DRAFT SECOND READING SPEECH

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Biosecurity Bill 2019

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Madam Speaker, I move that the Bill now be read a second time.

Tasmania's agri-food production had the estimated gross value of $2.4 billion in 2016-17 and the combined agriculture, forestry and fishing sector employs about 13 000 Tasmanians.

Then there is tourism and hospitality, which provides direct employment for 15 000 Tasmanians and contributes around $2.3 billion per annum to the State economy.

The growing success of these industries is, in no small part, due to the Tasmanian mainland and its many smaller islands being free from many pests and diseases that are rife elsewhere.

Biosecurity is essential to our State's agricultural productivity and market access, to our reputation for high quality primary products, and to the health and beauty of our natural environment.

But we face increasing challenges in managing biosecurity. Globalisation of trade, internet commerce, and the modern ease of travel establishes new pathways for the introduction of pests and diseases to the State.

Climate change could mean that Tasmania becomes a niche for invasive species that previously did not pose a serious threat to us.

In January of 2018 we faced the first ever outbreak of Queensland Fruit Fly in this State.

We must all consider how to deal with such biosecurity threats across the "biosecurity continuum" – that is, before they reach the State border, at the border, and after they have passed the border.

Tasmania needs a modern regulatory system that operates extra-territorially to cover the entire biosecurity continuum. One that provides an appropriate level of protection from the risks of

new pests or diseases being introduced, and one with the capability to manage pests and diseases that, unfortunately, are already here.

Until now, we have managed our biosecurity under eight disparate pieces of legislation, namely:

- The *Animal (Brands & Movement) Act 1984*
- The *Seeds Act 1985*
- The *Biological Control Act 1986*
- The *Animal Farming (Registration) Act 1994*
- The *Animal Health Act 1995*
- The *Plant Quarantine Act 1997*
- The *Weed Management Act 1999*
- The *Vermin Control Act 2000*

Although these Acts served us well, they were developed incrementally over three decades, and in a piecemeal fashion. As a result, it was clear our biosecurity laws were becoming increasingly disjointed, duplicative and outdated.

2014 saw the beginning of significant reforms to enhance the management of biosecurity in this State. The Government established Biosecurity Tasmania, and initiated a comprehensive policy review of Tasmania's biosecurity system.

The review was to make sure Tasmania has practical, modern biosecurity legislation capable of furthering the principles and objectives in the Tasmanian Biosecurity Strategy, while minimising red and green tape for business, and the community in general.

The initial review process involved input from industry groups such as the Tasmanian Farmers and Graziers Association, Tasmanian Seafood Industry Council, the then Primary Industry Biosecurity Action Alliance, Tourism Industry Council Tasmania, local government and other key stakeholders such as the Tasmanian Conservation Trust and Invasive Species Council.

A Draft Position Paper setting out policy positions for proposed regulatory reform was released for public consultation in March 2016, and a draft Future Directions Paper outlining a new legislative framework for biosecurity was released in November that same year.

In line with the main recommendation of this review, the Government made a decision to replace seven of Tasmania's biosecurity related Acts with a single piece of "framework legislation" – the Biosecurity Bill that is now before the House.

For the sake of maintaining national consistency, it was determined that one of our eight existing biosecurity related Acts – the *Biological Control Act 1986* – should remain as a stand-alone Act. That Act (which we recently amended) is part of a national scheme of uniform legislation to regulate the release of biological control agents (such as rabbit calicivirus) across Australia.

The Biosecurity Bill (now before the House) overhauls and consolidates Tasmania's biosecurity laws, and aligns Tasmania with the recent biosecurity reforms of New South Wales, Queensland, Western Australia and the Commonwealth.

The Bill has six equally important objectives.

First, to ensure that responsibility for biosecurity is shared between government, industry and the community.

Second, to protect Tasmania from threats posed by pests and disease to land and water based industries and environments, public health and public amenities, community activities and infrastructure.

Third, to provide a robust and fair regulatory framework for biosecurity in Tasmania that is based on sound risk assessment and evidence.

Fourth, to give effect to State, national and international biosecurity agreements and strategies, such as the Tasmanian Biosecurity Strategy.

Fifth, to facilitate the trade of Tasmanian produce by ensuring it meets national and international biosecurity requirements.

And finally, to promote compliance with a "general biosecurity duty" through emergency preparedness, effective enforcement measures, and communication and collaboration between government, industry and the community.

This new legislation will also form part of the Tasmanian Resource Management and Planning System (or the RMPS), and furthers the general RMPS objective of promoting sustainable development. Which is, in a nutshell, to ensure the use and development of our natural resources meets the needs of the present, without compromising the ability of future generations to meet their own needs.

So what reforms will be introduced by this Bill to achieve these objectives?

To start with, the Bill introduces a range of new legal concepts and definitions that reflect the terminology now used in contemporary biosecurity systems of Australia and overseas.

I want to explain some of these concepts because they are critical to understanding the Bill.

First, the Bill establishes the concept of *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, prions (a particular form of biological matter implicated in animal diseases), contaminants, and animal and plant products.

For example, bovine animals, and foot and mouth disease (a disease that affects bovines) would both fall within the definition of biosecurity matter.

The Bill also defines a *carrier* of biosecurity matter.

A *carrier* 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. For instance, a vehicle may be a carrier of a cow, while the cow in turn may be a carrier of foot and mouth disease.

Examples of *carriers* include vehicles, animals and plants (dead or alive), soil, sand, gravel and material such as packaging, clothing and agricultural equipment. A carrier does not include a human being, but it does include things that are worn or carried by a person such as clothing, footwear, and personal baggage.

Most human activities involving biosecurity matter or carriers fall within the Bill's definition of *dealings*.

Common examples of "dealings" include, keeping, breeding, selling or transporting biosecurity matter or carriers; importing biosecurity matter or carriers; propagating, growing, cultivating, experimenting with or supplying biosecurity matter or carriers.

Dealing also includes arranging for or causing a dealing to occur. So a person who arranges for biosecurity matter to be imported into Tasmania via the internet, will be dealing with the biosecurity matter for the purposes of the Act.

Finally, there are the concepts of *biosecurity impact* and *biosecurity risk*.

A *biosecurity impact* is, to paraphrase the Bill's definition, an adverse effect on our environment, community or economy arising from the presence, spread or increase of any plant or animal pest, disease, or contaminant.

So the loss of market access for fruit exporters associated with an incursion of fruit fly in the State – an economic impact – is an example of a biosecurity impact. As are the environmental impacts of a plant disease like myrtle rust on our wild native flora, or the impacts of an animal pest like European carp on our inland waterways.

And a *biosecurity risk* is simply the risk of a biosecurity impact occurring.

These are certainly not the only new legal concepts in this Bill. However, they are key to understanding many of the Bill's main features, which I will now move onto explaining.

Madam Speaker, I indicated earlier that this new Bill is in the nature of framework legislation.

As framework biosecurity legislation, it sets out the overarching legal concepts, principles, functions, and machinery to support biosecurity management in Tasmania. But it also enables more detailed measures to be tailor-made for managing specific issues, activities or impacts, and implemented via subordinate legislation.

As the House knows, before any subordinate legislation is made it must, in accord with the *Subordinate Legislation Act 1992,* be assessed by the Department of Treasury and Finance to not

impose any unreasonable cost or burden on any part of the community. A regulatory impact assessment involving public consultation must be carried out unless the Secretary of Treasury determines that it is not necessary.

So, for example, if a new fee or levy is set by regulations made under this Bill, it would be open to review and disallowance by either House of Parliament, as is the case for all subordinate legislation.

An example of an existing biosecurity system that will be implemented through regulations under the Bill is the National Livestock Identification Scheme (or NLIS).

As most farmers could tell you, the NLIS is a national scheme for the identification and traceability of livestock sold or moved anywhere in Australia. It is recognised as a world-leading biosecurity initiative, and was established because animal traceability is fundamental to managing both animal health, and the integrity of food produced from livestock – predominantly meat and dairy produce.

Tasmania implements the NLIS under the *Animal Brands and Movement Act 1985*. That Act, which is more than 30 years old, is cumbersome and outdated, and will be replaced by this Bill.

Unlike Tasmania, other states implement the NLIS through regulations made under their overarching biosecurity or animal health legislation rather than through a special NLIS related act.

So using regulations under Tasmania's new biosecurity legislation to implement the NLIS is a sensible reform, one that will bring us into line with other states.

Madam Speaker, the Bill includes improved governance with industry engagement enshrined.

The Bill establishes the Minister for Primary Industries and Water, and the Secretary of the Department of Primary Industries, Parks, Water and the Environment (which I will simply refer to as the Department) as the two key decision-makers, who can delegate their powers.

The two principal authorised (scientific) officers are the Chief Veterinary Officer and the Chief Plant Protection Officer, both of which have deputy positions attached. The Chief Plant Protection Officer is a new statutory position created under the Bill.

Under the Bill's framework, high-level decisions that are likely to have broad strategic, social, economic or environmental ramifications are the responsibility of the Minister.

These include decisions on the listing of permitted, prohibited or restricted matter, issuing emergency orders and control orders, approving biosecurity programs, and reimbursement schemes.

The Secretary is primarily responsible for high-level administrative functions such as appointment of authorised officers, business registration, approval of accreditation authorities, granting of general permits and general biosecurity directions, and Government cost recovery.

The Chief Veterinary Officer; the Chief Plant Protection Officer; their deputies; and regular authorised officers will be responsible for most day-to-day technical and operational functions under the Act. These officers (on the ground) are likely to be first responders in a biosecurity emergency.

Importantly, the Bill requires the Minister to establish a *Biosecurity Advisory Committee* with broad representation from industry and other community groups to provide advice to the Minister (or Secretary) on biosecurity related issues referred to it. No such Committee exists under the seven pieces of legislation to be replaced by the Bill.

Madam Speaker, in line with the new Biosecurity Acts of New South Wales and Queensland, the Bill introduces a statutory *general biosecurity duty*. This duty provides that any person dealing with biosecurity matter or a carrier who knows, or ought reasonably to know, that a biosecurity risk is posed or is likely to be posed has a legal duty to ensure that, so far as is reasonably practicable, the biosecurity risk is prevented, eliminated or minimised.

The general biosecurity duty will operate as a statutory "duty of care" in respect of biosecurity. It is legally enforceable and non-compliance with the duty may be penalised by criminal sanction, as is now the case in New South Wales and Queensland.

Tasmania's Biosecurity Bill makes it an indictable offence for a person who "deals" with biosecurity matter or a carrier to breach the general biosecurity duty.

A significant breach that is intentional or reckless will be an aggravated offence that carries the highest maximum penalty in the Bill.

An example of an aggravated breach of the general biosecurity duty would be a person causing a significant biosecurity impact by deliberately releasing an invasive pest, such as live fruit fly or European Carp, into the Tasmanian environment.

Madam Speaker, this Bill is more evolutionary than revolutionary. We are building on what has been successful to date in protecting our biosecurity status. Our new legislation will retain many of the components of the existing legislation, albeit in modernised and improved form.

A good example of this is an improved system for regulating the importation of plants, animals and other material into Tasmania from interstate, and the management of them once they are here.

The Bill does away with the confusing and opaque listing regime we currently use. And just to illustrate that point, I want to go through some of the discrete statutory list categories we now have in our existing legislation.

Under the *Animal Health Act 1995* we can have: List A diseases and List A disease agents; List B diseases and List B disease agents; listed animals, and listed animal products, relevant listed animal diseases, and restricted material.

Under the *Plant Quarantine Act 1997* we can have: List A plant pests, List B plant pests, List A plant diseases, and List B plant diseases; prescribed matter, prohibited plants, and prohibited plant products.

Under the *Weed Management Act 1999*: we can have declared weeds, emergency declared weeds, and non-declared weeds.

Under the *Vermin Control Act 2000* we can have rabbits, foxes, other (unspecified) declared vermin and non-declared vermin.

And under the *Animal Farming (Registration) Act 1994* we can have a list of "prescribed animals" which at present comprises just one animal – the emu.

None of our existing legislation provides express criteria or guidance in respect to listing decisions, or explanation of what their list categories actually mean. It is all left open to interpretation.

By contrast, the new Biosecurity Bill has just three self-explanatory list categories: *prohibited matter, permitted matter*, and *restricted matter*.

All are listed in the same way, under the one Act, and in accordance with clearly expressed statutory criteria relating to biosecurity risk.

Prohibited matter is biosecurity matter or carriers of greatest concern. It must be assessed to pose a significant biosecurity risk to Tasmania. For example, most current List A and List B pests and diseases (under existing biosecurity legislation) would be likely be classed as prohibited matter under the new legislation, and declared by notice in the Gazette.

A person cannot possess or deal with prohibited matter without a special permit – a *prohibited matter permit.*

Permitted matter is biosecurity matter of least concern. It is assessed to not pose a biosecurity risk to Tasmania (or an acceptable risk that is manageable with conditions).

Permitted matter is declared by formal notice in the Gazette following risk assessment. It can be brought into Tasmania without a permit so long as any conditions relating to import and dealing with the matter are followed. A failure to comply with a listing condition will disqualify the relevant biosecurity matter from being considered permitted matter. This means it will revert to being *restricted matter* in respect to importation into the State.

And *restricted matter* is a catch-all which covers any plant or plant product, animal or animal product (or a plant or animal disease) that is not listed as either prohibited matter or permitted matter. The Minister may also declare some restricted matter in the same way that prohibited or permitted matter is declared.

Restricted matter cannot be imported into Tasmania without a permit.

This approach, known in the biosecurity world as a "permitted list system", embodies the precautionary principle and is used in Western Australia and New Zealand.

It is particularly suited to geographically isolated jurisdictions such as Tasmania where (with our maritime borders) we have greater ability to control imports from other states; and it provides a consistent, pro-active approach to assessment of imports rather than a reactionary system.

Listing will be by Ministerial declaration and notified in the Government Gazette. An *objective statutory test* is included to ensure there is solid evidence to support the declaration.

An objective statutory test means that the Minister of the day must have reasonable grounds (normally – appropriate scientific advice and assessment) on the level of biosecurity risk before making a decision to declare something as either prohibited or permitted.

Madam Speaker, this Bill establishes a system of enterprise level regulation that corresponds with the newest systems of other states and the Commonwealth.

Group and individual permits may be granted, which can authorise a person, or classes of persons, to engage in activities that would otherwise contravene the Act.

Permits are a key biosecurity management tool because they allow action by exception, and have valuable roles both in emergencies and business-as-usual situations.

For example, a permit might allow a person to import restricted matter, or deal with prohibited matter, or move cattle during a foot and mouth disease emergency. These are all things that would otherwise be unlawful.

The Bill also provides that certain dealings with biosecurity matter or carriers may, by regulation, be made *regulated dealings*.

In order to undertake a regulated dealing a person must become a registered entity.

Registration allows for the rapid identification and tracking of activities, which facilitates quick contact with those engaged in the activity in times of need.

And Madam Speaker – I note that this was something that was recommended by the Legislative Council Sub-Committee B in its recent report on blueberry rust in Tasmania.

Recommendation "7" of the Committee's final report is (to quote the Report directly) for "a comprehensive grower database and system of property identification for blueberry growers be

developed that can be applied across other industries." Madam Speaker, the biosecurity registration system in this new legislation will help deliver on that recommendation for blueberry growers and other industries.

For example, commercial bee-keeping could be prescribed as a regulated dealing. It would then be compulsory for a person to be registered in order to participate in the honey industry. And it is worth noting that beekeeper registration has been compulsory in all other states for a number of years, under the National Bee Biosecurity Program.

In the event of a disease outbreak involving commercial honey-bees (like Colony collapse disorder – occurring in the North America and Europe), the number and location of Tasmania's beekeepers would be known, allowing rapid communications, and tracing of the disease spread.

Without a registration system, the disease could prove impossible to trace, and thus impossible to control.

Registration is by the Secretary, or a delegate of the Secretary, and will be valid for the dealing or dealings specified in the registration notice for up to five years.

It is anticipated that this registration system will (among other things) replace the system of "approved quarantine places" for receiving plant imports, that has been operating under the *Plant Quarantine Act 1997* for the last twenty odd years.

An advantage of the new registration system (over the old system of approved quarantine places) is that a business can operate across multiple sites under the one registration.

Under the Plant Quarantine Act, each site needs a separate approval as a quarantine place – even where all sites involve the same activity, and are managed by the same person.

Registration can be with or without conditions. So if commercial supply of biosecurity matter or carriers of a particular type (say fresh fruit and vegetables) was made a regulated dealing, then registration to undertake the activity could be conditional upon certain hygiene or transportation standards being met and verified by independent audit; or product inspection and certification under a recognised industry certification scheme.

Madam Speaker, this leads me to another important new feature of this Bill – the way it promotes shared responsibility for biosecurity, and co-regulatory arrangements with the private sector.

The Bill provides opportunities for business to choose to work cooperatively with others in their industry sector, or with government, to manage biosecurity risks and impacts.

We already have some examples of self-management. TT Line personnel undertake clearance of in-bound movements at embarkation in Melbourne, and Tasmanian cherry exporters may be accredited to inspect their own produce.

The Bill enables the State Government to recognise non-government organisations as accreditation authorities, who in turn may accredit private certifiers and auditors to audit and inspect business operations, and provide product certification.

Among other opportunities, this could see Government recognising industry-based quality assurance schemes for regulatory purposes, where appropriate.

One such scheme already operating across Australia is the Interstate Certification Assurance Scheme – a national system of plant health certification based on quality management principles.

The problem we have with our existing biosecurity legislation – particularly the Plant Quarantine Act - is they are not specifically designed to regulate the operation of industry certification schemes. And, as we saw with the recent fruit fly incursion, these schemes can sometimes fail to deliver intended outcomes.

For example, a situation may arise where someone on the mainland, who is not appropriately accredited to perform that task, is certifying produce as being pest free, enabling the importation of high-risk material to Tasmania.

To avoid those sorts of problems with industry schemes, we need a robust legal framework to govern their operation here, and this new Bill provides that. Under the new legislation, industry based biosecurity certification; auditing and accreditation activities will (to the extent they are connected with this State) be subject to regulatory oversight by Biosecurity Tasmania, even where some of the activity occurs on the mainland. A private certifier who fails to meet with Biosecurity Tasmania's regulatory standards can have their accreditation to operate in Tasmania cancelled or suspended, and may even face criminal sanctions in certain circumstances.

The Bill also provides a legal structure for the development and implementation of *biosecurity programs.* These can be administered by Government, or by an industry group like Oysters Tasmania, or Fruit Growers Tasmania, or a non-profit environmental organisation such as Landcare or the Tasmanian Land Conservancy.

Biosecurity programs could be established to (for example) eradicate weeds or feral animals from a particular area or region or to promote the adoption of industry-wide disease control and prevention measures by a particular commodity sector.

Biosecurity programs must set out in writing the actions which the various parties will undertake, and also how the program's costs will be met. This may be through sector or industry specific mechanisms, co-funding by Government, or other means.

Madam speaker, this Bill sets out the range of circumstances in which owners of plants, animals or other property may be reimbursed for biosecurity related loss of that property.

Currently in Tasmania, reimbursement (in respect to biosecurity) is effectively limited to animals or plants destroyed in a biosecurity response when it is covered by one of several national cost-sharing deeds entered into between the states, Commonwealth and relevant industry body. These deeds typically only cover pests and diseases that are exotic to Australia. They do not cover pests and disease that originate within Australia – such as Queensland Fruit Fly.

This shortcoming was evident in recent state-based responses such as blueberry rust where landholders were unable to be directly recompensed for the loss of plants destroyed on their properties.

Under this Bill, owners will be entitled to reimbursement for the death or destruction of animals, plants, or other property in the following circumstances:

- where the animal, plant or property is covered by a biosecurity cost-sharing agreement which provides for reimbursement; or

- where it is destroyed under a Government biosecurity program which specifically provides for reimbursement; or

- where it is destroyed under an approved (industry or community) biosecurity program which specifically provides for reimbursement; or

- otherwise in circumstance that may be prescribed by the regulations.

To maintain general affordability, and to prevent creating situations of moral hazard, there will be no statutory entitlement to reimbursement for indirect or consequential losses associated with biosecurity responses (such as compensation for loss of potential profits or future income). Nor for the death or destruction of any animal, plant or other property that is connected with a breach of the Act by or on behalf of a claimant.

The scope and nature of reimbursement schemes will be determined through proper consultation with relevant stakeholders and the general public. Of course, this process would need to include discussion around the proportion of funding for reimbursement that is appropriately provided by the public purse, versus those involved in activities associated with biosecurity risks.

Madam Speaker, like the legislation it replaces, this Bill provides the necessary legal framework for dealing with biosecurity emergencies.

The State will continue to be guided by national approaches (such as national emergency response deeds and agreements). However, these will be implemented through a simpler and more flexible regime of statutory instruments.

The Bill establishes three-tiered hierarchy for biosecurity emergency management. The choice of which statutory instrument to use is determined by the relative urgency of the response required.

In the most urgent situations, the relevant Minister of the day can make an *emergency order*, which will expire after six months, unless remade.

A court cannot issue an interim or interlocutory injunction to stay the operation of an emergency order, however a court is not prevented from making final orders to that effect.

Where the risks of a biosecurity impact are significant but do not require the same degree of urgency as an emergency order, the Minister can make a *control order*. A control order can be in effect for a period up to five years without needing to be remade.

And where long-term management of a biosecurity issue is required, *biosecurity zones* can be made by regulations. These will generally be ongoing until the risk or impact being managed is addressed (or accepted). However, as the House knows, regulations normally expire after ten years, unless remade.

Biosecurity zones could target established populations of animal pests (such as feral rabbits or cats) or weeds (such as gorse or blackberry). Or alternatively, a particular region or part of Tasmania's archipelago, such as Flinders Island, or Maria Island, could be made a biosecurity zone, to enable the application of particular management measures in that area.

While emergency orders may mandate special measures (such as requiring people to undergo an external treatment to decontaminate their clothing before entering or leaving an area) the types of measures will likely be similar across all three tiers of biosecurity response.

Response measures may include (but are not limited to): spatial zones or areas where different biosecurity requirements apply; measures to control the movement of biosecurity matter and carriers; and measures relating to the treatment, seizure, testing, destruction and disposal of biosecurity matter and carriers.

Both biosecurity zones and control orders can also be used in conjunction with, or to complement, biosecurity programs.

Madam Speaker, at present, a Tasmanian biosecurity officer who is authorised to exercise powers in relation to plants under the *Plant Quarantine Act 1997* would require another separate authorisation under the *Animal Health Act 1995,* in order to exercise similar powers in relation to animals.

Under the new Act, the appointment and functions of authorised officers will be streamlined, and far less prone to confusion or error.

The Bill requires the Secretary to be satisfied that any person appointed as an authorised officer holds appropriate knowledge, skills and experience to perform regulatory functions under the Act. The Bill also enables the minimum qualifications, skills and experience of authorised officers to be prescribed by regulation. And following feedback from stakeholders in the last round of

public consultation, a requirement was added for the Secretary (who appoints authorised officers) to be satisfied that a person is suitable (or "fit and proper") to be appointed as an officer.

All authorised officers will be operating under the same piece of legislation, and be able to exercise common functions in relation to all biosecurity risks (as opposed to having discrete powers applying to plant and animal biosecurity under different Acts).

This reform will simplify the task of training and supporting authorised officers in the performance of their work. It will greatly improve the ability of Biosecurity Tasmania to carry out its regulatory responsibilities in a consistent and efficient manner.

Officers will have a similar range of powers and functions under the new legislation to what they have under existing legislation. But their functions can only be used for an authorised biosecurity related purpose under the Act, and have limits placed on them in certain circumstances.

For example, an authorised officer cannot destroy anything that is over the value of $5000 unless he or she is specially authorised to do so, or is acting under a control order, emergency order or specific power granted in regulations.

When carrying out any functions on any private property, officers are under a statutory obligation to exercise due care, and do as little damage as possible.

And officers are empowered to use only "reasonable force" when it is necessary to gain entry to premises or vehicles, or open containers and other equipment for an authorised purpose.

This Bill also promotes a flexible, risk and performance based approach to compliance, which includes measures to avoid the need for costly criminal investigations and prosecutions in every case.

Two such measures in the Bill are *biosecurity directions* and *biosecurity undertakings*. These can be used when a person is engaging in activity that contravenes, or may contravene a requirement of the Act.

A *biosecurity direction* is a formal order issued by an authorised officer or the Secretary requiring a person to do something, stop doing something, or change the way they are doing something in order to comply with the Act. For example, a direction could be given to ensure a person takes certain actions to comply with the general biosecurity duty.

A biosecurity direction can be individual or general. An *individual biosecurity direction* may be given by an authorised officer, and applies to a specific person or business.

A *general biosecurity direction* may be given by the Secretary (or delegate), the Chief Veterinary Officer and the Chief Plant Protection Officer. It can apply to the general public, or to a specified class of persons.

In cases of emergency, an emergency biosecurity direction (both individual and general) may cover wider powers of inspection or control.

A right of appeal lies against an individual biosecurity direction, but not a general biosecurity direction, or an emergency biosecurity direction.

As an alternative to issuing an individual biosecurity direction, an authorised officer may accept a written *biosecurity undertaking* from a person.

Undertakings – which will not be treated as an admission of criminal wrongdoing – are offered and accepted by mutual consent, as a way of achieving compliance in an agreed time and manner.

However, once accepted, a biosecurity undertaking will be enforceable. Non-compliance with either a biosecurity direction or an accepted biosecurity undertaking, will be an offence under the Act.

Madam Speaker, in relation to biosecurity offences, we need appropriate penalties to serve as an effective deterrent against unlawful activity.

The Bill (and regulations that are to be made under it) will create biosecurity related offences and other mandatory requirements that are specific. The Bill refers to these as *specified biosecurity requirements*.

Where a person has committed a specific biosecurity offence, such as breaching a permit condition – the person may be charged with the specific offence, or alternatively the offence of breaching the general biosecurity duty, or both. The general biosecurity duty will also apply to any risks not covered by specified biosecurity requirement.

However, to prevent double jeopardy of punishment, a person found guilty of two or more biosecurity offences arising from the same conduct can only be punished for the one (most serious) offence.

Under Tasmania's current legislation, maximum fines and limitation periods for biosecurity offences are disproportionately low in comparison with other states.

Tasmania's highest maximum biosecurity fine (on 2016 rates) was almost $70,000 less than the lowest of the other states with a single Biosecurity Act (Western Australia), and is more than $2,000,000 less than the highest (New South Wales).

Furthermore, biosecurity investigations can be complex and it often takes time to detect a statutory breach, or determine the cause of a biosecurity impact.

But the limitation period for prosecuting an offence under both the Animal Health Act and Plant Quarantine Act is six months from the date of the offence – basically the default time limit for minor summary offences in the *Justices Act 1959.*

In practice, six months is often not enough time to allow a proper investigation of a biosecurity incident to be completed, and risks an important matter not being able to be progressed to court.

This Bill extends the limitation period for commencing a prosecution to three years from the date of the offence, with the possibility for that to be extended further by the Court in special circumstances, such as when discovery of an offence was delayed due to fraudulent behaviour on the part of the offender.

The Bill will also introduce a three tiered penalty regime that matches the nature and gravity of biosecurity offences.

The highest penalty is a 10,000 penalty-unit fine for a corporation ($1,630,000 on 2018-19 rates) or four years' imprisonment for a natural person.

This penalty will only apply to cases where a person is convicted of an intentional or reckless breach of the general biosecurity duty, resulting in a significant biosecurity impact.

The next level is a maximum fine of 3750 penalty units for a corporation, or two years' imprisonment for a natural person. This will apply to an offence requiring proof of fault or

negligence, such a breach of the general biosecurity duty that was negligent (rather than reckless or intentional).

The third level is a 2500 penalty unit fine for a corporation or 500 penalty unit fine for a natural person. This is the standard maximum penalty applying to most offences in the Act, including offences of strict liability, such as importing restricted matter without a permit.

Madam Speaker, I will finish my outline of the Bill's features with its provisions for natural justice and transparency in administrative decision-making.

Like other RMPS legislation, the Bill provides appropriate rights of appeal to the Resource Management and Planning Appeals Tribunal (hereafter – "the Tribunal") for decisions that directly concern private interests.

Appeal is available for decisions about individual biosecurity directions; biosecurity registrations; accreditation as a biosecurity certifier; appointment as an auditor; approval as an accreditation authority; claims for reimbursement; cost recovery orders; and individual permits.

Appeals to the Tribunal are not available in respect to high-level decisions applying generally to the public, or to broad classes of people. Examples of such decisions include emergency orders and control orders; listing declarations by the Minister; and the issuing of a group permit or general direction by the Secretary.

Nor is appeal to the Tribunal available for decisions in respect to emergency permits or directions, permits relating to prohibited matter (known as "prohibited matter permits"), or permits authorising a prohibited dealing (known as "prohibited dealing permits").

However, the Government is fully committed to upholding the principles of natural justice, and ensuring that officers performing functions under the Act meet the highest ethical and professional standards. Decisions or conduct that cannot be appealed (on the merits) to the Tribunal can still be reviewed administratively within the Department, or by the Tasmanian Government Ombudsman.

The Supreme Court can also review the Government's biosecurity decisions on a range of legal grounds (for example – a denial of natural justice, manifest unreasonableness, or failure to consider relevant evidence).

That is the normal right of review under the *Judicial Review Act 2000,* available to an aggrieved person with a proper interest in the subject matter of a Government decision.

The Judicial Review Act also enables an aggrieved person to request written reasons for a decision made under the Act. For example, an industry representative, or other affected person, can request that the Minister provide written reasons for a decision to prohibit imports of certain products; or a decision to make an emergency order under the Biosecurity Act. The Minister must then (by law) provide written reasons for the relevant decision within 28 days.

A request for reasons can be made whether or not the person making the request wishes to appeal against the decision, or go through a court process.

In response to stakeholder concerns, we have also added a requirement in the Bill (in respect of control orders) for the Minister to specify reasons for a decision to manage (rather than attempt to eradicate) a new disease or invasive pest found in the State.

In any event, Madam Speaker, it is the Government's intention that we will be proactive in the active disclosure of statements of reason for high-level decisions made by the Minister and Secretary under the Bill.

Along with appeal provisions – the Bill requires publication of a Tasmanian *Biosecurity Compendium* on the Department's website to aid in transparency, and promote public awareness of Tasmania's biosecurity requirements.

The Compendium will contain up-to-date lists of all prohibited matter, permitted matter and restricted matter declared under the Act. It can also include any explanatory and supporting information concerning listing decisions, and other biosecurity requirements that the Secretary considers appropriate. A good example would be information on how to comply with the general biosecurity duty in particular situations.

Access to the Biosecurity Compendium will be free and I anticipate that it will quickly become an invaluable plain-language resource. One that contains forms, guidelines and supporting information necessary to assist the business community, and the general public, to understand and comply with Tasmania's biosecurity laws.

Madam Speaker, this Bill represents one of the most significant reforms of Tasmania's agricultural and environmental laws in decades. It is very important for Tasmania that we get it right. That is why we had such a thorough and lengthy public consultation process to develop the Bill. It has been an exacting process, but it has been well worth the effort.

And the Government would like to acknowledge and thank the stakeholder groups and individuals who have engaged with the Government in good faith, and over an extended period, to provide submissions and feedback to assist in the formulation of this Bill. These include, (but are certainly not limited to) the Tasmanian Farmers and Graziers Association (TFGA), Tasmanian Seafood Industry Council, Fruit Growers Tasmania, Wine Tasmania, Poppy Growers Tasmania, the Tasmanian Agricultural Productivity Group, Primary Employers Tasmania, Oysters Tasmania, Nursery and Garden Industry Association, Tourism Industry Council, Primary Industries Biosecurity Action Alliance, the University of Tasmania, and the Tasmanian Conservation Trust.

Thanks to their efforts and others; we now have a better Bill, which has broad support within primary industry and the general community. And just to give the House some added comfort in regard to this, I would like to take the opportunity to quote some recent feedback on the Bill from stakeholders. The first is from a letter the TFGA provided to the Department in March of this year:

> *"The TFGA is grateful for the opportunity to make comment on the revised Biosecurity Bill. The TFGA believes this Bill is vital to the protection of Tasmanian agricultural industries. The amalgamation of a single bill covering biosecurity within the State, is important to ensure streamlined and effective legislation.*
>
> *TFGA has been involved with revision of the Biosecurity Bill since 2017. We have worked closely with the Department of Primary Industries, Parks, Water and the Environment during this time and worked through several versions of the Bill.*

The TFGA was glad to be able to once again consult with the Department and discuss the current version of the bill. After a productive consultation with the Department, the TFGA is comfortable with the current version…"

The next words are from Fruit Growers Tasmania, a group whose members were directly impacted by the recent Queensland Fruit Fly crisis – the largest and most expensive biosecurity emergency Tasmania has faced in modern times:

"This bill has undergone an extensive, iterative consultation process since 2014, which has enabled all Tasmanian industries to provide input and engage with government on this issue throughout the review process.

As a peak industry body for Tasmania's fruit sector, Fruit Growers Tasmania (FGT) strongly supports the proposed introduction of a general biosecurity duty, which clearly lays out the expectations and responsibilities of both agriculturalists, service providers, and members of the general public. FGT is supportive of the overarching structure of the proposed Act, which will provide a holistic approach that eliminates any potential gaps between the existing Acts.

In consideration of all [its] improvements over the existing legislation, FGT strongly supports the proposed Biosecurity Bill (2019). In our view, it represents a legislative framework for biosecurity management that is transparent and fair, yet also flexible and adaptive to Tasmania's evolving biosecurity needs.

Of course, Madam Speaker, while the Government is pleased to hear there is stakeholder support for the Bill – we must not take it for granted, and our work does not finish when the Bill receives Royal Assent. The implementation of any major new legislation like this Bill will require the development of new administrative practices, regulations, programs and standards. In leading that process, the Government will consult widely, and will work with primary producers and other stakeholders towards our common goal, which is (ultimately) to protect the Tasmanian environment, community and economy from biosecurity risks.

In conclusion Madam Speaker, this Bill will keep the biosecurity functions that have protected our State for the last thirty years, but will streamline and modernise them so that they can continue

protecting us for the next thirty years. At the same time, the Bill will give us new tools to manage the types of biosecurity threats, and the opportunities, that may arise in the future.

Seven acts will be reduced to one, making our biosecurity system simpler, easier to understand, and more efficient.

And the basic responsibilities for managing biosecurity risk held by all Tasmanians, all visitors to Tasmania, and all who do business in our State will be given legal force through the general biosecurity duty.

Madam Speaker, I believe that current and future generations of Tasmanians will recognise the introduction of this Bill as a watershed in the development of our world-renowned primary industries, and for the protection of our magnificent natural environment and our way of life.

The Government fully supports the introduction of this Bill and I commend it to the House.