

CLAUSE NOTES

Biosecurity Bill 2019

- Clause 1 **Short title**
The *Biosecurity Act 2019*
- Clause 2 **Commencement**
The Act will not commence until proclamation. Different provisions of the Act may be proclaimed separately (and thus commenced) at different times.
- Clause 3 **Objects of Act**
Sets out the Act's statutory objectives.
- Clause 4 **Principles for performing functions under this Act**
Requires any person performing a function under the Act to take into consideration both the objectives of the Act, and the general objectives of Tasmania's Resource Management and Planning System (RMPS). It also includes a series of other principles to govern the exercise of functions under the Act.
- Clause 5 **Application of Act**
Except where the contrary intention appears, this Act will not exclude or affect the operation of any other Act.
- Clause 6 **Extraterritorial operation of Act**
The Act will have extraterritorial application, to the fullest extent possible in law.
- Clause 7 **Act binds Crown**
The Crown is bound by the Act.
- Clause 8 **Interpretation**
Defines terms used throughout the Act.

A number of terms such as "weed" and "stock animal" are not used often in the Act, but can be used in regulations and/or other subordinate instruments made under the Act (e.g. control orders, biosecurity programs).

- Clause 9 **Meaning of *biosecurity compendium***
Establishes the biosecurity compendium as a statutory web-based publication that may be judicially noticed. The compendium must be publically available on the DPIPWE website, and up-to-date as of 01 July of each year.
- Clause 10 **Meaning of *biosecurity event***
Defines the term “*biosecurity event*” – which is an event that must be reported as soon as possible to an authorised officer.
- Clause 11 **Meaning of *biosecurity impact***
Defines the term “*biosecurity impact*” – which is an adverse environmental, economic or community impact caused by a pest, disease or contaminant (biosecurity matter).
- Clause 12 **Meaning of *biosecurity matter***
Defines the term “*biosecurity matter*” – which is any animal, plant or other organism apart from a human being. It includes animal and plant pests and diseases, disease agents, contaminants and products derived from animals and plants.
- Clause 13 **Meaning of *carrier***
Defines the term “*carrier*” – which includes any living or non-living thing that has, or is capable of having, biosecurity matter on it, attached to it or contained in it.
- Clause 14 **Meaning of *dealing***
Defines the term “*dealing*” – practically all human activities involving biosecurity matter or a carrier will be covered by this term.
- Clause 15 **Meaning of *emergency***
Clarifies what the term “*emergency*” means for the purposes of the Act, and indicates when a function can be considered as being performed in an emergency.
- Clause 16 **Meaning of *pest* and *invasive pest***
Defines the terms *pest* and *invasive pest*.
A pest includes any non-indigenous animal or plant that is, or is suspected of being harmful to Tasmania’s environment, economy or community.

So those animals currently classified as vermin under the *Vermin Control Act 2000* and weeds under the *Weed Management Act 1999* would both fall within the definition of pest.

A pest can also include any plant or animal that is indigenous on the mainland (e.g. koala, Cootamundra wattle) but not native to Tasmania.

An *invasive pest* is a pest that is not, or is no longer, known to be established anywhere in Tasmania (e.g. foxes) or otherwise established in a particular part of Tasmania (e.g. cats or rabbits on Macquarie Island).

The discovery of an invasive pest in any part of the State is a *biosecurity event* that is subject to a mandatory notification duty.

Clause 17 **Meaning of *regulated dealing* and *prohibited dealing***

Clarifies that any reference to a regulated or prohibited dealing in the Act is a reference to dealings that have been specifically prescribed as such.

Clause 18 **Meaning of *suitable person***

States grounds on which a person may be considered unsuitable in respect to an application under the Act (e.g. in respect to an application for a biosecurity registration or a permit). This also applies to the appointment of authorised officers under the Act.

Clause 19 **Permitted matter**

Enables the Minister to declare biosecurity matter to be permitted matter.

The Minister must have reasonable grounds to be satisfied that the biosecurity matter is low risk. This is an objective test, whereby the material question is whether the Minister possesses sufficient evidence (i.e. appropriate scientific advice and/or risk assessment) to enable a reasonable person in the Minister's position to be satisfied of the risk level.

Biosecurity matter's status as "permitted" can also be made conditional.

Permitted matter can be imported into the State (from another Australian state or territory) without needing a permit.

Clause 20 **Prohibited matter**

Enables the Minister to declare any biosecurity matter or carrier to be prohibited matter.

The Minister must have reasonable grounds (or evidence) to be satisfied that the biosecurity matter or carrier is high risk. This is an objective test (see above note regarding *permitted matter*).

A person cannot possess or otherwise deal with prohibited matter without a special permit (a *prohibited matter permit*).

- Clause 21** **Restricted matter**
States what is taken to be *restricted matter*.
By default, restricted matter includes any plant or plant product, animal or animal product, or animal or plant disease that has not been listed as either prohibited matter or permitted matter.
Restricted matter does not (by default) include all unlisted biosecurity matter or carriers – as this would be excessively broad (i.e. it would then also cover synthetic contaminants, agricultural material and equipment). However, the Minister has the discretionary power to declare any such material to be restricted matter.
Restricted matter cannot be imported into Tasmania from another Australian state or territory without a permit.
- Clause 22** **Form of declaration of matter**
Machinery clause setting out the form and mechanism for declarations of prohibited, permitted and restricted matter.
- Clause 23** **Minister to consult on declaration**
Requires the Minister to consult with the Chief Veterinary Officer and Chief Plant Protection Officer in respect of a declaration under this Division.
- Clause 24** **Reasonable suspicion – carriers**
Evidentiary clause to describe circumstances in which a thing or place may reasonably be suspected of being a carrier of biosecurity matter.
- Clause 25** **Reasonable suspicion of infection**
Evidentiary clause to describe circumstances in which a thing or place may reasonably be suspected of being infected with a disease.
- Clause 26** **Reasonable suspicion of infestation**
Evidentiary clause to describe circumstances in which a thing or place may reasonably be suspected of being infested with a pest.
- Clause 27** **Chief Plant Protection Officer**
Enables the Secretary to appoint a suitably qualified person to be Chief Plant Protection Officer.

- Clause 28** **Deputy Chief Plant Protection Officer**
Enables the Secretary to appoint one or more suitably qualified persons to be Deputy Chief Plant Protection Officers.
- Clause 29** **Chief Veterinary Officer**
Enables the Secretary to appoint a registered veterinary surgeon to be Chief Veterinary Officer.
- Clause 30** **Deputy Chief Veterinary Officer**
Enables the Secretary to appoint one or more registered veterinary surgeons to be Deputy Chief Veterinary Officers.
- Clause 31** **Authorised officers**
Allows the Secretary to appoint certain persons (State Service employees, local council officers, etc.) to be authorised officers under the Act.

Police officers will automatically be authorised officers under the Act.

Authorised officer's appointment will be subject to any conditions or limitations determined by the Secretary. Secretary must also be satisfied that appointed authorised officer is a suitable person.
- Clause 32** **Functions of authorised officer**
Empowers authorised officers to perform functions specified in the Act, subject to any conditions or limitations of their appointment.
- Clause 33** **Identification of authorised officers**
Sets out the requirements for authorised officers to have photographic identification.
- Clause 34** **Biosecurity auditors**
Sets out the procedures and criteria relating to the approval of a person as a biosecurity auditor.
- Clause 35** **Approval of authorised officer to perform functions of biosecurity auditor**
Allows the Secretary to approve an authorised officer to perform specified functions of a biosecurity auditor in conjunction with his or her functions as an authorised officer.

- Clause 36** **Entry to premises by biosecurity auditor**
States when a biosecurity auditor may enter premises to perform audit functions.
- Clause 37** **Use of assistants**
A biosecurity auditor may be assisted by another person when performing functions under the Act. An assistant could be anyone from a bystander to a private veterinarian or tradesperson who has particular skills or qualifications that the authorised officer lacks (e.g. a plumber or machinery operator). However the assistant will at all times be under the direction of an authorised officer in the performance of a function under the Act.
- Clause 38** **Biosecurity certifier**
Enables the accreditation of a person to perform the functions of a biosecurity certifier under the Act.
- Clause 39** **Approval of authorised officer to perform functions of biosecurity certifier**
Allows the Secretary to approve an authorised officer to perform specified functions of a biosecurity certifier in conjunction with his/her functions as an authorised officer.
- Clause 40** **Authorised analysts**
Enables the Secretary to appoint authorised analysts for the purposes of the Act.
- Clause 41** **Authorised purpose**
Sets out the purposes for which an authorised officer may exercise their statutory functions and powers under the Act. Makes it clear that the performance of any function (e.g. information gathering or entering premises) must only be for such authorised purposes.
- Clause 42** **Use of assistants**
Enables an authorised officer to be accompanied and assisted by another person in the performance of functions under the Act.
- Clause 43** **Use of dogs**
A specialist officer may be authorised to use a dog for the detection or management of biosecurity matter.

The types of dogs normally used would be either a trained detector (sniffer) dog used to detect plant or animal material, or a working dog for livestock mustering.

- Clause 44** **Performance of functions in emergency**
- Clarifies that an authorised officer's general functions are not limited by any specific emergency functions.
- Clause 45** **Extraterritorial performance of functions**
- Enables the Secretary and/or the Minister to enter into cross-jurisdictional arrangements for Tasmanian authorised officers, and interstate authorised officers, to perform biosecurity functions cooperatively across jurisdictions, under corresponding legislation.
- Clause 46** **Application of Division**
- Doubt-removal provision to clarify that performance of functions in this Division of the Act does not prevent an officer from concurrently performing other functions under the Act.
- Clause 47** **Information to be provided**
- Enables an authorised officer to give a written notice to a person requiring them to provide relevant information for an authorised purpose.
- Clause 48** **Authorised officer may require answer**
- Empowers an authorised officer to compel a person to answer questions for an authorised purpose (however, answers given by a natural person are not to be used as evidence against that person in criminal proceedings – except in relation to an obstruction offence).
- Clause 49** **Questions may be recorded**
- Confirms that an authorised officer may record any information given orally by a person, provided that the informant has been advised accordingly prior to giving the information.
- Clause 50** **Powers of authorised officers to enter premises**
- Details authorised officers' powers of entry to premises.
Entry may be with the use of reasonable force.

Entry to a residence must be under a warrant, or with the consent of the occupier.

- Clause 51** **Warrants**
- Details the form and procedures for obtaining a warrant to enter premises.
- Warrant may be issued by a justice or magistrate, and must be in a form that has been approved by the Commissioner of Police.
- Clause 52** **Authorised officers may require name and address**
- Empowers an authorised officer to compel a person to state their name and address, and/or provide written evidence of identity and address.
- Clause 53** **General functions of authorised officers**
- Details the general powers authorised officers may use in the administration and enforcement of the Act, subject to any conditions or limitations of their appointment.
- Similar to the existing range of powers inspectors have under the *Animal Health Act 1995* and *Plant Quarantine Act 1997*.
- Clause 54** **Requiring assistance**
- Enables an authorised officer to require the owner or occupier of premises to provide reasonable assistance and facilities to allow functions to be performed on the premises.
- Clause 55** **Recovery of fee for action taken**
- Enables the Secretary to recover from a liable person, the Crown's reasonable costs associated with action taken under the Act. This would normally only occur where the need for the action has arisen from a breach of the general biosecurity duty, or other default on the part of the liable person.
- Clause 56** **Interpretation**
- Defines terms used specifically in relation to seizure functions.
- Clause 57** **Receipt for seized things**
- Sets out the requirements for giving the owner or person responsible for a seized thing a written receipt.

- Clause 58** **Return of seized things**
Sets out the requirement to return a seized thing to its owner where its continued retention can no longer be justified.
- Clause 59** **Certification of inability to return seized thing**
Specifies the requirements and process for an officer certifying that the return of a seized thing is not possible.
- Clause 60** **Court order requiring delivery of seized thing**
Enables a person to apply to a court of competent jurisdiction for an order directing that a seized thing be returned.
- Clause 61** **Forfeiture of seized thing**
Sets out the circumstances in which the Secretary may declare a seized thing to be forfeited to the Crown, and describes the process for doing that.
- Clause 62** **Dealing with forfeited things**
A thing that is forfeited to the Crown becomes the property of the Crown and the Secretary may dispose of the thing as he or she sees fit.
- Clause 63** **Detention or treatment of persons**
Limits an authorised officer's powers in respect to the treatment or detention of persons.
- Clause 64** **Destruction requirements**
Imposes certain limitations on authorised officers' powers of destruction.
Officer cannot destroy property of greater value than \$5000 (limit of a "minor civil claim" in the Magistrates Court) without a special authorisation, or pursuant to an emergency order, control order or the regulations.
- Clause 65** **Notification of proposed destruction**
Natural justice provision requiring an authorised officer to provide (in a normal case) the owner or person responsible for any thing to be destroyed at least 24 hours' notice of the proposed destruction.

- Clause 66** **Interaction of functions with restrictions imposed by other Acts**
Restricts an authorised officer's power to destroy a protected plant, threatened species or aboriginal relic.
- Clause 67** **Interference with signs, device, trap, equipment, &c.**
Makes it an offence for a person to, without reasonable excuse, interfere with any signs, device, trap or equipment placed on premises by an officer for an authorised purpose.
- Clause 68** **Self-incrimination**
Prevents a person relying on the privilege against self-incrimination to avoid answering questions or providing information to an authorised officer.

However, any answer or information given by a natural person under compulsion cannot be used against that person in criminal proceedings or other proceedings for the imposition of a penalty, other than proceedings for an obstruction related offence.
- Clause 69** **Care to be taken by authorised officers**
Requires authorised officers to exercise due care, and to do as little damage as is reasonably possible in the circumstances when performing functions on premises.
- Clause 70** **General biosecurity duty**
Establishes the general biosecurity duty.

Confirms that a *specified biosecurity requirement* can be part of the general biosecurity duty, without limiting it.
- Clause 71** **Failure to comply with general biosecurity duty**
Makes contravention of the general biosecurity duty an offence.

A deliberate or reckless contravention of the general biosecurity duty that causes a significant biosecurity impact is an aggravated offence that carries the Act's highest maximum penalties (10,000 penalty unit fine for a corporation, four years' imprisonment for a natural person).

Provision is made for alternative verdicts, and for alternative proceedings – proceedings may be in the Supreme Court (before a jury) or, if the parties so elect, in the Magistrates Court.

Clause 72

Specified biosecurity requirements

Explains what is meant by the term “*specified biosecurity requirement*” and explains how specified biosecurity requirements interact with the general biosecurity duty.

Clarifies that the general biosecurity duty will not be displaced or overridden by a specified biosecurity requirement.

Removes doubt as to whether a person may be charged with a breach of the general biosecurity duty and another specific offence arising from the same conduct.

Provides double jeopardy protection, i.e. protection from excessive multiple punishments for the same conduct.

Clause 73

Notification of biosecurity event

Imposes a duty on certain classes of persons to notify an authorised officer of a biosecurity event (or suspected biosecurity event) as soon as practicable after the person becomes aware of (or suspects) the event.

Makes failure to comply with the duty an offence.

Creates rebuttable presumption (of knowledge) where a reasonable person in the circumstances of the defendant ought to have known of, or suspected, the likely occurrence of the biosecurity event.

Provides a defence where the defendant can establish that they had reasonable grounds to believe the event was already widely known.

Clarifies that a notification given under the section is not to be used as evidence against the person in criminal proceedings (other than for offences relating to obstruction or false information).

Clause 74

Dealing with prohibited matter

Makes dealing with any prohibited matter an offence.

In the context of this clause – a prosecutor would need to prove beyond reasonable doubt that: (1) the defendant dealt with the prohibited matter; and (2) the material dealt with was, in fact, prohibited matter.

However, there is no need to prove that the defendant knowingly dealt with the prohibited matter, or knew the matter was prohibited.

The onus then shifts to the defendant to make out any applicable defence, e.g. due diligence, or honest and reasonable mistake of fact, or that they had a valid permit authorising the dealing.

Clause 75

Dealing with restricted matter

Makes importing (from another part of Australia) restricted matter an offence.

Dealings with restricted matter (other than importing) are not prohibited.

Clause 76	Prohibited dealings Makes engaging in a prohibited dealing an offence.
Clause 77	Regulated dealing Makes engaging in a regulated dealing by a person other than a registered entity, an offence.
Clause 78	Registration required to engage in regulated dealings Sets out the scope and operation of a biosecurity registration.
Clause 79	Application for biosecurity registration Outlines the procedures and requirements for an application for a biosecurity registration.
Clause 80	Grant or refusal of biosecurity registration Sets out the Secretary's powers in relation to determining an application for biosecurity registration.
Clause 81	Duration of biosecurity registration Registration is for a period specified in the notice of registration, not exceeding 5 years.
Clause 82	Variation of biosecurity registration Enables the Secretary to vary the conditions of a biosecurity registration.
Clause 83	Application for renewal of biosecurity registration Outlines the procedures and requirements relating to an application for renewal of a biosecurity registration by a registered entity.
Clause 84	Grant or refusal of renewal application Sets out the Secretary's powers in relation to determining an application for renewal of biosecurity registration.
Clause 85	Conditions of biosecurity registration Outlines the Secretary's power to impose conditions on a biosecurity registration.

Clarifies that the types of conditions that may be imposed are not limited to only those types of conditions specifically mentioned in this Part.

- Clause 86** **Compliance with standards**
- Confirms that biosecurity registration can be made conditional on compliance with any specified standard, code, guideline, protocol, program or other like specification.
- Clause 87** **Conditions requiring specified works or measures**
- Confirms that biosecurity registration can be made conditional on specified works or measures being carried out by the registered entity.
- Clause 88** **Conditions imposing alternative arrangements**
- Confirms that biosecurity registration can be made conditional on an alternative arrangement being in place to deal with certain contingencies such as the registered entity abandoning the activity.
- Clause 89** **Conditions for insurance cover**
- Confirms that biosecurity registration can be made conditional on the registered entity holding appropriate insurance cover in respect to a liability that may arise under the registration.
- Clause 90** **Conditions requiring biosecurity audits**
- Confirms that biosecurity registration can be made conditional on the registered entity undergoing or arranging for audits to be carried out of the entity's operation.
- Clause 91** **Conditions requiring financial assurances**
- Confirms that biosecurity registration can be made conditional on the registered entity providing a financial assurance (e.g. a monetary bond) as a security against the occurrence of "secured events".
- Clause 92** **Conditions to take effect later**
- Enables commencement of a biosecurity registration to be delayed until certain steps are taken, or an event occurs.
- Clause 93** **Failure to comply with biosecurity registration condition**
- Makes it an offence to breach a condition of biosecurity registration.

Clause 94	<p>Grounds for suspension or cancellation of biosecurity registration</p> <p>States the grounds for a cancellation or suspension of a biosecurity registration by the Secretary.</p>
Clause 95	<p>Suspension of biosecurity registration</p> <p>Procedural clause setting out the process for suspension of a biosecurity registration.</p>
Clause 96	<p>Cancellation of biosecurity registration</p> <p>Procedural clause setting out process for the cancellation of a biosecurity registration.</p>
Clause 97	<p>Voluntary surrender of biosecurity registration</p> <p>Sets out the process for surrender of a registration by a registered entity.</p>
Clause 98	<p>Effect of suspension, cancellation or surrender on conditions</p> <p>Enables suspension, surrender or cancellation of biosecurity registration to be conditional.</p>
Clause 99	<p>Relevant decision-maker</p> <p>Defines relevant decision-maker for the issuing of permits under the Act and limits ability to issue of certain types of permits to the Secretary only.</p>
Clause 100	<p>Types of permit</p> <p>Describes the types of permits that may be granted under the Act i.e.</p> <ul style="list-style-type: none"> • A permit that relates to an emergency order or direction (“<i>emergency permit</i>”). • A permit that authorises a specified dealing with prohibited matter (“<i>prohibited matter permit</i>”). • A permit that authorises a prohibited dealing (“<i>prohibited dealing permit</i>”). • A permit that authorises a dealing that would otherwise breach the Act.
Clause 101	<p>Effect of permit</p> <p>States that a permit can authorise conduct that would, without a permit, be a breach of the Act.</p> <p>Clarifies that a permit relates to the requirements of this Act, and does not authorise conduct that would contravene another Act.</p>

Clause 102	Duration of permit A permit lasts for a period specified in the permit, which must not exceed 5 years.
Clause 103	Application for individual permit Procedural clause setting out the process for an application for an individual permit.
Clause 104	Grant or refusal of permit Sets out the basis and procedure for the grant or refusal of a permit by a relevant decision-maker.
Clause 105	Form of individual permit Machinery clause specifying the form of an individual permit.
Clause 106	Variation of individual permit Sets out the basis and procedure for variation of an individual permit.
Clause 107	Application for renewal of individual permit Sets out the procedure for an application to renew an individual permit.
Clause 108	Grant or refusal of renewal of individual permit Sets out the basis and procedure for deciding an application of renewal of a permit.
Clause 109	Effect of refusal to renew individual permit Clarifies that a permit remains in force until an application to renew it has been determined and the permit holder has been notified of the determination (except where permit has been suspended or cancelled).
Clause 110	Grant of group permit Sets out the basis and procedure for the issue of a group permit. Excludes a group permit from appeals to the Resource Management and Planning Appeal Tribunal (RMPAT).

Clause 111	Form of group permit Machinery clause specifying the form and content of a group permit.
Clause 112	Variation of group permit Establishes the basis for a variation of a group permit.
Clause 113	Renewal of group permit Enables renewal of a group permit by publication of a notice on the Departmental website.
Clause 114	Conditions of permits Enables the relevant decision-maker to impose conditions on a permit. Clarifies that the types of conditions that may be imposed are not limited to only those types of conditions specifically mentioned in this Part of the Act.
Clause 115	Conditions relating to insurance Confirms that permit may be conditional on permit holder maintaining appropriate insurance cover in respect to a liability that may arise under the permit.
Clause 116	Conditions relating to audits Confirms that permit can be made conditional on the permit holder undergoing or arranging for audits to be carried out of the entity's operation.
Clause 117	Conditions relating to financial assurances Confirms that permit can be made conditional on the permit holder providing a financial assurance (e.g. a monetary bond) as a security against the occurrence of "secured events".
Clause 118	Conditions may take effect at any time Enables, inter alia, commencement of a permit to be delayed until certain steps are taken, or an event occurs.
Clause 119	Failure to comply with permit condition Makes it an offence to breach a permit condition.

Clause 120	<p>Grounds for suspending or cancelling individual permit</p> <p>States the grounds for a cancellation or suspension of an individual biosecurity permit by a relevant decision-maker.</p>
Clause 121	<p>Grounds for suspending or cancelling group permit</p> <p>The Secretary may suspend or cancel a group permit at his or her discretion.</p>
Clause 122	<p>Suspension of permit</p> <p>Procedural clause setting out the process for suspension of a permit.</p>
Clause 123	<p>Permit holder may make submissions about suspension</p> <p>Natural justice provision to ensure an individual permit holder is given notice of the grounds of a suspension or proposed suspension, and has an opportunity to make submissions to the relevant decision-maker.</p>
Clause 124	<p>Cancellation of permit</p> <p>Procedural clause setting out process for the cancellation of a permit.</p>
Clause 125	<p>Permit holder may make submissions about cancellation</p> <p>Natural justice provision to ensure an individual permit holder is given notice of the grounds of a cancellation or proposed cancellation, and has an opportunity to make submissions to the relevant decision-maker.</p>
Clause 126	<p>Voluntary surrender of individual permit</p> <p>States the process for voluntary surrender of an individual permit.</p>
Clause 127	<p>Effect of suspension, cancellation or surrender on conditions</p> <p>Conditions may apply in respect to a cancellation, surrender or suspension of a permit, including new or varied conditions.</p> <p>Failure to comply with a condition under this clause is an offence.</p>
Clause 128	<p>Biosecurity zones</p> <p>Provides for the making of biosecurity zones in regulations, and sets out the scope, basis and purpose of biosecurity zones.</p>

Clause 129	<p>Biosecurity zone measures</p> <p>Details the types of regulatory measures that may apply in respect to biosecurity zones.</p>
Clause 130	<p>Failure to comply with biosecurity zone measure</p> <p>Makes contravention of a biosecurity zone measure an offence.</p> <p>Enables the Secretary to authorise a person to take any action necessary to rectify a failure to comply with a biosecurity zone measure.</p> <p>Enables the Secretary to charge a person responsible for a contravention a reasonable fee for any action taken to remedy the contravention.</p>
Clause 131	<p>Preparation of draft biosecurity program</p> <p>Provides the statutory basis for an industry body or community organisation to prepare a draft biosecurity program, and sets out the matters a draft program is to specify.</p>
Clause 132	<p>Approval of draft program</p> <p>Sets out the basis and requirements for approval of a draft biosecurity program by the Minister.</p>
Clause 133	<p>Amendment of approved biosecurity program</p> <p>Enables the Minister to amend an approved biosecurity program on the request of the entity that prepared the draft program.</p>
Clause 134	<p>Termination of approved biosecurity program</p> <p>Enables the Minister to terminate an approved biosecurity program at his or her discretion, or on the application of the entity that prepared the draft program.</p>
Clause 135	<p>Cost of implementing approved biosecurity program</p> <p>Enables the Minister to enter an agreement with the management committee for an approved biosecurity program – for the Crown to reimburse the committee’s reasonable costs and expenses of administering the program.</p>
Clause 136	<p>Government biosecurity program</p> <p>Enables the Minister to direct the Secretary to implement a Government biosecurity program, and sets out the matters such a program is to specify.</p>

- Clause 137** **Biosecurity control agreement**
Enables the Secretary to enter an agreement with a landholder for the carrying out of biosecurity management measures on the property.
Contravention of a biosecurity agreement is an offence.
- Clause 138** **Suspension or revocation of biosecurity control agreement**
Enables the Secretary to suspend or revoke a biosecurity control agreement if he or she reasonably believes there has been non-compliance.
- Clause 139** **Accreditation authority**
Identifies who is an accreditation authority for the purposes of the Act, and enables the Secretary to approve a person to be an accreditation authority.
- Clause 140** **Responsible accreditation authority**
Specifies how and when an accreditation authority becomes the responsible accreditation authority in respect to a particular person or function.
- Clause 141** **Biosecurity audits**
Identifies the types of biosecurity audits carried out under the Act.
- Clause 142** **Biosecurity audits mandatory in certain circumstances**
Identifies when a biosecurity audit is mandatory.
- Clause 143** **Reporting requirements for biosecurity audit**
Imposes statutory responsibilities on auditors to report specified matters to the accreditation authority that required the audit.
- Clause 144** **Biosecurity auditor to provide immediate report in certain circumstances**
Imposes requirement on auditors to report certain matters (e.g. critical non-compliance, misleading conduct) to the Secretary within 24 hours of becoming aware of the matter.
- Clause 145** **Accreditation audits**
Describes what an *accreditation audit* means in the context of the Act.

- Clause 146** **Who can require accreditation audits**
Identifies who can require accreditation audits and the circumstances when such audits will be required.
- Clause 147** **Engagement of auditors**
Enables an accreditation authority to either engage an auditor to carry out an accreditation audit or otherwise direct the “audit target” to engage an auditor subject to the authority’s requirements.
- Clause 148** **Functions of biosecurity auditors – accreditation audits**
Specifies the functions of a biosecurity auditor in respect to accreditation audits.
- Clause 149** **Recovery of fee for accreditation audits**
Enables an accreditation authority to recover the costs of engaging an auditor to carry out an accreditation audit.
- Clause 150** **Compliance audits**
Describes what a *compliance audit* means in the context of the Act.
- Clause 151** **Who can require compliance audits**
Identifies who can require compliance audits and the circumstances when such audits will be required.
- Clause 152** **Decision to require compliance audits**
Details the matters an accreditation authority must take into consideration when deciding whether to require a compliance audit.
- Clause 153** **Audit frequency policy**
Sets out the requirements for an accreditation authority to adopt and apply an audit frequency policy approved by the Secretary.
- Clause 154** **Engagement of auditor**
Enables an accreditation authority to either engage an auditor to carry out a compliance audit or otherwise direct the “audit target” to engage an auditor subject to the authority’s requirements.
Specifies the circumstances for directing a person to engage an auditor to perform a compliance audit.

Clause 155	Functions of biosecurity auditor – compliance audit Sets out the types of functions an auditor is to perform when carrying out a compliance audit.
Clause 156	Recovery of fee for compliance audit Enables an accreditation authority to recover the costs of engaging an auditor to carry out a compliance audit.
Clause 157	Use of compliance audit Requires an accreditation authority to take into account a compliance audit when performing any function under the Act in relation to the audit target.
Clause 158	Biosecurity certificate Describes the purpose, contents and nature of a biosecurity certificate issued by a biosecurity certifier.
Clause 159	Recognition of interstate biosecurity certificates Enables, for the purposes of the Act, recognition of a biosecurity certificate issued in another state or territory.
Clause 160	Issue or alteration of biosecurity certificate by unauthorised person Makes it an offence for a biosecurity certificate to be issued or altered by a person who is not a biosecurity certifier.
Clause 161	False biosecurity certificates Makes it an offence to issue a biosecurity certificate that is false or misleading or alter a certificate to make it false or misleading.
Clause 162	False representations Makes it an offence to represent that a biosecurity certificate has been issued in respect of any matter.
Clause 163	Emergency orders Enables the Minister to, by order, declare a biosecurity emergency and establish measures to respond to that emergency.

Clause 164	Duration of emergency order Emergency order remains in force for period stated in the order – not exceeding 6 months. The Minister may extend an order for a further 6 months, as many times as the Minister considers necessary.
Clause 165	Notice of emergency order generally Machinery provision setting out how the Minister is to publish notice of an emergency order.
Clause 166	Notice of emergency order relating to specific property The owner/occupier of a property that is the subject of a specific emergency order may be notified individually.
Clause 167	Emergency zones Provides further detail of the nature and scope of emergency zones.
Clause 168	Emergency measures Details the types of measures that may be imposed under an emergency order.
Clause 169	Additional emergency measures Enables imposition of special measures (e.g. restricting persons' movement and requiring treatments) in an emergency.
Clause 170	Measures which may not be emergency measures States certain limitations on the scope of emergency measures.
Clause 171	Inspection of persons Clarifies the scope of an emergency measure relating to the treatment of natural persons.
Clause 172	Emergency order prevails Confirms that an emergency order prevails over other orders and instruments made under the Act.

Clause 173	Offences Makes it an offence for a person to contravene an emergency order.
Clause 174	Secretary may authorise required actions and recover costs Enables the Secretary to authorise a person to take any action necessary to rectify a failure to comply with an emergency order. The Secretary may charge a person responsible for a contravention a reasonable fee for any action taken to remedy the contravention.
Clause 175	Amendment or revocation of emergency order Machinery clause enabling the Minister to amend or revoke an emergency order.
Clause 176	Protection of emergency actions A court or tribunal may not make an interim order that prevents, restricts, stays or defers an emergency order or measure, however a court/tribunal can make permanent or final orders to that effect.
Clause 177	Control orders Enables the Minister to, by order, establish control zones and control measures that will apply in connection with the zones for the prevention, elimination, minimisation, control or management of a biosecurity risk or biosecurity impact.
Clause 178	Content of control orders Outlines the written content requirements for a control order.
Clause 179	Notice of control orders generally Machinery provision setting out how the Minister is to publish notice of a control order.
Clause 180	Notice of control orders relating to specific property The owner/occupier of a property that is the subject of a specific control order may be notified individually.
Clause 181	Duration of control orders A control order is for a period stated in the order (not exceeding 5 years).

The Minister may extend a control order for a further 5 years – as many times as necessary.

- Clause 182** **Control zones**
Outlines the key components and scope of control zones.
- Clause 183** **Control measures**
Details the types of measures that may be imposed under an emergency order.
- Clause 184** **Consultation required for control order**
Directs the Minister to consult with the Ministers responsible for other relevant legislation before making a control order.
- Clause 185** **Measures which may not be control measures**
States certain limitations on the scope of control measures.
- Clause 186** **Destruction requirements**
Imposes certain limitations on the requirements for destruction of things under a control order.
- Clause 187** **Offence of contravening control measure**
Makes it an offence for a person to contravene a control measure.
Provides defence where no notice of the order has been given.
- Clause 188** **Secretary may authorise required actions and recover costs**
Enables the Secretary to authorise a person to take any action necessary to rectify a failure to comply with a control measure.
The Secretary may charge a person responsible for a contravention a reasonable fee for any action taken to remedy the contravention.
- Clause 189** **Amendment or revocation of control order**
Machinery clause enabling the Minister to amend or revoke a control order.

Clause 190	<p>Types of biosecurity direction</p> <p>Describes the types of biosecurity directions that may be given under this part i.e. <i>general biosecurity direction</i> (may apply to the general public or a class of persons) or <i>individual biosecurity direction</i> (may apply to a specified person).</p>
Clause 191	<p>General biosecurity direction</p> <p>Enables issue of a general biosecurity direction and explains the scope and purpose of such a direction.</p>
Clause 192	<p>How general biosecurity direction is given</p> <p>Procedural clause describing the methods of giving a general biosecurity direction.</p>
Clause 193	<p>Individual biosecurity directions</p> <p>Enables a relevant officer to issue an individual biosecurity direction and explains the purpose and scope of such a direction.</p>
Clause 194	<p>How individual biosecurity direction is given</p> <p>Procedural clause describing the methods of giving an individual biosecurity direction.</p>
Clause 195	<p>Special emergency powers – inspection and treatment</p> <p>An individual biosecurity direction given in the case of an emergency may cover additional powers of inspection, control and treatment.</p>
Clause 196	<p>Recovery of costs</p> <p>Enables a relevant officer to recover from a liable person, the Crown's reasonable costs associated with investigating the need for (and preparation of) an individual biosecurity direction. This would normally only occur where the need for the direction has arisen from a breach of the general biosecurity duty, or other default on the part of the liable person.</p>
Clause 197	<p>Taking of required actions and recovery of costs</p> <p>Enables an authorised officer to take or authorise action necessary to remedy a failure to comply with a biosecurity direction.</p> <p>The Secretary may charge a person responsible for a contravention a reasonable fee for any action taken to remedy the contravention.</p>

- Clause 198** **Measures not to be included in biosecurity direction**
States certain limitations on the scope of a biosecurity direction.
- Clause 199** **Additional measures not to be included in biosecurity direction**
Restricts the power to direct destruction of a protected plant, threatened species or aboriginal relic.
- Clause 200** **Offence not to comply with biosecurity direction**
Makes it an offence not to comply with a biosecurity direction.
- Clause 201** **Authorised officer may accept undertakings**
An authorised officer may accept a written undertaking from a person where there has been a suspected or likely contravention of the Act.
An undertaking may be accepted as an alternative to a biosecurity direction.
- Clause 202** **Contents of biosecurity undertaking**
States the required contents of a biosecurity undertaking.
- Clause 203** **When biosecurity undertaking takes effect**
States when a biosecurity undertaking becomes enforceable.
- Clause 204** **Contravention of biosecurity undertaking**
Makes contravention of a biosecurity undertaking an offence.
- Clause 205** **Fee for biosecurity undertaking**
Enables an authorised officer to charge a fee for preparing or accepting a biosecurity undertaking.
- Clause 206** **Authorised officer may take or authorise required actions and recover costs**
Enables an authorised officer to take or authorise action necessary to remedy a failure to comply with a biosecurity undertaking.
The Secretary may charge a person responsible for a contravention a reasonable fee for any action taken to remedy the contravention.

Clause 207	Order requiring compliance with biosecurity undertaking Enables the Secretary to apply to the Resource Management and Planning Appeals Tribunal for orders to enforce compliance with a biosecurity undertaking.
Clause 208	Withdrawal or variation of biosecurity undertaking Enables a person giving undertaking, or authorised officer, to withdraw or vary an undertaking in certain circumstances.
Clause 209	Enforcement action not prevented by undertaking Clarifies that an undertaking does not prevent legal action for an offence related to the subject matter of the undertaking. However, a court may take account of a person's compliance with an undertaking.
Clause 210	Recoverable amounts Describes what constitutes a <i>recoverable amount</i> for the purposes of the Act.
Clause 211	Cost recovery orders Enables the Secretary to serve a <i>cost recovery order</i> on a person.
Clause 212	Form of cost recovery orders Sets out the required form and contents of a cost recovery order.
Clause 213	Interest on cost recovery orders Standard cost recovery clause enabling the charging of interest on a recoverable amount (at the rate payable for an unpaid Supreme Court judgement).
Clause 214	Change in payment of cost recovery orders Enables the Secretary to approve a variation to a cost recovery order.
Clause 215	Recovery of recoverable amounts Enables the Secretary to institute debt recovery proceedings pursuant to a cost recovery order. Prevents debt recovery proceedings from being instituted before any time limit for an appeal (RMPAT) against the cost recovery order has elapsed.

Clause 216	Registration of cost recovery orders as charge on land Standard clause enabling the Secretary to apply to the Recorder of Titles for registration of an amount owing under a cost recovery order (as a charge over land).
Clause 217	Power to delegate functions under this Division Restricts the Secretary's power to delegate a statutory function relating to cost recovery to a State Service officer only.
Clause 218	Eligibility for reimbursements Sets out the circumstances where the owner of an animal, plant or other property may be entitled to reimbursement for the death or destruction of the animal, plant or property under the Act.
Clause 219	Claims for reimbursement Procedural clause specifying the form and manner of making claims for reimbursement under the Act.
Clause 220	Amount of reimbursement Machinery clause establishing the basis for calculating the amount of reimbursement that may be payable under the Act.
Clause 221	Determination of value Establishes the basis for determining the market or replacement value of any animal, plant or other property that may be the subject of a claim for reimbursement (must be in accordance with regulations, biosecurity program, or agreement).
Clause 222	Reimbursements may be withheld Enables the Secretary to withhold payment of reimbursement in the event of a doubt or dispute over entitlement.
Clause 223	Payment of reimbursements Specifies who is responsible for payment of reimbursement in particular circumstances.
Clause 224	Recovery of reimbursement Allows recovery of mistakenly paid reimbursement from the payee.

Clause 225	Offence to make false claim Creates offence of making a false claim for reimbursement.
Clause 226	Failure to comply with requirement Makes it an offence to not comply with a requirement of an authorised officer performing a function under the Act.
Clause 227	Obstructing authorised officer or biosecurity auditor Makes it an offence to obstruct, resist or hinder an authorised officer or biosecurity auditor performing a function under the Act.
Clause 228	Assaulting authorised officer or biosecurity auditor Makes it an offence to assault, abuse or threaten an authorised officer or biosecurity auditor performing a function under the Act.
Clause 229	Impersonating officials Makes it an offence to impersonate an authorised officer, biosecurity auditor or biosecurity certifier.
Clause 230	False or misleading information Makes it an offence to provide misleading or false information, or omit material information in any application made under the Act or otherwise in purported compliance with the Act. A defence is included where the provider alerts the recipient to the inaccuracy or incompleteness of the information.
Clause 231	Infringement notices Enables an authorised officer to deal with prescribed offences by way of infringement notice.
Clause 232	Continuing offence Empowers sentencing court to impose a daily penalty not exceeding one fifth of the maximum penalty for a continuing offence for each day the offence continues after its initial commission.
Clause 233	Offences by employers Employers will be criminally responsible for the offences of their employees.

A due diligence defence is provided.

Clause 234 Offences by bodies corporate

This applies where a corporation is charged with an offence under the Act and a director or officer of the company is also personally charged with the offence.

To convict the director/officer (as an individual) the onus is on the prosecution to prove, in addition to the elements of the offence, personal fault (such as actual authorisation, knowledge or negligence of the offence) on the part of the director/officer.

Clause 235 Offences by employees or agents

An employee or agent of another person will not be guilty of an offence under the Act if the employee/agent can prove that they were acting under the direction or supervision of their employer/principal, and could not reasonably have known that his/her actions were an offence.

Clause 236 Proceedings for offences

Except for the aggravated offence in section 70 (1), offences are to be dealt with summarily (in the Magistrates Court).

Criminal proceedings under the Act must be commenced within three years of the alleged offence date, unless the Court extends this time limit.

Clause 237 Presumption of state of mind

Evidentiary clause to clarify intent for most offences in the Act to be treated as strict liability offences, unless the contrary intention appears.

Strict liability means the prosecution does not have to prove fault or a mental element (*mens rea*), but only that the defendant committed the relevant act constituting the offence.

Clause 238 Evidentiary certificates

Enables a court to accept into evidence certificates attesting to various matters.

However, a party may still contest the accuracy of a certificate in any proceedings.

Clause 239 Evidence of allegation

Enables court to accept as evidence allegations in a complaint as to certain matters relating to the movement and possession of biosecurity matter.

In practice, without such provision, it would often be impossible for a regulator to prove such matters (beyond reasonable doubt) where the defendant has not kept accurate records or adequate traceability data.

This, in effect, creates a presumption as to the relevant evidence in a complaint, which a defendant could rebut by producing contrary evidence (such as business records and traceability data).

Clause 240

Evidence of authorised analyst

Enables a court to accept into evidence the certificate of an authorised analyst certifying the results of an analysis or examination, and certain facts relating to the integrity of samples.

However, a party may still contest the accuracy of a certificate in any proceedings.

Clause 241

Evidence as to state of mind of corporation

Confirms that evidence of the state of mind of an officer, employee or agent of a corporation is evidence of the corporation's state of mind.

Also confirms that corporations will be prima facie responsible for the acts and omissions of employees and agents acting in the course of their employment or agency.

Clause 242

Evidence of publication of instruments on website

Requires the Secretary to keep record of any website publications and confirms admissibility of certificate (of web publication) as evidence in legal proceedings.

Clause 243

Evidence of part to be evidence of whole

Allows a court to accept evidence of a sample of a thing as being representative of the whole parcel or quantity of a thing.

Clause 244

Defence of due diligence

Provides a defence of due diligence to anyone facing charges under the Act.

Once prosecution has proven the primary elements of an offence under the Act the onus shifts back to the defendant to prove (on the balance of probabilities) that he/she exercised due diligence to prevent the offence from occurring – if the defendant is successful in doing so, he/she must be found not guilty.

Clause 245	Defence of lawful excuse A defendant will be not guilty of an offence under the Act if the offending conduct was validly authorised under the Act (e.g. under a valid permit or exemption).
Clause 246	Actions done under the direction of authorised officers A person is not guilty of an offence if the relevant conduct was done in good faith by or under the direction of an authorised officer.
Clause 247	Burden of proof in certain circumstances Confirms that the defendant carries the burden of proving any exemption or authorisation under the Act.
Clause 248	Orders generally Doubt-removal clause clarifying that orders made under this Division of the Act are in addition to any other penalty or action taken in respect to a contravention.
Clause 249	Orders for restoration and prevention Enables a court to order an offender to take action to make good any damage, or mitigate or manage risks, arising from the offence.
Clause 250	Orders regarding costs and expenses of investigation Enables a court to make orders in respect to the costs and expenses associated with any investigation of an offence under the Act.
Clause 251	Prohibition orders Enables a court to make orders prohibiting an offender from engaging in further dealings with biosecurity matter or from holding a registration, permit or other authorisations/concessions under the Act.
Clause 252	Publication order Enables a court to order an offender to publicise (at the offender's expense) the circumstances of the offence and/or impacts or risks arising from the offence.

Clause 253	Recovery from court of competent jurisdiction of costs, expenses and compensation after offence proved Enables the Crown or another person who has incurred costs or suffered losses because of an offence to claim compensation from the offender.
Clause 254	Forfeiture Enables the Court to order the forfeiture to the Crown of any property or thing used in the commission of an offence under the Act.
Clause 255	Failure to comply with orders Makes it an offence to not comply with an order made under this Division of the Act.
Clause 256	Appeals generally States the general procedure and time limits applying in respect to appeals made to the RMPAT.
Clause 257	Appeals relating to accreditation authorities Provides a right of appeal in respect to decisions relating to an approval of an accreditation authority.
Clause 258	Appeals relating to biosecurity auditors Provides a right of appeal in respect to decisions relating to an appointment as a biosecurity auditor.
Clause 259	Appeals relating to permits Provides a right of appeal in respect to decisions relating to an individual permit under the Act.
Clause 260	Appeals relating to biosecurity registrations Provides a right of appeal in respect to decisions relating to biosecurity registration.
Clause 261	Appeals relating to accreditations Provides a right of appeal in respect to decisions relating to accreditation as a biosecurity certifier.

- Clause 262 Appeals relating to cost recovery orders**
Provides a right of appeal in respect to decisions relating to a cost recovery order.
- Clause 263 Appeals relating to individual biosecurity directions**
Provides a right of appeal in respect to decisions relating to an individual biosecurity direction.
- Clause 264 Appeals relating to reimbursements**
Provides a right of appeal in respect to decisions relating to a reimbursement claim for the death or destruction of a plant, animal or other property.
- Clause 265 Delegation**
General provision providing the necessary scope and machinery for delegations under the Act. Also allows for subdelegations in certain circumstances.
- Clause 266 Authorisations non-transferrable**
General provision to clarify that any authorisation under the Act (e.g. permits, registrations, accreditations) are not transferrable.
- Clause 267 Biosecurity Advisory Committee**
Makes provision for the establishment, function and membership of a Biosecurity Advisory Committee under the Act, to advise the Minister and Secretary on biosecurity issues referred to it.
- Clause 268 Protection from liability**
Provides protection from liability to person who, acting in good faith, provides confidential information to the Secretary relevant to biosecurity.
- Clause 269 Planning and other requirements in relation to authorised actions excluded**
Excludes the normal requirement for approvals under environmental planning and building regulations in respect to biosecurity actions authorised or required under this Act.

- Clause 270** **Disclosure of information**
Allows an accreditation authority to disclose relevant information obtained in the performance of functions under the Act.
- Clause 271** **Collection, use and disclosure of information**
Extends the ability of the Secretary, authorised officers and other persons performing functions under the Act to collect, use and disclose information for an authorised purpose.
- Clause 272** **Cruelty to animals not authorised**
Clarifies that this Act does not displace the requirements of the *Animal Welfare Act 1993* prohibiting cruelty to animals.
- Clause 273** **Requirements may continue to have effect**
Confirms that a requirement imposed under the Act must be complied with (unless revoked or cancelled) irrespective of whether or not a time specified for compliance has passed.
- Clause 274** **Service of notices and other documents**
Specifies the ways in which various documents and notices may be served under the Act.
- Clause 275** **Description of land in notices and other instruments**
Doubt-removal clause to validate any reasonably comprehensible description or identification of any land/premises in an instrument given or made under the Act.
- Clause 276** **Exemptions**
Enables the Secretary to grant an exemption (with or without conditions) from the requirements of the Act to a person or class of persons.
Such exemptions would only be in the most exceptional circumstances and would need to be consistent with the objectives of the Act.
- Clause 277** **Waiver and refund of fees and other amounts**
Confirms that the Secretary may waive fees and refund amounts paid under the Act.

Clause 278 **Application of *Personal Property Securities Act 2009* of the Commonwealth**

Excludes certain interests or rights granted under the Act from being treated as personal property (and therefore being used as a security for borrowings or property transactions) under the *Personal Property Securities Act 2009* (CTH).

Clause 279 **Immunity**

Provides that the Minister, Secretary or other individual officer will not be personally liable for losses caused by their honest act or omission while performing any function or exercising a power under the Act.

However, the Crown will be vicariously liable for individual officers' actions or omissions.

Clause 280 **Orders, notices, &c., not statutory rules**

States that orders, notices, declarations and other like instruments issued administratively under the Act are not statutory rules for the purposes of the *Rules Publication Act 1953* or subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

Clause 281 **Regulations**

General provision for making regulations under the Act. Specific examples are given of the matters that may be provided for in regulations however these are not intended to be limiting.

Clause 282 **Legislation repealed, rescinded and revoked**

States the subordinate legislation in Schedule 3 is to be rescinded/revoked by this Act.

Clause 283 **Administration of Act**

Act to be administered by the Minister for the Primary Industries and Water portfolios, and the Department for which the Minister is responsible (currently DPIPW).

Schedule 1 **ADMINISTRATIVE AUTHORITIES**

Sets out rules, procedures and machinery in respect to:

- the approval and functions of an accreditation authority
- the appointment and functions of a biosecurity auditor
- the accreditation and functions of a biosecurity certifier.

Schedule 2

BIOSECURITY ADVISORY COMMITTEE

Sets out requirements relating to the membership and procedures of the Biosecurity Advisory Committee.

Schedule 3

LEGISLATION REPEALED, RESCINDED AND REVOKED

Lists the subordinate legislation (made under the repealed legislation) referred to in clause 282.