

Biosecurity Bill 2011

Explanatory Notes

General Outline

Policy Objectives

The objective of the Bill is to provide for a flexible and responsive biosecurity framework to prevent or minimise adverse effects of exotic or endemic pests and diseases and contaminants on human health, social amenity, the economy and the environment.

Reasons for the Bill

Queensland currently has a number of Acts that deal with separate elements of biosecurity. This suite of legislation has evolved independently over time in response to changing biosecurity circumstances and is principally based on the primary industries aspects of animal and plant health.

Inadequacies with the current biosecurity legislative framework have been identified through operational experience and formal reviews. It lacks the flexibility to enable efficient and effective responses to future biosecurity risks to Queensland.

In November 2007, Biosecurity Queensland commissioned an external review of current biosecurity legislation. The review concluded that the current legislation is suboptimal for the administration and management of biosecurity and supported a new approach based on a single biosecurity bill. Providing new biosecurity legislation is a fundamental element of Queensland's biosecurity capability and capacity and is a 2006 Election Commitment.

Achievement of the Objectives

Biosecurity is a strategic concept about mitigation of risks and impacts associated with pests (including exotic pests), diseases that spread from

animals to humans and other matter including contaminants that have an adverse impact on the economy, the environment, social amenity and human health (each a 'biosecurity consideration' under the Bill). These pests, diseases and other matter posing a risk to Queensland's biosecurity are collectively identified in the Bill as biosecurity matter.

The Bill applies a single legislative scheme for the management of biosecurity risks associated with biosecurity matter and the carriers of biosecurity matter for example, soil potentially carrying red imported fire ants, plants carrying pests or tractors carrying weed seeds.

The Bill applies generally to all biosecurity matter (defined in the Bill to mean a living thing other than a human, a prion or other prescribed thing capable of causing a disease in an animal or human, a disease or a contaminant) but with specific reference to prohibited matter and restricted matter. Prohibited matter is biosecurity matter that is not present or known to be present in Queensland and if here, will have a significant adverse effect on a biosecurity consideration. Prohibitions apply to any unlawful dealing with prohibited matter. Restricted matter is biosecurity matter that is present in Queensland and provisions within the Bill restrict dealings with this type of biosecurity matter.

The Bill will assist in achieving sound biosecurity outcomes for Queensland. Firstly, the Bill incorporates the notion of 'shared responsibility' whereby the owner of a biosecurity risk must manage that biosecurity risk. This is done by imposing a universal biosecurity obligation on all persons to minimise biosecurity risks. That obligation encourages people to take a proactive role in preventing, managing and addressing biosecurity risks.

A person discharges his or her biosecurity obligation by complying with the Act, a guideline or a regulation or code of practice made under the Act. Mitigating the risks associated with biosecurity matter will benefit individuals and the community as a whole by reducing the possibility of loss or damage where a biosecurity risk is left unchecked.

Secondly, where there is a failure on the part of a person to discharge his or her obligation, the Bill provides for appropriate Government step-in powers to address the failure through the use of regulatory instruments and, where necessary, the prosecution of the offender. There is a greater range of regulatory instruments available for responses to failures than exist under the current legislation and these instruments are scalable according to the risk presented.

Thirdly, the Bill adopts a proactive rather than re-active position on managing biosecurity risks. It achieves this by providing for the adoption of the precautionary principle in risk-based decision making under the Bill. That principle provides that a lack of full scientific certainty should not be used as a reason to postpone taking action to prevent a biosecurity event or postpone a response to a biosecurity risk. The practical implication of this for the Bill's decision makers and the community is that the Bill will allow for swift responses to emergent situations without the necessity for formal scientific evidence that particular biosecurity matter or an occurrence involving particular biosecurity matter is or will have a significant adverse impact on a biosecurity consideration. Where human health is in issue, delays in response to suspected outbreaks of disease could be fatal.

The Bill repeals the following Acts:

- *Agricultural Standards Act*
- *Apiaries Act 1982*
- *Diseases in Timber Act 1975*
- *Exotic Diseases in Animals Act 1981*
- *Fisheries Act 1994* (Part 5, Divisions 5 – 7)
- *Land Protection (Pest and Stock Route Management) Act 2002*
- *Plant Protection Act 1989* and
- *Stock Act 1915*.

Alternatives to the Bill

The alternative to the Bill is to extensively amend and modernise the suite of existing primary industry legislation. This would be inconsistent with the 2006 State Election Commitment, the 2007 Review recommendation and would fail to adequately address community expectations of a single biosecurity regulatory framework.

Estimated Cost for Government Implementation

In the 2010-11 State Budget, \$3.5 million was allocated to support the development of the Bill and its implementation. Any costs for implementation that exceed this allocation will be met within existing budgetary allocations.

Consistency with Fundamental Legislative Principles

The Bill potentially departs from fundamental legislative principles (FLPs) as enumerated in section 4 of the *Legislative Standards Act 1992*. Any such departure occurs in the context of balancing FLPs with a competing community desire to ensure rapid and decisive responses to potential or real significant adverse impacts to the community from unmitigated biosecurity risks.

The Office of the Queensland Parliamentary Counsel has been consulted throughout the drafting process to reduce the impact of these potential breaches of fundamental legislative principles on the rights of private citizens.

Entry powers

A number of provisions through the Bill provide powers of entry to premises for authorised officers without a warrant or consent of the occupier. These powers are provided for averting or controlling biosecurity risks associated with a person's dealing with biosecurity matter. These provisions breach the fundamental legislative principle in section 4(3)(e) of the *Legislative Standards Act 1992* which provides that legislation should not confer powers to enter premises without a warrant issued by a judge or other judicial officer.

Specifically, the following provisions provide powers of entry.

Clause 105 – Additional powers of inspector for place within a biosecurity emergency area and clause 272 – Power and procedure for entry.

Clauses 105 and 272 relate specifically to emergency situations. Clause 105 enables an inspector or an authorised person acting under the direction of an inspector to enter and re-enter a place without consent within a biosecurity emergency area identified in a biosecurity emergency order under Chapter 5 of the Bill. Clause 272 provides that in emergency circumstances, inspectors appointed by the chief executive, have emergency powers to enter premises without a warrant and exercise emergency powers under Chapter 9. These powers may only be exercised to avoid an imminent and significant biosecurity risk from biosecurity matter or an activity at or being carried out at the place. There is an imperative to take decisive action in emergency situations to protect the community against adverse outcomes to biosecurity considerations from known or exotic biosecurity matter. In these circumstances such measures

are justified because any delays encountered in obtaining a warrant could have a significant adverse impact on a biosecurity consideration.

There are a number of constraints placed on the exercise of emergency powers and the Bill provides for appropriate safeguards. The steps taken by authorised officers: must be reasonable in the circumstances, entry is only permitted to non-residential parts of the place and officers must take all reasonable steps to cause as little inconvenience to any person and do as little damage as possible. The exercise of the powers is limited by time – an emergency order lasts for 21 days whilst emergency powers of inspectors last for 96 hours. Additionally, an inspector who exercises emergency powers of entry under Chapter 9 must notify the chief executive of the exercise of these powers. As a necessary check to these powers, the Bill contains the safeguard that if emergency powers are improperly used, compensation is payable under clause 322.

Clause 254 – Power to enter place under biosecurity program

This provision enables an authorised officer to enter a place under a biosecurity program without consent. This power is necessary to prevent the establishment or spread of biosecurity matter (pests and diseases like fire ants and Newcastle disease) that can have a significant adverse effect on human health, the environment, the economy or social amenity.

The chief executive or a local government by resolution may authorise a surveillance program or a prevention and control program. The circumstances giving rise to the making of a surveillance program include monitoring compliance with the Act if failure to comply would pose a biosecurity risk or confirming the presence of particular biosecurity matter in the State or parts of the State. A prevention and control program may be authorised similarly under a number of circumstances including, if the chief executive or local government is satisfied there is or is likely to be, prohibited matter in an area or to prevent the entry into an area of biosecurity matter that poses or is likely to pose a significant biosecurity risk. Obtaining a warrant is not practical in these circumstances and would inhibit the ability of authorised officers to effectively control the establishment and spread of harmful biosecurity matter in a timely manner.

The Bill provides for public notification of such programs (clause 227) and public access to the programs (clause 228). The authority to enter places without consent or warrant does not extend to places where a person ordinarily resides without the consent of the occupier or a warrant. Authority to enter other places is limited to entry at a reasonable time of the

day or night. Clause 263 of the Bill requires authorised officers: to make a reasonable attempt to locate the occupier and seek the occupier's consent to enter, produce the officer's identity card for the occupier's inspection, inform the occupier of the reason for the entry, advise the occupier that consent is not needed to enter. Where the occupier can not be located, the officer must leave a note in a secure and conspicuous position advising the occupier of the date, time and purpose of entry. Further, clause 229 requires the authorised officer to advise the occupier of the steps taken at the place, or to be taken under the program.

The powers following entry under a biosecurity program are limited to those necessary for carrying out the program.

Clauses 253 and 255 – 257 —Power to enter places

These provisions provide that an authorised officer may enter a place without a warrant or the consent of the occupier if a reasonable attempt to locate the occupier to gain consent is made and the occupier cannot be found. Under clause 253, if the occupier is located and refuses consent, the authorised officer is not permitted to enter the place. Clauses 255, 256 and 257 enable an authorised officer to enter a place to check compliance with and take steps under a biosecurity order or a direction. The purpose of giving a person a biosecurity order is to prevent a person from failing to discharge his or her general biosecurity obligation or to ensure the person discharges his or her general biosecurity obligation. Any failure in that regard can potentially cause significant adverse effects on biosecurity considerations (for example, a failure to comply with a biosecurity order or direction to eradicate a particular restricted invasive plant on the person's property which borders a National Park. The invasive plant could spread unchecked through the National Park displacing native species and irreparably damaging the environment).

Authorised officers who enter a place without consent because the occupier cannot be located, must leave a notice in a conspicuous and secure way stating the date, time and purpose of the entry. These powers of entry do not extend to permitting entry to a building or other structure used for residential purposes. Entry to a part of a place where a person resides is only permitted with the consent of the occupier or a warrant.

Authorised officers must take all reasonable steps to ensure the entry causes as little inconvenience and does as little damage as practicable in the circumstances. Compensation is payable under clause 322 for damage caused by negligent or unlawful acts of authorised officers. In addition,

reasonable notice in writing of the intention to enter and the reason for entry must be given to the occupier or owner of the place to be entered for entry to take action required under a direction (clause 257).

Limited review of decisions

The Bill provides for the limited review of chief executive decisions to make an emergency declaration or biosecurity emergency order or movement control order. A review of a chief executive's decision on those relevant matters is limited to a review by the Supreme Court on jurisdictional error grounds. There is an imperative to take decisive action in emergency situations to protect the community against the grave outcomes to a biosecurity consideration from known or exotic biosecurity matter. For example, swift action is needed to address highly pathogenic zoonotic diseases (diseases that spread from animals to humans) like the H5N1 strain of avian influenza or bovine spongiform encephalopathy. Delays in responsiveness caused by legal challenges can have profound negative effects on a biosecurity consideration.

The efficacy of responses to emergent situations will be greatly hampered if delays were encountered through legal challenges to the decision to declare new threats as prohibited matter.

Orders the subject of decisions limited in review would only be made where the chief executive considers the declaration and orders are critical to safeguarding the biosecurity of Queensland. Additionally, in relation to the declaration of an emergency by the chief executive, the Bill requires the Minister to table in Parliament a report on a declared emergency within six months of the declaration.

In these situations, the balance favours the general rights of the community over an individual's right to be heard in these circumstances.

The Bill also provides that a regulatory impact statement need not be prepared for subordinate legislation that declares particular biosecurity matter as prohibited matter or no longer prohibited matter. The costs to the community or sections of the community from the making of the subordinate legislation is considered to be far outweighed by the need to protect the public from significant adverse effects to biosecurity considerations by biosecurity matter in these circumstances.

Amendment of Act only by another Act

The Bill includes provisions empowering the chief executive to declare biosecurity matter as prohibited matter or no longer prohibited matter and

to establish particular areas within a biosecurity zone, potentially breaching FLPs. Provisions empowering the chief executive to make declarations concerning matter as prohibited are designed to enhance the responsiveness of administrative actions to address unknown matter that could have potentially adverse effects on biosecurity considerations. For example, a new strain of multi-drug resistant “flesh-eating” bacteria in milk that can be transmitted to humans working with cows has recently been discovered in Britain and Denmark. The Bill allows the use of this emergency declaration power only if the chief executive considers the situation urgent and it involves biosecurity matter that will have a significant adverse impact on a biosecurity consideration.

Provisions empowering the chief executive to declare biosecurity matter no longer prohibited matter or establishing areas within a biosecurity zone created under a regulation are necessary to ensure sufficient flexibility to address rapidly changing circumstances presented by biosecurity matter. Some biosecurity matter, by its nature, has the ability to spread vast distances by natural means. For example, an area infested by fire ants can change frequently as new infestations appear and old infestations are eradicated. The ability to establish particular areas within zones by chief executive notice provides the necessary timeliness and flexibility to address changing risk scenarios. Without this ability, there would be considerable amendments to biosecurity zone regulatory provisions with a consequent loss in responsiveness. The provision limits the chief executive’s power to imposing restrictions in particular areas that are lesser than those that would otherwise apply under a biosecurity zone regulatory provision.

Similarly, flexibility is required to address situations where responses to incursions or outbreaks of prohibited matter have not succeeded and containment and management strategies need to be employed. To ensure that persons are not penalised under the Bill for dealing with the prohibited matter, which has become endemic, the chief executive has the capacity to take urgent action and remove the prohibited status associated with the biosecurity matter.

Self-incrimination no defence

The public interest in protecting against serious biosecurity risks is best served by ensuring the full and frank disclosure of information pertinent to containing and investigating biosecurity risks.

Excluding the disclosure of information may jeopardise the tracing of contagious biosecurity matter and place Queensland’s biosecurity at risk.

It may also inhibit the effectiveness of formal inquiries into causes of and action taken in relation to serious biosecurity risks and biosecurity events.

Clauses 106 (Requirement to answer question or give information), 290 (Offence to contravene help requirement), 316 (Offence to contravene document production requirement) and 317 (Offence to contravene document certification) removes self-incrimination as a reasonable excuse for a person to fail to give a document required to be held or kept under the Act. These clauses clarify how information given by an individual (primary evidence), or any information or thing obtained as a direct or indirect result of evidence is also not admissible (i.e. derived evidence), may be used in proceedings. That is, primary and derived evidence is not admissible in a civil or criminal proceeding, other than criminal proceedings about the falsity or misleading nature of the primary evidence.

Documents that are issued to a person or required to be kept by the person under the Act will contain information that can assist authorised officers in a number of ways to discharge their duties including in tracing the forward and backwards movement of biosecurity matter for the purposes of identifying a source of a disease and possible carriers of a disease. Identifying and isolating the source of a disease outbreak enables the appropriate management of the disease and limits the possibility of disease spread. It is considered that these requirements represent a suitably proportionate approach to avert potential outbreaks of disease and assist in a required response during a biosecurity emergency.

Delegation of legislative power

The Bill includes a number of provisions that effectively allow a regulation to establish an offence under the Act. Clause 24(3), for example, provides that a person fails to discharge the person's general biosecurity obligation (an offence) if the person contravenes a provision in a regulation. These provisions raise fundamental legislative principles in relation to the delegation of legislative power under sections 4(2)(b) and 4(4)(b) of the *Legislative Standards Act 1992*.

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

The Bill includes provisions with broad statutory instrument making powers in emergency situations. The Bill creates offences for failing to comply with these statutory instruments. These provisions are considered

necessary to ensure there is sufficient flexibility to respond to biosecurity risks posed by biosecurity matter and the potentially significant adverse outcomes on a biosecurity consideration. It is considered there are sufficient checks and balances contained within the Bill to ensure these provisions do not abrogate the power of Parliament.

For example, the exercise of these emergency powers is limited to urgent situations and only where the chief executive is satisfied on reasonable grounds, having regard to the seriousness or potential seriousness of the biosecurity event or if the biosecurity risk is high enough that an emergency response or a movement control order is necessary. Both emergency orders and movement control orders are time limited. Emergency orders last for a maximum of 21 days and a movement control order for three months. Both orders require the chief executive to take all reasonable steps to ensure that persons likely to be affected by the orders are made aware of the making of the orders. For emergency orders, the chief executive must consult with both the Minister and the Chief Health Officer unless it is not practicable to do so. Additionally, the Minister must table a report about the biosecurity emergency the subject of the biosecurity emergency order in the Legislative Assembly within six months after the biosecurity emergency ends.

The delegation of legislative powers regarding biosecurity emergency orders and movement control orders represents a graduated response to an evolving situation. Urgent and decisive action is taken as the first response to prevent significant adverse effects to biosecurity considerations by biosecurity matter. As the level of risk posed by the biosecurity matter to biosecurity considerations reduces, the responses are likewise downgraded to ensure appropriate and proportionate action is taken commensurate with the level of risk presented.

Immunity from proceeding or prosecution

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

The conferral of immunity is balanced by the fact that any civil liability would otherwise be attached to a designated person instead attaches to the State or to a local government in instances where the liability arises

because of an action or an authorised person or chief executive officer employed by the local government.

Imposing obligations retrospectively

The Bill provides for a transitional regulation-making power. Clause 669 enables a regulation to make a provision of a saving and transitional nature about anything for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from a repealed Act to the Bill, and anything for which the Bill does not sufficiently provide. The clause provides that a transitional regulation may have retrospective operation to a day that is no earlier than the commencement of the Act.

Generally, the imposition on individuals of obligations retrospectively is considered inappropriate. The Bill contains extensive and detailed transitional provisions, and given the breadth of the existing legislation to be repealed by the Bill, it is prudent to include this regulation-making power to ensure that there are no unintended legislative consequences arising from the commencement of the Act.

Penalties

There are a number of offence provisions in the Bill carrying significant penalties. Clause 23, for example, provides that a person on whom a general biosecurity obligation is imposed must discharge the obligation. Failure to discharge the obligation is an offence. If the offence is deemed an aggravated offence (if the commission of the offence causes significant damage, or is likely to cause significant damage to the health and safety of people or to the economy or the environment) it carries a maximum penalty of 3000 penalty units or 3 years' imprisonment.

The magnitude of this penalty is considered appropriate in the circumstances given the outcomes envisaged by the provision. The purpose of imposing biosecurity obligations on persons is to aid in averting biosecurity risks and the adverse impacts of biosecurity matter on biosecurity considerations and to ensure that responsibility for the careful management and control of biosecurity matter is brought home to those who deal with the matter.

Biosecurity events have the potential to result in deaths, serious economic impacts, damage to the environment or adverse impacts on social amenity. Deliberate or reckless acts or omissions may result in accelerated or increased spread of biosecurity matter, delays in identification of an

incursion or outbreak all of which can exacerbate the adverse outcomes of a biosecurity event. Outbreaks or incursions of some biosecurity matter, if not prevented or rapidly addressed, can result in adverse outcomes to human health, industry profitability and the natural environment. Impacts of a biosecurity event can go beyond the industry involved with flow-on effects to the rest of the economy.

It is considered that the penalty for an aggravated offence under the general biosecurity obligation is appropriate for the level of risk and potential adverse outcomes of such an offence against the Act. The heavier penalty will also provide greater deterrence, potentially resulting in the diminished prevalence of such offences.

Detaining a person

In controlling the spread of biosecurity matter that poses a significant risk to a biosecurity consideration, it may be necessary to stop and inspect a vehicle, or give a direction restricting a person, biosecurity matter or a carrier to within an isolated area. Such a requirement may be considered as infringing upon the common law rights of individuals to freedom of movement and association.

However, these powers can only be exercised during a biosecurity emergency, or when it is considered there is an imminent and significant biosecurity risk. Preventing the spread of biosecurity matter during a biosecurity emergency is a critical factor in protecting biosecurity considerations from significant adverse outcomes. Such powers are considered vital in protecting public health when there is a risk of disease spread by human carriers.

There are a number of safeguards around the use of these powers included in the Bill. For example, the exercise of these powers is limited to urgent situations, and the chief executive is satisfied on reasonable grounds, having regard to the seriousness or potential seriousness of the biosecurity event or the biosecurity risk is high enough that an emergency response is necessary. Emergency orders are in place for a maximum of 21 days. A biosecurity emergency order requires the chief executive to take reasonable steps to ensure that persons likely to be directly affected by the orders are made aware of the making of the orders. The chief executive must consult with both the Minister and chief health officer unless it is not practicable to do so. Additionally, the Minister must table a report about the biosecurity emergency the subject of a biosecurity emergency order in the Legislative Assembly within 6 months after the biosecurity emergency ends.

The power of an inspector to take reasonable steps under clause 273 is also an emergency power and may only be exercised where an inspector is satisfied on reasonable grounds that an activity is being carried out, or there is biosecurity matter at a place and it is necessary to exercise these powers to avoid an imminent and significant biosecurity risk.

Consultation

Targeted stakeholder consultation on parts of the exposure draft of the Bill occurred throughout 2009 - 2011. The final Exposure Draft of the Bill was released for public consultation on 25 July 2011 with submissions closing on 2 September 2011. In tandem with the public release of the Exposure Draft, the department mailed out the Bill to key external stakeholders on 22 July 2011 and invited those stakeholders to departmental presentations on the Bill from 25 July to 19 August 2011.

Notes on Provisions

Chapter 1 Preliminary

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

Part 1 Introduction

1 Short title

Clause 1 specifies the short title of the Bill.

2 Commencement

Clause 2 provides for the Bill to commence on a date to be fixed by proclamation.

Part 2 Purposes of Act and achieving the purposes

3 Purposes of Act

Clause 3 identifies the main purposes of the Bill.

The main purpose of the Bill is to protect human health, social amenity, the economy, and the environment (each a biosecurity consideration) from pests, diseases, contaminants or other harmful matter that can create biosecurity risks.

4 How purposes are primarily achieved

Clause 4 establishes how the purposes of the Bill are primarily achieved. The purposes of the Bill are to be achieved by providing the basic safeguards necessary to protect biosecurity considerations through a combination of:

- imposing a universal obligation (a general biosecurity obligation defined in Clause 22) on persons to prevent or minimise the impacts of biosecurity risks on biosecurity considerations;
- enabling the forging of cooperative ties between all levels of government, industry and the general public and improving capacity generally to respond to biosecurity risks;
- allowing for risk-based decision-making on approaches to the management of and response to, biosecurity risks while incorporating the precautionary principle in risk-based decision-making to allow for timely responses to biosecurity risks or to prevent a biosecurity event;
- acknowledging best practice in mitigating biosecurity risks by providing for codes of practice relating to a person's obligations; and
- providing for the effective monitoring and enforcement of compliance with the Bill.

Part 3 Application and operation of Act

5 Scope of Act generally

Clause 5 identifies the scope of the Bill. The scope extends to acts and omissions of persons relating to biosecurity matter and dealings with particular biosecurity matter or carriers that may pose a biosecurity risk.

6 Act binds all persons

Clause 6 specifies that the Bill binds all persons including the State, the Commonwealth and other States to the extent the legislative power permits. Neither the State nor the Commonwealth can be prosecuted for an offence against the Bill.

7 General application of Act to ships

Clause 7 provides that the Bill applies to ships in Queensland waters and waters outside of Queensland provided that the ship is travelling from a place in Queensland to another place in Queensland. The clause provides that the Bill does not apply to ships of the Australian Defence Force or a defence force of another country, or where the ship is in waters outside of Queensland and travelling from and to a place not in Queensland.

8 Relationship with particular Acts

Clause 8 clarifies the relationship between the Act and other Acts.

Subclause (1) provides that the Act is in addition to and does not limit another Act. For example, under Chapter 2, a person has a biosecurity obligation not to do or omit to do something that may exacerbate the adverse effects of biosecurity matter on a biosecurity consideration. A person may therefore have a biosecurity obligation to manage invasive plants on the person's property. The Bill does not remove the obligation for a person to obtain a permit under the *Vegetation Management Act 1999* to clear native vegetation if the invasive plants are amongst the native vegetation and clearing the native vegetation is the only way to manage the invasive plants.

Subclause (2) identifies how potential inconsistencies between this Act and other specified Acts are to be addressed. Any inconsistency is to be resolved in favour of the other Act, but only to the extent of that

inconsistency. It is not intended that the Bill should interfere with the operation of these Acts in the matters to which they apply.

Subclause (4) exempts a person who does a lawful act authorised under Chapter 5, part 1 or 2 (Biosecurity emergencies; Movement control orders); or an inspector, a person directed by an inspector, or a person authorised by an inspector to take steps under Chapter 9 Part 3 (Emergency powers), from liability for the doing of a lawful act which would constitute an offence under a specified Act. For example, under Chapter 5 (Enforcement of biosecurity emergency order) an inspector may take a lawful action against biosecurity matter that may be an invasive pest animal or plant the subject of the emergency order. In taking that action, the officer might otherwise be assumed to commit an offence under the *Nature Conservation Act 1992* or the *Forestry Act 1959*. These Acts necessarily contain broad provisions about protecting all forms of wildlife and forest products. This can relate to indigenous or non-indigenous species. Equally, to prevent the spread of a plant disease during an emergency, it may be necessary to destroy native trees which would otherwise be an offence under the *Vegetation Management Act 1999*. The clause deems the person not to have committed the offence under Acts specified in the clause.

Subclause (5) provides that Chapter 2 of the *Neighbourhood Disputes Resolution Act 2011* does not apply in relation to a declared pest fence.

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

Clause 9 provides that a breach of an obligation under the Bill will not expose a person to liability under a civil action for breach of statutory duty.

10 Act does not affect other rights or remedies

Clause 10 outlines that a civil right or remedy available to a person is not affected or limited by the Bill. This ensures that a person's common law rights (for example in relation to an action against someone for negligence) are acknowledged by the Bill. The clause also provides that compliance with the Bill does not necessarily show that a civil obligation, which exists apart from the Bill, has been satisfied or has not been breached.

11 Community involvement in administration of Act

Clause 11 recognises that Queensland's biosecurity system is multi-layered and involves formal and informal relationships between the three levels of

government, industry, non-government organisations, community groups and individuals. The clause requires, as far as practicable, that the administration of the Bill is undertaken in consultation with the above-mentioned entities.

Part 4 Interpretation

Division 1 Dictionary

12 Definitions

Clause 12 provides that the dictionary in Schedule 4 defines particular words used in the Bill.

Division 2 Key concepts and definitions

Clauses 13 – 15 and 16 – 21 define certain terms for the purposes of the Bill. The definitions are integral to an understanding of the extent of the obligations under the Bill to persons who deal with biosecurity matter or a carrier.

13 What is a *biosecurity event*

Clause 13 defines the term ‘biosecurity event’ for the purposes of the Bill. The definition of ‘biosecurity event’ is an event or potential event, caused or likely to be caused by biosecurity matter, which has or may have a significant adverse affect upon a biosecurity consideration.

The clause provides examples of biosecurity events, that is, those occurrences that may or will have a significant adverse effect on a biosecurity consideration, for example, Hendra virus in horses or an outbreak of foot and mouth disease in another State.

14 What is *biosecurity matter*

Clause 14 defines ‘biosecurity matter’ in part as a living thing other than a human or part of a human. Humans are excluded from the definition to ensure that the Bill does not deal with the treatment of people from diseases where public health legislation will apply. The Bill does deal with the treatment of animals infected with zoonotic diseases (animal diseases such as rabies or psittacosis) that can be transmitted to humans. The definition also includes a prion, which is not a living thing but is an infectious agent composed primarily of protein that can cause disease (for example bovine spongiform encephalopathy or BSE, also known as "mad cow disease"). Other types of agents that cause animal or plant disease may also be prescribed under a regulation. The definition also includes contaminants, which are further defined in clause 17.

15 What is a *biosecurity risk*

Clause 15 defines a ‘biosecurity risk’ as a risk of exposure to any adverse effect on a biosecurity consideration that is caused by, or likely to be caused by, biosecurity matter, dealing with biosecurity matter or a carrier; or carrying out an activity relating to biosecurity matter or a carrier.

The term ‘deal with’ is defined in Schedule 4 to include a broad range of activities undertaken by persons associated with biosecurity matter or the carriers of biosecurity matter. Activities undertaken by persons will pose varying levels of biosecurity risk. This may be because of the manner in which the activity is undertaken or the inherent risk associated with the activity. A person’s dealing with biosecurity matter has a direct bearing on the biosecurity risk posed by the biosecurity matter, for example, a person who disposes of an invasive plant that is in seed into the environment creates an immediate biosecurity risk because of the invasive nature of the plant.

16 What is a *carrier*

Clause 16 defines a ‘carrier’ as any thing that is capable of moving biosecurity matter that is attached to it, or contained in it, from a place to another place. A carrier can also contain biosecurity matter that may attach to or enter another animal or plant, or part of another animal or plant, or another thing. Carriers may include animals, whether living or dead, inanimate objects (such as agricultural equipment) or humans that can transport biosecurity matter.

17 What is a *contaminant*

Clause 17 of the Bill defines a ‘contaminant’ as anything that may be harmful to animal or plant health or pose a risk of any adverse effect on a biosecurity consideration. Contaminants may be harmful to any animal or plant, or part of an animal or plant that the carrier attaches to or enters.

The presence of a contaminant in a carrier may be caused as a result of environmental contamination or as a result of the manufacture, packaging, packing, preparation, processing, production, storage, treatment or transport of the carrier.

18 What is *prohibited matter*

Clause 18 defines ‘prohibited matter’ as biosecurity matter that, for the time being, is established as prohibited matter under Chapter 2.

19 Prohibited matter criteria

Clause 19 outlines the criteria that biosecurity matter must satisfy to become prohibited matter under the Bill. Prohibited matter is biosecurity matter that is not present, or not known to be present in the State, and it is believed on reasonable grounds that if the biosecurity matter was to enter the state it may have a significant adverse effect on a biosecurity consideration. For example, prohibited matter could include the pests and diseases to which the national cost-sharing agreements apply or the pests or diseases that are significant from an international market access perspective.

Schedule 1 of the Bill lists things that are prohibited biosecurity matter, a regulation can prescribe things that are prohibited matter and the chief executive can make an emergency declaration declaring a thing to be prohibited matter. Chapter 2 deals with prohibited biosecurity matter in detail.

20 What is *restricted matter*

Clause 20 defines ‘restricted matter’ as biosecurity matter, that for the time being, is established as restricted matter under Chapter 2 and has the category number or numbers assigned to it in Schedule 2 or in the restricted matter regulation providing for its establishment as restricted matter under Chapter 2.

21 Restricted matter criteria

Clause 21 outlines the criteria that biosecurity matter must satisfy to become restricted matter under the Bill. Restricted matter is biosecurity matter that is present in the State, and it is believed on reasonable grounds that if conditions are not imposed to reduce, control or contain it may have an adverse effect on a biosecurity consideration. Schedule 2 of the Bill lists things that are restricted biosecurity matter. In addition, other things can be prescribed under a regulation as restricted matter.

Chapter 2 Significant obligations and offences

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

Part 1 General biosecurity obligation

22 What is a *general biosecurity obligation*

Clause 22 outlines the general biosecurity obligation.

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

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

Subclause (3) requires a person to do whatever is reasonably required to minimise the adverse effects of dealing with a biosecurity matter or carrier on biosecurity considerations. For example if an animal is infected with a disease a person could isolate the animal to minimise the risk of the disease

spreading to other members of the herd and to other animals in surrounding areas owned by other persons.

23 General biosecurity obligation offence provision

Clause 23 creates an offence for a person, without reasonable excuse, to fail to discharge the person's general biosecurity obligation.

The clause describes the maximum penalties. If the offence is an aggravated offence (as defined in clause 26 being an offence that causes significant damage, or is likely to cause significant damage, to biosecurity considerations) the maximum penalty is 3 years imprisonment or 3000 penalty units. In the case of a failure to discharge a person's general biosecurity obligation in relation to prohibited matter, the maximum penalty is 1 years imprisonment or 1000 penalty units. The maximum penalty for failure to discharge a person's general obligation for restricted matter is 6 months imprisonment or 750 penalty units and for any other failure, the maximum penalty is 500 penalty units.

24 Effect of regulation for discharge of general biosecurity obligation

Clause 24 explains how a person discharges his or her general biosecurity obligation by complying with a relevant regulation provision. Where a regulation prescribes a way of discharging a person's general biosecurity obligation, the person discharges his or her obligation by complying with the regulation.

However subclause (2) provides that unless stated in the regulation, the regulation will not prescribe all that a person must do to discharge his or her general biosecurity obligation. For example, there will be practices that a person should ordinarily be doing that may not be prescribed in a regulation. For example, a regulation may not state that a person must wash his or her hands after handling horses during an outbreak of equine influenza. However, there is a risk that in not washing hands after handling a horse that may be infected with equine influenza a person could spread the disease between horses. Because the regulation did not state that a person must wash his or her hands, it is no defence to a charge of failing to discharge the obligation because common sense practices, like hand washing, were not prescribed.

Subclause (3) provides that if a person contravenes the regulation provision, the person fails to discharge his or her general biosecurity

obligation and the general biosecurity obligation offence provision will apply.

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

Clause 25 details the effect of a code of practice on the discharge of a person's general biosecurity obligation.

Subclause (2) provides that a code of practice may not provide all that a person has to do to discharge his or her obligation. Similar to clause 24(2), there will be common sense practices that a person should ordinarily be doing which may not be identified in a code of practice. Like clause 24, it is not a defence for failing to discharge a biosecurity obligation for a person to rely upon a practice not contained in a code of practice.

Subclause (3) provides that a person fails to discharge his or her obligation by contravening or acts inconsistently with a code or by not following another way that is as effective as or more effective than the way stated in the code.

Subclause (4) provides that where a regulation prescribes mandatory compliance with the whole or stated part of a code of practice, any contravention or act inconsistent with the code of practice or stated part by a person is deemed to be a failure by the person to discharge his or her general biosecurity obligation.

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

Clause 26 details the concept of an aggravated offence. An aggravated offence is one causing significant damage or likely to cause significant damage, to a biosecurity consideration. The maximum penalty is 3000 penalty units or three years imprisonment. This recognises the possible significant adverse consequences that can flow from a person's deliberate or reckless dealing with biosecurity matter.

Sub-clause (2) provides that to prove an aggravated offence, the prosecution must prove that the person who committed the offence intended his or her conduct to cause significant damage to a biosecurity consideration or that the person was reckless as to whether his or her conduct would cause such significant damage.

27 Defence of due diligence

Clause 27 provides that in a proceeding for an offence against the general biosecurity obligation it is a defence to prove that the person exercised all due diligence to prevent the commission of the offence. A person will have been taken to have committed the relevant offence unless the person can prove that the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

In exercising proper due diligence a person must take all reasonable precautions. The clause provides the ways in which a person may show that he or she has exercised due diligence, including for example, by proving that the person took the precautions that were reasonable in all the circumstances to prevent the spread of any biosecurity matter.

A person can also prove that he or she acted diligently if the person proves that he or she followed a way that was either stipulated in a regulation or code of practice made in relation to the particular biosecurity matter or activity.

Part 2 Prohibited matter

Division 1 Establishing what is prohibited matter

28 Basic prohibited matter declaration provision

Clause 28 provides that biosecurity matter mentioned in Schedule 1 or prescribed in a regulation or declared by the chief executive under an emergency prohibited matter declaration is prohibited matter.

29 Prohibited matter regulation

Clause 29 allows the Minister to recommend to the Governor in Council that a regulation be made prescribing particular biosecurity matter as prohibited matter or that prohibited matter in Schedule 1 or made under an emergency prohibited matter declaration to be no longer prohibited matter.

Subclause (2) outlines the issues that must be considered by the Minister in making a recommendation to the Governor in Council to prescribe particular biosecurity matter as prohibited matter. These provisions ensure

that any required action is undertaken promptly to reduce the adverse effects on a biosecurity consideration.

Subclause (3) lists the criteria the Minister must be satisfied before recommending that particular biosecurity matter identified in Schedule 1 or declared under an emergency prohibited matter declaration, no longer be identified as prohibited matter. The criteria include whether it is no longer appropriate for the biosecurity matter to be subject to the provision of the Act relating to prohibited matter. For example, if a subsequent risk assessment of an invasive plant that is present in another State and grown for the cut flower market reveals that the species poses a lesser threat to a biosecurity consideration than an original assessment revealed, the species could be removed from the prohibited matter list and might be included on the restricted matter list in Schedule 2 where it can be more appropriately regulated.

30 Chief executive may make emergency prohibited matter declaration

Clause 30 empowers the chief executive to make emergency prohibited matter declarations about prohibited matter.

Subclause (1)(a) provides that the chief executive may declare biosecurity matter that is not currently listed as prohibited matter in Schedule 1 or in a regulation, as prohibited matter.

Subclause (1)(b) provides that the chief executive can declare biosecurity matter listed in Schedule 1 or prescribed in a regulation as prohibited matter to no longer be prohibited matter.

Subclause (2) provides that the chief executive may only make an emergency prohibited matter declaration to declare matter as prohibited matter under subclause (1)(a) in an emergency situation having first been satisfied of the following matters:

- the biosecurity matter satisfies the prohibited matter criteria provided for in clause 19; and
- in the circumstances, it is necessary to make the declaration to prevent or limit the adverse effects.

For example, an occasion may arise where a previously unknown pest or disease is identified in another jurisdiction and is suspected of being the cause of stock losses in those jurisdictions. With the frequency of movement of goods between States and from overseas, there may be

heightened risk that the pest or disease could be introduced into Queensland within a short period of time. Allowing the chief executive to make an emergency prohibited matter declaration in this type of situation will enable enhanced prevention, surveillance and eradication action to be taken in relation to the matter and will assist in mitigating biosecurity risks associated with the particular biosecurity matter. In time constrained emergent situations, emergency prohibited matter declarations avoid delays in listing the matter through a regulation making process.

Subclause (3) allows the chief executive to declare any biosecurity matter mentioned in Schedule 1 or declared under a prohibited matter regulation as prohibited matter, no longer to be prohibited matter. The chief executive may only make this declaration if satisfied that:

- the biosecurity matter is no longer contained and can not be eradicated
- the biosecurity matter has spread and is in a large area of the State
- the rate of spread of the biosecurity matter means that it is likely to spread over a large area of the State
- for some other reason, it is no longer practical, or it is otherwise no longer appropriate, for the biosecurity matter to be subject to the provisions of this Act relating to prohibited matter

This provision is necessary as the Bill imposes obligations on persons to report the presence of prohibited matter to an inspector (Clause 35) and not to deal with prohibited matter (Clause 36). A failure to comply with these clauses is an offence. Where attempts to eradicate particular prohibited matter have failed and the prohibited matter has spread quickly throughout Queensland affecting many Queenslanders, it would be unreasonable to impose these prohibited matter obligations on the public and expose members of the public to prosecution for failing to comply with these obligations. The removal of matter from the prohibited list ensures that a person is not unreasonably penalised under the relevant offence provisions relating to prohibited matter.

Subclause (4) provides that after an emergency prohibited matter declaration is made, the chief executive must publish the emergency prohibited matter declaration in full on the internet.

Subclause (5) provides that after an emergency prohibited matter declaration is made, the chief executive must publish the notice in the gazette and ensure persons likely to be affected by the declaration are made aware by other means including advertising in media outlets.

Subclause (6) states that an emergency prohibited matter declaration is not invalid if the chief executive has not within a reasonable time publicised the making of an emergency prohibited matter declaration.

31 Matters for inclusion in emergency prohibited matter declaration

Clause 31 provides that an emergency prohibited matter declaration must include provisions providing a description of the biosecurity matter, the emergency declaration area, when the declaration begins and when it expires.

32 Effect and duration of emergency prohibited matter declaration

Clause 32 provides that an emergency prohibited matter declaration has effect from when it is made and unless sooner revoked will stay in force until 3 months after publication of the gazette notice or if the declaration comes into force under a regulation.

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

Clause 33 provides that a prohibited matter regulation or emergency prohibited matter declaration that declares biosecurity matter to be prohibited matter must also declare in which particular section of Schedule 1 (grouped according to specific matter), the prohibited matter is to be included. For example, if a new noxious fish has been declared prohibited, it will be classified under Part 6 (Noxious fish) of Schedule 1.

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

Clause 34 obliges the Minister to keep an up-to-date list of all biosecurity matter that is currently prohibited matter on the department's website.

Division 2 Obligations relating to prohibited matter

35 Reporting presence of prohibited matter

Clause 35 requires a person to report to an inspector the presence of prohibited matter or where a person believes or ought reasonably believe that particular biosecurity matter is prohibited matter. The reporting obligation is imposed upon a person if the prohibited matter is, on its own or in or on a carrier at the person's place or in the person's possession. Early notification of the detection of prohibited matter enables immediate biosecurity responses to be implemented to avoid a biosecurity event from occurring.

Subclause (2) provides that if a person is not aware that an inspector has already been advised, the person must advise an inspector of the presence of biosecurity matter as soon as possible but no more than 24 hours after becoming aware. It is an offence to fail to comply with this provision.

Subclause (3) excuses a person from liability for failing to advise an inspector of an offence against the clause if the dealing with the prohibited matter is authorised under a prohibited matter permit or otherwise under a person's lawful control under another Act or a law of the Commonwealth.

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

Subclause (5) requires a person not to take any action likely to exacerbate the spread of the biosecurity matter, but to take action to minimise the risk posed by the prohibited matter. A failure to comply with this provision is an offence.

36 Dealing with prohibited matter

Clause 36 prohibits a person from dealing with prohibited matter. Failure to comply with this provision is an offence.

The definition of 'deal with' in Schedule 4 includes a broad range of activities including possession or sale. A person's dealing with biosecurity matter may have the potential to increase the risk posed by the biosecurity matter. Because of the heightened biosecurity risks associated with prohibited matter, the clause prohibits all dealings with prohibited matter

by a person. For example, the stinging catfish is a rapid and successful reproducer and would compete with native species for breeding sites and similar resources if it were to be introduced into Queensland. These fish are currently listed as prohibited matter and therefore their possession or sale of such species is prohibited.

Subclause (2) clarifies that a person does not commit an offence against the clause only because the person advises an inspector under this part about the discovery of prohibited matter. A person deals with prohibited matter if the person possesses the biosecurity matter. It would be unreasonable for a person to be prosecuted for dealing with the prohibited matter when the person, upon discovery of the prohibited matter, reported its presence to an inspector. The subclause excuses a person from the offence provision in these situations.

Subclause (3) provides that a person does not commit an offence of dealing with prohibited matter if it is done under a permit issued under Chapter 7 or the authority of another Act or law of the Commonwealth. Additionally, the subclause provides that a person does not commit an offence under this clause if the dealing with the prohibited matter is for the purposes of its seizure under Chapter 9 or that the person has a reasonable excuse for the dealing.

Part 3 Restricted matter

Division 1 Establishing what is restricted matter

37 Basic restricted matter declaration provision

Clause 37 provides that biosecurity matter mentioned in Schedule 2 or prescribed as restricted matter in a regulation is restricted matter.

38 Restricted matter regulation

Clause 38 empowers the Minister to recommend to the Governor in Council that a regulation be made declaring particular biosecurity matter as restricted matter. The clause also enables a declaration stating particular biosecurity matter listed in Schedule 2 of the Bill to no longer be restricted matter.

Subclause (2) provides that before the Minister recommends the prescribing of particular biosecurity matter as restricted matter, the Minister must first be satisfied that the biosecurity matter may pose a biosecurity risk that the biosecurity matter satisfies the restricted matter criteria in clause 21, and that prompt action is required to address that risk. These provisions ensure that any required action be undertaken promptly to reduce the presence of the matter in the State as well as control or contain any adverse effect the biosecurity matter may have on a biosecurity consideration within the State.

Subclause (3) allows the Minister to make a recommendation to the Governor in Council to remove particular biosecurity matter from Schedule 2 as restricted matter. The Minister may make such a recommendation if satisfied that it is no longer practical or appropriate for the biosecurity matter to be subject to the restricted matter provisions of the Act.

39 Requirement for restricted matter regulation to classify new restricted matter

Clause 39 provides that a restricted matter regulation declaring biosecurity matter as restricted matter must also declare in which particular section of Schedule 2 (grouped according to specific matter), the restricted matter is to be included. For example, a new restricted invasive plant would be classified under Part 2 (Restricted matter – invasive plants and animals) of Schedule 2.

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

Clause 40 obliges the Minister to keep, on the department's website, an up-to-date list of all biosecurity matter that is for the time being restricted matter.

Division 2 Obligations relating to restricted matter

41 Reporting presence of category 1 or 2 restricted matter

Clause 41 requires a person to notify an appropriate authorised officer of the presence of restricted matter that has been assigned Category 1 or 2.

Schedule 2 lists restricted matter and assigns category numbers to each restricted matter. Each category imposes a requirement or a restriction on a person's dealing with the biosecurity matter. It is an offence not to comply with that requirement or restriction designated by the category number. For example, anthrax is restricted matter assigned as a number 1 category. A person must report the presence of the anthrax to an appropriate authorised officer (who is an inspector in relation to a category 1 reporting requirement).

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

Subclause (2) requires a person to notify an appropriate authorised officer of the presence as soon as possible but no more than 24 hours after becoming aware of the presence. Failure to comply with this provision is an offence.

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

Subclause (4) provides that a person is not required to advise an appropriate authorised officer of the presence of biosecurity matter if another person has already advised. The subclause provides an example of an instance where this may occur.

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

Subclause (6) clarifies who is an appropriate authorised officer for the purposes of notification. For category 1 restricted matter, the appropriate officer is an inspector. For category 2 restricted matter, the appropriate officer is an authorised person appointed by the chief executive.

42 Releasing or disposing of category 7 restricted matter

Clause 42 creates an offence for disposing of or releasing into the environment restricted matter or anything infected or infested with restricted matter assigned a category 7 unless the release or disposal is performed in the way prescribed under a regulation, authorised under a

restricted matter permit, or performed by an authorised officer in accordance with the authorised officer's functions under the Act. Certain invasive weeds and noxious fish have the capacity to repopulate an area even though they have been killed because their seeds, or live young within the dead fish, may still be alive.

43 Requirement to kill or dispose of category 8 restricted matter

Clause 43 requires a person who has Category 8 restricted matter in his or her possession or under his or her control, to kill the restricted matter. Category 8 restricted matter relates only to noxious, non-native fish.

Subclause (2) requires a person to dispose of a thing infected or infested with a category 8 restricted matter in the manner prescribed by a regulation.

Subclause (3) excuses a person from liability if the person possesses the restricted matter under a permit issued under Chapter 7 or the restricted matter is otherwise in the lawful possession or control of a person under another Act or law of the Commonwealth.

44 Offences about other categories of restricted matter

Clause 44 prohibits certain activities associated with certain restricted matter.

Subclause (1) prohibits:

- the sale, barter, exchange or trade of restricted matter assigned category 3. Category 3 restricted matter are particular invasive plants and animals that pose a significant biosecurity risk. Some of these plant species are included in the national list of Weeds of National Significance;
- moving Category 4 restricted matter. Category 4 restricted matter are certain invasive plants and animals. The restriction on the movement of these particular invasive plants and animals is to stop their spread into new areas of the State.
- keeping Category 5 restricted matter. Category 5 restricted matter are noxious fish and invasive animals. Due to their high pest potential, these noxious fish and invasive animals are not to be kept by persons.

- the feeding of restricted matter assigned category 6. Category 6 restricted matter are noxious fish and invasive animals. Invasive animals may be encouraged into urban fringes or settled areas by people deliberately feeding them. Feeding foxes, wild dogs, feral cats and feral pigs can lead to the colonisation of populations of these invasive animals in an area and cause undesirable outcomes, for example, injury to stock caused from an attack by wild dogs, predation of natural wildlife by foxes and feral cats and damage to the environment caused by feral pigs.

Subclause (2) excuses a person from liability for an offence committed under subclause (1) if the person's actions were authorised under a permit issued under Chapter 7 or otherwise authorised under another Act or law of the Commonwealth.

Subclause (3) excuses a person from liability if the person is moving Category 4 restricted matter, keeping Category 5 restricted matter, or giving food to Category 6 restricted matter for the purposes of seizing the restricted matter as evidence of the commission of an offence under Chapter 9.

Subclause (4) excuses a person from liability if the person is moving Category 4 restricted matter for the purposes of its identification by the Queensland Museum for restricted matter that is an animal, or the Queensland Herbarium for restricted matter that is plant.

Subclause (5) excuses a person from liability if the person is keeping Category 5 restricted matter for the purposes of its identification by the Queensland Museum for restricted matter that is an animal, or the Queensland Herbarium for restricted matter that is plant.

Subclause (6) excuses a person from liability if the person is feeding Category 6 restricted matter if the feeding is under the direction of a local government and is carried out in preparation for, or in the course of, baiting the Category 6 restricted matter.

Part 4 Other offences

45 Designated animals feeding on animal matter

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

Subclause (1) makes it an offence for a person to feed animal matter to a designated animal and subclause (3) provides that it is an offence to not take reasonable steps to ensure designated animals do not feed on animal matter.

Designated animals are defined in clause 120 as cattle; sheep; goats; pigs; bison, buffalo; deer; the family *Camelidae*; the family *Equidae*; captive birds; bees; or an animal prescribed under a regulation as a designated animal. Schedule 4 defines animal matter as animal material or tissues derived from animal origin including fish and birds.

Subclauses (2) and (4) provide exemptions to the offences in certain circumstances. A person does not commit the offences of feeding animal matter that is meal (a term separately defined in Schedule 4) to a designated animal or allows a designated animal to feed on animal matter, provided the designated animal is not a ruminant. Additionally, a person does not commit an offence against the provisions if the person carries out the prohibited activity for scientific purposes under the *Animal Care and Protection Act 2001*, or uses animal matter in a poisoned bait for killing a feral pig.

46 Notifiable incidents

Clause 46 requires a person to notify an inspector of a notifiable incident. A notifiable incident includes any biosecurity event or specified symptoms or conditions in plants or animals that are suggestive of the plant or animal being infected with biosecurity matter that may cause adverse effects on a biosecurity considerations. For example, symptoms or conditions could include, blisters on the mouths or feet of certain animals, abnormally high mortality rate or morbidity in animals or plants.

A persons' obligation to notify an inspector of the notifiable incident arises when:

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

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

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

Subclause (4) outlines how the incident is to be communicated to the inspector.

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

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

Chapter 3 Matters relating to local governments

Part 1 Provisions about functions and obligations of local governments

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

47 Main function of local government

Clause 47 identifies the main function of a local government under the Bill. This function is to ensure invasive animals and plants (invasive biosecurity matter) are managed within a local government's area in compliance with the Act. The clause also allows local governments to make local laws about the management of invasive biosecurity matter.

48 When State and local government act in partnership

Clause 48 enables the chief executive (on behalf of the State) and the chief executive officer (on behalf of a local government) to agree to enter into a collaborative arrangement whereby the State may assist local government in relation to the administration or enforcement of a local government responsibility under the Bill. The arrangement may be directed at ensuring a coordinated way to respond to a biosecurity event or sharing of costs between the parties for a biosecurity event.

49 Minister may direct local government to perform function or obligation

Clause 49 provides that the Minister may, if the Minister reasonably believes a local government is not performing its functions or obligations under the Act, direct the local government through a local government compliance notice to perform the function or obligation. The notice must state the function or obligation that has not been met, what action must be taken to redress the matter and when the action is required to commence. The clause provides that before issuing the notice, the Minister must consult with the local government and consider the local government's views about the performance of the function or obligation.

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

Clause 50 applies if a compliance notice has been issued to a local government under clause 49.

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

the local government is unable to achieve substantial compliance with the notice.

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

51 Minister may ask for particular information from local government

Clause 51 provides that the Minister may require a local government to provide a written report about any power or function required to be performed by the local government under the Act.

Part 2 Biosecurity plans for local government areas

Division 1 Requirement for biosecurity plans

52 Local governments to have biosecurity plan

Clause 52 provides that a local government must have a biosecurity plan. The clause sets out what may be included in a biosecurity plan.

Division 2 Making and implementing biosecurity plans

53 Preparing draft plan

Clause 53 provides that a local government working group must be established to prepare a draft biosecurity plan. The clause details who may be included in this group and what the group must take into consideration in preparing the draft biosecurity plan.

54 Notice of draft plan and consideration of public submissions

Clause 54 specifies that a local government must give public notice when the draft biosecurity plan has been prepared. The clause sets out how notice of the draft plan must be communicated and what the notice must state.

55 Chief executive to consider draft plan

Clause 55 states that, within 60 days of the end of the submission period and at least 3 months before an existing biosecurity plan ceases to have effect, the local government must give its draft biosecurity plan to the chief executive for review. If the chief executive is satisfied that the plan complies with the purposes of the Act and provides the management of invasive biosecurity matter within the local government's area, the chief executive must advise the local government that it may adopt the biosecurity plan. If the chief executive is not satisfied of these matters, the chief executive must advise the local government about how the draft plan may be amended and resubmitted to the chief executive.

Subclause (4) provides that if the chief executive does not advise the local government within the 3-month period, the chief executive is taken to have advised the local government that it may adopt the biosecurity plan.

56 Adopting plan

Clause 56 provides that if the chief executive advises, or is taken to have advised the local government that it may by resolution adopt the biosecurity plan, the local government must adopt the biosecurity plan.

57 Duration of plan

Clause 57 states that unless renewed earlier, a local government's biosecurity plan has effect for no more than 5 years.

58 Implementing plan

Clause 58 states that a local government must implement its biosecurity plan.

Division 3 Reviewing, amending and inspecting biosecurity plans

59 Reviewing a biosecurity plan

Clause 59 states that a local government may review its biosecurity plan when the chief executive officer of the local government considers it appropriate. A review of the plan must be completed at least once each year. The local government may consult with any State entity that controls land the local government considers appropriate for reviewing its biosecurity plan. The local government must give the chief executive a copy of the review as soon as practical after completing the review.

60 Amending plan

Clause 60 sets out the requirements for amending a biosecurity plan.

61 Plan to be available for inspection

Clause 61 provides that a local government must keep a copy of its biosecurity plan available for inspection free of charge to members of the public at the local government's office.

Division 4 Miscellaneous

62 Local governments acting concurrently for biosecurity plan

Clause 62 states that two or more local governments can propose and adopt the same biosecurity plan. Each local government must implement the plan in its own local government area to the extent the plan relates to that area.

Part 3 Land Protection Fund

63 Continuation of Land Protection Fund

Clause 63 declares that the Land Protection Fund established under the *Land Protection (Pest Management) Act 2002* continues in existence under the Act.

64 Purpose and administration of fund

Clause 64 sets out the purpose and the operations of the Land Protection Fund, the activities that may be funded and the financial collections expected for the fund.

65 Payments from fund

Clause 65 provides that expenditure from the Land Protection Fund shall be for expenses incurred by the chief executive, amounts necessary for the operation of the barrier fence board, or for any payment permitted under the Act or authorised by the chief executive to be paid from the Fund.

66 Consultation with local government about activities

Clause 66 requires the chief executive to consult with the relevant local government regarding suitability and priority of activities, before paying an amount from the fund for services to be provided by the chief executive that help to achieve the local government's responsibilities.

67 Minister may require local government to make annual payment

Clause 67 empowers the Minister to require, by notice and within a stated period, a local government to pay an amount (for a financial year) to the chief executive for activities in its area that help the local government meet its responsibilities relating to invasive biosecurity matter for its area or maintenance of a barrier fence. The amount must not be more than the maximum amount prescribed under local government regulation. The clause sets out examples of services provided to the local government area. The clause states the period in which the amount must be paid by the local government.

68 Minister must give local government report about activities

Clause 68 provides that the Minister must issue each local government that has contributed to the fund under section 67 a written report for the financial year of outcomes of services provided by the chief executive under this Act in the local government's area.

Chapter 4 Codes of practice, guidelines and particular agreements

Part 1 Codes of practice

Chapter 4 provides for the making of codes of practice and guidelines about matters relating to Biosecurity.

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

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

As noted in Chapter 2, if a regulation requires strict compliance with the code of practice and the person does not follow the code's stated way, the person will be taken to have failed to discharge the person's general biosecurity obligation. If a regulation does not require a person to comply with a code, a person must still address the biosecurity risk by following the code's stated way or another effective or more effective way to discharge his or her obligation.

69 Making codes of practice

Clause 69 provides that a regulation may make codes of practice about matters relating to biosecurity. The purpose of codes of practice made under a regulation is to assist individuals to discharge their statutory obligations.

Codes of practice may be made about, but are not limited to:

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

70 Consultation about codes of practice

Clause 70 requires the chief executive to consult with a number of bodies including local governments, industry associations or community groups, before making a code of practice. Consultation is not required for codes of practice or provisions of codes of practice that are adopted. The clause further provides that a failure to consult does not affect the validity of the code of practice.

71 Tabling and inspection of documents adopted in codes of practice

Clause 71 requires the Minister to table in Parliament a copy of all adopted provisions of codes of practice if they are not part of or attached to the regulation. These must be tabled within 14 days of the regulation being gazetted. If any amendments are made to the adopted provisions these must also be tabled in Parliament within 14 days of the amendments being made.

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

A failure to table the adopted provisions or keep a copy available for inspection does not invalidate or otherwise affect the regulation.

Part 2 Guidelines

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

72 Chief executive may make guidelines

Clause 72 enables the chief executive to make guidelines to provide guidance to local governments, relevant industries and the general public about matters relating to the administration of the Act. The Clause also allows the chief executive to make guidelines about ways a person may discharge his or her biosecurity obligation and comply with other requirements under the Act.

Guidelines may be made about, but are not limited to:

- (a) how the monitoring and enforcement of provisions of the Bill are undertaken;

- (b) ways of complying with requirements imposed under the Bill in relation to restricted matter, such as ways to humanely kill and dispose of noxious fish, steps to manage invasive plants and their impact on an occupier's land or ways to avoid moving fire ants in soil;
- (c) on-farm procedures for keeping and caring for horses, such as ensuring food and water are kept under a roofed structure and away from trees where fruit bats may inhabit to minimise the risk of horses being infected with the Hendra virus; and
- (d) raising designated animals on land for the domestic needs of the occupants of the land. For example, a guideline may be made about regulatory requirements for the keeping and moving of designated animals under the Act.

A guideline may be made by adopting another entity's guideline with or without changes. The clause also provides that before making or amending a guideline, the chief executive must consult with persons who have sufficient interest in the making or amending of the guideline.

73 Availability of guidelines

Clause 73 requires the chief executive to publish and make available to the public current guidelines.

74 Obligation to have regard to guidelines

Clause 74 provides that in deciding whether a person has discharged his or her general biosecurity obligation, a guideline may be taken into account. However, it must not be presumed that because a person has failed to follow a guideline that the person has failed to discharge his or her general biosecurity obligation. For example, a person may fail to follow general guidelines about on-farm procedures for keeping and caring for horses. If the horses become infected with a disease, the fact that the person did not follow the guidelines will not, of its own, be suggestive that the person has breached his or her general biosecurity obligation under the Act.

Part 3 Particular agreements between State and other entities

Division 1 Intergovernmental agreements

75 Intergovernmental agreement for recognising biosecurity certificates

Clause 75 empowers the Minister or the chief executive, on behalf of the State, to enter into intergovernmental agreements with the Commonwealth or another State for the purposes of enhancing the objects of the Bill. Such agreements may:

- provide for recognition by Queensland of biosecurity certificates issued by another State or the Commonwealth and vice versa
- impose audit, inspection or other requirements on a party to the agreement to ensure the integrity and mutual recognition of the biosecurity certificates
- provide for another matter necessary or convenient to achieve the purposes of the Bill.

Division 2 Government and industry agreements

76 Entering into government and industry agreements

Clause 76 empowers the Minister or the chief executive, on behalf of the State, to enter into an agreement with other jurisdictions (the Commonwealth or another State), local governments, industry bodies and natural resource management bodies (a government and industry agreement) for the purposes of enhancing the objects of the Bill. The purpose of the agreement may be:

- to ensure a coordinated process for responding to a biosecurity event
- sharing the costs, between the parties, related to a biosecurity event
- for providing for another matter necessary or convenient to achieve the purposes of the Bill.

77 Content of government and industry agreement

Clause 77 provides for the content of government and industry agreements. Agreements may detail the measures the parties to the agreement must undertake in preparing for a biosecurity event including, preventing, controlling or responding to a biosecurity event. For example, parties to the Government and Livestock Industry Cost Sharing Deed in respect of Emergency Animal Disease Responses are bound to follow the procedures set out in Australian Veterinary Emergency Plan about how to respond to a biosecurity event.

These agreements may also provide for the whole or partial reimbursement of costs incurred, or losses suffered, by a person who complied with an implemented response to a biosecurity event. An example of a cost incurred by a person complying with an implemented response may be the costs of eradicating foot and mouth disease. As a result of the outbreak, the loss suffered by a person may be the value of animals owned by the person that are destroyed to eradicate or control the disease.

Division 3 Compliance agreements

Subdivision 1 Preliminary

78 Entering into compliance agreements

Clause 78 empowers the chief executive to enter into a compliance agreement with another party that will help achieve the purposes of the Bill. Compliance agreements are voluntary, auditable, co-regulatory agreements that can be entered into by the State and other parties to manage biosecurity risks.

Compliance agreements provide for:

- (a) the application of particular procedures relating to biosecurity matter that must be carried out by the other party;
- (b) the records which must be kept to show compliance with the procedures; and
- (c) the supervision, monitoring and testing of the other party's compliance with the procedures.

Subclause (2) provides that a compliance agreement may detail the circumstances in which the chief executive can give the other party notice for cancelling, amending or suspending the agreement.

Subclauses (3) and (4) empower an inspector, exercising his or her emergency powers under Chapter 9, to give the other party to the agreement notice of the application of additional procedures that are not contained in the original agreement. Such additional procedures are then deemed to form part of the compliance agreement under subclause (5).

Subclause (6) clarifies that if a compliance agreement conflicts with a biosecurity emergency order, a biosecurity zone regulatory provision or a movement control order under this Bill discussed under Chapter 5, the compliance agreement has no effect to the extent of the conflict.

Subdivision 2 Applications for compliance agreements

79 Requirements for application

Clause 79 allows a person to apply to the chief executive to enter into a compliance agreement with the State. The clause outlines the required details an application must contain, including (but not limited to) the applicant's details, nature of the business, potential biosecurity risks associated with the applicant's business activities and detailed prevention measures to be undertaken by the applicant.

The clause also requires the applicant to disclose certain information including any previous conviction for a biosecurity offence committed by the applicant, or in the case of a corporation or unincorporated association, an executive officer or committee member. An application must also contain other prescribed information. A prescribed fee must accompany the application.

80 Consideration of application

Clause 80 requires the chief executive to consider and decide to grant or refuse the application.

81 Criteria for deciding application

Clause 81 provides that in deciding the application, the chief executive must be satisfied that all necessary measures are in place to address or mitigate any potential biosecurity risk. The chief executive must also be satisfied that the audit carried out under clause 432 (Audit of applicant's business for entering into compliance agreement) has shown that the applicant can comply with the requirements of the compliance agreement and his or her business has implemented procedures that prevent or manage exposure to all biosecurity risks related to the biosecurity risk matter. The chief executive must also consider whether the applicant is a suitable person to enter into a compliance agreement.

82 Inquiry about application

Clause 82 provides that the chief executive, when deciding applications in relation to compliance agreements, may make further inquiries to determine the suitability of an applicant. The clause also enables the chief executive to seek further information or documents from the applicant to consider the application. A written notice seeking the information or documents must be given to the applicant within 30 days of the chief executive receiving the application.

If the applicant does not comply with the request for further information within the stated period of at least 30 days the application is taken to have been withdrawn.

83 Suitability of applicant to enter into compliance agreement

Clause 83 provides that the chief executive, in determining an applicant's suitability to enter into a compliance agreement, must consider previous convictions for a relevant biosecurity offence other than a spent conviction. The chief executive must also have regard to whether the applicant has previously had a compliance agreement suspended or cancelled.

84 Decision on application

Clause 84 requires the chief executive to determine the provisions of a compliance agreement, give the applicant an information notice, and enter into the agreement on behalf of the State.

Subclause (2) provides examples of the provisions or conditions that may be attached to a compliance agreement. Subclause (3) specifies that the term of the agreement must not exceed 5 years.

The clause also provides that the chief executive must, as soon as practical, give the applicant an information notice if the chief executive refuses the application.

85 Failure to decide application

Clause 85 provides that the chief executive is deemed to have refused the application if a decision has not been made within 30 days of receiving the application or within 30 days plus the time taken for the chief executive to obtain the further information requested under clause 82. The applicant is entitled to an information notice about this decision. These decisions may be reviewed under chapter 11.

Subdivision 3 Suspension and cancellation of compliance agreements

86 Grounds for suspension or cancellation

Clause 86 identifies the grounds for suspension or cancellation of a compliance agreement. The grounds include the person no longer being a suitable person, the person has been convicted of an offence for failing to comply with the agreement or where the chief executive reasonably believes the other party has not complied, or is not complying, with the agreement.

87 Show cause notice

Clause 87 requires the chief executive to issue the other party to a compliance agreement with a show cause notice if the chief executive believes a ground exists to suspend or cancel a compliance agreement. The notice must set out the relevant information pertaining to the grounds for suspension or cancellation. The show cause period ends at least 28 days after the notice is given to the other party.

88 Representations about show cause notice

Clause 88 provides that the recipient of a show cause notice has 28 days after being given the notice to make written representations about the notice to the chief executive. The chief executive is required to consider all representations made by the other party.

89 Ending show cause process without further action

Clause 89 provides that if the chief executive, after considering the other party's accepted representations, no longer believes a ground exists to suspend or cancel the compliance agreement, the chief executive must not take any further action about the show cause notice. The chief executive is to give the other party a notice confirming that no further action will be taken.

90 Suspension or cancellation

Clause 90 provides that after considering any accepted representations, if the chief executive still believes a ground exists to suspend or cancel the agreement, the chief executive may suspend or cancel the agreement. This clause applies also to a situation where there are no accepted representations by the other party under clause 88.

The clause also provides that if the chief executive decides to suspend or cancel the agreement, the chief executive must give an information notice about the decision to the other party.

The decision will take effect on the day the information notice is given or the day stated in the notice, whichever is the later. An information notice may be reviewed under chapter 11.

91 Immediate suspension of compliance agreement

Clause 91 empowers the chief executive to immediately suspend a compliance agreement if the chief executive believes a ground exists to suspend or cancel the agreement and immediate suspension is necessary because of an immediate and serious biosecurity risk. For example, a stock food manufacturer has a compliance agreement with the chief executive. An auditor notifies the chief executive that production lines for stock feed are not adequately cleaned and samples of ruminant stock feed indicate that animal matter is present in the stock feed because of the manufacturing process. It is an offence under the Act to feed animal matter to ruminants.

The feeding of this contaminated stockfeed to ruminants could cause an outbreak of mad cow disease. An outbreak of mad cow disease is a serious biosecurity risk to human health and the economy.

Subclause (2) provides that a suspension operates immediately from when the chief executive gives the other party an information notice and a show cause notice. The suspension continues until the chief executive cancels the suspension period or the show cause notice is finally dealt with or 56 days has passed since the notices were given to the other party.

If during the suspension period the other party returns the compliance agreement to the chief executive and the suspension period has ended allowing the compliance agreement to continue, the chief executive must return the agreement to the other party.

92 Return of suspended or cancelled compliance agreement

Clause 92 makes it an offence for a person to fail to return a suspended or cancelled compliance agreement to the chief executive within 14 days after the decision takes effect. Subclause (3) requires the chief executive to return the compliance agreement to the other party at the end of the suspension period. However, under subclause (4) the chief executive is not required to return the compliance agreement if it is cancelled.

Subdivision 4 Provisions about compliance agreements

93 Effect of compliance agreement if holding compliance certificate

Clause 93 provides that a party to a compliance agreement may issue a certificate certifying that all measures to prevent biosecurity risks associated with the biosecurity matter the subject of the agreement have been complied with. An authorised officer, when exercising powers under the Act relating to the biosecurity matter specified in the agreement, may accept and without undertaking any checks rely and act on the certificate.

For example, a biosecurity zone is established to prevent the entry of cattle ticks into a part of the State. A requirement for persons to bring cattle into that biosecurity zone is for an inspector to inspect the cattle for cattle tick immediately prior to its movement into the biosecurity zone. A cattle

producer has entered into a compliance agreement with the chief executive about cattle tick and has implemented measures to prevent the producer's cattle from the risk of tick infestation. The cattle producer may show an inspector a certificate certifying that, in accordance with the compliance agreement, the cattle have been treated for cattle tick. An inspector can rely upon that certificate without requiring the producer to unload the cattle to enable the inspector to inspect the cattle for cattle tick.

94 Complying with compliance agreement

Clause 94 provides that it is an offence for a person to fail to comply with a compliance agreement unless the person can prove that he or she took all reasonable steps to comply with the compliance agreement.

95 False statements and false advertising

Clause 95 provides that it is an offence for a person to falsely claim by way of oral or written statement or publication that the person has entered into a compliance agreement.

Chapter 5 Managing biosecurity emergencies and risks

Part 1 Biosecurity emergencies

A biosecurity emergency order is an order made by the chief executive directed at isolating and stopping the spread of particular biosecurity matter and, if achievable, to eradicate the matter. The chief executive may make a biosecurity emergency order if he or she is satisfied on reasonable grounds that an emergency response is necessary.

Division 1 Preliminary

96 Relationship to other Acts

Clause 96 provides that this Part does not interfere with emergency provisions under other Acts and vice versa.

97 Other Acts not affected

Clause 97 specifically provides that the Bill does not limit the *Disaster Management Act 2003*, Chapter 8 of the *Public Health Act 2005* or the chemical, biological and radiological emergency provisions of the *Public Safety Preservation Act 1986*.

98 Powers under this part and powers under other Acts

Clause 98 provides that the powers under this part are in addition to and do not limit powers under this Bill or another Act.

Division 2 Declaring a biosecurity emergency

99 Chief executive may make biosecurity emergency order

Clause 99 enables the chief executive to make a biosecurity emergency order, by notice and published on the department's website, to respond to a biosecurity event (clause 13 defines the term 'biosecurity event'). In making the order, the chief executive must have regard to the seriousness or potential seriousness of the event, and the extent of its impact on the economy, the environment, human health, and social amenity. Before making the order, the chief executive must consult with the Minister and, if the event is likely to have a significant impact on human health, the chief health officer.

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

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

Subclause (4) provides that the chief executive may only make a biosecurity emergency order if he or she is satisfied on reasonable grounds that an emergency response as provided for in the order is necessary. In making the order, the chief executive must have regard to the seriousness or potential seriousness of the event and the extent of its impact on the economy, the environment, human health, and social amenity.

Subclause (5) obliges the chief executive, before making the order, to consult with the Minister and, if the event is likely to have a significant impact on human health, the chief health officer. Subclause (6) provides that if it is not practical to undertake the consultation prior to making the order that consultation must be undertaken as soon as practical after the making of the order.

Subclause (7) provides that an emergency declaration is not invalid if the chief executive has not within a reasonable time complied with Subclause (2), (5) or (6).

100 Matters for inclusion in biosecurity emergency order

Clause 100 outlines what a biosecurity emergency order must state:

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

The clause further identifies other matters for inclusion in a biosecurity emergency order. Other matters may include a requirement to publish warnings about the effect a biosecurity matter or carrier is having on a biosecurity consideration and prohibitions on dealing with or movement of biosecurity matter or a carrier.

101 Effect and duration of biosecurity emergency order

Clause 101 provides that a declared biosecurity emergency order starts from when the chief executive makes a declaration under clause 99 (Chief executive may make a biosecurity emergency order) or a time stated in the order and ends 21 days after it is declared, unless it is revoked sooner by the chief executive. A movement control order may also revoke a biosecurity emergency order.

The clause provides that if the biosecurity emergency order is inconsistent with biosecurity zone regulatory provisions (discussed at clause 114 (Regulation may include provisions for biosecurity zones)), a movement control order (discussed at clause 110 (Chief executive may make movement control order)), or a code of practice, the biosecurity emergency order will prevail to the extent of the inconsistency. For example, if a movement control order allows the movement of mangoes in an area of north Queensland and a biosecurity emergency order is made regarding mangoes throughout the whole of Queensland, then the emergency order prevails and the mangoes cannot be moved until the emergency order has ended.

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

Division 3 Enforcement of biosecurity emergency order

102 Compliance with biosecurity emergency order

Clause 102 provides that it is an offence for a person to fail to comply with a biosecurity emergency order unless the person has a reasonable excuse or did not have a reason to know of the existence of the order.

103 Power to stop vehicles

Clause 103 provides that an inspector who is also a police officer or an authorised transport officer may require a person in control of a vehicle to stop the vehicle at a biosecurity emergency checkpoint. In stopping the vehicle, the inspector must have regard to objective criteria for the stopping

and checking of vehicles at the checkpoint. For example, in the case of equine influenza it may be that all vehicles carrying horse floats must be stopped and checked.

The clause further provides that, if the inspector is a police officer, the inspector may require a vehicle to stop other than at a biosecurity emergency checkpoint if it is suspected the vehicle may be being used in contravention of the emergency order.

It is an offence to fail to comply with the requirement to stop a vehicle under this provision.

104 Inspection of stopped vehicle

Clause 104 empowers an inspector, or an authorised person acting under the direction of an inspector, to inspect a vehicle that has been stopped pursuant to a biosecurity emergency order. The inspection is for the purposes of ensuring that the vehicle is not carrying biosecurity matter or a carrier in contravention of the biosecurity emergency order.

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

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

The clause further provides that an inspector (who is not a police officer) or an authorised person may also exercise non-emergency powers under this Act if required, despite the vehicle being stopped under the provisions of a biosecurity emergency order.

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

Clause 105 identifies additional powers of an inspector, or an authorised person acting under the direction of an inspector within a biosecurity emergency area. The use of these additional powers is limited to those powers reasonably necessary for managing the biosecurity emergency the subject of the order.

Subclause (8) provides that if an inspector exercises powers to demolish a building then section 575 of the *Sustainable Planning Act 2009* does not apply to the person who demolishes the building.

106 Requirement to answer question or give information

Clauses 106 provides that it is a reasonable excuse for an individual to fail to answer a question or give information or a document if answering the question or giving the information or document might tend to incriminate the individual or make the individual liable to penalty. This clause applies only to individuals and not to a corporation.

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

Division 4 Biosecurity emergency order permits

107 Biosecurity emergency order permit

Clause 107 empowers a non-police inspector to issue a permit (a biosecurity emergency order permit) on the application of a person, who is subject to the operation of a biosecurity emergency order. The biosecurity emergency order permit authorises the person to perform a stated activity or activities of a stated description that would otherwise be in breach of the biosecurity emergency order.

The clause authorises the inspector to grant the permit if the inspector is satisfied that granting the permit will not worsen the effects of the biosecurity emergency or be detrimental to the effectiveness of the biosecurity emergency order. The inspector may refuse to grant, grant on conditions, amend or cancel the permit by way of an information notice.

108 Offences relating to biosecurity emergency order permits

Clause 108 provides that it is an offence for the holder of a biosecurity emergency order permit to fail to comply with the conditions of the permit, to fail to carry the permit on their person during the period of the order or to fail to produce the permit when requested.

Division 5 Reports about biosecurity emergencies

109 Tabling of report

Clause 109 requires the Minister to table a report in the Legislative Assembly about a biosecurity emergency order within 6 months after the biosecurity emergency ends. The clause details what the report must state.

Part 2 Movement control orders

Movement control orders are made by the chief executive to restrict the movement of biosecurity matter and carriers within the State, keep particular biosecurity matter or a carrier within an area of the State, or prohibit the entry into the State of particular biosecurity matter or carriers. These orders may be made at any time the chief executive is satisfied the particular biosecurity matter will have an adverse impact on the economy, environment, social amenity or human health.

110 Chief executive may make movement control order

Clause 110 enables the chief executive, by notice, to make a movement control order prohibiting or restricting movement of biosecurity matter for the purposes of managing, reducing or eradicating the stated biosecurity matter. The chief executive may make a movement control order only if satisfied that the biosecurity matter under the order poses a biosecurity risk of enough seriousness to justify making the order. The clause details the process for making the movement control order including obliging the chief executive to publish in the gazette notice of the movement control order together with the subject matter generally and where a copy of the

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

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

111 Matters for inclusion in movement control order

Clause 111 sets out the matters for inclusion in a movement control order. A movement control order may prohibit or restrict the movement of biosecurity matter or a carrier into or out of the State or stated areas of the State, or into or out of an area adjacent to a stated area. Conditions may be imposed on the restricted movements. A movement control order may direct action by a person to manage, reduce or eradicate controlled biosecurity matter. It can also impose requirements on a person to do certain things, like disinfecting, treating or destroying biosecurity matter or a carrier, or notifying an inspector about the presence or suspected presence of controlled biosecurity matter.

112 Compliance with movement control order

Clause 112 provides that it is an offence for a person to fail to comply with a movement control order.

113 Effect of movement control order

Clause 113 specifies that a movement control order takes precedence over a permit or other authorisation given under an Act, and that such permit or authorisation has no effect to the extent it is inconsistent to with a movement control order. For example, a permit to travel designated animals along a stock route given under legislation relating to the control and management of stock routes would not be effective to authorise travel that is prohibited under a movement control order while the order is in force.

Part 3 Biosecurity zone regulatory provisions

Part 3 provides for regulations to provide for Biosecurity Zones. The purpose of biosecurity zone regulatory provisions is to manage, reduce or eradicate regulated biosecurity matter over an extended period of time or indefinitely.

114 Regulation may include provisions for biosecurity zones

Clause 114 provides a head of power for a regulation to be made under the Bill to include provisions (biosecurity zone regulatory provisions) establishing the whole or part of the State for stated biosecurity matter (regulated biosecurity matter).

For example zones may be used for the control of cattle ticks within the State. Under the *Stock Act 1915* and in particular the *Stock (Cattle Tick) Notice 2005* Queensland is divided into three tick zones for movement control purposes. Before entering a tick free or control zone, stock from the tick infected zone must be inspected, cleaned and treated under the supervision of a biosecurity inspector or approved person. There are also restrictions on stock moving interstate. The Bill may continue to provide for zones similar to those under the former legislation through biosecurity zone regulatory provisions. This will enable continued control of the movement of cattle and the control and reduction of cattle tick. Biosecurity zone regulatory provisions may include a requirement that susceptible animal species, like cattle and horses, be treated for ticks before the animal is taken out of or into the biosecurity zone.

A biosecurity zone could be as large as the entire State or as small as a local government area or a number of properties and are designed to be in place for the long term.

115 Matters for inclusion in biosecurity zone regulatory provisions

Clause 115 provides, without limitation, the matters that may be included in biosecurity zone regulatory provisions including:

- prohibiting or regulating how a person deals with a stated biosecurity matter;

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

Subclause (1)(c) enables the chief executive, by notice and published on the department's website, to establish a particular area within a biosecurity zone to provide for different requirements to apply to that area than those of the biosecurity zone. Subclause (3) clarifies that the requirements that may be imposed by the chief executive cannot be greater than those otherwise applying under the biosecurity zone regulatory provisions. By its nature, some biosecurity matter has the ability to spread some distance by natural (non-human assisted) means, for example fire ants, plant diseases like citrus canker or equine influenza. By establishing these areas within a biosecurity zone it provides a level of flexibility to address the changing circumstances presented by biosecurity matter and quickly limit the imposition of regulatory measures only to those areas where a biosecurity risk may reasonably be present with a point in time.

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

116 Effect of biosecurity zone regulatory provisions

Clause 116 specifies that biosecurity zone regulatory provisions take precedence over a permit or other authorisation given under an Act, and that such permit or authorisation has no effect to the extent it is inconsistent with the biosecurity zone regulatory provisions. For example, a permit to travel designated animals along a stock route given under legislation relating to the control and management of stock routes would not be effective to authorise travel that is prohibited under biosecurity zone regulatory provisions while the provisions are in force.

Part 4 Biosecurity instrument permits

117 Definition

Clause 117 defines biosecurity instrument to mean a movement control order or biosecurity zone regulatory provisions.

118 Biosecurity instrument permit

Clause 118 empowers an inspector to issue a permit (a biosecurity instrument permit) on the application of a person, who is subject to the operation of a biosecurity instrument. The permit authorises the person to perform a stated activity or activities of a stated description that would otherwise be in breach of the biosecurity instrument.

The inspector may only grant a permit if satisfied that the granting will not increase the level of biosecurity risk posed by the biosecurity matter or be detrimental to the effectiveness of the biosecurity instrument. The inspector may refuse to grant, grant on conditions, amend or cancel the permit by way of an information notice.

119 Offences relating to biosecurity instrument permits

Clause 119 provides that it is an offence to fail to comply with the conditions of a biosecurity instrument permit, to fail to carry the biosecurity instrument permit with the person, or fail to produce the biosecurity instrument permit when it is required by an authorised officer for inspection.

Chapter 6 Registration of biosecurity entities and designated animal identification

Chapter 6 provides for registration of entities that keep a threshold number of designated animals or hold designated biosecurity matter and provides for traceability of specified animals through the National Livestock

Identification System (NLIS). The registration of beekeepers is also provided for under this Chapter. The Chapter imposes obligations on persons to keep records about the keeping and movement of designated or specified animals. Provisions are also made for restricting activities at places identified as posing a biosecurity risk because of past activities carried out at places.

Part 1 Preliminary

120 What is a *designated animal*

Clause 120 defines the term ‘designated animal’ and lists the animals included in that definition. A regulation may also prescribe an animal to be a prescribed designated animal.

121 What is a *specified animal*

Clause 121 defines the term ‘specified animal’ and lists the animals included in that definition. A regulation may prescribe a designated animal as a specified animal.

122 What is *designated biosecurity matter*

Clause 122 defines the term ‘designated biosecurity matter’ as biosecurity matter prescribed under a regulation.

123 What is the *threshold number of designated animals*

Clause 123 identifies the threshold number of designated animals, other than bees, and prescribed designated animals. The threshold number of designated animals is the minimum number of animals that a person holds at a place. Once the threshold number is reached the person becomes a registrable biosecurity entity under clause 127. A person must apply for registration within 14 days of there first being the threshold number of designated stock on the place (refer to clause 130(2)).

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

Clause 124 provides that the threshold amount of designated biosecurity matter is that amount prescribed under a regulation.

125 Who *keeps* a designated animal

Clause 125 identifies the keeper of designated animals. A person keeps designated animals if the person has responsibility for the animal's care and control, regardless of whether that control is exercised via an agent or the person's employee.

However, if the keeper cannot be reasonably identified, then the person who has title of the animal is the keeper. Further, a person keeps a designated animal (other than a bee) if the animal is held at a holding facility (defined in Schedule 4) and the person has final responsibility for the operation of the facility, or the animal is being travelled on a stock route and the person has final responsibility for the travelling of the animal. For example, a farmer has sold his cattle to another person and employs a drover to travel the cattle along the stock route to the purchaser's property. The purchaser is the keeper of the cattle as the purchaser has title to the cattle and has final responsibility for the cattle.

126 Who *holds* designated biosecurity matter

Clause 126 establishes that a person who has the daily control of designated biosecurity matter, holds the designated biosecurity matter. However, if the holder cannot be reasonably identified, then the person who has title to the designated biosecurity matter holds the biosecurity matter.

127 What is a *registrable biosecurity entity*

Clause 127 provides that a person is a registrable biosecurity entity if the person keeps designated animals other than bees across one or more places at or above the threshold level, holds the threshold amount or more of designated biosecurity matter, or keeps designated animals that are bees.

Subclause (3) establishes that two or more persons acting in partnership can be regarded as a registrable biosecurity entity. Additionally, if one of the partners were to separately own other designated animals at or above the threshold limit, that partner is to be regarded as a separate registrable biosecurity entity.

128 What is a *biosecurity circumstance*

Clause 128 defines a biosecurity circumstance as the keeping of designated animals or the holding of designated biosecurity matter.

129 Who is the *occupier of a place*

Clause 129 defines an occupier of a place as the person who is in daily control of the place. Where it is impracticable to determine who the occupier is, the provision deems the person who owns the place as the occupier of the place.

Part 2 Registration and related requirements

Division 1 Registration of registrable biosecurity entities

130 Registrable biosecurity entity must apply for registration

Clause 130 requires that unless exempted by the chief executive, a registrable biosecurity entity must apply for registration with the chief executive. It is an offence to fail to register unless the person has a reasonable excuse.

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

A registrable biosecurity entity must apply for registration for each biosecurity circumstance. For example, a person who keeps the threshold number of designated animals must apply for registration for the keeping of those animals. If a person holds the threshold amount of designated biosecurity matter the person must apply for registration for the holding of

that designated biosecurity matter. However if a person keeps the threshold amount of designated animals and holds the threshold amount of designated biosecurity matter subclause (4) provides that the person can combine the applications into the one application document.

131 Approval for registrable biosecurity entity to remain unregistered

Clause 131 sets out the circumstances in which a registrable biosecurity entity may apply for exemption from the registration requirement under clause 130. If the application for exemption is refused by the chief executive the applicant is entitled to receive an information notice.

132 Application for registration before becoming a registrable biosecurity entity

Clause 132 enables a person to apply for registration if they reasonably expect that they will be a registrable biosecurity entity for a future biosecurity circumstance. For example, a person does not currently keep designated animals but intends to purchase designated animals that will be delivered to the person's place following the sale. The person may apply for registration before the purchase and arrival of the animals at the person's place.

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

133 Application requirements for registration of registrable biosecurity entity

Clause 133 outlines the details required on an application for registration of a registrable biosecurity entity.

134 Registration of biosecurity entity

Clause 134 requires the chief executive to consider duly made applications for registration of persons as registrable biosecurity entities.

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

Subclause (2) provides that the chief executive may grant, grant with conditions or refuse to grant registration to a person to keep bees. It is an offence under clause 145 to keep bees if the person is not registered to keep bees. If the application is granted, the chief executive must register the person and decide the biosecurity risk status details for the entity. The chief executive must provide details of the registration to the person together with an information notice for the registration details. An information notice must also be given to the person if a biosecurity risk has been assigned or if the chief executive has refused the application, or imposed conditions on the registration.

135 Inquiry about application for registration relating to bees

Clause 135 provides that, before deciding an application for registration for the keeping of bees, the chief executive may make further inquiries to decide the suitability of an applicant. A notice may be issued requiring the applicant to give the chief executive further information or a document. The chief executive must give the applicant a reasonable period of at least 30 days, stated in the notice, to furnish the information or document.

Subclause (2) provides that the applicant is taken to have withdrawn the application if the applicant does not comply with the requirement for further information or document.

Subclause (3) provides that the chief executive must give the notice requesting the further information or document within 30 days after receiving the application for registration.

Subclause (4) requires the information or document provided by the applicant to be verified by statutory declaration.

136 Suitability of person for registration relating to bees

Clause 136 provides for the matters the chief executive may have regard to in deciding whether an applicant is a suitable person to obtain registration for the keeping of bees.

137 Failure to decide application for registration relating to bees

Clause 137 provides that if the chief executive fails to decide an application for registration for the keeping of bees within 30 days after receiving the application, the failure is taken to be a decision by the chief executive to refuse the grant the application.

Subclause (3) provides that where the chief has requested the applicant provide further information or a document (under clause 135), the chief executive is taken to have refused to grant the application if the chief executive does not decide the application within 30 days after receiving the further information or document.

Subclause (4) provides that where an application is taken to have been refused, the applicant is entitled to be given an information notice by the chief executive for the decision.

138 Chief executive may register person without application

Clause 138 provides that the chief executive may register a person as a biosecurity entity if the chief executive considers that person is or is likely to become a registrable biosecurity entity, regardless of whether the person has applied for registration or if the situation will be on a temporary basis. Before registering the person the chief executive must give the person a notice of proposal to register the person and specify a time for the person to make a written submission on the proposal. If the chief executive registers the person, the chief executive must give the person an information notice about the decision, including the entity's biosecurity risk status details.

139 Allocation of PICs

Clause 139 specifies that the chief executive must allocate a property identification code (a *PIC*) to any designated place if a person is registered under this part to keep designated animals, other than bees. This clause does not apply if a PIC has already been allocated to the place because of another registration under this part of the Bill. A PIC may take any form

the chief executive considers appropriate, subject to the other requirements of this chapter.

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

140 Registered biosecurity entity may apply for deregistration

Clause 140 provides for application for deregistration to be made to the chief executive if a person who is a registered biosecurity entity ceases to be a registrable biosecurity entity for a biosecurity circumstance. For example, the person has sold all the cattle the person kept on the person's property and has no intention of re-stocking the property. The person may apply to the chief executive to de-register him or herself as a registrable biosecurity entity. If satisfied that the person is no longer a registrable biosecurity entity for the biosecurity circumstance then the chief executive must remove the person from the register or otherwise refuse the application. If the application is refused the chief executive must give the applicant for deregistration an information notice for the decision to refuse.

141 Registered biosecurity entity to be given proof of registration

Clause 141 specifies that the chief executive may give a registered biosecurity entity proof of the entity's registration in the form approved for this purpose. Proof of registration must be supplied to the registered biosecurity entity upon request by the person.

142 No transfer of registration

Clause 142 specifies that a registered biosecurity entity's registration can not be transferred.

143 Term of registration

Clause 143 provides that the term of registration of a registered biosecurity entity is the term decided by the chief executive having regard to the

circumstances of the entity. The term must not be more than three years even if the period is made up of two or more separate periods.

144 Renewal of registration

Clause 144 provides that unless otherwise advised by the entity the chief executive must renew the registration (other than registration in relation to the keeping of bees) of a registered biosecurity entity when the term of registration ends. The chief executive can, at any time, require a biosecurity entity to supply any information reasonably required to confirm the continuing accuracy of any aspect of the entity's registration details. It is an offence, unless the person has a reasonable excuse, to not supply the requested information.

Division 2 Special provisions relating to the keeping of bees

145 Prohibition on keeping of bees without registration

Clause 145 provides that it is an offence for a person to keep bees unless the bees are kept in a hive and the person is registered biosecurity entity for the keeping of the bees. However, an offence is not committed if the person's application for registration is still pending or is the subject of a review or appeal process that is not complete or the person has been given a registration exemption.

146 Additional information for application for registration

Clause 146 specifies that applications by a registrable biosecurity entity made under this Part for the keeping of bees must state if the registrable biosecurity entity, or any executive of the entity if the entity is a corporation, has a conviction for a relevant biosecurity offence, other than a spent conviction. The term 'relevant biosecurity offence' is defined in Schedule 4. Enough detail of the offence must be included in the application for registration to allow the chief executive to decide if it is appropriate to register the entity.

147 Allocation of HIN

Clause 147 requires the chief executive to give a hive identification number (a *HIN*) for the hives of a registered biosecurity entity. All HINs are entered into the biosecurity register.

The clause enables the chief executive to take any appropriate action such as cancelling or replacing a HIN to ensure that each registered biosecurity entity has only one HIN that is unique to that entity. In doing so, the chief executive must give the entity an information notice for the decision that will affect the registration details of the entity.

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

148 Display of information about registered biosecurity entity

Clause 148 provides that it is an offence for an entity to fail to display a registration notice on one of the hives or in a conspicuous place within the hives if located on land that is or that is adjacent to land that is the entity's residential land.

149 Conditions for the keeping of bees

Clause 149 establishes conditions for the keeping of bees. These conditions include that the entity must comply with a code of practice made under this Act for the keeping of bees and other reasonable conditions imposed by the chief executive. The chief executive may impose such conditions on the initial registration of the entity. The clause further enables the chief executive to impose further conditions, remove or amend conditions as appropriate, by way of an information notice to the entity.

150 Application for renewal

Clause 150 outlines the process for an application for renewal of an entity's registration under this Part for the keeping of bees. If the application is refused by the chief executive the registered biosecurity entity must be given an information notice about the decision.

151 Inquiry about application

Clause 151 provides that, before deciding an application for renewal of registration for the keeping of bees, the chief executive may give notice to the applicant requiring the applicant to give the chief executive further information or a document the chief executive requires to decide the application. The chief executive must give the applicant a reasonable period of at least 30 days, stated in the notice, to furnish the information or document.

Subclause (2) provides that the applicant is taken to have withdrawn the application if the applicant does not comply with the requirement for further information or document.

Subclause (3) provides that the chief executive must give the notice requesting the further information or document within 30 days after receiving the application for registration.

Subclause (4) requires the information or document provided by the applicant to be verified by statutory declaration.

152 Failure to decide application

Clause 152 provides that if the chief executive fails to decide an application for renewal of a registered biosecurity entity's registration for the keeping of bees within 30 days after receiving the application, the failure is taken to be a decision by the chief executive to refuse to grant the application.

Subclause (3) provides that where the chief has requested the applicant provide further information or a document (under Clause 151), the chief executive is taken to have refused to grant the application for renewal if the chief executive does not decide the application within 30 days after receiving the further information or document.

Subclause (4) provides that where an application for renewal is taken to have been refused, the applicant is entitled to be given an information notice by the chief executive for the decision.

153 Registration continues pending decision about renewal

Clause 153 provides that any current registration for the keeping of bees will continue while the application for renewal is pending and will continue until the decision to renew or refuse is made or taken to be made. However, the registration will not continue while the renewal application is pending

if the registration is earlier suspended or cancelled. If the renewal application is refused, or taken to be refused, the registration will then expire on the date the information notice for the decision is given to the applicant.

Division 3 Restricted places

154 Inclusion of restricted places in biosecurity register

Clause 154 empowers the chief executive to declare a particular place that could pose a biosecurity risk to be a restricted place and how the use of the place is to be restricted. The declarations are made by way of the chief executive making an appropriate entry into the biosecurity register and notifying the occupier, owner or relevant entity of the declarations by way of an information notice. Subclause (4) enables the chief executive to have regard to the biosecurity risk status details for the entity in deciding whether to declare a place a restricted place.

155 Compliance with restricted place restrictions

Clause 155 makes it an offence, without reasonable excuse, for a person to perform any activities that contravene a restriction recorded in the biosecurity register for the restricted place. It will be a defence for the person to establish that they did not know and ought not reasonably to know of the existence of the restriction or had a reasonable excuse for performing the activity that contravened the restriction.

156 Removal of restricted place from biosecurity register

Clause 156 enables the chief executive to remove from the biosecurity register declarations for a particular place if the chief executive is satisfied that the place no longer poses a biosecurity risk. The removal can occur on the chief executive's own initiative or after consideration of an application for removal under this clause.

157 Application for removal of restricted place from biosecurity register

Clause 157 sets out the process for a person to make an application to the chief executive to have a place removed from the biosecurity register as a

restricted place. The application must be in the prescribed form, be accompanied by the prescribed fee and provide sufficient detail to describe why the place no longer poses a biosecurity risk, for example, evidence prepared by a suitably qualified person that supports the conclusion that the place no longer poses a biosecurity risk.

158 Chief executive may seek further information or documents

Clause 158 enables the chief executive to require an applicant under clause 157 to provide further information or documents that are reasonably necessary to determine the application. If the applicant fails to provide the required further information or documents within the stated timeframe, the application under clause 157 will be taken to have been withdrawn.

159 Decision on application

Clause 159 provides that for any application under clause 157 to remove a restricted place from the biosecurity register, the chief executive must consider the application and decide whether to grant or refuse the application. Further, subclause (3) provides that if the chief executive fails to decide the application within a specified timeframe, the application will be taken to have been refused. If the application is refused the applicant must be given an information notice regarding the decision.

If the application is granted, the chief executive must remove the place from the biosecurity register and notify the applicant of that fact.

Division 4 NLIS administrator

160 Power to disclose designated information to approved NLIS administrator

Clause 160 empowers the chief executive to approve an entity by gazette notice as the administrator of the NLIS (National Livestock Identification System) database and provide information to the administrator about registered biosecurity entities relevant to the keeping of specified animals by the entity under Part 1 of this Chapter. The provision of information about a registered biosecurity entity to the administrator may be subject to conditions the chief executive considers appropriate.

Division 5 The biosecurity register

161 Chief executive's obligation to keep register

Clause 161 requires the chief executive to keep a biosecurity register of registered biosecurity entities and restricted places.

162 Information required to be kept for registered biosecurity entities

Clause 162 outlines the information that must be included in the biosecurity register for each registered biosecurity entity in relation to each biosecurity circumstance (the term 'biosecurity circumstance' is defined in clause 128) and any further information the chief executive considers appropriate.

163 Requirement for change notice

Clause 163 makes it an offence for a registered biosecurity entity to fail to notify the chief executive of any change that affects or may affect the accuracy of the entity's designated details in the register.

164 Correction and updating of biosecurity register for registered biosecurity entities

Clause 164 enables the chief executive to correct the designated details for a registered biosecurity entity on the register if they are incorrect or it is necessary to ensure the traceability of designated animals or designated biosecurity matter, on the chief executive's own initiative or otherwise.

However, if the chief executive is given a change notice under clause 163, the notice may be refused if the chief executive is satisfied that a further application for registration under this Part should be made. For example, a change notice indicates the registrable biosecurity entity is attempting to transfer the registration to another person. In this case, the change notice application would be refused because transfer of registration is not permitted under clause 142. The registrable biosecurity entity would need to apply to cancel his or her registration and the new person would need to make a new application for registration.

165 Public access to biosecurity register

Clause 165 enables the public access to the register and take copies or extracts of it, for a fee, provided sufficient notice is given. The clause details the circumstances in which a person may apply for access and the circumstances under which a person is not entitled to receive the risk status details for a registered biosecurity entity.

Part 3 Specified animal identification and tracing system

Division 1 Approved devices

166 Meaning of *approved device*

Clauses 166 provides that an approved device is a tag or other identifying device or mark that is used to distinguish one specified animal to which it is fitted from all other animals.

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

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

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

167 Meaning of *fit*

Clause 167 defines the term *fit* to also include branding or tattooing an identifying mark on an animal or the insertion of an approved device into an animal where appropriate.

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

Clause 168 provides that the chief executive may approve different types and specifications of devices to be used in identifying specified animals, after having regard to any code of practice in relation to identification devices for the different types of specified animals. The chief executive must publish particular information about approved devices for different animals or circumstances on the department's website.

169 Meaning of *suitable approved device*

Clause 169 defines a suitable approved device for a specified animal if it is suitable to be fitted to the animal having regard to the specifications decided by the chief executive for the device.

170 Only suitable approved device to be fitted

Clause 170 makes it an offence to fit a device to a specified animal that is not a suitable approved device under clause 169. The clause also provides it is a defence if the person did not know or ought reasonably to know the device was not a suitable approved device or they had a reasonable excuse for fitting the incorrect device.

Division 2 Approved device requirement and travel approvals

171 Approved device requirement

Clause 171 provides that it is an offence for the person who keeps a specified animal, to move the animal from the place without it being fitted with a suitable approved device unless the person has a reasonable excuse. This clause applies whether or not the person is a registered biosecurity entity.

172 Exemptions from approved device requirement

Clause 172 outlines the circumstances in which a person will be exempt from prosecution for an offence under clause 171. The circumstances include the movement of the animal to a neighbouring property (a place

where some, or the entire place, is within 20km of the place of origin) for the purposes of ordinary animal management and the animal is to be returned to the place of origin within 48 hours after the arrival at the neighbouring place. For example, cattle are moved to a neighbouring property to be dipped. A further exemption to the identification requirement for the movement of specified animals is where the person obtains a travel approval from the chief executive.

173 Obtaining a travel approval

Clause 173 enables a person to apply to the chief executive for a travel approval for the movement of a specified animal without the need to have the animal identified under clause 171. The chief executive may ask the applicant for further information or documents to decide the application. The travel approval may be granted if the movement of the animal can be traced by NLIS and the movement does not pose a biosecurity risk. The chief executive may impose conditions on the approval.

If the chief executive decides to refuse the application for a travel approval or grants the approval on conditions, the applicant must be given an information notice. If the chief executive fails to decide the application within the decision period, the failure is taken to be a decision by the chief executive to refuse to grant the application. The applicant is entitled to be given an information notice where there has been a failure to decide the application.

Division 3 Receiving specified animals

174 Meaning of moving from another place

Clause 174 clarifies that a reference in this division to the movement of an animal from one place to another also includes a movement of the animal by the owner of the animal that does not involve another person taking delivery of the animal. The clause provides as an example of where this situation might arise by reference to persons who travel their animals on a stock route and return their animals back to the place of departure.

175 Receiver requirement to advice NLIS administrator

Clause 175 imposes obligations on persons who receive specified animals.

Subclause (1) identifies who is the receiver of a specified animal for the purposes of the clause. For example, a saleyard operator is a receiver of specified animals when the saleyard holds specified animals for sale.

Subclause (2) provides that if the receiver is a meat processing facility and the animal is expected to be slaughtered within 5 days after arrival at the facility the receiver must provide the stated information to the NLIS administrator within 48 hours after slaughter.

Subclause (3) provides that if the receiver is a meat processing facility and the animal is not expected to be slaughtered within 5 days after arrival at the facility the receiver must provide the stated information to the NLIS administrator within 48 hours after arrival of the animal.

Subclause (4) lists the NLIS reporting obligations of receivers of specified animals at places other than meat processing facilities. It is an offence, without a reasonable excuse, for a receiver to fail to provide the NLIS administrator with the required information within 48 hours of taking delivery of the animals.

Subclause (5) provides that, where the receiver becomes a registrable biosecurity entity upon taking delivery of the animal but has not yet obtained registration, the period of 48 hours does not start until the receiver has obtained registration.

Subclause (6) provides that a receiver must provide the required information to the NLIS administrator under subclauses (2) to (4) regardless of whether a specified animal was fitted with an approved device.

Subclause (7) exempts the receiver from the reporting obligations if the receiver takes delivery of the specified animal in the capacity of the owner or occupier of a place where the specified animal is agisted, and the owner or occupier is not the owner of the animal, or if the receiver is a conveyor or drover of the animal, or if the receiver is the purchaser of the animal from a saleyard.

Subclauses (8) and (9) provides that if an organiser of an agricultural show receives a head of cattle the organiser must comply with the reporting obligations only to the extent of giving the NLIS administrator:

- (a) the PIC and serial number of the device or RFID number of the microchip for the approved device fitted to the animal;
- (b) the serial number of any movement record relating to the movement of the animal;

-
- (c) the PIC of the place where the agricultural show is being held; and
 - (d) the date of arrival of the animal at the place where the agricultural show is being held.

Subclause (10) provides that if a receiver is not required to comply with the reporting obligations, the responsible person must give the NLIS administrator the stated information with 48 hours of taking delivery of the specified animal. The term ‘responsible person’ is defined under subclause (12) as the person who at law has title to or who otherwise has final responsibility for the specified animal.

Subclause (11) provides that it is a reasonable excuse to fail to comply with the reporting obligations if a person selling, conveying or driving the specified animal has already advised the NLIS administrator of the stated information.

176 Stated information for s175—approved device that includes microchip

Clause 176 identifies the stated information to be given to the NLIS administrator under clause 175 for a specified animal fitted with an approved device that includes a microchip.

Subclause (1) lists the information required to be provided to the NLIS administrator by the receiver of a specified animal at a meat processing facility under clause 175(2).

Subclause (2) lists the information required to be provided to the NLIS administrator by the receiver of a specified animal at a meat processing facility under clause 175(3).

Subclause (3) lists the information required to be provided to the NLIS administrator by the receiver of a specified animal at a place other than a meat processing facility under clause 175(4).

Subclause (4) states that subclause (3) does not apply if the place the animal is delivered to is a designated animal transit facility. The term ‘designated animal transit facility’ is defined in Schedule 4.

177 Stated information for s175—approved device that does not include microchip

Clause 177 identifies the stated information to be given to the NLIS administrator under clause 175 for a specified animal fitted with an approved device that does not include a microchip. The clause does not

apply if the place the animal is delivered to is a designated animal transit facility. The information requirements include, for example, the species and the number of animals of each species moved as part of a group.

178 Stated information for s175—specified animal received at transit facility

Clause 178 identifies the stated information to be given to the NLIS administrator under clause 175 if the place of delivery of the specified animal is a transit facility.

179 Receiver requirement to advise inspector

Clause 179 requires a relevant person who receives specified animals that have not been fitted with an approved device to notify an inspector within 24 hours of that circumstance and comply with the inspector's reasonable directions, unless the relevant person has a reasonable excuse. This provision does not apply to a person if they are a conveyor or drover of the animal.

Division 4 Movement records

180 Movement record requirement

Clause 180 provides that it is an offence for a person, to fail to create a record of a proposed movement of a designated animal and give a copy of the movement record to the conveyor or drover of the animal before the movement starts. It will not be an offence if the person can demonstrate a reasonable excuse for failing to comply with this provision. This applies whether or not the person is a registered biosecurity entity for the keeping of a designated animal.

Subclause (3) outlines circumstances when a movement record is not required. This will be if the movement of the animal is to or from a place that is a neighbouring property (a place within 20 km of the place of origin) and the movement is for ordinary stock management purposes and the movement does not require a biosecurity instrument permit. The term 'biosecurity instrument permit' is defined in clause 118.

Subclause (5) provides that it is an offence for a conveyor or drover of the designated animal to commence the movement without having a copy of

the movement record in his or her possession unless the person has a reasonable excuse.

Subclause (6) provides that a single movement record may be created for the proposed movement of two or more designated animals. For example, one movement record only needs to be created to record the movement of a flock of sheep and a herd of goats that are to be moved together from the place of origin to the next place.

181 Appropriate form of movement record

Clause 181 identifies the details to be included in movement records for designated animals that are not specified animals and the details to be included for specified animals.

Information that may be required includes the details of the places the animal is moved from and the receiver's information, the proposed date of movement, the species and breed of the animal, identification marks, whether the animal has suffered or is suffering an illness and the serial number that is unique for the movement record.

182 Relaxation of movement record requirement for multiple conveyances

Clause 182 enables the recording on the one movement record of the movement of more than one species of specified animal if the mixed species are travelling from the same place to the same destination. All specified animals must leave within 24 hours of the commencement of the movement and the movement of the animals may take place by more than one conveyance of the animals. Each conveyor must carry a signed certificate by the person authorised or required to create the movement record under clause 180.

Subclause (5) identifies the details that must be included in the certificate that is to be carried by the drivers of each vehicle conveying the specified animals.

183 Other matters about movement record requirement

Clause 183 provides that the relevant person who creates a movement record under clause 180 must keep a copy of the record for five years if the animal was a specified animal or otherwise for two years. It is an offence to fail to comply with this requirement. It is also an offence for the person

to fail to produce the movement record to an inspector unless the person has a reasonable excuse.

184 Receiving designated animal

Clause 184 provides that it is an offence for a person to receive a designated animal that is moved without a movement record, if they accept delivery of the animal without taking delivery of a copy of the movement record. Subclause (3) requires a person who takes delivery of a copy of a movement record to keep the copy for five years after the movement started.

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

Subclause(9) exempts a person from the requirement to create and keep a record under subclause (5) if the person who accepts delivery of the animal has the responsibility for the organisation and operation of an agricultural show and is required to keep a record under clause 185.

185 Show organiser to record designated animal movements

Clause 185 provides that it is an offence for a relevant person responsible for organising and operating an agricultural show (defined in Schedule 4) to fail to keep for two years a record of the relevant information for each designated animal present at the show.

Subclause (2) outlines what relevant information is required to be kept for each animal for identification and traceability purposes, including where the animal came from, when it arrived, when it left, any identifying marks and the date the animal participated in an event at the agricultural show.

The provision applies to a relevant person whether or not the person is a registrable biosecurity entity for the keeping of the designated animal and whether or not the person is required to comply with the movement record requirement under clause 180.

Subclause (4) provides that an offence against this provision will not have been committed if the relevant person has a reasonable excuse for failing to comply.

Division 5 Miscellaneous

186 Supply of device for use as an approved device

Clause 186 makes it an offence for a person to supply another person with a device that is not an approved device if they know or ought reasonably to have known that the device was not an approved device.

Subclause (2) provides that it is an offence for a person to supply to another person, other than the State, a device, for use as an approved device, unless the purchaser has given the person a written order for the device. The device must have the PIC of the place where the specified animal is to be kept recorded on the device.

Subclause (3) provides that it is an offence for a purchaser to receive such a device without first giving the supplier an order for the device and the device has the PIC of the place where the specified animal is kept.

Subclause (4) outlines the details required to be kept in a record for the supply of a device of any kind for use as an approved device. The clause provides that it is an offence to fail to keep the record for five years after the date of supply of the device. It is also an offence for a person to fail to produce the record to an inspector unless the person has a reasonable excuse.

187 Restriction on applying or removing approved device

Clause 187 imposes obligations on persons regarding the fitting and removal of devices from specified animals.

Subclause (1) creates an offence for a person to fit a specified animal with an approved device if the animal is already fitted with an approved device that is in the form of a tag, unless the fitting falls into one of the two exemptions under the subclause:

- if the existing approved device is first removed from the specified animal as authorised under the clause; or

- if under the specifications decided by the chief executive for the new approved device, the new approved device is a suitable approved device for fitting to the specified animal despite the fitting of the existing approved device.

Subclause (2) outlines the circumstances in which a person may remove from a specified animal an approved device that has been fitted and is in the form of a tag. This includes when an inspector authorises the removal or the device is malfunctioning and needs to be replaced.

Subclause (3) provides that the removal of an approved device in the form of a tag from a specified animal that does not come within one of the circumstances outlined in subclause (2) will constitute an offence.

Subclauses (4) and (5) establish that if an approved device is removed and another fitted in its place to a specified animal, the NLIS administrator must be notified within 48 hours after the removal and provided with specific details including the serial number of the new device, the RFID number of the microchip (if one) and the PIC of the place where the animal is kept. Failure to notify the NLIS administrator will constitute an offence.

188 Restrictions on altering, defacing or destroying approved device

Clause 188 establishes offences for altering, defacing or destroying an approved device or allowing an approved device to be altered or defaced, unless it happens in the course of legally removing the device from a specified animal under clause 187. It will be a defence for a person to establish a reasonable excuse for the alteration, defacement or destruction.

189 Requirement to destroy removed approved device

Clause 189 establishes an offence for failing to destroy an approved device that has been removed from a specified animal. However, if it is practicable to recycle and re-use the approved device, according to any specifications made by the chief executive, a person may recycle and re-use that device. It is an offence under the clause to fail to secure the device against theft until it is recycled and re-used.

190 Approval to use different PIC for approved device for specified animal

Clause 190 allows a registered biosecurity entity, other than a saleyard, that keeps specified animals to apply to the chief executive for approval to have recorded on an approved device the PIC of a different place to the place where the animal is kept. The provision prescribes the application requirements. If the application is refused the applicant must be advised of the decision and given an information notice for the decision.

191 False, misleading or incomplete movement record

Clause 191 provides that it is an offence for a person required to create a movement record to record information that the person knows or ought reasonably to know is false, misleading or incomplete in a material particular in the movement record, unless the person has a reasonable excuse.

Part 4 Miscellaneous

192 Special provision about regulations

Clause 192 identifies reporting and recording requirements for the movement of designated animals to or from saleyards, designated animal transit facilities, meat processing facilities or live export holdings that may be included in a regulation. The clause also provides for a regulation to prescribe other obligations of saleyards, selling agents, designated animal transit facilities, meat processing facilities or live export holdings in relation to the movement of designated animals and requirements for the fitting or removal of approved devices.

193 Evidentiary aids for biosecurity register and NLIS database

Clause 193 provides for certain evidentiary matters relating to the biosecurity register and the NLIS database.

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

Clause 194 makes it an offence for a person to give the NLIS administrator information that they knew or ought reasonably to have known was false or misleading in a material particular, unless the person has a reasonable excuse.

Chapter 7 Prohibited matter and restricted matter permits

Chapter 7 deals with the issuing of permits to deal with prohibited and restricted matter.

Part 1 Preliminary

195 Issue of prohibited and restricted matter permits

Clause 195 empowers the chief executive to issue prohibited and restricted matter permits.

196 What is a prohibited matter permit

Clause 196 defines a prohibited matter permit as a permit that authorises stated dealings with stated prohibited matter.

197 What is a restricted matter permit

Clause 197 defines a restricted matter permit as a permit that authorises stated dealings with state restricted matter.

198 Types of prohibited matter permits

Clause 198 provides for two types of prohibited matter permits that may be issued by the chief executive - scientific research permits (prohibited matter) and another type prescribed under a regulation.

199 Types of restricted matter permits

Clause 199 provides for the following restricted matter permits that may be issued by the chief executive - biological control, commercial use, scientific research (restricted matter), or another type prescribed under a regulation.

200 What is a permit plan for prohibited or restricted matter

Clause 200 defines the term 'permit plan'. Permit plans detail how the applicant for a prohibited matter permit or restricted matter permit proposes to deal with the prohibited or restricted matter the subject of the permit. Permit plans must be given to the chief executive by the applicant for a prohibited matter or restricted matter permit.

Subclause (2) identifies what a permit plan must address including the likely biosecurity risks posed by the biosecurity matter and how those risks will be minimised.

Subclause (3) provides that, should the restricted matter in the absence of a permit be required to be disposed of or destroyed, the permit plan for restricted matter must also specify how the restricted matter will be disposed of or destroyed when the term of the permit ends.

Part 2 Permit applications

201 Applying for permit

Clause 201 provides that a person may apply to the chief executive for a prohibited or restricted matter permit. The application must be in the approved form and be accompanied by a permit plan and the prescribed fee.

Subclause (3) provides that an application for a scientific research (prohibited matter) permit must be accompanied by a document showing

that the proposed dealings with the prohibited matter will be conducted in an approved, certified or registered facility, together with a detailed research proposal. Regulations will prescribe authorities who can approve, certify or register a facility.

Subclause (4) enables an applicant to withdraw his or her application at any time. Subclause (5) provides that if the applicant withdraws his or her application, or the application is taken to be withdrawn, the application fee is not refundable. Subclause (6) provides that the chief executive may waive payment of the application fee in certain circumstances.

202 Inquiry about application

Clause 202 provides that the chief executive, when deciding applications in relation to prohibited or restricted matter permits, may make further inquiries to determine the suitability of an applicant. A notice may be issued requiring the applicant to furnish a document or further information. If required, the document or further information must be verified by a statutory declaration.

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

203 Suitability of person to hold permit

Clause 203 sets out the criteria the chief executive may have regard to when deciding whether a person is suitable to hold a prohibited or restricted matter permit. The criteria include whether the applicant has previously been refused a prohibited or restricted matter permit and whether the applicant has a conviction for a relevant biosecurity offence. The term 'relevant biosecurity offence' is defined in Schedule 4 of the Bill.

The suitability criteria set out in this clause may be taken into account by the chief executive not only when deciding the applications for new prohibited and restricted matter permits but also when deciding applications to renew a permit under clause 212.

Part 3 Deciding application

204 Consideration of application

Clause 204 provides that the chief executive must consider the application and grant, grant with conditions, or refuse to grant the application.

205 Decision on application

Clause 205 requires the chief executive to issue a permit for prohibited matter or restricted matter if the application is granted. However, if the application is refused, or granted with conditions, the applicant must, as soon as practicable, be given an information notice outlining the decision. The decision may be reviewable under chapter 11.

206 Failure to decide application

Clause 206 provides that an application for a prohibited or restricted matter permit is taken to be refused if the chief executive fails to decide the application within 30 days of its receipt. If the chief executive has requested further information under clause 202(1)(b) the application is taken to be refused if the chief executive fails to decide the application within 30 days of receipt of the required information or document.

An information notice of the decision by the chief executive must be given to the applicant if the application is taken to be refused under this section.

207 Criteria for decision

Clause 207 provides that the chief executive must be satisfied, before a prohibited or restricted matter permit is granted, that the applicant is a suitable person to hold the permit and the permit plan adequately addresses the biosecurity risks posed by the biosecurity matter the subject of the permit.

208 Particular matters for scientific research (prohibited matter) permit

Clause 208 sets out the particular matters the chief executive must have regard to in deciding a scientific research (prohibited matter) permit application. These matters may include any standards, codes of practice or

guidelines identified under a regulation and the likelihood of any significant advances in scientific knowledge being gained because of the research to be conducted under the permit.

Part 4 Term and conditions of permits

209 Term of permit

Clause 209 specifies the term of a prohibited or restricted matter permit. Unless it is sooner suspended or cancelled, a permit remains in force for the term decided by the chief executive and stated in the permit. The term of a permit can be no longer than three years.

210 Conditions of permit decided by the chief executive

Clause 210 provides that a prohibited or restricted matter permit may be granted or renewed subject to conditions approved by the chief executive. Subclause (2) specifies that the chief executive, when deciding on what conditions to attach to the permit, must have regard to the prohibited or restricted matter the subject of the permit and the nature of the proposed dealings with that matter.

Subclause (3) outlines types of conditions that may be attached to the permit, such as record-keeping and reporting requirements and the scope of the permitted dealings with the prohibited or restricted matter. Subclause (4) provides that any conditions decided on by the chief executive must be set out in the permit when it is issued or renewed.

211 Other conditions applying to a permit

Clause 211 specifies that it is a condition of a prohibited or restricted matter permit that the permit holder must allow an authorised officer to enter the premises where the dealings of the permit are being undertaken to monitor compliance with the permit. A prohibited matter or restricted matter permit may also be subject to any conditions prescribed under a regulation as applying to the permit.

Part 5 Renewal of permits

212 Application for renewal

Clause 212 specifies the timeframes within which an application for renewal of a permit must be made by a permit holder and sets out the procedural requirements for the application. The chief executive must consider the application and either renew or refuse to renew the permit. The clause also specifies the criteria the chief executive may have regard to when deciding whether to grant the application. An information notice must be given to the permit holder if the chief executive decides either to refuse to renew the permit or impose conditions on the permit approval under clause 210.

Subclause (3) provides that the chief executive may waive payment of the fee that is meant to accompany the application for renewal if the chief executive is satisfied of the matters mentioned in clause 201(6).

213 Inquiry about application

Clause 213 provides that the chief executive, when making a decision for renewal of a prohibited or restricted matter permit, may issue a notice to the applicant requiring him or her to furnish a document or further information. The notice requiring the further information must be given to the applicant within 30 days of the chief executive receiving the application for renewal. If required, the document or further information must be verified by a statutory declaration.

The clause also provides the timeframes for the reply by the applicant to provide the further information. If the applicant does not supply the requested document or information within the stated timeframe the application is taken to be withdrawn.

214 Failure to decide application

Clause 214 provides that an application for a renewal of a prohibited or restricted matter permit is taken to be refused if the chief executive fails to decide the application within 30 days of its receipt. If the chief executive has requested further information under clause 213(1) the application is taken to be refused if the chief executive fails to decide the application within 30 days of receipt of the required information or document.

An information notice for the decision by the chief executive must be given to the applicant if the application for renewal is refused under this section.

215 Permit continues pending decision about renewal

Clause 215 provides that a permit will continue until the renewal application has been decided or taken to have been decided or is taken to have been withdrawn. If the renewal application is refused or taken to be refused, the permit will continue until the permit holder has been given an information notice outlining the decision. The continuation of a permit does not apply to a permit that was suspended or cancelled earlier.

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

Clause 216 makes it an offence for a permit holder to fail to comply with a notice from the chief executive directing that stated prohibited or restricted matter be disposed of upon cancellation of the permit. Compensation is not payable for the disposal of the prohibited or restricted matter.

Part 6 Transfer of permit

217 Transfer of permit

Clause 217 provides for the transfer of a prohibited or restricted matter permit. The clause specifies that the holder of a permit and a proposed transferee of a permit may jointly apply to the chief executive in the approved form, accompanied by the prescribed fee, for the transfer of the permit to the proposed transferee. The transfer of the permit is subject to any conditions applying to the permit.

The chief executive may transfer a permit only if he or she is satisfied that, as a result of the transfer, there will not be any substantial changes in the persons principally involved in dealing with the prohibited or restricted matter the subject of the permit. The chief executive must be satisfied that the transferee is a suitable person to hold the permit, having regard to the matters set out in clause 203, and has the capacity to ensure the conditions of the permit are complied with. Where the holder of a prohibited or restricted matter permit is deceased, the personal representative of the

deceased permit holder may apply to the chief executive in the approved form for the transfer of the permit to the personal representative as a transferee.

The current permit, the subject of the transfer, will be replaced with a new permit once the transfer has been approved.

Part 7 Register of prohibited matter and restricted matter permits

218 Register of permits

Clause 218 provides that the chief executive must keep a register of prohibited and restricted matter permits. The register is open for the public to view on payment of a prescribed fee and on application a person may buy a copy of all or parts of the register. A fee for this purpose is the fee prescribed under a regulation.

Chapter 8 Programs for surveillance, prevention and control

Chapter 8 provides for the authorisation of surveillance programs and prevention and control programs by the chief executive or local government to help achieve the purposes of the Act. The chapter also makes provision for consultation and notification requirements on the making of the programs and enforcement of these programs.

Part 1 Preliminary

219 Types of biosecurity programs

Clause 219 defines a biosecurity program as a surveillance program or a prevention and control program.

220 What is a *surveillance program*

Clause 220 describes a surveillance program and lists the purposes for which such a program may be implemented. The purposes include monitoring compliance with the Act, for example, monitoring compliance with a code of practice or a biosecurity zone provision or a prohibited matter permit, confirming the presence or absence of biosecurity matter in the State to which the program relates, and monitoring the effects of measures taken in response to a biosecurity risk.

221 What is a *prevention and control program*

Clause 221 describes a prevention and control program and lists the purposes for which such a program may be implemented. The purposes include preventing the entry, establishment or spread of biosecurity matter or managing, controlling or eradicating biosecurity matter. The clause provides that the program will only be directed at situations where the biosecurity matter (to which the program relates) poses a significant biosecurity risk, or could pose a significant biosecurity risk in the relevant area. If the program is for the purpose of managing, controlling or eradicating biosecurity matter, a prevention and control program may be implemented in addition to existing control measures if they are deemed to be inadequate.

Part 2 Authorising biosecurity programs

222 Authorising and carrying out biosecurity program

Clause 222 empowers the chief executive, a local government, the chief executive and one or more local governments if the chief executive officer

of each local government agrees, or two or more local governments if the chief executive officer of each local government agrees to authorise and carry out a biosecurity program. The authorisation for biosecurity program is referred to as a program authorisation. A program authorisation must be authorised in writing for a program authorisation made by the chief executive, or by resolution of the local government for a program authorisation made by a local government. However, a prevention and control program may only be authorised by the chief executive or local government if either is satisfied there is, or is likely to be, prohibited matter in an area. This would include, for example, the presence of a colony of red imported fire ants, a plague of locusts, or an infestation of water mimosa in an area.

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

The clause goes on to provide that the chief executive must ensure that each authorised officer who is proposed to act under a biosecurity program is informed of all of the matters stated within the authorisation for the program. Similarly, the chief executive officer of a local government must ensure all authorised persons proposed to act under the program are informed of these matters. Biosecurity programs authorised by a local government may only relate to places in the local government's area.

223 What program authorisation must state

Clause 223 specifies what an authorisation for a biosecurity program must state, including the biosecurity matter to which the program relates, the purpose of the program, the parts of the State to which it applies, when the program starts, and the period over which the program is to be carried out.

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

biosecurity matter, the program authorisation must state the parts of the State to which the program applies and, if the program only applies to a particular type of place in the State or a part of the State, a description of the type of place.

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

The program authorisation must also state the powers an authorised officer may exercise under the program, including the extent to which an authorised officer is to act under the program, including measures the authorised officer may take.

Subclause (2) clarifies that the period over which the program is to be carried out must be limited to the period reasonably necessary for achieving the program's purpose.

224 Taking action under biosecurity program

Clause 224 empowers persons authorised by a program authorisation (authorised program persons) to exercise their powers at any reasonable time and at a place situated in the area, in accordance with the biosecurity program authorisation. The clause further specifies the powers that may be exercised by an authorised program person, including the power to direct an occupier of a place to take reasonable steps within a reasonable period to remove or eradicate the biosecurity matter the subject of the program. When giving the direction, the authorised program person must give the occupier an offence warning for the direction. The clause specifies that actions taken under a biosecurity program must be limited to those that are reasonably necessary for achieving the program's purpose. This clause does not limit the powers of an authorised officer under Chapter 9 of the Bill.

Subclause (8) defines authorised program person for the purposes of the section.

225 Failure to comply with direction

Clause 225 provides that it is an offence for an occupier of a place to fail to comply with a direction under clause 224 (Taking action under biosecurity program) unless the occupier has a reasonable excuse. However, the person does not commit an offence if the person was not given an offence warning for the direction.

Part 3 Consultation and notification

226 Consultation about proposed biosecurity program

Clause 226 specifies that the chief executive must consult as far as practicable with a local government for the area to which the program applies before authorising a biosecurity program. Similarly, subclause (2) requires a local government to consult as far as practicable with the chief executive before authorising a biosecurity program.

227 Notice of proposed biosecurity program

Clause 227 requires the chief executive or chief executive officer of a local government to publish notice of the authorisation for a biosecurity program at least 14 days before the program commences. Subclause (2) provides that the notice must be given to each State entity that controls land in the area to which the program relates, and specifies that the notice must be published on either the department's website or the local government's website, depending upon who authorised the biosecurity program. Subclause (3) provides further detail on how the notice may be published. Subclause (4) clarifies that a failure to give or publish the notice under subclause (3) does not invalidate the authorisation.

Subclause (5) specifies the requirements for the notice, including why the biosecurity program is happening and how it will be run and the expected timeframe for the program. It requires that a copy of the program must be made available for viewing and that a copy of the program must be made available for purchase from the administrative entity. Subclause (6) specifies that the price charged for the purchase of a copy of the program authorisation must not be greater than its production and, if posted, its postage cost.

228 Access to authorisation

Clause 228 requires copies of the program authorisation must be made available for inspection or purchase for the duration of the program.

Part 4 Steps taken under biosecurity program

229 Notification of steps taken or to be taken under biosecurity program

Clause 229 requires that before exercising the authorised officer's power at a place where an occupier is present the authorised officer must inform the occupier of the purpose of the biosecurity program, the steps taken or to be taken under the program and that it is an offence to interfere with the steps taken.

If an occupier is not present at the place, the authorised officer must leave a notice stating the purpose of the program, the steps taken or to be taken under the program and that interfering with those steps may constitute an offence, and the authorised officer's name and contact details.

230 Person must not interfere with steps taken or to be taken

Clause 230 provides that it is an offence for a person to interfere with a step taken by an authorised officer under a biosecurity program.

Part 5 Enforcement matters for biosecurity programs

231 Biosecurity orders

Clause 231 provides that an inspector or authorised person who is appointed for Chapter 12 may, when acting under a biosecurity program, give a person a biosecurity order under Chapter 12, even though the biosecurity order is not for the prevention, control, management or eradication of the biosecurity matter to which the biosecurity program

relates. For example, an authorised officer may attend a property under a surveillance program that has been established for fire ants and while on the property notices lantana weed growing along the fence line. The authorised officer may issue the person a biosecurity order to eradicate the lantana.

Chapter 9 Inspectors and authorised persons

Chapter 9 provides for appointments and conditions of appointment of authorised officers. The chapter provides for the general and emergency powers of authorised officers and the conditions under which each may be exercised.

Part 1 General matters about inspectors and authorised persons

Division 1 Appointment of inspectors

232 Appointment and qualifications

Clause 232 empowers the chief executive to appoint inspectors. Inspectors may only be appointed by the chief executive of the department, by instrument and in writing. The clause lists five categories of person that may be appointed as an inspector and requires the chief executive to be satisfied that the intended appointee has the necessary expertise or experience to be qualified for the appointment.

233 Appointment conditions and limit on powers

Clause 233 provides for the conditions of appointment of inspectors and allows for the imposition of limitations on their powers. The conditions, and any limitation on the inspector's powers, can be stated in the inspector's instrument of appointment or a notice given to the inspector and signed by the chief executive, or in a regulation.

234 When office ends

Clause 234 identifies when an inspector ceases to hold office. Subclause (1) provides that the office of a person as an inspector ends if any of the following happens—

- the term of office stated in a condition of office ends;
- under another condition of office, the inspector ceases to hold office;
- the inspector's resignation under clause 235 takes effect.

Subclause (2) provides that subclause (1) does not limit the ways the office of a person as an inspector ends. 'Condition of office' is defined in subclause (3) to mean a condition under which the inspector holds office.

235 Resignation

Clause 235 provides that an inspector may resign by giving a signed notice to the chief executive. However, subclause (2) provides that if holding office as an inspector is a condition of the inspector holding another office, the inspector may not resign as an inspector without resigning from the other office as well.

Division 2 Appointment of authorised persons

236 Appointment and qualifications

Clause 236 empowers the chief executive or a chief executive officer of a local government (each an 'administering executive' as defined in Schedule 4 of the Bill) to appoint authorised persons and lists categories of person that may be appointed. To allow smaller local governments to share an authorised person, provision is made for the chief executive officers of two or more local governments to appoint the same person. The clause requires

the administering executives to be satisfied that the intended appointee has the necessary expertise or experience to be qualified for the appointment. Further, a person appointed as an authorised person by 1 or more local government chief executive officers may only exercise the powers of an authorised person under the Act in the area of those local governments and only in relation to invasive biosecurity matter.

237 Appointment conditions and limit on powers

Clause 237 provides for the conditions of appointment of authorised persons and allows for the imposition of limitations on their powers. The conditions, and any limitation on the authorised person's powers, can be stated in the authorised person's instrument of appointment, or a notice given to the authorised person and signed by the administrative executive, or in a regulation.

238 When office ends

Clause 238 identifies when an authorised person ceases to hold office and is equivalent to clause 234 (When office ends – appointment of inspectors) relating to inspectors. Subclause (1) provides that the office of a person as an authorised person ends if any of the following happens—

- the term of office stated in a condition of office ends;
- under another condition of office, the authorised person ceases to hold office;
- the authorised person's resignation under clause 239 takes effect.

Subclause (2) provides that subclause (1) does not limit the ways the office of a person as an authorised person ends. 'Condition of office' is defined in subclause (3) to mean a condition under which the authorised person holds office.

239 Resignation

Clause 239 provides that an authorised person may resign by giving a signed notice to the relevant administering executive. Where the authorised person is appointed by two or more chief executive officers the authorised person needs only give a signed notice to one of the chief executive officers. However, subclause (3) provides that if holding office as an authorised person is a condition of the authorised person holding

another office, the authorised person may not resign as an authorised person without resigning from the other office as well.

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

240 Purpose of division

Clause 240 provides that the purpose of this division is to allow the special appointment of police officers as inspectors, and to allow the special appointment of accredited persons and authorised officers under the *Transport Operations (Road Use Management) Act 1995* (TORUM) as authorised persons.

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

241 Regulation may appoint prescribed class of police officer

Clause 241 provides that a regulation may provide that each police officer of a class prescribed in the regulation is an inspector under the Act. Subclause (2) provides that a police officer of the class prescribed in the regulation is deemed an inspector without further appointment.

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

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

242 Appointment of police officer as inspector for biosecurity emergency

Clause 242 deals with the appointments of police officers as inspectors for biosecurity emergencies declared under Chapter 5.

Subclauses (1) to (3) provide that for the purposes of a biosecurity emergency order the chief executive may, by notice, provide that each police officer of a class described in the notice is an inspector under this Act for the purposes of implementation of the biosecurity emergency order. The term of appointment as an inspector is limited to the period the biosecurity emergency order is in force or for another stated period in the notice. The appointment of a police officer of a class described in the notice is made only for the purposes of the biosecurity emergency provisions identified in the notice.

Subclause (4) provides that information other than a description of the class of police officer may be included in the chief executive's notice made under subclause (2).

Subclause (5) provides that the notice under subclause (2) does not limit the operation of section 14 of the *Police Powers and Responsibilities Act 2000*, the effect of which is explained in clause 241.

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

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

Clause 243 deals with the appointment of TORUM authorised officers or accredited persons as authorised persons under the Act for a biosecurity emergency declared under Chapter 5.

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

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

Subclause (5) provides that before making the notice the chief executive must consult with the chief executive under TORUM about the contents of the proposed notice.

Division 4 Identity cards

244 Issue of identity card

Clause 244 states that an administering executive must issue each authorised officer with an identity card. The term 'authorised officer' is defined in Schedule 4 to mean an inspector or an authorised person.

Subclause (2) identifies what must be included in an identity card.

Subclauses (3) and (4) provide for circumstances where an identity card need not be issued by an administering executive. For example, for practical purposes it will not be appropriate to make identity cards for police officers or TORUM authorised officers or accredited persons in a declared emergency under Chapter 5 as immediate responses to the emergency are required. An identity card need not be specially made if the appointee holds an existing identity card containing the same details as required under subclause (2).

245 Production or display of identity card

Clause 245 requires authorised officers to produce their identity card or have it clearly visible when exercising a power in relation to a person in the person's presence. Subclause (2) provides that if this is not practical, the authorised officer must produce his or her identity card for the person's inspection at the first reasonable opportunity. Subclause (3) provides that an authorised officer is not required to produce his or her identity card only for the purposes of entering a place under clause 252 (General power to enter places).

246 Return of identity card

Clause 246 requires a person issued with an identity card and who ceases to be an authorised officer to return the card to the administering executive within 21 days. A failure to comply with this requirement is an offence unless the person has a reasonable excuse.

Division 5 General matters about authorised officers

247 Powers generally

Clause 247 provides that an authorised officer has the powers given to him or her under the Act and that the exercise of those powers is subject to the direction of the administering executive.

248 Powers of particular authorised persons limited to local government area

Clause 248 limits the powers of an authorised person who is appointed by the chief executive officer of a local government to the local government area or where an authorised person is appointed by two or more local governments, the person's powers are limited to those local government areas.

249 Functions of authorised officers

Clause 249 identifies the functions of authorised officers.

Division 6 Miscellaneous provisions

250 References to exercise of powers

Clause 250 provides that wherever there is a reference under Part 1 of this chapter to the exercise of a power by an authorised officer and there is no reference to a specific power, the reference is to the exercise of all or any of the authorised officer's powers under this chapter or a warrant to the extent that the powers are relevant.

251 Reference to document includes reference to reproductions from electronic document

Clause 251 provides that a reference in this chapter to a document includes a reference to an image or writing produced from an electronic document, or capable of being produced from an electronic document with or without the aid of another article or device.

Part 2 Entry to places by authorised officers

Division 1 Power to enter

252 General power to enter places

Clause 252 makes provision for an authorised officer's general power to enter places.

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

- (a) an occupier of the place consents under division 2 to the entry and clause 260 (Matters authorised officer must tell occupier) has been complied with for the occupier; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised under a warrant and, if there is an occupier of the place, clause 270 (Entry procedure) has been complied with for the occupier; or
- (d) it is a place of business regulated under the Act and is—
 - (i) open for carrying on the business; or
 - (ii) otherwise open for entry; or
 - (iii) required under the Act to be open for inspection by an authorised officer.

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

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

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

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

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

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

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

253 Power to enter place to ascertain if biosecurity risk exists

Clause 253 empowers authorised officers to enter a place to determine whether there is a biosecurity risk at the place. The relevant authorised officer is required to have formed a reasonable belief that there may be a biosecurity risk at the place before exercising the power of entry. The power of entry must be exercised at a reasonable time. The reference to 'place' does not mean premises or part of premises where a person resides without the person's consent or a warrant.

254 Power to enter place under biosecurity program

Clause 254 empowers an authorised officer, acting under a biosecurity program (authorised under Chapter 8) to enter a place at a reasonable time

to take action under the program. The reference to a ‘place’ does not mean premises or part of the premises where the person resides.

255 Power to enter place to check compliance with biosecurity order

Clause 255 empowers authorised officers to enter a place to determine whether a person has complied with a biosecurity order issued under clauses 231 (Biosecurity orders) or 363 (Giving biosecurity order) for the place. Reference to a ‘place’ does not include premises or part of premises where a person resides. Entry to a residence cannot occur without the person’s consent or a warrant.

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

Clause 256 empowers authorised officers to enter a place to take the steps that a person given a biosecurity order was required to take but has not taken. The provision also extends to entry by employees or agents engaged by an issuing authority to undertake the steps. The term issuing authority is defined in Schedule 4 to mean either the chief executive or a local government. For example, a landholder is issued with a biosecurity order by an authorised person appointed by the chief executive officer of a local government to dig up and dispose of Mexican feather grass on the landholder’s property. The landholder fails to comply with that order. The local government may direct local government employees or a contractor to undertake the weed removal and disposal. The employees or contractors have the power under this clause to enter onto the land and undertake the required work.

257 Power to enter place to take action required under direction

Clause 257 empowers an authorised officer or an issuing authority’s employees or agents to enter a place if a person has been given a direction by an authorised officer under the Act and the person has failed to comply with that direction.

Subclauses (2) and (3) provide for entry by authorised officers, or the issuing authority’s employees or contractors, at reasonable times and for the purposes of undertaking the action required by the direction.

Subclause (4) provides that if the direction is given under a biosecurity program, the issuing authority must give the occupier or owner of the place reasonable notice that the issuing authority by its employees or agents, or an authorised officer, intends to enter the place and the entry is authorised under the Act to do so. The issuing authority must also specify the reason for entering the place.

Entry does not include entry to premises or part of premises where a person resides without the consent of the occupier or under the terms of a warrant.

Division 2 Entry by consent

258 Application of div 2

Clause 258 outlines the operation of Division 2 in regard to the asking of an occupier of a place for consent to allow the authorised officer or another authorised officer to enter the place under clause 252(1)(a) (General power to enter places).

259 Incidental entry to ask for access

Clause 259 provides that for the purpose of asking the occupier for the consent to enter, an authorised officer may, without the occupier's consent or a warrant:

- enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

260 Matters authorised officer must tell occupier

Clause 260 provides that before asking for the consent, the authorised officer must give a reasonable explanation to the occupier:

- about the purpose of the entry, including the powers intended to be exercised;
- that the occupier is not required to consent; and

- that the consent may be subject to conditions and may be withdrawn at any time.

261 Consent acknowledgement

Clause 261 makes provision for the giving of a consent acknowledgement if consent to enter is given.

Subclause (1) provides that if the consent to enter is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent. Subclause (2) identifies the matters the acknowledgement must state including any conditions of the consent.

Subclause (3) provides that if the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.

Subclause (4) provides that if it is impractical for the authorised officer to give the occupier a copy of the acknowledgement immediately, the authorised officer must give the copy as soon as practical.

Subclause (5) provides that if an issue arises in a proceeding about whether the occupier consented to the entry, and an acknowledgement complying with subclause (2) for the entry is not produced in evidence, the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Division 3 Entry for particular purposes

262 Entry of place under s 253

Clause 262 identifies procedural matters to be complied with by an authorised officer intending to enter a place under section 253 (Power to enter place if biosecurity risk exists) to determine whether there is a biosecurity risk at the place. Before entering the place, the authorised officer must make a reasonable attempt to locate the occupier and obtain the occupier's consent to entry. After making a reasonable attempt if the authorised officer cannot locate the occupier, the authorised officer may enter the place. Subclause (5) requires the authorised officer, in these circumstances, to leave a notice to the occupier about the date, time and purpose of the entry.

Subclause (3) provides that if the authorised officer locates the occupier and the occupier does not consent to the entry the authorised officer must not enter the place without first obtaining a warrant.

263 Entry of place under ss 254 and 255

Clause 263 identifies procedural matters to be complied with by an authorised officer intending to enter a place under a biosecurity program or to check compliance with a biosecurity order.

Before entering the place for either of these purposes, the authorised officer must first make a reasonable attempt to locate the occupier and obtain the occupier's consent to entry.

After making a reasonable attempt if the authorised officer cannot locate the occupier, the authorised officer may enter the place. Subclause (4) requires the authorised officer, in these circumstances, to leave a notice to the occupier about the date, time and purpose of the entry.

Subclauses (5) and (6) identify the procedural requirements for authorised officers who locate an occupier of the place. Where an occupier is present the authorised officer must, upon entering, produce his or her identity card, inform the occupier of the reason for entering the place and advise the occupier that the authorised officer is authorised to enter the place under the Act without the consent of the occupier.

264 Entry of place under ss 256 and 257

Clause 264 identifies procedural matters to be complied with by an authorised officer or an issuing authority's employees or agents who intend to enter a place for the purposes of taking the steps or actions that were not taken either under a biosecurity order or under a direction.

Before entering the place for these purposes, the authorised officer, employee or contractor must make a reasonable attempt to locate the occupier and obtain the occupier's consent to the entry.

After making a reasonable attempt the authorised officer, employee or contractor cannot locate the occupier, the person may enter the place. Subclause (4) requires the person, in these circumstances, to leave a notice to the occupier about the date, time and purpose of the entry.

Subclauses (5) and (6) identify the procedural requirements for persons wanting to enter and who locate an occupier of the place. Where an

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

Division 4 Entry under warrant

Subdivision 1 Obtaining warrant

265 Application for warrant

Clause 265 enables an authorised officer to make a sworn application to a magistrate for a warrant to enter a place. A magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires.

266 Issue of warrant

Clause 266 makes provision for the issue of a warrant.

Subclause (1) provides that the magistrate may issue a warrant for the place only under subclause (2) or (3).

Subclause (2) provides that the magistrate may issue a warrant for the place if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next seven days, a particular thing or activity that may provide evidence of an offence against the Act or there is a biosecurity risk at the place.

Subclause (3) provides that a magistrate may issue a warrant for a place for the purpose of the authorised officer’s performance of a function mentioned in clause 249(1)(a) or (b) at the place if:

- the place is a place mentioned in clause 252(1)(b), (d) or (e); and
- the magistrate is satisfied it is reasonably necessary that the authorised officer should have access to the place for the purpose of effectively performing the function at the place.

Subclause (4) lists the matters the warrant must state.

Subclause (5) provides that where a warrant relates to a biosecurity risk, the warrant may also state that an authorised officer may re-enter the place at a later date to check compliance with a biosecurity order if one is issued as a result of the authorised officer's entry of the place under the warrant. The period for such re-entry stated in the warrant may be up to seven days after the date the biosecurity order sets as the end date by which the actions required under the biosecurity order must be completed or the date stated in the warrant. Warrants that do not provide for re-entry expire 14 days after the warrant's issue.

267 Electronic application

Clause 267 makes provision for the application of a warrant to be by electronic means in urgent or special circumstances. The clause provides that the application may not be made before the authorised officer prepares a written application but may be made before the application is sworn.

268 Additional procedure if electronic application

Clause 268 provides for additional procedures for an application made by electronic communication.

269 Defect in relation to a warrant

Clause 269 provides that a warrant is not invalidated by a defect in the warrant or in compliance with the subdivision unless the defect affects the substance of the warrant in a material particular. Subclause (2) defines 'warrant' to include a duplicate warrant mentioned in clause 268(3).

Subdivision 2 Entry procedure

270 Entry procedure

Clause 270 sets out the procedure for entering a place. Subclause (1) provides that the clause applies if an authorised officer is intending to enter a place under a warrant issued under this division. Subclause (2) provides that before entering the place the authorised officer must do or make a reasonable attempt to do the following things:

- identify himself or herself to a person who is an occupier of the place and is present, by producing the authorised officer's identity card or another document evidencing the appointment;
- give the person a copy of the warrant;
- tell the person the authorised officer is permitted by the warrant to enter the place; and
- give the person an opportunity to allow the authorised officer immediate entry to the place without using force.

However, subclause (3) provides that the authorised officer need not comply with subclause (2) if the authorised officer believes on reasonable grounds that entry to the place, without compliance, is required to ensure the execution of the warrant is not frustrated. Subclause (4) defines 'warrant' to include a duplicate warrant for the purposes of subclause (3).

Part 3 Emergency powers of inspectors

271 Application of pt 3

Clause 271 gives emergency powers to inspectors. The emergency powers may be used only where an inspector is satisfied that the powers are necessary to avoid an imminent and significant biosecurity risk. The emergency power may not be used at a place or part of a place used only for residential purposes.

272 Power and procedure for entry

Clause 272 provides that an inspector may enter a place without a warrant or consent of the occupier and outlines the procedures that must be followed prior to entering the place.

273 Power in relation to activity or biosecurity matter

Clause 273 enables an inspector to take reasonable steps, authorise another person to take reasonable steps, or give directions to persons at the place to take reasonable steps, necessary for managing the biosecurity activity or matter that is the subject of the emergency at the place. Subclause (2)

provides a non-exhaustive list of steps that are reasonable steps that may be taken.

Subclause (3) and (4) specify how a direction may be given by an inspector. It is an offence under clause 277 to fail to comply with that direction. Subclause (5) provides that where an inspector takes reasonable steps to address the biosecurity risk, the inspector may also exercise any of the inspector's powers under this Chapter. For example, an inspector takes reasonable steps to isolate animals affected by a prohibited matter at the place. Whilst taking those steps, the inspector may direct a person at the place to destroy a thing that is the carrier of the prohibited matter.

274 How power may be exercised

Clause 274 provides that an inspector may exercise the powers under clauses 272(1) and 273(1)(b) and (5) with the assistance of another and if needed, using reasonable force to exercise those powers. In exercising the emergency powers the inspector must ensure that as little inconvenience is caused to persons on the premises and as little damage to property occurs as practicable in the circumstances.

275 Requirement to give chief executive notice

Clause 275 requires an inspector, as soon as practicable after exercising his or her emergency powers, give the chief executive notice of that fact.

276 Duration of emergency powers

Clause 276 provides that an inspector's emergency power lasts until the earlier of either the imminent and significant risk has been avoided, or 96 hours has lapsed since the inspector first exercised the emergency power.

277 Failure to comply with inspector's directions in emergency

Clause 277 provides that it is an offence for a person to fail to comply with a direction given by an inspector exercising emergency powers unless the person has a reasonable excuse.

278 Inspector's powers not affected

Clause 278 provides that the powers of an inspector under this Part do not limit any other powers an inspector has under the Act.

Part 4 Other authorised officers’ powers and related matters

Division 1 Stopping or moving vehicles

279 Application of div 1

Clause 279 provides that Division 1 applies in circumstances where an authorised officer reasonably suspects, or is aware, that a thing in or on a vehicle may provide evidence of the commission of an offence against the Act, or may pose a biosecurity risk.

280 Power to stop or move

Clause 280 empowers an authorised officer to direct a person in charge of a motor vehicle to stop the vehicle or move it to a convenient place to allow the authorised officer to exercise his or her powers under the Act.

Subclause (2) provides that if the vehicle is stopped, the authorised officer may direct the person in control of the vehicle to:

- not move it until the authorised officer has exercised the officer’s powers; or
- move the vehicle to, and keep it at, a stated reasonable place to allow the officer to exercise the powers.

Subclause (3) provides that when giving the direction under subclause (2), the authorised officer must give the person in control an offence warning for the direction. The term ‘offence warning’ is defined in Schedule 4 to mean a warning given by an authorised officer to a person that, without a reasonable excuse, it is an offence for the person to fail to comply with a direction or requirement given to the person by the authorised officer.

281 Identification requirements if vehicle moving

Clause 281 outlines procedural matters for an authorised officer intending to stop a moving vehicle under clause 280(1). The authorised officer must clearly identify himself or herself as an authorised officer in exercising the officer’s powers. When the vehicle stops the authorised officer must

immediately produce his or her identity card for the inspection of the person in control of the vehicle.

282 Failure to comply with direction

Clause 282 provides that it is an offence for a failure to comply with a request, signal or direction unless the person has a reasonable excuse. It is a reasonable excuse for a person not to comply with the request or signal to stop or move the person's vehicle immediately if the authorised officer has not identified himself or herself or if the stopping or moving of the vehicle would endanger someone else or cause loss or damage to property and the person complies with the request as soon as practicable.

Subclause (4) provides that a person does not commit an offence against the clause if the direction the person fails to comply with is given under clause 280(2) and the person is not given an offence warning for the direction.

Division 2 Stopping or moving travelling animals

283 Application of div 2

Clause 283 provides that Division 2 applies if an inspector reasonably suspects, or is aware, that an animal travelling on a stock route or a reserve may pose a biosecurity risk.

284 Power to stop or move

Clause 284 empowers an inspector to direct a person driving animals on the stock route or reserve to stop the animal at a place or return it to a place to allow the inspector to exercise his or her powers in relation to that animal.

Subclause (3) provides that when giving the direction, the inspector must give the person an offence warning for the direction.

285 Identification requirements if animal travelling on stock route

Clause 285 provides that where an inspector intends to give a direction to a person driving an animal on the stock route to stop, the inspector must clearly identify him or herself. When the animal has been stopped the

inspector must immediately produce his or her identity card for inspection by the person in control of the animal.

286 Failure to comply with direction

Clause 286 provides that it is an offence for a person driving or in control of an animal to fail to comply with a direction by an inspector, unless the person has a reasonable excuse. It is a reasonable excuse for the person not to comply with the request or direction immediately if the inspector has not identified himself or herself or if it would endanger someone else or cause loss or damage to property in complying with the request or direction. For example, if the immediate stopping of an animal could cause a traffic accident, the person has a reasonable excuse not to immediately comply with the direction.

Subclause (4) provides that a person does not commit an offence against the clause if the direction the person fails to comply with is given under clause 284(2) and the person is not given an offence warning for the direction.

Division 3 General powers of authorised officers after entering places

287 Application of div 3

Clause 287 identifies the powers that may be exercised by authorised officers who enter a place under:

- clause 252(1)(a) (General power to enter places); or
- clause 252(1)(c); or
- clause 252(1)(d); or
- clause 253 (Power to enter place to ascertain if biosecurity risk exists); or
- clause 254 (Power to enter place under biosecurity program); or
- clause 255 (Power to enter place to check compliance with biosecurity order); or
- clause 256 (Power to enter place to take steps if biosecurity order not complied with); or

-
- clause 257 (Power to enter place to take action required under direction); or
 - Part 3 (Emergency powers of inspectors); or
 - Chapter 5 (Managing biosecurity emergencies and risks).

Subclause (2) clarifies that if an authorised officer enters a place with consent or under the terms of a warrant (clause 252(1)(a) or (c)), the powers under this Division are subject to any conditions of the consent or terms of the warrant.

288 General powers

Clause 288 lists the general powers of authorised officers after entering a place. Subclause (1) provides that an authorised officer may do any of the following (each a ‘general power’)

- search any part of the place;
- inspect, examine or film any part of the place or anything at the place;
- take for examination a thing, or a sample of or from a thing, at the place;
- place an identifying mark in or on anything at the place;
- place a sign or notice at the place;
- produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
- take to, into or onto the place and use any person, equipment and materials the authorised officer reasonably requires for exercising the officer’s powers under the Division;
- under a prevention and control program, destroy biosecurity matter the subject of the program or a carrier of the biosecurity matter if the officer reasonably believes on reasonable grounds the biosecurity matter poses a significant biosecurity risk;
- destroy biosecurity matter or a carrier, with the consent of the owner, if the officer believes on reasonable grounds the biosecurity matter or carrier poses a significant biosecurity risk;
- remain at the place for the time necessary to achieve the purpose of the entry.

Subclause (2) provides that an authorised officer may take a necessary step to allow the exercise of a general power.

Subclause (3) provides that if an authorised officer takes a document from the place to copy it, the officer must copy and return the document to the place as soon as practicable.

Subclause (4) provides that if an authorised officer takes from the place an article or device reasonable capable of producing a document from an electronic document to produce the document, the officer must produce the document and return the article or device to the place as soon as practicable.

Subclause (5) provides definitions of ‘examine’, ‘film’ and ‘inspect’.

289 Power to require reasonable help

Clause 289 empowers an authorised officer to require an occupier of the place or a person at the place to provide the officer with reasonable help (a ‘help requirement’) to enable the officer to exercise a general power including, for example, to produce a document or to give information.

Subclause (2) provides that when making a help requirement, the authorised officer must give the person an offence warning for the requirement.

290 Offence to contravene help requirement

Clause 290 makes it an offence to contravene a help requirement unless the person has a reasonable excuse. It is a reasonable excuse that providing the help might tend to incriminate the person or expose them to a penalty.

Subclause (2) provides that it is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty. However, subclause (3) provides that subclause (2) does not apply if a document or information the subject of the help requirement (the ‘subject’) is required to be held or kept by the defendant under the Act.

Division 4 Seizure by authorised officers and forfeiture

Subdivision 1 Power to seize

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

Clause 291 empowers an authorised officer who has entered a place that does not require either consent from an occupier or a warrant to seize evidence. In such a situation the authorised officer may seize a thing only if the authorised officer reasonably believes it is evidence of an offence against the Bill.

Subclause (2) provides that subclause (1) applies even if the entry is under a warrant issued under clause 266(3) (Issue of warrant).

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

Clause 292 empowers an authorised officer who has entered a place that may only be entered with an occupier's consent or with a warrant to seize evidence.

Subclause (2) provides that if the occupier consented to the entry the authorised officer may only seize a thing the officer reasonably believes is evidence of an offence against the Act and is consistent with the purpose of entry told to the occupier when seeking consent to enter.

Subclause (3) provides that if an authorised officer enters the place under a warrant issued under clause 266(2) (Issue of warrant), the officer may seize the evidence for which the warrant was issued.

Subclauses (4) and (5) provide that an authorised officer may also seize anything else at the place if the officer reasonably believes:

- the thing is evidence of an offence against the Act; and
- the seizure is necessary to prevent the thing being
 - hidden, lost or destroyed; or
 - used to continue, or repeat, the offence; or

- the thing at the place has just been used in committing an offence against the Act.

293 Seizure of property subject to security

Clause 293 empowers an authorised officer to seize a thing under this Division and exercise powers in relation to the thing despite a lien or security over the thing. However, the seizure does not affect the other person's lien or security against a person other than the authorised officer or a person acting for the authorised officer.

Subdivision 2 Powers to support seizure

294 Requirement of person in control of thing to be seized

Clause 294 empowers an authorised officer to make a requirement of a person in control of a thing to be seized. Subclause (1) provides that to enable a thing to be seized, an authorised officer may require the person in control of it:

- to take it to a stated reasonable place by a stated reasonable time; and
- if necessary, to remain in control of it at the stated place for a reasonable time.

Subclause (2) provides that the requirement must be made by notice and if it is not practicable to give the notice, the authorised officer may give the requirement verbally but confirm it by notice as soon as practicable.

295 Offence to contravene seizure requirement

Clause 295 provides that it is an offence for a person to fail to comply with a requirement of a person in control of a thing to be seized unless the person has a reasonable excuse.

296 Power to secure seized thing

Clause 296 empowers an authorised officer to secure a seized thing.

Subclause (1) provides that having seized a thing, an authorised officer may leave it at the place where it was seized (the 'place of seizure') and

take reasonable action to restrict access to it or move it from the place of seizure.

Subclause (2) provides examples of the means by which an authorised officer may restrict access to a seized thing, including to seal the thing or the entrance to the place of seizure and mark the thing or place to show access to the thing or place is restricted. If the thing seized is equipment the authorised officer may restrict access to the thing by making it inoperable.

297 Offence to contravene other seizure requirement

Clause 297 provides that a person must comply with a requirement made of the person under clause 296(2)(c) unless the person has a reasonable excuse.

298 Offence to interfere

Clause 298 makes it an offence to interfere with a seized thing.

Subclause (1) provides that if access to a seized thing is restricted under clause 296, a person must not tamper with the thing or with anything used to restrict access to the thing without an authorised officer's approval or a reasonable excuse.

Subclause (2) provides that if access to a place is restricted under clause 296 a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without an authorised officer's approval or a reasonable excuse.

Subdivision 3 Safeguards for seized things

299 Receipt and information notice for seized thing

Clause 299 obliges an authorised officer to give the owner, or another person from whom a thing was seized, a receipt detailing a description of the thing seized and an information notice for the decision to seize the thing. However, subclause (1) provides that a receipt and notice need not be given if the officer reasonably believes there is no one apparently in possession of the thing or the thing has been abandoned. A receipt may

also not be given if, because of the condition, nature and value of the thing it would be unreasonable to require the officer to comply with the clause.

Subclause (3) provides that if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.

Subclause (4) allows the receipt and information notice to be given in the same document and relate to more than one seized thing.

Subclause (5) enables the authorised officer to delay giving the receipt and information notice if the officer reasonably suspects giving them may frustrate or otherwise hinder an investigation by the inspector under the Act. However, subclause (6) provides that the delay may only be for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place to keep it under observation.

300 Access to seized thing

Clause 300 allows an owner access to a seized thing.

Subclause (1) provides that until a seized thing is forfeited or returned, an authorised officer who seized the thing must allow the owner to inspect it at any reasonable time and from time to time and if it is a document—to copy it.

However under subclause (2) an owner's access to a seized thing under subclause (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

Subclause (3) provides that the inspection or copying must be allowed free of charge.

301 Return of seized thing

Clause 301 provides for the return of seized things of intrinsic value that are not forfeited or destroyed.

Subclause (2) requires an authorised officer to return the thing to its owner:

- generally—at the end of six months after the seizure; or
- if a proceeding for an offence involving the thing is started within the six months—at the end of the proceeding and any appeal from the proceeding; or

-
- if the thing seized posed a biosecurity risk – when either it ceased to be a biosecurity risk or the authorised officer is satisfied that the biosecurity risk will not recur if the thing is returned.

Subclause (3) provides that despite subclause (2), if the thing was seized as evidence, the authorised officer must return the thing seized to the owner as soon as practicable after the officer is satisfied that:

- its continued retention as evidence is no longer required; and
- it will not be used to continue or repeat an offence against the Act; and
- it is lawful for the owner to possess the thing.

Subclause (4) provides that nothing in the clause affects a lien or other security over the thing.

Subdivision 4 Forfeiture

302 Forfeiture by administrator decision

Clause 302 empowers the State or local government (a ‘relevant entity’) in certain circumstances to allow forfeiture of a seized thing to the relevant entity.

Subclause (1) identifies the circumstances in which a seized thing will be forfeited to the State or local government for whom the person that seized the thing was acting. Those circumstances are:

- the owner cannot be found after making reasonable inquiries; or
- the thing cannot be returned to its owner, after making reasonable efforts; or
- it is considered that the return of the seized thing may result in a recurrence of a biosecurity risk; or
- it is necessary to keep the thing to prevent it being used to commit an offence.

Subclauses (2) and (3) outline the matters that must be taken into consideration in determining what reasonable inquiries and efforts must be employed to locate the owner of the thing or to return the thing to the owner. For example, taking into account the thing’s condition, nature and value in deciding whether it is reasonable to make the inquiries or efforts.

303 Forfeiture by chief executive decision

Clause 303 empowers the chief executive to decide a particular seized thing is forfeited to the State. The thing will be forfeited to the State if either of the following applies:

- an inspector believes a seized thing can be changed so that it complies with the Act but the owner of the thing that does not comply with the requirement to change the thing; or
- an inspector believes on reasonable grounds that a thing cannot be changed to comply with the Act and it is necessary to retain the thing to prevent its use in committing an offence against this Act.

For example, a bag of seed for sowing contains weed seeds which can be separated and an inspector requests the weed seeds be separated and removed from the seed. If the owner fails to separate and remove the weed seeds within a stated time, the inspector may seize the bag of seed and it will be forfeited to the State.

304 Information notice for forfeiture decision

Clause 304 obliges the State or local government that decides a thing is forfeited under clause 302(1) or the chief executive who decides a thing is forfeited under clause 303 to give the owner of the thing an information notice for the decision as soon as practicable.

Subclause (3) provides that if the decision was made under clause 302(1)(a) or (b), the information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.

Subclause (4) provides that the information notice must state that the former owner may apply for a stay of the decision if the owner appeals against the decision.

Subclause (5) provides that the requirement to provide an information notice does not apply if:

- the decision was made under clause 302(1)(a) or (b); and
- the place where the thing was seized is:
 - a public place; or
 - a place where the notice is unlikely to be read by the former owner.

305 Forfeiture on conviction

Clause 305 provides for a court to order the forfeiture of a thing on the conviction of a person for an offence against the Act.

Subclause (1) provides that the court may order the forfeiture to the State or a local government of anything used to commit the offence or anything else the subject of the offence.

Subclause (2) provides that the court may make the order whether or not the thing has been seized and, if it has been seized, whether or not the thing has been returned to the former owner of the thing.

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

306 Procedure and powers for making forfeiture order

Clause 306 identifies the procedure and powers for making a forfeiture order. A court may order the forfeiture of a thing on the conviction of a person for an offence against this Act, on its own initiative, or on application by the prosecution. The clause enables a court, in deciding whether to make a forfeiture order, to require notice about the matter be given to a person the court considers appropriate and to hear submissions made by persons claiming to have property in the thing.

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

307 When thing becomes property of relevant entity

Clause 307 provides that a thing becomes the property of a relevant entity if it is forfeited to the relevant entity under clause 302(1).

308 When thing becomes property of the State or local government

Clause 308 provides that a thing becomes the property of the State:

- if the chief executive decides the thing is forfeited to the State because an owner has not changed the thing, as directed by an inspector, to comply with the Act (under clause 303); or
- if the chief executive decides the thing is forfeited to the State because it cannot be changed and it is necessary to retain it to prevent its use in committing an offence (under clause 303); or
- the thing is forfeited to the State or the local government because it has been used in the commission of an offence against the Act; or
- both the owner and the State transfer the ownership of the thing to the State by way of a written agreement.

Subclause (2) provides that a thing becomes the property of a local government if the thing is forfeited to the local government under clause 305.

309 How property may be dealt with

Clause 309 sets out how property may be dealt with by an administering executive if the property has been forfeited or had ownership transferred to the State or a local government. Ways in which property may be dealt with include destroying it, giving it away or selling the property. If a thing is sold the proceeds of the sale (minus costs of the sale) are to be given to the former owner of the thing. The administering executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under the Act.

Subclause (5) provides that the clause is subject to any disposal order made for the thing.

310 Power of destruction

Clause 310 empowers an authorised officer to destroy a seized thing if it consists wholly or partly of contaminated or decomposed matter or the officer reasonably believes it poses an immediate biosecurity risk.

Division 5 Disposal orders

311 Disposal order

Clause 311 provides that a court may make a disposal order for a thing upon the conviction of a person for an offence against the Act.

Subclauses (2) and (3) provide that the court may make the order on its own initiative or on the application of the prosecution and it may be made against anything used to commit the offence or anything else the subject of the offence and whether or not the thing was seized under this Act.

The clause enables a court, in deciding whether to make a disposal order, to require notice about the matter be given to a person the court considers appropriate and to hear submissions made by persons claiming to have property in the thing.

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

Division 6 Power to remove or reduce biosecurity risk under a warrant

312 Power to remove or reduce biosecurity risk after entering place

Clause 312 empowers an authorised officer to take necessary steps to remove or reduce the biosecurity risk at a place that was stated in the warrant. An authorised officer may also take any necessary steps to prevent the biosecurity risk from recurring, including by seizing a thing.

Division 7 Other information-obtaining powers of authorised officers

313 Power to require name and address

Clause 313 empowers an authorised officer to require a person to state his or her name and address and provide proof of this if necessary. The power

may be exercised if an authorised officer finds a person committing an offence or reasonably suspects the person has just committed an offence against the Act or has information that leads the officer to reasonably suspect a person has just committed an offence against the Act or a person is responsible for a biosecurity risk.

Subclause (3) enables the authorised officer to require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the stated name or address or otherwise be able to give the evidence.

Subclause (4) provides that when making a personal details requirement, the authorised officer must give the person an offence warning for the requirement.

Subclause (5) provides that a requirement under the clause is a ‘personal details requirement’.

314 Offence to contravene personal details requirement

Clause 314 makes it an offence for a person to fail to comply with a personal details requirement unless the person has a reasonable excuse.

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

315 Power to require production of documents

Clause 315 empowers authorised officers to require persons to produce documents and if required, to certify a copy of a document as being a true copy of a document or entry.

Subclause (1) enables an authorised officer to require a person to make available (either immediately or at some later time) a document, including a reproduction of a stored document, that was either issued to the person or required to be kept by the person under the Bill. A document required to be kept under the Act would include a permit relating to biosecurity matter held by the person. A requirement under subclause (1) is called a ‘document production requirement’.

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

Subclause (3) provides that for an electronic document, compliance with the document production requirement requires the making available or production of a clear written reproduction of the electronic document.

Subclause (4) enables an authorised officer to keep the document to copy it.

Subclause (5) provides that if the authorised officer copies the document, or an entry in the document, the officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry. A requirement under subclause (5) is a 'document certification requirement'.

Subclause (7) requires the authorised officer to return the document to the person as soon as practicable after copying it. Subclause (8) provides that if a document certification requirement is made of a person, the officer may however keep the document until the person complies with the requirement.

316 Offence to contravene document production requirement

Clause 316 makes it an offence for a person to fail to comply with a requirement to produce a document under clause 315 unless the person has a reasonable excuse.

Subclause (2) provides that it is not a reasonable excuse for a person to fail to comply with a document production requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

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

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

317 Offence to contravene document certification requirement

Clause 317 provides that it is an offence for a person to fail to comply with a document certification requirement made under clause 315 unless the person has a reasonable excuse. It is not a reasonable excuse to fail to comply with a document certification requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

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

318 Power to require information

Clause 318 empowers an authorised officer to require a person to provide information where the authorised officer reasonably believes an offence against the Act has been committed and a person may be able to give information about the offence.

The authorised officer may, by notice given to the person, require the person to give the officer information related to the offence at a stated reasonable time and place. This type of requirement is called an 'information requirement'.

Subclause (4) provides that for information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document. Subclause (5) provides that in the clause, 'information' includes a document.

319 Offence to contravene information requirement

Clause 319 provides that it is an offence for a person to fail to comply with an information requirement unless the person has a reasonable excuse. It is a reasonable excuse for a person not to give the information if doing so

might tend to incriminate the individual or expose the individual to a penalty.

Part 5 Miscellaneous provisions relating to authorised officers

Division 1 Damage

320 Duty to avoid inconvenience and minimise damage

Clause 320 provides that in exercising a power, an authorised officer must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

321 Notice of damage

Clause 321 provides for the giving of a notice of damage. Subclause (1) provides that notice must be given of damage caused under this Act, other than chapter 10 (Compensation for loss or damage from biosecurity response), by an authorised officer or a person acting under the direction or authority of an authorised officer.

Under subclause (2), notice need not be given if the authorised officer reasonably considers the damage is trivial, there is no one apparently in possession of the thing or the thing has been abandoned.

Subclause (3) requires the authorised officer to give notice of the damage to the person who appears to the officer to be the owner, or person in control, of the damaged thing.

Subclause (4) provides that if for any reason it is not practicable to comply with subclause (3), the officer must leave the notice at the place where the damage happened and ensure it is left in a conspicuous position and in a reasonably secure way.

Subclause (5) provides that an authorised officer may delay complying with subclause (3) or (4) if the officer reasonably suspects complying with the subclause may frustrate or otherwise hinder the performance of the officer's functions. Subclause (6) provides that the delay may be only for

so long as the officer continues to have the reasonable suspicion and remains in the vicinity of the place.

Subclause (7) provides that if the authorised officer believes the damage was caused by a latent defect in the thing or circumstances beyond the control of the officer or the assistant the officer may state the belief in the notice.

Subclause (8) requires the notice to state the particulars of the damage and that the person who suffered damage may claim compensation under clause 322.

Division 2 Compensation

322 Compensation

Clause 322 makes provision for compensation because of an authorised officer's exercise of a power under this Act, other than chapter 10 (Compensation for loss or damage from biosecurity response). Subclause (1) provides that a person may claim compensation from a local government or the State, where the person has incurred loss or expense because of the exercise or purported exercise of a power by an authorised officer including a loss sustained under this Act.

Subclause (2) provides that subclause (1)(a) only applies to loss arising from an accidental, negligent or unlawful act or omission. Subclause (3) provides that under subclause (1) loss does not include loss arising from a lawful seizure or a lawful forfeiture.

Subclause (4) provides that the compensation may be claimed and ordered in a court with jurisdiction for the recovery of the amount or in proceedings for an alleged offence against the Act the investigation of which gave rise to the claim.

Subclause (5) provides that a court may order the payment of compensation only if satisfied it is just to make the and in considering whether it is just to order compensation. Subclause (6) provides that the court must have regard to any relevant offence committed by the claimant.

Subclause (7) creates a head of power for a regulation to prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

Subclause (8) provides that compensation claimed for loss under clause 320 can only be made under this clause.

Subclause (9) defines 'loss' to include costs and damage.

Division 3 Other offences relating to authorised officers

323 Giving authorised officer false or misleading information

Clause 323 makes it an offence for a person to give an authorised officer or an accredited certifier information or a document containing information that the person knows is false or misleading in a material particular. This offence applies to information or a document given in relation to the administration of this Act whether or not the information or document was given in response to a specific power under the Act.

324 Obstructing authorised officer

Clause 324 provides that it is an offence to obstruct an authorised officer, or a person helping the authorised officer unless the person has a reasonable excuse. The authorised officer must warn the person that the person is obstructing the officer and that it is an offence to do so unless the person has a reasonable excuse.

325 Impersonating authorised officer or accredited certifier

Clause 325 makes it an offence for a person to impersonate an authorised officer or an accredited certifier.

Division 4 Other provisions

326 Evidential immunity for individuals complying with particular requirements

Clause 326 makes provision for evidential immunity for individuals complying with particular requirements.

Subclause (1) provides that subclause (2) applies if an individual gives or produces information or a document to an authorised officer under clause 289 (Power to require reasonable help), 315 (Power to require production of documents) or 318 (Power to require information).

Subclause (2) provides that evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.

Subclause (3) provides that subclause (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

Chapter 10 Compensation for loss or damage from biosecurity response

Chapter 10 manages claims for compensation for loss or damage suffered as a result of actions directed by the chief executive. The chapter creates two exclusive avenues for compensation claims to be made – scheme compensation and statutory compensation. The chapter describes the operation of these sources of compensation and limitations that may apply to a claim for compensation under either avenue.

Part 1 Introduction

327 What is a *biosecurity response*

Clause 327 defines a ‘biosecurity response’ for the purposes of Chapter 10. Subclause (1) states that a biosecurity response is any lawful action taken by the chief executive or an authorised officer (excluding a local

government authorised person) or a person acting under the authority of the chief executive or authorised officer. Other than the specific examples provided in the subclause, a biosecurity response also includes actions taken by the chief executive, authorised officers appointed by the chief executive or persons assisting those authorised officers under Chapter 5 (Managing biosecurity emergencies and risks) and Chapter 8 (Programs for surveillance, prevention and control).

Subclause (2) provides that a biosecurity response does not include any action taken under Chapter 12 (Biosecurity orders and injunctions), for example, action taken by a person in compliance with a biosecurity order. The subclause also clarifies that a biosecurity response does not include anything that happens by accident or as a result of negligence. If damage is caused by accident or negligence, compensation may be sought under clause 322 (Compensation).

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

Clause 328 provides that a reference to loss or damage to property arising out of a biosecurity response is loss or damage if it is caused lawfully under the Act and constitutes all or part of a biosecurity response. The clause provides that if loss or damage occurs in these circumstances a person may be entitled to compensation. For example, the destruction of a building arising out of an emergency order or the destruction of a herd of cattle to stop the spread of a disease.

329 What is *property*

Clause 329 defines property as something that is capable of being owned by a person and capable of being physically damaged or destroyed, such as an animal, a plant, equipment, or a building.

330 What is *notional value* or *notional reduction in value of property*

Clause 330 defines key terms used in Chapter 10.

Subclause (1) provides that the *notional value* of property, the subject of loss, is the amount that would have been received for the sale of the property had it been lawfully sold immediately before it was destroyed. An

example of this may be the value of a cow immediately before it was destroyed to prevent the spread of disease.

Subclause (2) provides that the *notional reduction in value* is the difference between the amount that would have been received for the property if it was sold under a lawful direction at the place it was damaged immediately before being damaged, and, the amount that would have been received for the property if it was sold under a lawful direction immediately after it was damaged.

Subclause (3) clarifies the distinction between the terms ‘damage’ and ‘loss’ for the purposes of Chapter 10. Property is considered to be the subject of damage rather than loss, if it still holds some commercial value, despite its being destroyed. For example, a test is carried out on an animal with a fleece. As a result of that test the animal dies. Although the animal has been destroyed, the fleece of the animal holds some commercial value. The animal is considered to be damaged rather than destroyed because it retains a commercial value.

Subclause (4) defines the term ‘sold under a lawful direction’. As it relates to property, the term means – the sale, without delay, at the highest price reasonably obtainable under the lawful direction of the person who is required to agree to and complete the sale irrespective of whether that person was willing to sell at the price obtained.

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

Clause 331 defines the term ‘compensation scheme’ to be a government and industry agreement that includes provision for the payment of compensation for loss or damage arising out of a biosecurity response. An example of a current compensation scheme is the Emergency Plant Pest Response Deed.

For the purposes of Chapter 10, a compensation scheme is referred to as ‘Scheme compensation’ which may not be limited to compensation to compensation for loss or damage to property. For example, scheme compensation may provide for compensation for indirect loss associated with a biosecurity response.

332 Sources of compensation available under this chapter

Clause 332 outlines the two different types of compensation for loss or damage arising out of a biosecurity response dealt with under Chapter 10. Scheme compensation, outlined in clause 331 and statutory compensation discussed at clause 334.

Part 2 Scheme compensation

333 Operation of scheme compensation

Clause 333 identifies the circumstances under which a person may be entitled to scheme compensation. Firstly, a compensation scheme referred to in clause 331 must exist and provide for compensation for the loss or damage the person suffered and secondly, the person has applied to the chief executive for compensation in compliance with the scheme. Upon receiving an application the chief executive must take all reasonable steps to ensure the person receives his or her entitlement under the scheme.

Part 3 Statutory compensation

334 Operation of statutory compensation

Clause 334 entitles a person who suffers loss or damage to property arising out of a biosecurity response not covered by a compensation scheme to claim statutory compensation from the State to the extent provided for under Chapter 10. The person must apply to the chief executive for that compensation.

335 How scheme compensation affects entitlement to statutory compensation

Clause 335 excludes a person from claiming statutory compensation if the claim for compensation should be made under clause 333 for scheme compensation. Subclause (2) clarifies that if a person's claim for compensation is one that is required to be made under clause 333 (Operation of scheme compensation) fails because the person has not

fulfilled necessary conditions or requirements under the scheme, the person is also excluded from statutory compensation.

Subclause (2) provides an example of where a person's application for statutory compensation will fail because of the existence of a compensation scheme which would have compensated the person for the loss or damage but for the person's failure to comply with the requirements of the scheme.

336 Other limitations applying to entitlement to statutory compensation

Clause 336 identifies the exclusions to a person's entitlement to statutory compensation.

Subclause (1) provides that statutory compensation is not claimable:

- to the extent that the conduct of the person contributed to the loss or damage;
- if the loss or damage would have happened in any event regardless of the happening of the biosecurity response. For example, a plant pest disease (such as myrtle rust) that is spread by the wind is found on one property and its presence triggers an emergency order. The plants on the property are destroyed to eradicate the pest and the plants on the neighbouring property that are in close proximity to the diseased plants are also destroyed. The plants of the neighbouring property would have been diseased through the spread of the disease;
- if the biosecurity response was directed at addressing a risk posed by the existence of biosecurity matter and the property was infected or infested with the biosecurity matter when the loss or damage happened;
- if the biosecurity response was directed at addressing a risk posed by a contaminant and the contaminant was already present in the property at or above the level prescribed under a regulation when the loss or damage happened;
- if, when the loss or damage happened, the property was likely to have become infested or infected with the biosecurity matter. Under subclause (2), the chief executive may publish on the department's website a methodology for calculating whether property was likely to become infested or infected. For example, scientific evidence establishes that certain animal and plant diseases may be transmitted by wind. The evidence also establishes the length of time that a

disease will remain alive if it is carried on the wind. With this knowledge, the chief executive may consider properties within a certain radius of the initial outbreak of the disease susceptible to become infected with the disease;

- if the property was, but is not longer, infested or infected with the biosecurity matter which the response was aimed at eradicating. For example, an animal recovered without being vaccinated from a disease that is the subject of a prevention and control program. Scientific evidence concludes that the animal will be a carrier of that disease and will at some stage shed the disease and infect other healthy animals. To avoid a future outbreak of that disease the animal is destroyed. The person is not entitled to statutory compensation in these cases;
- if the destruction was necessary because of an act or omission of the owner that contributed to, or was likely to cause or contribute to, the spread of the biosecurity matter. For example, an animal owner does not isolate from the rest of the herd an animal that the owner knows or ought reasonably to know is infected or suspected of being infected with a disease;
- if the biosecurity response was necessary because of an act or omission of the owner, or someone acting under the owner's authority, and the owner is found guilty of an offence against the Act arising from or in connection with the act or omission. For example, the owner of a herd of designated animals fails to notify an inspector that one of the animals has shown an adverse reaction to a vaccination given for a disease. An adverse reaction to a vaccination is symptomatic of the animal already carrying the disease. The owner was required under clause 46 (Notifiable incidents) to advise an inspector of this occurrence as it is a notifiable incident. A biosecurity response is subsequently initiated because of the spread of the disease. A result of the biosecurity response is the destruction of some or all of the person's designated animals. As the failure to advise an inspector of the notifiable incident is an offence against the Act, the owner is not entitled to claim statutory compensation; or
- if the loss or damage is recoverable under a policy of insurance held by the person. For example, an owner of a designated animal has an insurance policy covering the animal and the animal's destruction was a consequence of a biosecurity response. The animal's owner must seek compensation for the loss under the insurance policy.

337 No compensation for consequential loss

Clause 337 provides that statutory compensation is payable for loss or damage to property but not for consequential loss. Subclause (1) provides that for 'loss' of property, statutory compensation is limited to the notional value of the property. As defined in clause 330 (What is a notional value or notional reduction in value of property), this is the amount that would have been received for the sale of the property had it been sold under a lawful direction immediately before it was destroyed.

Subclause (2) provides that for 'damage' to property compensation is payable for the notional reduction in value, as defined in clause 330 (What is a notional value or notional reduction in value of a property), of the property.

Subclause (3) declares that statutory compensation does not include compensation for any direct or indirect consequential loss.

Subclause (4) provides examples of the types of consequential loss which cannot be the subject of a statutory compensation claim. Those losses include loss of anticipated or actual revenue or profits and loss of goodwill or business opportunity.

Subclause (5) provides that statutory compensation may not be claimed for loss or damage that is in the form of, in the nature of, or analogous to:

- reimbursement of additional expenses incurred;
- punitive or exemplary damages;
- special damages, or damages for indirect loss or damage of any nature whatsoever.

Part 4 Claiming statutory compensation

338 Application for statutory compensation

Clause 338 provides that applications for statutory compensation must be in the approved form and received by the chief executive within 90 days after the date the loss or damage happens.

339 Further information may be required

Clause 339 enables the chief executive to require further information from an applicant seeking statutory compensation to assist in deciding the application. The further information must be provided to the chief executive within the specified timeframe.

340 Day for making and advising of decision

Clause 340 identifies the timeframe in which the chief executive must give an applicant for statutory compensation a decision on his or her application. The chief executive may also extend the timeframe for making and advising the applicant of the decision if the chief executive considers it necessary.

Upon making a decision the chief executive must give the applicant an information notice setting out the decision. If the decision is to pay compensation, the notice must set out the amount of compensation to be paid.

The chief executive is taken to have refused the application for compensation if the chief executive fails to make a decision within the specified timeframe. In this case the applicant is entitled to an information notice. Decisions where an information notice is given or required to be given may be reviewed under Chapter 11 of the Bill.

Chapter 11 Evidence, legal proceedings and reviews

Chapter 11 provides for evidentiary matters, legal proceedings and reviews of administrative decisions under the Act.

Part 1 Evidence

341 Application of pt 1

Clause 341 establishes that Part 1 applies to a proceeding under the Act.

342 Appointments and authority

Clause 342 identifies appointments and authorities that are to be presumed for example the chief executive's appointment or an authorised officer's appointment unless a party to the proceeding requires proof by reasonable notice.

343 Signatures

Clause 343 provides that a signature purporting to be the signature of the chief executive, a chief executive officer, an authorised officer or an accredited certifier is evidence of that signature.

344 Evidentiary aids

Clause 344 provides that a certificate purporting to be signed by the chief executive or chief executive officer stating any of the following matters is evidence of the matter:

(a) a stated document of any of the following types is a document given, issued, kept or made under the Act:

- (i) an appointment, approval or decision;
- (ii) a notice, direction or requirement;
- (iii) a permit;
- (iv) a record or an extract from a record; or
- (v) a code of practice

(b) a stated document is another document kept under the Act;

(c) a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a) or (b);

(d) on a stated day, or during a stated period, a stated person was or was not the holder of a permit;

(e) on a stated day, or during a stated period, a permit:

(i) was or was not in force;

(ii) was or was not subject to a stated condition

(f) on a stated day a permit was suspended for a stated period, surrendered or cancelled;

(g) on a stated day or during a stated period, a stated appointment, including a person's appointment as an authorised officer, was or was not in force;

(h) on a stated day:

(i) a stated person was given a stated notice or direction under the Act;
or

(ii) a stated requirement under the Act was made of a stated person; or

(iii) a stated amount is payable under the Act by a stated person.

Subclause (2) provides that in a complaint starting a proceeding, a statement that the matter came to the complainant's knowledge on a stated date is evidence of that fact. Subclause (3) also provides that in a proceeding in which the State or local government applies under section 347 (Recovery of cost of investigation), a certificate stating that the costs were incurred and the way in which, and the purpose for which, they were incurred is evidence of the matters stated. Subclause (4) clarifies the meaning of permit for this clause.

Part 2 Legal proceedings

345 Offences under this Act

Clause 345 sets out that there are both summary and indictable offences against this Bill. An indictable offence is an offence that has a penalty of more than two years imprisonment. A summary offence is an offence not punishable by indictment or for which no procedure is specified. This clause also provides for proceedings for indictable offences. The clause further specifies the period within which proceedings for a summary offence must be commenced.

346 Allegations of false or misleading information or document

Clause 346 provides that a charge for an offence involving false or misleading information or documents may state ‘false or misleading’ to the person’s knowledge without specifying which is being relied upon.

347 Recovery of costs of investigation

Clause 347 enables a court on application by the State or a local government to order a person who is convicted of an offence against the Act to pay an amount equal to the costs incurred during an investigation of the offence. The payment must be made to the State or local government that incurred the costs. An application under this clause for the recovery of costs of an investigation of an offence against the Act is in the court’s civil jurisdiction. This clause also clarifies that the civil standard of proof, proof on the balance of probabilities, is to be used in deciding any issued raised on the application.

348 Responsibility for acts or omissions of representative

Clause 348 imposes liability on the principal for the acts or omissions of the principal’s representative.

Subclauses (1) and (2) provide that in a proceeding for an offence against the Act where it is relevant to prove a person’s state of mind, it is sufficient to show that the act or omission was done by the person’s representative acting within the scope of the representative’s actual or apparent authority and the representative had the state of mind.

Subclause (3) provides that liability for the representative’s act or omission in the circumstances described in subclause (2) attaches to the principal unless the principal proves that he or she could not, by the exercise of reasonable diligence, have prevented the act or omission.

349 Executive officers must ensure corporation complies with Act

Clause 349 places an obligation on the executive officers of a corporation to ensure that the corporation complies with prescribed provisions of the Act. The term ‘prescribed provisions’ is defined in subclause (5).

This clause creates an offence on the part of each executive officer of a corporation in situations where the corporation has committed an offence

against the Act. However, it is a defence for an executive officer to prove that he or she exercised reasonable diligence to ensure the corporation complied with the provision; or was not in a position to influence the conduct of the corporation in relation to the offence.

350 Fines payable to local government

Clause 350 provides that where a local government prosecutes an offence under the Act, any fines ordered by the court must be paid to the local government.

Part 3 Reviews

Division 1 Internal reviews

351 Internal review process

Clause 351 specifies that every external review of a decision to which an information notice relates must be in the first instance by way of an application for internal review.

352 Who may apply for internal review

Clause 352 specifies that a person who is given, or is entitled to be given an information notice for a decision, or a person in control of a thing to be seized or forfeited may appeal to the issuing authority against the decision.

353 Requirements for making application

Clause 353 sets out the process and timeframes for the lodgement of an application for the review of an original decision made by an issuing authority.

354 Stay of operation of original decision

Clause 354 provides for the stay of the operation of an original decision.

Subclauses (1), (2) and (3) provide that an application for an internal review will not stay the operation of the subject of the decision (the original decision) unless the applicant applies to the relevant body and the relevant body agrees to stay that decision. Subclause (7) defines the term ‘relevant body’ to mean a court for an original decision to seize or forfeit a thing or QCAT for any other original decision.

Subclauses (4) and (5) provide for the period of a stay and matters a relevant body may impose on the stay of the original decision.

Subclause (6) clarifies that an internal review application of an original decision only affects the decision or the execution of the decision if a stay of the decision is granted.

355 Internal review

Clause 355 requires the issuing authority to conduct a review of the original decision and make a decision (the internal review decision) confirming, amending or substituting another decision for the original decision within 20 days of receiving the application for internal review. Where an original decision is confirmed or amended that confirmed or amended decision is, by subclauses (4) and (5), taken to be the internal review decision.

Subclause (2) specifies that the person conducting the review must not be the original decision maker and must not be a person in a less senior office than the original decision maker. However, subclause (3) provides that subclause (2) does not apply if the original decision maker was the chief executive or a chief executive officer.

356 Notice of internal review decision

Clause 356 requires the issuing authority, within 10 days after making an internal review decision, give the applicant notice of the decision. Subclause (2) specifies what the notice of decision must state if the review decision is not the decision sought by the applicant and is an original decision to seize or forfeit a thing. For another decision the notice must be accompanied by a QCAT information notice for the decision.

Under subclause (3) if the issuing authority does not give the notice within the set time-frame, then the issuing authority is taken to have made an internal review decision confirming the original decision.

Division 2 External reviews by QCAT

357 Who may apply for external review

Clause 357 specifies that a person who is given, or is entitled to be given, a QCAT information notice under clause 356 (Notice of internal review decision), may apply to QCAT for an external review of the decision. QCAT may, by application or on its own initiative, stay the operation of the internal review decision.

Division 3 Appeals

358 Who may appeal

Clause 358 specifies that a person who has applied for an internal review of an original decision to seize or forfeit a thing and is dissatisfied with the internal review decision may appeal to the court against the decision.

359 Procedure for an appeal to the court

Clause 359 states the procedure for an appeal.

Subclause (3) and (4) provide the timeframe in which the notice must be filed and state that the court may at any time extend the time for filing the notice of appeal. Subclause (5) provides that the notice must state fully the grounds of the appeal.

360 Stay of operation of internal review decision

Clause 360 provides that the court may grant a stay of the operation of an internal review decision appealed against in order to secure the effectiveness of the appeal. A stay may be granted on conditions the court considers appropriate. The stay operates for a period fixed by the court and may be amended or revoked by the court.

Subclauses (3) and (4) provide that the stay must not extend past the time when the court decides the appeal and that an appeal against a decision only affects the decision if the decision is stayed.

361 Powers of court on appeal

Clause 361 states the powers of the court on appeal.

Subclause (1) provides that in deciding an appeal the court has the same powers as the issuing authority in making the internal review decision appealed against and the court is not bound by the rules of evidence and must comply with natural justice. Subclauses (2) and (3) provide that the appeal is by way of rehearing, and the court may confirm the internal review decision, set aside the internal review decision and substitute another decision, or set aside the internal review decision and return the matter to the issuing authority with directions from the court.

362 Effect of decision of court on appeal

Clause 362 provides that if the court acts to set aside the internal review decision and return the matter to the issuing authority with directions, and the issuing authority makes a new decision, then the new decision is not subject to review or appeal under this part.

The clause also provides that if the court substitutes another decision, the substituted decision is taken to be the decision of the issuing authority. The issuing authority may give effect of the decision as if it were the original decision of the issuing authority and no application for review or appeal has been made.

Chapter 12 Biosecurity orders and injunctions

Chapter 12 provides for the issuing of biosecurity orders by authorised officers to a person who has failed to discharge his or her general biosecurity obligation established under chapter 2. Recipients of biosecurity orders are entitled to apply to a court to have a third party contribute to the cost of complying with the order if they believe the third party is wholly or partly responsible for the failure to discharge the general biosecurity obligation. The chapter also provides for injunctions against individuals to prevent individuals from committing an offence against the Act.

Part 1 Biosecurity Orders

Division 1 General matters about biosecurity orders

Clauses 363 to 379 provide for an authorised officer to give a person a biosecurity order requiring the person to take action to prevent or reduce a biosecurity risk arising from the recipient's failure or possible failure to discharge his or her general biosecurity obligation at a place.

363 Giving biosecurity order

Clause 363 enables an authorised officer to give a person a biosecurity order if the officer reasonably believes the person has failed or may fail to discharge his or her biosecurity obligation. For example, an authorised officer may form a reasonable belief that soil on a person's land contains fire ants. The officer may give the person a biosecurity order which could direct the person, amongst other things, not to move the soil from the person's property to another place without first treating the soil to ensure that it does not contain fire ants.

Subclause (2) provides that the order may be given regardless of the circumstances in which the authorised officer forms the belief that the person has failed to discharge his or her general biosecurity obligation at a particular place. For example, if an authorised officer enters a place under an emergency order and notices something at the place that indicates that the person has failed to discharge the person's general biosecurity obligation relating to the dealing with biosecurity matter, a carrier or an activity not the subject of the biosecurity emergency order. The authorised officer may issue a biosecurity order directed at ensuring the recipient discharges his or her general biosecurity obligation in relation to the particular biosecurity matter, carrier or activity. Similarly, under clause 231 (Biosecurity orders), an authorised officer may give a person a biosecurity order even though it is not issued in respect of the particular biosecurity matter, carrier or activity that a biosecurity program relates.

A biosecurity order may state the times or intervals when the authorised officer proposes to enter the place where the biosecurity matter or carrier, the subject of the order, is kept (including a vehicle) to check compliance with the order. The order may also state how the recipient may show that

the required action has been taken. For example, to allow the recipient to go about his or her business without further interruption caused by an authorised officer returning to the place to check compliance with the order, the recipient may show compliance with the order by way of taking photographs before, during and after the action is taken. An authorised officer may rely on the photographs without having to return and check on the work done in compliance with the order.

364 Matters that must be included in biosecurity order

Clause 364 identifies what must be included in a biosecurity order:

- the name and address or other identifying information of the recipient that the authorised officer can reasonably obtain;
- how and where the recipient has failed or may fail to discharge his or her general biosecurity obligation;
- the steps the recipient must take to prevent or reduce the biosecurity risk arising from the recipient's failure or possible failure to discharge his or her general biosecurity obligation;
- the reasonable period for taking the steps having regard to the biosecurity risk posed by the recipient's failure or possible failure to discharge his or her general biosecurity obligation;
- how the recipient may show he or she is complying with the order and when the recipient must show this compliance;
- the authorised officer's name and details about the relevant issuing authority sufficient to identify the authority; and
- that it is an offence to fail to comply with a biosecurity order without a reasonable excuse.

The biosecurity order must also explain the effect of clauses 255 (Power to enter place to check compliance with biosecurity order) and 256 (Power to enter place to take steps if biosecurity order not complied with) as they relate to an authorised officer's power to enter the place to check compliance with the order and to take the action required under the order if the recipient fails to comply with the order.

365 What biosecurity order may require

Clause 365 identifies additional requirements for a recipient to do at a place that may be included in a biosecurity order. This includes requirements to treat (or not to treat), dispose, destroy (or cause the destruction of), control or eradicate, clean or disinfect, or remove (or prohibit or restrict the removal of) biosecurity matter or a carrier or other thing at the place. The recipient may also be required to stop using the place for a particular purpose, for a stated period, or until specific action is taken.

366 Requirements for giving biosecurity order

Clause 366 requires a biosecurity order to be given in writing. If a biosecurity order is given orally because it is not practicable to immediately give it in writing, the authorised officer must warn the recipient that it is an offence to fail to comply with the order. The authorised officer must, as soon as practicable, confirm the direction in writing. For example, an authorised officer may notice animal matter being inadvertently put into a production line for feed material for ruminants. The authorised officer may give an immediate verbal direction to stop the animal matter getting into the bags used to contain the ruminant feed material. The direction must be complied with and the authorised officer must confirm that direction in writing as soon as practicable after giving the direction.

367 Compliance with biosecurity order

Clause 367 makes it an offence for a person to fail to comply with a biosecurity order.

368 Approval for particular biosecurity order

Clause 368 requires an authorised person (appointed by the chief executive officer of a local government) to get the chief executive officer's approval prior to giving a biosecurity order to a person in situations where taking the action required under the biosecurity order would be likely to stop a business carried on by the person.

369 Register of biosecurity orders

Clause 369 requires that the administering executive of an authorised officer must keep a register of all biosecurity orders that are issued. The particulars to be recorded include:

- the real property description of the land to which it relates;
- the local government area in which the land was situated;
- information about the biosecurity matter or other thing the order relates and what is required to address the biosecurity risk posed by the biosecurity matter or other thing;
- when the order was given and the period within which the required action is to be taken;
- any other information prescribed by a regulation.

The register may be kept in any way the administering executive decides including in an electronic form.

Subclause (4) provides a person may inspect the register at the usual place of business for the relevant entity when the place is open to the public. The fee to inspect or buy a copy of the register may be prescribed by a regulation.

Division 2 Recovery of costs and expenses

370 Recovery of costs of taking steps under biosecurity order or action under direction

Clause 370 provides that the issuing authority for a biosecurity order may recover the amount that the issuing authority properly and reasonably incurs in taking steps under clause 256 (Power to enter places or take steps if biosecurity order not complied with) or the action under clause 257 (Power to enter place or take action required under direction) of this Bill. The issuing authority must give the person a notice setting out the debt amount. The amount becomes payable 30 days after the person is given notice of the details of the amount of the debt.

If the issuing authority is a local government then the amount payable to the local government is, for the purposes of recovery, taken to be rates owing to the local government.

371 Cost under biosecurity order a charge over land

Clause 371 enables a local government to register, as a charge over a person's land, the outstanding amounts owed to the local government under clause 370. Subclauses (3) and (4) provide that the local government may request the registrar of titles to register a charge over the recipient's land. That charge will then have priority over any encumbrance other than encumbrances in favour of the State, a government entity or rates payable to the local government.

Subclause (5) outlines procedural matters the local government must follow if the unpaid amount is paid after the charge is registered on the recipient's land. Subclause (6) declares that this clause does not limit any other remedy a local government may pursue for the recovery of the unpaid amount.

Division 3 Recovery of costs from other persons

372 Recipient may apply for contribution

Clauses 372 enables the recipient of a biosecurity order who considers a third party wholly or partly responsible for the failure by the recipient to discharge his or her biosecurity obligation, to seek contribution from that third party for the costs incurred by the recipient in complying with the order. Subclause (2) provides that the action for the recovery is to be brought in a Court which may issue a cost recovery order against the third party. Subclauses (3) and (4) identify what information the application must contain and allow a Court to refuse consideration of the application until that information is given in the way the court requires, for example, given by way of statutory declaration.

373 Notice of hearing of cost recovery order must be given

Clause 373 requires 14 days notice of the hearing of the cost recovery order application be given to the third party. Subclauses (2) and (3) provide that the third party is entitled to be heard at the hearing, however, if the third party does not attend, the matter can be heard and determined in the third party's absence.

374 When court may make cost recovery order

Clause 374 lists the matters about which the court must be satisfied before making a cost recovery order against the third party. Of principal importance is that the magistrate is satisfied that the third party is responsible for all or part of the failure to discharge the general biosecurity obligation to which the biosecurity order related.

Part 2 Injunctions

375 Application of pt 2

Clauses 375 provides that the chief executive or chief executive officer of a local government may seek a court injunction against a person who is engaged in, engaging in, proposing to engage in or omitting to engage in conduct that constitutes or would constitute an offence under Chapter 2 of this Act.

376 Who may apply for an injunction

Clause 376 provides that the chief executive or the chief executive of a local government may apply to the District Court for the injunction under clause 375. However, a chief executive officer of a local government may only apply for an injunction if the conduct relates only to invasive biosecurity matter for the local government's area.

377 District Court's powers

Clause 377 confers power on the District Court to hear and decide an application for an injunction in relation to the conduct or failure specified in clause 375 and sets out the court's powers to grant an injunction and the types of injunction that may be granted.

378 Terms of injunction

Clause 378 provides that the court may grant the injunction on the terms the court considers appropriate.

379 Undertakings as to damages or costs

Clause 379 provides that no undertakings as to damages or costs may be required to be made where the chief executive or the chief executive officer of a local government seeks an injunction under the Act.

Chapter 13 Accredited certifiers

Chapter 13 establishes a framework for the accreditation of persons to issue biosecurity certificates. Biosecurity certificates assure other persons (including interstate authorities) that the biosecurity matter or the carrier is free of pests, diseases or contaminants or comes from an area within Queensland that is free of pests, diseases or contaminants. The purpose of biosecurity certificates is to allow for the movement of biosecurity matter or carriers of biosecurity matter within the State or out of the State.

Part 1 Interpretation

380 Definitions for ch 13

Clause 380 defines certain terms used for this Chapter.

Part 2 Purpose and operation of biosecurity certificates and the accreditation system

381 What is a *biosecurity certificate*

Clause 381 defines the term ‘biosecurity certificate’. A biosecurity certificate may state that biosecurity matter or another thing including a carrier of biosecurity matter:

- is free of any prohibited, restricted, regulated or any other stated biosecurity matter;
- is in a stated condition or is from a stated area;
- has received stated treatment or meets stated requirements.

382 Purpose and operation of acceptable biosecurity certificates

Clause 382 provides that an acceptable biosecurity certificate is a way in which a person may be taken to have complied with or be exempted from requirements of the Act or a corresponding law about biosecurity matter that poses a biosecurity risk.

Subclauses (2) and (3) provide for the effect of acceptable biosecurity certificates. For the purposes of the Act, acceptable biosecurity certificates are those issued by persons accredited under this Chapter or issued by interstate officers acting in compliance with a corresponding law whether or not an intergovernmental agreement exists that provides for the interstate recognition of the certificates. The effect of subclauses (2) and (3) is that the matters contained in the acceptable biosecurity certificates can be accepted and relied upon by an authorised officer without further checking. For example, if an accredited certifier issued an acceptable biosecurity certificate stating that a particular load of fruit is free of fruit fly, an authorised officer monitoring compliance with a biosecurity zone established for the prohibition of the introduction of fruit fly may rely on the certificate and allow the load of fruit to enter the zone without further checking.

The term ‘corresponding law’ is defined in Schedule 4 to mean a law of the Commonwealth or another State that corresponds or substantially corresponds the Bill or a provision of the Bill.

383 Purpose and operation of accreditation system

Clause 383 provides that the purpose of the accreditation system is to allow individuals to gain accreditation so that they may issue biosecurity certificates under the Act.

384 Giving biosecurity certificates

Clause 384 provides for the giving of biosecurity certificates.

Subclause (1) identifies the matters that an accredited certifier may need to do before issuing a biosecurity certificate, for example, examine the biosecurity matter. Subclauses (2) and (3) provide that an accredited certifier may, if accreditation conditions permit, issue a biosecurity certificate for the person's own or other person's biosecurity matter or thing. Further, if accreditation conditions permit, another person acting under the direction of the accredited person may also issue a biosecurity certificate.

Part 3 Accreditation of inspector or authorised person

385 Application of part limited to authorised officers appointed by chief executive

Clause 385 identifies the inspectors and authorised persons appointed by the chief executive officer under Divisions 1 and 2 of Part 1 of Chapter 9 of the Act to which this Part applies.

386 Accreditation of inspectors

Clause 386 states that an inspector is an accredited certifier subject to conditions and limitations under the inspector's instrument of appointment or as advised by the chief executive.

387 Accreditation of authorised persons appointed by chief executive

Clause 387 provides that a person appointed as an authorised person by the chief executive is an accredited certifier if the authorised person's accreditation is provided for in the authorised person's instrument of appointment or as advised by the chief executive after appointment. The accreditation of the authorised person is subject to conditions and limitations under his or her instrument of appointment, or as advised by the chief executive.

388 Fees

Clause 388 provides a head of power for a regulation to prescribe fees payable for the giving of a biosecurity certificate by an authorised officer who is also an accredited certifier.

Part 4 Accreditation by application

389 Application for accreditation

Clause 389 provides that a person may apply to the chief executive for the grant of an accreditation to issue biosecurity certificates. The application must be in the approved form and accompanied by the fee prescribed by regulation.

Subclauses (2) and (3) require the applicant to disclose information on the application including details of any relevant accreditation offence which the applicant has been convicted. If the applicant is a corporation or an incorporated association, the application must disclose any conviction for a relevant accreditation offence committed by an executive officer or management committee member of the corporation or incorporated association. The term ‘relevant accreditation offence’ is defined in clause 380 to mean:

- (a) an offence against this Act;
- (b) an offence against a repealed Act;
- (c) an offence involving the supply or use of a chemical for agricultural purposes or an offence against the *Agricultural and Veterinary Chemicals (Queensland) Act 1994*;
- (d) an offence under a law of the Commonwealth, another State or a foreign country that corresponds or substantially corresponds with an offence mentioned in paragraphs (a), (b) or (c).

The clause provides that it is an offence to provide false or misleading information in a material particular in the application to the chief executive.

390 Additional application requirements for ICA scheme

Clause 390 identifies specific details that must be included in an application for a grant of accreditation under the ICA scheme. For example, the application must include details about the operational procedures under the scheme that will be complied with by the applicant and how the applicant proposes to comply with those procedures. The term 'ICA scheme' is defined in clause 380.

391 Consideration of application

Clause 391 empowers the chief executive to grant the accreditation applied for or another accreditation, grant the accreditation subject to conditions, or refuse to grant the accreditation.

392 Criteria for granting accreditation

Clause 392 specifies the criteria the chief executive must be satisfied of before granting the accreditation.

Subclause (1) requires the chief executive to be satisfied that the applicant has the necessary expertise or experience and is a suitable person to be an accredited certifier.

Subclauses (2), (3) and (4) specifically relate to an application for the grant of accreditation to participate in the ICA scheme. The chief executive must ensure that an audit is conducted on the system (an ICA system) proposed by the applicant to comply with the ICA operational procedures and to have regard to the results of that audit in deciding whether or not to grant the accreditation. The chief executive must be satisfied that the proposed ICA system addresses the requirements of the operational procedures to which the application relates.

393 Inquiry about application

Clause 393 provides that the chief executive when considering an application for a grant of accreditation may make further inquiries to decide the suitability of the applicant. A notice may be issued requiring the applicant to furnish a document or further information. The clause also provides the timeframes for the issue of the further information notice and the time for reply by the applicant. If the applicant does not supply the requested document or information within the stated timeframe then the applicant is deemed to have withdrawn the application.

394 Suitability of person for accreditation

Clause 394 sets out the criteria the chief executive may consider when deciding whether a person is suitable for accreditation, including whether the applicant has been convicted of a relevant accreditation offence other than a spent conviction or whether the applicant has been previously refused an accreditation under this Act or another corresponding repealed Act or law.

395 Decision on application

Clause 395 provides that if the chief executive decides to grant the accreditation, the chief executive must give the accreditation to the applicant. If the chief executive decides to refuse to grant the accreditation, or to impose conditions on the accreditation, the chief executive must give the applicant an information notice for the decision as soon as practical.

396 Failure to decide application

Clause 396 provides that if the chief executive fails to decide the application within 30 days after receiving it, the chief executive is taken to have refused to grant the application.

Subclause (3) provides that where the chief executive has required the applicant to furnish further information or a document, the chief executive is taken to have refused to grant the accreditation if the chief executive does not decide the application within 30 days after receiving the further information or document.

If the application is taken to be refused, the applicant is entitled to an information notice by the chief executive for the decision.

397 Term of accreditation

Clause 397 specifies an accreditation remains in force for a period of no more than three years unless it is sooner cancelled or suspended.

398 Form of accreditation

Clause 398 provides that an accreditation may be given in a way considered appropriate by the chief executive.

399 Limitation on further application after refusal or cancellation of accreditation

Clause 399 specifies a minimum time applicants must wait before reapplying for a grant of accreditation after a refusal to grant or the cancellation of an accreditation.

400 Accreditation conditions

Clause 400 provides that the chief executive may grant accreditation on conditions. Conditions may be imposed when the accreditation is issued or renewed.

Subclause (2) specifies that imposed conditions may provide for a number of matters including restrictions on the use of the accreditation and the types of records required to be kept by the accredited certifier.

401 Register

Clause 401 requires the chief executive to keep a register of accredited certifiers. The register must contain specific information for each accredited certifier, such as the accredited certifier's name and contact details, conditions imposed on the accreditation and the term of the accreditation. The register may be kept in the form, including electronic form, as the chief executive considers appropriate. The chief executive must publish the register on the department's website.

Part 5 Renewal of accreditations

402 Application for renewal

Clause 402 provides that an accredited certifier may apply to the chief executive for renewal of the person's accreditation.

Subclause (2) specifies the timeframes within which an application for renewal of an accreditation must be made and details the procedural requirements for the application. The chief executive must consider the application and either renew or refuse to renew the accreditation or to impose conditions on the accreditation. The clause also specifies the criteria in respect of which the chief executive may have regard when

deciding whether to grant the application. An information notice must be given to the applicant if the chief executive decides either to refuse to renew the accreditation or impose conditions on the accreditation.

403 Inquiry about application

Clause 403 enables the chief executive to require an applicant for renewal of a grant of accreditation to provide further information or documentation the chief executive reasonably considers is needed to decide the application. The notice for further information or a document must be given to the applicant within 30 days after receipt of the application for renewal. The chief executive may require the information or documentation be verified by statutory declaration. If the applicant fails to comply with the requirement the application is taken to have been withdrawn.

404 Failure to decide application

Clause 404 provides that if the chief executive fails to decide the application within 30 days after receiving it, the chief executive is taken to have refused to grant the application.

Subclause (3) provides that where the chief executive has required the applicant to furnish further information or a document, the chief executive is taken to have refused to grant the application if the chief executive does not decide the application within 30 days after receiving the further information or document.

If the application is taken to be refused, the applicant is entitled to an information notice by the chief executive for the decision.

405 Accreditation continues pending decision about renewal

Clause 405 specifies that a person's accreditation continues until a decision has been made, or is taken to have been made, or the application is taken to have been withdrawn or the accreditation is earlier suspended or cancelled. Subclause (2) provides that a refusal to renew an accreditation does not affect the accreditation until an information notice for the refusal for renewal is given to the applicant.

Part 6 Offences about accreditation

406 Contravention of accreditation conditions

Clause 406 specifies that an accredited certifier must not contravene any condition of his or her accreditation unless the person has a reasonable excuse.

407 Offences about certification

Clause 407 provides for offences about certification.

Subclause (1) provides that it is an offence for a person who is not an accredited certifier, or who is acting other than under the direction of an accredited certifier, to give to another anything that purports to be a biosecurity certificate about biosecurity matter or another thing.

Subclause (2) provides that it is an offence for a person to falsely state or represent to another that an acceptable biosecurity certificate has been issued for biosecurity matter so as to affect the sale or movement of the biosecurity matter or thing. Further, it is an offence to make a false representation or statement to an authorised officer that an acceptable biosecurity certificate has been issued for particular biosecurity matter or thing where in fact no biosecurity certificate has been issued.

408 Unauthorised alteration of biosecurity certificate

Clause 408 provides that it is an offence to alter a biosecurity certificate unless authorised by the issuing accredited certifier or if the accreditation allows for, under a consignment, the splitting of biosecurity matter between places.

Part 7 Keeping of accreditation related records

409 Keeping of biosecurity certificate by accredited certifier or receiver

Clause 409 requires accredited certifiers to keep original or true copies of the biosecurity certificates they create for either themselves or other parties along with details of the use of the certificate as prescribed by a regulation. These records must be kept for the required period.

Subclause (2) requires an accredited certifier to produce the biosecurity certificate for inspection if required by an authorised officer or relevant auditor during the required period, unless the accredited certifier has a reasonable excuse.

Subclauses (3), (4) and (5) require a person who receives a biosecurity certificate from an accredited certifier to keep the certificate for the required period and produce for inspection to an authorised officer the certificate during the required period.

Chapter 14 Auditors and auditing

Chapter 14 establishes a framework for approval of individuals to be auditors and for conduct of auditing functions under the Act.

Part 1 Auditors

Division 1 Functions and approval of auditors

Subdivision 1 Functions

410 Auditor's functions

Clause 410 outlines the functions of an auditor as:

- advise the chief executive about the capacity of persons applying to enter into compliance agreements to comply with those agreements under clause 84 (Decision on application) and to conduct audits of the businesses of other parties to compliance agreements under Divisions 2 of Part 2 of this Chapter; and
- auditing a person's ICA systems or proposed ICA systems under clause 392 (Criteria for granting accreditation) to allow the chief executive to decide whether to grant an accreditation under Chapter 13 and to conduct audits of a person's ICA system under Division 3 of Part 2 of this Chapter; and
- preparing audit reports under clauses 439 to 442 and
- providing reports to the chief executive about audits conducted by the auditor under this Chapter; and
- other functions as prescribed by a regulation.

Subdivision 2 Approval of inspector or authorised person as auditor

411 Application of subdivision limited to authorised officers appointed by chief executive

Clause 411 provides that subdivision 2 of Chapter 14 applies only to an inspector or authorised person appointed by the chief executive under Divisions 1 and 2 of Part 1, Chapter 9.

412 Approval of inspectors as auditors

Clause 412 specifies that an inspector is an auditor subject to any conditions, including limitations, included in the inspector's instrument of appointment or advised to the inspector by the chief executive.

413 Approval of authorised persons as auditors

Clause 413 provides that an authorised person is an auditor if the authorised person's approval as an auditor is provided for in his or her instrument of appointment or in any advice given to the authorised person by the chief executive. The clause goes on to specify that an authorised person's approval as an auditor is subject to any conditions, including limitations in the authorised person's instrument of appointment or as advised by the chief executive. The chief executive may withdraw the chief executive's approval by advice given to the authorised person.

Subdivision 3 Approval as auditor by application

414 Application for approval as auditor

Clause 414 provides that a person may apply to the chief executive for approval as an auditor.

415 Consideration of application

Clause 415 provides that the chief executive must consider the application and either grant or refuse to grant the application.

416 Criteria for granting application

Clause 416 specifies that the chief executive may only approve a person as an auditor if the chief executive is satisfied that the person has the necessary expertise or experience to be an auditor.

417 Inquiry about application

Clause 417 enables the chief executive to make inquiries to decide the suitability of an applicant to be an auditor. The clause also provides that the chief executive may require an applicant to provide further information or documentation the chief executive reasonably requires to decide the

application. The further information or document must, if the notice requires, be verified by a statutory declaration. If an applicant fails to comply with the requirement, the applicant is taken to have withdrawn the application.

418 Suitability of person to be an auditor

Clause 418 identifies the matters the chief executive may have regard to in considering whether the applicant is a suitable person, including any prior refusal of an application of this type whether in Queensland or elsewhere and whether any prior approval as an auditor was suspended or cancelled.

419 Decision on application

Clause 419 specifies that if the chief executive decides to grant the application, the chief executive must issue the approval. If the chief executive decides to either impose conditions on the approval or refuse to grant the application, the chief executive must give an information notice to the applicant.

420 Failure to decide application

Clause 420 provides that if the chief executive fails to decide an application within the specified timeframes, the application is taken to have been refused. The applicant is entitled to be given an information notice by the chief executive if the application is refused under this clause. The decision may be reviewable under chapter 11.

Division 2 Term and conditions of approval

421 Term of approval

Clause 421 specifies an approval remains in force for no longer than three years unless sooner cancelled or suspended.

422 Conditions of approval

Clause 422 specifies the standard conditions of an approval. It is a standard condition of approval that the auditor must give the chief executive notice of any direct or indirect financial or other interest the auditor has with an

entity the auditor is required to audit under this Chapter. Subclause (2) provides that the auditor must give the chief executive immediate notice of the financial or other interest held by the auditor. The chief executive may impose other conditions the chief executive considers appropriate for the proper conduct of an audit when the approval is issued or renewed or at another time. The chief executive must give the auditor an information notice if additional conditions are imposed when the approval is issued, renewed or at another time.

423 Auditor to comply with conditions of approval

Clause 423 provides that it is an offence for an auditor to fail to comply with a condition of his or her approval. It is irrelevant if the penalty for the offence may be imposed whether or not the approval is suspended or cancelled because of the contravention.

Division 3 Renewal of approvals

424 Application for renewal

Clause 424 specifies the timeframes within which an application for renewal of an auditor's approval must be made by the auditor and sets out the procedural requirements for the application. The chief executive must consider the application and either renew or refuse to renew the approval. The clause also specifies the criteria in respect of which the chief executive may have regard when deciding whether to grant the application. An information notice must be given to the auditor if the chief executive decides either to refuse to renew the approval or impose conditions on the approval.

425 Inquiry about application

Clause 425 enables the chief executive to require an auditor who has applied to renew the approval to provide further information or documentation the chief executive reasonably considers is necessary to decide the application. The chief executive may require the information or documentation to be verified by statutory declaration. If the auditor fails to comply with the requirement, the application is taken to have been withdrawn.

426 Failure to decide application

Clause 426 provides that if the chief executive fails to decide an application for a person to become an auditor within 30 days of receipt of the application, the failure to decide will be taken as a refusal to grant the application. Subclauses (2) and (3) provide that if an auditor, on a renewal application, is requested by the chief executive to provide further information, then a failure to decide the renewal application within 30 days after the receipt of that further information will be taken to be a refusal of the application.

For an application that has been refused under this provision the applicant will be entitled to receive an information notice about the decision.

427 Approval continues pending decision about renewal

Clause 427 provides that an auditor approval will continue until the renewal application has been decided or is taken to have been decided or withdrawn. If the renewal application is refused, the auditor approval will continue until the auditor has been given an information notice outlining the decision. The continuation of an auditor's approval under this clause does not apply to an approval that has been previously suspended or cancelled.

Division 4 General provisions

428 Applications—general

Clause 428 sets out the details to be included and requirements for an application for approval as an auditor, renewal of an approval and the amendment of the conditions of an approval.

Subclauses (2) and (3) require the application to be in the approved form, signed by the applicant and accompanied by the prescribed fee. The approved form must make provision for an applicant's statement about his or her direct financial or other interests with entities proposed to be audited that the applicant has that may conflict with the applicant's proper performance as an auditor.

429 Form of approval

Clause 429 provides that an approval must include the auditor's name and contact details, any conditions imposed and the term of the approval.

430 Register

Clause 430 specifies that the chief executive must keep a register of auditors. The register must contain the auditor's name and contact details, the conditions of the approval and the term of the approval. The register may be kept in the form the chief executive considers appropriate including in electronic form. The chief executive must publish the register on the department's website.

Part 2 Auditing

Division 1 Preliminary

431 Purpose of pt 2

Clause 431 sets out the purpose this Part as providing for auditing of compliance agreements and accreditations, monitoring the conduct of audits and reporting the results of audits.

Division 2 Auditing for compliance agreements

432 Audit of applicant's business for entering into compliance agreement

Clause 432 requires the chief executive to audit the business of a person applying to enter into a compliance agreement. The purpose of the audit is to ensure that the applicant has implemented procedures that provide a way for preventing or managing exposure to all biosecurity risks relating to the biosecurity risk matter for the business. The audit will also ensure that the applicant has the capacity to comply with the requirements of the compliance agreement.

433 Compliance audits

Clause 433 makes it an offence if the other party to a compliance agreement fails to have a compliance audit conducted of his or her business within 6 months after entering into the compliance agreement and at intervals of no more than 6 months, unless the other party has a reasonable excuse.

Subclause (2) provides that the chief executive may conduct additional audits of the business if the chief executive reasonably suspects the business does not conform with the requirements of the compliance agreement or noncompliance with the agreement was identified during a previous compliance audit.

434 Check audit

Clause 434 enables the chief executive to conduct a check audit of the business of the other party to a compliance agreement.

435 Nonconformance audit

Clause 435 enables the chief executive to arrange a nonconformance audit of the business the other party to a compliance agreement. A nonconformance audit may occur if the chief executive has received at least three audit reports about the business in a 12 month period showing the other party has not remedied a particular noncompliance in relation to the business.

Division 3 Auditing for accreditation

436 Compliance audits

Clause 436 provides that it is an offence if an accredited certifier fails to have compliance audits of his or her activities as an accredited certifier conducted within six months after he or she is granted accreditation and then at the intervals specified within the accreditation, unless the accredited certifier has a reasonable excuse.

Subclause (2) provides that the chief executive may conduct additional audits of the accredited certifier's activities if the chief executive reasonably suspects the activities do not conform with the accreditation or

noncompliance with the accreditation was identified during a previous compliance audit.

437 Check audit

Clause 437 enables the chief executive to conduct a check audit of an accredited certifier's activities.

438 Nonconformance audit

Clause 438 enables the chief executive to arrange a nonconformance audit of the accredited certifier's activities. A non-conformance audit may occur if the chief executive has received at least three audit reports about the accredited certifier's activities in a 12 month period showing the accredited certifier has not remedied a particular noncompliance in relation to the activities.

Part 3 Auditors' reports and responsibilities

Division 1 Compliance agreement reports

439 Report about audit for entering into compliance agreement

Clause 439 identifies the information to be included in an audit report for an audit undertaken to assess the adequacy of the measures proposed to prevent or manage the biosecurity risk matter of a person intending to enter into a compliance agreement, including:

- whether the applicant has or has not implemented procedures for the applicant's business that provide a way for preventing or managing exposure to all biosecurity risks relating to the biosecurity risk matter for the business;
- the reasons that the auditor considers the applicant has or has not implemented the procedures;

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- whether, in the auditor's opinion, the applicant has or does not have the capacity to comply with the requirements of the compliance agreement;
 - the reasons that the auditor considers the applicant has or does not have the capacity to comply; and
 - other information prescribed by a regulation.

The auditor must within 14 days of completing the audit provide one copy of the report to the applicant and one copy to the chief executive, unless the auditor has a reasonable excuse.

440 Report about audit for compliance or non-conformance audit

Clause 440 identifies what must be included in an audit report for a compliance or nonconformance audit, including:

- whether, in the auditor's opinion the business complies or does not comply with the compliance agreement;
- the reasons that the auditor considers the activities comply or do not comply with the compliance agreement;
- details of action taken or proposed to be taken to remedy non-compliance with the compliance agreement;
- whether the auditor needs to conduct a nonconformance audit of the business in relation to any noncompliance identified in the audit;
- whether, in the auditor's opinion, the frequency of the compliance audits should be changed and the reasons for that change.

The auditor must within 14 days after completing the audit provide one copy of that report to the other party to the compliance agreement and one copy to the chief executive, unless the auditor has a reasonable excuse.

Division 2 Accreditation reports

441 Report about audit for grant of accreditation

Clause 441 identifies what must be included in an audit report of an applicant's ICA system or proposed system for a grant of accreditation, including:

- details of the applicant's ICA system or proposed ICA system audited;
- whether, in the auditor's opinion, each ICA system or proposed ICA system satisfies the requirements of any operational procedures to which the system is directed;
- the reasons that the auditor considers each ICA system or proposed ICA system satisfies or does not satisfy the requirements of any operational procedure to which the system is directed; and
- other information prescribed by regulation.

The auditor must, within 14 days after completing an audit provide one copy of that report to the applicant and one copy to the chief executive, unless the auditor has a reasonable excuse.

442 Report about audit for compliance or nonconformance audit

Clause 442 identifies what must be included in an audit report for a compliance or non-conformance audit for accreditation as an accredited certifier, including:

- whether the activities comply or do not comply with the accreditation;
- the reasons the auditor considers the activities comply or do not comply with the accreditation;
- if the activities do not comply with the accreditation, details of action taken or proposed to be taken to remedy the noncompliance;
- for accredited certifiers participating in the ICA scheme, whether the ICA systems satisfies the operational procedures and the reasons why the system comply or fail to comply with the operational procedures;
- whether the auditor needs to conduct a nonconformance audit of the activities in relation to any noncompliance identified in the audit; and

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- whether, in the auditor's opinion, the frequency of the compliance audits should be changed and the reasons for that change.

The auditor must, within 14 days after completing an audit provide one copy of that report to the accredited certifier and one copy to the chief executive, unless the auditor has a reasonable excuse.

Division 3 Responsibilities

443 Auditor's responsibility to inform chief executive

Clause 443 provides that an auditor, whilst conducting an audit under this chapter, must advise the chief executive that he or she has formed a reasonable belief that a person has contravened or contravening the Act and the contravention poses an imminent and serious biosecurity risk. The auditor must advise the chief executive the facts and circumstances that gave rise to that belief within 24 hours of forming the belief. It is an offence for an auditor to fail to comply with this requirement. The clause provides that the advice may be given orally within that 24 hour period but must give the notice to the chief executive within 24 hours of giving the verbal details.

Part 4 Offences

444 Obstructing auditor

Clause 444 provides that it is an offence to obstruct an auditor in the conduct of an audit unless the person has a reasonable excuse. An auditor must warn a person that his or her behaviour is considered to be obstructing the auditor in the performance of his or her duties and that it is an offence to obstruct the auditor.

445 Impersonating auditor

Clause 445 provides that it is an offence to pretend to be an auditor.

Chapter 15 Common amendment, suspension and cancellation provisions for particular authorities

Chapter 15 provides for common amendment, suspension and cancellation provisions for particular authorities under the Bill.

Part 1 Interpretation

446 Definitions

Clause 446 defines the term ‘relevant authority’ used in this chapter.

Part 2 Amending conditions of relevant authority on application

447 Application by holder of relevant authority to amend conditions

Clause 447 specifies that the holder of a relevant authority may apply to the chief executive to amend the conditions of the authority and specifies what the application must contain. However, if the relevant authority is a prohibited matter or restricted matter permit, the chief executive may waive payment of the fee. To waive the fee, the chief executive must be satisfied the proposed dealings with the prohibited or restricted matter are aimed at controlling the matter, the applicant will not derive any benefit from the dealings, and the chief executive will be advised of the progress and outcome of the dealings.

The chief executive must consider the application and decide to amend, or refuse to amend the conditions of the authority. If refusal is decided, an information notice must be sent to the applicant as soon as practicable after

the decision is made. If the chief executive decides to amend the conditions of the authority, the chief executive must, as soon as practicable, issue to the applicant another relevant authority showing the amendment.

448 Inquiry about application

Clause 448 enables the chief executive to require an applicant who has applied to amend a relevant authority to provide further information or documentation the chief executive reasonably considers is needed to decide the application. The chief executive may require the information or documentation be verified by statutory declaration. If the applicant fails to comply with the requirement, the application is taken to have been withdrawn.

449 Failure to decide application

Clause 449 sets out the timeframes within which the chief executive must decide an application made under clause 447 (Application by holder of relevant authority to amend conditions) and specifies that if the application is not decided within these timeframes, the application is taken to have been refused. The applicant is entitled to be given an information notice by the chief executive if the application is taken to be refused under this clause.

Part 3 Cancellation, suspension and amendment by chief executive

450 Cancellation and suspension—grounds

Clause 450 sets out the grounds on which the chief executive may cancel or suspend a relevant authority. For example, subclause (1)(a) provides that cancellation or suspension may occur if the authority was obtained by materially incorrect or misleading information or documents. Under clause 389 (Application for accreditation) it is an offence to give the chief executive false or misleading information when making the application.

451 Amendment of relevant authority

Clause 451 empowers the chief executive to amend a relevant authority.

452 Cancellation, suspension or amendment by chief executive—show cause notice

Clause 452 provides that the chief executive must give a show cause notice to a holder of a relevant authority if the chief executive believes a ground exists to suspend or cancel the authority or proposes to amend an authority.

Subclauses (2) and (3) set out the particulars that a show cause notice must contain and specify that the show cause period must end at least 28 days from the giving of the notice.

453 Representations about show cause notice

Clause 453 provides that the holder of an authority may make written representations about the show cause notice to the chief executive and the chief executive must consider all the representations.

454 Ending show cause process without further action

Clause 454 enables the chief executive to end the show cause process after considering the accepted representations made by the holder of an authority under clause 453 (Representations about show cause notice). The chief executive must give a notice to the holder of the decision to take no further action about the show cause notice.

455 Cancellation, suspension or amendment

Clause 455 provides that after considering any accepted representations made by the holder of an authority under clause 453 (Representations about show cause notice), the chief executive still believes a ground exists to cancel, suspend or amend the authority, the chief executive may cancel, suspend or amend the authority in accordance with the proposed action stated in the show cause notice. This clause applies also to a situation where there are no accepted representations by the holder of the authority under clause 453.

The clause also provides that if the chief executive decides to cancel, suspend or amend the authority, the chief executive must as soon as practicable give an information notice for the decision to the holder.

456 Immediate suspension of relevant authority

Clause 456 sets out the grounds and procedures for the immediate suspension or cancellation of an authority.

Part 4 Miscellaneous**457 Amendment of relevant authority without show cause notice**

Clause 457 exempts from the requirements of the chapter particular types of amendments of a relevant authority. The provision only applies to clerical amendments, amendments that will not adversely affect the interests of the holder and amendments proposed by the holder and accepted by the chief executive without requiring a formal application to be made. In these cases, the chief executive may make the amendment to the authority by way of a notice to the holder.

458 Cancellation of relevant authority without show cause notice

Clause 458 exempts from the requirements of the chapter a request by the holder of a relevant authority to cancel his or her authority and the chief executive proposes to give effect to the request. The chief executive may cancel the authority by way of notice to the holder.

459 Return of cancelled, suspended or amended relevant authority

Clause 459 makes it an offence for a holder not to return a relevant authority to the chief executive within 14 days, or a later stated date, after receiving a notice from the chief executive requiring the return of the authority. Subclauses (4) and (5) require the chief executive to return authorities to holders at the end of a suspension period or following an amendment to an authority.

Subclause (6) clarifies that an amendment to an authority is not dependent on the actual document being in possession of the chief executive to effect that amendment nor does a holder need to be in possession of the actual amended authority for the amendment to have effect.

Subclause (7) provides that the chief executive is not required to return the document for a relevant authority that is cancelled.

Chapter 16 Invasive animal barrier fencing

Chapter 16 establishes the Invasive Animals Barrier Fence Board and its functions. The chapter deals with pest management through maintaining the existing pest animal barrier fences and undertaking other pest animal management activities.

Part 1 The barrier fence board

Division 1 Establishment

460 Establishment of barrier fence board

Clause 460 establishes the Invasive Animals Barrier Fence Board.

461 Legal status

Clause 461 provides that the barrier fence board is to be a body corporate, have its own seal and may sue or be sued in its corporate name. Further, the barrier fence board represents the State and has the privileges and immunities of the State.

462 Application of other Acts

Clause 462 specifies that the barrier fence board is a statutory body under the *Financial Accountability Act 2009* and *Statutory Bodies Financial Arrangements Act 1982* and states the relationship of the board's powers under this Bill.

463 Board's function

Clause 463 establishes that the function of the barrier fence board is to inspect and maintain the invasive animal barrier fence to ensure the board's area is kept free from dingos, dogs other than domestic dogs, and European rabbits. The clause goes on to provide that maintaining the fence may include repairing or replacing damaged sections of the fence, clearing obstructions away from the fence for the purposes of ensuring the integrity of the fence, and inspecting the condition of the fence.

464 Board's powers

Clause 464 provides that the Invasive Animals Barrier Fence Board has all the powers of an individual. The board may, for example, enter into contracts, appoint and act through agents and attorneys, acquire, hold, deal with and dispose of property and employ staff and engage consultants.

465 Minister may give direction to board

Clause 465 provides the Minister with the power to issue a direction to the barrier fence board about the performance of a function or exercise of its powers if satisfied it is necessary in the public interest. The board must comply with that direction. The clause requires the Minister to consult with the board before giving the direction. The direction is to be gazetted within 21 days after the direction is given.

Division 2 Board directors

466 Control of board

Clause 466 establishes that the directors of the barrier fence board control the board.

467 Role of directors

Clause 467 provides that the directors of the barrier fence board are responsible for the way the board performs its functions and exercises its powers. The role of the directors is to ensure that the board performs its functions in an appropriate, effective and efficient way.

468 Number and appointment

Clause 468 establishes that the membership of the barrier fence board will consist of seven directors made up of the chairperson and six other directors.

469 Chairperson

Clause 469 provides that the Minister will appoint the chairperson to the barrier fence board after consulting with each entity the Minister considers has an interest in the maintenance of the barrier fence and the operation of the board. Subclause (2) sets out those persons who are disqualified from being appointed as the chairperson of the barrier fence board.

470 Nominating local government groups

Clause 470 provides that there are three nominating groups of local governments, being the western nominating group of local governments, the central nominating group of local governments and the southern nominating group of local governments.

471 Appointment of directors other than chairperson

Clause 471 sets out the requirements for the appointment of directors of the barrier fence board other than the chairperson:

- three are to be representatives from each of the nominating groups of local governments;
- one board member is to be a State Government employee;
- two persons, who in the opinion of the Minister have the necessary experience or expertise to be a member and who are not employees or elected representatives of the State or local government or the Legislative Assembly; and
- two of these six members (other than the State government employee) must be persons who are primary producers.

472 Qualifications of directorship

Clause 472 outlines requirements for qualification for appointment as a director. Subclause (1) provides that a person is ineligible for membership or continued membership on the board if the person is an insolvent within

the meaning in section 9 of the *Corporations Act 2001* (Cwth), or has been convicted of an indictable offence or a relevant biosecurity offence.

473 Term of appointment

Clause 473 establishes that the term of appointment for a director or a casual director is to be as stated in the instrument of appointment. The term of appointment must not exceed three years.

474 Termination of appointment

Clause 474 sets out the circumstances for termination of an appointment of a director of the board by the Minister.

475 Vacation of office

Clause 475 outlines the circumstances when the office of a director of the board becomes vacant which are when the director dies, resigns or the director is removed from office under this Part.

476 Disclosure of interests

Clause 476 provides that a director must not have an interest that could conflict with the proper performance of duties when an issue about that interest comes before the board. Unless the board directs otherwise, the director is not to be present for consideration to take part in a decision. The disclosure is to be recorded in the board's minutes. Offence penalties are provided and interest does not include an interest that the director has in common with others of any nominating entity.

Subclause (6) provides that another director who also has a direct or indirect financial or personal interest in the matter must not be present when the board of directors is considering its decision or take part in making the decision.

477 Director to act in board's interest

Clause 477 removes any doubt that the director is required to act in the best interests of the board.

Division 3 Business and meetings

478 Conduct of business

Clause 478 enables the board to conduct its business and meetings in the way it considers appropriate.

479 Times and places of meetings

Clause 479 specifies the board's meeting arrangements and when a meeting is to be called.

480 Quorum

Clause 480 sets out the quorum requirement of a board.

481 Presiding at meetings

Clause 481 provides that the board's chairperson must preside at all meetings at which the chairperson is present. If the chairperson is absent, the director chosen by the directors must preside.

482 Conduct of meetings

Clause 482 specifies that a question at a board meeting is decided by a majority of the votes of the directors present at the meeting and voting. Subclause (2) provides that each director present has a vote on each question to be decided, and if the votes are equal, the chairperson has a casting vote.

Subclause (3) provides that a director present at the meeting who abstains from voting is taken to have voted for the negative.

Subclause (4) provides that the board may hold meetings, or allow directors to take part in its meetings by using any technology reasonable available, such as teleconferencing and videoconferencing. Subclause (5) provides that a director who takes part in a board meeting using such technology is taken to be present at the meeting.

Subclause (6) provides that a resolution is validly made by the board, even if it is not passed at the board meeting if a majority of the board's directors

gives written agreement to the resolution and notice of the resolution is given under procedures approved by the board.

483 Minutes

Clause 483 specifies the board is to record proceedings of meetings and resolutions in minutes.

484 Fees and allowances

Clause 484 provides that a director is entitled to be paid the fees and allowances approved by the Minister.

Division 4 Financial matters

485 Estimate of board's operational costs

Clause 485 requires the barrier fence board to provide written estimates of operational costs for each financial year at least two months before the start of the financial year to which the estimate relates. The estimates must be accompanied by details, including a works program, for the items to which the costs relates and an amount for each item.

486 Approval for carrying out board's operations

Clause 486 provides the board must obtain the approval of the Minister for its financial year's cost estimates.

Division 5 Board employees

487 Board may employ or engage persons

Clause 487 enables the board to employ or engage suitably qualified persons, 'board employees', to assist the board in discharging its functions. The board may only appoint a person as a board employee if satisfied the person has the necessary experience or expertise.

488 Powers of board employees generally

Clause 488 provides that the barrier fence board may delegate powers to board employees. In exercising those powers the board employee must follow the directions of the board. The powers of a board employee are limited to—

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

489 Issue of identity card

Clause 489 states that the barrier fence board must issue each board employee with an identity card.

Subclause (2) identifies what must be included in an identity card. Subclause (3) does not prevent the issue of a single identity card to a person for this Act and other purposes.

490 Production or display of identity card

Clause 490 requires board employees to produce their identity card or have it clearly visible when exercising a power in relation to a person in the person's presence. Subclause (2) provides that if this is not practical, the board employee must produce his or her identity card for the person's inspection at the first reasonable opportunity.

491 Return of identity card

Clause 491 requires a board employee issued with an identity card and who ceases to be a board employee to return the card to the administering executive within 21 days. A failure to comply with this requirement is an offence unless the person has a reasonable excuse.

492 Incidental entry to ask for access

Clause 492 provides for the purpose of asking the occupier of a place for consent to enter the place on behalf of the barrier fence board, a board

employee may enter land around the premises to contact the occupier or part of the place that is considered ordinarily open to members of the public when they wish to contact the occupier of the place.

493 Matters board employee must tell occupier

Clause 493 provides that a board employee, prior to requesting consent to enter the place on behalf of the barrier fence board, must explain to the occupier the reasons for the request, that the occupier does not have to consent and that if consent is given it can be subject to conditions set by the occupier. The occupier can withdraw consent at any time.

494 Obstructing board employee

Clause 494 provides that it is an offence to obstruct a board employee, or a person helping the board employee unless the person has a reasonable excuse. The board employee must warn the person that the person is obstructing the board employee and that it is an offence to do so unless the person has a reasonable excuse.

495 Impersonating board employee

Clause 495 makes it an offence for a person to impersonate a board employee.

Division 6 Miscellaneous

496 Delegation

Clause 496 empowers the board to delegate its functions to an appropriately qualified person.

497 Annual report

Clause 497 obliges the board to prepare an annual report at the end of each financial year and give it to the Minister. Subclause (2) specifies that the Minister must table a copy of the report in the Legislative Assembly as soon as practical after receiving it.

Part 2 The barrier fence

Division 1 Identification

498 Identification of the barrier fence

Clause 498 provides that the barrier fence is made up of the sections of fencing built along the declared building lines. The chief executive may create new versions of the relevant maps depicting the location of the barrier fence or any adjustment to the barrier fence. The maps are available to be accessed or inspected at the Department's head office during business hours.

Division 2 Maintaining the barrier fence

499 Building gates and grids in barrier fence

Clause 499 requires the barrier fence board, to build and pay for a gate or grid in the fence to allow movement where the fence causes operational interference to the landowner.

500 Maintaining barrier fence

Clause 500 requires the barrier fence board to maintain the fence in a condition that stops the movement of invasive animals from one side of the fence to the other. To enable the board to maintain the fence, the board is given powers to clear a line of up to 20 metres along either side of the fence of vegetation or obstructions and to enter the land to clear obstructions or inspect or maintain the fence.

501 Power to enter a place

Clause 501 enables the barrier fence board to enter a place for the purposes of building, inspecting or maintaining (including clearing of obstructions) a fence or to clear a line along it. To enter the property for these purposes, the board must either obtain the consent of the occupier, or give a written notice to the occupier of the board's intention to enter. Where it is impractical to give notice, the board must publish its intention to enter in a

newspaper circulating generally in the area or put a notice in a conspicuous place at the property.

Subclause (5) provides that if the board needs to enter the land in urgent circumstances, the board need only give the occupier notice that is reasonably practical in the circumstances.

502 Agreement to make opening in barrier fence

Clause 502 authorises the barrier fence board to enter into an agreement with another person about making an opening in the fence for a particular purpose and period, such as laying a road or pipeline through the fence. Subclause (2) provides that the agreement must be subject to conditions that, as far as practical, prevent the movement of an invasive animal from one side of the fence to the other while the fence is opened.

503 Duty to avoid inconvenience and minimise damage

Clause 503 provides that in exercising a power of the barrier fence board a board employee must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

504 Notice of damage

Clause 504 provides for the giving of a notice of damage. Subclause (1) provides that notice must be given of damage caused by a board employee or a person acting under the direction or authority of a board employee.

Under subclause (2), notice need not be given if the authorised officer or board employee reasonably considers the damage is trivial, there is no one apparently in possession of the thing or the thing has been abandoned.

Subclause (3) requires the board employee to give notice of the damage to the person who appears to the board employee to be the owner, or person in control, of the damaged thing.

Subclause (4) provides that if for any reason it is not practicable to comply with subclause (3), the board employee must leave the notice at the place where the damage happened and ensure it is left in a conspicuous position and in a reasonably secure way.

Subclause (5) provides that if the authorised officer or board employee believes the damage was caused by a latent defect in the thing or

circumstances beyond the control of the board employee may state the belief in the notice.

Subclause (6) requires the notice to state the particulars of the damage and that the person who suffered damage may claim compensation under clause 504.

505 Compensation

Clause 505 makes provision for compensation because of a board employee's exercise of a power where the person incurred loss arising from an accidental, negligent or unlawful act or omission.

Subclause (3) provides that the compensation may be claimed and ordered in a court with jurisdiction for the recovery of the amount or in proceedings for an alleged offence against this Act the investigation of which gave rise to the claim.

Subclause (4) provides that a court may order the payment of compensation only if satisfied it is just to make the and in considering whether it is just to order compensation. Subclause (5) provides that the court must have regard to any relevant biosecurity offence committed by the claimant.

Subclause (6) creates a head of power for a regulation to prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

Subclause (7) provides that compensation claimed for loss where a board employee has taken all reasonable steps in exercising his or her power to cause as little inconvenience, and do as little damage as possible, can only be made under this clause.

Subclause (8) defines 'loss' to include costs and damage.

506 Directing restoration of barrier fence

Clause 506 empowers the barrier fence board to give a person, by written notice, a direction to restore the pest fence to the condition it was in before the damage reasonably believed to have been caused by the person. The board must also give the person an information notice about the board's decision. If the person does not comply with the notice, the board may carry out the work.

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

Division 3 Offences about the barrier fence

507 Damaging, or making openings in, the barrier fence

Clause 507 makes it an offence for a person, without reasonable excuse, to damage or make an opening in a declared pest fence.

508 Obstructing inspection or maintenance of barrier fence

Clause 508 makes it an offence for a person, without reasonable excuse, to build a structure, excavate land or carry out an activity likely to obstruct the inspection or maintenance of the barrier fence.

509 Closing gates

Clause 509 makes it an offence for a person, without reasonable excuse, to fail to close a gate in a declared pest fence immediately after use.

Chapter 17 Miscellaneous

Chapter 17 provides for miscellaneous matters covered under the Bill.

510 Inconsistencies in scientific name or common name for relevant biosecurity matter

Clause 510 outlines the approach to be taken in dealing with any minor inconsistencies between a reference to a scientific name of relevant biosecurity matter used in the Bill and a scientific name ascribed to it by an authoritative document (for example, a published text book on exotic fish). Under this clause, the relevant biosecurity matter mentioned in the authoritative document is taken to be the same relevant biosecurity matter under this Bill. This clause defines the term ‘relevant biosecurity matter’

as prohibited matter, restricted matter, controlled biosecurity matter or regulated biosecurity matter. These terms are defined in the Dictionary, Schedule 4.

511 Confidentiality of information

Clause 511 makes it an offence for a person to disclose specified confidential information obtained as a result of the person performing a function under the Bill, unless the disclosure is expressly authorised under subclause (3), for example if:

- the information is disclosed for a purpose under the Bill;
- the information is disclosed to certain entities identified in subclause (3)(b) that have a necessary interest in matters relating to biosecurity. For example, the exchange of information between the State and a local government about an outbreak of a restricted invasive plant on a particular property in the local government's area. The exchange of information with Safe Food Production Queensland for the purposes of fulfilling its functions under the *Food Production (Safety) Act 2000*;
- the disclosure is with the consent of the person to whom the information relates; or
- the disclosure is authorised under a Bill or another law.

512 Delegation by chief executive

Clause 512 enables the chief executive to delegate certain chief executive powers. The clause does not allow the chief executive to delegate the powers to make an emergency prohibited matter declaration (clause 30), a biosecurity emergency order (clause 99) or a movement control order (clause 110). Further, the chief executive may not delegate the chief executive's function to establish particular areas in a biosecurity zone or authorise lesser restrictions in a biosecurity zone (clause 115) or the authorisation of a surveillance or prevention and control program under Part 2 of Chapter 8.

513 Protecting officials from liability

Clause 513 provides that an official, as defined within this clause, does not incur civil liability for an act done, or omission made, honestly and without negligence under this Bill. If a liability exists then it attaches instead to

either the State or the local government under which the person is acting or directed.

514 Public officials for Police Powers and Responsibilities Act

Clause 514 provides for certain persons under the Bill to be public officials for the *Police Powers and Responsibilities Act 2000* if a police officer is satisfied that it is reasonably necessary in the circumstances.

515 When regulatory impact statement not required

Clause 515 provides that a regulatory impact statement need not be prepared for emergency declarations made by the chief executive under clause 30 (Chief executive may make emergency prohibited matter declaration).

516 Limitation of review

Clause 516 specifies that a relevant matter is final and conclusive and can not be challenged, appealed against, reviewed, quashed, set aside or called into question in another way under the *Judicial Review Act 1991*, other than by review of a jurisdictional error by the Supreme Court. Relevant matters are also not subject to any writ or order of another court, tribunal or another entity on any ground. A person may not bring a proceeding for an injunction, or for any writ, declaration or other order, to stop or otherwise restrain the performance of a relevant act (an act directed or authorised under an emergency declaration or biosecurity emergency order). A person may bring a proceeding to recover damages for loss or damage caused by a negligent act, or by omission in the performance of an act or by an unlawful act.

Subclauses (5) sets out, but does not limit, the criteria to be considered on judicial review by the Supreme Court for a matter of jurisdictional error. The criteria may be considered by the Supreme Court on a stay or a review application.

In this instance, ‘relevant matter’ means a chief executive decision to make, or the making or purported making of an emergency prohibited matter declaration or a biosecurity emergency order or movement control order, or the performance or purported performance of a relevant act or an obligation to perform a relevant act.

517 Service of documents

Clause 517 sets out that if a document is required or permitted under this Bill to be given to a person it may be given to the person by facsimile transmission under the conditions listed in the clause.

518 Application of Acts to local governments

Clause 518 provides that this Act applies to a local government as if the local government were a body corporate. A proceeding may be taken under this Act against a local government and a local government may be dealt with as if it were a body corporate. Proceedings may be taken under this Act against a local government in its own name.

519 Review of Act

Clause 519 states that the Minister must review the efficacy and efficiency of this Bill within five years of its commencement.

520 Approval of forms

Clause 520 authorises the chief executive to approve forms for use under this Bill.

521 Regulation-making power

Clause 521 provides that the Governor in Council may make regulations under this Bill and specifies the matters about which a regulation may be made.

Chapter 18 Repeal, savings and transitional provisions

Chapter 18 provides for the repeal, savings and transitional provisions of matters relating to Acts and parts of Acts being repealed by this Act. These provisions ensure the continued proper administration of the repealed Acts

and the ongoing effect of rights, privileges, obligations and liabilities arising in relation to pre-repeal matters.

Part 1 Repeal of Acts

Part 1 sets out the Acts the Biosecurity Act repeals.

Part 2 Savings and transitional provisions

Part 2 provides for the savings and transitional provisions and how a matter that is currently in force under a repealed Act will be dealt with upon the commencement of this Act. This may be by a continuation of the matter under the repealed Act as though this Act had not been enacted or the matter may be dealt with under a corresponding provision under this Act.

Division 1 of this Part defines certain terms used in this Chapter and identifies generally how provisions of the repealed Acts are to be dealt with under a corresponding provision of this Act. Division 2 expands on Division 1 and provides for the general transitioning of documents, actions, obligations and protections under a repealed Act to this Act. The Division uses specific examples, from repealed Acts, for chapters 2 to 17 to further explain how provisions from any of the repealed Acts may be transitioned.

Division 3 of this Part identifies generally how provisions of the repealed Acts are to be specifically dealt with under this Act, particularly where there may not be corresponding provisions provided for in this Act. Division 4 addresses individual provisions from each of the repealed Acts, particularly those provisions that were fundamental to the repealed Act and where the transition of that fundamental provision needs to be distinguished from other provisions due to its circumstances.

Chapter 19 Amendment of Acts

Chapter 19 provides for consequential amendments to other Acts.

Part 1 Amendment of Chemical Usage (Agricultural and Veterinary) Control Act 1988

Part 1 outlines the amendments made to the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* as a consequence of the repeal of the *Stock Act 1915* and amendment of the *Fisheries Act 1994*.

The *Chemical Usage (Agricultural and Veterinary) Control Act 1988* currently provides for the regulation of things containing residues of agricultural and veterinary chemicals above certain prescribed limits, for example plants, fruit and vegetables, fertilisers and manufactured stock food.

The amendments provide for the regulation of trade of species animals and animal products like meat and milk, containing residues of agricultural and veterinary chemicals above certain prescribed limits.

In addition, the chief executive will be able to decide the chemical residue status of animals and places. This is linked to the registration requirements for biosecurity entities under Chapter 6 of the Bill. Details of the chemical residue status will be entered in the biosecurity register referred to in Chapter 6.

Part 2 Amendment of Fisheries Act 1994

Part 2 makes consequential amendments to Divisions 5, 6 and 7 of Part 5 and the schedule (Dictionary) of the *Fisheries Act 1994* by removing references to:

- declared pest;
- declared disease;
- declared quarantine area;
- diseased fisheries resources;
- noxious fisheries resources; and
- quarantine declaration.

The Bill removes these references as the subject matter contained in Divisions 5, 6, and 7 of Part 5 of that Act (noxious fish, diseases and contaminants in fish) will be regulated as biosecurity matter under the Bill. For example, references to ‘declared pest’ in section 9 of the Fisheries Act will be referred to in the Bill as biosecurity matter which may be managed as prohibited, restricted, controlled or regulated biosecurity matter as appropriate.

The regulation of noxious fisheries resources under Division 5 of the Fisheries Act and identified in Schedule 6 of the *Fisheries Regulation 2008* continue to be regulated under the Bill. Noxious fish identified in Schedule 6 of the *Fisheries Regulation 2008* are included in Schedules 1 or 2 of the Bill and regulated as prohibited or restricted matter as appropriate.

The regulation of diseased fisheries resources under Division 6 of the Fisheries Act is similarly regulated under the Bill as it is under the Fisheries Act. Ordering the removal and destruction of noxious or diseased fisheries resources under Division 7 of the Fisheries Act will likewise be regulated under the Bill.

Part 3 Amendment of other Acts

Part 3 provides that Schedule 3 amends the Acts it mentions. The amendments to these Acts are of a minor nature and include:

- replacing references to Acts repealed by the Bill with references to the Biosecurity Act;
- replacing references to declared pests, pests and exotic diseases to prohibited, restricted, controlled or regulated biosecurity matter under the Bill; and

- updating references to former disused titles, like stock inspector, with references to current titles referred to in the Bill.

Schedule 1 Prohibited matter

Schedule 1 lists biosecurity matter classified as prohibited matter (refer to clause 18).

Schedule 2 Restricted matter and categories

Schedule 2 lists biosecurity matter classified as restricted matter (refer to clause 20) and attaches categories to certain restricted matter (refer to Chapter 2 Division 2) which sets out a person's obligations for that restricted matter.

Schedule 3 Consequential and minor amendments

Schedule 3 makes consequential and minor amendments to-

- *Animal Care and Protection Act 2001*
- *Brands Act 1915*
- *Cape York Peninsula Heritage Act 2007*
- *Disaster Management Act 2003*
- *Environmental Protection Act 1994*

- *Judicial Review Act 1991*
- *Land Act 1994*
- *Police Powers and Responsibilities Act 2000*
- *Public Health Act 2005*
- *Public Interest Disclosure Act 2010*
- *Public Safety Preservation Act 1986*
- *Vegetation Management Act 1999*
- *Veterinary Surgeons Act 1936*
- *Water Act 2000*

Schedule 4 Dictionary

Schedule 4 defines terms used in the Act.

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