



**ACT**  
Government



# ACT Biosecurity Act CONSULTATION PAPER



## Have your say

This document introduces the principles and mechanisms by which biosecurity risks will be managed in the ACT under proposed new biosecurity legislation. It is intended as a consultation document that government agencies, industry groups, primary producers, other stakeholders and the general public will use to familiarise themselves with the new system and provide input into its development.

Copies of this document and a summary document can be seen at:

<https://www.yoursay.act.gov.au/>

Individuals, agencies and groups are invited to make their written submission by Friday 10 August 2018:

- by post to the ACT Biosecurity Manager, ACT Parks and Conservation Service  
Environment, Planning and Sustainable Development Directorate  
GPO Box 158  
CANBERRA CITY 2601
- by email to [ACTBiosecurity@act.gov.au](mailto:ACTBiosecurity@act.gov.au)
- by internet at [www.yoursay.act.gov.au](http://www.yoursay.act.gov.au)

Please note that submissions will not be made public. Receipt of submissions will be acknowledged, but detailed responses to individual submissions will not be provided.

## Acknowledgements

The significant contribution of the NSW Department of Primary Industries in the preparation of this document is gratefully acknowledged.

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## **PART 1: New biosecurity legislation for the ACT**

Biosecurity means protecting the economy, environment and community from the negative impact of pests and animal and plant diseases. These include pests and diseases affecting plant and animal health, and other pest animals and weeds. The responsibility for biosecurity is shared among governments, industries and individuals; however, action by state and territory governments is specifically required to ensure that legislation supports this principle and is consistent with nationally agreed biosecurity policy.

### **1.1 Rationale for change**

#### **1.1.1 The ACT Biosecurity Strategy 2016–2026**

In 2016, the ACT Government released the ACT Biosecurity Strategy. Its purpose is to provide a more efficient and enabling framework for the management of pests and diseases in the ACT.

The Strategy highlights why biosecurity is important for the Territory and our neighbours and outlines a new vision for a more streamlined, effective and integrated biosecurity system. It identifies three key outcomes for biosecurity in the ACT.

The outcomes the Strategy is designed to achieve are:

1. Biosecurity is recognised as a shared responsibility by governments, industry and the community.
2. Biosecurity protects the environment and community and contributes to sustainable economic growth.
3. Biosecurity is underpinned by a responsive and consistent legislative framework, risk management framework, business systems and training.

The Strategy's key concept of shared responsibility is not compatible with the existing legislative and regulatory environment and is one of the platforms on which the proposed new legislative framework has been built. Under the new model, individuals, businesses and government will have both more obligations and more opportunity to act to avoid biosecurity risks, resulting in a more proactive and effective system.

Modern legislation will improve consistency and responsiveness across all risk areas (animal and plant health, weeds, invasive pest animals and contaminants) and across industry sectors, for example, the meat, horticultural and apiary industries. The approach used to assess, respond to and manage biosecurity risks is similar across risk areas and sectors, so a single piece of legislation can be adopted to manage all situations.

The streamlining of regulatory functions will contribute to the economic productivity of primary industries and protection of the environment and community in the ACT and surrounding NSW through:

- improved management of endemic diseases, pests and weeds by a broader range of stakeholders
- increased awareness of statutory requirements by all land managers and other biosecurity stakeholders

- empowerment of industry to manage their biosecurity risks to maximise profit within a robust framework
- simpler and more consistent administrative requirements for some activities e.g. more straightforward registration procedures, and provision for self-certification and third party auditing in the future

Effective management of biosecurity risks helps to protect our biodiversity, distinctive ecosystems and natural environment through:

- effective control of pest animals, which are among the biggest threats to biodiversity and the natural environment in the ACT. Foxes, rabbits pigs and wild dogs are considered to be the primary cause of the loss of many native terrestrial species;
- control or management of invasive introduced plants that have now become established in the wild in the ACT. At least 100 of these weeds are highly invasive and pose a substantial threat to biodiversity; and
- reducing the likelihood of new incursions of pests and diseases into the ACT through controlling the entry of high-risk species and carrier materials.

### **1.1.2 Consistency with better regulation requirements**

The ACT Government aims to ensure that regulations are effective in achieving their objectives and do not impose unnecessary burden on businesses or the community.

The ACT's *Confident & Business Ready: Building on our strengths strategy* Strategic Imperative 1: Creating the Right Business Environment states the following:

1. We will ensure our regulatory processes and outcomes are appropriate, efficient and effective, and prioritise reforms that support businesses, stimulate economic activity and increase productivity in the ACT.
2. We will make it easier for businesses to meet regulatory requirements by streamlining processes and incrementally moving to a modern, risk-based approach to services and compliance.

The Council of Australian Governments has agreed that all governments will ensure that regulatory processes in their jurisdiction are consistent with the following principles:

1. Establishing a case for action before addressing a problem.
2. A range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed.
3. Adopting the option that generates the greatest net benefit for the community.
4. In accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:
  - a. the benefits of the restrictions to the community as a whole outweigh the costs, and
  - b. the objectives of the regulation can only be achieved by restricting competition.
5. Providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear.

6. Ensuring that regulation remains relevant and effective over time.
7. Consulting effectively with affected key stakeholders at all stages of the regulatory cycle.
8. Government action should be effective and proportional to the issue being addressed.

Part 1 of this consultation document demonstrates many of the ways in which the legislation reform process addresses these principles. In particular, the concept of shared responsibility enables self-regulation by industry (for example, through self-certification or third party auditing), which will reduce the need for regulatory intervention by government.

Detail on how the framework satisfies better regulation principles is attached at Appendix 4.

### **1.1.3 National biosecurity arrangements**

In Australia, the Commonwealth oversees the prevention of pests and diseases reaching and entering Australia, and state and territory governments focus on preventing the establishment and spread of pests and diseases post-border and facilitating reduction of impacts from widely established pests and diseases.

An Intergovernmental Agreement on Biosecurity (IGAB) was signed by First Ministers of all states and territories, with the exception of Tasmania, and by the Prime Minister in January 2012.

The agreement identifies national goals and objectives, and the roles and responsibilities of the states and territories.

The IGAB is underpinned by three national agreements: the Emergency Animal Disease Response Agreement (EADRA); the Emergency Plant Pest Response Deed (EPPRD); and the National Environmental Biosecurity Response Agreement (NEBRA). Each agreement includes a number of state/territory and industry commitments. National agreements relating to exotic production weeds and aquatic animal diseases are also in preparation. The benefit for the ACT in being a signatory to these agreements is that other jurisdictions would assist us in the event of an incursion of a nationally significant pest or disease.

The EADRA and EPPRD are agreements that engage government and affected primary industries in preparedness, cost sharing arrangements and decision making with respect to nationally-significant animal and plant emergency pests and diseases respectively. These agreements include provisions requiring a comprehensive legal structure to be in place, before costs can be recovered by each jurisdiction.

The NEBRA establishes the arrangements for responses to nationally significant biosecurity incidents where there are predominantly public benefits. It includes a commitment to review state and territory level legislation to ensure consistency with the national approach. As a result, amendments are required to a number of ACT Acts to strengthen emergency management provisions.

In the ACT, conforming with national agreements is complicated because there are five Acts which deal with biosecurity issues and adopt different terminology and guiding principles.

The national agreements highlight the difficulty of making significant broad reforms to existing legislation.

In addition there are many nationally agreed policies that require legislative underpinning. The National Livestock Identification System (NLIS) for improving traceability of cattle, sheep and goats in a food security or animal disease event, and the Interstate Certification Assurance (ICA) scheme for horticulture and nursery produce are examples of such policies.

#### **1.1.4 Interstate arrangements**

Pests and diseases do not recognise jurisdictional boundaries, so state and territory governments cannot operate in isolation from each other, despite having full responsibility within their borders. It is important that our legislation is complementary and compatible with legislation in other states and territories, particularly NSW, leading to more effective management of biosecurity risks and regulatory and compliance activities. Businesses operating across borders would also benefit from harmonisation of legislation between jurisdictions.

The proposed ACT Biosecurity Act is in line with a general move in Australia to modernise and consolidate biosecurity-related legislation. Some states have done this (or are proposing to do so) while retaining separate plant and animal Acts. Others have moved towards cross-sector legislation that provides general powers for managing threats. For example, the Queensland and NSW governments have enacted single new Biosecurity Acts; and the Commonwealth *Biosecurity Act 2015* commenced on 16 June 2016. The Queensland and NSW legislation includes provision for the management of threats from contaminants in stock feed and fertilisers, as well as the management of threats from pests and diseases.

#### **1.1.5 Need for new legislation**

The ACT needs a legislative framework that provides effective modern management tools, is responsive in emergency situations, responds to the future growth of Canberra International Airport as a regional import and export hub, and can be implemented efficiently by government and industry. Much of the ACT legislation is outdated and reflects the thinking of the last century, when animal and plant health management was heavily regulated and administratively cumbersome, and government intervention was the norm.

There are a number of examples of weaknesses and inconsistency in our existing legislation. For instance, there are inconsistencies in quarantine powers between the *Animal Diseases Act 2005* and the *Plant Diseases Act 2002*, there are no quarantine powers for pest plants and animals and no emergency powers to respond quickly to an incursion of an exotic pest plant or animal. Powers of inspectors and authorised people under our existing ACT legislation are also inconsistent, and do not apply for all pests and diseases. There is no modern ACT legislation to effectively prevent the sale and supply of contaminated stock food and fertilisers and no powers to issue a plant health certificate to meet interstate quarantine requirements.



The current legislation is inefficient and often confusing for producers, agents, transporters, ACT Government staff and the community, and can reduce the effectiveness of biosecurity management. The removal of inconsistencies and duplication will reduce red tape and the risk of procedural errors, and should provide cost savings for industry and government.

#### **1.1.6 Responsibility for biosecurity**

A major deficiency of the existing legislation is that there is limited opportunity for government, industry and the community to work together to manage emergency responses and ongoing control programs. Greater flexibility is required so government can lead and coordinate where appropriate, for example in emergencies, but allow industry and the community to take stronger leadership and ownership roles in other areas that have private benefits or strong community support. Quality assurance programs and preventing the escape and establishment of exotic pets and garden plants are examples where industry and communities can take a lead role.

The ACT Biosecurity Strategy 2016-26 establishes biosecurity as a shared responsibility, with the best outcomes able to be delivered when all stakeholders work together. The Strategy clearly articulates the roles and responsibilities of the two levels of government (ACT and Commonwealth), industry and the wider community in identifying and managing biosecurity risks.

Across Australia, arrangements for sharing the responsibility for biosecurity are becoming more prevalent. Codes of practice, regulatory standards, quality and market assurance schemes, and joint management plans are just a few examples of government–industry partnerships whereby biosecurity risks are managed together. This shared approach is supported by the three national agreements EADRA, EPPRD and NEBRA for pest and disease incursions of national significance.

## **1.2 Undertaking legislative reform**

### **1.2.1 Options for change**

Continued use of existing legislation will become increasingly inefficient, difficult to implement and expensive for both government and industry as the ACT economy, including imports, exports and international travel, grows. The following reform options were considered:

1. Take no action.
2. Amend the existing Acts to overcome their deficiencies.
3. Adopt a non-regulatory approach.
4. Develop a comprehensive, contemporary Act that supports best practice biosecurity management in the ACT, is consistent with national commitments and complements the biosecurity legislation of other Australian jurisdictions.

In deciding which of these approaches to adopt, consideration was given to how we can most effectively and efficiently achieve:

- consistency with national policies and commitments
- sharing of responsibilities between industry, the community and government
- harmony with legislation in other Australian jurisdictions
- support for best practice biosecurity management across all industry sectors and land tenures
- the capacity to consistently apply risk assessment in making decisions on the response to and management of biosecurity events
- the ability to respond in all situations, including emergencies and dealing with unexpected or new threats
- improved protection of the ACT's biodiversity and natural environment
- support for industry co-regulation and quality assurance programs
- opportunities for industry to take a stronger leadership role with more flexible systems to capitalise on market access opportunities
- clearer powers for authorised people and a comprehensive compliance framework
- mechanisms for cost sharing and cost recovery
- the ability to be used by other agencies within the ACT Government, such as the Environment Protection Authority, the Emergency Services Agency, and ACT Policing
- increased awareness of and participation through ongoing engagement with industry and the community
- reduction in red tape and regulatory burden for industry and government.

The consolidation of existing legislation is unlikely to deliver best practice biosecurity management or a reduction in red tape and would not achieve good alignment with legislation in NSW.

The decision to develop a new and contemporary Biosecurity Act will support the ACT Biosecurity Strategy outcomes and make the ACT ready to deal with major emergencies, protect the environment and social amenity, and foster sustainable economic growth. This paper discusses the policy initiatives which are proposed for inclusion in draft legislation to be prepared for the approval of Cabinet and the ACT Legislative Assembly ('the Biosecurity Bill').

Any legislative reforms will need to be consistent with the ACT's human rights obligations under the *Human Rights Act 2004*.

### **1.2.2 Proposed features of the new biosecurity legislation**

A framework has been developed for the new Biosecurity Bill. It is shown schematically in Appendices 1 and 2, explained in detail in Parts 2–13 of this consultation paper and features the following:

#### **Biosecurity matter**

*Biosecurity matter* is all non-human living things, or parts thereof, and their products, and contaminants. It also includes other specified things that are capable of spreading disease among plants or animals, or from plants or animals to humans. However, although this is a very broad term, biosecurity matter will not trigger a response unless it poses a risk to the economy, environment or community.

*Prohibited matter* is biosecurity matter that could have significant adverse consequences to the economy, environment or community and that is declared to be prohibited matter. Dealings with prohibited matter will be restricted to reduce the biosecurity risk associated with this matter.

#### **Risk-based response**

*Biosecurity risk* is the risk caused by biosecurity matter which could adversely impact the economy, environment or community. The evaluation of risk will continue to form the basis for decisions or responses to situations that could or do threaten biosecurity under the proposed legislation. Science and intelligence will be used to identify, assess and prioritise risks. Resources can then be applied most effectively to minimise, monitor and control the probability and/or impacts of biosecurity risks.

#### **A broad range of management and regulatory tools**

Different mechanisms and instruments (referred to here as 'tools') will be provided for the management of biosecurity matter and risks, depending on the circumstances and the outcome intended to be achieved. These are shown in Appendices 1 and 2.

The range of tools and the flexibility of their application will allow for the most appropriate and effective means of minimising risks and managing biosecurity events. Many of the tools can be applied in a broad range of situations with varying severity proportional to the level of risk. These tools will assist in overcoming significant barriers under the current legislation such as the inability to permit keeping of prohibited pest plants and animals for scientific research purposes.

#### **A range of authorised person powers**

The framework takes the approach that powers should match the circumstances. For example, strong emergency powers are appropriate for the early stages of a response to a suspected significant biosecurity risk, but less extensive powers are needed as the risk is managed or in other less urgent circumstances.

Powers and duties will be vested in the Director-General, Environment, Planning and Sustainable Development Directorate (EPSDD) and authorised people. Delegation provisions will ensure that powers are devolved appropriately having regard to the levels of risk and responsibility, and operational efficiencies. Some powers, such as obtaining a biosecurity certificate that something is free from a certain pest or disease, will in the future be able to be provided under the new legislation by government, or by an accredited third party or another jurisdiction under corresponding laws.

## **Invasive plants and animals**

Invasive species including pest animals and weeds are not specifically referred to in much of this paper. All weeds and other invasive species are considered to be pests and are referred to as biosecurity matter. This approach is consistent with the terminology adopted in the IGAB.

### **1.3 Public consultation**

The public is invited to make submissions on the proposed framework (see page 2 for details). The following questions are provided to assist in consideration of the consultation paper:

- Will the framework improve the ACT's biosecurity status and assist in reducing new incursions and the impacts of established pests and diseases?
- Does the framework enable government, industry and the broader community of the ACT to fulfil their general biosecurity duty?
- Does the framework include all mechanisms, instruments and powers necessary for the government to deal effectively with biosecurity management and emergency response now and into the future as the ACT economy expands?
- Is the interaction between the various management tools (e.g. biosecurity control orders, biosecurity zones and regulatory Standards) clear, and will these tools be effective?
- Will the framework achieve the desired outcome of shared responsibility for effective biosecurity management in the ACT?

The flow diagrams in Appendices 1 and 2 show how the various parts of the framework and the specific management and emergency response tools and powers, fit together. In some cases it is obvious which tool or power should be used to respond to a biosecurity event or risk, but in other cases there might be several tools and powers to choose from. Often tools and powers may be used in combination to achieve the best outcome.

The Biosecurity Threat Decision Tree at Appendix 3 is a decision-making tool developed by NSW, which establishes the rationale for government intervention in response to a biosecurity threat, and for various means of cost recovery. It bases these decisions on factors such as who benefits from intervention, the level of government regulation needed (if any), the likely outcome of no intervention and a cost-benefit analysis of potential methods and scope of cost recovery.

## PART 2: Framework for the Biosecurity Bill

### 2.1 Objects of the Biosecurity Bill

The Biosecurity Bill will be based on the primary reasons for biosecurity management and will be consistent with the ACT Biosecurity Strategy and the Territory's national commitments.

The primary object of the Biosecurity Bill is to provide a flexible and responsive statutory framework. This will enable the prevention, elimination or minimisation of the risk of adverse impacts on the ACT economy, environment and community caused by biosecurity matter.

Specifically, the Biosecurity Bill aims to allow for the management of:

- threats to terrestrial and aquatic environments arising from pests and diseases
- pests and diseases and contaminants that are economically significant for primary production industries
- animal and plant pests and diseases, pest plants and animals and contaminants that may have an adverse effect on community activities, infrastructure, health and well-being.

### 2.2 Application of the Biosecurity Bill

The Act will apply to all land within the ACT and all waters within the limits of the Territory. It is intended to have extraterritorial application insofar as the legislative powers of the Territory permit (part 2.4).

It is expected that the Biosecurity Bill will repeal the following existing Acts or parts of Acts and relevant regulations made under those Acts:

- *Animal Diseases Act 2005*
- *Plant Diseases Act 2002*
- *Pest Plants and Animals Act 2005*
- *Stock Act 2005*
- *Fertilisers (Labelling and Sale Act) 1904*

The objectives of the *Animal Diseases Act 2005* and the *Plant Diseases Act 2002* are to protect the health and welfare of people and animals and to protect markets relating to animals and plants and associated products. These Acts provide mechanisms for the detection, prevention and control of outbreaks of endemic and exotic animal and plant diseases in the ACT and to allow the Territory to assist in the prevention and control of outbreaks in other jurisdictions within Australia. The Acts outline procedures for imposing quarantines, prohibiting entry of materials that could spread disease and for dealing with the outbreak of diseases or pests.

The objectives of the *Pest Plants and Animals Act 2005* are to protect the ACT's land and aquatic resources from threats from pest plants and pest animals and to promote a strategic approach to pest management. The *Stock Act 2005* regulates the movement and identification of stock and the application of stock levies. The *Fertilisers (Labelling and Sale Act) 1904* regulates the sale and adulteration of fertilisers.

Consequential amendments will also be required to other legislation that makes reference to these Acts.

The Biosecurity Bill will not cover:

- contamination risks arising from manufacturing or processing facilities; these risks will continue to be dealt with under the Environment Protection Act 1997
- animal welfare
- the approval, management or utilisation of genetically modified crops, which will continue to be dealt with under existing Territory and Commonwealth legislation
- direct human health issues such as influenza and tuberculosis which are covered by the *Public Health Act 1997*; but measures to mitigate the direct risks to human health arising from diseases, toxins and irritants produced by animals or plants will be included.

For example, the Biosecurity Bill will include measures which will assist to prevent, eliminate or minimise the impacts of zoonotic diseases i.e. animal diseases that can be transmitted to humans such as rabies and anthrax. It will also cover the transmission of human diseases to animals.

## 2.3 Key definitions and concepts

Some of the key concepts and definitions proposed for the Biosecurity Bill are discussed below. Many of these definitions and terms have been taken directly from or are a modified version of those included in the Queensland and NSW Biosecurity Acts.

### 2.3.1 Key definitions

Some important definitions proposed for the Biosecurity Bill include:

Biosecurity matter:

- an animal, plant or living thing other than a human, or a part of an animal, plant or living thing other than a human or
- a product of an animal, plant or living thing or
- a disease or the agent of a disease or
- a contaminant (non-living matter) or
- any other thing prescribed under regulation that can cause a disease in an animal or plant or
- any other thing prescribed under regulation that can be transmitted via an animal or plant and causes a disease in a human.

**Biosecurity event:** a past, present or potential occurrence, for which biosecurity matter could be reasonably thought to be the cause, and which is likely to have, or has had, a significant adverse effect on the economy, environment or community.

The words 'significant' and 'adverse' are used to describe the possible effect of a biosecurity event on the economy, environment or community. Policy will provide guidance as to when a biosecurity event poses a significant adverse effect.



*Economy* will include industry, production, market access, tourism, employment and transport.

*Environment* will include ecosystems, native flora and fauna and biodiversity.

*Community* will include lifestyle, community infrastructure, social cohesion, human health and well-being and cultural values and aesthetics.

**Biosecurity risk:** the risk of an adverse effect on the economy, environment or community caused by, or likely to be caused by, biosecurity matter or a carrier, dealing with biosecurity matter or a carrier, or carrying out an activity relating to biosecurity matter or a carrier.

**Carrier:** anything that is capable of moving biosecurity matter that is on it, attached to it, or contained in it, from one place to another place. The carrier may not itself be affected by the biosecurity matter.

Carriers may include:

- plants and animals (whether living or dead)
- soil, gravel, sand and other matter
- inanimate objects (such as vehicles, packaging and agricultural equipment)
- humans.

For example, stock feed containing a contaminant or soil containing invasive weed seeds are considered to be carriers. Note that plants and animals can be both carriers and biosecurity matter in their own right.

**Contaminant:** any non-living thing occurring in or on an animal or plant (a carrier), or with the potential to be ingested or absorbed by an animal or plant (a carrier), and that causes the carrier to pose a risk of an adverse effect on the economy, environment or the community.

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

Examples of contaminants include pesticides that can remain in the environment after application and then be ingested or absorbed by living things, chemical treatments intended to control pests and diseases in crops and animals and that can carry over to the food itself, heavy metals in fertilisers, meat meal in stockfeed intended for ruminant animals and toxins in stock food that result from the presence of food spoilage organisms.

### **2.3.2 Important concepts**

As noted earlier, key concepts to be included in the Biosecurity Bill include risk-based decision making and the introduction of a statutory 'general biosecurity duty'.

#### **Risk-based decision making**

Risk assessment and management are intrinsic to biosecurity. A risk-based approach will continue to be used to make decisions on how to manage situations that could, or do, threaten the Territory.

The identification, assessment and prioritisation of biosecurity risks ensures that resources are applied in a coordinated and efficient way to minimise, monitor and control the probability or impact of biosecurity risks and events.

For example, knowledge of pest and disease biology and ecology combined with patterns of trade, travel and weather can be used to identify and evaluate different pathways for the risk of the entry of exotic disease into the ACT. The pathways under human control providing the highest risk would be closed and the lower risk entry points would be regulated using the tools and powers in the Biosecurity Bill.

The ACT Government will partner with stakeholders to develop management and mitigation responses to biosecurity risks which address stakeholder concerns and are proportionate to the risks posed to the economy, the environment or the affected communities. It also means that not every pest, disease or contaminant in the ACT will be addressed using the regulatory measures included in this framework.

Continued commitment to a risk-based approach will ensure that resources are deployed to the highest risk areas and that, in a given set of circumstances, the most appropriate response is provided. An additional advantage of this approach is that stakeholders develop a better understanding of the different levels of biosecurity risk and the reasons for particular responses.

### **Shared responsibility**

Effective biosecurity provisions are in the interests of government, industry and the community. One of the fundamental concepts of the new regulatory model is that everyone (including industry, the community and natural resource managers, custodians and users) has certain responsibilities for biosecurity.

The responsibility for biosecurity lies with both those who contribute to biosecurity risks and/or those who benefit from the effective management of those risks. The ACT Biosecurity Strategy 2016-26 sets out the roles and responsibilities of government, industry and the wider community in identifying and managing biosecurity risks.

In translating this concept into the legislative framework, it is established here that:

*The government* is a stakeholder on behalf of the public. Its role is to preserve the integrity of the economy, environment and community, and as a public land manager.

*Risk creators* (where appropriate) have the primary responsibility for bearing the costs of risk management and mitigation. They have the opportunity to have input into determining the extent and nature of regulation required to manage and mitigate risk.

*Beneficiaries* (where appropriate) have the opportunity to effectively manage biosecurity risks through risk management and mitigation activities where such activities provide a net benefit to the parties for doing so.

*Industry* will also have an opportunity to self-regulate through accredited schemes. Legislation will allow for such schemes, but they will operate within bounds that are set according to the risk involved.

## General biosecurity duty

A general biosecurity duty will be introduced in the Biosecurity Bill that recognises each person's role in preventing, eliminating or minimising biosecurity risks based on their activities and level of knowledge and understanding. This emphasis on shared responsibility is consistent with the IGAB and the ACT Biosecurity Strategy.

The general biosecurity duty will apply to anyone who deals with biosecurity matter or with a carrier of biosecurity matter, or carries out an activity in relation to biosecurity matter, and who knows or ought reasonably to know that the biosecurity matter or the carrier or activity poses or is likely to pose a biosecurity risk.

All reasonable and practicable measures to prevent, eliminate or minimise the biosecurity risk must be taken. For some but not all activities involving biosecurity matter, the Biosecurity Bill and its subordinate legislation will prescribe actions that a person must take to discharge their biosecurity duty. In the absence of any legislated requirements an authorised **person** may notify a person as to how they can comply with their general biosecurity duty.

This concept is comparable to the obligations of employers and employees regarding risks to personal health and safety under the *Work Health and Safety Act 2011*.

More information on the general biosecurity duty and how a person can discharge this duty, including examples, is presented in section 3.1 of this paper.

## Management of biosecurity matter

The existing legislation is a reactive legislative model, in that the regulatory controls in relation to a pest or disease are usually activated once a relevant declaration has been made in respect of that pest, disease or other biosecurity risk, or else in response to the Territory's commitments to national biosecurity.

What is proposed in this framework is a more flexible, strategic and proactive approach to the management of biosecurity matter. The new approach is based on the principle of shared responsibility and that regulation of biosecurity matter should increase parallel with the seriousness of the risk it poses.

This risk-based framework provides the highest level of regulation in relation to biosecurity matter declared as 'prohibited matter'. This matter is likely to have significant adverse impacts and therefore needs to be tightly regulated. 'Prohibited matter' has similarities to the 'notifiable' pests and diseases declared under current legislation. Some pests and diseases may also be subject to 'prohibited dealings'. This will include pest plants and animals currently declared as 'prohibited' from supply or keeping but not notifiable under the *Pest Plants and Animals Act 2005*. As the biosecurity risk decreases, the need for direct regulatory control also decreases, so that lower risk biosecurity matter will be managed through the general biosecurity duty, which in specific cases may be informed by regulations and regulatory standards.

Globalisation of trade, climate change, population growth and increased importation of plant and animal materials with the growth of Canberra international airport, increase the likelihood that new biosecurity risks will be introduced to the ACT. Under current biosecurity legislation the ACT Government has no emergency powers to facilitate management of new pest plants and animals on privately-managed land. This Bill will provide emergency powers on privately managed land to ensure timely and effective

responses to new biosecurity risks and that unnecessary delays are minimised. It is important that the legislation provides for timely and effective responses to new biosecurity risks, and that unnecessary delays are minimised. Early detection and eradication of new incursions is generally the most cost-effective way to manage biosecurity risk.

## **2.4 Extraterritorial application**

Extraterritorial application for biosecurity legislation is particularly important because of the constant movement of biosecurity matter across state and territory borders.

The Biosecurity Bill will provide for the Minister to enter into agreements with other states and territories in relation to matters that affect biosecurity in the ACT. Under such an agreement, authorised people from both the ACT and another state or territory could exercise powers under the Biosecurity Bill in the other state or territory for matters that affect biosecurity in the ACT. Section 13 of the *Environment Protection Act 1997* provides an example of this approach.

The Biosecurity Bill will also allow for orders, registration and other biosecurity management tools to apply in relation to biosecurity matter which affects biosecurity in the ACT, whether that matter is in the ACT or in a place outside the Territory.

It is also proposed to recognise certain licences, permits or authorities issued in other jurisdictions which are relevant to the management of biosecurity in the ACT. This is the approach in the ACT with regard to the registration of beekeepers under the *Animal Diseases Act 2005*, which currently allows beekeepers registered in NSW to operate in the ACT without requiring registration in the ACT.

## **PART 3: Obligations**

### **3.1 The general biosecurity duty**

#### **3.1.1 To whom does the general biosecurity duty apply?**

The general biosecurity duty is an obligation that will apply to any person (including corporate/incorporated bodies and government agencies) who deals with biosecurity matter or with a carrier of biosecurity matter, or carries out an activity in relation to biosecurity matter, and who knows or ought reasonably to have known that the biosecurity matter or the carrier or activity poses or is likely to pose a biosecurity risk.

#### **3.1.2 What is the general biosecurity duty?**

The general biosecurity duty requires that every time a person deals with biosecurity matter (including dealing with a carrier of biosecurity matter) they must take all reasonably practicable measures to prevent, eliminate or minimise the biosecurity risk posed by that matter.

More or stronger actions to prevent, eliminate or minimise a biosecurity risk would be expected in cases where either the likelihood of a biosecurity risk occurring is higher or its potential to have a significant impact on the economy, environment or community is greater. High risk matter and activities will have mandatory requirements, whereas a lower risk would be managed using non- mandatory tools such as guidelines or public awareness campaigns.

Factors determining what 'reasonably practicable' steps should be taken by an individual include:

- the likelihood of the risk occurring
- the degree of harm or damage the biosecurity matter could potentially cause
- what is generally known about the risk and ways to prevent, eliminate or minimise it
- what a 'reasonable person' in the position of that person would know about the risk and ways to prevent, eliminate or minimise it
- what the person actually knows about the risk and ways to prevent, eliminate or minimise it
- the capacity of the person to take appropriate action to prevent, eliminate or minimise the risk
- the measures available to the person to prevent, eliminate or minimise the risk
- the cost of those measures, and whether the cost is disproportionate to the degree of risk involved or would cause hardship for a person to pay the cost.

For example:

- it would be reasonable to expect a saleyard manager to be aware of a relevant code of practice relating to biosecurity risk management in saleyards
- it would be reasonable to expect a land custodian to prevent higher risk weeds present on their property from spreading onto a neighbour's property where it is feasible to do so.

Actions to prevent, eliminate, or minimise the spread of a pest or disease or otherwise reduce risk are regarded as reasonable if they are generally available and it is feasible to implement them (such as by a different handling procedure for the biosecurity matter), and if the cost of that action is not disproportionate to the risk posed.

Examples of actions to prevent, eliminate or minimise a risk which may be required under the general biosecurity duty include requirements to:

- isolate animals infected with a contagious disease to reduce the risk of the disease spreading to other animals in the herd and to animals in surrounding areas owned by other people
- decontaminate clothing and equipment using suitable disinfection methods following the disposal of carcasses due to an anthrax outbreak
- dispose of plant material containing a plant disease or disease agent in a manner that ensures the disease or disease agent does not spread
- check that material imported into the ACT does not contain pests, diseases or contaminants
- reduce the risk of serious weeds and pest animals spreading to neighbouring properties
- clean machinery to prevent the spread of weeds between properties.

It will be an offence for a person to fail to comply with the general biosecurity duty, noting that the person's level of knowledge (both actual and what could reasonably be assumed) will be a key consideration in any action.

### **3.1.3 Regulatory requirements and standards**

The regulations will include mandatory requirements for the mitigation and management of specific biosecurity risks under the general biosecurity duty. Some of these will be existing legislative provisions, for example, regulations governing the keeping of honey bees and the vaccination of commercial poultry flock for Newcastle disease.

In other cases, a code of practice or similar may be adopted as a mandatory regulatory standard under the regulation. These will provide details on how to identify hazards and manage risks in relation to particular biosecurity matter.

For example, a regulatory standard that covers issues such as vaccination, the methods of dealing with sick and dead birds, water supply, rodent and wild bird control, and hygiene could be developed for free range poultry farms. It would then be mandatory for producers to follow these provisions. Similarly, while the National Best Management Practice for Beekeeping in the Australian Environment, developed by the Australian Honey Bee Industry Council, is currently focused on environmental matters, if extended to include biosecurity considerations it may be adopted as a regulatory standard for the ACT. The ACT may also consider adopting national model codes of practice for the humane control of pest animals, which guide ACT Government vertebrate pest operations.



Where a regulation or a regulatory standard is in place, it must be followed in all situations to which it applies. In most cases, compliance with a regulation or a regulatory standard will mean that a person has taken reasonably practicable measures to prevent, eliminate or minimise biosecurity risks, and therefore has discharged their general biosecurity duty.

However some regulations and regulatory standards will explicitly state that compliance with their provisions may not mean that the general biosecurity duty has been discharged, and that further risk prevention, elimination or minimisation actions might be required in high risk circumstances.

Regulations and regulatory standards will be developed in consultation with relevant stakeholders, including community groups, professional and industry associations and natural resource management bodies such as the ACT Parks and Conservation Service.

A person will be found to have failed to discharge the general biosecurity duty if the person contravenes a provision of a relevant regulation or regulatory standard.

Failure to comply with a regulation or regulatory standard will be an offence.

### **3.2 Prohibited matter obligations**

Biosecurity matter which has been identified as posing a significant adverse risk to the economy, environment or community will be declared to be 'prohibited matter'.

A prohibited matter declaration may apply to the whole or only a specified part of the ACT.

A process for identifying and declaring prohibited matter will be developed extending the risk management approaches used under current legislation.

A person must not deal with prohibited matter in any way unless required to do so by a biosecurity direction (part 6.2) or authorised to do so by a permit (part 8.1). Any person who becomes aware of the presence of prohibited matter, or suspects its presence, must immediately notify an authorised person or contact the Biosecurity Hotline. Notification will be required in all cases where a person becomes aware of the matter or suspects its presence, whether it is on their own property or they become aware of the prohibited matter in the course of their employment or during a recreational activity.

Where prohibited matter is notified, authorised people may issue a biosecurity direction prescribing the management and mitigation measures that must be taken as a first response to the biosecurity risk. In many cases where prohibited matter is identified or suspected, it will also be appropriate to invoke the emergency management powers provided under this framework to ensure that the biosecurity risk is comprehensively managed in a timely manner.

While the prohibited matter declaration provides a clear and robust framework for management of known high risk biosecurity matter, it will not be necessary for biosecurity matter to be declared as prohibited matter to activate any of the biosecurity management tools provided under the framework. The list of biosecurity matter declared as 'prohibited' may be amended as necessary to respond to newly identified biosecurity risks or in response to national agreements.

Examples of biosecurity matter that may be declared as prohibited matter include foot and mouth disease, highly pathogenic avian influenza, Hendra virus, Tomato Potato Psyllid, Mouse-ear Hawkweed and Red Imported Fire Ant.

It will be an offence for a person who knows or suspects the presence of prohibited matter to deal with the matter (except with a permit or in compliance with a biosecurity direction), or to fail to immediately notify an authorised person or the Biosecurity Hotline.

### **3.3 Other obligations**

#### **3.3.1 Notification**

In addition to the notification obligations that apply to prohibited matter, the new legislation will also include an obligation for persons to notify an authorised person, or the Biosecurity Hotline within 24 hours of any incident which the person knows or suspects to be a biosecurity event or which constitutes a significant biosecurity risk. A biosecurity event is defined in part 2.3.

Examples of a biosecurity event include:

- blisters on the mouths or feet of cloven-hoofed animals
- abnormally high mortality rates or morbidity rates in plants and animals both domesticated and those occurring in the natural environment
- sudden, significant and unexplained fall in production related to plants or animals.

Notification requirements may also be included in regulations in relation to other biosecurity matter.

It will be an offence to fail to comply with a notification obligation.

#### **3.3.2 Other regulatory obligations**

The regulations will also contain provisions that are not general biosecurity obligations. Non-compliance with one of these will be an offence against the provision rather than a failure to meet the general biosecurity duty.

For example, provisions relating to the NLIS, swill feeding, heavy metal contaminants in fertilisers and prohibited matter in stock feeds will be in the regulations.

## **PART 4: Control orders and biosecurity zones**

Control orders and biosecurity zones will allow flexible responses to biosecurity risks in situations where specific management initiatives are required. A control order or a zone may be made in relation to any biosecurity matter, whether or not the matter is declared.

Both control orders and zones will be made when a risk assessment has shown that formal control mechanisms are required to manage a biosecurity threat to the Territory or surrounding regions of NSW.

Control orders and zone requirements will be published on the ACT EPSDD website to ensure that all stakeholders can easily access information about management obligations in relation to particular biosecurity matter. As zones will be made by regulation, they will also appear on the ACT Legislation Register website.

The Biosecurity Management Toolbox diagram at Appendix 1 provides further details about the use of control orders and zones under this framework.

### **4.1 Control orders**

Control orders will provide for a rapid response where a new biosecurity risk is identified, but an emergency response is not warranted. The Director-General may make a control order and specify a control zone to manage, mitigate or eliminate a particular biosecurity risk by prohibiting or regulating the movement of, or other dealings with, certain biosecurity matter or a carrier. This will provide greater flexibility to respond in a timely manner than if a regulation had to be made immediately. It will also reduce the administration associated with such actions where flexibility is imperative. A control order will mainly be used where prevention or eradication is the end goal.

A control order in relation to or affecting native flora and fauna may only be made after consultation with the Conservator for Flora and Fauna.

Although a control order can apply to an individual, it is more likely that they will apply to a class of persons who deal with a particular biosecurity matter. They can also exclude certain classes of person.

A control order may:

- prohibit or regulate how a person deals with suspected or specified biosecurity matter or a carrier
- direct the eradication of suspected or specified biosecurity matter
- prohibit, regulate or require the movement of suspected or specified biosecurity matter or a carrier into, out of, or within a specified zone
- require particular management actions to prevent the introduction, establishment or spread of suspected or specified biosecurity matter
- require inspection, testing or notification of suspected or specified biosecurity matter or a carrier or
- require records to be kept relating to the suspected or specified biosecurity matter.

For example, if an outbreak of anthrax occurred in the ACT, a control order could be issued to prohibit stock movement and to require the vaccination and identification of stock and the destruction of carcasses. The control order would cover all properties that have been exposed to the disease and may include neighbouring properties if there is a high level of risk to those properties.

As another example, in the event of an outbreak of Newcastle disease of poultry in NSW, a control order could prohibit the movement of all potential carriers of Newcastle disease into the ACT from NSW.

A control order will specify the length of time it will remain in force, up to a maximum of five years. The duration will be appropriate for the circumstances of the particular biosecurity incursion.

For example, to eradicate an infestation of Madagascan Fireweed, a control period of several years may be required, whereas for an outbreak of Hendra virus, where the objective is to limit its impact, a control period of 30 days may be sufficient.

Where eradication of particular biosecurity matter is not achievable, a control order may be used while a long term management approach is developed. Long term management of biosecurity matter may be achieved through the application of a range of legislated and non-legislative measures, for example by declaration of a Biosecurity zone (see Part 4.2), or through an education program.

A control order will take effect on its publication on the Directorate's website or such later date as is specified in the order. It is not subject to review but the Director-General may, by order in writing, amend or revoke a control order.

Permits will be available to allow actions to be taken which would otherwise be in breach of control order requirements (part 8.2).

It will be an offence to fail to comply with a control order, except at the direction of an authorised person or under a permit.

## **4.2 Biosecurity zones**

The purpose of a biosecurity zone is to manage, reduce or eradicate particular biosecurity matter over an extended period of time in the whole or a specified part of the ACT. Biosecurity zones will be made by regulation.

A biosecurity zone can be as large as the ACT or as small as a group of properties. It will apply to all persons or only to stated persons and may exclude certain persons or classes of persons from its operation.

For example, a biosecurity zone could be appropriate for the management of grape vine Phylloxera in the ACT. Phylloxera is known to be present in Australia in two regions of NSW—the Sydney region and the Albury/Corowa region, and in several locations within Victoria. A biosecurity zone could be established including the entire ACT with the objective of preventing the introduction of phylloxera into the ACT from Victoria and the infested Sydney and Albury/Corowa regions of NSW.

The biosecurity zone may include provisions which:

- prohibit or prescribe how a person deals with specified biosecurity matter or a carrier
- direct the eradication of specified biosecurity matter
- prohibit, regulate or require the movement of specified biosecurity matter or a carrier into, out of, or within a biosecurity zone
- require particular management actions to prevent the introduction, establishment and/or spread of specified biosecurity matter
- require inspection, testing or notification of specified biosecurity matter or a carrier
- require records to be kept relating to the specified biosecurity matter.

In line with the risk-based approach which underpins the Bill, the management obligations imposed within a biosecurity zone may vary in different areas within the zone, in response to the level of biosecurity risk arising in the particular area within the zone.

For example, during the equine influenza (EI) outbreak in 2007, a risk-based zoning system was put in place across NSW and the ACT based on the risk that EI was present in an area:

- The restricted area (or red zone) was the infected area, where all horse movements were prohibited.
- The special restricted area (or purple zone) was a defined part of the infected area in which there was a high density of horses and active spread of infection was considered inevitable. Horse movements were allowed within this zone.
- A control area (amber zone) was an area of low risk of infection adjacent to an infected area, where enhanced surveillance and movement restrictions were also imposed.
- A protected area (green zone and white zone) was an area assessed to be free from EI.

Permits will be available to allow actions to be taken which would otherwise be in breach of zone requirements (See part 8.2)

It will be an offence to fail to comply with zone requirements, except at the direction of an authorised person or under a permit.

## PART 5: Registration, and identification and traceability

### 5.1 Registration of biosecurity entities

Under the Biosecurity Bill, as under existing legislation, people (including individuals and corporate bodies) keeping certain biosecurity matter will need to register with the Director-General of the Directorate. Registration will assist with the management of the biosecurity risks posed by the relevant biosecurity matter, for example through enhanced tracing capacity, advisory opportunities and the ability to notify about relevant developments in a timely manner.

The legislation will detail what biosecurity matter and circumstances will trigger a requirement for registration. People who must be registered are:

- those who keep or hold more than a threshold number of prescribed animals, plants or other biosecurity matter, and
- any other person prescribed by the regulation. Registration may be required by people who:
  - keep bees or other invertebrate species
  - keep large amounts of high-risk biosecurity matter for research purposes
  - operate saleyards
  - breed or keep certain high-risk types of fish
  - keep any other biosecurity matter as may be prescribed in the regulations.

The legislation will also detail biosecurity matter that cannot be kept and circumstances in which certain biosecurity matter cannot be kept. For example, non-native animals required to be licensed under the *Nature Conservation Act 2014*, including exotic turtles, rattlesnakes, many primates and large cats, would not be able to be privately kept as the biosecurity risks associated with the keeping of these animals are considered too high. A declaration process under the Biosecurity Bill would prescribe biosecurity matters such as some exotic animals for which it is not appropriate for the Conservator of Flora and Fauna to issue a licence to import, export or keep. This may apply to a class of people/organisations (e.g. research, zoos and private individuals) or in certain circumstances.<sup>1</sup>

Licence applications under the Nature Conservation Act to the Conservator of Flora and Fauna for non-native animals would be referred to the Director-General responsible for the Biosecurity Bill, to ensure the biosecurity risks are considered before a licence is issued. Where a licence is currently in place for such animals, provisions will be made in relation to future arrangements.

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<sup>1</sup> Note: A regulation under the Nature Conservation Act can indicate matters for which a licence cannot be given.



If a person keeps more than one type of biosecurity matter in circumstances that require registration, then they must be registered in respect of each type of matter. The legislation will not require registration to keep native animals that are licensed under the Nature Conservation Act, or to keep animals that are currently covered by the *Domestic Animals Act 2000*. This includes domestic dogs and cats.

#### **5.1.1 Registration generally**

Any person wishing to keep biosecurity matter in circumstances that require registration must apply to the Director-General for registration as a biosecurity entity. The Director-General will be required to determine the application.

Regulations will prescribe any matters that the Director-General must or may consider when determining an application for registration and will also prescribe relevant fees. Different matters will be prescribed in relation to different types of applications. For example, additional matters may need to be considered if the application is to keep an animal in circumstances that may pose a threat to public safety, such as bees. The pest potential to agriculture, the environment and people will also need to be considered for applications to keep a biosecurity matter as prescribed in the regulations.

Registration may be granted subject to conditions, as prescribed in the regulations or specified in the instrument of registration. For example, persons registered to keep biosecurity matter as may be prescribed in the regulations will be required, as a condition of registration, to comply with prescribed standards regarding security, signage, identification and husbandry. Any additional requirements specific to the animal being registered would be imposed as conditions on individual registrations.

Conditions on individual registrations can be amended at any time by notice in writing to the registered person.

In some cases, the Director-General may impose a condition of registration that requires a person to provide a bond, evidence of appropriate insurance or evidence of alternative arrangements in the event that the registered person is no longer able to manage the biosecurity matter.

Permits will be available to allow a temporary relaxation of registration conditions where appropriate (part 8.3).

An application to amend registration will be required if there is any material change to the original registration, such as a change of premises, alteration to or construction of a new enclosure, etc.

Registration may be granted for a period of up to five years.

The decision of the Director-General to refuse to grant registration or an amendment to registration, to grant registration subject to conditions or to de-register a person will be subject to merits review.

Exemptions to the requirement for registration may be prescribed in the regulations. In specified cases registration will not be required under the Biosecurity Bill if an entity is already registered or licensed under another Act. For example, research institutions are licensed to keep animals under the Nature Conservation Act.

Similarly, if a person is registered or licensed to keep a prescribed species in another state or territory, the ACT may recognise that registration. For situations where registration is not required in the state of origin but is required in ACT, and the need for registration is only temporary (for example, for veterinary care or breeding purposes), a short-term permit could be issued, at a charge.

It will be an offence for any person who is required to be registered to fail to be registered. It will also be an offence for a person to fail to comply with the conditions of registration.

The commission of an offence relating to registration may be grounds for suspension or cancellation of a person's registration.

## **5.2 Identification and traceability**

The existing NLIS will be supported in the legislation. Requirements regarding the identification and traceability of animals under the NLIS will include:

- specified animals which will require identification, and the identification requirements for those animals, e.g. cattle, pigs, sheep, goats
- requirements in relation to property identification codes
- requirements to record and report movements of specified animals on the NLIS or other databases (which may reference national business rules or standards)
- standards for devices for the identification (whether mandatory or voluntary) of specified animals (which may reference national or industry standards)
- conditions for the manufacture, sale and use of identification devices
- movement records
- exemptions from specified requirements.

The legislation will also enable additional schemes for the identification and tracing of animals, plants or products to be put in place if they are needed in future.

It will prescribe the purposes for which information may be used and by whom, to ensure that data are only able to be accessed and used appropriately, and in accordance with privacy legislation. Certain information will be available to members of the public on request and may be subject to the payment of a fee.

It will be an offence not to identify specified biosecurity matter or record and report movements as prescribed by the regulation.

## **PART 6: Authorised people and other officers**

In order to effectively carry out their role protecting the ACT from biosecurity threats, authorised people:

- investigate, monitor and enforce compliance with the legislation,
- manage and mitigate biosecurity risks and suspected biosecurity risks, including as part of the first response to an emergency,
- provide advice to government, industry and the community about their statutory obligations under the Act,
- obtain information and records for purposes connected with the administration and enforcement of the Act, and
- generally administer the Act.

### **6.1 Appointment of authorised people**

The Director-General will be able to appoint any person, including a class of persons, as an authorised person under the Biosecurity Bill. In most cases, the persons appointed will be ACT Government employees, but in some circumstances third parties may be appointed as authorised people with limitations.

For example, people hired by the Directorate under contract to perform services such as insect trap monitoring may be appointed as authorised people provided they are deemed to have sufficient expertise and training. Their appointment will be for a specified time period and provide only the powers necessary to carry out these services.

Police officers will be automatically appointed as authorised people for the purposes of the Biosecurity Bill.

The legislation will include provision for the Director-General to delegate any or all of his or her powers under the Biosecurity Bill, including the power to appoint authorised people. Conditions may be imposed on any such delegation.

Appointments of authorised people may be general or may limit the powers and functions that may be exercised by the officer. All appointments may be made subject to conditions.

All authorised people will be required to carry an identity card and, when exercising a power, must produce the card if requested to do so by a person affected by the exercise of the power.

When exercising any powers, authorised people will be required to take all reasonable steps to cause as little damage and inconvenience as possible. The legislation will include provision to protect authorised people from liability where they act with lawful authority and in good faith for the purposes of the Biosecurity Bill.

## **6.2 Powers of authorised people**

Authorised people require broad powers to allow them to effectively carry out their role as first responders and biosecurity incident managers. They must be able to respond appropriately where there are reasonable grounds to suspect the presence of a biosecurity risk, or to suspect a breach of the provisions of the Bill.

Existing biosecurity legislation contains a range of enforcement powers with each separate Act providing its own set of powers in relation to a specific risk area. The Biosecurity Bill will maintain the current enforcement powers with the added advantages that the powers will all be in one piece of legislation, they will cover the entire biosecurity spectrum and current minor inconsistencies will be removed. This will provide operational efficiencies for authorised people, streamlining of processes and a reduction in red tape.

The key powers of authorised people in the Biosecurity Bill will include:

- powers of entry and search
- powers to question and require information and records
- powers to issue directions
- powers to manage and respond to biosecurity risks and suspected biosecurity risks.

An authorised person will be able to exercise any of their powers where the officer reasonably considers that the exercise of the power is necessary to manage or mitigate a biosecurity risk or suspected biosecurity risk; to monitor, investigate and enforce compliance with a requirement or obligation under the Biosecurity Bill; or to otherwise administer the Biosecurity Bill.

For example, the Biosecurity Bill will give an authorised person powers of entry to deal with a pest plant or animals that is a new incursion into the ACT even if it is not declared prohibited or notifiable.

Authorised people will be able to require any person to provide reasonable assistance in relation to the exercise of any of their powers.

It will be an offence to obstruct, delay or hinder an authorised person in the exercise of their powers. It will also be an offence to fail to comply with any lawful requirement given by an authorised person.

### **6.2.1 Powers of entry and search**

The Biosecurity Bill will maintain the broad-ranging powers to enter and search that are currently given to authorised people and inspectors under existing biosecurity legislation.

Under the Biosecurity Bill, authorised people will be able to enter any premises at a reasonable time, or at any time when circumstances are serious and urgent, other than any part of a premises used as a dwelling. Entry to parts of premises used as a dwelling may only be made with the consent of the occupier or under the authority of a search warrant.

This power of entry extends to vehicles, vessels, aircraft and other means of conveyance. Authorised people will also be able to stop these vehicles and other means of conveyance to enable them to enter and search.

When entering premises, authorised people may use reasonable force, including the breaking open of locks, gates, fences and doors. Authorised people may also obtain the assistance of police officers or others to help with the exercise of the power.

After gaining entry to premises, authorised people may take actions considered necessary for any of the purposes set out above. These actions may include to:

- inspect or examine any thing
- take and submit for analysis samples of biosecurity matter or carriers of biosecurity matter
- take photographs or other recordings, including the copying of electronic information
- seize or secure anything connected with an offence or suspected offence.

The power to inspect or examine things will include a power for an authorised person to use reasonable force to open, break open and search any container or other receptacle.

### **6.2.2 Power to question and require information**

The Biosecurity Bill will expand powers to give authorised people the power to require anyone they reasonably suspect to have information and records that are required for the purposes of the Biosecurity Bill, to answer questions or provide information and records in relation to those matters. The authorised person may also, by notice in writing, require a person to attend at a specified place and specified time to answer any such questions and provide information and records.

Where this power is exercised the authorised person will also be required to advise an individual of their right to refuse to answer any question if the answer could incriminate them or expose them to the imposition of a penalty.

If the authorised person suspects that a person has committed or is about to commit an offence, he or she may also require the person to state their name and address. Current legislation already permits this.

### **6.2.3 Power to issue biosecurity directions and biosecurity certificates**

Authorised people will have the power to issue a range of directions and to issue biosecurity certificates. For more information on the issuing of biosecurity certificates see Part 9.1 of this paper.

The directions that may be issued by authorised people include:

- biosecurity directions
- directions to attend a place to answer questions and provide information (discussed above)
- infringement notices.

Biosecurity directions can be issued by authorised people to ensure a person discharges his or her general biosecurity duty and to prevent, eliminate or minimise a biosecurity risk or suspected biosecurity risk. Failure to comply with a direction given under a biosecurity direction will be an offence.

Biosecurity directions will generally be in writing. If necessary a verbal instruction may be given, but it must be confirmed by a written biosecurity direction within 72 hours. Biosecurity directions will set out the actions that must be taken, the grounds for the authorised person's directions and, if applicable, the nature of the non-compliance.

A biosecurity direction will take effect immediately and will continue to operate until an authorised person is satisfied that compliance has been effected. The direction will specify a reasonable period of time in which compliance is to be effected. It will be possible to seek an extension of time for compliance with the direction, or in most situations to seek a review of terms of the direction.

If a person does not take the steps required under the biosecurity direction, an authorised person may undertake the action personally, or authorise another person to undertake the action. In addition to any penalty incurred through non-compliance with the direction, the costs associated with that work will be recoverable as a debt.

### **Biosecurity direction to discharge the general biosecurity duty**

If an authorised person reasonably suspects that a person has failed or may fail to discharge their general biosecurity duty the authorised person can issue a biosecurity direction directing the person to take or refrain from taking specified actions so as to ensure that the general biosecurity duty is discharged.

For example, an authorised person investigates a report that a property has a serious weed infestation impacting on neighbouring properties. The authorised person visits the property and confirms the presence of the weed species Serrated Tussock which are seeding and have entered neighbouring properties including a national park. The authorised person may give the owner or occupier of the property a biosecurity direction requiring them to stop the spread of the weed from their property, and specifying how this should be achieved.

### **Biosecurity direction to prevent, eliminate or minimise a confirmed or suspected biosecurity risk**

Biosecurity directions may also be issued to respond to and manage biosecurity risks or suspected biosecurity risks. In the event of an existing or suspected biosecurity risk, an authorised person can issue a biosecurity direction directing a person to take specified actions or refrain from taking certain actions so as to prevent, eliminate or minimise the risk or suspected risk.

For example, a report of sick cattle is investigated by an authorised person. A common feed source is identified as a possible cause of the illness. The feed is traced to a local stock food supplier. The authorised person could issue the owner/operator of the business supplying the stockfeed with a biosecurity direction requiring the feed to be withheld from sale and not moved or distributed until further direction. Such a direction would help minimise the scale of the biosecurity risk until further details were available. In many cases this could be the difference between whether the risk could be eradicated or not.

### **Power to issue infringement notices**

The Biosecurity Bill will include powers for authorised people to issue infringement notices (part 12). Currently there are no infringement notice provisions for the *Animal Diseases Act 2005*.

### **Powers to respond to and manage biosecurity risks**

Authorised people play a crucial role as first responders and biosecurity risk managers. In order to effectively carry out these important roles, authorised people will be provided with management and response powers. These will be similar to the corresponding powers in existing legislation and will include powers to:

- move or restrict movement of biosecurity matter or carriers of biosecurity matter
- treat biosecurity matter or carriers of biosecurity matter (including vaccinate)
- identify biosecurity matter or carriers of biosecurity matter
- place signs or notices
- destroy infected or infested biosecurity matter or carriers of infected or infested biosecurity matter.

At the direction of the Director-General, authorised people will also be able to destroy certain uninfected or uninfested biosecurity matter. Abandoned or neglected beehives in particular pose disease risks to other apiaries and need to be destroyed if the owner or occupier cannot be located.

The power to carry out pest and disease surveillance programs will also be provided to authorised people. These monitoring and trapping programs are necessary to detect and formally confirm or exclude the presence of pests or diseases, in order to ensure that Australia can meet the import requirements of our international trading partners. Insect traps and sentinel animals are commonly used to conduct these surveillance programs for pests and diseases such as Asian gypsy moth, exotic fruit fly and arbovirus.

### **Power to issue undertakings**

As an alternative to issuing a biosecurity direction, an authorised person will be able to accept a written undertaking from a person to carry out, or refrain from carrying out, certain actions.

The written undertaking should provide full details of the actions the person will carry out or refrain from carrying out, and a date by which they will fulfil the agreement.

It will be an offence to fail to comply with a biosecurity undertaking.

If a person does not take the steps required under the undertaking, an authorised person may undertake the action personally, or authorise another person to undertake the action. In addition to any penalty incurred through non-compliance, the costs associated with that work will be recoverable as a debt.

## **Compensation**

Compensation may be payable for any damage caused by authorised people in exercising the power of entry unless the occupier of the premises obstructed, delayed or hindered the authorised person in gaining entry.

Compensation may also be payable for any damage caused by authorised people in breaking open any container or receptacle unless the owner of the container or receptacle obstructed, delayed or hindered the authorised person in the process.

Compensation will not be payable for any damage caused by the exercise of any other power unless provided for under the proposed bill, but common law remedies may be available for negligent, reckless or unlawful actions by authorised people.

## **6.3 Other officers**

The Director-General may appoint government officers to be Chief Biosecurity Officer and Chief Veterinary Officer. The Chief Biosecurity Officer will have responsibilities for administration of the Act and other powers as specified in the instrument of appointment. The Chief Veterinary Officer will have powers in regard to animal health as specified in the instrument of appointment.



## PART 7: Emergencies

Under this framework, a biosecurity emergency occurs where there is a current, suspected or imminent significant biosecurity risk.

This would include, for example, cases where rabies, fire blight, foot and mouth disease or red imported fire ants are discovered or suspected to be present in the ACT, or if stock feed contaminated with a substance known to create serious livestock health problems has been widely distributed to stock owners.

Biosecurity emergencies are currently managed under the *Animal Diseases Act 2005*, the *Plant Diseases Act 2002* and the *Pest Plants and Animal Act 2005* and could in extreme situations also be managed under the *Emergencies Act 2004*. The aim in the Biosecurity Bill is to retain the basic principles of the existing biosecurity legislation, broaden it to cover other biosecurity matter such as contaminants, and increase the responsiveness in some situations, by allowing for an initial emergency response to be mounted irrespective of whether a disease or pest has been declared or a pest plant management plan is in place.

A biosecurity emergency requires decisive and immediate action to protect the economy, environment or community from the biosecurity risk. The use of emergency powers will minimise delays and reduce the impact of an emergency situation.

A two-stage model for dealing with biosecurity emergencies is proposed:

- Stage 1: authorised people exercise emergency powers (part 7.1).
- Stage 2: issue of a biosecurity emergency declaration (part 7.2) and activation of the ACT Biosecurity Emergency Plan.

The emergency response tools flow chart at Appendix 2 shows the relationship between the two stages. It is likely that one or more of the general management tools will be required once the emergency powers and declaration are no longer necessary.

Biosecurity emergency permits will be available (part 8.4).

### 7.1 Authorised person emergency powers

Where an authorised person is of the belief that there is a biosecurity emergency, the authorised person must notify the Director-General immediately.

In such circumstances, authorised people may exercise a range of emergency powers which are appropriate to their role as first responders to the emergency. These emergency powers include:

- the power to restrict or regulate the movement of people,
- the power to require people to apply specified hygiene procedures, and
- stronger information gathering powers.

For example, in the event of a foot and mouth disease outbreak, an authorised person could issue a biosecurity direction requiring a person who has been in contact with the affected livestock to undergo external decontamination, to ensure they do not transfer the virus off the property.

Any direction issued by an authorised person during an emergency will not be subject to merits review.

In an emergency situation it may be critical to obtain information urgently to respond to a significant biosecurity risk. Accordingly, the general power to question and require information (part 6) will be strengthened to allow authorised people to require an individual person to answer questions and provide other information, even if it could be self-incriminating. Failure to comply with the requirement will be an offence provided appropriate warnings have been given. The answers or information provided may not then be used in evidence against that individual in a prosecution for an offence, but may be used in proceedings against other individuals and corporations or to obtain further information.

A biosecurity direction issued by an authorised person under emergency powers remains in place until revoked. Authorised person emergency powers are important first response powers, to be used until a biosecurity emergency declaration is made by the Minister (Part 7.2).

Directorate policy and procedure will guide the exercise of emergency powers.

## **7.2 Biosecurity emergency declaration**

The Minister may make a biosecurity emergency declaration through an emergency order to respond to a biosecurity emergency where there are reasonable grounds to believe that without emergency management the biosecurity threat may have a significant adverse impact on the Territory's economy, environment or community or that of surrounding NSW. At the same time the ACT Biosecurity Emergency Plan would be activated.

An emergency order will allow for sufficient but not excessive response actions to isolate the area, stop the spread of relevant biosecurity matter and, if possible, eradicate that biosecurity matter.

An emergency order will last for a maximum of six months and may be remade upon expiry, if necessary. An emergency order will state:

- the nature of the biosecurity emergency
- the area to which the declaration relates ('emergency zone or zones')
- the duration of the order (i.e. six months or less)
- the duties and obligations imposed on occupiers and other persons within each emergency zone including any notification obligations
- any requirement for the treatment and/or destruction, disposal, movement, decontamination or other dealing with biosecurity matter (whether infected, infested, contaminated, or not) or a carrier
- any other measures considered necessary.

It will be an offence to fail to comply with the obligations imposed on persons under an emergency order. It is proposed to include high maximum penalties in the Biosecurity Bill for non-compliance during an emergency.

An emergency order takes effect on the date a copy of the order is provided to affected persons, upon publication on the EPSDD website or such later date as is specified in the order.

### 7.2.1 Enforcement of emergency orders

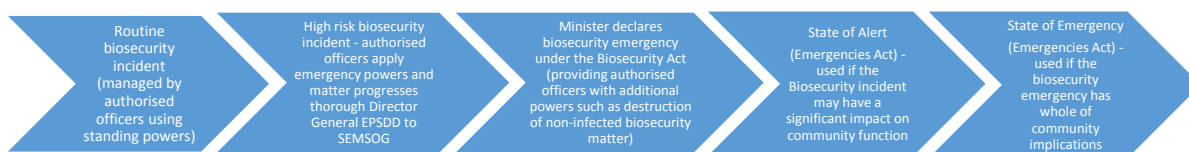
In an emergency zone, an authorised person may use both the general and the emergency powers provided to them under the Biosecurity Bill.

Where an emergency order requires the treatment or destruction of non-infected or non-infested biosecurity matter, an authorised person will have the additional authority to carry out these actions.

## 7.3 Escalation and relationship with the *ACT Emergencies Act 2004*

Biosecurity emergencies have the potential to cause significant disruption to community function and an economic and social impact on the community. In circumstances where there is a significant risk to the public and a whole of Government response is required, the Director-General through the Security and Emergency Management Senior Officials Group (SEMSOG) recommends to the Minister for Police and Emergency Services that a State of Alert be declared under the *Emergencies Act 2004*.

A further escalation of the biosecurity emergency may prompt SEMSOG to recommend that a State of Emergency be declared under the *Emergencies Act 2004*, and an Emergency Controller be appointed under the Act to assume overall control of the emergency.



## 7.4 Protection of emergency responses

The *Plant Diseases Act 2002* has no powers to prevent court proceedings placing interim injunctions on quarantine declarations and the *Animal Diseases Act 2005* only provides for this power in the case of exotic diseases. The *Pest Plants and Animals Act 2005* contains no quarantine or other emergency provisions. The Biosecurity Bill will provide that during a biosecurity emergency, a court may not grant an interim injunction or other interim relief that may prevent, restrict or defer any emergency response action or anything authorised or required to be done in relation to the emergency.

However, as is the case now, it is not intended to prevent a court from granting a permanent injunction or other final order in any proceedings.

## **PART 8: Permits**

Permits will allow actions to be taken which would otherwise be in breach of legislative requirements.

It will be possible for the officer who issued a permit to suspend, cancel or amend the conditions of a permit at any time by a notice given to the permit holder.

Failure to comply with the conditions of a permit will constitute an offence.

### **8.1 Prohibited matter permits**

A person can apply to the Director-General for the issue of a prohibited matter permit. A person may only deal with biosecurity matter that is declared to be 'prohibited matter' within the ACT when authorised by a permit. Prohibited matter permits may also be issued to a class of persons.

A prohibited matter permit will contain strict conditions for the management of the matter and can only be issued if the Director-General is satisfied that issuing the permit will not increase the level of biosecurity risk posed by the biosecurity matter or be detrimental to the effectiveness of any management response in relation to that biosecurity matter.

For example, scientists at a certain research laboratory may hold a 'class of persons' permit allowing them to keep a prescribed serious pathogen, under strict conditions of access, storage, handling, building security and waste disposal procedures.

Where permits have been issued to a class of persons, the permit must be published on [www.environment.act.gov.au](http://www.environment.act.gov.au) website. Amendment to the conditions of, suspension or cancellation of such a permit must also be published on the website.

The issue, amendment, cancellation or suspension of a permit to a class of persons will also be published in any additional manner that, in the opinion of the Director-General, is likely to bring it to the attention of people who will be directly affected.

Prohibited matter permits issued to individuals will be subject to merits review.

### **8.2 Control order and biosecurity zone permits**

A person can apply to an authorised person for the issue of a permit to allow certain actions, or failure to perform certain actions, that would otherwise be in breach of a control order or biosecurity zone provision. A permit provides operational flexibility in relation to these requirements.

An authorised person may issue a permit if satisfied that issuing the permit will not increase the level of biosecurity risk posed by the biosecurity matter or be detrimental to the effectiveness of the control order or biosecurity zone.

A permit can be issued to an individual or to a class of persons and remains in force for the period specified in the permit.

A permit may be issued subject to specific conditions that the authorised person considers appropriate in the circumstances.

Where permits have been issued to a class of persons, the permit must be published on the website [www.environment.act.gov.au](http://www.environment.act.gov.au). Amendment to the conditions of, suspension or cancellation of such a permit must also be published on the Directorate's website.

The issue, amendment, cancellation or suspension of a permit to a class of persons will also be published in any additional manner that, in the opinion of the Director-General, is likely to bring it to the attention of people who will be directly affected.

The decision of an authorised person to issue, refuse to issue, amend, suspend or cancel a biosecurity control order or biosecurity zone permit to an individual will be eligible for merits review.

### **8.3 Permits varying the conditions of registration**

Permits may be issued by an authorised person for one-off or temporary circumstances for which the conditions of registration may be relaxed. Additional conditions may be added to the permit.

For example, a permit would be needed to allow a non-exempt animal under the *Nature Conservation Act 2014* to be housed temporarily at a location or in an enclosure other than that for which it is registered if its normal housing is being repaired. The permit would state the acceptable alternative housing requirements.

The decision of an authorised person to issue, refuse to issue, amend, suspend or cancel a permit will be subject to merits review.

### **8.4 Biosecurity emergency permit**

A person may apply to the Director-General for a biosecurity emergency permit which may allow action which would not otherwise be permitted while an emergency order is in force.

An emergency permit may be issued by the Director-General only if the permit will not exacerbate the adverse effects of the biosecurity emergency and will not be detrimental to the effectiveness of the emergency order.

A permit may be issued to an individual or to a class of persons for a limited period of time, or for the duration of an emergency order.

A biosecurity emergency permit may be issued subject to conditions. The issuing officer may amend the conditions of a permit at any time by notice given to the permit holder. A permit may also be cancelled at any time by notice given to the permit holder.

Where permits have been issued to a class of persons, the permit must be published on the Directorate's internet website. Amendment to the conditions of the permit or notice of cancellation or suspension of the permit must also be published on the Directorate's internet website. The permit and any amendments may also be published in any other manner that the Director-General considers is most likely to bring it to the attention of the persons who will be affected.

In order to facilitate the effective management of the biosecurity emergency, the decision of the Director-General to refuse to issue, amend or cancel a biosecurity emergency permit will not be subject to merits review.

## PART 9: Biosecurity certificates and accredited certifiers

### 9.1 Biosecurity certificates

Biosecurity certificates are a form of assurance that allows for the transit of goods such as certified produce within the ACT and interstate. A certificate states that the relevant goods meet particular requirements that minimise biosecurity risk. It may make assurances such as:

- the goods are free of any stated biosecurity matter (such as a specified pest, disease or contaminant)
- they are in a stated condition
- they are from a stated area
- they have had specified treatment(s) and/or
- they meet certain other specified requirements.

Biosecurity certificates (or equivalent instruments) issued pursuant to a corresponding law in another jurisdiction are recognised under this framework.

Currently ACT legislation has no provision for the issuing of such certificates.

#### 9.1.1 The Interstate Certification Assurance Scheme (ICA Scheme)

The ACT is the only mainland jurisdiction that is not part of the national certification scheme for the movement of plants and plant products, known as the Interstate Certification Assurance Scheme (ICA Scheme) and existing legislation has no provision for implementing such a Scheme.

As part of the ICA Scheme, a person may be accredited to issue Plant Health Assurance Certificates under arrangements specified in a certification agreement with government. The arrangements may require certain procedures to be implemented, produce to be treated in a certain way or to be in a certain condition to ensure a particular biosecurity risk is eliminated or minimised to a satisfactory level. The *Plant Diseases Act 2002* has no provisions for issuing plant health assurance certificates.

The ICA Scheme currently provides for the use of over 40 different types of certification agreement. An individual certification agreement is referred to as an ICA arrangement. NSW has approximately 545 businesses accredited to issue Plant Health Assurance Certificates for their products under an ICA arrangement.

The ICA arrangements operate nationally (except in Tasmania) for the certification of plant products to meet interstate entry requirements. Each arrangement relates to a specific product, such as apples, stone fruit and grapevines, and sets out procedures that are required to provide assurance that the product is free of the specified pest or disease.

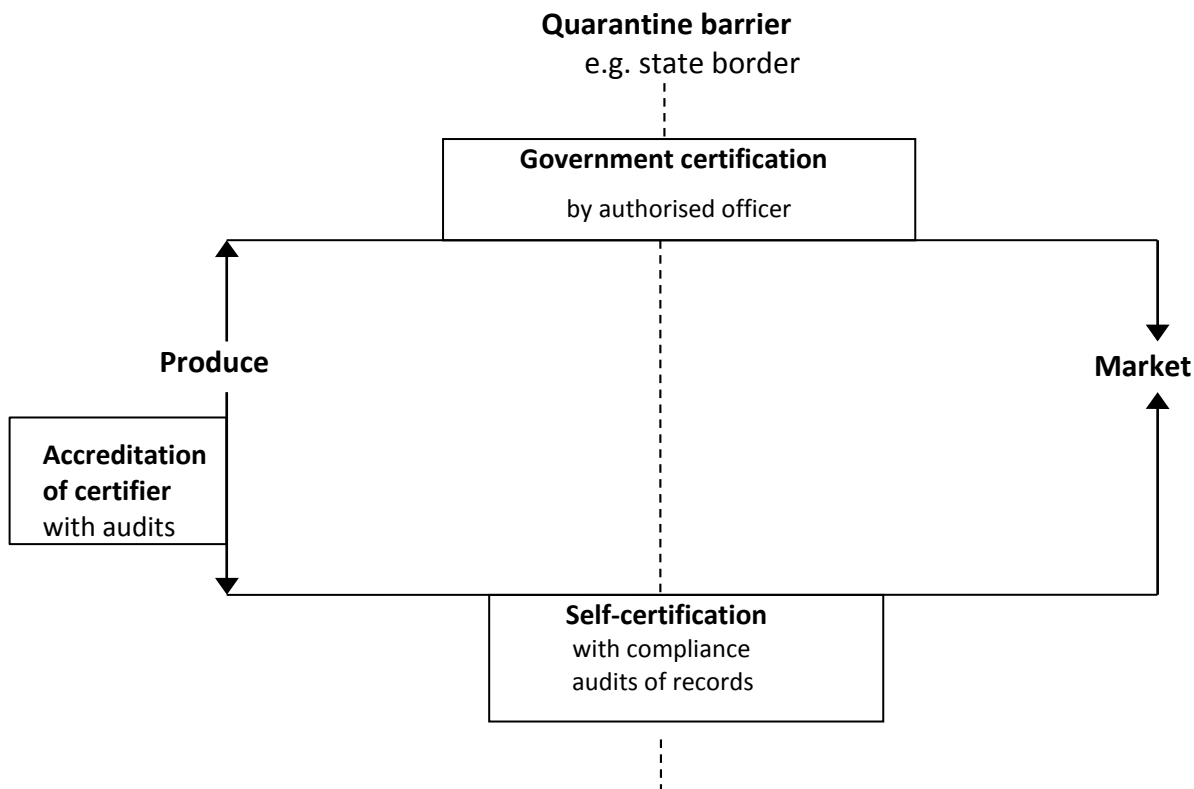
The successful operation of the ICA Scheme in other jurisdictions has demonstrated that certification agreements provide a high degree of assurance that plant products can move free of biosecurity risks. The Biosecurity Bill will provide a legislative basis for the operation of the ICA Scheme in the ACT.

## 9.2 Accreditation for the issuing of biosecurity certificates

The framework makes provision for the issue of biosecurity certificates by persons who have completed training to become accredited as certifiers.

The Biosecurity Bill will allow for self-certification by accredited certifiers, in recognition that industry stakeholders have a primary interest in maintaining the integrity of the accreditation and certification system. An accredited certifier may be an individual producer or a third party employed or hired by an industry body to issue biosecurity certificates.

The diagram below shows the different routes whereby produce may be certified to access a market across a quarantine barrier. The role of auditing is outlined in Part 8.



The process for accreditation to issue a biosecurity certificate under the new legislative scheme will be similar to current procedures for accreditation required for the issue of Plant Health Assurance Certificates under the ICA Scheme in NSW.

Accreditation will be for a maximum period of five years. In some circumstances provisional accreditation may be granted, with final accreditation contingent upon satisfying specified conditions. Accreditation will generally be granted only in relation to specified biosecurity matter or specified types of certification.

Accreditation will be subject to conditions, which may include that the accredited certifier:

- must comply with any specified standards for the issue of biosecurity certificates
- must not make a false or misleading statement in respect of a biosecurity certificate

- must not issue a biosecurity certificate that contains false or misleading information
- must not falsely represent that a biosecurity certificate has been issued
- must keep records in relation to specified matters
- any other condition considered appropriate.

It will be an offence for an accredited certifier to contravene the conditions of their accreditation or a requirement in relation to the issue of certificates.

It will also be an offence for any person to alter or otherwise falsify a biosecurity certificate.

### **9.2.1 Accreditation authorities**

The Biosecurity Bill recognises that some industry groups are able to take responsibility for accrediting certifiers within their industry. As a result, both the Director-General and any accreditation authority recognised under the legislation will be permitted to appoint accredited certifiers.

The Director-General will approve bodies as accreditation authorities. Factors to be assessed in granting this approval will include the processes and controls in place within the organisation, and the capacity of the body to perform the functions. The Director-General can impose conditions on the approval of an accreditation authority, and can cancel, suspend or revoke the approval if a condition is breached, or at the request of the accreditation authority.

Accreditation authorities are likely to be industry groups or independent consultancy businesses. Bodies which presently issue accreditation under the ICA Scheme, and other bodies which the Director-General considers qualified to carry out this function, for example Meat and Livestock Australia, and the Australian Honey Bee Industry Council, are likely to be included as accreditation authorities.

### **9.2.2 Suspension, cancellation or refusal of accreditation**

The Director-General or an accreditation authority may suspend or cancel the accreditation of a person whom they have certified, where they form the opinion that an accreditation condition has been breached by the accredited certifier, or for any other reason prescribed in the regulations.

The Director-General will also be able to require the accreditation authority to investigate an accredited certifier if of the opinion that the certifier has breached an accreditation condition or for any other reason prescribed in the regulations.

The decision to refuse to accredit a person will be subject to merits review, as can a decision to grant accreditation subject to conditions or the suspension or cancellation of accreditation. Failure to determine the application within a prescribed period of time may be deemed to be a refusal of the application which will entitle a person to lodge an application for merits review.



## PART 10: Auditing

Audit schemes enable an effective strategic approach to compliance and market access. Auditing is a requirement of some existing interstate and international market access agreements (e.g. the Interstate Certification Assurance scheme for horticulture products and the stock food audit program that supports Australia's status as a low risk country for Transmissible Spongiform Encephalopathies such as mad cow disease). Audits are used for the following purposes:

- Accreditation audits—during the assessment of applications for registration and accreditation as a certifier, and for approval as an accreditation authority.
- Compliance audits—in which compliance with the conditions of registration and certifier accreditation is assessed.
- Investigative audits—to follow up reports or evidence of non-compliance, and to identify measures for compliance improvement and avoidance of critical non-compliance.

This approach will encourage compliance through reduced compliance costs for those who are compliant, compared with the increased costs of more frequent audits or penalties, the threat of regulatory action (including suspension or cancellation of registration), or prosecution for critical non-compliance. It is also responsive to the level of risk posed by a particular enterprise or activity, allowing for more frequent audits of higher risk enterprises.

The proposed audit system will enable the implementation of a strategic approach to the management of biosecurity risks associated with accreditation schemes or the keeping of certain biosecurity matter. This will be achieved through the assessment of applications and compliance with the conditions of accreditation and registration. The auditing process will identify areas of non-compliance which in turn facilitates a process for improvement. The frequency of audits will be determined by reference to factors such as the degree of non-compliance identified in previous audits, and general compliance policies which identify compliance risk and the need for compliance education.

For example, if the report of the previous compliance audit indicated good compliance with the conditions of accreditation, the next compliance audit may not take place for another two years or so. Conversely, if the report indicated poor compliance with the conditions of accreditation, the next compliance audit may occur within months.

The target of the audit will be required to pay for the audit on a cost recovery basis. A variable audit frequency therefore provides financial incentives for high levels of compliance with the Biosecurity Bill.

### 10.1 Appointment of auditors

An authorised person or any other person may be appointed as an auditor by the Director-General or an accreditation authority.

An auditor's appointment will be for a maximum of five years and will be subject to conditions. These conditions will include the requirement for the auditor to declare any direct or indirect financial or other interest that may prejudice their ability to impartially perform their functions as an auditor.

The Director-General or an accreditation authority may cancel or suspend the appointment of an auditor for breach of a condition or for any other reason prescribed in the legislation. The Director-General will also be able to require an accreditation authority to investigate an auditor if of the opinion that the auditor has breached a condition or for any other reason prescribed in the regulations.

The decision to refuse to appoint a person as an auditor will be subject to merits review. A right of merits review will also be available in relation to the decision to appoint a person subject to conditions and the suspension or cancellation of an appointment.

It will be an offence for an auditor to contravene a condition of approval or to make a false statement in relation to an audit.

## **10.2 Audit reports**

Following completion of the audit of an accredited certifier, an auditor will provide the audit report to the body that accredited the certifier and to the certifier who was audited.

Where registered entities are audited, the audit report will be provided to the Director-General and the registered entity.

If an auditor finds that an accredited certifier or registered entity has not complied with the conditions of their accreditation or registration, the auditor must include the details of the non-compliance in the audit report and the actions required to rectify the non-compliance, including the timeframe for rectification.

If the non-compliance is critical the auditor must immediately notify the Director-General, for example if:

- it is discovered that a biosecurity certificate has been issued which contains false or misleading information
- an audit reveals that registered species are not being kept at the place specified in the conditions of registration or
- if the non-compliance threatens the effectiveness of an ICA arrangement.

An auditor who is an authorised person may take such compliance action as is considered to be necessary in relation to any breaches of the Biosecurity Bill.

## **10.3 Mandatory auditing of some registered entities**

It is proposed that the Biosecurity Bill will provide for mandatory auditing as a condition of registration for high-risk biosecurity entities to check for compliance with legislation. Saleyards, any future abattoirs and knackerries, and persons who keep certain non-indigenous animals may be subject to these conditions.

The auditing scheme will promote compliance with livestock identification and traceability requirements. The registration and auditing of saleyards, and any future abattoirs and knackerries under this framework will provide new enforcement mechanisms and incentives for operators to comply with the provisions of the NLIS in the ACT.

Compliance with these provisions currently requires monitoring and enforcement actions by authorised people who have to monitor saleyards on sale days, collect evidence and issue verbal and/or written warnings and prosecute serious and reoccurring offences through court. These actions have failed to achieve the consistent level of compliance required to ensure the integrity of the NLIS. Even a low level of non-compliance has the potential for a significantly negative outcome.

The registration and auditing of these high risk enterprises will provide new enforcement mechanisms and incentives for enterprises to comply with legislated requirements, for example through the increased cost of a higher audit frequency following non-compliance. Persistent or critical non-compliance may lead to the suspension or cancellation of registration, fines and prosecution.

## **PART 11: Financial arrangements**

### **11.1 Cost recovery**

In line with the policy objective of developing a framework for shared responsibility in relation to biosecurity, the legislation will make provision for sharing the costs of biosecurity. In this regard, the legislation will provide the Director-General with the power to implement cost recovery initiatives for any service provided under the Biosecurity Bill or its regulations. Under existing practices, the ACT does not charge for any of these services.

Biosecurity services which confer a direct benefit on an individual or business, and are of minimal or indirect value to the community may be subject to charges. Fees for service will directly relate to the service provided. Directorate policy will set the rates at which the costs of services are recovered.

Services for which fees may be charged include:

- the issue of biosecurity certificates
- applications for accreditation under a compliance agreement or as a certifier of biosecurity certificates
- audits
- applications for registration, and for renewal, amendment and transfer of registration
- applications for a permit or a permit amendment.

The Biosecurity Bill will also include provision for compliance costs to be recovered from a person against whom compliance action was taken. These costs will directly relate to the effort required to ensure compliance. Again Directorate policy will set the rates at which the costs are recovered.

For example, if a stock transporter refuses to stop at an emergency border control station, their truck and any biosecurity matter on it will later be examined to ensure no risk arose from their refusal to stop. The cost of this investigation will be recovered (over and above any penalty or court action for non-compliance).

Where debts are accrued for actions taken by authorised people to minimise biosecurity risks, any unpaid debts will be recovered as a charge against the land upon transfer of ownership of that land.

The Biosecurity Threat Decision Tree (Appendix 3) assists in decision making regarding the level of government response to a particular biosecurity threat. Its output includes a decision on whether costs should be borne by the taxpayer, the individual risk creator or as a fee for service to beneficiaries. In future the services for which costs may be recovered will be determined using the Biosecurity Threat Decision Tree as a guide.

## **11.2 Compensation**

During a biosecurity response, actions may be required which result in the loss or damage of property. This could include for example, the destruction of an apple orchard to stop the spread of the disease fire blight or the destruction of animals in an outbreak of foot and mouth disease.

The Biosecurity Bill will include provision for payment of compensation for certain losses. This compensation will be payable either in accordance with the national emergency response agreements (the EADRA, EPPRD and NEBRA) or, where there is no applicable emergency response agreement, in accordance with a statutory compensation scheme (Part 11.2.2).

This approach to compensation will include incentives for early notification of suspected emergency outbreaks and is designed to encourage greater involvement by industry in cost sharing agreements. The statutory scheme also includes disincentives for those who fail to comply with their biosecurity obligations and those whose acts or omissions cause or contribute to the spread of the biosecurity matter.

### **11.2.1 Compensation schemes**

Compensation for certain losses arising from a biosecurity incident may be cost-shared under an agreement between the Commonwealth and state/territory governments and industry, or between the Commonwealth and state/territory governments ('compensation scheme').

The EADRA and the EPPRD include provisions for compensating owners of property who suffer certain losses arising from actions to control an emergency animal disease or an emergency plant pest as contemplated in those agreements. In the EPPRD, these costs are referred to as 'owner reimbursement costs'. The proportion of the amounts payable by government and the affected industry will depend on the category of the pest or disease.

The NEBRA also includes provisions for the reimbursement of costs for owners of property who suffer certain losses in relation to incursions of pests and diseases where these impact predominantly on the environment, people and business activity.

Where an applicable cost-sharing agreement is in place, compensation or owner reimbursement costs will be payable consistent with the terms and conditions of that scheme and no other right to compensation or owner reimbursement costs for property damage will be provided under the framework.

### **11.2.2 Statutory compensation**

Under the framework, compensation may be payable in limited circumstances in relation to property destroyed in accordance with the Biosecurity Bill because of a biosecurity incident that is not covered by a compensation scheme. This does not include circumstances where a compensation scheme is available in relation to the loss, but compensation under the scheme is refused in the particular circumstances of the case.

For example, it may be necessary for an authorised person to demolish an outbuilding at a place within a biosecurity emergency area in compliance with the requirements of an emergency order.

Compensation for the destruction of property will not be payable under the framework:

- if it is covered by an insurance policy
- to the extent to which the claimant's conduct caused or contributed to the need for the property to be destroyed
- if the property would have been destroyed despite the biosecurity response
- if the contaminant that is the subject of the biosecurity response was present at the property in an amount more than the maximum amount allowable under the regulation at the time of the biosecurity response
- if the biosecurity response was necessary because of an act or omission of the owner or person acting under the authority of the owner and that act or omission was likely to have caused or contributed to the spread of the biosecurity matter or
- if the biosecurity response was necessary because of an act or omission of the owner or a person associated with the owner, and the owner is found guilty of an offence under the Biosecurity Bill with respect to the act or omission.

Statutory compensation is not payable for consequential loss. For example, while compensation by the state may be payable for the destruction of a herd of cattle or a grain crop during a biosecurity response, it will not be payable for the value of any loss of subsequent production. This includes loss of reproductive potential such as the potential value of calves a cow may have had, or the potential value of crops that may subsequently be grown on the same land that was treated in a response or feed that may be destroyed as a risk mitigation measure.

Compensation is not payable under the Biosecurity Bill for personal injury, which is covered by existing personal injury laws.

A determination as to the refusal to pay compensation or as to the amount of compensation payable will be reviewable by the Court or the ACT Civil and Administrative Tribunal (ACAT) if the claim for compensation is over \$500 in total. Failure to determine the application within a prescribed period of time may be deemed to be a refusal of an application for compensation.

It will be an offence to submit a claim for compensation that is false or misleading.

Nothing in this Part prevents the Minister from making ex gratia compensation payments in circumstances outside the terms of the national agreements or the normal scope of statutory compensation. The power to make these payments cannot be delegated.

## **PART 12: Offences, defences and penalties**

### **12.1 Limitations of present enforcement framework**

Present biosecurity legislation has some limitations in its enforcement framework. Penalties are sometimes low which may not adequately deter parties from breaching the Act. Deterrence is a particularly important element when biosecurity is involved where the aim is to prevent something happening such as the spread of a disease to the Territory.

Modern best practice enforcement frameworks contain a hierarchy of enforcement tools that enable graduated responses to enforcement that increase in severity in accordance with the seriousness of the offence. Enforcement tools under present legislation are limited. The primary action available is criminal prosecution which is a serious matter that may not be an appropriate response or use of resources. For example, an on the spot fine may be more appropriate for minor breaches or it may be important that damage done to the environment is repaired rather than the offender being punished. Criminal prosecution also has limited ability to prevent non-compliance or halt non-compliance if detected.

Enforcement is increasingly moving away from command and control approaches towards measures that incentivise and encourage compliance. Current compliance arrangements do not effectively incentivise compliance in accordance with best practice.

### **12.2 Potential improvements**

A range of reforms will be considered to improve compliance. It is proposed to strengthen penalties to improve the deterrent of the Act's offences, including higher penalties for body corporates than individuals. A range of mechanisms to improve flexibility in approach available to enforce breaches are being considered.

#### **12.2.1 Offence provisions generally**

It is proposed to have two categories of offences under the new framework. Category 1 offences are serious offences committed where a person wilfully, negligently or recklessly does an act or fails to do an act in contravention of a requirement under the Biosecurity Bill. Category 2 offences will include all other offences. These offences are strict liability offences. For some offences, higher penalties will apply in relation to repeat offences.

Where appropriate, a continuing offence will be provided. A continuing offence generally involves an ongoing course of conduct that causes a harm that lasts as long as that course of conduct persists. The continuing offence is one which by its nature or by its terms is a single, ongoing crime.

Provision will be made for aggravated offences in respect of some offences. For example, failure to comply with a lawful direction by an authorised person where there is an emergency declaration will attract a higher maximum penalty.

Offence provisions will need to be consistent with the ACT's human rights obligations under the *Human Rights Act 2004*.

Appropriate defences will be made available in the Biosecurity Bill.

See Appendix 5 for a list of offences identified in this paper.

### **12.2.2 Additional offences**

In addition to the offences specifically mentioned in other parts of the framework, other offences that may be provided by the legislation include to provide false or misleading information in connection with the Biosecurity Bill, including:

- provide false/misleading information or documents to any person including persons performing functions under the Biosecurity Bill such as the Director General, an authorised person, an accredited certifier or an auditor
- submit a claim for compensation that is false or misleading
- alter or otherwise falsify a biosecurity certificate
- make a false statement in relation to a biosecurity certificate or an audit
- impersonate an authorised person, an accredited certifier or an auditor.

### **12.2.3 Infringement notices**

Infringement notices are a common tool to enforce more minor breaches of legislation. The Biosecurity Bill will provide for the issue of infringement notices by authorised people for offences prescribed in a regulation under the *Magistrates Court Act 1930* as infringement notice offences. Infringement notice amounts will also be prescribed in the regulation.

### **12.2.4 Alternative penalties**

It is proposed that the legislation will provide that the Court may impose a range of penalties as an alternative to, or in addition to, fines or imprisonment, such as:

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



## Appendix 1: Biosecurity Management Toolbox

Tool	General biosecurity duty	Prohibited matter	Control order
<b>Responsibility</b>	Fundamental principle of the Act	Director-General	Director-General
<b>Status</b>	Ongoing	Long-term management	Duration up to five years
<b>Purpose</b>	To share responsibility for effective biosecurity management	To set obligations for prohibited biosecurity matter	To manage, reduce or eradicate certain biosecurity matter for a defined time.  Where a risk assessment indicates that formal controls are required to manage a specific biosecurity threat to the state.
<b>Main features</b>	<p>The duty applies to anyone who deals with biosecurity matter or a carrier or who carries out an activity in relation to the biosecurity matter and who knows or ought reasonably to know that the matter or activity is likely to pose a biosecurity risk.</p> <p>The duty is to take all reasonable and practical measures to prevent, eliminate or minimise the biosecurity risks associated with all biosecurity matter.</p> <p>Regulations and regulatory standards will set out how a person should deal with specific biosecurity matter in order to meet their duty.</p> <p>There are strong penalties for breaching the general biosecurity duty.</p>	<p>Matter that poses a significant adverse risk to the economy, environment or community is listed in a schedule.</p> <p>Obligations are applied to all prohibited matter which include a duty to notify and to not deal with the matter.</p> <p>Declarations apply to the whole or part of the Territory.</p> <p>Notification can activate emergency provisions.</p>	<p>To prohibit or regulate the movement of or other dealings with biosecurity matter or a carrier.</p> <p>To provide directions or impose requirements to manage, reduce or eradicate biosecurity matter.</p> <p>Can apply to whole or part of the Territory.</p> <p>A control order remains in force for up to five years, however a new order can be issued if the threat is still present.</p>

Tool	Biosecurity zone	Registration	Certification & auditing
<b>Responsibility</b>	By regulation	Director-General	Authorised officers, accredited certifiers and auditors
<b>Status</b>	Reviewed every five years	Duration up to five years	Long-term management
<b>Purpose</b>	For managing biosecurity matter that requires long-term measures to be put in place to manage, reduce or eradicate it.	For managing the risks associated with certain biosecurity matter including: <ul style="list-style-type: none"> <li>• the keeping of bees</li> <li>• operating saleyards</li> <li>• keeping of certain high-risk fish.</li> </ul>	Strategic approach to compliance. Recognition of industry-based certification schemes. Recognition by ACT of biosecurity certificates issued by other Australian jurisdictions.
<b>Main features</b>	Matter subject to a zone prescribed in the regulation. Will prohibit/regulate actions to manage, reduce or eradicate biosecurity matter. Creation will require stakeholder consultation. Minister can establish areas within a zone where less stringent requirements apply. Can apply to the whole Territory or a designated area. Will be issued subject to conditions. May be issued to an individual or a class of persons.	Relevant persons must apply to be registered. Requirements for the management of the biosecurity matter, including animal welfare, will be imposed through conditions of registration which may include compliance with certain standards. Some registered biosecurity entities will be audited to check their compliance with requirements. Audit frequency will increase following non-compliance identified at the last audit.	Certificates state certain facts about biosecurity matter or other things (e.g. its condition, origin, treatment etc). Authorised officers can accept and rely on the facts stated in a certificate without checking further. A person can apply to be an accredited certifier under a certification agreement. Certificates issued by an accredited certifier are an alternative to certification by a government authorised officer. Accredited certifiers will be audited.

## Biosecurity directions

- An authorised officer can issue a biosecurity direction:
- to direct a person how to comply with obligations under the Biosecurity Act
- requiring a person to take, or refrain from taking, action, in order to prevent, eliminate or minimise biosecurity risks or suspected biosecurity risks.
- A written undertaking can be accepted by an authorised officer as an alternative to issuing a biosecurity direction.

## Permits

- A permit will authorise activities that would otherwise be prohibited under legislation.
- Permits provide operational flexibility and enable business continuity.
- Permits can be issued by the director-general or an authorised officer.

## Appendix 2: Biosecurity Emergency Response Tools

Tool	Emergency powers	Biosecurity emergency declaration
<b>Responsibility</b>	Authorised officer directions	Minister declaration
<b>Status</b>	For the duration of the emergency	Maximum six months
<b>Powers</b>	<p>Can use all general powers.</p> <p>Additional emergency powers allow an officer to:</p> <ul style="list-style-type: none"> <li>• restrict or regulate the movement of people</li> <li>• require people to apply specified hygiene procedures</li> <li>• require information even if self-incriminating.</li> </ul> <p>Emergency responses will be protected from interim court rulings that could prevent, restrict or defer emergency actions.</p>	<p>Can use all general powers and emergency powers.</p> <p>Additional powers allow an officer, with the Minister's approval, to:</p> <ul style="list-style-type: none"> <li>• treat non-infected biosecurity matter</li> <li>• destroy non-infected biosecurity matter.</li> </ul> <p>Emergency responses will be protected from interim court rulings that could prevent, restrict or defer emergency actions.</p>
<b>Application</b>	<p>To avoid a current, suspected or imminent significant biosecurity risk arising from biosecurity matter or an activity present in any place except a dwelling.</p> <p>First response to a biosecurity emergency.</p>	<p>The Minister must be satisfied of the actual or potential seriousness of the biosecurity event and the extent of its impact or likely impact, and that a declaration is warranted.</p> <p>Must be primarily directed at taking emergency action to isolate the biosecurity area, stop the spread of any biosecurity matter associated with the biosecurity event, and if practical, eradicate the biosecurity matter.</p>

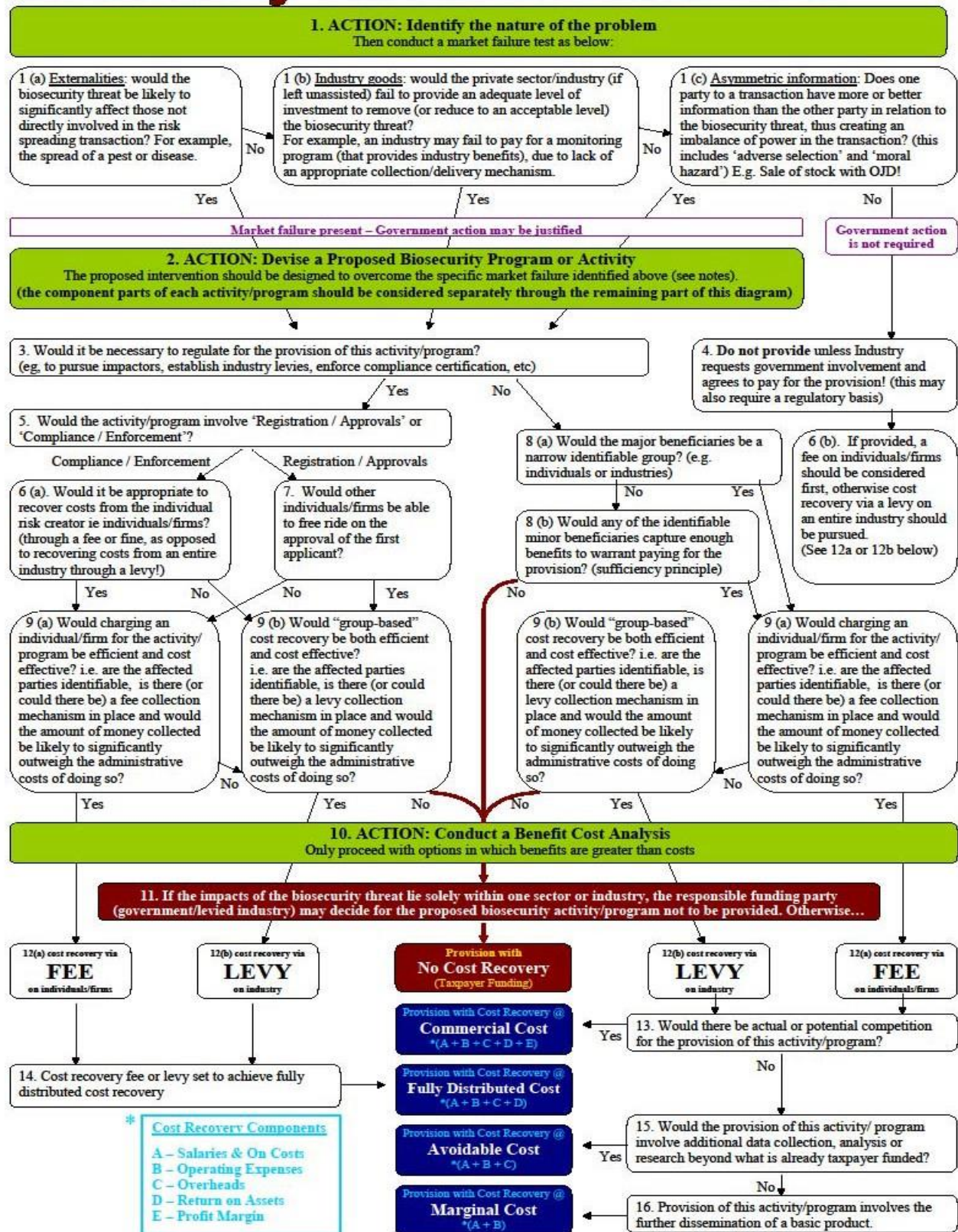
### Emergency permits

- Authorise activities that would otherwise contravene a biosecurity emergency declaration only if it will not intensify the biosecurity emergency.
- Provide operational flexibility.
- Can be issued to individuals or to classes of persons, for specific periods or for the duration of the declaration.

## Appendix 3: Biosecurity Threat Decision Tree

(sourced from NSW Department Primary Industries)

# Biosecurity Threat Decision Tree



## Appendix 4: Better Regulation Principles and the Bill

### The Better Regulation Principles

The following principles have been applied during the development of the proposed Biosecurity Bill to ensure consistency with the ACT and COAG better regulation guidelines:

1. The need for government action should be established.
2. The objective of government action should be clear.
3. The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options.
4. Government action should be effective and proportional.
5. Consultation with business and the community should inform regulatory development.
6. The simplification, repeal, reform or consolidation of existing regulation should be considered.
7. Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

The application of these principles in developing the proposed legislation is detailed below.

#### **Principle 1: The need for government action should be established**

The need for government action is established by the provisions of the ACT Emergency Plan the Territory Wide Risk Assessment and the Intergovernmental Agreement on Biosecurity.

The ACT Emergency Plan identifies the need to ensure that the ACT is ready to deal with major emergencies and natural disasters and identifies EPSDD as the lead response agency for biosecurity emergencies. The Territory Wide Risk Assessment identifies biosecurity as high risk for the ACT.

The development of nationally consistent legislation will support the obligations of the ACT and the other mainland states and territories under the Intergovernmental Agreement on Biosecurity. Under that agreement, the mainland states and territories recognise the importance of a national system to manage biosecurity threats, and agree to work together to implement a consistent approach to the management of unwanted pests, diseases and weeds.

#### **Principle 2: The objective of government action should be clear**

The revised biosecurity framework has been developed to meet Australia's commitments under the Intergovernmental Agreement on Biosecurity and the ACT biosecurity outcomes outlined in the ACT Biosecurity Strategy.

The primary objective of the revised framework is the development of legislation that is:

- consistent with national policies and commitments
- compatible with legislation in other Australian jurisdictions
- supportive of best practice biosecurity management
- supportive of industry co-regulation and quality assurance programs
- flexible to deal with unexpected or new biosecurity threats



- responsive in all biosecurity situations, including emergencies
- effective in reducing red tape and regulatory burden
- effective in simplifying the current legislation and improving enforceability.

**Principle 3: The impact of government action, including on competition, should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options**

The options to achieve the Government's objectives are to:

- take no action
- amend existing Acts
- adopt a non-regulatory approach
- develop a single, comprehensive *Biosecurity Act* that supports best practice biosecurity management in the ACT.

*Take no action*

Taking no action would mean that our statutory framework will not reflect best practice in the management of biosecurity risks. Our legislation will be less effective in managing unwanted pests, diseases and weeds, and measures to better protect our environment, our community and our economy from biosecurity losses will not be implemented.

Maintaining the status quo will also mean that the weaknesses, shortcomings and lack of consistency in our existing legislation are not addressed, and opportunities to reduce red tape will not be capitalised. For instance, there are a number of inconsistencies and deficiencies in quarantine powers between the Animal Diseases Act and the Plant Diseases Act and there are no quarantine powers for pest plants and animals and no emergency powers to respond quickly to an incursion of an exotic pest plant or animal in either Act. Powers of inspectors and authorised people under our existing ACT legislation are also inconsistent. Taking no action to address these inconsistencies will mean that government and industry will continue to incur unnecessary red tape and that the legislative framework relating to biosecurity will remain unnecessarily complex and not as effective as it could be.

*Amend existing Acts*

The amendment of existing legislation would require a comprehensive overhaul of five pieces of outdated legislation. This is because our legislation largely focuses on the Government taking the lead role in the management of biosecurity threats, an approach that is neither sustainable nor consistent with contemporary best practice.

Best practice requires the government, industry and the wider community to work together to mitigate biosecurity risks, an approach identified in both the Intergovernmental Agreement on Biosecurity and the ACT Biosecurity Strategy 2016-2026.

The amendment of existing legislation is not considered to be a practical or efficient approach to achieving the Government's objectives when compared to the development of a new, single Act. The amendment of existing legislation will not overcome the fragmentation in the current statutory regime. The amendment of existing legislation will also fail to deliver the red tape savings to industry and government that can be generated by the implementation of a new, single Act.

### *Adopt a non-regulatory approach*

A non-regulatory approach would mean that there would be no legislative capacity to compel individuals or industry to take action to prevent, eliminate or minimise the spread of harmful pests and diseases, and no ability to impose sanctions where action in response to biosecurity threats is not taken.

A non-regulatory approach would mean that biosecurity risk management would be absent, ad hoc or patchy, rather than being co-ordinated, consistent and effective, creating a risk that the environment, community and economy are not adequately protected.

Market failures would follow, as the lack of action by some could impact heavily on others through no fault of their own. In addition, the quality of food domestically, and access to international markets through Canberra International Airport could be reduced through a lack of biosecurity maintenance and regulatory programs.

An uncoordinated and inconsistent approach to the management of biosecurity will not meet the expectations of the community or the obligations of the Government under the Intergovernmental Agreement on Biosecurity. It will not streamline or improve the management of biosecurity and will not adequately protect the environment, the community and our primary industries from the unwanted impacts of problem pests and disease.

A non-regulatory approach is therefore not considered to be an effective or reasonable option.

### *Develop a single, comprehensive Biosecurity Act*

The introduction of a single, comprehensive Biosecurity Act will help to address the existing deficiencies in the ACT biosecurity framework. It will replace the separate regimes created under five pieces of legislation with one unified scheme for the management of all biosecurity risks.

A new Act will also allow the better management of biosecurity risks associated with the use of contaminants such as stock medicines, pesticide residues and heavy metals in fertilisers.

The development and implementation of the proposed Biosecurity Bill will also give effect to the roles and responsibilities of the ACT under the Intergovernmental Agreement on Biosecurity. In doing so, the Biosecurity Bill will deliver a responsive and consistent statutory framework, consistent with the goals of the ACT Biosecurity Strategy 2016-2026.

### **Principle 4: Government action should be effective and proportional**

The proposed Biosecurity Bill will be effective and proportional in providing a single, comprehensive Act relating to biosecurity matters.

The Biosecurity Bill contains a range of powers to manage biosecurity threats and allows those powers to be used flexibly to respond to particular biosecurity risks in the most efficient and effective way possible.

For instance, the Biosecurity Bill will allow strong emergency powers to be invoked in the early stages of a biosecurity risk, and for less extensive powers to be used as the risk is managed or in other less urgent circumstances.

The development of nationally consistent legislation will also contribute toward the effective management of biosecurity risks. The management of pests, diseases and weeds is a cross boundary issue and, being surrounded by NSW, it is important that ACT biosecurity management activities are carried out within a consistent legislative framework.

**Principle 5: Consultation with business and the community should inform regulatory development**

The provisions of the proposed Biosecurity Bill are underpinned by the ACT Biosecurity Strategy 2016-2026. The central principle of the ACT Biosecurity Strategy is that biosecurity is a shared responsibility between the government, stakeholders, industry and the wider community. The ACT Biosecurity Strategy sets out the government's long-term objectives for how we will work together to manage biosecurity in the ACT. The proposed Biosecurity Bill will be drafted to support these long term objectives.

The ACT Biosecurity Strategy 2016-2026 was released on 28 June 2016. A draft of the Strategy was released for public consultation for six weeks between 8 July 2015 and 19 August 2015. All organisations identified as stakeholders in the strategy, including ACT rural landholders, were consulted and 13 written submissions received. All comments received on the draft Strategy during the consultation period were considered when finalising the Strategy.

**Principle 6: The simplification, repeal, reform or consolidation of existing regulation should be considered**

The proposed Biosecurity Bill will replace a range of existing ACT Acts and Regulations (or parts thereof) relating to biosecurity. In doing so, the proposed Biosecurity Bill will consolidate the complex system of acts, regulations, disallowable and notifiable instruments, orders, and permits into the one piece of legislation providing a more efficient means to manage the Territory's biosecurity risks.

**Principle 7: Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness**

Evaluation and review of the Biosecurity Act will be completed as part of the standard legislative review processes in the ACT.

In addition, the IGAB, the agreement underpinning the proposed Biosecurity Bill, will be reviewed periodically by the States and Commonwealth. Under the Agreement, review of the implementation and effectiveness of the Agreement and its schedules will take place five years after the commencement of the Agreement, and every five years thereafter (of earlier if considered necessary by the parties).



## Appendix 5: Offences

It is presently proposed that the Biosecurity Bill will include the following offences:

1. Failure to comply with the general biosecurity duty.
2. Failure to comply with a regulation.
3. Failure to comply with a regulatory Standard where the Standard specifies how to discharge the general biosecurity duty.
4. Dealing with prohibited matter, and failure to immediately notify an authorised person, or the Biosecurity Hotline of the presence or suspected presence of prohibited matter.
5. Failure to immediately notify an authorised person or the Biosecurity Hotline of an incident which a person knows or suspects to be a biosecurity event or which constitutes a significant biosecurity risk.
6. Failure to comply with control order or zone requirements.
7. Failure to comply with the conditions of a permit.
8. Failure to comply with a biosecurity direction or any lawful requirement given by an authorised office including a general direction.
9. Obstruct, hinder or delay an authorised person, or a person assisting an authorised person performing functions under the Act (includes physical obstruction as well as destruction, tampering or removal of evidence relating to an alleged offence and/or retaking seized items).
10. Threaten or assault an authorised person.
11. Failure to answer questions and provide information and records required by an authorised person. In a biosecurity emergency, this may include information that is self-incriminating provided appropriate warnings have been given (the answers or information may be used in proceedings against other individuals and corporations, or to obtain further information, but not to prosecute that individual).
12. Failure to comply with a biosecurity emergency declaration.
13. Failure to comply with a biosecurity undertaking.
14. Failure of any person who is required to be registered to be registered and failure to comply with conditions of registration.
15. Failure to comply with the requirements of the National Livestock Identification Scheme.
16. Failure by an auditor to comply with a condition of their approval as an auditor.
17. Contravention by an accredited certifier of the conditions of their accreditation or a requirement in relation to the issue of certificates.

18. Provide false or misleading information in connection with the Act, including:
- provide false/misleading information or documents to any person including persons performing functions under the Act such as the Director-General, an authorised person, an accredited certifier or an auditor
  - submit a claim for compensation that is false or misleading
  - alter or otherwise falsify a biosecurity certificate
  - make a false statement in relation to a biosecurity certificate or an audit.
19. Impersonate an authorised person, an accredited certifier or an auditor.
20. Aid, abet or conspire with a person in the committing of an offence.
21. Additional offences may be included in the regulation.