

2023

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

**Biosecurity Bill 2023
Explanatory Statement
and
Human Rights Compatibility Statement
(*Human Rights Act 2004, s 37*)**

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May 2023**

BIOSECURITY BILL 2023

This explanatory statement relates to the Biosecurity Bill 2023 (the Bill) as presented to the ACT Legislative Assembly.

The statement is to be read in conjunction with the Bill. It is not a complete description but provides information about the intent of, and provisions in, the Bill.

It has been prepared to assist the reader. It does not form part of the Bill, has not been endorsed by the Assembly, and is not to be taken as providing a definitive interpretation of the meaning of a provision.

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

BACKGROUND

About biosecurity

Biosecurity covers threats and risks to the environment, economy, social amenity and human health aspects which relate to:

- pest animals;
- weeds;
- animal pests and diseases, including zoonotic diseases which occur in animals but may be transmitted to humans under natural conditions (e.g. brucellosis and rabies);
- plant pests and diseases;
- food safety issues only as they relate to zoonoses; and
- animal welfare only as it relates to animal health issues.

Biosecurity issues have an ever-increasing global profile due to evolving factors affecting the range and spread of pests, weeds, and animal and plant diseases. These factors include the increase in people movement, extreme weather patterns caused by climate change, and increasing diversity and volume of international trade in animals, plants and their products, which are key contributors in the spread of recognised diseases from region to region.

Policy context

The national biosecurity system

Australia's strong biosecurity system protects environmental assets worth more than \$5.7 trillion, a tourism sector worth \$50 billion, agriculture, forestry and fisheries exports worth \$51 billion, and over 1.6 million jobs. (www.awe.gov.au/biosecurity-trade/policy/australia). If biosecurity is not pro-actively and effectively managed, it could pose significant economic and environmental risks to affected sectors and the broader community. As such, biosecurity in Australia is a matter of national significance.

The Australian Government, states and territories operate under an integrated national biosecurity system. This system involves biosecurity measures applied across the biosecurity continuum: offshore (pre-border), at the border, and onshore (post-border). The ACT biosecurity system is part of onshore (post-border) biosecurity. The ACT Government recognises Territorians depend on and benefit from pre-border, border and post-border biosecurity control measures implemented and managed as part of the national biosecurity system. These measures collectively safeguard our lifestyles, livelihoods, industries, environment and health, and foster sustainable economic development.

The Australian Government's commitment and investment in biosecurity provides a robust policy and legislative framework to inform and support management of biosecurity risks and threats across the biosecurity continuum. This framework is underpinned by international legal instruments, agreements and their related standards, texts and definitions. They include the Sanitary and Phytosanitary Agreement, and to some extent the Agreement on Technical Barriers to Trade, the Convention on Biological Diversity and its Cartagena Protocol on Biosafety, and the International Health Regulations. This international policy platform provides a global system of risk analysis principles, notification procedures and information exchange to provide consistent safeguards in relation to food safety, human/animal/plant health, and protection of the environment and biological diversity.

The ACT biosecurity system

The ACT Government is committed to playing its part in the integrated national biosecurity system. It is party to several national agreements, including the Intergovernmental Agreement on Biosecurity (IGAB) and related inter-jurisdictional deeds, through which it recognises its roles, obligations and responsibilities as part of Australia's post-border biosecurity contingent. The ACT Government actively participates in the three technical consultative committees that implement these deeds to be a part of these important national decisions. If the ACT has a biosecurity incident, it is supported by the deeds. National experts through the consultative committee would determine the course of action needed. Human resources would be provided to the ACT to support the response and affected industries and governments would help cost share.

The ACT biosecurity system is supported and informed by the ACT Biosecurity Strategy 2016-2026. It is also closely linked with the NSW biosecurity system due to the ACT's unique landlocked geographic location within NSW. As such, there is a significant need for interoperability with NSW to help keep the ACT free of unwanted plants, animals and their diseases, and to engage in cross-border biosecurity risk management operations, and facilitate biosecure trade, business operations and people movement.

In the ACT we have a lot at stake. Our natural assets include Namadgi National Park (46% of the ACT) and Canberra Nature Park, Canberra's urban forest (with over 809,000 native and exotic trees on unleased land), interspersed with urban open spaces which collectively give the ACT its renowned bush capital image.

Our growing economy, with its significant investment in infrastructure, tourism, a developing agriculture and food sector, educational institutions and small businesses, relies on the safe movement of people, plants, animals, and plant and animal products. Our lifestyles, livelihoods and social amenity are also underpinned by the safeguard protocols of a responsive and fit for purpose biosecurity regime. Ensuring the system has the powers to deal with the wide spectrum of current and emerging biosecurity risks, with impacts ranging from small-scale localised incidents to multi-billion dollar industry-wide impacts, also garners community and business confidence and trust in the ACT Government's commitment and ability to protect our community and way of life. Equally, it reinforces the ACT Government's credibility and integrity among its jurisdictional and national peers within the national system.

The ACT biosecurity system applies a multi-tiered and collaborative approach. Biosecurity staff work closely with and support affected stakeholders to cost-effectively prevent or manage biosecurity risks and threats and to minimise harm and losses. The potential risks to stakeholders and governments are significant and we share a common goal in maintaining a positive biosecurity status. The proposed Bill provides a fair and flexible modern legislative framework to support the changing nature of policy and operational needs. In practice, within this system, regulatory offence provisions are considered a last resort option.

About the Biosecurity Bill 2023

Need for legislative reform

The Australian Government introduced the *Biosecurity Act 2015* to better manage the changing profile of biosecurity risks and threats. Consequently, NSW, Queensland and Tasmania have updated their legislation, and Victoria and Western Australia are in the process of doing so.

Consistent with other jurisdictional approaches, the ACT Government is updating its biosecurity legislation. In drafting the Bill, current and emerging biosecurity policy needs, the ACT Government's commitments and obligations, NSW, Queensland and Tasmanian biosecurity legislation, inter-operability with the NSW biosecurity system, human rights compatibility, the ACT Emergency Plan and its frameworks, the ACT Guide for Framing Offences and modern biosecurity risk management principles and approaches were given due consideration.

The Bill as drafted proposes an appropriate legislative framework to support the effective management of biosecurity risks and impacts in the Territory, consistent with the requirements of the ACT Government's Biosecurity Strategy 2016-2026, the ACT's regional and geographic context, and the ACT Government's national biosecurity obligations and commitments.

The Bill will result in the repeal of the ACT's multiple existing biosecurity-related Acts.

DEVELOPMENT OF THE BILL

Public consultation on the proposed approach

Following extensive community consultation (through YourSay in 2018) which indicated public support for legislative reform, the Bill responds to this community feedback. The feedback highlighted support and expectations that the ACT Government's biosecurity Acts would be replaced by a unified single piece of legislation, better align with the NSW biosecurity system to minimise red tape and enhance the efficacy of on-ground risk management operations, and be modernised to better safeguard the ACT's economy, environment and community in response to current and emerging biosecurity issues.

Alignment with ACT biosecurity policy

The Bill supports the ACT Government's biosecurity policy and aligns with the objectives of the ACT Biosecurity Strategy 2016-2026 notably to:

- Communicate a clear vision and build support for a strong and integrated biosecurity system for the ACT;
- help meet the ACT's obligations under national biosecurity agreements;
- Provide the foundation for all stakeholders – government, agencies, industry, natural resource managers, land custodians or users and community groups – to work together and help to make best use of the synergies across all groups; and
- Identify a clear set of outcomes and actions that are relevant to the ACT and aligned with those of NSW.

Australia is currently witnessing an increase in biosecurity threats. The outbreak of varroa mite in NSW, foot and mouth disease in Indonesia, the rapid spread of lumpy skin disease in buffalo, and the spread of Japanese encephalitis virus by mosquitos and its recent declaration as a communicable disease of national significance are examples of the diversity of biosecurity risks and threats that the Bill will need to have the scope to address.

OVERVIEW OF THE BILL

Purpose and effect of the Bill

The Bill delivers the legislative framework for the ACT biosecurity system. The Bill will be supported by regulations and disallowable and notifiable instruments.

A favourable biosecurity status provides a valuable safety net for the ACT's environment, economy and community, and supports national, regional and Territory biosecurity objectives.

The Bill is required to create adequate regulation-making power to meet the needs of the changing nature and scope of biosecurity risks and management practices. As drafted the Bill provides for an operating environment which fosters economic growth and development, enables inter-operability with the NSW biosecurity system, safeguards the community and protects livelihoods, lifestyle and social amenity, and the environment and biodiversity. It also ensures that the ACT is not the weak link in a national biosecurity system and that the

ACT's biosecurity legislation is equipped with powers to deal with a broad range of scenarios from small scale localised issues to multi-billion dollar industry wide impacts. The Bill also has in place safeguards to minimise possible impacts on human rights should they arise.

Creating a system which promotes trust and confidence

The Territory is currently free from a range of animal and plant pests and diseases that are present in other parts of Australia and the world. To sustain an appropriate level of biosecurity protection into the future, the ACT's biosecurity system must be able to adapt to the changing nature and scope of biosecurity risks and emerging biosecurity challenges.

These changes and challenges include, but are not limited to, the increasing movement of people to and from the ACT, growth and diversification in trade and e-commerce, establishment of an international airport in Canberra, effects of a changing climate on the range, habitat and spread of plant and animal pests and diseases, and the susceptibility of native flora, fauna, ecosystems and biodiversity to new and existing pests, weeds and diseases.

Failure to effectively align and adapt the ACT biosecurity system to keep up with its current and future needs could have significant negative economic repercussions for affected Australian industry sectors, the natural environment and the community.

Biosecurity risks do not respect jurisdictional borders and the Territory's geographic position is such that on-going cooperation, inter-operability and complementarity with NSW are elemental to the effective functioning of the ACT biosecurity system.

A modern legislative framework to support changing biosecurity needs

Biosecurity legislation in the Territory consists of the *Animal Diseases Act 2005*, the *Plant Diseases Act 2002* and the *Pest Plants and Animals Act 2005*.

These three Acts are overly prescriptive, complex, not comprehensive, prevent action consistent with contemporary approaches, and are inadequate in meeting the Territory's evolving biosecurity risk management needs and obligations. For example, they include inconsistent provisions and powers for the regulation of plant and animal biosecurity risks, quarantine, authorised people, biosecurity certificates and biosecurity permits.

The Bill will repeal the current biosecurity Acts, and replace them and subordinate legislation under these Acts, with a single, flexible, modernised Act. The objective of the Bill is to give effect to the ACT Government's intention to address inconsistencies and policy gaps in existing legislation, and provide adequate powers to manage (assess, prevent, eliminate, minimise and control) biosecurity risks. The Bill's provisions also better align with changing biosecurity risk management needs and approaches.

The Bill recognises the complexity of biosecurity management and the important roles played across all land tenures. It acknowledges the shared responsibility for biosecurity of government, industry and relevant stakeholders within the ACT and across the border with

NSW. It supports appropriate and cost-effective implementation of the ACT's biosecurity objectives consistent with the ACT Government's national obligations.

The Bill will also result in the repeal of the *Fertilisers (Labelling and Sale) Act 1904*. These provisions are out-of-date and non-compliant with current national requirements.

It should be noted that biosecurity risks to the human population will continue to be regulated under the *Public Health Act 1997*.

Key changes introduced by the Bill

The Bill provides a strong, progressive legislative framework to support current and emerging biosecurity policy and operational needs and compliance with national requirements and obligations, maintain the ACT Government's credibility and reputation as a reliable partner in the national biosecurity system, and safeguard the community, environment and economy.

The Bill as drafted recognises the reality that no two biosecurity situations are likely the same and setting of prescriptive offence provisions would be unfair and inconsistent with the ACT's human rights objectives. The Bill allows for flexibility, proportionality and reasonableness based on relative biosecurity risks and impacts for each biosecurity event.

NOTE ON OFFENCE PROVISIONS

A range of offences under the new framework include provisions for serious offences committed where a person intentionally or recklessly does an act or fails to do an act in contravention of a requirement under the Bill. Strict liability offences and executive liability offences are also proposed for some offences. Provision has also been made for aggravated offences in respect of some offences.

In setting offence provisions, consideration was given to the:

- *Human Rights Act 2004*;
- ACT Guide for Framing Offences;
- Compliance with ACT Government commitments and obligations under national deed agreements;
- Offence provisions in other jurisdictions;
- Policy and operational needs of the ACT biosecurity system, including interoperability with the NSW biosecurity system;
- Capability to be effective in current and emerging biosecurity risks situations; and
- Need for adequate powers to deal with a wide range of possible biosecurity scenarios with varying risk and impact levels, including from small-scale localised incidents to multi-billion dollar industry-wide impacts.

The biosecurity system is a national system as pests and diseases do not respect jurisdictional borders. To support this national system and reduce perverse incentives for high-risk biosecurity enterprises to establish in the ACT the Bill includes offences and penalties that are proportionately consistent with biosecurity legislation in other jurisdictions. Noting too that no two biosecurity cases are likely the same given the many variables, the Bill as drafted allows for greater flexibility and fairness proportionate to risk and impact to be determined on a case-by-case basis.

Consequently, some offence provisions set higher than normal maximum penalties and imprisonment terms relative to the ACT's offences framework. These are designed to provide adequate powers within the Bill to be able to deal with larger scale biosecurity risks and impacts, which may involve having to make determinations for individuals, small business and large corporations. These provisions are lower than those prescribed in NSW legislation but are deemed an adequate disincentive to weakening the ACT biosecurity system.

The inclusion of strict liability offences in the Bill is necessary to deter individuals from engaging in activities that are inconsistent with the objects of the Bill and the obligations placed on authorised persons in carrying out functions under the Bill. There are no less restrictive means available to effectively achieve this purpose.

The risk of inadvertent breach of these provisions is low. Persons covered by regulatory frameworks are provided with adequate information about their obligations under those frameworks and the provisions explicitly state the conduct that is required to commit the offence. Appropriate regulatory actions are essential to build business and community confidence in the ACT biosecurity system and its regulatory framework.

There is a high expectation that registered professionals will exercise appropriate skill and care when providing professional services and it is important that this standard is enforced through appropriate penalties to protect the community and deter unsafe behaviours.

These offences and penalties also reflect the significant adverse effects that biosecurity incidents can have on the environment, economy and community. For example, it is estimated that a multi-jurisdiction outbreak of foot and mouth disease could cost the Australian economy up to \$80 billion, mainly due to trade restrictions but with significant long-term social and other impacts across the country.

If varroa mite were to become established in Australia this would have significant impacts on the honeybee and pollination industries. These industries contribute approximately \$14 billion per annum to the Australian economy with approximately one third of Australian food dependant on honeybee pollination.

The Bill provides guidance on what is meant by 'reasonable steps' which requires consideration of a range of factors, including the nature of the biosecurity risk, the degree of impact, the availability and suitability of ways to prevent, eliminate or minimise the biosecurity risk and the costs involved.

There is much at stake for Territorians and other Australians and the Bill's offence provisions reflect this. The Bill provides for appropriate defences. It also provides for alternative verdicts). The Court has the power to impose a range of penalties as an alternative to, or in addition to, fines or imprisonment such as:

- a) undertaking remediation or rectification work;
- b) prohibition powers;
- c) recovery of costs of disease control and/or consequential loss;
- d) publication of an offender's name and the offence;
- e) personal undertakings; and
- f) an order that a person not purchase, acquire, take possession or custody of an animal, animal product, plant, plant product, weed, contaminant or other material.

In relation to the National Livestock Identification System (NLIS) it is proposed that provisions be included in a regulation under the Bill given the detailed nature of these provisions and the anticipated need for regular amendments as the national scheme evolves. The current NLIS provisions include offences with a maximum penalty of 50 penalty units and it is proposed to maintain the current penalties in the regulation.

NOTE ON RECOVERY OF COSTS

Provisions which allow for the recovery of reasonable costs and charging and determination of reasonable fees are included as part of the Bill in the following instances:

- s 130 – Approvals – authority criteria
- s 151 – Biosecurity directions – recovery of costs
- s 175 – Recovery of costs for action taken
- s 204 – Recovery of costs, expenses and compensation after offence proved
- s 230 – Determination of fees

The Bill includes a power to charge a fee for the assessment of applications for authorisations under the Bill such as permits, registration, accreditation of certifiers and appointment of auditors and third-party authorities.

This is consistent with the existing approach. The *Animal Diseases Act 2005*, *Plant Diseases Act 2002* and *Pest Plants and Animals Act 2005* all include a power for the Minister to determine fees. It is also consistent with one of the key principles under IGAB that risk creators and beneficiaries contribute to the cost of risk management measures.

Any fees to be charged under the new legislation will be detailed in subordinate legislation and consider the impacts on affected stakeholders. While there are currently no proposals to impose fees under the Bill, if a new fee is being proposed, a business case will be prepared for consideration by ERC in the first instance.

The Bill makes provision to recover costs incurred in rectifying non-compliance with a requirement imposed on a person under the Bill. This includes a power to recover reasonable costs for action taken, including as part of a biosecurity direction, powers to recover costs, expenses and compensation after offence proved.

This is consistent with the IGAB principle that risk creators contribute to the cost of risk management measures and equivalent provisions already exist in the *Animal Diseases Act 2005*, *Plant Diseases Act 2002* and the *Pest Plants and Animals Act 2005*.

CONSISTENCY WITH HUMAN RIGHTS

Human rights overview

During the development of the Bill, due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HR Act).

An assessment of the Bill against section 28 of the HR Act is provided below. Section 28 provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. However, the reasonable limits test may not require the adoption of the least restrictive means identified, but rather that when determining the reasonableness of the relevant limitation, it is sufficient that the means adopted falls within a range of reasonable responses to the problem confronted.

The main focus of biosecurity is through preventative risk management. Its proactive and collaborative approach enables early response efforts and risk mitigation measures which can significantly reduce overall costs, harm, and losses, thereby benefitting government, the environment, economy and community. This approach, established through agreed international biosecurity policies and associated multilateral agreements, risk management frameworks, standards and protocols, is in place to enable and facilitate biosecure global trade and market access.

As such, within Australia biosecurity is a matter of national significance and underpins the success of many Australian industries and livelihoods at Territory, regional and national levels. The national biosecurity system operates across the biosecurity continuum which includes pre-border, border and post-border operations. The ACT biosecurity system forms part of Australia's post-border measures.

Notably, biosecurity measures are not designed in themselves to affect humans, but rather to address biosecurity risks to the environment, economy and community from pest plants, pest animals, and animal and plant diseases. However, these measures may indirectly impact the rights of people dealing with biosecurity matter which poses or is likely to pose a biosecurity risk. Providing for adequate powers in the Bill so that it is effective in a wide spectrum of plausible biosecurity scenarios, which includes from localised small-scale incidents to multi-billion dollar industry impacts, is critical for the continued effective operation of the ACT biosecurity system within its national context.

To ensure the limits on human rights are proportionate, the Bill includes appropriate safeguards, defences and protections and provides for an enforcement regime which has powers to apply the law with due consideration to proportionality and fairness based on biosecurity risk and impact in each case.

To be fit for purpose within its geographic location inside New South Wales (NSW), the ACT biosecurity system relies upon inter-operability with the NSW biosecurity system. Provisions of the Bill, therefore, also take into account the impacts of the ACT being a place of least restrictive laws. Additionally, the ACT Government is party to the Intergovernmental Agreement on Biosecurity (IGAB) and related deeds and arrangements. Therefore,

compliance requirements of this national framework have also informed the drafting of the Bill.

Given this policy context, limits that may be placed on human rights by the Bill are considered reasonable and justifiable in a free and democratic society. An assessment of the Bill's impact on relevant provisions of the HR Act is provided below for the rights engaged.

Rights engaged

The Bill engages and may limit the following rights under the HR Act under specific situations which may arise when functions under the Bill are undertaken:

- Section 9 – Right to life (promoted)
- Section 12 – Right to privacy and reputation (limited)
- Section 13 – Right to freedom of movement (limited)
- Section 15 – Right to freedom of assembly and association (limited)
- Section 22 – Minimum guarantees in criminal proceedings (limited)
- Section 27B – Right to work and rights in works (promoted and limited)

Rights Promoted

Section 9 - Right to life

Section 9 (1) of the HR Act recognises that everyone has the right to life. In particular, no one may be arbitrarily deprived of life.

The right to life requires the ACT Government to safeguard life where there may be a real and immediate direct or indirect risk to life. The Bill acknowledges that without a regulated and risk-based approach to biosecurity management, there may be outcomes that pose a risk to the health, safety or economic wellbeing of a person and the broader community.

All authorised persons and entities acting under the function of the Bill are required to be adequately and appropriately qualified and experienced. This is to ensure that biosecurity risk management is carried out in accordance with prescribed methods and does not lead to the contamination of human food and water supplies, animal feedstock, or the environment. Equally, the handling of biosecurity matter may make a person vulnerable to contagions or disease, which could impact on their health or safety. The biosecurity risk-minimisation measures in the Bill which may impact on other rights in the HR Act are designed to reduce the likelihood of exposing a person to such potential biosecurity risks. Further, if a biosecurity event is not appropriately managed it could result in significant avoidable costs to human, animal or plant health and safety if the biosecurity event spreads beyond the premises.

Section 27B - Right to work and rights in work

The Bill will promote the right to work and rights in work by preventing or effectively managing a significant biosecurity risk. It will do so by creating safe working conditions for those working in biosecurity and industry sectors supported by biosecurity measures,

therefore promoting the right to 'enjoy just and favourable conditions of work'. The ACT biosecurity system is a safeguard risk-based system which provides confidence to individuals and businesses who invest or operate in the ACT that the ACT Government is preventing ingress of diseases and pests across our borders and keeping our natural resources clean, our food and water supplies fit for consumption, and our economy sustainably managed.

Rights Limited

Section 12 – Right to privacy and reputation

1. Nature of the right and the limitation (s28(a) and (c))

Section 12 (a) of the HR Act recognises that everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and section 12 (b) recognises the right not to have his or her reputation unlawfully attacked.

The following sections of the Bill provide for powers of entry to premises, search, compelling of information, inspection and external treatment of people or recording of oral responses:

s 44 Emergency declarations - measures about treatment of people	Provides for limited external treatments to be carried out on people in a biosecurity emergency
s 45 Emergency declarations - measures about inspection of people	Provides for visual inspection of the exterior of a person's clothing, accessories and shoes, and to shake or move the person's hair in a biosecurity emergency
s 150 Biosecurity directions – treatment of people	In an emergency, provides for a direction to require an external treatment measure on a person.
s 151 Biosecurity directions - inspection of people	In an emergency, provides for a direction to visually inspect a person, and shake or move the person's hair, for biosecurity matter, a carrier or a potential carrier.
s 173 Power to enter premises	The power to enter premises that are only used for residential purposes can only be done with consent, with a warrant, or at any time if the authorised person believes on reasonable grounds that the risk is so serious and urgent that immediate entry is necessary.
s 176 General powers on entry to premises	Specifies the scope of actions an authorised person can do under this Bill in relation to the premises or anything at the premises, upon entering a premises under this part.
s 177 Power to require information, documents, etc	Authorises an authorised person acting under this part to require the occupier or anyone else at the premises to give information and copies of documents that the person has access to, and to give

	assistance to exercise a function under this part.
s 179 Power to obtain, inspect and copy records	Provides for an authorised person to obtain, inspect or copy information, documents or anything else that a person has access to that is reasonably required by the authorised person for this Bill.
s 180 Power to require answers to questions	Provides for an authorised person to require a person to answer questions in relation to a matter under this Bill.
s 181 Evidence may be recorded	Provides for an authorised person to record information given orally under this division provided the person is given notice of the intention to record.
s 185 Direction to give name and address	Provides for an authorised person on reasonable grounds to request name and address of a person who has committed or is committing or is about to commit an offence under the Bill.

2. Legitimate purpose (s28(b))

The legitimate purpose of these measures is to manage biosecurity risks arising from biosecurity matter, dealings with biosecurity matter, carriers or other activities involving biosecurity matter or carriers that may pose a biosecurity risk to the environment, the economy or the community.

3. Rational connection between the limitation and the purpose (s28(d))

The provisions in the Bill which may impact the right to privacy of a person are directly linked to biosecurity risk management activities related to the function of the Bill.

For the purposes of biosecurity legislation, it is important that officers have adequate powers in relation to biosecurity matter or other related things, to ensure that biosecurity risks can be appropriately managed in a timely and efficient manner. For this reason the following powers are authorised under the Bill.

An emergency declaration, or a biosecurity direction given in an emergency may authorise an authorised person to carry out an external treatment measure on a person. This would be authorised in instances where it is necessary in order to safeguard the person from being a carrier of biosecurity matter, or to prevent contamination or the spread of contamination, and/or prevent spread of the biosecurity risk. An example of an external treatment measure is sterilising footwear in a treatment dip prior to entering or leaving a biosecurity event site (s 44).

An emergency declaration, or a biosecurity direction given in an emergency may authorise an authorised person to visually inspect a person, and/or shake or move the person's hair. This would be authorised in instances where it is necessary in order to safeguard the person from being a carrier of biosecurity matter, or to prevent contamination or the spread of

contamination, and/or prevent spread of the biosecurity risk. An example of when a visual inspection and hair shaking may be required would be if the person has been in contact with a beehive infected with varroa mite and it is necessary to check for fugitive bees on the person. A visual inspection in this case would help capture the bees and prevent the person from being stung and/or prevent a bee from being carried further from the site to spread the disease (s 45).

Entry to premises is required in a biosecurity event as biosecurity matter and carriers of biosecurity matter are physical things. Therefore, in order to control their spread and effectively manage the risk they pose, it is necessary for example to physically treat, cordon off/confine, seize, move or destroy the biosecurity matter or carrier (s 173).

An authorised person undertaking functions under this Bill when responding to a biosecurity event needs to be able to assess the risk including its distribution, intensity, scale and scope. For example the extent and degree of disease symptoms on affected plants. To obtain this information and then to be able to appropriately respond to the risk, it is necessary for an authorised person to have recourse to a suite of measures to gather the necessary details about the biosecurity risk. Typical actions they may be required to undertake in such an event include for example, being able to inspect things for the presence of biosecurity matter, or to take images of diseased animals or plants as a record for diagnostic or analytical purposes, or to confine, detain or isolate an infected herd to prevent the spread of the biosecurity risk. They may also need to erect signage, for example, to prevent entry into a biosecurity confinement area in which contaminated biosecurity matter is being held. In addition, copies of documents may also be required, for example for traceability and reporting purposes (ss 176, 177 and s 179).

Biosecurity matter, pests and other things believed to pose a biosecurity risk, including vehicles, could play a significant hazardous role as sources of biosecurity contamination with the potential to exacerbate the situation, or as vectors of biosecurity matter in the case of diseased animals or plants.

Authorised persons are given powers to compel information because, if biosecurity matter which poses a biosecurity risk is present at the premises, individual persons associated with the biosecurity risk may be the only source of information or best placed to provide information that authorised persons may need to investigate and respond to a biosecurity event (s 180).

Information gathering and questioning by authorised persons are only permitted because they relate to the management of the biosecurity event and it is reasonably believed at the time that this information is material to the management operation of said event. For example, personal contact details of a person may be requested as there may be a likelihood that they may be a carrier of biosecurity matter or have information that may assist with investigating or managing the biosecurity risk, or to disseminate information to them at a later stage in relation to the biosecurity event or risk, or if follow-up action may be required specific to the biosecurity event. If a person provides information orally, for the purposes of ensuring there is an accurate record of the information, the Bill authorises an authorised

person to record information given orally provided that the person giving the information is given warning that it will be recorded. For example, it may be easier to record evidence provided by a farmer orally of what happened to a sick pig and what symptoms were observed rather than an authorised person having to note down all the details of the progressive symptoms, etc that the farmer observed (s 181).

When it is reasonably believed there has been or is likely to be an offence against this Bill, an authorised officer is authorised under the Bill to obtain the name and address of a person. This is to ensure that should there be any biosecurity risk that ensues the person can be contacted and further information to support the management of the risk can be expeditiously accessed. Given that biosecurity risk mitigation responses are often time critical and the focus of the Bill and the biosecurity system is on early intervention and harm and loss minimisation, being able to access information quickly is critical to effective risk management (s 185).

4. *Proportionality (s28 (e))*

Any imposition on a person's right to privacy is subject to the specific conditions and requirements of a biosecurity event. Biosecurity events are highly variable in scope, scale and impact and no two biosecurity events can be said to be identical as there are numerous factors at play. The Bill requires an adequate range of powers to be available to authorised persons so they can respond effectively under a broad spectrum of plausible biosecurity management scenarios. Biosecurity impacts could range from small scale losses or harm to individuals to multi-billion dollar industry impacts. Biosecurity events are also often time critical and can have significant negative impacts on the environment, community and economy.

Proportionality of powers of authorised persons

Biosecurity events and the measures required to appropriately manage them are highly situationally specific. While Division 12.2 of the Bill provides for the necessary powers for authorised persons to undertake required functions under the Bill appropriate to a biosecurity event, the Bill also provides for safeguards and protocols to ensure that measures are commensurate with need, powers are not misused, and a person's right to privacy is impacted to the least extent possible. Key provisions that are relevant include:

Section 173 Power to enter premises

This clause prescribes the limited circumstances under which an authorised person may enter premises and sets out clear protocols for how it may be done. An authorised person must seek consent to entry before entering premises, except in the case of an emergency.

The power to enter premises that are only used for residential purposes can only be done with consent, with a warrant, or at any time if the authorised person believes on reasonable grounds that the risk is so serious and urgent that immediate entry is necessary (s 170 (g)).

Section 174 Production of identity card

This safeguard clause protects an occupier of premises from having their right to privacy arbitrarily impacted. It provides for an occupier of premises to ask for the identity card of an authorised person or person accompanying an authorised person. If the person does not comply, the person (other than a police officer) must leave the premises immediately.

Section 175 Consent to entry

This safeguard clause stipulates the manner in which an authorised person may seek consent to entry from an occupier, and requires that an authorised person must produce proof of identity for him/herself and any persons accompanying the authorised person to the occupier, inform the occupier of the purpose of the entry and that anything found and seized under this chapter may be used in evidence in court, and that consent may be refused.

Section 176 General powers on entry to premises

This clause limits the powers of an authorised person upon entry to premises to specific actions pertaining to the function of the Bill as it relates to managing the biosecurity event at hand.

Proportionality of measures permissible under emergency declarations, control declarations and biosecurity directions

While these powers are granted under the Bill to enable authorised persons to investigate, manage and respond to biosecurity events to minimise harm, loss and impact, and to protect the community, environment and economy, they are limited by what is appropriate, justifiable and reasonable under the circumstances.

Whether a biosecurity event can be managed under the provisions of a biosecurity direction, control declaration or emergency declaration is based on a granular scale determined by the level of biosecurity risk. Powers authorised under biosecurity directions, control declarations and emergency declarations reflect this granularity and are proportionate to the level of risk and impact. In all these cases, there are clear and transparent limitations and protocols assigned to the powers available to authorised persons to ensure that these powers are not abused.

Most biosecurity events would be dealt with through biosecurity directions. As the risk level rises or where early intervention or preventative measures are available, a control declaration may be used by the Minister. A control declaration is a notifiable instrument. These scenarios are appropriate when it is not an emergency situation, for example where the risk can be managed within a less time-restricted timeframe a control declaration could be used to manage the risk. And for less urgent risks, biosecurity directions are applied and authorised persons work with affected parties to appropriately manage the risks.

Notably, a biosecurity emergency represents the most significant risk and possibly catastrophic impacts. For example, the detection of foot and mouth disease and the urgency

to contain and manage the risk before it can impact trade and market access within the multi-million dollar Australian meat and livestock industry. For this reason, powers under an emergency declaration are greater. For example, in such an emergency, if there is reason to believe that prohibited biosecurity matter is present in a part of the residential property only used as a residence, it may be critical that it is seized to mitigate the risk.

There are also stringent parameters for determining if a biosecurity event represents an emergency. For example, in the case of emergency declarations, these are notifiable instruments. They include specific details (s 38) including the area or premises where the emergency measures apply (emergency zone). They have a limited timeframe, which unless otherwise specified in the declaration notice, is 6 months, and they can only be extended in 6 month increments. Additionally, the Minister must give public notice of both an emergency declaration and its extension, and is required to take reasonable steps to ensure people who are likely to be affected by the declaration or its extension are made aware of it (s 40). There is also an in-built proportionality test to the emergency measures that can be declared. Measures must not be more onerous than the Minister considers necessary, taking into account the nature of the biosecurity emergency (s 41).

In any biosecurity event, a control declaration or emergency declaration proposed by the Minister will only prescribe measures that are proportionate to the biosecurity risk.

A further safeguard is section 231, which also places limits on certain powers in relation to humans and residential premises proportional to biosecurity risk.

Proportionality of the measures that allow an authorised person to require the answer to questions/compel information/require the giving of name and address

Information gathered and the means by which it is gathered is proportionate to the biosecurity risk and the available timeframes for a biosecurity response. Only information relevant to the biosecurity event and its investigation, management and response under the Bill is authorised to be required of a person, and only if the person is reasonably believed to have access to the said information.

Section 182 provides for abrogation of privilege against self-incrimination, and section 183 requires that a person is given a warning so they are aware of a direction or duty that may be required of them. Section 223 of the Bill also provides protection against civil or criminal liability to persons who give information honestly and without recklessness in relation to a biosecurity risk or matter.

Section 13 – Right to freedom of movement

Section 15(2) – Right to freedom of association

1. Nature of the right and the limitation (s28(a) and (c))

Section 13 of the HR Act recognises that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT; and section 15 (2) of the HR Act recognises that everyone has a right to freedom of association.

The following sections of the Bill provide for powers which may impact the freedom of movement of people, and by default the freedom of association of people in certain instances:

s 43 Emergency declarations – measures restricting movement of people	Provides for measures to keep a biosecurity zone secure and safely managed during a biosecurity emergency.
s 56 Control declarations – measures restricting movement of people	Provides for control measures imposed on any biosecurity matter, premises, area, activity or thing for the purposes of managing the biosecurity risk under the Bill and consistent with the control declaration. Such measures specifically target biosecurity related matter but may by default impact the movement of people.
s 149 Biosecurity directions – restricting movement of people	In an emergency provides for a biosecurity direction to impose control measures in relation to any biosecurity matter, premises, area, activity or other thing to manage the biosecurity risk under the Bill and consistent with the biosecurity direction. Such measures specifically target biosecurity related matter but may by default impact the movement of people

2. Legitimate purpose (s28(b))

The legitimate purpose of these measures is to manage biosecurity risks arising from biosecurity matter, dealings with biosecurity matter or carriers and other activities involving biosecurity matter or carriers that may pose a biosecurity risk to the environment, the economy or the community.

3. Rational connection between the limitation and the purpose (s28(d))

As a risk management measure under the Bill it may be necessary to cordon off and/or restrict certain areas within the premises to isolate or manage biosecurity matter which poses a biosecurity risk. These measures may inadvertently result in the right to freedom of movement or association of people at the premises being limited.

Under a biosecurity direction, control direction or emergency declaration the Bill provides for measures which may result in the restricted movement of people. This may include regulating the movement of people through designated entry and exit points to effectively undertake a function under the Bill.

Should such measures be implemented in a biosecurity event it would be for the specific purposes of reducing the spread of biosecurity matter or risk of contamination in order to protect the safety and amenity of persons who are not carriers of biosecurity matter and other things and areas of the premises not impacted by the biosecurity matter, as well as to

mitigate the negative impacts on the environment, economy or community which could result in severe losses and harm.

For example, in an emergency it may be deemed necessary to restrict access to specific exit or entry points or other contaminated areas of premises to facilitate expeditious biosecurity management operations and safeguard people from exposure to becoming potential carriers of biosecurity matter.

These measures are restricted to instances where it is reasonably believed that there may not be any other recourse to removing or managing said matter and protecting people who are at risk of exposure to danger from biosecurity matter or contaminants. There are no other available approaches which are less impactful on the right to freedom of movement that could reasonably be applied in situ under such circumstances.

4. *Proportionality (s28 (e))*

While there are provisions in the Bill which may indirectly impact the right to freedom of movement of a person, and by extension the freedom of association, these measures are limited to circumstances where the risk of danger or contamination is such that it is a necessary safeguard for the protection of the person, other persons present, or the environment, economy or community.

It is a general safeguard that measures restricting the movement of people can only be ordered under an emergency declaration or in an emergency under a biosecurity direction.

Emergency declarations are issued according to several criteria in Part 3, which include safeguards such as time limits for how long the declaration has effect and public notice requirements. Furthermore, emergency declarations can be no more onerous than the Minister considers necessary specific to the circumstances of the biosecurity event. Stringent conditions and protocols are also prescribed to ensure that this power is only used when there are no other reasonable options available to efficiently manage a biosecurity event.

Biosecurity directions also have similar safeguards in Part 10. They can only be given by authorised persons, they can only be given for specific purposes relevant to compliance with the Bill, enforcement of the Bill and managing biosecurity risk and impact. Similarly, biosecurity directions must be given in writing, or orally and then followed up in writing within 7 days.

The harm and costs to the environment, economy and community in the absence of adequate enforcement powers to support the ACT biosecurity system could be catastrophic. In addition, the ACT Government has obligations under national agreements and failure to ensure the Bill is adequate to address local, regional and national biosecurity events would compromise the reputation and perceived integrity of the ACT as a partner within the national system, as well as undermine the Bill's efficacy in serving its purpose within the ACT biosecurity system.

Section 18 – Right to liberty and security of person

1. *Nature of the right and the limitation (s28(a) and (c))*

Section 18 (1) of the HR Act recognises that everyone has the right to liberty and security of person. In particular, no-one may be arbitrarily arrested or detained.

Provisions in the Bill which may limit the right to liberty include those listed in the table below. Imprisonment terms are included in these specific provisions of the Bill.

s 24 Offences- fail to comply with general biosecurity duty	Provides for enforcement of the Bill where a person has a biosecurity duty under s 22 and fails to comply.
s 27 Offences-fail to comply with duty to notify biosecurity event	Provides for enforcement of the Bill where a person has a duty to notify a biosecurity event under s 26 and fails to comply. It includes a strict liability offence and provides for defences to a prosecution against this offence.
s 31 Offences-fail to comply with duty to notify presence of notifiable biosecurity matter	Provides for enforcement of the Bill where a person has a duty to notify the presence of notifiable biosecurity matter under s 30 and fails to comply. It includes a strict liability offence.
s 34 Offences- deal with prohibited biosecurity matter	Provides for enforcement of the Bill where a person without authority or permission deals with prohibited biosecurity matter. It includes a strict liability offence. It also includes a legal burden on the defendant and defence provisions against subsection (1).
s 49 Offences – fail to comply with emergency declaration	Provides for enforcement of the Bill if a person fails to comply with an emergency declaration. It includes a strict liability offence. It also includes a requirement that the person must be made aware of an emergency declaration.

2. *Legitimate purpose (s28(b))*

The legitimate purpose of these measures is to manage biosecurity risks arising from biosecurity matter, dealings with biosecurity matter or carriers and other activities involving biosecurity matter or carriers that may pose a biosecurity risk to the environment, the economy or the community.

3. *Rational connection between the limitation and the purpose (s28(d))*

The Bill requires adequate powers to be responsive to and effective in all plausible biosecurity scenarios. Imprisonment terms are included in specific provisions of the Bill to reflect the serious nature of this conduct, deter this conduct and provide adequate

regulatory powers in support of enforcement when operationalising the ACT biosecurity system within wide-ranging contexts.

The ACT biosecurity system is part of the national biosecurity system and its legislative powers need to be adequate to respond to local, regional and national events. In addition, within the biosecurity continuum, the ACT's provisions need to be adequate to deter people from viewing the ACT as an attractive dumping ground for biosecurity matter or for dealings in illegal biosecurity matter, as well as supporting the operation of the ACT biosecurity system. The ACT Government also must meet its obligations and commitments under the national system.

4. Proportionality (s28 (e))

As the ACT biosecurity system operates within the paradigm of the national biosecurity system and additionally relies on inter-operability with the NSW biosecurity system, enforcement provisions have had to give due regard to manage potential perverse system outcomes. These outcomes include the implications of providing a regulatory environment with least restrictive laws and becoming an attractive location for illegal dealings with biosecurity matter, including dumping of biosecurity matter. Offence provisions in the Bill are notably lower than those of other jurisdictions. However, by being more stringent than what is standard within the ACT Guide to Framing Offences, they act to as a deterrent to non-compliance.

Failure to provide a robust and comprehensive legal framework for biosecurity in the ACT could undermine the ACT biosecurity system, and also have significant local, regional and/or national consequences for the community, environment and economy.

The Bill has sought to include penalties which can be applied proportionate to risk and impact and provide adequate powers to be effective across the broad spectrum of plausible biosecurity scenarios.

Section 24 - Offences - fail to comply with general biosecurity duty

A general biosecurity duty applies to a limited class of people under the Bill. A person who deals with biosecurity matter or a carrier and who knows, or ought reasonably to know, the biosecurity risk posed or likely to be posed by the biosecurity matter, carrier or dealing has a biosecurity duty to ensure that, so far as is reasonably practicable, the biosecurity risk is prevented, eliminated or minimised.

This limited class of people are in effect largely stakeholders who engage with biosecurity related matters through a professional capacity and would be aware that they have a biosecurity duty under the Bill. They would have access to this and other relevant biosecurity related information through engagement with professional and/or industry bodies/associations and related government authorities, licence, permit, approval, registration or other authorisation or accreditation processes, and standard workplace policies and procedures. For example, during the recent occurrence of varroa mite in Newcastle, NSW, EPSDD mobilised a targeted engagement, education and consultation

program with people keeping bees in the ACT. This included through face-to-face meetings and seminars, webinars, and disseminating information and advice through email networks to ensure support was available to all small-scale and largescale beekeepers in the ACT to manage the biosecurity risk.

In rural and peri-urban areas of the ACT, including for hobby farmers, information and support to manage biosecurity risks is also readily accessible through regular dealings with the ACT Rural Landholders Associations, EPSDD Biosecurity Rural Services and ACT NRM teams within EPSDD, and established community networks.

The environment sector relies heavily on community and volunteer groups to assist with protecting local natural environment from pests, weeds and plant and animal diseases. Community and volunteer groups are an established and active resource for information dissemination and support for the community. This includes three major catchment groups established within the ACT who engage regularly with local schools, businesses and the community. In the urban context, local government funded Landcare and Parkcare groups are volunteer community groups which operate within local neighbourhoods and communities and are a source of valuable information and support. Online resources such as Canberra Nature Map (<https://canberra.naturemapr.org>) are also actively used by the community to inform and obtain information about pests, weeds and plant and animal diseases observed in Canberra. In addition, Connecting People Connecting Nature initiative (EPSDD) works within the urban environment to raise awareness about protecting urban biodiversity and minimising negative impacts such as from weeds and pests.

Notably biosecurity and quarantine related headlines of significance are also broadcast through mainstream news and media platforms keeping the public in general informed of their occurrence.

A biosecurity duty requires a person with such a duty only to take reasonable steps in executing said duty. What constitutes reasonable steps is defined in the Bill and accounts for what the person knows about the risk and the cost of managing that risk. In addition, biosecurity risk is defined, which gives further clarity to the scope of the offence.

Noting that early intervention and prevention are the focus of the biosecurity system, it is a necessary feature of the ACT biosecurity system that people take reasonable steps to prevent, eliminate or minimise risks. The biosecurity duty needs to be effective against a broad spectrum of plausible biosecurity scenarios, ranging from small-scale individual localised events to multi-billion dollar industry impacts. Failure to comply with a biosecurity duty could result in an outcome anywhere along this spectrum. Consequently, maximum penalties have been assigned so that the enforcement provisions have adequate scope to be effective, and can be intrinsically and proportionally linked to the risk and impact in each case. The most serious offence with the biggest maximum penalty requires that actual harm be caused, that is, there is a significant biosecurity impact.

Failure to comply with a biosecurity duty can give rise to significant biosecurity impacts. The risks and impacts can be the same irrespective of the fault element. For example, intentionally or negligently allowing a cow with foot and mouth disease to roam around a

paddock with other cows would encourage the spread of disease and could lead to Australia's meat and livestock industry coming to a standstill and the suspension of export licences. Safeguarding Australia's foot and mouth disease-free status is critical to the survival and success of Australia's meat and livestock industry and would give rise to economic and social repercussions throughout the supply chain. However, only intentional failure to comply with a biosecurity duty attracts a maximum penalty with terms of imprisonment.

s 27 Offences-fail to comply with duty to notify biosecurity event

Immediate notification of a biosecurity event as soon as it becomes known is an important part of the biosecurity system. It provides for greater response times, early detection and intervention options, and greater recourse to harm and loss minimisation strategies.

Regulations will provide clarity on the ways a person can notify a biosecurity event. The offence is limited to people with a close connection to the biosecurity event: the duty to notify a biosecurity event only arises if a person is the owner, occupier or person in charge of, or has possession of, premises, a carrier or other thing in relation to which the biosecurity event relates, or the person becomes aware of the biosecurity event as a result of a consultation or other work carried out in relation to the premises, carrier or other thing, in the person's professional capacity. The duty can also be owed by someone prescribed in regulation (s 26 (2)).

The Bill describes what constitutes a biosecurity event, and links this to the risk of a significant biosecurity impact occurring. The Bill also includes examples of the kinds of facts that constitute a biosecurity event. They are circumstances that ought to give rise to alarm. For example, the appearance of ulcers or blisters on the mouth or feet of ruminants or pigs, or an unexplained and significant increase in a mortality rate or morbidity rate in plants or animals.

Failure to comply with a duty to notify a biosecurity event can give rise to significant biosecurity impacts. The risks and impacts can be the same irrespective of the fault element.

The Bill includes safeguards which provide for defences against the offence: the defendant can prove that they believed on reasonable grounds that the biosecurity event was widely and publicly known.

Section 31 - Offences-fail to comply with duty to notify presence of notifiable biosecurity matter

The Minister may declare biosecurity matter to be notifiable biosecurity matter if satisfied that it poses a biosecurity risk. A declaration is a notifiable instrument.

Immediate notification of notifiable biosecurity matter as soon as it becomes known is an important part of the biosecurity system. It provides for greater response times, early detection and intervention options, and greater recourse to harm and loss minimisation strategies.

Offences only apply to the limited class of person who has a duty to notify the presence of notifiable biosecurity matter. The offence mirrors section 26 and is limited to people with a close connection to the biosecurity event (s 30 (2)).

The Bill includes safeguards which provide for defences against the offence. The defendant can prove that they believed on reasonable grounds that the biosecurity event was widely and publicly known.

Section 34 - Offences- deal with prohibited biosecurity matter

Prohibited biosecurity matter is declared by the Minister through a notifiable instrument. Only authorised persons or persons with a relevant permit are able to deal with prohibited biosecurity matter as it represents biosecurity matter that poses a high risk. Consequently, it is important to prevent and deter anyone else from dealing with prohibited biosecurity matter.

Most prohibited biosecurity matter which could be an animal or plant disease or pest, are listed because they are exotic or if already present in the ACT or Australia, pose a risk with severe consequences in terms of industry productivity, trade or even human health. For example, rabies, bovine spongiform encephalopathy (mad cow disease) or foot and mouth disease.

The Bill provides for enforcement provisions where a person without authority or permission deals with prohibited biosecurity matter.

As the consequence of dealing with prohibited biosecurity matter can give rise to significant local, regional or national biosecurity consequences, this class of high-risk biosecurity matter is notified and strict protocols are required to ensure they are kept out of Australia, or if they become known to be present, are dealt with expeditiously.

Subsection (4) presumes that prohibited biosecurity matter found on land occupied by the defendant that the defendant had possession of said matter, unless the defendant proves that they did not know, and could not reasonably be expected to have known, that they had said matter in their possession. The legal burden on the defendant is considered appropriate in this case as the defendant is likely the only person with recourse to pertinent information in this regard. For example, they may just be visiting the premises as a family friend.

Section 49 – Offences – fail to comply with emergency declaration

It is an offence to fail to comply with an emergency declaration. A biosecurity emergency is a declared event, notified by the Minister, and is only applied in situations where the Minister is satisfied, or reasonably suspects, that there is a current or likely to happen biosecurity risk that may have a biosecurity impact. It is also limited in scope to emergency measures that are no more onerous than the Minister considers necessary, taking into account the nature of the biosecurity emergency, and are limited in duration by section 39. The Minister must give public notice of the declarations and take reasonable steps to ensure that people who are likely to be directly affected by the declaration are made aware of it. Emergency declarations must state the measures that need to be complied with.

In biosecurity emergencies the severity of the risk and its potential impact has been assessed as extremely high and the need for expeditious action requires that an emergency response be executed. For example, a livestock standstill in the case of an outbreak of foot and mouth disease.

Failure to comply with an emergency declaration could give rise to slowing down or impeding the biosecurity risk management effort to minimise harm and losses. Irrespective of the fault element the outcomes could be the same and the impact and consequences widespread.

Section 22 – Minimum guarantees in criminal proceedings

1. Nature of the right and the limitation (s28(a) and (c))

Section 22 (1) of the HR Act recognises that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law; and section 22 (2) recognises that anyone charged with a criminal offence is entitled to the following minimum guarantees, equally with anyone else: (a) to be told promptly and in details, in a language that he or she understands, about the nature and reason for the charge; (b) to have adequate time and facilities to prepare his or her defence; and section 22 (2) (i) not to be compelled to testify against himself or herself or to confess guilt.

Strict liability offences may limit the right to be presumed innocent by allowing for the imposition of criminal liability without the need to prove fault.

The Bill makes provision for strict liability offences notably in the following sections:

Section 27 Offences-fail to comply with duty to notify biosecurity event	Provides for enforcement of the Bill where a person has a duty to notify a biosecurity event under s 26 and fails to comply.
Section 31 Offences-fail to comply with duty to notify presence of notifiable biosecurity matter	Provides for enforcement of the Bill where a person has a duty to notify the presence of notifiable biosecurity matter under s 30 and fails to comply.
Section 36 Offences-engage in prohibited dealing	Provides for enforcement of the Bill where a person engages in a prohibited dealing.
Section 49 Offences – fail to comply with emergency declaration	Provides for enforcement of the Bill if a person fails to comply with an emergency declaration.
Section 61 Offences – fail to comply with control declaration	Provides for enforcement of the Bill where a person fails to comply with a control declaration.
Section 73 Offences – fail to comply with permit condition	Provides for enforcement of the Bill when a biosecurity permit holder fails to comply with his/her permit conditions.
Section 86 Offences – fail to comply with group exemption condition	Provides for enforcement of the Bill when a person acting under the authority of a group exemption fails to comply with the conditions of the group exemption.

Section 90 Offence – engage in regulated dealing without registration	Provides for enforcement of the Bill when a person engages in a regulated dealing without a registration to do so.
Section 100 Offence – fail to comply with registration condition	Provides for enforcement of the Bill when a registered person fails to comply with the conditions of his/her registration.
Section 112 Offences – false or misleading biosecurity certificate	Provides for enforcement of the Bill when a person issues a false or misleading biosecurity certificate.
Section 113 Offences – false representation about biosecurity certificate	Provides for enforcement of the Bill when a person falsely represents that a biosecurity certificate has been issued.
Section 138 Offences – fail to comply with approval condition	Provides for enforcement of the Bill when an approval-holder fails to comply with the conditions of his/her approval.
Section 156 Offences – fail to comply with biosecurity direction	Provides for enforcement of the Bill when a person fails to comply with a biosecurity direction.
Section 166 Offences – fail to comply with biosecurity undertaking	Provides for the enforcement of the Bill when a person who has given a biosecurity undertaking fails to comply with the requirements of the biosecurity undertaking.
Section 169 Offences – failure to return an authorised person’s identity card	Provides for enforcement of the Bill where an authorised person fails to return their identity card.
Section 176 General powers on entry to premises	Provides for enforcement where a person interferes with a sign, device or any other equipment placed by an authorised person.
Section 177 Power to require information, documents, etc	Provides for enforcement of the Bill where a person fails to take reasonable steps to comply with a requirement to give information, documents, etc.
Section 179 – Power to obtain, inspect and copy records	Provides for enforcement of the Bill where a person fails to take reasonable steps to comply with a requirement made of the person to give information, documents etc.
Section 180 – Power to require answers to questions	Provides for enforcement of the Bill where a person fails to comply with a requirement to answer questions
Section 184 – Power to seize things	Provides for enforcement of the Bill where a person interferes with a seized thing without approval.

Section 186 – Offences – fail to comply with a direction to give name and address	Provides for enforcement of the Bill where a person fails to comply with a direction to give their name and address
Section 188 – Offences – fail to comply with a direction to stop vehicle	Provides for enforcement of the Bill where a person fails to comply with a direction to stop vehicle

2. Legitimate purpose (s28(b))

The legitimate purpose of these measures is to manage biosecurity risks arising from biosecurity matter, dealings with biosecurity matter or carriers and other activities involving biosecurity matter or carriers that may pose a biosecurity risk to the environment, the economy or the community.

3. Rational connection between the limitation and the purpose (s28(d))

Strict liability provisions have only been included in the Bill in instances where the significance to response operations is perceived as being critical and could impede efforts to protect the environment, economy or community from exposure or spread of biosecurity matter or contaminants being managed.

Where they are applied to permits, registrations and authorisations, and in relation to a direction or declaration, they are in place to deter non-compliance with these requirements and conditions.

The strict liability offences in the Bill engage the right to be presumed innocent by reversing the onus of proof from the prosecution onto a defendant. In instances in the Bill where there is a reverse onus of proof its purpose is to ensure the effective enforcement of and compliance with the requirements of the Bill by enabling the offences within it to be effectively prosecuted. The limitation on section 22 is aimed at providing the effective promotion of responsible conduct in the face of a biosecurity event which could have significant financial, environmental, economic or community impacts, including compromise Australia's international biosecurity status.

4. Proportionality (s28 (e))

The right to presumption of innocence before the law has been recognised by the common law and is codified in section 22 of the HR Act. The courts have held, however, that the right to presumption of innocence may be subject to limits, particularly where those who might be affected by an offence would be expected to be aware of its existence.

Section 23 (1) (b) of the *Criminal Code 2002* provides a specific defence to strict liability offences of mistake of fact. Section 23 (3) of the Criminal Code provides that other defences may also be available for use for strict liability offences, which includes the defence of intervening conduct or event, as provided by section 39 of the Criminal Code.

As a general safeguard in the Bill, all strict liability offences are limited to a monetary penalty of 50 penalty units, which is in line with the Guide to Framing Offences.

In relation to the proportionality of the use of strict liability offence provisions in the Bill proposed for:

Section 27 Fail to comply with duty to notify biosecurity event

Section 31 Offences-fail to comply with duty to notify presence of notifiable biosecurity matter

A biosecurity event is defined in the Bill and examples of what events would give rise to a biosecurity event are also included. These may include the appearance of unexplained and significant signs or symptoms in animals, including unexplained neurological signs or conditions, and symptoms in plants that are unexplained in significant. These are observable and noticeable events among animal and plant stock.

Similarly, notifiable biosecurity matter is biosecurity matter that the Minister has declared through a notifiable instrument. It is reasonable to expect that any person operating in sectors of the economy where such matter may arise is aware of the notification requirement.

Under both offences, a defendant has recourse to a defence if the defendant proves they believed on reasonable grounds that the biosecurity event was widely and publicly known. A defendant can also prove that they took all reasonable precautions and exercised all appropriate diligence to prevent the commission of the offence.

Section 36 Offences-engage in prohibited dealing

A prohibited dealing is declared by the Minister through a notifiable instrument.

A defendant has recourse to a defence if the defendant proves they had a reasonable excuse to be engaging in a prohibited dealing. The burden of proof rests with the defendant as the defendant would be best placed to provide any evidential proof. For example, that the defendant holds a biosecurity permit to engage in the prohibited dealing. A defendant could also prove that they took all reasonable precautions and exercised all appropriate diligence to prevent the commission of the offence.

Section 49 Offences – Fail to comply with emergency declaration

Section 61 Offences – Fail to comply with control declaration

Directions under an emergency declaration, and control declaration are time critical, coordinated and specific, so that response efforts can be expediently carried out to avert or effectively manage a significant biosecurity risk.

Declarations must be specific about the measures that must be complied with. Furthermore, it is a requirement in the Bill that for this offence to be applicable, at the time the person committed the offence, the person had been made aware of the emergency declaration.

Section 73 – Offences – fail to comply with permit condition

Section 86 – Offences – fail to comply with group exemption condition

Biosecurity permits and Biosecurity Group Exemptions are conditional. They allow for dealings which would otherwise be non-compliant with the Bill. The terms and conditions inherent in these agreements are explicit risk management measures, and are specified to effectively avert and manage potential biosecurity risks associated with the activity. Failure to comply with these terms and conditions would create a biosecurity risk as risk management protocols are not being adhered to. Permit holders are aware of the conditions on their permits.

Section 90 – Offences – engage in regulated dealing without registration

Section 100 – Offences – fail to comply with registration condition

Regulated dealings are specific dealings, such as the keeping of bees. They are designated as such due to the biosecurity risks they are susceptible to, their significance within the economy, including potentially in export and trade, and the import/export protocols in place nationally and/or internationally which specify standards and requirements to support biosecure transactions in these goods and related services or products. These protocols have been agreed and negotiated between governments and industries, and meet the United Nations Sanitary and Phytosanitary Agreement requirements for market access and trade. Being registered is a condition of dealing with such matter or things.

Registration allows for traceability in the event of a biosecurity risk, and facilitates being able to contact, work with and disseminate information to relevant stakeholders within the industry. As operational needs of businesses are industry specific, many of the response and risk management support is provided by the industry bodies themselves to safeguard their members' interests and ensure that Australia's reputation as a supplier of the product(s) they trade meet trade compliance requirements. The requirements ensure that biosecurity hazards such as diseases are not spread, and that food and feed supplies are safe and fit for purpose, for example do not exceed agreed maximum residue levels set by trade protocols for biosecurity related contaminants. A person who is engaging in a regulated dealing without a registration therefore represents a significant risk to the industry.

Regulated dealings are prescribed by regulation. A strict liability offence is included under this provision as a person knows if they are registered or not, and should be aware of the requirement to be registered. The section also includes a legal burden on the defendant and defence provisions against subsection (1) in recognition of the fact that only the person may have recourse to information which proves that the person had a reasonable excuse for dealing with the prohibited biosecurity matter. For example, the person is registered to engage in the dealing or they are engaged as the employee or agent of a registered person for the specified regulated dealing.

Registration, like permits and group exemptions, are conditional agreements. When a person registers they are agreeing to the explicit terms and conditions of the registration. Failure to comply is a breach of the agreement and jeopardises the biosecurity of the other members of the industry.

Section 112 – Offences – false or misleading biosecurity certificate

Section 113 – Offences – false representation about biosecurity certificate

Section 138 – Offences – fail to comply with approval condition

A biosecurity certificate is an authorised endorsement of the status and/or condition of biosecurity matter, premises or other thing. For example, foot and mouth disease free livestock. Falsified or misleading information on a biosecurity certificate could negatively impact industry members by spreading a biosecurity risk, tarnishing the industry's reputation nationally and globally, and even could lead to trade restrictions and/or the need for World Trade Organisation dispute resolution.

Two strict liability offence provisions are included. These provisions are justified on the basis that people issuing and receiving biosecurity certificates are aware of the requirements of the scheme. This provision also acts as a deterrent against being open to corruption among providers of biosecurity certificates.

Similarly, approvals of certifiers, auditors and authorities are conditional agreements. Approval-holders are required to abide by the explicit standards, terms and conditions for conduct and acceptable practices and protocols in their agreement. Approvals represent an endorsement of accreditation to undertake the activities of the approval held. Approval holders are on notice of the conditions of their approval.

Section 156 – Offences – fail to comply with biosecurity direction

Part 10 of the Bill cites the scope of activities that are appropriate for a biosecurity direction. These activities are directly related to the management of a biosecurity risk by an authorised person. Biosecurity directions can be given in writing or orally, and may also be given in an emergency. If the biosecurity direction is given orally, a written confirmation of the direction must be given to the person within 7 days, unless the direction has already been complied with. This gives people captured by the strict liability offence clarity regarding what is required by the direction. Biosecurity directions could include for example the movement of biosecurity matter, the repair of a gate to secure an enclosure which has biosecurity matter in it or the erection of a sign which alerts people on the premises not to enter the enclosure.

A strict liability offence provision is included. The offence includes a legal burden on the defendant and defence provisions against subsection (1) in recognition of the fact that only the person may have recourse to information which proves that the person has a reasonable excuse for failing to comply with the direction.

Section 166 – Offences – fail to comply with biosecurity undertaking

A biosecurity undertaking is a written commitment to the director-general by a person to undertake explicit actions within specified timeframes which are related to managing a biosecurity risk. Failure to follow through with such a commitment would jeopardise the efficacy of the planned risk management response. People who give undertakings are aware of the terms they have agreed to.

Sections 176, 177, 179, 180, 184, 186 & 188 – Offences supporting enforcement powers

There are several strict liability offences that support the enforcement and investigative powers of authorised persons. These offences require people to refrain from interfering with signs, devices or other equipment placed by authorised people, co-operate with authorised persons by providing information and documents, answer questions, refrain from interfering with seized things, and to give name and address, and stop vehicles.

These are all important features of biosecurity risk management and the investigation and enforcement of offences under the Bill.

A number of safeguards have been included. It is a defence against the strict liability offences in sections 176 and 182 that the defendant proves they held a reasonable excuse for non-compliance. Information gathering and questioning by authorised persons are only permitted because they relate to the management of the biosecurity event and it is reasonably believed at the time that this information is material to the management response of said event. An authorised person must give written notice stating a time and place nominated by the person that is reasonable in the circumstances for the person to attend and answer questions about a matter that the person is reasonably believed to have knowledge about. Before requiring a person to comply with a requirement under section 177, section 179, section 180 (1) and section 186, they must be given a warning that failure to comply constitutes an offence. It is a defence under section 188 that the defendant proves they had a reasonable excuse for failing to comply with the direction.

Section 223 of the Bill also provides protection against civil or criminal liability to persons who give information honestly and without recklessness in relation to a biosecurity risk or matter.

For all strict liability offences, although an evidential onus would be less restrictive on the right to be presumed innocent found in section 22, it would not be as effective. This is because strict liability offences provide that the defendant's act alone should dictate the offence, rather than the reasons that the defendant acted in that way.

Section 27B – Right to work and rights in works

1. Nature of the right and the limitation (s28(a) and (c))

27B Right to work and other work-related rights

- 1) Everyone has the right to work, including the right to choose their occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.
- 2) Everyone has the right to the enjoyment of just and favourable conditions of work.

The Bill includes provisions for permit, authorisation, registration, identification and traceability schemes. These provisions may impact people whose work and livelihoods require engaging in conduct that would otherwise constitute an offence to undertake that

work in a regulated way and may limit the right to work, as the eligibility conditions will necessarily exclude some people from the opportunity to participate in this type of work.

2. *Legitimate purpose (s28(b))*

The legitimate purpose of these measures is to manage biosecurity risks arising from biosecurity matter, dealings with biosecurity matter or carriers and other activities involving biosecurity matter or carriers that may pose a biosecurity risk to the environment, the economy or the community.

3. *Rational connection between the limitation and the purpose (s28(d))*

Requiring that people who work in the biosecurity sector, and/or with biosecurity matter obtain the necessary licenses, registration and approvals is rationally connected to managing biosecurity risk, as it ensures that only those with the requisite skills, knowledge and experience, and those that are suitable under the Bill, are permitted to engage in behaviour that poses a biosecurity risk.

Within the biosecurity continuum in the national biosecurity system, all jurisdictions operate and participate in a range of these schemes and they are part of the biosecurity operating environment. Accreditation and auditability provide for additional safety nets within the system, supported by strong enforcement provisions to deter non-compliance with the Bill. International trade and market access provide the backdrop and enabling framework for import and export protocols which inform the national biosecurity system. The provisions in the Bill give effect to these broader system requirements.

4. *Proportionality (s28 (e))*

The work requirements for these roles within the biosecurity system are often technical and/or specialised. Incompetence and inadequate skills in these areas puts at risks the whole biosecurity system, and the community, environment and economy. For these reasons and to safeguard the integrity of the system, the Bill specifies processes for selection and authorisation of appropriate individuals. Professional and industry schemes of this nature are not unique to the biosecurity sector. They exist in the ACT in other sectors, for example in the form of professional bodies such as for engineers.

Authorisations and approvals may also permit activities relating to biosecurity matter which would otherwise be non-compliant with the Bill. They would be non-compliant because they have the potential to pose a biosecurity risk. Therefore, these arrangements specify explicit terms, conditions and technical requirements for the safe conduct of these activities by appropriately qualified and experienced people. As such sections 68, 96 and 132 of the Bill require that appropriate consideration is given to the suitability of a person applying for a permit, registration or approval under the Bill. Considerations of suitability must take into account the applicant's history of compliance with the Bill and other legislation that is relevant, the outcomes of previous biosecurity audits, matters prescribed in regulation and matters the director-general considers relevant. This allows the decision-maker to build a relevant risk-profile for the applicant.

Consequently, the Bill also provides for persons who cannot demonstrate that they have the necessary qualifications, skills, knowledge and experience to have their applications refused, where the risk associated with the conduct would be unacceptable.

The Bill requires that reasons for refusal must be stated in a written decision notice in each case for permits (s 67), registration (s 95) and approvals (s 131).

Similarly, should the circumstances and/or conditions of the arrangement changes, including the biosecurity risk levels associated with the conduct, the Bill provides for the suspension or cancellation of a permit (s 74), registration (s 101) and approval (s 139). These safeguards are in place to reflect the need for a high level of responsiveness within the biosecurity system. For example, the biosecurity risk when foot and mouth disease is not present in the Asia-Pacific region is different from its biosecurity risk level when it is detected in an import shipment on Australian shores. These decisions are based on the proportional risk associated with the conduct at the time and are necessary to safeguard the integrity of the system as a whole, and the community, economy and environment. In most cases other than emergencies, the permit-holder, registered person or approved person must be given notice of the proposed suspension or cancellation. Persons affected by these proposed suspensions and cancellations have 28 days to make a submission to the director-general about the proposed suspension or cancellation.

Section 222 of the Bill provides for the review of decisions, as stated in Schedule 1.

SUMMARY

The provisions of the Bill support pest and disease management strategies and response policies, and reflect established roles and responsibilities of government and industry in:

- reducing the impact of pests and diseases on the environment, people (including social amenity and human infrastructure) and business activity by improving management of pests and diseases;
- ensuring more efficient and timely emergency responses to pest and disease outbreaks;
- maintaining Australia's favourable international reputation for being free of many pests and diseases, including for biosecure business activity and ecosystem sustainability;
- maintaining continued compliance with Australia's national requirements and obligations; and
- providing cost-effective, science and risk-based biosecurity management for Territorians.

It should be noted that the presence of biosecurity matter or a carrier of biosecurity matter does not trigger a biosecurity duty, obligation, requirement or response in and of themselves, but only in cases where they pose or are likely to pose a risk to the environment, economy or community.

The measures proposed are carefully targeted and are the least restrictive for the broad spectrum of circumstances that need a suitable legislative framework to enable the effective and efficient operation of the ACT biosecurity system.

BIOSECURITY BILL 2023

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Biosecurity Bill 2023**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

.....

Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

PART 1 PRELIMINARY

DIVISION 1.1 INTRODUCTION

Clause 1 Name of Act

This clause provides that the name of the Act is the *Biosecurity Act 2023*.

Clause 2 Commencement

This clause provides for the commencement of the Act.

Clause 3 Dictionary

This clause incorporates the dictionary at the end of the Bill as part of the Bill.

The definitions and specified terms in the Bill, such as biosecurity matter, carrier, dealing with, biosecurity risk and biosecurity impacts, are based on language consistent with international and national legal instruments, agreements and their related standards, texts and definitions, and are understood within the context of the biosecurity continuum.

Clause 4 Notes

This clause provides that a note in the Bill is merely explanatory.

Clause 5 Offences against Act – application of Criminal Code etc

This clause provides that other legislation, notably *Criminal Code 2002*, applies to offences in this Bill. This is a standard clause included in all Acts. It is intended to draw the reader's attention to the provisions of the Criminal Code, Chapter 2, General Principles of Criminal Responsibility. It also provides a reference to penalty units.

Clause 6 Objects of Act

This clause stipulates the objects of the Bill consistent with the ACT Government Biosecurity Strategy 2016-2026 and the ACT Government's obligations and commitments under the national biosecurity system.

Key objectives include managing biosecurity risks, promoting biosecurity as a shared responsibility between government, industry and the community, providing an effective risk-based framework for management of biosecurity risks, give effect to intergovernmental biosecurity agreements and facilitate trade.

Clause 7 Application of Act – emergency services and police

This clause provides that this Bill does not apply to the exercise or purported exercise of a function by a relevant person under the *Emergencies Act 2004* or a police officer when protecting life or property. It also includes a definition of relevant person.

DIVISION 1.2 IMPORTANT CONCEPTS

This Division defines several key concepts important in understanding the framework for biosecurity management in the ACT and its interpretation through the Bill.

These terms are understood across the biosecurity continuum and within the national biosecurity system which the ACT biosecurity system is a part of. They provide clear parameters to ensure that the Bill and its powers are interpreted consistent with and limited to the intent and context of the ACT biosecurity system.

Clause 8 Meaning of *biosecurity matter*

This clause defines the concept of *biosecurity matter* which consists of pest plants (weeds), pest animals, diseases affecting animals and plants, and contaminants affecting animals and plants. It also includes other specified things, such as prions, that can spread disease among plants or animals or from animals to humans but will not include disease agents that can transmit disease between humans. Biosecurity matter or a carrier of biosecurity matter will not trigger a duty, obligation, requirement or response unless the biosecurity matter or carrier poses or is likely to pose a risk to the environment, economy or community.

It should be noted that biosecurity risks to the human population will continue to be regulated under the ACT *Public Health Act 1997*.

Clause 9 Meaning of *carrier*

This clause defines the concept of *carrier* as anything that is capable of having biosecurity matter on or in it.

Clause 10 Meaning of *deal with biosecurity matter or carrier*

This clause defines the concept of *deal with biosecurity matter or carrier*.

Clause 11 Meaning of *pest*

The clause defines the concept of *pest*.

Clause 12 Meaning of *biosecurity impact*

The clause defines the concept of *biosecurity impact* as it relates to an adverse effect on the environment, economy or community from the introduction, spread or increase of biosecurity matter; or contamination of an animal, plant animal product or plant product making it unfit for commercial or other activity, a risk to human health or the environment, or unfit for export or trade.

Clause 13 Meaning of *biosecurity risk*

This clause defines the concept of *biosecurity risk* as the risk of a biosecurity impact happening.

Clause 14 Reasonable suspicion - carriers

This clause specifies the grounds for reasonably suspecting that an animal, plant or other thing is a carrier.

Clause 15 Reasonable suspicion – disease infection

This clause specifies the grounds for reasonably suspecting that an animal, plant or other thing is infected with a disease.

Clause 16 Reasonable suspicion – pest infestation

This clause specifies the grounds for reasonably suspecting that an animal, plant, place or thing is infested with a pest.

PART 2 BIOSECURITY DUTIES AND OFFENCES

DIVISION 2.1 PRINCIPLES APPLYING TO BIOSECURITY DUTIES

Clause 17 Biosecurity duties not transferable

This clause provides for the non-transferability of biosecurity duties.

Clause 18 Person can have more than 1 biosecurity duty

This clause provides for a person to be able to have multiple biosecurity duties.

Clause 19 More than 1 person can have a biosecurity duty

This clause provides for a biosecurity duty to be assigned to more than one person.

Clause 20 Duty to manage biosecurity risk

This clause provides for a biosecurity duty to be imposed on a relevant person to take all reasonable steps to manage a biosecurity risk.

Clause 21 Meaning of *reasonable steps*

This clause defines the concept of *reasonable steps* which requires consideration of a range of factors, including the nature of the biosecurity risk, the degree of impact, the availability and suitability of ways to prevent, eliminate or minimise the biosecurity risk, and the costs involved.

DIVISION 2.2 GENERAL BIOSECURITY DUTY

Clause 22 General biosecurity duty

This clause provides for the concept of a general biosecurity duty which requires relevant persons who deal with biosecurity matter or a carrier of biosecurity matter to take all reasonable steps to prevent, eliminate or minimise the biosecurity risk posed or likely to be posed by that matter.

This duty will only apply to people who know or ought to know of the relevant biosecurity risks. It provides for relevant stakeholders to play an active role in improving the likelihood of early, more efficient and cost-effective response options.

The concept of a general biosecurity duty is not unique to the ACT but is used by other jurisdictions, including NSW and the Australian Government, and is consistent with modern approaches and an on-going commitment to prevention and response through a participatory model.

Clause 23 Specific biosecurity requirements

This clause provides for specific biosecurity requirements which must be met as part of a general biosecurity duty.

Where specific biosecurity requirements are in place under the Bill or another Territory law in relation to a particular dealing, a person who fails to comply with those specific requirements fails to comply with his/her general biosecurity duty.

It is not possible nor in accordance with best practice regulatory principles to specify each and every requirement that must be met for all biosecurity risks in all circumstances. Accordingly, there will be numerous circumstances where specific biosecurity requirements will not be in place leaving it up to the person to choose how they wish to comply with their general biosecurity duty. This incorporates the concept that biosecurity is a shared responsibility and also provides greater flexibility for a person to decide the mitigation measures that best suit a particular circumstance consistent with the concept of reasonable steps as defined in the Bill.

Clause 24 Offences – fail to comply with general biosecurity duty

This clause provides an offence if a person intentionally or negligently fails to comply with a general biosecurity duty.

For intentional offences, the maximum penalty is 2,500 penalty units, imprisonment for 2 years or both. For negligent offences the maximum penalty is 2,500 penalty units.

The clause provides a further offence irrespective of whether the failure was intentional or negligent if the failure causes a significant biosecurity impact. The maximum penalty for this offence is 5,000 penalty units, imprisonment for 4 years or both.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts, and in the case of individuals and entities ranging from small businesses to multi-million dollar corporations. They are nevertheless lower than those of NSW. However, they may still be considered severe enough within the ACT legislative framework to act as a deterrent against non-compliance against the Bill.

Inadequate legislative provisions would risk the ACT becoming an attractive dumping ground for biosecurity matter or a place for their illegal dealings. Such an outcome not only

jeopardises the environment, economy and community but also the ACT Government's reputation within the national biosecurity system.

DIVISION 2.3 DUTY TO NOTIFY BIOSECURITY EVENTS

Clause 25 Meaning of *biosecurity event*

This clause defines the concept of *biosecurity event* as a current or likely event that has had or is likely to have a significant biosecurity impact.

It also specifies several circumstances that would constitute a biosecurity event including the presence of prohibited matter in any part of the Territory, the appearance of ulcers or blisters on the feet or mouth of ruminants or pigs, an unexplained and significant increase in mortality or morbidity rates in animals or plants or an unexplained fall in production relating to plants or animals.

The clause includes a regulation making power so that other events can be prescribed if required. This allows for the Bill to provide greater clarity as to what constitutes a biosecurity event for the purposes of the Bill into the future.

Clause 26 Duty to notify biosecurity event

Biosecurity events will need to be immediately reported. This will enable prompt diagnosis and response for new and emerging significant pests and diseases, enable early response strategies to help reduce costs, losses, and harm to the environment, economy and community.

The duty to notify only arises if the person is the owner, occupier, in charge of or in possession of premises, carrier or other thing in relation to which the event relates or becomes aware of it through a professional capacity.

Clause 27 Offences - fail to comply with duty to notify biosecurity event

This clause provides an offence if a person who has a duty to notify a biosecurity event, fails to comply. The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence for failing to notify a biosecurity event under this subsection.

If a person intentionally or negligently fails to comply with the duty the maximum penalty is 2,500 penalty units, imprisonment for 2 years or both.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts. They also include two defences if the defendant proves that they took all reasonable precautions and exercised appropriate due diligence to prevent the commission of the offence or if they reasonably believed that the biosecurity event was already widely and publicly known.

Clause 28 Duty to notify biosecurity event – self-incrimination

This clause provides that a person is not excused from his/her duty to notify a biosecurity event on the ground that this may incriminate the person or expose the person to a penalty.

However, the clause also provides that any information, document or thing obtained because of the person complying with the duty is not admissible in evidence against the person in any proceedings other than for an offence against this section or an offence relating to false or misleading information, document or things.

DIVISION 2.4 DUTY TO NOTIFY PRESENCE OF BIOSECURITY MATTER

Clause 29 Notifiable biosecurity matter

This clause provides for the Minister to declare biosecurity matter that poses a risk to the environment, economy or community to be *notifiable biosecurity matter*. A declaration is a notifiable instrument under the Bill.

Clause 30 Duty to notify presence of notifiable biosecurity matter

This clause provides for a duty to notify the presence of notifiable biosecurity matter. The duty to notify notifiable biosecurity matter only applies to people who are in a position to know of the presence and the risk.

Clause 31 Offences - fail to comply with duty to notify presence of notifiable biosecurity matter

This clause provides an offence if a person has a duty to notify a notifiable biosecurity matter and fails to comply. The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence for failing to notify a notifiable biosecurity matter under this subsection.

If a person intentionally or negligently fails to comply with the duty the maximum penalty is 2,500 penalty units, imprisonment for 2 years or both.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts. The clause includes two defences if the defendant proves that they took all reasonable precautions and exercised appropriate due diligence to prevent the commission of the offence or if they reasonably believed that the biosecurity event was already widely and publicly known.

Clause 32 Duty to notify presence of notifiable biosecurity matter – self-incrimination

This clause provides that a person is not excused from the duty to notify the presence of notifiable biosecurity matter on the ground that this may incriminate the person or expose the person to a penalty.

However, the clause also provides that any information, document or thing obtained because of the person complying with the duty is not admissible in evidence against the person in any proceedings other than for an offence against this section or an offence relating to false or misleading information, document or things.

DIVISION 2.5 PROHIBITED BIOSECURITY MATTER

Clause 33 Prohibited biosecurity matter

This clause provides for the Minister to declare biosecurity matter to be *prohibited biosecurity matter*. A declaration may apply to a stated part of the ACT and is a notifiable instrument.

Notification of the presence or suspected presence of prohibited biosecurity matter will require immediate reporting to ensure early detection to minimise biosecurity impacts and harm, loss and costs to the environment, economy and community.

Clause 34 Offences - deal with prohibited biosecurity matter

This clause provides an offence if a person deals with prohibited biosecurity matter. Prohibited biosecurity matter is biosecurity matter that could have significant adverse consequences for the environment, economy or community and that is declared to be prohibited biosecurity matter.

The Bill defines '*deal with*' in clause 10. Deal with is a term that is used and understood across the biosecurity continuum.

The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence for dealing with prohibited biosecurity matter under this subsection.

If a person intentionally or negligently commits an offence the maximum penalty is 2,500 penalty units, imprisonment for 2 years or both.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts. They are considered severe enough within the ACT legislative framework to act as a disincentive against the dumping of biosecurity matter in the ACT and against non-compliance.

The clause includes two defences: if the defendant proves that they did not know, or could not reasonably be expected to have known, that they had prohibited biosecurity matter in their possession; or if the defendant proves that they took all reasonable precautions and exercised all appropriate diligence to prevent the commission of the offence.

DIVISION 2.6 PROHIBITED DEALINGS WITH BIOSECURITY MATTER

Clause 35 Prohibited dealings with biosecurity matter

This clause provides for the Minister to declare that a stated dealing with biosecurity matter is prohibited (*prohibited dealing*) if the dealing poses a significant biosecurity risk. A declaration may apply to a stated part of the ACT and is a notifiable instrument.

Clause 36 Offences - engage in prohibited dealing

This clause provides an offence if a person engages in a prohibited dealing. The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence for engaging in a prohibited dealing.

If a person intentionally or negligently commits an offence the maximum penalty is 2,500 penalty units.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts. They are considered severe enough within the ACT legislative framework to act as a disincentive against the dumping of biosecurity matter in the ACT and against non-compliance.

DIVISION 2.7 ALTERNATIVE VERDICTS

Clause 37 Alternative verdicts for offences

This clause provides that if a trier of fact is not satisfied beyond reasonable doubt that the defendant is guilty of the relevant offence but is satisfied beyond reasonable doubt that the defendant is guilty of an alternative offence, the trier of fact may find the defendant guilty of the alternative offence, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

Relevant offences and alternative offences are cited in table 37.

PART 3 BIOSECURITY EMERGENCY DECLARATIONS

Clause 38 Emergency declarations

This clause provides that the Minister may declare a biosecurity emergency if satisfied or reasonably suspects that there is a current or imminent biosecurity risk that may have a significant biosecurity impact. The clause includes provisions on what must be included in an emergency declaration and the purposes for which an emergency declaration may be made.

An emergency declaration is a notifiable instrument unless the declaration applies only to stated premises (referred to as a *property specific declaration*) and the Minister considers it appropriate to not notify the declaration. For property specific declarations, the Minister may instead give a copy to the owner, occupier or person apparently in charge of the premises. This measure ensures that confidentiality and privacy matters can be protected appropriate to the circumstances.

Under the proposed framework, a biosecurity emergency could be triggered where there is a current, suspected or imminent significant biosecurity risk. This could include the detection of foot and mouth disease or a serious zoonotic disease, although it is important to note that not all significant biosecurity risks will require the exercise of emergency powers.

In the case of an emergency, authorised people need adequate powers of entry and search, and may need immediate entry to premises. They also require strong information gathering powers even if the answer may incriminate the person. While any answer provided in this situation will not be able to be used against the person in other proceedings, the information may be critical in assisting with eradicating or containing the biosecurity risk or minimising its adverse impacts for the benefit of the environment, economy and community.

The ACT Biosecurity Emergency Plan is a subplan under the ACT Emergency Plan that:

- a) details responsibilities for the control and coordination of biosecurity emergencies in the ACT;
- b) adopts the emergency management framework established under the *Emergencies Act 2004* when a whole-of-government response is required; and
- c) recognises that many biosecurity emergencies will not require a whole-of-government response and will instead be coordinated by the Environment Planning and Sustainable Development Directorate (EPSDD) using consistent emergency management structures.

Clause 39 Emergency declarations – duration

This clause provides that the duration of an emergency declaration is 6 months after it comes into force unless a shorter duration is stated in the declaration.

An emergency declaration can be extended for additional periods of up to 6 months to allow for longer term emergency responses such as a multi-jurisdictional foot and mouth disease outbreak.

An extension of an emergency declaration is a notifiable instrument.

Clause 40 Emergency declarations – notice

This clause provides that the Minister must give public notice of an emergency declaration and an extension of an emergency declaration unless it is a property specific declaration. For property specific declarations, the Minister may instead give a copy to the owner, occupier or person apparently in charge of the premises. This measure ensures that confidentiality and privacy matters can be protected appropriate to the circumstances.

In addition, the Minister must take reasonable steps to ensure that people who are likely to be directly affected by the declaration or extension are made aware of it.

Clause 41 Emergency declarations – deciding emergency measures

This clause provides that when deciding emergency measures, the Minister must ensure that the measures are no more onerous than considered necessary given the nature of the particular biosecurity emergency. The Minister must also consider the purposes for emergency declarations as specified in section 38 (3) and any other relevant matters.

Clause 42 Emergency declarations – scope of emergency measures

This clause provides that emergency measures may prohibit, regulate or control the doing of, or require or authorise the doing of, anything related to the biosecurity risk, and describes particular sorts of activities that are considered appropriate.

Clause 43 Emergency declarations - measures restricting movement of people

This clause provides for emergency measures to restrict movement of people in specified ways only. This includes limited powers to regulate the movement of people through designated entry and exit points.

This clause does not prevent an emergency measure being imposed in relation to any biosecurity matter, premises, activity or other thing, that has an impact on the movement of a person but that is not imposed for the purpose of restricting the movement of the person.

Clause 44 Emergency declarations - measures about treatment of people

This clause specifies that an emergency declaration can only require an external treatment measure to be carried out in relation to a person and must not require a person to provide a sample of their blood, hair, saliva or any other body part or body fluid.

External treatment measures may include for example the use of a foot bath in the case of an emergency to prevent the spread of biosecurity matter.

Clause 45 Emergency declarations - measures about inspection of people

This clause specifies that a requirement in an emergency declaration for the inspection of people by an authorised person must be limited to a visual inspection (which could include the exterior of the person's clothing, accessories and shoes) and to shake or otherwise move the person's hair.

This is considered the least invasive and restrictive approach to inspection for biosecurity matter on the person while enabling authorised persons to undertake their functions under the provisions of the Bill.

Clause 46 Emergency declarations - measures about destruction of things

This clause specifies that an emergency declaration must not require or authorise the destruction of any biosecurity matter or other thing unless the Minister is satisfied that certain conditions require it.

This clause specifies the terms and conditions under which an emergency declaration may include a requirement to destroy any biosecurity matter or other thing. In such circumstances, the Minister must ensure that a copy of the declaration is given to the owner or person in charge of the matter or thing that is destroyed, unless said persons cannot be found after reasonable inquiry and the Minister considers the declaration must be carried out without delay.

These requirements are considered the least invasive to the person while still enabling authorised persons to undertake their functions under the provisions of the Bill.

Clause 47 Emergency declarations - prevail over other instruments

This clause specifies the situations in which an emergency declaration prevails, to the extent of any inconsistency with other regulations, directions, declarations, permits, authorisations, undertakings or any other exemption, right or instrument under this Bill.

Clause 48 Emergency declarations - authorising actions and recovering costs

This clause provides for the director-general to authorise a person to take authorised actions if a person fails to comply with an emergency declaration, and to recover reasonable costs for taking action under this section.

This clause also specifies the requirements for the director-general to give written notice to an occupier of the premises if authorising entry to residential premises. The notice must include the day of entry and must be given to the occupier at least 1 day before the day of entry. However, notice is not required if the occupier of the premises has already consented or is under the authority of a warrant.

Clause 49 Offences – fail to comply with emergency declaration

A person must comply with an emergency declaration. The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence under this subsection.

A person commits an offence if the person intentionally or negligently fails to comply with an emergency declaration. The maximum penalty for this offence is 2,500 penalty units, imprisonment for 2 years or both.

This section does not apply if the person who committed the offence, at the time was not made aware of the emergency declaration. The clause also states how a person can be made aware of an emergency declaration.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts. They are nevertheless lower than those of NSW. However, they may still be considered severe enough within the ACT legislative framework to act as a disincentive against the dumping of biosecurity matter in the ACT.

Clause 50 Emergency declarations - protection of emergency actions

This clause restricts a court or tribunal from pronouncing interim actions which have the effect of preventing, restricting, staying or deferring any emergency declaration or anything authorised or required to be done under an emergency declaration during the period of the declaration.

However, a court or tribunal may still make a permanent injunction or other final order in any proceeding at any time.

PART 4 BIOSECURITY CONTROL DECLARATIONS

Clause 51 Control declarations

This clause provides for the Minister to make a control declaration to manage a biosecurity risk or biosecurity impact if satisfied that it is necessary.

The main purpose of a control declaration is to prevent the introduction into the ACT, eradicate from the ACT, or minimise and manage in the ACT, biosecurity matter that poses a risk, including a significant biosecurity risk or impact. For example, the ACT can prevent the introduction of a new significant pest that has been detected in mainland Australia but is outside the ACT by issuing a control declaration that requires treatment of affected carriers prior to entry into the Territory.

It is anticipated that time-limited control declarations will be the preferred mechanism to protect the ACT from biosecurity risks outside the Territory and to manage most biosecurity responses within the ACT. Import and export protocols to protect borders are a fundamental feature of biosecurity risk management, nationally and internationally.

A control declaration is a notifiable instrument.

Clause 52 Control declarations - duration

It is proposed that control declarations will have a duration of five years unless otherwise specified and commences on the day after it is notified or any later day stated in the declaration.

Clause 53 Control declarations - notice

The Minister must give public notice of a control declaration and must take reasonable steps to ensure people who are likely to be directly affected by the declaration are made aware of the declaration.

Clause 54 Control declarations – deciding control measures

This clause provides that when deciding the control measures, the Minister must ensure that the measures are no more onerous than considered necessary given the nature of the biosecurity risk or impact. The Minister must also consider the purposes for control declarations as specified in section 51 (3) and any other relevant matters.

Clause 55 Control declarations – scope of control measures

This clause provides that control measures may prohibit, regulate or control the doing of, or require or authorise the doing of, anything related to the biosecurity risk, and describes measures that are appropriate in this regard.

Clause 56 Control declarations – measures restricting movement of people

A control declaration must not prohibit, regulate, control or require the movement of a person.

However, a control declaration may impose restrictions to any biosecurity matter, premises, area, activity or other thing, that has an impact on the movement of a person but that is not imposed for the purpose of restricting the movement of the person.

Clause 57 Control declarations - measures about treatment of people

This clause specifies that a control declaration must not require a treatment measure to be carried out in relation to a person and must not require a person to provide a sample of their blood, hair, saliva or any other body part or body fluid.

Clause 58 Control declarations - measures about destruction of things

This clause specifies that a control declaration must not require or authorise the destruction of any biosecurity matter or other thing unless the Minister is satisfied that certain specified conditions require it.

This clause specifies the terms and conditions under which a control declaration may include a requirement to destroy any biosecurity matter or other thing. In such circumstances, the Minister must ensure that a copy of the declaration is given to the owner or person in charge of the matter or thing before it is destroyed, unless said person cannot be found after reasonable inquiry and the Minister considers the declaration must be carried out without delay.

This clause provides for the least possible impact on people while enabling authorised persons to undertake functions under the relevant provisions of the Bill.

Clause 59 Control declarations - nature conservation and heritage matters

A control declaration must not require a person to interfere with a native animal, native fish, native plant, natural or constructed structure or feature in a reserve, infrastructure in a reserve, a site or object of historical, archaeological, palaeontological or geological interest in a reserve, without the Minister having consulted with the conservator of flora and fauna.

The meaning of *interfere* is included in the dictionary.

A failure to comply with this section does not invalidate the control declaration.

This provision ensures consistency and compliance with the requirements of the *Nature Conservation Act 2014* and the *Heritage Act 2004*.

Clause 60 Control declarations – authorising actions and recovering costs

This clause provides for the director-general to authorise a person to take authorised actions if a person fails to comply with a control declaration, and to recover reasonable costs for taking action under this section.

This includes entering the premises other than the residential premises, and taking action in relation to the premises, or anything at the premises, that the liable person is required by the control declaration to take or is otherwise necessary to remedy the failure to comply.

The Bill recognises the complexity of biosecurity management and the important roles played across all land tenures. It acknowledges the shared responsibility for biosecurity of government, industry and relevant stakeholders within the ACT and across the border with NSW. It supports appropriate and cost-effective implementation of the ACT's biosecurity objectives consistent with the ACT Government's national obligations. Recovery of relevant and reasonable costs is considered an acceptable and fair practice within the biosecurity continuum.

Clause 61 Offences – fail to comply with control declaration

A person must comply with a control declaration. The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence under this subsection.

A person commits an offence if the person intentionally or negligently fails to comply with a control declaration. The maximum penalty for this offence is 1,000 penalty units.

This section does not apply if, at the time, the person who committed the offence was not made aware of the control declaration. The clause also states how a person can be made aware of a control declaration.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts. They are nevertheless lower than those of NSW. However, they may still be considered severe enough within the ACT legislative framework to act as a disincentive against the dumping of biosecurity matter in the ACT.

PART 5 BIOSECURITY PERMITS AND GROUP EXEMPTIONS

DIVISION 5.1 BIOSECURITY PERMITS

Clause 62 Biosecurity permits authorise conduct otherwise prohibited

Biosecurity permits prescribe necessary conditions to provide for situations where a person may need to engage in conduct which would otherwise be prohibited under the Bill. For example, a need to:

- a) deal with prohibited biosecurity matter (s 34);
- b) engage in a prohibited dealing (s 36); or
- c) failing to comply with an emergency declaration (s 49).

A permit does not authorise conduct in contravention of an emergency declaration, or a biosecurity direction given in an emergency, unless the permit expressly relates or applies to the emergency.

Clause 63 Permits - application

This clause provides for a person to apply to the director-general for a permit to engage in conduct otherwise an offence under the Bill and stipulates the format and requirements for an application.

Clause 64 Permits - renewal application

This clause provides for a person to apply for the renewal of a permit to the director-general, and stipulates the format and requirements of the renewal application.

In cases where the application for renewal is made before the permit expires, the permit continues in force until the director-general notifies the applicant of a decision on the renewal application. This reduces the risk of arresting permit activities pending a decision when there is no reasonable need to do so.

Clause 65 Permits – additional information

This clause provides for the director-general to seek additional information by written notice from a person applying for a permit or a renewal of a permit that the director-general reasonably needs to decide the application.

Non-compliance with a requirement in the notice may be grounds for the director-general to refuse further consideration of the application.

Clause 66 Permits – change of information

This clause requires that a person applying for a permit or the renewal of a permit must provide as soon as practicable, to the director-general written notice of details of changes to information in the application, if these changes are known before the application is decided.

Clause 67 Permits- decision on application

The director-general must approve or refuse applications for permits or permit renewals. Appropriate reasons for a refusal are specified in the section.

If the director-general fails to give notice of a decision within the period prescribed by regulation, the director-general is taken to have refused the application.

Clause 68 Permits - suitable person

This clause specifies what the director-general must consider in assessing whether an applicant is a suitable person, or in the case of a corporation, the suitability of each influential person for the corporation. Influential person is defined in section 225 of the Bill.

Clause 69 Permits – duration

A permit or renewal starts on the day it is given or any later stated date in the permit decision notice and expires 5 years after it starts or at any earlier date stated in the permit decision notice.

A permit has no effect during a period of suspension.

Clause 70 Permits – amendment

This clause makes provision for the director-general to amend a permit if satisfied that amendment is necessary, either on the director-general's own initiative or on the application of the permit-holder.

Clause 71 Permits – conditions

This clause specifies the conditions of a permit given under the Bill.

Clause 72 Permits – financial assurance conditions

This clause provides for the director-general to impose a condition on a permit requiring the permit-holder to provide a financial assurance (referred to as a *financial assurance condition*) and specifies the secured events to which this provision applies.

Clause 73 Offences – fail to comply with permit condition

A permit-holder must comply with the conditions of the permit. The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence under this subsection.

A person commits an offence if the permit is subject to condition, and the permit-holder intentionally or negligently fails to comply with the condition. The maximum penalty for this offence is 2,500 penalty units.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts.

Clause 74 Permits – grounds for suspension or cancellation

This clause stipulates the grounds for suspension or cancellation of a permit.

Clause 75 Permits – suspension

This clause provides for the director-general to give a permit-holder a written suspension if satisfied there are grounds for doing so.

Clause 76 Permits – notice of proposed suspension

Before suspending a permit, the director-general must give the permit-holder a written notice stating the intention to suspend the permit and the grounds for the proposed suspension. The notice must stipulate a stated date that is at least 28 days after the day the notice is given to the permit-holder by which time the permit-holder may make a submission to the director-general about the proposed suspension.

In deciding a suspension, the director-general must consider a submission received before the stated day.

Clause 77 Permits – immediate suspension without prior notice

This clause negates the need for a prior notice of proposed suspension if the director-general is satisfied that a suspension is required urgently because of the biosecurity impact of the conduct authorised by the permit, in an emergency, or any other reason prescribed by regulation.

The director-general must still give the permit-holder written notice of the grounds for proposed suspension. The notice must stipulate a stated date that is at least 28 days after the day the notice is given to the permit-holder by which time the permit-holder may make a submission to the director-general about the proposed suspension.

In deciding whether to revoke or continue the suspension, the director-general must consider a submission received before the stated day.

Clause 78 Permits – cancellation

This clause provides for the director-general to cancel a permit if satisfied there are reasonable grounds to do so, and requires that the grounds for cancellation and when the cancellation takes effect are given in a written cancellation notice to the permit-holder.

Clause 79 Permits - notice of proposed cancellation

This clause stipulates the process the director-general must follow to cancel a permit.

The director-general must give the permit-holder written notice of the grounds for proposed cancellation. The notice must stipulate a stated date that is at least 28 days after the day the notice is given to the permit-holder by which time the permit-holder may make a submission to the director-general about the proposed cancellation.

The director-general must take into account in deciding whether to revoke or continue the cancellation a submission received before the stated day.

Clause 80 Permits – immediate cancellation without prior notice

This clause provides for the immediate cancellation without prior notice of a permit in situations where the director-general is satisfied that there is an urgent biosecurity impact and need related to the permit activity, in an emergency, in situations where the permit is suspended, or for any other reason prescribed by regulation.

The director-general must still give the permit-holder written notice of the grounds for proposed cancellation. The notice must stipulate a stated date that is at least 28 days after the day the notice is given to the permit-holder by which time the permit-holder may make a submission to the director-general about the proposed cancellation.

The director-general must consider in deciding whether to revoke or continue the cancellation a submission received before the stated day.

Clause 81 Permits – surrender

This clause stipulates the process and conditions applying to the surrender of a biosecurity permit by a permit-holder.

DIVISION 5.2 GROUP EXEMPTIONS

Clause 82 Group exemptions

This clause defines a group exemption under the Bill as an exemption which authorises a stated class of people to engage in stated conduct otherwise prohibited by this Bill.

A group exemption does not authorise conduct in contravention of an emergency declaration or biosecurity direction given in an emergency unless the exemption expressly relates or applies to the emergency.

Clause 83 Group exemptions – declaration

This clause provides for the director-general to declare that a stated class of people is exempt from a stated provision of the Bill subject to specified conditions.

Clause 84 Group exemptions – duration

This clause stipulates that group declarations must not be for a period longer than 5 years.

Clause 85 Group exemptions – conditions

This clause provides for the director-general to impose any appropriate conditions on a group exemption.

Clause 86 Offences - fail to comply with group exemption condition

A person engaging in conduct under the authority of a group exemption must comply with the conditions of the group exemption. The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence under this subsection.

A person commits an offence if the group exemption is subject to condition, and the person intentionally or negligently fails to comply with the condition. The maximum penalty for this offence is 1,000 penalty units.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts. They are nevertheless lower than those of NSW. However, they may still be considered severe enough within the ACT legislative framework to act as a disincentive against the dumping of biosecurity matter in the ACT.

DIVISION 5.3 PERMITS AND GROUP EXEMPTIONS

Clause 87 Permits and group exemptions – exercise of functions in emergencies

This clause provides for the director-general to exercise a function in an emergency if reasonably believed necessary or a biosecurity emergency is suspected or has or is happening or is imminent.

PART 6 BIOSECURITY REGISTRATION

Registration is a scheme whereby people keeping certain biosecurity matter or undertaking certain activities will need to register with the director-general. Registration will assist with the management of biosecurity risks posed by the relevant biosecurity matter or activity. For example, through enhanced tracing capacity, the imposition of conditions to mitigate biosecurity risks, and the ability to notify key stakeholders about relevant biosecurity developments in a timely manner.

For example, the keeping of bees which is currently a requirement under Part 5A of the *Animal Diseases Act 2005*. Requirements for the management of bees will be imposed through conditions of registration, which may include compliance with parts of the industry-developed Biosecurity Code of Practice.

Registered biosecurity entities will be auditable to check compliance with requirements.

Clause 88 Meaning of *regulated dealing* - Part 6

The definition of *regulated dealing* is a dealing with biosecurity matter that is prescribed by regulation.

Clause 89 Biosecurity registration authorises regulated dealings

Biosecurity registration authorises the registered person to engage in a stated regulated dealing under the Bill.

Clause 90 Offences - engage in regulated dealing without registration

A person must not engage in a regulated dealing. The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence under this subsection.

A person commits an offence if the person intentionally or negligently engages in a regulated dealing. The maximum penalty for this offence is 1,000 penalty units.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts.

Clause 91 Registration - application

This clause provides for a person to apply to the director-general for registration to engage in a regulated dealing and specifies the method by which the person is required to do so. Regulated dealing is defined in section 88 of the Bill.

Clause 92 Registration – renewal application

This clause provides for a person to apply for the renewal of a registration to engage in a regulated dealing to the director-general and specifies the method by which the person is required to do so.

Clause 93 Registration – additional information

This clause provides for the director-general to seek more information in support of an application for registration or renewal application for registration to engage in a regulated dealing and specifies the conditions which apply for this process.

Clause 94 Registration – change of information

This clause requires that a person applying for a registration or the renewal of a registration must provide as soon as practicable, to the director-general written notice of details of changes to information in the application, if these changes are known before the application is decided.

Clause 95 Registration - decision on application

The director-general must approve or refuse applications for registration or renewal of a registration. Appropriate reasons for refusal are specified in the section.

If the director-general fails to give an applicant notice of a decision within the period prescribed by regulation, the director-general is taken to have refused the application.

Clause 96 Registration - suitable person

The director-general in deciding if an applicant is a suitable person must consider history of compliance with relevant Acts and the person's capacity to comply in the future, the outcome of any biosecurity audit, and any other matters prescribed by regulation or considered relevant by the director-general.

In the case of a corporation, the suitability of each influential person for the corporation must be considered. Influential person is defined in section 225 of the Bill.

Clause 97 Registration – duration

A registration or registration renewal starts on the day it is given or any later stated date in the registration decision notice and expires 5 years after it starts or at any earlier date stated in the registration decision notice.

Registration has no effect during a period of suspension.

Clause 98 Registration – amendment

This clause makes provision for the director-general to amend a registration if satisfied that amendment is necessary, either on the director-general's own initiative or on the application of the registered person.

Clause 99 Registration – conditions

This clause specifies the conditions of registration for a regulated dealing, including for a plan or alternative arrangement that takes effect if the registered person is no longer registered to engage in the regulated dealing or is unable to continue to engage in the regulated dealing. Regulated dealing is defined in section 88 of the Bill.

Clause 100 Offences - fail to comply with registration condition

A registered person must comply with the conditions on their registration. The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence under this subsection.

A registered person commits an offence if the person's registration is subject to a condition, and the person intentionally or negligently fails to comply with the condition. The maximum penalty for this offence is 1,000 penalty units.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts.

Clause 101 Registration – grounds for suspension or cancellation

This clause stipulates the grounds for suspension or cancellation of a registration for regulated dealings.

Clause 102 Registration – suspension

This clause provides for the director-general to give a registered person a written suspension notice if satisfied there are grounds to do so.

Clause 103 Registration – notice of proposed suspension

Before suspending a person's registration, the director-general must give the person a written notice stating the intention to suspend the registration and the grounds for the proposed suspension. The notice must stipulate a stated date that is at least 14 days after the day the notice is given to the person by which time the person may make a submission to the director-general about the proposed suspension.

In deciding a suspension, the director-general must take into account a submission received from the registration-holder before the stated day.

Clause 104 Registration – immediate suspension without prior notice

This clause negates the need for a prior notice of proposed suspension if the director-general is satisfied that a suspension is required urgently because of the biosecurity impact of the conduct authorised by the registration, in an emergency, or any other reason prescribed by regulation.

The director-general must still give the registered person written notice of the grounds for the proposed suspension. The notice must stipulate a stated date that is at least 14 days after the day the notice is given to the person by which time the person may make a submission to the director-general about the proposed suspension.

In deciding whether to revoke or continue a registration, the director-general must take into account a submission from the registration-holder received before the stated day.

Clause 105 Registration – cancellation

This clause provides for the director-general to cancel a person's registration if satisfied there are reasonable grounds to do so, and requires that the grounds for cancellation and date the cancellation takes effect are given in a written cancellation notice to the person.

Clause 106 Registration - notice of proposed cancellation

This clause stipulates the process the director-general must follow in order to cancel a registration for a regulated dealing.

Clause 107 Registration - immediate cancellation without prior notice

This clause provides for the immediate cancellation without prior notice of a registration to engage in a regulated dealing in situations where the director-general is satisfied that there

is an urgent biosecurity impact related need to do so, in an emergency, in situations where the registration is suspended, or for any other reason prescribed by regulation.

The director-general must still give the person written notice of the grounds for the proposed cancellation. The notice must stipulate a stated date that is at least 28 days after the day the notice is given to the person by which time the person may make a submission to the director-general about the proposed cancellation.

The director-general must take into account in deciding whether to revoke or continue the cancellation a submission received from the registration-holder before the stated day.

Clause 108 Registration – surrender

This clause stipulates the process and conditions applying to the surrender of a registration by a registered person.

Clause 109 Registration – Exercise of functions in emergencies

This clause provides for the director-general to exercise a function in an emergency if reasonably believed necessary or a biosecurity emergency is suspected, has or is happening or is imminent.

PART 7 BIOSECURITY CERTIFICATES

Clause 110 Biosecurity certificates

This clause makes provision for the issue of biosecurity certificates by a biosecurity certifier. It specifies the type and condition of matters, premises or other thing that can be certified and the period for which it is in force.

Section 120 and section 122 provide definitions for who is included as an accredited certifier under the Bill.

Biosecurity certificates are a form of assurance that certain biosecurity matter or an area or thing is in a stated condition, has been subject to a specified treatment, or meets any other specified conditions or requirements. This is important for interstate trade as all other jurisdictions require certification for the importation of certain commodities.

Clause 111 Interstate biosecurity certificates

This clause defines *interstate biosecurity certificate* as a certificate issued under a corresponding biosecurity law, that certifies a matter that could be certified in a biosecurity certificate. It also provides for an interstate biosecurity certificate to be valid as a biosecurity certificate under this Bill.

Clause 112 Offences - false or misleading biosecurity certificate

A person must not issue a false or misleading biosecurity certificate. The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence under this subsection.

A person commits an offence if a person intentionally or negligently issues a false biosecurity certificated. The maximum penalty for this offence is 1,000 penalty units.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts.

Clause 113 Offences - false representation about biosecurity certificate

A person must not falsely represent that a biosecurity certificate has been issued. The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence under this subsection.

A person commits an offence if a person intentionally or negligently falsely represents that a biosecurity certificate has been issued. The maximum penalty for this offence is 1,000 penalty units.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts.

PART 8 BIOSECURITY AUDITS

Clause 114 Meaning of *authorisation-holder* – Part 8

This clause defines *authorisation-holder* as being a permit-holder, registered person, biosecurity certifier, biosecurity auditor, certifier authority, or auditor authority insofar as they relate to Part 8 of the Bill. Section 120 of the Bill defines *auditor authority*, *biosecurity auditor*, *biosecurity certifier* and *certifier authority* for the purposes of the Bill.

Clause 115 Biosecurity audits

The use of biosecurity audits is a recognised measure across the biosecurity continuum and is considered internationally, nationally and by industry as an appropriate and acceptable safeguard to protect the integrity of the biosecurity system. In addition, there are strict requirements and procedures that the director-general must follow when requiring a biosecurity audit. These provisions include requirements for the notification of the proposed audit to the person being audited with a view to minimising impact on the person.

This clause provides for the director-general to require a biosecurity auditor to carry out a biosecurity audit in relation to an authorisation-holder and prescribes the conditions and processes entailed.

Biosecurity audits enable the assessment of applicants for authorisations such as registration, accreditation and permits, for compliance audits to ensure appropriate compliance with legislative requirements, and to identify areas of non-compliance which in turn will facilitate a process for improvement.

The frequency of audits will be determined by reference to factors such as the degree of non-compliance identified in previous audits, and general compliance policies which identify compliance risk and the need for compliance education.

Similar to the proposal to provide for third-party certifiers, the Bill makes provision for appropriately qualified third parties to be appointed as auditors. Appropriately skilled authorised people also may be appointed as auditors. Appointments can be unconditional or limited to certain situations, such as auditing businesses accredited under the Interstate Certification Assurance Scheme (ICA Scheme).

Providing for third-party accreditation authorities recognises that biosecurity is a shared responsibility and that industry stakeholders have a strong interest in maintaining the integrity of the accreditation and certification system. Third-party accreditation authorities further reduce the administrative burden on government and allow for the biosecurity system to continue to evolve and more efficiently serve the needs of stakeholders.

Clause 116 Biosecurity audits – notice to authorisation-holder

This clause specifies the requirements of a written authorisation-holder notice which must be provided to the person requiring the audit.

Clause 117 Biosecurity audits – reporting requirements

This clause provides for the requirement of an audit report following a biosecurity audit and specifies what it must include.

This clause also requires that a copy of the audit report must be given to the person requiring the audit and the audited authorisation-holder within 21 days after the audit is completed, or any longer period prescribed by regulation.

This clause also provides for the director-general to request a copy of the audit report.

Clause 118 Biosecurity audits – immediate reporting requirements

This clause applies if a biosecurity auditor becomes aware of or suspects that the authorisation-holder has failed to comply with the Bill, or has contravened the Bill, or a biosecurity event has or is happening, or is likely to happen, or a false or misleading biosecurity certificate has been issued., or an event prescribed by regulation has or is happened or is likely to happen.

This clause also specifies the way the auditor must report the matter to the director-general.

Clause 119 Biosecurity audits – costs

This clause provides for reasonable costs of an audit to be recovered from the audited authorisation-holder.

PART 9 BIOSECURITY CERTIFIERS, AUDITORS AND AUTHORITIES

DIVISION 9.1 CERTIFIERS, AUDITORS AND AUTHORITIES

Clause 120 Definitions – Part 9

This clause defines the terms *auditor authority*, *biosecurity auditor*, *biosecurity certifier* and *certifier authority*.

As a further note, an accredited certifier may be an individual producer, or a third party employed or hired by an industry body to issue biosecurity certificates. Accrediting third party certifiers will allow businesses that operate in the ACT to self-certify consignments to interstate markets under national self-certification schemes such as ICA Scheme. The ICA Scheme has been operating successfully for over 25 years and has significantly reduced the administrative burden on governments with minimal non-conformance detected.

Providing for third-party accreditation authorities recognises that biosecurity is a shared responsibility and that industry stakeholders have a strong interest in maintaining the integrity of the accreditation and certification system. Third-party accreditation authorities further reduce the administrative burden on government and allow for the biosecurity system to continue to evolve and more efficiently serve the needs of stakeholders.

Third-party schemes are likely to become standard features within international and national biosecurity systems. Greenlife Industry Australia has developed a third-party certification and audit scheme for the nursery industry which is accepted by all other Australian jurisdictions. Other third-party schemes are in development.

Clause 121 Approval of authorised people as certifiers and auditors

This clause provides for the director-general to approve an authorised person as a biosecurity certifier or a biosecurity auditor.

Clause 122 Recognition of interstate certifiers, auditors and authorities

This clause provides for corporations and authorised people as biosecurity certifiers and biosecurity auditors under a corresponding biosecurity law to issue biosecurity certificates, carry out biosecurity audits, authorise people as biosecurity certifiers or biosecurity auditors corresponding to the authority the corporations and authorised people possess under the corresponding biosecurity law.

Interstate includes the Northern Territory.

The clause also defines the meaning of ‘interstate authorisation’ for the purpose of this Bill.

Clause 123 Interstate authorisations—non-compliance notice

This clause provides for the director-general to issue a written non-compliance notice if an interstate authorisation fails to comply with a condition of approval.

Clause 124 Interstate authorisations—proposed non-compliance notice requirements

This clause specifies what the director-general is required to include in a non-compliance notice under section 123 and the requirements, including timeframes and processes, that apply.

Clause 125 Interstate authorisations—revocation of non-compliance notice

This clause provides for the director-general to revoke a non-compliance notice if satisfied that the corporation has appropriately dealt with the non-compliance.

Clause 126 Authorisation of certifiers, auditors and authorities to exercise functions

This clause states the functions of a biosecurity certifier, biosecurity auditor, certifier authority and audit authority for this Bill.

DIVISION 9.2 APPROVAL OF CERTIFIERS, AUDITORS AND AUTHORITIES

Clause 127 Approvals - application

This clause provides for a person to apply to the director-general for approval as a biosecurity certifier, biosecurity auditor, certifier authority or audit authority and requires a written application including information that the director-general reasonably needs to decide the application.

Clause 128 Approvals - renewal application

This clause provides for an approval-holder to apply to the director-general for renewal of their approval as a biosecurity certifier, biosecurity auditor, certifier authority or audit authority and requires a written application including information that the director-general reasonably needs to decide the application.

If a renewal application is made prior to the expiry of an approval, the current approval continues in force unless suspended, cancelled or surrendered, until the director-general notifies the applicant of a decision on the renewal application.

Clause 129 Approvals - additional information

This clause provides for the director-general to seek additional information by written notice from a person applying for an approval or renewal of an approval that the director-general reasonably needs to decide the application.

Non-compliance with a requirement in the notice may be grounds for the director-general to refuse further consideration of the application.

Clause 130 Approvals - change of information

This clause requires that a person applying for an approval or the renewal of an approval must provide, as soon as practicable, to the director-general written notice of details of changes to information in the application, if these changes are known before the application is decided.

Clause 131 Approvals - decision on application

The director-general must approve or refuse applications for approvals or renewal of approvals. Reasonable grounds for refusal are specified in the section.

If the director-general fails to give an applicant notice of a decision within the period prescribed by regulation, the director-general is taken to have refused the application.

Clause 132 Approvals - suitable person

The director-general in deciding if an applicant is a suitable person must consider the applicant's history of compliance with relevant Acts and capacity to comply in the future, the outcome of any biosecurity audit, and any other matters prescribed by regulation or considered relevant by the director-general.

Clause 133 Approvals – authority criteria

The director-general may approve an applicant as a certifier authority or auditor authority if the director-general is satisfied that the applicant satisfies the requirements as set out in this section.

Clause 134 Approvals – duration

An approval or renewal of an approval starts on the day it is given or any later stated date in the approval decision notice and expires 5 years after it starts or at any earlier date stated in the approval decision notice.

An approval has no effect during a period of suspension.

Clause 135 Approvals – amendment

This clause makes provision for the director-general to amend an approval if satisfied that amendment is necessary, either on the director-general's own initiative or on the application of the approval-holder.

Clause 136 Approvals – conditions generally

This clause specifies the conditions which generally apply to an approval under the Bill.

Clause 137 Approvals – additional conditions for corporations

This clause requires corporations as approval-holders to ensure that each individual exercising a function on behalf of the corporation under the approval has the required qualifications, skills, knowledge and experience to do so, and must give the director-general

written notice of the name and contact details of the individual before the person starts exercising the function.

Clause 138 Offences – fail to comply with approval condition

This clause requires that an approval-holder must comply with the conditions of the approval. The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence under this subsection.

An approval-holder commits an offence if the person intentionally or negligently fails to comply with the condition on the approval. The maximum penalty for this offence is 1,000 penalty units.

This section safeguards the ACT biosecurity system from approval-holder non-compliance, incompetence and/or negligence. These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts.

Clause 139 Approvals – grounds for suspension or cancellation

This clause specifies the grounds for suspension or cancellation of an approval under the Bill.

Clause 140 Approvals – suspension

This clause provides for the director-general to suspend an approval when satisfied there are grounds for doing so.

Clause 141 Approvals – notice of proposed suspension

This clause specifies the process the director-general must follow when proposing a suspension of approval.

Clause 142 Approvals – immediate suspension without prior notice

This clause provides for the director-general to suspend an approval without prior notice and specifies the conditions and process for doing so.

The director-general must still give the approval-holder a written notice stating the grounds and timeframe for the suspension, and the requirements for making a submission about the suspension. The director-general must take into consideration a submission from the approval-holder received before a stated day in making a decision.

Clause 143 Approvals – cancellation

This clause provides for the director-general to cancel an approval if satisfied there are reasonable grounds to do so, and requires that written notice of the grounds for cancellation and when the cancellation takes effect must be given to the approval-holder.

Clause 144 Approvals – notice of proposed cancellation

This clause requires that the director-general must give the approval-holder written notice of the proposed cancellation including grounds for the cancellation and the process for making a submission about the proposed cancellation.

In making a decision on the cancellation, the director-general must take into consideration a submission from the approval-holder received before a stated day as specified in the notice.

Clause 145 Approvals – surrender

This clause provides for an approval-holder to surrender an approval and stipulates the process and conditions that are entailed.

PART 10 ENFORCEMENT – BIOSECURITY DIRECTIONS

This Part makes provision for authorised persons to give directions considered reasonable and necessary in the line of duty for the purpose of preventing a person from failing to comply with the Bill, to manage a biosecurity risk or impact, or to enforce the Bill. Provisions address situations under which there may be a need to indirectly restrict movement of people, notably in emergency situations, and also safeguards for the appropriate treatment of people.

It also includes provisions which limit authorised persons when implementing inspection measures as appropriate safeguards.

Clause 146 Biosecurity directions

This clause provides for an authorised person to give a direction to a person and specifies the directions that are applicable to this Bill.

Clause 147 Biosecurity directions – giving directions

This clause provides for an authorised person to give a direction to a person and specifies the methods and conditions which apply in the giving of directions that are applicable to this Bill.

Clause 148 Biosecurity directions – scope of directions

This clause stipulates what a biosecurity direction may prohibit, regulate, control or require.

Clause 149 Biosecurity directions – restricting movement of people

This clause provides for biosecurity directions to restrict the movement of people in specified ways only. This includes limited powers to regulate the movement of people through designated entry and exit points and thoroughfares.

This clause does not prevent authorisation under an emergency declaration being imposed in relation to any biosecurity matter, premises, area, activity or other thing, that has an impact on the movement of a person but that is not imposed for the purpose of restricting the movement of the person.

Clause 150 Biosecurity directions – treatment of people

This clause provides for a biosecurity declaration in an emergency to be able to direct a person to carry out an external treatment measure or permit an external treatment measure to be carried out, in relation to the person.

For example, external treatments measures may include the use of a foot bath in an emergency.

A biosecurity direction must not require a treatment measure to be carried out in relation to a person other than as provided for in this section.

Clause 151 Biosecurity directions – inspection of people

This clause provides for a biosecurity declaration in an emergency to be able to direct a person to permit an authorised person to inspect the person for biosecurity matter, a carrier or a potential carrier and specifies the limited type of inspection measures that are authorised under this Bill.

Clause 152 Biosecurity directions – destruction of things

This clause specifies that a biosecurity direction must not require or authorise the destruction of any biosecurity matter or other thing unless it is, or the authorised person reasonably suspects it is, prohibited biosecurity matter, a carrier of prohibited biosecurity matter, a declared pest, or if other specified conditions apply. For example, if the destruction is expressly authorised or required by an emergency or control declaration.

Clause 153 Biosecurity directions – nature conservation and heritage matters

A biosecurity direction must not require the destruction of a native animal, native fish, native plant, natural or constructed structure or feature in a reserve, infrastructure in a reserve, a site or object of historical, archaeological, palaeontological or geological interest in a reserve without the Minister having consulted with the conservator of flora and fauna.

A failure to comply with this section does not invalidate the biosecurity direction.

This section does not apply if the destruction is expressly authorised or required by an emergency declaration or a control declaration.

Clause 154 Biosecurity directions – recovery of costs

This clause provides for the recovery of reasonable costs of any inspection, test or assessment made in preparing a biosecurity direction.

Clause 155 Biosecurity directions – authorising actions and recovering costs

This clause provides for the director-general to authorise a person to take authorised actions if the liable person fails to comply with a biosecurity direction, and to recover reasonable costs for taking action under this section.

This includes entering the premises other than the residential premises, and taking action in relation to the premises, or anything at the premises, that the liable person is required by the biosecurity direction to take or is otherwise necessary to remedy the failure to comply.

Clause 156 Offences – fail to comply with biosecurity direction

A person must comply with a biosecurity direction. The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence under this subsection.

A person commits an offence if the person intentionally or negligently fails to comply with a biosecurity direction. The maximum penalty for this offence is 1,000 penalty units.

It is a defence to a prosecution for an offence against this section if the defendant proves they had a reasonable excuse for failing to comply with the direction.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts.

Clause 157 Biosecurity directions – exercise of functions in emergencies

This clause provides for an authorised person to exercise a function in an emergency and stipulates the conditions under which such exercise of function is appropriate. For example, under an emergency declaration.

PART 11 BIOSECURITY UNDERTAKINGS

Clause 158 Biosecurity undertakings

This clause provides for the director-general to accept a written undertaking (referred to as a *biosecurity undertaking*) given by a person who has failed or is suspected of failure to comply with the Bill.

The giving of an undertaking does not constitute an admission of guilt in relation to the matters to which the undertaking relates.

Clause 159 Biosecurity undertakings - contents

This clause stipulates what a written biosecurity undertaking must state.

Clause 160 Biosecurity undertakings – when enforceable

This clause stipulates that a biosecurity undertaking becomes enforceable when the person giving the undertaking and the director-general agree in writing to the terms of the undertaking.

Clause 161 Biosecurity undertakings – amendment

This clause stipulates that a biosecurity undertaking may only be amended if both the person and the director-general agree in writing.

A biosecurity undertaking must not be amended to provide for non-compliance with the Bill.

Clause 162 Biosecurity undertakings – ending

This clause stipulates the conditions under which a biosecurity undertaking ends.

Clause 163 Biosecurity undertakings – authorising actions and recovering costs

This clause provides for the director-general to authorise a person to enter premises other than residential premises and take action if a liable person fails to comply with a biosecurity undertaking.

It also provides for the director-general to recover reasonable costs from the liable person of taking action under this section.

Clause 164 Biosecurity undertakings – orders requiring compliance

This clause provides for the director-general to apply to the Magistrates Court for an order if reasonable grounds exist and specifies the conditions under which this section operates and the orders that the Magistrates Court has recourse to.

Clause 165 Biosecurity undertakings – effect on other proceedings

This clause specifies that a proceeding may not be brought against a person for an offence if the conduct relates to an undertaking which is still in force and the person has not failed to comply with the undertaking.

Clause 166 Offences – fail to comply with biosecurity undertaking

A person must comply with a biosecurity undertaking that is enforceable against that person. The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence under this subsection.

A person commits an offence if the person intentionally or negligently fails to comply with a biosecurity undertaking. The maximum penalty for this offence is 1,000 penalty units.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts.

PART 12 AUTHORISED PEOPLE

DIVISION 12.1 GENERAL

Clause 167 Definitions – Part 12

This clause defines the terms *connected*, *occupier*, *offence* and *warrant* as they relate to this Bill.

Clause 168 Authorised people

This clause provides for the director—general to appoint a person as an authorised person for this Bill.

A police officer is also an authorised person for this Act.

Clause 169 Identity cards

This clause requires that the director—general give each authorised person (other than a police officer) an identity card and specifies the format and information required for the identity card.

An offence under this section is a strict liability offence.

It is an offence under the Bill for a person who stops being an authorised person not to return the person's identity card. The maximum penalty for this offence is 5 penalty units. If the card has been lost, stolen or destroyed by someone else, this offence does not apply

Clause 170 Use of assistants

This clause provides for an authorised person in exercising a function under the Bill to use an assistant and specifies the conditions for such assistance.

Clause 171 Use of animals

This clause provides for an authorised person in exercising a function under the Bill to use an animal and specifies the conditions for such assistance.

Clause 172 Authorised person must show identity card on exercising power

This clause requires that an authorised person (other than a police officer) must show the person's identity card to the relevant affected person before exercising a power under the Bill and states how this may be done.

DIVISION 12.2 POWERS OF AUTHORISED PEOPLE

The key proposed powers of authorised people under the Bill include:

- a) powers of entry and search, including to parts of premises not used for residential purposes;

- b) powers to question and require information and records;
- c) powers to issue biosecurity directions and certificates and accept biosecurity undertakings;
- d) powers to investigate, manage and respond to biosecurity risks and suspected biosecurity risks, including power to destroy prohibited matter, pests and other biosecurity matter if required to appropriately mitigate a biosecurity risk; and
- e) strong entry, information-gathering, investigation and risk management powers in the case of an emergency.

Some of the authorised officer powers and other measures, including emergency measures, are likely to engage and limit a number of human rights under the *Human Rights Act 2004*. For example, the Bill includes powers for authorised people to enter premises and take action to rectify non-compliance with a requirement under the Bill. The Bill includes appropriate safeguards to ensure any limitations are reasonably justified.

It is proposed that authorised peoples' powers be commensurate with those in NSW to enable consistent investigation and management in the event of cross-border related biosecurity incidents. It is also proposed that appropriately trained and qualified people from other jurisdictions may be appointed as authorised people to further assist in cross-border risk management as well as to address any resource limitations affecting timeliness of responses in the ACT.

Clause 173 Power to enter premises

This clause provides for an authorised person to enter premises and prescribes the circumstances under which it is reasonable to do so and the way it may be done.

Clause 174 Production of identity card

This clause provides for an occupier of premises to ask for the identity card of an authorised person or person accompanying an authorised person. If the person does not comply, the person (other than a police officer) must leave the premises immediately.

Clause 175 Consent to entry

This clause requires that an authorised person when seeking to enter premises under section 170 must provide evidence of identity, such as an identity card, and tell the occupier the purpose for the entry, and that anything found and seized under this section may be used in evidence in court and that the person has the right to refuse entry.

If the occupier consents to entry, the authorised person must ask for a written acknowledgement of consent which includes specified details regarding the basis for consent.

Clause 176 General powers on entry to premises

This clause stipulates what an authorised person who enters premises may do in relation to the premises or anything at the premises. These powers include being able to:

- inspect, move, isolate, confine or detain biosecurity matter or anything, which may include breaking open or otherwise accessing containers, vehicles or other things;
- take images or other recordings, which may include inspecting, copying or taking extracts from documents relating to a failure to comply with the Bill;
- carry out a treatment measure in relation to any biosecurity matter, premises or other thing;
- erect or repair any fencing, gate or any other method of enclosure, or carry out any other security or containment measure in relation to the premises or any biosecurity matter or other thing; and
- install or use a device at the premises to detect or monitor the presence of biosecurity matter or other thing, which includes destroying, disposing of or eradicating anything, in accordance with the Bill or as prescribed by regulation.

It is an offence to interfere with a sign, device or any other equipment placed by an authorised person under subsection 176(1). The maximum penalty for this offence is 50 penalty units.

The clause also provides a strict liability offence under this subsection.

A person commits an offence if the person intentionally or negligently interferes with a sign, device or any other equipment placed by an authorised person under subsection 176(1). The maximum penalty for this offence is 1,000 penalty units.

It is a defence for an offence against this subsection if the defendant proves that they had a reasonable excuse for interfering with the sign, device or other equipment.

These offences provide the Bill with adequate powers to be effective for a range of plausible scenarios from small-scale local incidents to multi-billion dollar industry-wide impacts.

Clause 177 Power to require information, documents, etc

This clause provides for an authorised person to request information or documents or anything else the occupier or person at the premises has access to and is reasonably required by the authorised person to exercise a function under this Bill. This includes obtaining answers to questions, requesting documents or copies of documents, and obtaining help to exercise a function under this Bill pertaining to the biosecurity event being managed. For example, requiring the occupier to confine or move an animal in their possession.

A person must take reasonable steps to comply with a requirement made of the person under subsection (1). The maximum penalty for this offence is 50 penalty units.

An offence against this subsection is a strict liability offence.

A person commits an offence if the person fails to take reasonable steps to comply with a requirement made of the person under this subsection. The maximum penalty for this offence is 1,000 penalty units.

Information gathering is a critical part of biosecurity risk detection and mitigation efforts and urgent action is often required to minimise risks, harm and losses. Failure to comply with this provision could result in industry-wide impacts with significant economic, social and community implications.

Clause 178 Recovery of costs for action taken

This clause provides for the director-general to recover reasonable costs for action taken by an authorised person against a liable person in relation to any biosecurity duty or obligation, failure to comply with this Bill, or any other matter relevant in the circumstances.

Clause 179 Power to obtain, inspect and copy records

This clause provides for an authorised person by written notice to request a person to give information, produce documents or anything else, that the person has access to and that is reasonably required by the authorised person for this Bill.

It is an offence not to take reasonable steps to comply with a requirement made of the person under this section. The maximum penalty for this offence is 50 penalty units.

An offence against this subsection is a strict liability offence.

A person commits an offence if the person fails to take reasonable steps to comply with a requirement made of the person under this section. The maximum penalty for this offence is 1,000 penalty units.

Clause 180 Power to require answers to questions

This clause provides for an authorised person to require a person to answer questions in relation to a matter under this Bill reasonably believed that the person may have knowledge about the matter.

This clause also provides for an authorised person to give written notice stating a time and place nominated by the person that is reasonable in the circumstances for the person to attend and answer questions about a matter that the person is reasonably believed to have knowledge about.

In the event that there is no reasonable time or place nominated by the person, the authorised person may nominate a time and place that is reasonable to the circumstances.

A person who is the subject of a requirement under this section must comply. The maximum penalty for this offence is 50 penalty units.

An offence against this subsection is a strict liability offence.

It is an offence if a person who is the subject of a requirement made under this section fails to comply with the requirement. The maximum penalty for this offence is 1,000 penalty units.

Clause 181 Evidence may be recorded

This clause provides for an authorised person to record information given orally under this Bill if the authorised person has informed the person giving the information beforehand of the intention to record the information.

Any record made must be given to the person who provided the information as soon as practicable.

Clause 182 Abrogation of privilege against self-incrimination

Any information, document or thing obtained, directly or indirectly, under the Bill is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence arising out of the false or misleading nature of the answer, information, or document.

Clause 183 Warning to be given

For clauses, section 177, section 179 or section 180 (1), an authorised person must notify a person to whom a request is made, that failure to comply with a requirement constitutes an offence under this Bill and that section 182 provides for a safeguard against self-incrimination.

Clause 184 Power to seize things

This clause provides for an authorised person who enters premises with the occupier's consent to seize anything at the premises if seizure of the thing is consistent with the purpose of entry. If the authorised person enters premises under a warrant, the authorised person may seize anything that the warrant pertains to.

The clause specifies reasonable grounds for seizure of a thing if the thing relates to an offence under this Bill, or it is necessary to manage the biosecurity risk posed by the thing, this includes preventing it from being concealed, lost, destroyed, or spread.

This clause also provides for a seized thing to be removed from the place of seizure or to have access to it restricted.

Interference with seized biosecurity matter could critically endanger people and livelihoods, give rise to significant industry and/or market access issues, and/or harm the environment.

A person commits an offence if the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted by an authorised person

unless authorised to do so. Failure to comply is an offence under this section. The maximum penalty for this offence is 50 penalty units.

An offence against this subsection is a strict liability offence.

A person commits an offence if the person intentionally or negligently interferes with a seized thing or its container without approval. The maximum penalty for this offence is 1,000 penalty units.

Clause 185 Direction to give name and address

This clause provides for an authorised person to obtain the name and address of a person and evidence of the person's identity if reasonably believed the person has, is or is about to commit an offence against this Bill, or who may be able to assist in the investigation of an offence against this Bill.

The authorised person is required to tell the person in a language or way of communicating that is reasonably believed to be understood by the person, that it is an offence to fail to comply with the direction.

Clause 186 Offences – fail to comply with direction to give name and address

A person must comply with a direction to give name and address under section 185. The maximum penalty for this offence is 50 penalty units.

An offence against this subsection is a strict liability offence.

A person commits an offence if the person fails to comply with a direction under section 185. The maximum penalty for this offence is 1,000 penalty units.

In executing this function under the Bill, an authorised person must produce the authorised person's identity card for inspection by the person and tell the person that failure to comply is an offence under the Bill.

This section does not apply if the person produces the evidence not more than 24 hours after the day the direction was made.

Information and information sources are critical to the execution of functions under the Bill by authorised persons in the detection and management of biosecurity risks and impacts.

Clause 187 Directions to stop vehicle

This clause provides for an authorised person to stop a vehicle if there are reasonable grounds to believe that the vehicle is associated with a biosecurity risk or connected with an offence against this Bill. The Bill specifies how and when an authorised person may give a direction to a person to stop a vehicle. A vehicle may only be stopped for a duration necessary for the authorised person to exercise the function.

Vehicles can play a significant hazardous role as sources of biosecurity contamination or as vectors of biosecurity matter in the case of diseased animals or plants with the potential to exacerbate a situation if not managed appropriately.

Clause 188 Offences - fail to comply with direction to stop vehicle

A person must comply with a direction to stop a vehicle when executed in accordance with section 187 of this Bill. The maximum penalty for this offence is 50 penalty units.

An offence against this subsection is a strict liability offence.

A person commits an offence if the person fails to comply with a direction under section 187. The maximum penalty for this offence is 1,000 penalty units.

This section does not apply if the authorised person did not produce an identity card for inspection by the person as soon as practicable after giving the direction.

It is a defence for an offence against this subsection if the defendant proves that they had a reasonable excuse for failing to comply with the direction.

DIVISION 12.3 SEARCH WARRANTS

Clause 189 Warrants generally

This clause provides for an authorised person to apply to a magistrate for a warrant to enter premises. A warrant must state the offence for which the warrant is issued, the things that may be seized, and the timeframe during which the warrant is enforceable.

Clause 190 Warrants - application other than in person

This clause provides for an authorised person to apply to a magistrate for a warrant through means other than in person under certain conditions.

Clause 191 Search warrants – announcement before entry

This clause specifies what an authorised person must do before anyone enters premises under a search warrant and during a search.

Clause 192 Details of search warrant to be given to occupier etc

This clause requires that an authorised person must give the occupier or person present at the time of a search warrant is being executed a copy of the warrant or equivalent, and a document setting out the rights and obligations of the person.

Clause 193 Occupier entitled to be present during search etc

This clause provides for a person who is or represents the occupier of the premises being searched to observe the search being conducted, unless this would impede the search or the person is under arrest.

DIVISION 12.4 RETURN AND FORFEITURE OF THINGS SEIZED

Clause 194 Receipt for things seized

This clause requires an authorised person to provide a receipt to the owner of things seized and specifies what information must be included in the receipt.

Clause 195 Moving things to another place for inspection, processing or testing under search warrant

This clause provides for an authorised person acting under a search warrant to move things seized under said warrant for inspection, processing or testing and specifies conditions for when and how this function may be executed.

Clause 196 Access to things seized

This clause provides for a person entitled to inspect a thing seized to be able to do so.

Clause 197 Return of thing seized

This clause provides for a thing seized to be returned to its owner or subject to specified conditions for reasonable compensation paid to the owner by the Territory for the loss of the thing.

Clause 198 Forfeiture of things seized

This clause provides for action that would need to be taken when a thing seized is not required to be returned or reasonable compensation is not required to be paid.

DIVISION 12.5 LIMITS ON POWERS OF AUTHORISED PEOPLE

Clause 199 Authorised people – treatment of people

This clause requires that an authorised person must not inspect a person, require a treatment measure to be carried out in relation to a person, require a person to submit to testing, or provide a sample of bodily fluids or parts.

Clause 200 Authorised people – restricting movement of people

This clause prevents an authorised person from prohibiting, regulating, or controlling the movement of a person unless expressly authorised by an emergency declaration or a biosecurity direction.

Clause 201 Authorised people – destruction of things

This clause provides for an authorised person to destroy a thing if there are reasonable grounds to suspect it is prohibited biosecurity matter, it is a declared pest or it poses a biosecurity risk, and there is no reasonable, practicable, alternative treatment available.

Clause 202 Authorised people – notice of proposed destruction

This clause provides for written notice to be given to the owner or person in charge of a thing at least 24 hours before the thing is destroyed. However, exceptions to this clause include where destruction is required to be carried out immediately or without notice under an emergency declaration or control declaration.

Clause 203 Authorised people – nature conservation and heritage matters

This clause limits the powers of authorised people in relation to nature conservation and heritage assets and sites, including native flora and fauna, infrastructure and objects of significance.

This section does not apply to the destruction of a thing if the destruction is required under an emergency declaration or a control declaration.

DIVISION 12.6 MISCELLANEOUS

Clause 204 Damage etc to be minimised

This clause requires an authorised person in executing functions under this Bill to take all reasonable steps to ensure that as little inconvenience, detriment and damage as is practicable is caused while executing functions under this Bill.

PART 13 COURT PROCEEDINGS

DIVISION 13.1 COURT PROCEEDINGS GENERALLY

This chapter outlines a range of provisions in relation to general court orders, orders for restoration, prevention, prohibition, publication, recovery of costs, expenses and compensation after offence proved.

Clause 205 Evidence of analysts

This clause provides for certified results of an analysis or examination to be admissible in a proceeding and as evidence.

Clause 206 Injunctions to restrain contravention of requirements

This clause provides for the director-general or anyone else to apply to the Supreme Court for an injunction.

Clause 207 Recovery of costs, expenses and compensation after offence proved

This clause provides for the director-general to recover reasonable costs and expenses incurred from the person found guilty of an offence under this Bill.

DIVISION 13.2 COURT ORDERS

Clause 208 Orders generally

This clause provides for a court to make one or more orders under this part of the Bill against a person who is found guilty of an offence against this Bill.

Clause 209 Orders for restoration and prevention

This clause provides for a court to Order a person found guilty of an offence against this Bill to take the steps stated in the order, within the time stated in the order. the conditions which apply under this Bill when making a court order.

A person commits an offence if a person who is subject to an order intentionally fails to comply with the order. There is a maximum penalty for this offence of 1,000 penalty units.

Clause 210 Prohibition orders

This clause provides for a court to make prohibition orders which includes cancelling, suspending or amending registrations, permits, authorisations or approvals granted under this Bill.

A person commits an offence if a person who is subject to a prohibition order intentionally fails to comply with the order. There is a maximum penalty for this offence of 1,000 penalty units.

Clause 211 Publication orders

This clause provides for a court to make publication orders, fix a period for compliance and impose any other requirement that the court considers necessary for enforcement of the order.

A person commits an offence if a person who is subject to a publication order intentionally fails to comply with the order. There is a maximum penalty for this offence of 100 penalty units.

The director-general may recover from the person the reasonable costs of taking action under this section.

Clause 212 Orders to undertake training or other projects

This clause provides for a court to make orders which require undertaking training or projects and to fix a period for compliance.

A person commits an offence if a person who is subject to an order to undertake training or other projects intentionally fails to comply with the order. There is a maximum penalty for this offence of 100 penalty units.

PART 14 COMPENSATION

These compensation requirements have been included in the Bill to ensure consistency between the legislation and the ACT Government's contractual commitments under the deeds, and to provide greater clarity on what compensation is payable and what compensation is not payable.

The emergency response cost-sharing deeds under IGAB, namely Emergency Animal Disease Response Agreement (EADRA), Emergency Plant Pest Response Deed (EPPRD) and National Environmental Biosecurity Response Agreement (NEBRA), recognise that major animal and plant health and environmental emergencies are of national significance. These deeds provide mechanisms for participating jurisdictions and affected industries to share costs associated with eradication of specified incursions proportionate to each jurisdiction's relative exposure and risk. All Australian jurisdictions and a large number of industry bodies are signatories to these deeds.

The cost-sharing deeds also include detailed provisions regarding compensation that is payable to affected people for plants and animals that die from an emergency pest or disease or any plant, animal or other thing that is destroyed as part of the emergency response. These provisions include incentives for early notification of suspected emergency outbreaks and are designed to encourage greater involvement by industry in cost-sharing agreements.

The *Animal Diseases Act 2005*, *Plant Diseases Act 2002* and *Pest Plant and Animals Act 2005* currently include broad provisions for compensation but do not provide the proposed clarity nor do they reflect requirements of the deeds. This status has the potential to expose the ACT to bigger compensation claims than those contemplated under the various deeds and to also create confusion for affected parties at a time when they are likely to be under significant financial and emotional stress.

The statutory compensation provisions of the Bill largely reflect those in the NSW *Biosecurity Act 2015* for consistency with the various cost-sharing deeds the ACT Government is party to, and to support inter-operability with the NSW system.

They include discretion to refuse or reduce the amount payable to a person if the person, for example:

- a) committed an offence that contributed to the emergency situation;
- b) kept the emergency biosecurity matter at the affected premises in contravention of a requirement under the Bill;
- c) was indemnified for the loss under a contract of insurance; or
- d) made a false or misleading claim in relation to the compensation payable.

They exclude compensation for:

- a) loss of profit;
- b) loss occasioned by breach of contract;

- c) loss of production; or
- d) any other consequential loss.

There may also be isolated instances where an emergency response requiring destruction of property is activated in the ACT that is not covered by the relevant emergency response cost-sharing agreement. In such situations it is proposed that compensation will be payable under the same terms and conditions to provide consistency.

Any compensation claims that cannot be met from the existing EPSDD budget will be submitted to Expenditure Review Committee (ERC) for consideration prior to being progressed.

Clause 213 Meaning of *emergency biosecurity matter* – Part 14

This clause defines *emergency biosecurity matter* as biosecurity matter that is the subject of an emergency declaration.

Clause 214 Compensation payable to owners of animals, plants and property

This clause specifies what is compensable as a result of destruction of an animal, plant or property in accordance with an emergency declaration.

Clause 215 Amount of compensation payable

This clause specifies the method for determining the amount of compensation payable.

Clause 216 Other losses excluded

This clause provides for a limitation on compensation payable and explicitly excludes from compensation any loss of profit, loss caused by breach of contract, loss of production or any other consequential loss.

Clause 217 Time limit for claims

This clause specifies the format and timeframe for making a claim for compensation to the director-general.

Clause 218 Grounds for refusing or reducing claim

This clause provides for the director-general under specified conditions to refuse or reduce a claim.

Clause 219 Power to correct decision and require repayment

This clause provides for the director-general having decided a claim and later is satisfied that the decision is incorrect, to amend or reverse the decision within 5 years of making the decision.

PART 15 NOTIFICATION AND REVIEW OF DECISIONS

Clause 220 Meaning of *reviewable decision* – Part 15

This clause defines reviewable decision for the purposes of this Bill.

Clause 221 Reviewable decision notices

This clause specifies who a reviewable decision notice must be given to by a decision-maker.

Clause 222 Applications for review

This clause provides for relevant people to apply to the ACAT for a review of a reviewable decision.

PART 16 MISCELLANEOUS

Clause 223 Disclosure of information – director-general

This clause provides for the director-general to disclose information to another entity if the information is necessary for the entity to exercise a function relating to the managing a biosecurity risk.

Clause 224 Disclosure of information – certifier and auditor authorities

This clause provides for certifier and auditor authorities to disclose information obtained in exercising a function under this Bill to the director-general.

Clause 225 Protection of officials from liability

This clause provides that an official is not civilly liable for anything done or omitted to be done honestly and without recklessness under the functions of this Bill. Any civil liability that would arise instead attaches to the Territory.

In the section, official means director-general, authorised person or person exercising a function under this Bill.

Clause 226 Protection of others from liability

This clause provides that giving of information related to a biosecurity risk or matter done honestly and without recklessness does not incur a civil or criminal liability.

Clause 227 Criminal liability of executive officers

This clause provides that an executive officer of a corporation is taken to commit an offence if the corporation commits an offence against this Bill if the officer was reckless about the offence, was in a position to influence the conduct of the corporation and failed to take reasonable steps to prevent the commission of the offence.

The section specifies what constitutes reasonable steps and defines executive officer for the purposes of this section.

Clause 228 Meaning of *influential person* for a corporation

This clause defines influential person, related corporation and relevant power for a corporation.

Clause 229 Appointment of analysts

This clause provides for the director-general to appoint a person as an analyst for this Bill subject to the necessary qualifications and experience to exercise the functions of an analyst.

Clause 230 Cruelty to animals not authorised

Nothing in this Bill authorises a contravention of the *Animal Welfare Act 1992*.

Clause 231 Application – Crimes (Surveillance Devices) Act 2010

This clause provides that the director-general may impose a requirement to install or use a device to detect or monitor the presence of any biosecurity matter or other thing on those premises and possessing a record of an activity obtained by use of a device installed or used.

This provision does not authorise the detection or monitoring of a person or listening to conversations. None of the provisions in the Bill authorise the installation or use of a device in a part of premises that is being used only for residential purposes without the consent of the occupier of the premises.

Establishing nationally consistent and efficient business processes that support surveillance, diagnostic activities and sample tracking forms part of the national biosecurity system. Evidence from surveillance devices is used to verify credentials of suppliers within the supply chain in trade and market access and supports our agriculture, food, forestry and aquaculture industries, and the Australian Government in trade and market access negotiations. If surveillance devices are used, they would be focussed on capturing information on the status of a disease or pest incursion or other biosecurity matter on the premises. Enhancing biosecurity surveillance activities that better target, locate and manage exotic pests and diseases, and provide greater evidence of area freedom from pests and diseases is an important feature of the national biosecurity system.

Clause 232 Minister may exempt people, biosecurity matter, etc

This clause provides for the Minister to declare that this Bill or a provision of the Bill does not apply to a stated person, biosecurity matter, carrier, premises or other thing.

An exemption declaration is a disallowable instrument.

Clause 233 Determination of fees

This clause provides for the Minister to determine fees for this Bill.

A determination is a disallowable instrument.

While there is intention at present to introduce fees, should a fee be considered in the future, a business case will be put to the ERC for consideration in the first instance.

Clause 234 Regulation-making power

This clause provides that the Executive may make regulations for this Bill. A regulation may apply, adopt or incorporate an instrument as in force from time to time.

PART 17 REPEALS

Clause 235 Legislation repealed

(1) The following legislation is repealed:

- *Animal Diseases Act 2005* (A2005-18)
- *Animal Diseases Regulation 2006* (SL2006-39)
- *Fertilisers (Labelling and Sale) Act 1904* (A1904-33)
- *Magistrates Court (Pest Plants and Animals Infringement Notices) Regulation 2005* (SL2005-34)
- *Magistrates Court (Plant Diseases Infringement Notices) Regulation 2005* (SL2005-32)
- *Pest Plants and Animals Act 2005* (A2005-21)
- *Plant Diseases Act 2002* (A2002-42).

(2) The following instruments are repealed:

- *Legislation (Animal Diseases) Delegation 2017* (NI2017-199)
- *Legislation (Plant Diseases) Delegation 2018 (No 1)* (NI2018-395)
- *Public Sector Management (Animal Diseases) Delegation 2017* (NI21017-638)
- *Public Sector Management (Pest Plants and Animals) Delegation 2016 (No 1)* (NI2016-298)
- *Public Sector Management (Pest Plants and Animals) Delegation 2017* (NI2017-641)
- *Public Sector Management (Plant Diseases) Delegation 2017* (NI2017-640).

(3) All other statutory instruments made under the legislation mentioned in subsection (1) are repealed.

Schedule 1 Reviewable decisions

Schedule 1 of the Bill specifies decisions that are reviewable under this Bill.

Dictionary

The Dictionary specifies the meaning to be used for specified terms when interpreting this Bill.