 Consideration of application

Clause 422 empowers the chief executive to grant the accreditation applied for or another accreditation, grant the accreditation subject to conditions, or refuse to grant the accreditation.

423 Criteria for granting accreditation

Clause 423 specifies that the chief executive must be satisfied that the applicant has the necessary expertise or experience and is a suitable person to be an accredited certifier.

If the application for the grant of accreditation is to participate in the ICA scheme, the chief executive must ensure that an audit is conducted on the ICA system proposed by the applicant to comply with the ICA operational procedures. The chief executive must have regard to the results of that audit in deciding whether or not to grant the accreditation. The chief executive must be satisfied that the proposed ICA system addresses the requirements of the operational procedures to which the application relates.

424 Inquiry about application

Clause 424 provides that the chief executive, when considering an application for a grant of accreditation, may make further inquiries to decide the suitability of the applicant. A notice may be issued requiring the applicant to furnish a document or further information. The clause also provides the timeframes for the issue of the further information notice and the time for reply by the applicant. If the applicant does not supply the requested document or information within the stated timeframe then the applicant is deemed to have withdrawn the application.

425 Suitability of person for accreditation

Clause 425 sets out the criteria the chief executive may consider when deciding whether a person is suitable for accreditation. The information includes whether the applicant has been refused a previous accreditation under this Act or another similar Act, whether the applicant has had a previous accreditation suspended or cancelled or whether the applicant has been previously convicted of a relevant accreditation offence.

426 Decision on application

Clause 426 provides that if the chief executive decides to grant the accreditation, the chief executive must give the accreditation to the applicant. If the chief executive decides to refuse to grant the accreditation, or to impose conditions on the accreditation, the chief executive must give the applicant an information notice for the decision as soon as practical.

427 Failure to decide application

Clause 427 provides that if the chief executive fails to decide the application within 30 days after receiving it, the chief executive is taken to have refused to grant the application.

Where the chief executive has required the applicant to furnish further information or a document, the chief executive is taken to have refused to grant the accreditation if the chief executive does not decide the application within 30 days after receiving the further information or document.

If the application is taken to be refused, the applicant is entitled to an information notice by the chief executive for the decision.

428 Term of accreditation

Clause 428 specifies that an accreditation must state the period of time it applies, which is no longer than three years, unless it is sooner cancelled or suspended.

429 Form of accreditation

Clause 429 provides that an accreditation may be given in a way considered appropriate by the chief executive, for example as a certificate or agreement.

430 Accreditation conditions

Clause 430 provides that the chief executive may grant or renew an accreditation on conditions. The conditions are not limited but may include the type of certificates that the certifier may give and the conditions on which those certificates may be given, how the accreditation may be used, security for the performance of the conditions, payment of reasonable costs to the chief executive to ensure that the conditions are complied with and the types of records required to be kept by the accredited certifier.

431 Register

Clause 431 requires the chief executive to keep a register of accredited certifiers. The register must contain specific information for each accredited certifier, such as the accredited certifier's name and contact details, conditions imposed on the accreditation and the term of the accreditation. The register may be kept in the form, including electronic form, as the chief executive considers appropriate. The chief executive must publish the register on the department's website.

Part 5 Renewal of accreditations

432 Application for renewal

Clause 432 provides that an accredited certifier may apply to the chief executive for renewal of their accreditation. The application for renewal of an accreditation must be made on an approved form within 60 days of current accreditation expiring and be accompanied by the fee that is prescribed under a regulation.

The chief executive must consider the application and either renew or refuse to renew the accreditation or to impose conditions on the accreditation. The clause specifies the criteria that the chief executive may have regard to when deciding whether to grant the application. An information notice must be given to the applicant if the chief executive decides either to refuse to renew the accreditation or impose conditions on the accreditation.

433 Inquiry about application

Clause 433 enables the chief executive to require an accreditation renewal applicant to provide further information or documentation that is needed by the chief executive to decide the application. The notice for further information or a document must be given to the applicant within 30 days after receipt of the application for renewal. The chief executive may require the information or documentation be verified by statutory declaration. If the applicant fails to comply with the requirement the application is taken to have been withdrawn.

434 Failure to decide application

Clause 434 provides that if the chief executive fails to decide the application within 30 days after receiving it, the chief executive is taken to have refused to grant the application. Where the chief executive has required the applicant to furnish further information or a document, the chief executive is taken to have refused to grant the application if the chief executive does not decide the application within 30 days after receiving the further information or document. If the application is taken to be refused, the applicant is entitled to an information notice by the chief executive for the decision.

435 Accreditation continues pending decision about renewal

Clause 435 specifies that a person's accreditation continues until a decision has been made, or is taken to have been made, or the application is taken to have been withdrawn or the accreditation is earlier suspended or cancelled. A refusal to renew an accreditation does not affect the accreditation until an information notice for the refusal for renewal is given to the applicant.

Part 6 Offences about accreditation

436 Contravention of accreditation conditions

Clause 436 specifies that it is an offence, with a maximum penalty of 200 penalty units, for an accredited certifier to contravene any condition of their accreditation, unless the person has a reasonable excuse.

437 Offences about certification

Clause 437 provides that it is an offence, with a maximum penalty of 1000 penalty units, for a person who is not an accredited certifier, or who is acting other than under the direction of an accredited certifier, to give to another anything that purports to be a biosecurity certificate about biosecurity matter or another thing.

It is an offence for a person to falsely state or represent to another that an acceptable biosecurity certificate has been issued for biosecurity matter so as to affect the sale or movement of the biosecurity matter or thing. Further, it is an offence to make a false representation or statement to an authorised officer that an acceptable biosecurity certificate has been issued for particular biosecurity matter or thing where in fact no biosecurity certificate has been issued.

438 Unauthorised alteration of biosecurity certificate

Clause 438 provides that it is an offence, with a maximum penalty of 200 penalty units, to alter a biosecurity certificate unless authorised by the issuing accredited certifier or if the accreditation allows for, under a consignment, the splitting of biosecurity matter between places.

439 Giving accredited certifier false or misleading information

Clause 439 states that it is an offence, with a maximum penalty of 200 penalty units, for a person to give an accredited certifier information, or a document containing information, that the person knows is false or misleading in a material particular.

The clause clarifies that the offence applies to information or a document given in relation to the administration of this Act whether or not the information or document was given in response to a specific power under this Act.

440 Impersonating accredited certifier

Clause 440 states that it is an offence, with a maximum penalty of 100 penalty units, for person to impersonate an accredited certifier.

Part 7 Keeping of accreditation related records

441 Keeping of biosecurity certificate by accredited certifier or receiver

Clause 441 requires accredited certifiers to keep a copy of the biosecurity certificates they create for either themselves or other parties along with details of the use of the certificate as prescribed by a regulation. It is an offence, with a maximum penalty of 200 penalty units, not to keep the records for the required period.

An accredited certifier must produce the biosecurity certificate for inspection if required by an authorised officer or relevant auditor during the required period, unless the accredited certifier has a reasonable excuse. Failing to produce a certificate for inspection is an offence, with a maximum penalty of 100 penalty units.

A person who receives a biosecurity certificate from an accredited certifier must keep the certificate for the required period and produce for inspection to an authorised officer the certificate during the required period. It is an offence, with a maximum penalty of 200 penalty units, for a receiver not to keep a certificate and an offence, with a maximum penalty of 100 penalty units, for a receiver not to produce a certificate for inspection to an authorised officer.

The term ‘required period’ in relation to an ICA is either one year or when the first audit occurs if it is less than one year. For other certificates the ‘required period’ is five years from the issue date of the certificate.

Chapter 16 Auditors and auditing

Chapter 16 establishes a framework for approval of individuals to be auditors and for conduct of auditing functions under the Act.

Part 1 Auditors

Division 1 Functions and approval of auditors

Subdivision 1 Functions

442 Auditor's functions

Clause 442 outlines that the functions of an auditor are to advise the chief executive about the capacity of a person applying to enter into compliance agreements to comply with those agreements and to conduct audits of the businesses of other parties to compliance agreements.

A further function is to audit a person's ICA systems or proposed ICA systems to allow the chief executive to decide whether to grant an accreditation under Chapter 14 and to conduct audits of a person's ICA system.

Other functions are to prepare audit reports under clauses 471 to 474, provide reports to the chief executive about audits conducted by the auditor under this Chapter and any other functions as prescribed by a regulation.

Subdivision 2 Approval of inspector or authorised person as auditor

443 Application of subdivision limited to authorised officers appointed by chief executive

Clause 443 provides that subdivision 2 of Chapter 16 applies only to an inspector or authorised person appointed by the chief executive under Divisions 1 and 2 of Part 1, Chapter 10.

444 Approval of inspectors as auditors

Clause 444 specifies that an inspector is an auditor subject to any conditions, including limitations, included in the inspector's instrument of appointment or advised to the inspector by the chief executive.

445 Approval of authorised persons as auditors

Clause 445 provides that an authorised person is an auditor if their approval as an auditor is provided for in their instrument of appointment or in any advice given to the authorised person by the chief executive. The clause specifies that an authorised person's approval as an auditor is subject to any conditions, including limitations in the authorised person's instrument of appointment or as advised by the chief executive. The chief executive may withdraw the chief executive's approval by advice given to the authorised person.

Subdivision 3 Approval as auditor by application

446 Application for approval as auditor

Clause 446 provides that a person may apply to the chief executive for approval as an auditor.

447 Consideration of application

Clause 447 provides that the chief executive must consider the application and either grant or refuse to grant the application.

448 Criteria for granting application

Clause 448 specifies that the chief executive may only approve a person as an auditor if the chief executive is satisfied that the person has the necessary expertise or experience to be an auditor and is a suitable person to be an auditor.

449 Inquiry about application

Clause 449 enables the chief executive to make inquiries to decide the suitability of an applicant to be an auditor. The chief executive may require an applicant to provide further information or documentation the chief executive reasonably requires to decide the application. The further information request must be by notice and given to the applicant within 30 days of the application being lodged. The further information or document must, if the notice requires, be verified by a statutory declaration. If an applicant fails to comply with the requirement, the applicant is taken to have withdrawn the application.

450 Suitability of person to be an auditor

Clause 450 identifies that, in determining the suitability of a person to be an auditor, the chief executive may have regard to whether the person has previously been refused as an auditor or whether any prior approval as an auditor was suspended or cancelled. The chief executive may also consider a person's ability to perform the functions of an auditor.

451 Decision on application

Clause 451 specifies that if the chief executive decides to grant the application, the chief executive must issue the approval. If the chief executive decides to either impose conditions on the approval or refuse to grant the application, the chief executive must give an information notice to the applicant.

452 Failure to decide application

Clause 452 provides that if the chief executive fails to decide an application, or additional information, within the specified timeframes, the application is taken to have been refused. The applicant is entitled to be given an information notice by the chief executive if the application is refused under this clause.

Division 2 Term and conditions of approval

453 Term of approval

Clause 453 specifies that the chief executive determines an approval remains in force for a specified period up to three years unless it is sooner cancelled or suspended.

454 Conditions of approval

Clause 454 specifies that an auditor's approval is subject to conditions including that the auditor must give the chief executive, immediately after the auditor becomes aware of an interest, notice of any direct or indirect financial or other interest the auditor has with an entity the auditor is required to audit under this Chapter. The chief executive may impose other conditions the chief executive considers appropriate for the proper conduct of an audit when the approval is issued or renewed or at another time. The chief executive must give the auditor an information notice if additional conditions are imposed when the approval is issued, renewed or at another time.

455 Auditor to comply with conditions of approval

Clause 455 provides that it is an offence, with a maximum penalty of 100 penalty units, for an auditor to fail to comply with a condition of their approval. The penalty may apply in

addition to the person having their approval suspended or cancelled because of the contravention.

Division 3 Renewal of approvals

456 Application for renewal

Clause 456 specifies the timeframes within which an application for renewal of an auditor's approval must be made by the auditor and sets out the procedural requirements for the application. The chief executive must consider the application and either renew or refuse to renew the approval. The clause also specifies the criteria in respect of which the chief executive may have regard when deciding whether to grant the application. An information notice must be given to the auditor if the chief executive decides either to refuse to renew the approval or impose conditions on the approval.

457 Inquiry about application

Clause 457 enables the chief executive to require an auditor who has applied to renew the approval to provide further information or documentation the chief executive reasonably considers is necessary to decide the application. The further information request must be by notice and given to the applicant within 30 days of the application being lodged. The chief executive may require the information or documentation to be verified by statutory declaration. If the auditor fails to comply with the requirement, the application is taken to have been withdrawn.

458 Failure to decide application

Clause 458 provides that if the chief executive fails to decide an application for a person to become an auditor within 30 days of receipt of the application, the failure to decide will be taken as a refusal to grant the application. If an auditor, on a renewal application, is requested by the chief executive to provide further information, then a failure to decide the renewal application within 30 days after the receipt of that further information will be taken to be a refusal of the application. For an application that has been refused under this provision the applicant will be entitled to receive an information notice about the decision.

459 Approval continues pending decision about renewal

Clause 459 provides that an auditor's approval will continue until the renewal application has been decided or is taken to have been decided or withdrawn. If the renewal application is refused, the auditor approval will continue until the auditor has been given an information notice outlining the decision. The continuation of an auditor's approval under this clause does not apply to an approval that has been previously suspended or cancelled.

Division 4 General provisions

460 Applications—general

Clause 460 sets out the details to be included and requirements for an application for approval as an auditor, renewal of an approval and the amendment of the conditions of an approval.

The application must be in the approved form, signed by the applicant and accompanied by the prescribed fee. The approved form must make provision for an applicant's statement about their direct financial or other interests with entities proposed to be audited that the applicant has that may conflict with the applicant's proper performance as an auditor.

461 Form of approval

Clause 461 provides that an approval must be in the approved form and include the auditor's name and contact details, any conditions imposed and the term of the approval.

462 Register

Clause 462 specifies that the chief executive must keep a register of auditors. The register must contain the auditor's name and contact details, the conditions of the approval and the term of the approval. The register may be kept in the form the chief executive considers appropriate including in electronic form. The chief executive must publish the register on the department's website.

Part 2 Auditing

Division 1 Preliminary

463 Purpose of pt 2

Clause 463 sets out the purpose of this Part as providing for auditing of compliance agreements and accreditations, monitoring the conduct of audits and reporting the results of audits.

Division 2 Auditing for compliance agreements

464 Audit of applicant's business for entering into compliance agreement

Clause 464 requires the chief executive to audit the business of a person applying to enter into a compliance agreement. The purpose of the audit is to ensure that the applicant has implemented procedures that provide a way for preventing or managing exposure to all biosecurity risks relating to the biosecurity risk matter for the business. The audit will also ensure that the applicant has the capacity to comply with the requirements of the compliance agreement.

465 Compliance audits

Clause 465 sets out requirements to audit in relation to a compliance agreement between the state government and another party. It makes it an offence, with a maximum penalty of 100 penalty units, if the other party to a compliance agreement fails to have a compliance audit conducted of their business within 6 months after entering into the compliance agreement or at the interval stated in the compliance agreement. Also the other party must have a compliance audit conducted of their business at intervals of no more than six months or at the interval stated in the compliance agreement, unless the other party has a reasonable excuse.

The chief executive can request in writing that the other party to a compliance agreement conduct additional audits of the business. This applies if the chief executive reasonably suspects the business does not conform to the requirements of the compliance agreement or noncompliance with the agreement was identified during a previous compliance audit. It is an offence, with a maximum penalty of 100 penalty units, if the other party to a compliance agreement fails to comply with the requirement to undertake the additional audit requested by the chief executive.

466 Check audit

Clause 466 enables the chief executive to conduct a check audit of the business of the other party to a compliance agreement. For example the chief executive may be given advice that a business is not complying with the requirements of the compliance agreement. In this case the chief executive has the power to conduct a check audit of the business of the other party to a compliance agreement at any time, but only if the chief executive considers it appropriate.

467 Nonconformance audit

Clause 467 enables the chief executive to require the other party to a compliance agreement to undertake a further audit called a non-conformance audit if the other party has not remedied a particular aspect of the agreement after at least three audit reports. The chief executive may require the other party to conduct the non-conformance audit and decide who to conduct the audit. If there are costs to government from the non-conformance audit being undertaken, then the chief executive may recover the cost as a debt payable by the other party to the State.

Division 3 Auditing for accreditation

468 Compliance audits

Clause 468 provides that it is an offence, with a maximum penalty of 100 penalty units, if an accredited certifier fails to have compliance audits of their activities conducted within six months after they are granted accreditation and then at the intervals specified within the accreditation, unless the accredited certifier has a reasonable excuse.

The chief executive may conduct additional audits of the accredited certifier's activities if the chief executive reasonably suspects the activities do not conform to the accreditation, or noncompliance with the accreditation was identified during a previous compliance audit. It is an offence, with a maximum penalty of 100 penalty units, if an accredited certifier fails to comply unless they have a reasonable excuse.

469 Check audit

Clause 469 enables the chief executive to conduct a check audit of an accredited certifier's activities if the chief executive considers it appropriate.

470 Nonconformance audit

Clause 470 enables the chief executive to arrange a nonconformance audit of the accredited certifier's activities. A nonconformance audit may occur if the chief executive has received at least three audit reports about the accredited certifier's activities in a 12 month period showing the accredited certifier has not remedied a particular noncompliance in relation to the activities. The nonconformance audit may be done by an employee of the department or another person decided by the chief executive. If there are costs to government from the nonconformance audit being undertaken then the chief executive may recover the cost as a debt payable by the other party to the State.

Part 3 Auditors' reports and responsibilities

Division 1 Compliance agreement reports

471 Report about audit for entering into compliance agreement

Clause 471 provides that it is an offence, with a maximum penalty of 100 penalty units, for an auditor not to give a copy of audit report to the applicant and a copy to the chief executive within 14 days after having completed the audit. The audit report must include:

- whether the applicant has or has not implemented procedures for the applicant's business that provide a way for preventing or managing exposure to all biosecurity risks relating to the biosecurity risk matter for the business;
- the reasons that the auditor considers the applicant has or has not implemented the procedures;
- whether, in the auditor's opinion, the applicant has or does not have the capacity to comply with the requirements of the compliance agreement;
- the reasons that the auditor considers the applicant has or does not have the capacity to comply; and
- other information prescribed by a regulation.

472 Report about audit for compliance, nonconformance or check audit

Clause 472 provides that it is an offence, with a maximum penalty of 100 penalty units, for an auditor of a compliance, nonconformance or check audit not to provide a copy of the audit report to the other party to the compliance agreement and a copy of the audit report to the chief executive within 14 days, unless the auditor has a reasonable excuse. The audit report must include the following information:

- whether, in the auditor's opinion the business complies or does not comply with the compliance agreement;
- the reasons that the auditor considers the activities comply or do not comply with the compliance agreement;
- details of action taken or proposed to be taken to remedy non-compliance with the compliance agreement;
- whether the auditor needs to conduct a nonconformance audit of the business in relation to any noncompliance identified in the audit;
- whether, in the auditor's opinion, the frequency of the compliance audits should be changed and the reasons for that change.

Division 2 Accreditation reports

473 Report about audit for grant of accreditation

Clause 473 identifies what must be included in an audit report of an applicant's ICA system or proposed system for a grant of accreditation, including:

- details of the applicant's ICA system or proposed ICA system audited;
- whether, in the auditor's opinion, each ICA system or proposed ICA system satisfies the requirements of any operational procedures to which the system is directed;
- the reasons that the auditor considers each ICA system or proposed ICA system satisfies or does not satisfy the requirements of any operational procedure to which the system is directed; and
- other information prescribed by regulation.

It is an offence, with a maximum penalty of 100 penalty units, for an auditor not to provide, within 14 days after completing an audit, a copy of the report to the applicant and a copy to the chief executive, unless the auditor has a reasonable excuse.

474 Report about audit for compliance, nonconformance or check audit

Clause 474 identifies what must be included in an audit report for a compliance, non-conformance or check audit for accreditation as an accredited certifier, including:

- whether the activities comply or do not comply with the accreditation;
- the reasons the auditor considers the activities comply or do not comply with the accreditation;
- if the activities do not comply with the accreditation, details of action taken or proposed to be taken to remedy the noncompliance;
- for accredited certifiers participating in the ICA scheme, whether the ICA systems satisfy the operational procedures and the reasons why the system complies or fails to comply with the operational procedures;
- whether the auditor needs to conduct a nonconformance audit of the activities in relation to any noncompliance identified in the audit; and
- whether, in the auditor's opinion, the frequency of the compliance audits should be changed and the reasons for that change.

It is an offence, with a maximum penalty of 100 penalty units, for an auditor not to provide, within 14 days after completing an audit, a copy of the report to the accredited certifier and a copy of the report to the chief executive, unless the auditor has a reasonable excuse.

Division 3 Responsibilities

475 Auditor's responsibility to inform chief executive

Clause 475 places a responsibility on an auditor, whilst conducting an audit, to report that advise the chief executive if he or she has formed a reasonable belief that a person has contravened or is contravening the Act and the contravention poses an imminent and serious biosecurity risk.

The auditor must advise the chief executive the facts and circumstances that gave rise to that belief within 24 hours of forming the belief. It is an offence, with a maximum penalty of 500 penalty units, for an auditor to fail to comply with this requirement. The clause provides that the advice may be given orally within that 24 hour period but must give the notice to the chief executive within 24 hours of giving the verbal details.

Part 4 Offences about auditing

476 Obstructing auditor

Clause 476 provides that it is an offence, with a maximum penalty of 100 penalty units, to obstruct an auditor in the conduct of an audit, unless the person has a reasonable excuse. An auditor must warn a person that their behaviour is considered to be obstructing the auditor in the performance of their duties and that it is an offence to obstruct the auditor.

477 Impersonating auditor

Clause 477 provides that it is an offence, with a maximum penalty of 100 penalty units, to impersonate an auditor.

Chapter 17 Amendment, suspension and cancellation provisions for particular authorities

Chapter 17 provides for common amendment, suspension and cancellation provisions for particular authorities under the Bill.

Part 1 Interpretation

478 Definition

Clause 478 defines the term 'relevant authority' used in this chapter refers to:

- prohibited and restricted matter permits;
- an accreditation; or
- an auditor's approval.

Part 2 Amending conditions of relevant authority on application

479 Application by holder of relevant authority to amend conditions

Clause 479 specifies that the holder of a relevant authority may apply to the chief executive to amend the conditions of the authority. The application must comply with general application requirements under clause 460. However, if the relevant authority is a prohibited matter or restricted matter permit, the chief executive may waive payment of the fee. To waive the fee, the chief executive must be satisfied the proposed dealings with the prohibited or restricted matter are aimed at controlling the matter, the applicant will not derive any benefit from the dealings, and the chief executive will be advised of the progress and outcome of the dealings.

The chief executive must consider the application and decide to amend, or refuse to amend the conditions of the authority. If refusal is decided, an information notice must be sent to the applicant as soon as practicable after the decision is made. If the chief executive decides to amend the conditions of the authority, the chief executive must, as soon as practicable, issue to the applicant another relevant authority showing the amendment.

480 Inquiry about application

Clause 480 enables the chief executive to require an applicant who has applied to amend a relevant authority to provide further information or documentation the chief executive reasonably considers is needed to decide the application. The chief executive must require the information by notice and state in the notice the period of time, which must be at least 30 days, for the applicant to provide the required information or documentation. The chief executive may require the information or documentation be verified by statutory declaration. If the applicant fails to comply with the requirement, the application is taken to have been withdrawn.

481 Failure to decide application

Clause 481 sets out that if the chief executive fails to make a decision about an application by the holder of relevant authority to amend conditions within 30 days, then the application is taken to have been refused. The applicant is entitled to be given an information notice by the chief executive if the application is taken to be refused under this clause.

Part 3 Cancellation, suspension and amendment by chief executive

482 Cancellation and suspension

Clause 482 sets out the grounds on which the chief executive may cancel or suspend a relevant authority. The grounds are that the authority holder:

- obtained the authority by materially incorrect or misleading information or documents or by mistake;
- has not paid the relevant fee for the authority;
- has contravened a condition of the authority;
- has committed an offence under the Act;
- has had another prohibited or restricted matter permit in another jurisdiction in the past two years that was cancelled;
- for an auditor, they are no longer a suitable person, do not have the required expertise, or have not audited in a fair honest or diligent way; or
- for an accreditation, a circumstance in the biosecurity certificate is inconsistent with a legal requirement because that legal requirement was introduced after the certificate was issued.

483 Amendment of relevant authority

Clause 483 empowers the chief executive to amend a relevant authority.

484 Cancellation, suspension or amendment by chief executive—show cause notice

Clause 484 requires the chief executive to give a show cause notice to a holder of a relevant authority if the chief executive believes a ground exists to suspend or cancel the authority or proposes to amend an authority.

The show cause notice must state the proposed action and the grounds for it as well as the facts and circumstances that the grounds were based on. In relation to a suspension the period must be specified and if it is to amend the authority then the amendment must be specified. The show cause notice should give at least 28 days for the authority holder to respond why the particular action should not be taken.

485 Representations about show cause notice

Clause 485 provides that the holder of an authority may make written representations about the show cause notice to the chief executive and the chief executive must consider all the representations.

486 Ending show cause process without further action

Clause 486 provides that if, after considering all of the accepted representations made by the holder of an authority under clause 485 (Representations about show cause notice)., the chief executive believes that the proposed action should no longer be pursued, no further action is required to end the show cause process.

The chief executive must give a notice to the holder of the decision to take no further action about the show cause notice.

487 Cancellation, suspension or amendment

Clause 487 provides that the chief executive may suspend, cancel or amend an authority if, after considering any accepted representations made by the holder of an authority to the show cause notice, there is no substantive grounds to not proceed with the cancelation, suspension or amendment the authority. This clause also applies to a situation where there are no accepted representations by the holder of the authority.

If the chief executive decides to cancel, suspend or amend the authority, the chief executive must as soon as practicable give an information notice for the decision to the holder.

488 Immediate suspension of relevant authority

Clause 488 provides for the chief executive to immediately suspend or cancel an authority if there is a relevant reason to do so and it is necessary. The clause provides the reasons are:

- for a prohibited or restricted matter permit, there would be an immediate and serious risk to a biosecurity consideration if the holder of the permit were to continue to hold it.
- for an accreditation, there would be an immediate and serious risk to a biosecurity consideration or to trade in a particular commodity if the holder of the certificate were to continue to hold it.
- for an auditor's approval, there would be an immediate and serious risk to a biosecurity consideration if the holder of the approval were to continue to hold it.

To suspend an authority, the chief executive must give an information notice of the decision and a show cause notice to the holder. The suspension commences immediately the notices are given and continues until either: the suspension is cancelled; the show cause notice is dealt with; or 56 days after the notice was given.

489 Amendment of relevant authority without show cause notice—minor amendment

Clause 489 exempts from the requirements of the chapter particular types of amendments of a relevant authority. The provision only applies to clerical amendments, amendments that will not adversely affect the interests of the holder and amendments proposed by the holder and accepted by the chief executive without requiring a formal application to be made. In these cases, the chief executive may make the amendment to the authority by way of a notice to the holder.

490 Cancellation of relevant authority without show cause notice

Clause 490 exempts from the requirements of the chapter a request by the holder of a relevant authority to cancel their authority and the chief executive proposes to give effect to the request. The chief executive may cancel the authority by way of notice to the holder.

491 Return of cancelled, suspended or amended relevant authority

Clause 491 makes it an offence for a holder not to return a relevant authority to the chief executive within 14 days, or a later stated date, after receiving a notice from the chief executive requiring the return of the authority. Subclauses (4) and (5) require the chief executive to return authorities to holders at the end of a suspension period or following an amendment to an authority.

Subclause (6) clarifies that an amendment to an authority is not dependent on the actual document being in possession of the chief executive to effect that amendment nor does a

holder need to be in possession of the actual amended authority for the amendment to have effect.

Subclause (7) provides that the chief executive is not required to return the document for a relevant authority that is cancelled.

Chapter 18 Miscellaneous

Chapter 18 provides for miscellaneous matters covered under the Bill.

492 Inconsistencies in scientific name or common name for relevant biosecurity matter

Clause 492 outlines the approach to be taken in dealing with any minor inconsistencies between a reference to a scientific name of relevant biosecurity matter used in the Bill and a scientific name ascribed to it by an authoritative document (for example, a published text book on exotic fish). Under this clause, the relevant biosecurity matter mentioned in the authoritative document is taken to be the same relevant biosecurity matter under this Bill. This clause defines the term 'relevant biosecurity matter' as prohibited matter, restricted matter, controlled biosecurity matter or regulated biosecurity matter. These terms are defined in the Dictionary, Schedule 4.

493 Confidentiality of information

Clause 493 makes it an offence, with a maximum penalty of 50 penalty units, for a person to disclose specified confidential information obtained as a result of the person performing a function under the Bill, unless the disclosure is expressly authorised under subclause (3), for example if:

- the information is disclosed for a purpose under the Act;
- the information is disclosed to certain entities identified in subclause (3)(b) to minimise biosecurity risk. For example, the exchange of information between the State and a local government about an outbreak of a restricted invasive plant on a particular property in the local government's area;
- the disclosure is with the consent of the person to whom the information relates; or
- the disclosure is otherwise required or permitted by law.

Confidential information does not include information that is publicly available but does include information about a person's personal affairs or reputation or something that could damage the commercial activities of a person.

494 Personal information on register under this Act

Clause 494 requires that the chief executive, the chief executive officer of a local government or a chairperson of an invasive animal board should not include a person's address on a public register if it would place at risk the personal safety of the person or another person.

495 Delegation by chief executive

Clause 495 enables the chief executive to delegate certain of their functions and powers to appropriate public servants. However the chief executive cannot delegate their functions and powers in relation to the making of an emergency prohibited matter declaration (clause 31); a biosecurity emergency order (clause 113) or a movement control order (clause 124). Further, the chief executive may not delegate the chief executive's function to establish particular areas in a biosecurity zone or authorise lesser restrictions in a biosecurity zone (clause 128)

or the authorisation of a surveillance or prevention and control program under Part 2 of Chapter 9.

496 Protecting officials from liability

Clause 496 provides that the Minister, the chief executive, a chief executive officer of a local government, an authorised officer or a person acting under the direction of an authorised officer, a director of a barrier fence board, a public service employee acting as an auditor or an accredited certifier, does not incur civil liability for an act done, or omission made, honestly and without negligence under the Act. If a liability exists then it attaches instead to either the State or the local government under which the person is acting or directed.

497 Public officials for Police Powers and Responsibilities Act

Clause 497 provides for certain persons under the Bill to be public officials for the *Police Powers and Responsibilities Act 2000* if a police officer is satisfied that it is reasonably necessary in the circumstances.

498 Limitation of review

Clause 498 specifies that a relevant matter is final and conclusive and can not be challenged, appealed against, reviewed, quashed, set aside or called into question in another way under the *Judicial Review Act 1991*, other than by review of a jurisdictional error by the Supreme Court. An outbreak of a pest or disease or the presence of a contaminant has the potential to have a significant adverse affect upon a biosecurity consideration and therefore immediate action is necessary to avert such a biosecurity event from eventuating. Where human life or the livelihoods of Queenslanders are placed in jeopardy because of a biosecurity event, any delay in implementing an appropriate response can have fatal consequences. This provision limits a person's capacity to seek injunctive or another form of court-ordered relief against a decision of the chief executive to authorise or declare an emergency prohibited matter declaration, a biosecurity emergency order or a movement control order.

A person may bring a proceeding to recover damages for loss or damage caused by a negligent act, or by omission in the performance of an act or by an unlawful act.
In the case where the court has established a ground of jurisdictional error the court may have regard to the following matters:

- the court's ability to assess the level of biosecurity risk to which the biosecurity response instrument is directed;
- the effect of the court's order would have on preventing the impact on a biosecurity consideration of the biosecurity risk;
- the urgency of the matter;
- the desirability of the court delaying the issue of an order that would prevent implementation of the chief executive's decision for a period sufficient to allow the emergency nature of the circumstances to abate.

499 Service of documents

Clause 499 sets out that if a document is required or permitted under this Bill to be given to a person it may be given to the person by facsimile transmission under the conditions listed in the clause.

500 Application of Acts to local governments

Clause 500 provides that this Act applies to a local government as if the local government were a body corporate. A proceeding may be taken under this Act against a local government

and a local government may be dealt with as if it were a body corporate. Proceedings may be taken under this Act against a local government in its own name.

501 Review of Act

Clause 501 states that the Minister must review the efficacy and efficiency of this Bill within five years of its commencement.

502 Approval of forms

Clause 502 authorises the chief executive to approve forms for use under this Bill.

503 Regulation-making power

Clause 503 provides that the Governor in Council may make regulations under this Bill about a fee, ways to discharge a general biosecurity obligation, measures to prevent or control the spread of biosecurity matter, ways of destroying, demolishing or disposing of biosecurity matter or a carrier, maximum tolerable contaminant levels and penalties for contravening a Regulation.

Chapter 19 Repeal, savings and transitional provisions

Chapter 19 provides for the repeal, savings and transitional provisions of matters relating to Acts and parts of Acts being repealed by the Bill. These provisions ensure the continued proper administration of the repealed Acts and the ongoing effect of rights, privileges, obligations and liabilities arising in relation to pre-repeal matters. The Acts being repealed are:

- *Agricultural Standards Act 1994*
- *Apiaries Act 1982*
- *Diseases in Timber Act 1975*
- *Exotic Diseases in Animals Act 1981*
- *Plant Protection Act 1989*
- *Stock Act 1915*,

Chapter 20 Amendment of Acts

Chapter 20 provides for amendments to other Acts as a result of the commencement of the Bill.

Part 1 Amendment of Chemical Usage (Agricultural and Veterinary) Control Act 1988

Part 1 outlines the amendments made to the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* as a consequence of the repeal of the *Stock Act 1915* and amendment of the *Fisheries Act 1994*.

The *Chemical Usage (Agricultural and Veterinary) Control Act 1988* currently provides for the regulation of things containing residues of agricultural and veterinary chemicals above certain prescribed limits, for example plants, fruit and vegetables, fertilisers and manufactured stock food.

The amendments provide for the regulation of trade of species animals and animal products like meat and milk, containing residues of agricultural and veterinary chemicals above certain prescribed limits.

In addition, the chief executive will be able to decide the chemical residue status of animals and places. This is linked to the registration requirements for biosecurity entities under Chapter 7 of the Bill. Details of the chemical residue status will be entered in the biosecurity register referred to in Chapter 7.

Part 2 Amendment of Fisheries Act 1994

Part 2 makes consequential amendments to Divisions 5, 6 and 7 of Part 5 and the schedule (Dictionary) of the *Fisheries Act 1994* by removing references to:

- declared pest;
- declared disease;
- declared quarantine area;
- diseased fisheries resources;
- noxious fisheries resources; and
- quarantine declaration.

The Bill removes these references as the subject matter contained in Divisions 5, 6, and 7 of Part 5 of that Act (noxious fish, diseases and contaminants in fish) will be regulated as biosecurity matter under the Bill. For example, references to 'declared pest' in section 9 of the Fisheries Act will be referred to in the Bill as biosecurity matter which may be managed as prohibited, restricted, controlled or regulated biosecurity matter as appropriate.

The regulation of noxious fisheries resources under Division 5 of the *Fisheries Act 1994* and identified in Schedule 6 of the *Fisheries Regulation 2008* continue to be regulated under the Bill. Noxious fish identified in Schedule 6 of the *Fisheries Regulation 2008* are included in Schedules 1 or 2 of the Bill and regulated as prohibited or restricted matter as appropriate.

The regulation of diseased fisheries resources under Division 6 of the *Fisheries Act 1994* is similarly regulated under the Bill as it is under the *Fisheries Act 1994*. Ordering the removal and destruction of noxious or diseased fisheries resources under Division 7 of the *Fisheries Act 1994* will likewise be regulated under the Bill.

Part 3 Amendment of Land Protection (Pest and Stock Route Management) Act 2002

Part 3 provides for amendments to the *Land Protection (Pest and Stock Route Management) Act 2002*.

Part 4 Amendment of other Acts

Clause 578 provides that Schedule 4 amends the Acts it mentions.

Schedule 1 Prohibited matter

Schedule 1 lists biosecurity matter classified as prohibited matter (refer to clause 19).

Schedule 2 Restricted matter and categories

Schedule 2 lists biosecurity matter classified as restricted matter (refer to clause 21) and attaches categories to certain restricted matter (refer to Chapter 2, Part 3, Division 2) which sets out a person's obligations for that restricted matter.

Schedule 3 Savings and transitional provisions

Schedule 3 lists all of the savings and transitional provisions.

Schedule 4 Acts amended

Schedule 4 makes consequential and minor amendments to-

- *Animal Care and Protection Act 2001*
- *Brands Act 1915*
- *Cape York Peninsula Heritage Act 2007*
- *Disaster Management Act 2003*
- *Environmental Protection Act 1994*
- *Forestry Act 1959*
- *Judicial Review Act 1991*
- *Land Act 1994*
- *Land Protection (Pest and Stock Route Management) Act 2002*
- *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*
- *Police Powers and Responsibilities Act 2000*
- *Public Health Act 2005*
- *Public Interest Disclosure Act 2010*
- *Public Safety Preservation Act 1986*
- *Transport Infrastructure Act 1994*
- *Vegetation Management Act 1999*
- *Veterinary Surgeons Act 1936*
- *Water Act 2000*
- *Water Supply (Safety and Reliability) Act 2008*

Schedule 5 Dictionary

Schedule 5 defines specific terms that are used in the Bill.