



Biosecurity Act 2014

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Queensland

Biosecurity Act 2014

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Biosecurity Act 2014

An Act to provide for a comprehensive biosecurity framework to manage the impacts of animal and plant diseases and pests in a timely and effective way and ensure the safety and quality of animal feed, fertilisers and other agricultural inputs

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *Biosecurity Act 2014*.

2 Commencement

- (1) This Act commences on a day to be fixed by proclamation.
- (2) However, if no day has been fixed by 1 July 2016, the Act commences on that day.
- (3) The *Acts Interpretation Act 1954*, section 15DA does not apply to this Act.

3 Simplified outline of main provisions of Act

- (1) Chapter 1 describes the purposes and scope of the Act and defines key concepts.
- (2) Chapter 2 imposes—
 - (a) a general biosecurity obligation on persons dealing with biosecurity matter or a carrier of biosecurity matter; and

- (b) other obligations in relation to biosecurity matter that is prohibited or restricted matter; and
 - (c) obligations on persons to notify an inspector about particular incidents.
- (3) Chapter 3 establishes the functions and obligations of local governments and continues the Land Protection Fund.
- (4) Chapter 4 deals with invasive animal boards and barrier fencing.
- (5) Chapter 5 provides for codes of practice and guidelines to be made under this Act.
- (6) Chapter 6 establishes procedures for dealing with biosecurity emergencies and risks.
- (7) Chapter 7 provides for the registration of entities and places and a system for the identification and tracking of particular animals.
- (8) Chapter 8 creates a permit process to allow particular dealings with biosecurity matter that is prohibited or restricted matter.
- (9) Chapter 9 provides for the making of programs for the surveillance, and prevention and control, of biosecurity risks.
- (10) Chapter 10 provides for persons appointed to perform functions under the Act to exercise powers and enter places, seize things and obtain information.
- (11) Chapter 11—
 - (a) establishes a scheme for payment of statutory compensation for particular damage or loss arising from action taken under this Act; and
 - (b) deals with the effect of industry compensation schemes on statutory compensation.
- (12) Chapter 12 deals with evidence, legal proceedings and the review of decisions made under the Act.
- (13) Chapter 13 provides for the giving of biosecurity orders to persons to deal with biosecurity risks.

requirements for accessing markets for animal and plant produce, including live animals and plants.

(2) It is also a purpose of this Act to manage risks associated with the following—

- (a) emerging, endemic and exotic pests and diseases that impact on—
 - (i) plant and animal industries, including agriculture, aquaculture, horticulture, fisheries and forestry industries; or
 - (ii) the built environment; or
 - (iii) companion or leisure animals; or
 - (iv) biodiversity and the natural environment; or
 - (v) tourism, lifestyle and pleasure industries; or
 - (vi) infrastructure and service industries, including power, communication, shipping and water supplies;
- (b) the transfer of diseases from animals to humans and from humans to animals;
- (c) biological, chemical and physical contaminants in carriers.

(3) In this section—

built environment means the environment, but having particular regard to the qualities and characteristics of locations, places and areas arising out of the existence of buildings and other examples of human activity.

5 How purposes are primarily achieved

The purposes of this Act are to be achieved primarily by—

- (a) imposing a general obligation on persons to prevent or minimise the impact of biosecurity risks on human health, social amenity, the economy and the environment (each a ***biosecurity consideration***); and

- (b) regulating activities involving biosecurity matter or carriers; and
- (c) including in risk-based decision-making under this Act the principle that lack of full scientific certainty should not be used as a reason to postpone taking action to prevent a biosecurity event or to postpone a response to a biosecurity risk; and
- (d) providing for flexible and timely ways of minimising and mitigating biosecurity risks; and
- (e) providing for monitoring and enforcement of compliance with this Act; and
- (f) providing for codes of practice relating to a person's obligations under this Act; and
- (g) providing for the chief executive to make guidelines or policies about the application of this Act and how a person may comply with obligations imposed under this Act; and
- (h) providing for a framework that improves the capacity of local governments, industry and the community generally to respond to biosecurity risks.

Part 3 Application and operation of Act

6 Scope of Act generally

This Act includes within its scope—

- (a) acts and omissions on or in land and waters of the State in relation to biosecurity matter that may pose a biosecurity risk; and
- (b) any dealing with prohibited matter, restricted matter or carriers that may pose a biosecurity risk.

7 Act binds all persons

- (1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) However, the Commonwealth or a State can not be prosecuted for an offence against this Act.

8 General application of Act to ships

- (1) This section states the application of this Act to ships in Queensland waters and ships in waters beyond the outer limit of Queensland waters (*other waters*).
- (2) This Act applies to—
 - (a) a ship in Queensland waters; and
 - (b) to the extent this Act applies in other waters, including, for example, under the *Crimes at Sea Act 2001*—a ship in other waters if the ship is travelling from a place in Queensland to another place in Queensland.
- (3) This Act does not apply to—
 - (a) a ship in other waters if the ship is travelling from a place outside of Queensland to another place outside of Queensland; or
 - (b) a ship of the Australian Defence Force or of a defence force of another country.

9 Relationship with particular Acts

- (1) This Act is in addition to, and does not limit, any other Act.
- (2) If this Act is inconsistent with an Act as follows, that Act prevails, but only to the extent of the inconsistency—
 - (a) *Biological Control Act 1987*;
 - (b) *Food Act 2006*;
 - (c) *Food Production (Safety) Act 2000*;

- (d) the *Gene Technology Act 2000* (Cwlth), as applied as a law of Queensland by the *Gene Technology (Queensland) Act 2016*;
 - (e) *Public Health Act 2005*.
- (3) Subject to subsection (4), this Act does not affect the application of a relevant Act.
- (4) A person who does an act authorised under chapter 6, part 1 or 2 or an inspector, a person directed by an inspector or a person authorised by an inspector who takes steps under chapter 10, part 3 is taken not to commit an offence against a relevant Act only because of doing the act or taking the steps.
- (5) The *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, chapter 2 does not apply in relation to a barrier fence.
- (6) In this section—
relevant Act means any of the following—
- (a) *Fisheries Act 1994*;
 - (b) *Forestry Act 1959*;
 - (c) *Marine Parks Act 2004*;
 - (d) *Nature Conservation Act 1992*;
 - (e) *Vegetation Management Act 1999*.

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

No provision of this Act creates a civil cause of action based on a contravention of the provision.

11 Act does not affect other rights or remedies

- (1) This Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.
- (2) Without limiting subsection (1), compliance with this Act does not necessarily show that a civil obligation that exists

apart from this Act has been satisfied or has not been breached.

12 Community involvement in administration of Act

This Act is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, public sector entities, local governments, industry, Aborigines and Torres Strait Islanders under Aboriginal tradition and Island custom, interested groups and persons and the community generally.

Part 4 Interpretation

Division 1 Dictionary

13 Definitions

The dictionary in schedule 4 defines particular words used in this Act.

Division 2 Key concepts and definitions

14 What is a *biosecurity event*

A *biosecurity event* is an event comprising something that—

- (a) has happened, is happening or may happen; and
- (b) has had, is having or may have a significant adverse effect on a biosecurity consideration; and
- (c) was or is being caused by, or may be or may have been caused by, biosecurity matter.

Examples—

- 1 A horse has died and it has been confirmed that the death was caused by the Hendra virus infection. This may have a significant adverse effect on human health.
- 2 There has been a suspected outbreak of foot and mouth disease in another State that may spread to the State and may have a significant adverse effect on the economy.

15 What is *biosecurity matter*

(1) *Biosecurity matter* is—

- (a) a living thing, other than a human or part of a human; or
 - (b) a pathogenic agent that can cause disease in—
 - (i) a living thing, other than a human; or
 - (ii) a human, by the transmission of the pathogenic agent from an animal to the human; or
 - (c) a disease; or
 - (d) a contaminant.
- (2) If biosecurity matter has a life cycle, a reference in this Act to the biosecurity matter includes a reference to the biosecurity matter at each stage of its life cycle.

Examples of stages of the life cycle for particular biosecurity matter—

egg, larva, pupa, adult

- (3) If schedule 1 or 2, a prohibited matter regulation, a restricted matter regulation, a biosecurity zone regulatory provision or a movement control order states a common name for biosecurity matter, it is sufficient in a provision of this Act to refer to the biosecurity matter by the common name.

16 What is a *biosecurity risk*

A *biosecurity risk* is a risk of any adverse effect on a biosecurity consideration caused by, or likely to be caused by—

- (a) biosecurity matter; or

- (b) dealing with biosecurity matter or a carrier; or
- (c) carrying out an activity relating to biosecurity matter or a carrier.

17 What is a *carrier*

- (1) A *carrier* is any animal or plant, or part of any animal or plant, or any other thing—
 - (a) capable of moving biosecurity matter attached to, or contained in, the animal, plant or other thing from a place to another place; or
 - (b) containing biosecurity matter that may attach to or enter another animal or plant, or part of another animal or plant, or another thing.
- (2) In this section—
 - thing*—
 - (a) means a thing, whether alive, dead or inanimate; and
 - (b) includes a human.

18 What is a *contaminant*

- (1) A *contaminant* is anything that may be harmful to animal or plant health or pose a risk of any adverse effect on a biosecurity consideration.
- (2) The presence of a *contaminant* in a carrier may be harmful to any animal or plant, or part of an animal or plant, that the carrier attaches to or enters.
- (3) The presence of a contaminant in a carrier may be caused by—
 - (a) manufacturing, packaging, packing, preparing, processing, producing, storing, treating or transporting the carrier; or
 - (b) environmental contamination of the carrier.

Examples of a contaminant—

- pathogenic bacteria in irrigation water
- environmental contaminants, including dioxins and residual organochlorine pesticides and nanoparticles
- heavy metals in fertilisers and animal feed
- waste from industrial and mining activities, including waste containing asbestos, heavy metals or radioactive material
- weed seeds

19 What is *prohibited matter*

Prohibited matter is biosecurity matter that, for the time being, is established as prohibited matter under chapter 2.

20 Prohibited matter criteria

Biosecurity matter satisfies the prohibited matter criteria if—

- (a) the biosecurity matter is not currently present or known to be present in the State; and
- (b) there are reasonable grounds to believe that if it did enter the State or part of the State the biosecurity matter may have a significant adverse effect on a biosecurity consideration.

Example of significant adverse effect on a biosecurity consideration—

The entry of particular biosecurity matter into the State may have a significant adverse effect on the economy if, for the purposes of trade in or market access for a product, there were to be imposed a requirement to prove that the product is free from the biosecurity matter.

21 What is *restricted matter*

- (1) *Restricted matter* is biosecurity matter that, for the time being, is established as restricted matter under chapter 2.
- (2) Restricted matter has the category number or numbers assigned to it in schedule 2 or in the restricted matter regulation that, under chapter 2, provides for its establishment as restricted matter.

- (3) A reference in this Act to restricted matter of a particular category number is a reference to restricted matter that is assigned that category number in schedule 2 or the restricted matter regulation.

22 Restricted matter criteria

Biosecurity matter satisfies the restricted matter criteria if—

- (a) the biosecurity matter is currently present in the State; and
- (b) there are reasonable grounds to believe that, if restrictions under this Act are not imposed on the biosecurity matter to reduce, control or contain it, it may have an adverse effect on a biosecurity consideration.

Chapter 2 Significant obligations and offences

Part 1 General biosecurity obligation

23 What is a *general biosecurity obligation*

- (1) This section applies to a person who deals with biosecurity matter or a carrier, or carries out an activity, if the person knows or ought reasonably to know that the biosecurity matter, carrier or activity poses or is likely to pose a biosecurity risk.
- (2) The person has an obligation (a *general biosecurity obligation*) to take all reasonable and practical measures to prevent or minimise the biosecurity risk.
- (3) Also, the person has an obligation (also a *general biosecurity obligation*)—

- (a) to prevent or minimise adverse effects on a biosecurity consideration of the person's dealing with the biosecurity matter or carrier or carrying out the activity; and
- (b) to minimise the likelihood of causing a biosecurity event, or to limit the consequences of a biosecurity event caused, by dealing with the biosecurity matter or carrier or carrying out the activity; and
- (c) not to do or omit to do something if the person knows or ought reasonably to know that doing or omitting to do the thing may exacerbate the adverse effects, or potential adverse effects, of the biosecurity matter, carrier or activity on a biosecurity consideration.

Examples of things that may exacerbate the adverse effects, or potential adverse effects, of biosecurity matter, a carrier or an activity—

- failing to isolate an infected animal from a herd
- failing to wash footwear before leaving a property on which anthrax is present
- inappropriately disposing of leaf litter containing a plant virus or disease
- failing to take reasonable steps to reduce contaminants in plants and animals, including, for example, by allowing designated animals (not including bees) to graze on land contaminated with heavy metals or by using water that may contain a contaminant to irrigate crops
- failing to manage the impact of invasive plants and animals on a person's land

24 General biosecurity obligation offence provision

- (1) A person on whom a general biosecurity obligation is imposed must discharge the obligation.

Maximum penalty—

- (a) if the offence is an aggravated offence—3000 penalty units or 3 years imprisonment; or
- (b) if the offence is not an aggravated offence—

- (i) for a breach in relation to prohibited matter—1000 penalty units or 1 year's imprisonment; or
 - (ii) for a breach in relation to restricted matter—750 penalty units or 6 months imprisonment; or
 - (iii) otherwise—500 penalty units.
- (2) If the offence is not an aggravated offence, it is a defence for the person to show that the person had a reasonable excuse for failing to discharge the obligation.

25 Effect of regulation for discharge of general biosecurity obligation

- (1) This section applies if a provision of a regulation (***regulation provision***) is identified in the regulation as a provision that prescribes a way of discharging a person's general biosecurity obligation.
- (2) Unless otherwise stated in the regulation, the regulation provision does not prescribe all that a person to whom the provision applies must do, or must not do, to discharge the person's general biosecurity obligation.
- (3) However, for applying the general biosecurity obligation offence provision, the person fails to discharge the general biosecurity obligation if the person contravenes the regulation provision.

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

- (1) This section applies if a code of practice states a way of discharging a person's general biosecurity obligation.
- (2) Unless otherwise stated in the code of practice, the code of practice does not state all that a person to whom the code of practice applies must do, or must not do, to discharge the person's general biosecurity obligation.

- (3) However, for applying the general biosecurity obligation offence provision, the person fails to discharge the general biosecurity obligation if the person—
 - (a) contravenes, or otherwise acts inconsistently with, the code of practice; and
 - (b) does not follow a way that is as effective as, or more effective than, the code of practice for discharging the general biosecurity obligation.
- (4) Also, for applying the general biosecurity obligation offence provision, if a regulation requires a person to comply with the whole or a stated part of a code of practice to discharge the person's biosecurity obligation, the person fails to discharge the general biosecurity obligation if the person contravenes, or otherwise acts inconsistently with, the code of practice or stated part.

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

- (1) An offence is an *aggravated offence* if the commission of the offence causes significant damage, or is likely to cause significant damage, to the health and safety of people or to the economy or the environment.
- (2) To prove an aggravated offence, the prosecution must prove that the person who committed the offence—
 - (a) intended the person's conduct to cause significant damage to the health and safety of people or to the economy or the environment; or
 - (b) was reckless as to whether the conduct would cause significant damage to the health and safety of people or to the economy or the environment.

28 **Defence of due diligence**

- (1) In a proceeding for an offence against the general biosecurity obligation offence provision, it is a defence for a person to prove that the person took all reasonable precautions and

exercised proper diligence to prevent the commission of the offence by the person or by another person under the person's control.

- (2) Without limiting the ways in which a person proves the matter stated in subsection (1), a person proves the matter if the person proves that—
- (a) the conduct alleged to constitute the offence was due to—
 - (i) an act or default of another person; or
 - (ii) reliance on information supplied by another person; and
 - (b) the person made all reasonable enquiries about—
 - (i) whether any animal, plant or other thing was the carrier of prohibited matter or restricted matter the subject of the offence alleged; and
 - (ii) any necessary treatments that may be required for any carrier of any biosecurity matter to rid the carrier of the biosecurity matter; and
 - (c) any of the following applied—
 - (i) the person carried out all checks on the health of any biosecurity matter or carrier of any biosecurity matter as were reasonable in all the circumstances;
 - (ii) if another person carried out checks on the health of any biosecurity matter or carrier of any biosecurity matter, it was reasonable in all the circumstances to rely on the checks carried out by the other person;
Example—
checks carried out by a veterinary surgeon
 - (iii) it was reasonable in all the circumstances to rely on checks carried out by another person who supplied any biosecurity matter or carrier of any biosecurity matter to the person; and

- (d) the person took the precautions that were reasonable in all the circumstances to prevent the spread of any biosecurity matter.
- (3) Also, without limiting the ways in which a person proves the matter stated in subsection (1) or (2)(c)(i), a person proves the matter if the person proves that—
 - (a) if a regulation prescribes a way in which a person's general biosecurity obligation can be discharged to prevent or minimise a biosecurity risk posed by the relevant biosecurity matter or carrier of the biosecurity matter—the person followed the prescribed way; or
 - (b) if a code of practice states a way in which a person's general biosecurity obligation can be discharged to prevent or minimise a biosecurity risk posed by the relevant biosecurity matter or carrier of the biosecurity matter—the person adopted and followed the stated way.
- (4) This section is not intended to exclude the operation of the Criminal Code, section 24.
- (5) In subsection (2)(a) and (c)—
another person does not include a following person—
 - (a) an employee or agent of the defendant;
 - (b) in the case of a defendant that is a body corporate, a director, employee or agent of the defendant.

Part 2 Prohibited matter

Division 1 Establishing what is prohibited matter

29 Basic prohibited matter declaration provision

- (1) Biosecurity matter mentioned in schedule 1 is prohibited matter.

- (2) However, the operation of subsection (1) may be affected by a prohibited matter regulation or an emergency prohibited matter declaration.

30 Prohibited matter regulation

- (1) A regulation (a *prohibited matter regulation*) may—
- (a) declare that particular biosecurity matter not mentioned in schedule 1 is prohibited matter; or
 - (b) declare that particular biosecurity matter mentioned in schedule 1, or declared to be prohibited matter under an emergency prohibited matter declaration, is no longer prohibited matter.
- (2) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1)(a) only if the Minister is satisfied that—
- (a) the biosecurity matter satisfies the prohibited matter criteria as provided for in section 20; and
 - (b) prompt action is required to declare the biosecurity matter to be prohibited matter.
- (3) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1)(b) only if the Minister is satisfied that—
- (a) 1 or more of the following applies—
 - (i) the biosecurity matter is no longer contained and can not be eradicated;
 - (ii) the biosecurity matter has spread and is in a large area of the State;
 - (iii) the rate of spread of the biosecurity matter means that it is likely to spread over a large area of the State;
 - (iv) for some other reason, it is no longer practical, or it is otherwise no longer appropriate, for the

biosecurity matter to be subject to the provisions of this Act relating to prohibited matter; and

- (b) prompt action is required to declare the biosecurity matter not to be prohibited matter.
- (4) A prohibited matter regulation that declares biosecurity matter mentioned in schedule 1 no longer to be prohibited matter may also declare the biosecurity matter to be restricted matter.

31 Chief executive may make emergency prohibited matter declaration

- (1) The chief executive may, by notice signed by the chief executive (an *emergency prohibited matter declaration*)—

- (a) declare any of the following to be prohibited matter—
 - (i) biosecurity matter not mentioned in schedule 1;
 - (ii) biosecurity matter declared under a prohibited matter regulation no longer to be prohibited matter;or

Note—

Subsection (1)(a)(ii) allows biosecurity matter that is included in schedule 1, but that a prohibited matter regulation has declared to be no longer prohibited matter, to be urgently re-established as prohibited matter.

- (b) declare that particular biosecurity matter mentioned in schedule 1, or declared to be prohibited matter, under a prohibited matter regulation, is no longer prohibited matter.
- (2) The chief executive may make an emergency prohibited matter declaration under subsection (1)(a) only if the chief executive is satisfied that—
 - (a) the biosecurity matter satisfies the prohibited matter criteria as provided for in section 20; and
 - (b) urgent action is required to declare the biosecurity matter to be prohibited matter.

- (3) The chief executive may make an emergency prohibited matter declaration under subsection (1)(b) only if the chief executive is satisfied that—
 - (a) 1 or more of the following applies—
 - (i) the biosecurity matter is no longer contained and can not be eradicated;
 - (ii) the biosecurity matter has spread and is in a large area of the State;
 - (iii) the rate of spread of the biosecurity matter means that it is likely to spread over a large area of the State;
 - (iv) for some other reason, it is no longer practical, or it is otherwise no longer appropriate, for the biosecurity matter to be subject to the provisions of this Act relating to prohibited matter; and
 - (b) urgent action is required to declare the biosecurity matter not to be prohibited matter.
- (4) The chief executive must publish an emergency prohibited matter declaration in full on the department's website contemporaneously with the making of the declaration, or, if that is not practicable, with the least practicable delay after the declaration is made.
- (5) As soon as practicable after making an emergency prohibited matter declaration, the chief executive must—
 - (a) publish in the gazette a notice of the making of the declaration, the day the declaration started, a description of the biosecurity matter the subject of the declaration and the places where a copy of the declaration may be obtained; and
 - (b) take all reasonable steps to ensure that persons likely to be directly affected by the declaration are made aware of the making of the declaration, including, for example, by some or all of the following—
 - (i) advertising in newspapers, on radio and on television;

- (ii) electronically using emails and text messages;
 - (iii) automated telephoning.
- (6) An emergency prohibited matter declaration is not invalid only because of a failure of the chief executive to comply with subsection (4) or (5).

32 Matters for inclusion in emergency prohibited matter declaration

An emergency prohibited matter declaration must include provisions that state—

- (a) a description of the biosecurity matter the subject of the declaration; and
- (b) when the declaration starts; and
- (c) when the declaration expires if it is not sooner revoked.

33 Effect and duration of emergency prohibited matter declaration

- (1) An emergency prohibited matter declaration has effect from when it is made.
- (2) Unless it is sooner revoked, an emergency prohibited matter declaration stays in force until the earlier of the following to happen—
 - (a) 3 months elapse after the making of the emergency prohibited matter declaration;
 - (b) a prohibited matter regulation comes into force that deals with the biosecurity matter the subject of the emergency prohibited matter declaration.

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

A prohibited matter regulation or emergency prohibited matter declaration that declares biosecurity matter to be

prohibited matter must also declare in which part of schedule 1 the prohibited matter may be taken to be included.

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

The Minister must keep on the department's website an up-to-date list of all biosecurity matter that is for the time being prohibited matter.

Division 2 Obligations relating to prohibited matter

36 Reporting presence of prohibited matter

- (1) This section applies to a person if the person becomes aware of the presence of biosecurity matter that is prohibited matter, or that the person believes or ought reasonably to believe is prohibited matter—
 - (a) at a place of which the person is an occupier; or
 - (b) in the person's possession or under the person's control; or
 - (c) in or on a carrier at a place of which the person is an occupier; or
 - (d) in or on a carrier in the person's possession or under the person's control.
- (2) If the person is not aware that any inspector has been advised, or has otherwise become aware, of the presence of the biosecurity matter, the person must advise an inspector of the presence of the biosecurity matter without delay.

Maximum penalty—1000 penalty units or 1 year's imprisonment.
- (3) However, the person is not required to advise an inspector under subsection (2) if—

- (a) the biosecurity matter is in the possession of a person, or is otherwise under a person's control, under a prohibited matter permit; or
 - (b) the biosecurity matter is in the lawful possession of a person, or is otherwise under a person's lawful control, under another Act or a law of the Commonwealth.
- (4) Also, the person is not required to advise an inspector under subsection (2) if the person becomes aware, before the person would otherwise be required to advise an inspector under the subsection, that advice of the presence of the biosecurity matter has been given to an inspector by another person.

Example—

A person would not be required to advise an inspector of the presence of prohibited matter in 1 of the person's animals if the veterinary surgeon who diagnosed the presence of the prohibited matter advised an inspector about it as soon as the diagnosis was made.

- (5) The person must not take any action reasonably likely to exacerbate, and must take any action reasonably likely to minimise, the biosecurity risk posed by the prohibited matter.

Maximum penalty—1500 penalty units or 1 year's imprisonment.

37 Dealing with prohibited matter

- (1) A person must not deal with prohibited matter.

Maximum penalty—1000 penalty units or 1 year's imprisonment.

- (2) A person does not commit an offence against subsection (1) only because the person advises an inspector under this part about the discovery of prohibited matter.
- (3) Subsection (1) does not apply to a dealing with prohibited matter—
- (a) that is—
 - (i) authorised under a prohibited matter permit; or

- (ii) authorised under a biosecurity emergency order or biosecurity emergency order permit; or
 - (iii) for the purposes of its seizure under chapter 10 as evidence of the commission of an offence; or
 - (iv) authorised under another Act or a law of the Commonwealth; or
- (b) for which the person has a reasonable excuse.

Part 3 Restricted matter

Division 1 Establishing what is restricted matter

38 Basic restricted matter declaration provision

- (1) Biosecurity matter mentioned in schedule 2 is restricted matter.
- (2) However, the operation of subsection (1) may be affected by—
 - (a) a restricted matter regulation; or
 - (b) a prohibited matter regulation, but only in the way mentioned in part 2, division 1.

39 Restricted matter regulation

- (1) A regulation (a *restricted matter regulation*) may—
 - (a) declare that particular biosecurity matter not mentioned in schedule 2 is restricted matter; or
 - (b) declare that particular biosecurity matter mentioned in schedule 2 is no longer restricted matter.
- (2) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1)(a) only if the Minister is satisfied that—

- (a) the biosecurity matter may pose a biosecurity risk; and
 - (b) the biosecurity matter satisfies the restricted matter criteria as provided for in section 22; and
 - (c) prompt action is required to declare the biosecurity matter to be restricted matter.
- (3) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1)(b) only if the Minister is satisfied that—
- (a) it is no longer practical, or it is otherwise no longer appropriate, for biosecurity matter to be the subject of the provisions of this Act relating to restricted matter; and
 - (b) prompt action is required to declare the biosecurity matter not to be restricted matter.

40 Requirement for restricted matter regulation to classify new restricted matter

A restricted matter regulation that declares biosecurity matter to be restricted matter—

- (a) must also declare in which particular provisions of schedule 2 the restricted matter may be taken to be included; and
- (b) must assign a category number or category numbers to the restricted matter.

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

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

Division 2 Obligations relating to restricted matter

42 Reporting presence of category 1 or 2 restricted matter

- (1) This section applies to a person if the person becomes aware of the presence of biosecurity matter that is relevant restricted matter, or that the person believes or ought reasonably to believe is relevant restricted matter—
 - (a) at a place of which the person is an occupier; or
 - (b) in the person's possession or under the person's control; or
 - (c) in or on a carrier at a place of which the person is an occupier; or
 - (d) in or on a carrier in the person's possession or under the person's control.
- (2) If the person is not aware that any appropriate authorised officer has been advised, or has otherwise become aware, of the presence of the biosecurity matter, the person must advise an appropriate authorised officer of the presence of the biosecurity matter as soon as practicable, but not more than 24 hours, after becoming aware as mentioned in subsection (1).

Maximum penalty—

- (a) for a breach in relation to category 1 restricted matter—750 penalty units or 6 months imprisonment; or
 - (b) for a breach in relation to category 2 restricted matter—200 penalty units.
- (3) However, the person is not required to advise an appropriate authorised officer under subsection (2) if—
 - (a) the biosecurity matter is in the possession of a person, or is otherwise under a person's control, under a restricted matter permit; or

- (b) the biosecurity matter is in the lawful possession of a person, or is otherwise under a person's lawful control, under another Act or a law of the Commonwealth.
- (4) Also, the person is not required to advise an appropriate authorised officer under subsection (2) if the person becomes aware, before the person would otherwise be required to advise an appropriate authorised officer under the subsection, that advice of the presence of the biosecurity matter has been given to an appropriate authorised officer by another person.

Example—

A person would not be required to advise an appropriate authorised officer of the presence of relevant restricted matter in 1 of the person's animals if the veterinary surgeon who diagnosed the presence of the restricted matter advised an appropriate authorised officer about it as soon as the diagnosis was made.

- (5) The person must not take any action reasonably likely to exacerbate, and must take any action reasonably likely to minimise, the biosecurity risk posed by the restricted matter.

Maximum penalty—750 penalty units.

- (6) In this section—

appropriate authorised officer means—

- (a) if the biosecurity matter is or ought reasonably be believed to be category 1 restricted matter—an inspector; or
- (b) if the biosecurity matter is or ought reasonably be believed to be category 2 restricted matter—an authorised officer.

relevant restricted matter means category 1 or category 2 restricted matter.

43 Distributing or disposing of category 3 restricted matter

- (1) A person who has category 3 restricted matter in the person's possession or under the person's control must not distribute or dispose of the restricted matter unless the distribution or disposal is—

- (a) performed in the way prescribed under a regulation; or
- (b) authorised under a restricted matter permit; or
- (c) performed by an authorised officer in the performance of the authorised officer's functions under this Act; or
- (d) for the purpose of the Board of the Queensland Museum, or the Queensland Herbarium, identifying the restricted matter; or
- (e) for the purpose of identifying the restricted matter by, or at the request of, a government entity with expertise in the identification of the restricted matter; or
- (f) for a purpose prescribed by regulation.

Maximum penalty—500 penalty units.

- (2) A person who has a thing infested with category 3 restricted matter in the person's possession or under the person's control must not distribute or dispose of the thing unless the distribution or disposal is—

- (a) performed in the way prescribed under a regulation; or
- (b) authorised under a restricted matter permit; or
- (c) performed by an authorised officer in the performance of the authorised officer's functions under this Act.

Maximum penalty—500 penalty units.

- (3) In this section—

distribute, restricted matter or a thing, includes the following—

- (a) giving the restricted matter or thing to another person;
- (b) selling or trading in the restricted matter or thing;
- (c) releasing the restricted matter or thing into the environment.

44 Requirement to kill and dispose of category 7 restricted matter

- (1) A person who has category 7 restricted matter in the person's possession or under the person's control must, as soon as practicable, kill the restricted matter.

Maximum penalty—500 penalty units.

Note—

A guideline could apply under chapter 5 about ways to humanely kill noxious fish.

- (2) A person who has, in the person's possession or under the person's control, category 7 restricted matter that has been killed must dispose of the restricted matter in the way prescribed under a regulation.

Maximum penalty—500 penalty units.

- (3) Subsection (2) applies whether or not the person killed the category 7 restricted matter.
- (4) However, a person does not commit an offence against subsection (1) or (2) if—
- (a) the restricted matter is in the possession of the person, or is otherwise under the person's control, under a restricted matter permit; or
 - (b) the restricted matter is in the lawful possession of the person, or is otherwise under the person's lawful control, under another Act or a law of the Commonwealth.

45 Offences about other categories of restricted matter

- (1) A person must not do any of the following—
- (a) move, or cause or allow to be moved, category 4 restricted matter;
 - (b) keep in the person's possession or under the person's control category 5 restricted matter;
 - (c) give food to category 6 restricted matter.

Maximum penalty—500 penalty units.

- (2) A person does not commit an offence against subsection (1) if the person's action is authorised under—
 - (a) a restricted matter permit; or
 - (b) another Act or a law of the Commonwealth.
- (3) A person does not commit an offence against subsection (1) if the person's action in relation to the restricted matter is for the purposes of the restricted matter's seizure under chapter 10 as evidence of the commission of an offence.
- (4) A person does not commit an offence against subsection (1)(a) if the moving of the category 4 restricted matter is for the purposes of its identification by, or at the request of, a relevant entity.
- (5) A person does not commit an offence against subsection (1)(b) if the keeping of the category 5 restricted matter is for the purposes of its identification by, or at the request of, a relevant entity.
- (6) A person does not commit an offence against subsection (1)(c) if the feeding is carried out in preparation for, or in the course of, lawfully baiting, trapping or shooting the category 6 restricted matter.
- (7) In this section—

relevant entity means any 1 of the following—

- (a) the Board of the Queensland Museum established under the *Queensland Museum Act 1970*;
- (b) the department that includes the entity known as the Queensland Herbarium;
- (c) another government entity with expertise in the identification of the restricted matter to be moved or kept.