
355 Evidentiary aids

- (1) A certificate purporting to be signed by the chief executive, or a chief executive officer, stating any of the following matters is evidence of the matter—
- (a) a stated document is 1 of the following things made, given, issued or kept under this Act—
 - (i) an appointment, approval or decision;
 - (ii) a notice, direction or requirement;
 - (iii) a permit;
 - (iv) a record or an extract from a record;
 - (v) a code of practice;
 - (b) a stated document is another document kept under this Act;
 - (c) a stated document is a copy of, or an extract from a part of, a thing mentioned in paragraph (a) or (b);
 - (d) on a stated day, or during a stated period, a stated person was or was not the holder of a permit;
 - (e) on a stated day, or during a stated period, a permit—
 - (i) was or was not in force; or
 - (ii) was or was not subject to a stated condition;
 - (f) on a stated day a permit was suspended for a stated period, surrendered or cancelled;
 - (g) on a stated day, or during a stated period, a stated appointment, including a person's appointment as an authorised officer, was or was not in force for a stated person or thing;
 - (h) on a stated day—
 - (i) a stated person was given a stated notice or direction under this Act; or
 - (ii) a stated requirement under this Act was made of a stated person; or

- (iii) a stated amount is payable under this Act by a stated person.
- (2) In a complaint starting a proceeding, a statement that the matter came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.
- (3) In a proceeding in which the State or a local government applies under section 358 to recover costs incurred by the State or local government, a certificate by the chief executive for the State or the chief executive officer of the local government stating that stated costs were incurred and the way in which, and purpose for which, they were incurred is evidence of the matters stated.
- (4) In this section—
permit means—
 - (a) a prohibited matter permit; or
 - (b) a restricted matter permit.

Part 2 Legal proceedings

356 Offences under this Act

- (1) An offence against this Act that has a penalty of more than 2 years imprisonment is an indictable offence that is a misdemeanour.
- (2) Any other offence against this Act is a summary offence.
- (3) A proceeding for an indictable offence may be taken, at the prosecution's election—
 - (a) by way of summary proceedings under the *Justices Act 1886*; or
 - (b) on indictment.
- (4) A magistrate must not hear an indictable offence summarily if—

- (a) at the start of the hearing, the defendant asks that the charge be prosecuted on indictment; or
 - (b) the magistrate considers that the charge should be prosecuted on indictment.
- (5) If subsection (4) applies—
 - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
 - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
 - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (4) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
 - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).
- (6) The maximum term of imprisonment that may be summarily imposed for an indictable offence is 3 years imprisonment.
- (7) A proceeding must be before a magistrate if it is a proceeding—
 - (a) for the summary conviction of a person on a charge for an indictable offence; or
 - (b) for an examination of witnesses for a charge for an indictable offence.
- (8) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.
- (9) A proceeding for an offence against this Act that is to be heard in a summary way under the *Justices Act 1886* must start within—
 - (a) 1 year after the commission of the offence; or

- (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence was committed.

357 Allegations of false or misleading information or document

In any proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was 'false or misleading' to the person's knowledge, without specifying which.

358 Recovery of costs of investigation

- (1) This section applies if—
 - (a) a court convicts a person of an offence against this Act; and
 - (b) the State or a local government applies to the court for an order against the person for the payment of the costs the State or the local government has incurred in taking a thing or doing something else during the investigation of the offence; and
 - (c) the court finds the State or local government has reasonably incurred the costs.
- (2) The court may order the person to pay the State or local government an amount equal to the costs if it is satisfied it would be just to make the order in the circumstances of the particular case.
- (3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.
- (4) An application to a court under this section, and any order made by the court on the application, is a judgment in the court's civil jurisdiction.
- (5) Any issue is to be decided on the balance of probabilities.

359 Responsibility for acts or omissions of representative

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
 - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

- (4) In this section—

representative means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

state of mind of a person includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

360 Fines payable to local government

- (1) This section applies if—
 - (a) a proceeding for an offence about a matter is taken by a local government; and
 - (b) a court imposes a fine for the offence.

- (2) The fine must be paid to the local government.

Part 3 Reviews

Division 1 Internal reviews

361 Internal review process

Every external review of a decision to which an information notice relates must be in the first instance by way of an application for internal review.

362 Who may apply for internal review

The following persons may apply to the issuing authority for an information notice for an internal review of the decision (an *internal review application*) to which it relates—

- (a) a person who has been given, or is entitled to be given, the information notice for the decision;
- (b) for a decision to seize or forfeit a thing—a person in control of the thing.

363 Requirements for making application

- (1) An internal review application must—
 - (a) be in the approved form; and
 - (b) be supported by enough information to enable the issuing authority to decide the application; and
 - (c) be made within 14 days after the applicant is given the information notice for the decision the subject of the application.
- (2) However, the issuing authority may, at any time, extend the time for making an internal review application.

364 Stay of operation of original decision

- (1) An internal review application does not stay the decision the subject of the application (the *original decision*).
- (2) However, the applicant may immediately apply for a stay of the original decision to the relevant body.
- (3) The relevant body may stay the original decision to secure the effectiveness of the internal review and a later appeal to the court or external review by QCAT.
- (4) The stay—
 - (a) may be given on conditions the relevant body considers appropriate; and
 - (b) operates for the period fixed by the relevant body; and
 - (c) may be amended or revoked by the relevant body.
- (5) The period of the stay must not extend past the time when the issuing authority makes an internal review decision about the original decision and any later period the relevant body allows the applicant to enable the applicant to appeal against, or apply for an external review of, the internal review decision.
- (6) An internal review application affects the original decision, or carrying out of the decision, only if the decision is stayed.
- (7) In this section—

relevant body means—

 - (a) for an original decision to seize or forfeit a thing—the court; or
 - (b) for another original decision—QCAT.

365 Internal review

- (1) The issuing authority must, within 20 days after receiving an internal review application made under section 363—
 - (a) conduct an internal review of the original decision; and
 - (b) make a decision (the *internal review decision*) to—

- (i) confirm the original decision; or
 - (ii) amend the original decision; or
 - (iii) substitute another decision for the original decision.
- (2) The application must not be dealt with by—
 - (a) the person who made the original decision; or
 - (b) a person in a less senior office than the person who made the original decision.
- (3) Subsection (2)—
 - (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and
 - (b) does not apply to an original decision made by the chief executive or a chief executive officer personally.
- (4) If the internal review decision confirms the original decision, for the purpose of an appeal or external review, the original decision is taken to be the internal review decision.
- (5) If the internal review decision amends the original decision, for the purpose of an appeal or external review, the original decision as amended is taken to be the internal review decision.

366 Notice of internal review decision

- (1) The issuing authority must, within 10 days after making an internal review decision, give the applicant notice of the decision.
- (2) If the internal review decision is not the decision sought by the applicant, the notice must—
 - (a) for an original decision to seize or forfeit a thing—state the following—
 - (i) the day the notice is given to the applicant (the ***review notice day***);
 - (ii) the reasons for the decision;

- (iii) that the applicant may, within 28 days after the notice is given, appeal against the decision to the court;
 - (iv) how to appeal;
 - (v) that the applicant may apply to the court for a stay of the decision; or
- (b) for another decision—be accompanied by a QCAT information notice for the decision.
- (3) If the issuing authority does not give the notice within the 10 days, the issuing authority is taken to have made an internal review decision confirming the original decision.
- (4) In this section—
QCAT information notice means a notice complying with the QCAT Act, section 157(2).

Division 2 External reviews by QCAT

367 Who may apply for external review

A person given, or entitled to be given, a QCAT information notice under section 366 for an internal review decision may apply, as provided under the QCAT Act, to QCAT for an external review of the decision.

Note—

The QCAT Act, section 22(3) provides that QCAT may stay the operation of the internal review decision, either on application by a person or on its own initiative.

Division 3 Appeals

368 Who may appeal

A person who has applied for an internal review of an original decision to seize or forfeit a thing and is dissatisfied with the

internal review decision may appeal to the court against the decision.

369 Procedure for an appeal to the court

- (1) An appeal is started by filing notice of appeal with the clerk of the court.
- (2) A copy of the notice must be served on the issuing authority.
- (3) The notice of appeal must be filed within 28 days after the appellant receives notice of the internal review decision appealed against.
- (4) However, the court may, at any time, extend the time for filing the notice of appeal.
- (5) The notice of appeal must state fully the grounds of the appeal.

370 Stay of operation of internal review decision

- (1) The court may grant a stay of the operation of an internal review decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
 - (a) may be granted on conditions the court considers appropriate; and
 - (b) operates for the period fixed by the court; and
 - (c) may be amended or revoked by the court.
- (3) The period of a stay stated by the court must not extend past the time when the court decides the appeal.
- (4) An appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

371 Powers of court on appeal

- (1) In deciding an appeal, the court—

- (a) has the same powers as the issuing authority in making the internal review decision appealed against; and
 - (b) is not bound by the rules of evidence; and
 - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing.
- (3) The court may—
 - (a) confirm the internal review decision; or
 - (b) set aside the internal review decision and substitute another decision; or
 - (c) set aside the internal review decision and return the matter to the issuing authority with directions the court considers appropriate.

372 Effect of decision of court on appeal

- (1) If the court acts to set aside the internal review decision and return the matter to the issuing authority with directions the court considers appropriate, and the issuing authority makes a new decision, the new decision is not subject to review or appeal under this part.
- (2) If the court substitutes another decision, the substituted decision is taken to be the decision of the issuing authority, and the issuing authority may give effect to the decision as if the decision were the original decision of the issuing authority and no application for review or appeal had been made.

Chapter 13 Biosecurity orders and injunctions

Part 1 Biosecurity orders

Division 1 General matters about biosecurity orders

373 Giving biosecurity order

- (1) If an authorised officer reasonably believes that a person has failed, or may fail, to discharge the person's general biosecurity obligation at a place, the authorised officer may give the person (the *recipient*) an order (a *biosecurity order*).
- (2) The authorised officer may give the person the biosecurity order regardless of the circumstances in which the authorised officer forms the belief.

Examples—

- 1 An authorised officer enters a place under a biosecurity emergency order made for responding to an outbreak of equine influenza. The authorised officer notices Mexican feather grass (an invasive plant that is restricted matter) at the place. The authorised officer may give the occupier of the place a biosecurity order for the Mexican feather grass.
- 2 Under a prevention and control program, an authorised officer appointed by the chief executive enters a place to which the program applies. The biosecurity matter the subject of the program is red imported fire ants. The authorised officer notices the person is keeping tilapia at the place. Tilapia is category 7 restricted matter. The authorised officer may give the occupier of the place a biosecurity order for the tilapia.
- (3) A biosecurity order must be directed at ensuring the recipient discharges his or her general biosecurity obligation at the place, and may in particular be directed at ensuring the recipient discharges the general biosecurity obligation for particular biosecurity matter.

- (4) The biosecurity order may state that an authorised officer proposes, at a stated time or at stated intervals, to enter any of the following where biosecurity matter or a carrier, the subject of the order, is kept to check compliance with the order—
- (a) the place;
 - (b) a vehicle of which the recipient is the person in control;
 - (c) another place of which the recipient is the occupier.

Note—

See section 270 for the procedure for entry to check compliance with a biosecurity order.

- (5) The biosecurity order may state how the recipient may show that the stated action has been taken.

374 Matters that must be included in biosecurity order

- (1) A biosecurity order must state each of the following—
- (a) the name and address of the recipient, or any other identifying information about the recipient that the authorised officer can reasonably obtain;
 - (b) if the authorised officer reasonably believes the recipient has failed to discharge the recipient's general biosecurity obligation—the way in which the recipient has failed to discharge the recipient's general biosecurity obligation;
 - (c) the place where the recipient failed, or may fail, to discharge the recipient's general biosecurity obligation;
 - (d) the action the recipient must take at the place to prevent or reduce the biosecurity risk arising from the recipient's failure, or possible failure, to discharge the recipient's general biosecurity obligation;
 - (e) the period within which the action must be taken;
 - (f) the action, if any, the recipient must take to show the recipient is complying with the biosecurity order and the period within which the action must be taken;

Example—

photos, taken before, during and after treatment, of land infested with restricted matter

- (g) the name of the authorised officer;
 - (h) the name, address and contact details of the issuing authority for the biosecurity order;
 - (i) that it is an offence for the recipient not to comply with the order unless the recipient has a reasonable excuse.
- (2) The period stated under subsection (1)(e) must be reasonable having regard to the biosecurity risk arising from the recipient's failure, or possible failure, to discharge his or her general biosecurity obligation.
- (3) The biosecurity order must also set out, or state the effect of, sections 262 and 263.

375 What biosecurity order may require

Without limiting sections 373 and 374, the biosecurity order may require the recipient to do any of the following at the place—

- (a) treat in a stated way, or refrain from treating, a carrier of biosecurity matter to control the biosecurity matter or to lessen the risk of the spread of the biosecurity matter;
- (b) dispose of biosecurity matter or a carrier in a stated way, including by burning or burying it or by depositing it at a place where waste is deposited or disposed of;
- (c) destroy, or cause the destruction of, biosecurity matter or a carrier at the place in a stated way;
- (d) control or eradicate biosecurity matter in a stated way;
- (e) clean or disinfect the place, or part of the place, a person at the place or anything on the person or a carrier at the place in a stated way;
- (f) stop using the place or part of the place, for a stated purpose or a stated period, or until stated action is taken;

- (g) remove biosecurity matter or a carrier from the place to another place and destroy, or cause the destruction of, the biosecurity matter or the carrier at the other place in a stated way;
- (h) prohibit, or restrict in a stated way, the removal of biosecurity matter or a carrier;
- (i) remove biosecurity matter or a carrier from the State or part of the State in a stated way.

376 Requirements for giving biosecurity order

- (1) A biosecurity order must be in writing.
- (2) However, a biosecurity order may be given orally if—
 - (a) for any reason it is not practicable to immediately give the order in writing; and
 - (b) the authorised officer giving the biosecurity order gives the recipient a warning that, without reasonable excuse, it is an offence for the recipient not to comply with the order.
- (3) If the biosecurity order is given in writing, the order must be accompanied by, or include, an information notice for the authorised officer's decision to give the order.
- (4) If the biosecurity order is given orally, the authorised officer must—
 - (a) when giving the order, tell the recipient that—
 - (i) the recipient will be given, as soon as practicable, an information notice for the decision to give the order; and
 - (ii) the recipient is entitled to apply for an internal review of the decision to give the order; and
 - (iii) if the recipient applies for an internal review of the decision to give the order, the recipient may immediately apply for a stay of the decision; and

- (b) as soon as practicable after giving the order, confirm the order by giving the recipient a notice that—
 - (i) states the terms of the order and the date the order was given; and
 - (ii) is accompanied by, or includes, an information notice for the authorised officer's decision to give the order.

377 Compliance with biosecurity order

The recipient of a biosecurity order must comply with the order unless the recipient has a reasonable excuse.

Maximum penalty—800 penalty units.

Note—

If a recipient fails to comply with a biosecurity order, the issuing authority for the order may take action under chapter 10, for example under section 263. Other action may be taken under this Act, for example, under part 2 of this chapter.

378 Approval for particular biosecurity order

- (1) This section applies to a biosecurity order to be given to a person by an authorised person appointed by the chief executive officer of a local government if, in the opinion of the authorised person or chief executive officer, taking the action as mentioned in the biosecurity order, within the period stated in the order, would be likely to stop a business carried on by the person.
- (2) Before the biosecurity order is given, the order must be approved by the chief executive officer.

379 Register of biosecurity orders

- (1) The administering executive of an authorised officer must keep a register of all biosecurity orders given by the authorised officer.

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- (2) The register must contain the following particulars for each biosecurity order—
- (a) the real property description of the land to which it relates;
 - (b) the local government area in which the land is situated;
 - (c) the day the order was given;
 - (d) information about biosecurity matter or any other thing to which the order relates;
 - (e) the action required to be taken under the order;
 - (f) the period stated in the order for taking the action;
 - (g) other information prescribed under a regulation.
- (3) If the administering executive is satisfied that no further action is required in relation to a biosecurity order, the administering executive may remove the order from the register.
- (4) The chief executive may publish the register, or part of the register, on the department's website.
- (5) A person may, on payment of the fee prescribed under a regulation, inspect a register, kept by a chief executive officer of a local government, at the local government's principal place of business when the place is open to the public.
- (6) On application by a person and payment of the fee prescribed under a regulation, a person may buy a copy of all or part of the information held in a register.

Division 2 Recovery of costs and expenses

380 Recovery of costs of taking steps under biosecurity order

- (1) The issuing authority for a biosecurity order may recover the amount that the issuing authority properly and reasonably incurs in taking the steps under section 263 as a debt payable

by the person who failed to take the action to the issuing authority.

- (2) The issuing authority must give the person notice of the amount of the debt.
- (3) For subsection (1), the amount becomes payable 30 days after the issuing authority gives the person notice of the amount of the debt.
- (4) If the issuing authority is a local government, the amount payable to the local government is, for the purposes of recovery, taken to be rates owing to the local government.

381 Cost under biosecurity order a charge over land

- (1) This section applies if an amount, including any interest on the amount, (the *unpaid amount*) is payable to a local government by the recipient under a biosecurity order relating to a failure to discharge a general biosecurity obligation on land owned by the recipient.
- (2) The unpaid amount is a charge on the land.
- (3) The local government may register the charge over the land by lodging the following documents with the registrar of titles—
 - (a) a request to register the charge over the land, in the appropriate form;
 - (b) a certificate signed by the local government's chief executive officer stating there is a charge over the land under this section.
- (4) After the charge is registered over the land, the charge has priority over all other encumbrances over the land other than—
 - (a) encumbrances in favour of the State or a government entity; and
 - (b) rates payable to the local government.
- (5) If the unpaid amount is paid, the local government must lodge the following documents with the registrar of titles—

- (a) a request to release the charge over the land, in the appropriate form;
 - (b) a certificate signed by the local government's chief executive officer stating the unpaid amount has been paid.
- (6) This section does not limit any other remedy the local government has to recover the unpaid amount.

Division 3 **Recovery of costs from other persons**

382 Recipient may apply for contribution

- (1) This section applies if the recipient of a biosecurity order has complied with the order and considers another person (the *third party*), whether or not the State, is wholly or partly responsible for the failure to discharge the general biosecurity obligation the subject of the order.
- (2) The recipient may apply to a court for an order (a *cost recovery order*) that the third party reimburse the recipient for part or all of the costs of complying with the biosecurity order.
- (3) The application must—
 - (a) be sworn; and
 - (b) state the grounds on which the application is made; and
 - (c) state the name of the third party; and
 - (d) state the amount sought from the third party; and
 - (e) be accompanied by a copy of the biosecurity order.
- (4) The court may refuse to consider the application until the applicant gives the court all the information the court requires about the application in the way the court requires.

Example—

The court may require additional information supporting the application be given by statutory declaration.

383 Notice of hearing of cost recovery order must be given

- (1) The third party to whom the application relates must be given a notice at least 14 days before the day the application is to be heard.
- (2) The notice—
 - (a) must be accompanied by a copy of the application; and
 - (b) must state—
 - (i) the time when and the place where the application is to be heard; and
 - (ii) that the third party may appear at the hearing and be heard on the application; and
 - (iii) that, if the third party does not appear, the application may be decided in the absence of the third party.
- (3) If the third party appears at the time and place stated in the notice, the third party is entitled to be heard on the application.
- (4) If the third party does not appear at the time and place stated in the notice, the application may be decided in the absence of the third party.

384 When court may make cost recovery order

A court may make a cost recovery order against the third party if it is satisfied—

- (a) a biosecurity order was given to a person; and
- (b) the person has complied with the order and has paid, or is liable to pay, an amount for the cost of complying with the order; and
- (c) the third party is responsible for part or all of the failure to discharge the general biosecurity obligation the subject of the order; and
- (d) a copy of the application for the cost recovery order has been given to the third party.

Part 2 Injunctions

385 Application of pt 2

- (1) This part applies if—
 - (a) a person has engaged, is engaging or is proposing to engage in conduct that constitutes or would constitute an offence under chapter 2; and
 - (b) the chief executive or a chief executive officer has reasonable grounds to believe that an injunction under this part is necessary to mitigate any adverse effect on a biosecurity consideration arising from the conduct.
- (2) In this part, a reference to engaging in conduct may be taken to include a reference to omitting to engage in conduct, if the omission constitutes or would constitute an offence under chapter 2.

386 Who may apply for an injunction

- (1) The chief executive or chief executive officer may apply to the District Court for an injunction in relation to the conduct.
- (2) However, a chief executive officer may apply for an injunction in relation to the conduct only if the conduct relates to invasive biosecurity matter for the local government's area.

387 District Court's powers

- (1) On considering the application for an injunction, the District Court may grant an injunction—
 - (a) restraining the person from engaging in the conduct; and
 - (b) if in the court's opinion it is desirable to do so, requiring the person to do anything.
- (2) The power of the court to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in the conduct; and
 - (b) whether or not the person has previously engaged in the conduct.
- (3) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised—
 - (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; and
 - (b) whether or not the person has previously failed to do the act or thing.
- (4) An interim injunction may be granted under this part until the application is finally decided.
- (5) The District Court may rescind or vary an injunction at any time.
- (6) The powers conferred on the District Court under this part are in addition to, and do not limit, any other powers of the court.

388 Terms of injunction

- (1) The District Court may grant an injunction in the terms the court considers appropriate.
- (2) Without limiting subsection (1), an injunction may be granted restraining a person from carrying on a business or carrying out another activity—
 - (a) for a stated period; or
 - (b) except on stated terms and conditions.
- (3) Also, the court may grant an injunction requiring a person to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the person's conduct.

389 Undertakings as to damages or costs

If the chief executive or a chief executive officer applies for an injunction under this part, no undertaking as to damages or costs may be required to be made.

Chapter 14 Particular agreements between State and other entities

Part 1 Intergovernmental agreements

390 Intergovernmental agreement for recognising biosecurity certificates

An agreement (an *intergovernmental agreement*) entered into by the Minister or the chief executive, for the State, with the Commonwealth or another State may—

- (a) provide for recognition by Queensland of biosecurity certificates given under a law of the Commonwealth or other State that is a corresponding law to this Act; and
- (b) provide for recognition by the Commonwealth or another State of biosecurity certificates given under this Act by accredited certifiers; and
- (c) impose audit, inspection or other requirements on a party to the agreement to ensure the integrity and mutual recognition of certificates mentioned in paragraphs (a) and (b); and
- (d) provide for another matter necessary or convenient to achieve the purposes of this Act.

Part 2 Government and industry agreements

391 Entering into government and industry agreements

- (1) The Minister or the chief executive may, for the State, enter into an agreement (a ***government and industry agreement***)—
- (a) to help achieve the purposes of this Act; and
 - (b) that is between the State and any 1 or more of the following—
 - (i) 1 or more other jurisdictions;
 - (ii) 1 or more local governments;
 - (iii) 1 or more industry bodies;
 - (iv) 1 or more natural resource management bodies;
 - (v) 1 or more other entities.

Example for subparagraph (v)—

utility service provider, port authority

- (2) The agreement may be directed at—
- (a) ensuring a coordinated process for either of the following—
 - (i) responding to a biosecurity event;
 - (ii) sharing, between the parties, the costs related to a biosecurity event; or
 - (b) providing for another matter necessary or convenient to achieve the purposes of this Act.

- (3) In this section—

industry body means a body considered by the participants in a particular industry to be the national or State representative of the industry.

other jurisdiction means the Commonwealth or another State.

392 Content of government and industry agreement

(1) A government and industry agreement may provide for the following—

- (a) measures the parties to the agreement must undertake for—
 - (i) preparing for a biosecurity event; or
 - (ii) preventing, controlling or responding to a biosecurity event; or
 - (iii) undertaking surveillance for biosecurity matter; or
 - (iv) recovering from a biosecurity event; or
 - (v) ongoing management of biosecurity matter that caused a biosecurity event;
- (b) the whole or partial reimbursement of costs incurred, or losses suffered, by a person in complying with an implemented response to a biosecurity event;

Examples of costs that may be incurred by a person in complying with an implemented response—

- costs of eradicating or controlling biosecurity matter
- costs of undertaking a measure to prevent the introduction, reintroduction or spread of biosecurity matter

Examples of losses that may be suffered by a person in complying with an implemented response—

- the value of animals or plants owned by the person that are destroyed to eradicate or control biosecurity matter or to prevent the introduction, reintroduction or spread of biosecurity matter
- the value of production that is foregone because land owned by the person must be left fallow to prevent the introduction, reintroduction or spread of biosecurity matter

- (c) sharing, between the parties to the agreement, of any of the following costs incurred by a party to the agreement—
 - (i) costs of an implemented response to a biosecurity event, including, for example, labour costs, operating expenses and capital expenditure;

- (ii) costs of reimbursing persons for costs incurred, or losses suffered, by them in complying with the implemented response;
 - (d) restrictions applying to cost sharing under the agreement;
Examples of restrictions that may apply to cost sharing under the agreement—
 - only a stated maximum amount is eligible for cost sharing under the agreement
 - only the stated types of costs are eligible for cost sharing under the agreement
 - (e) anything else necessary or convenient for the matters mentioned in paragraphs (a) to (d).
- (2) Subsection (1)(c) does not limit the types of costs that may be subject to cost sharing under the agreement.
- (3) In this section—

implemented response, to a biosecurity event, means action taken in response to the biosecurity event, under a term of a government and industry agreement that states how the parties to the agreement will respond, or decide what their response will be, to the biosecurity event.

Part 3 Compliance agreements and certificates

Division 1 Purpose and effect of compliance agreements

393 Entering into compliance agreements

- (1) The chief executive may, for the State, enter into an agreement (a ***compliance agreement***) that—
- (a) helps achieve the purposes of this Act; and

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- (b) is between the State and a person (the *other party*); and
 - (c) identifies any biosecurity risk matter the subject of the agreement; and
 - (d) provides for—
 - (i) the application of particular procedures relating to the biosecurity risk matter that must be carried out by the other party; and
 - (ii) the records the other party must keep to show compliance with the procedures; and
 - (iii) the supervision, monitoring and testing of the other party's compliance with the procedures.
- (2) A compliance agreement may provide that, in the circumstances and to the extent stated in the agreement, the chief executive may give the other party notice—
- (a) cancelling or amending the agreement; or
 - (b) suspending the operation of the agreement—
 - (i) for a stated period; or
 - (ii) until the happening of a stated event.
- (3) An inspector may give the other party notice of the application of particular procedures that are additional to the procedures contained in the compliance agreement.
- (4) However, the inspector may give notice under subsection (3) only if the inspector is acting under chapter 10, part 3.
- (5) If the inspector gives notice under subsection (3), the procedures stated in the notice are taken to be procedures in the compliance agreement.
- (6) Also, a compliance agreement is of no effect to the extent it purports to authorise an act or omission that is contrary to a biosecurity emergency order, a biosecurity zone regulatory provision or a movement control order.

394 What is a *compliance certificate*

A *compliance certificate* is a certificate—

- (a) issued under a compliance agreement by a person authorised by the other party to the agreement to give the certificate; and
- (b) stating that the measures proposed for preventing or managing exposure to all biosecurity risks relating to the biosecurity risk matter for the agreement have been carried out.

395 Effect of compliance agreement if holding compliance certificate

- (1) This section applies if—
 - (a) the biosecurity risk matter stated in a compliance agreement is the dealing with a particular biosecurity matter or carrier; and
 - (b) a person holds a compliance certificate under the agreement for the biosecurity risk matter.
- (2) An authorised officer may, in exercising powers under this Act relating to the biosecurity risk matter, accept and, without further checking, rely and act on the compliance certificate.

Example—

An authorised officer may release to the other party to a compliance agreement biosecurity matter or a carrier that has been seized under chapter 10, part 4, division 5 if the other party holds a compliance certificate for the biosecurity matter or carrier.

Division 2 Applications for compliance agreements

396 Requirements for application

- (1) A person may apply to the chief executive in the approved form to enter into a compliance agreement with the State.

- (2) The application must state each of the following—
- (a) the details about the applicant that are prescribed under a regulation;
 - (b) a brief description of the nature of the business the applicant conducts, including details of any biosecurity matter or carrier the business deals with, or activity carried out by the business, (the ***biosecurity risk matter***) that may pose a biosecurity risk;
 - (c) the biosecurity risks that are reasonably likely to be associated with the biosecurity risk matter;
 - (d) the measures proposed to prevent or manage exposure to the biosecurity risks and to help achieve the purposes of this Act, including measures—
 - (i) to minimise the likelihood of the applicant’s dealing with biosecurity risk matter causing a biosecurity event; or
 - (ii) to limit the consequences of a biosecurity event caused by the applicant’s dealing with biosecurity risk matter;

Examples—

- hygiene or disinfection practices
 - staff training
 - operating procedures for plant and equipment used in the applicant’s business
 - the implementation of quality assurance measures to ensure the biosecurity risks associated with the biosecurity risk matter are identified, monitored and controlled
- (e) when assessment of the proposed measures mentioned in paragraph (d) will be carried out and the way the measures will be assessed;
 - (f) whether the applicant proposes complying with a recognised way of managing the biosecurity risks for the applicant’s business, including, for example, an Australian standard or a code of practice;

- (g) if the applicant or, if the applicant is a corporation or an incorporated association, if an executive officer of the corporation or a member of the association's management committee has a conviction for a relevant biosecurity offence, other than a spent conviction—details of the offence and the circumstances of its commission;
 - (h) other information prescribed under a regulation relating to control of the biosecurity risks.
- (3) The application must be accompanied by the fee prescribed under a regulation.

397 Consideration of application

The chief executive must consider the application and decide to grant, or refuse to grant, the application.

398 Criteria for deciding application

- (1) The chief executive may grant the application only if satisfied—
- (a) the measures proposed to prevent or manage exposure to the biosecurity risks are suitable for the biosecurity risk matter; and
 - (b) the audit carried out under section 464 shows—
 - (i) the applicant's business has implemented procedures that provide a way for preventing or managing exposure to all biosecurity risks relating to the biosecurity risk matter; and
 - (ii) the applicant can comply with the requirements of the compliance agreement.
- (2) Further, in deciding whether or not to grant the application, the chief executive must consider whether the applicant is a suitable person to enter into a compliance agreement.

399 Inquiry about application

- (1) Before deciding the application, the chief executive—
 - (a) may make inquiries to decide the suitability of the applicant to enter into a compliance agreement; and
 - (b) may, by notice given to the applicant, require the applicant to give the chief executive, within the reasonable period of at least 30 days stated in the notice, further information or a document the chief executive reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with a requirement under subsection (1)(b).
- (3) A notice under subsection (1)(b) must be given to the applicant within 30 days after the chief executive receives the application.
- (4) The information or document under subsection (1)(b) must, if the notice requires, be verified by statutory declaration.

400 Suitability of applicant to enter into compliance agreement

In considering whether an applicant is a suitable person to enter into a compliance agreement, the chief executive must have regard to whether the applicant or, if the applicant is a corporation or an incorporated association, an executive officer of the corporation or a member of the association's management committee—

- (a) has a conviction for a relevant biosecurity offence, other than a spent conviction; or
- (b) has previously entered into a compliance agreement that the chief executive has suspended or cancelled under division 3.

401 Decision on application

- (1) If the chief executive decides to grant the application, the chief executive must—
 - (a) decide the provisions of the compliance agreement; and
 - (b) give the applicant an information notice for the decision that includes the proposed provisions; and
 - (c) on behalf of the State, enter into a compliance agreement with the applicant.
- (2) Without limiting section 393, the provisions of a compliance agreement may include any of the following—
 - (a) that the applicant must comply with a document, including, for example, an Australian standard or a code of practice, in conducting the applicant's business;
 - (b) particular procedures relating to biosecurity matter that must be carried out by the applicant under the agreement;
 - (c) the records the applicant must keep to show compliance with the procedures;
 - (d) agreed procedures for the supervision, monitoring and testing of the applicant's compliance with the procedures;
 - (e) the performance outcomes for the procedures;
 - (f) circumstances in which the agreement can be cancelled or suspended;
 - (g) circumstances in which the agreement can be amended;
 - (h) the way and the intervals in which the applicant is required to report on the applicant's compliance with the agreement and any other matter stated in the agreement;
 - (i) the information, or documents, relating to the applicant's business that the applicant may be required to give the chief executive;
 - (j) the day that the agreement takes effect;

- (k) any other conditions the chief executive considers necessary or desirable to ensure the biosecurity risks that are reasonably likely to be associated with the biosecurity risk matter are prevented or managed.
- (3) A compliance agreement must state its term that is not more than 5 years after the agreement takes effect.

Note—

See sections 393 and 407 for when the chief executive may cancel a compliance agreement.

- (4) If the chief executive decides to refuse the application, the chief executive must as soon as practicable give the applicant an information notice for the decision.

402 Failure to decide application

- (1) Subject to subsections (2) and (3), if the chief executive fails to decide the application within 30 days after its receipt, the failure is taken to be a decision by the chief executive to refuse to grant the application.
- (2) Subsection (3) applies if—
 - (a) a person has made an application to enter into a compliance agreement; and
 - (b) the chief executive has, under section 399(1), required the applicant to give the chief executive further information or a document.
- (3) The chief executive is taken to have refused to grant the application if the chief executive does not decide the application within 30 days after the chief executive receives the further information or document.
- (4) If the application is taken to be refused under this section, the applicant is entitled to be given an information notice by the chief executive for the decision.

Division 3 Suspension and cancellation of compliance agreements

403 Grounds for suspension or cancellation

- (1) Each of the following is a ground for suspending or cancelling a compliance agreement—
 - (a) the other party to the agreement is not, or is no longer, a suitable person to be a party to the agreement;
 - (b) the other party is convicted of an offence against section 409;
 - (c) the chief executive reasonably believes the other party has not complied, or is not complying, with the agreement;
 - (d) a compliance audit of the other party's business identifies a noncompliance with the agreement and the noncompliance is likely to cause a significant biosecurity risk;
 - (e) the chief executive entered into the agreement in reliance on a materially false or misleading representation or declaration of the other party;
 - (f) a ground for cancelling or suspending the agreement has arisen under section 401(2)(f).
- (2) For forming a belief that the ground mentioned in subsection (1)(a) exists, the chief executive may have regard to the matters to which the chief executive may have regard in deciding whether an applicant for entering into a compliance agreement is a suitable person to enter into the agreement.

404 Show cause notice

- (1) This section applies if the chief executive believes a ground exists to suspend or cancel the compliance agreement.
- (2) The chief executive must give the other party to the agreement a notice under this section (a *show cause notice*).

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- (3) The show cause notice must state the following—
- (a) the action the chief executive proposes taking under this division (the *proposed action*);
 - (b) the grounds for the proposed action;
 - (c) an outline of the facts and circumstances forming the basis for the grounds;
 - (d) if the proposed action is suspension of the agreement—the proposed suspension period;
 - (e) that the other party may, within a stated period (the *show cause period*), make written representations to the chief executive to show why the proposed action should not be taken.
- (4) The show cause period must end at least 28 days after the other party is given the show cause notice.

405 Representations about show cause notice

- (1) The other party to the compliance agreement may make written representations about the show cause notice to the chief executive in the show cause period.
- (2) The chief executive must consider all representations (the *accepted representations*) for the show cause notice made under subsection (1).

406 Ending show cause process without further action

If, after considering the accepted representations for the show cause notice, the chief executive no longer believes a ground exists to suspend or cancel the compliance agreement, the chief executive—

- (a) must not take any further action about the show cause notice; and
- (b) must give the other party to the agreement a notice that no further action is to be taken about the show cause notice.

407 Suspension or cancellation

- (1) This section applies if—
 - (a) there are no accepted representations for the show cause notice; or
 - (b) after considering the accepted representations for the show cause notice, the chief executive—
 - (i) still believes a ground exists to suspend or cancel the compliance agreement; and
 - (ii) believes suspension or cancellation of the agreement is warranted.
- (2) The chief executive may—
 - (a) if the proposed action was to suspend the agreement—suspend the agreement for not longer than the proposed suspension period; or
 - (b) if the proposed action was to cancel the agreement—cancel the agreement or suspend it for a period.
- (3) If the chief executive decides to take action under subsection (2), the chief executive must as soon as practicable give the other party to the agreement an information notice for the decision.
- (4) The decision takes effect on the later of the following—
 - (a) the day the information notice is given to the other party;
 - (b) the day stated in the information notice for that purpose.

408 Immediate suspension of compliance agreement for biosecurity risk

- (1) The chief executive may suspend the compliance agreement immediately if the chief executive believes—
 - (a) a ground exists to suspend or cancel the agreement; and

- (b) it is necessary to suspend the agreement immediately because there is an immediate and serious biosecurity risk.
- (2) The suspension—
 - (a) can be effected only by the chief executive giving an information notice to the other party to the agreement about the decision to suspend the agreement, together with a show cause notice; and
 - (b) operates immediately the notices are given to the other party; and
 - (c) continues to operate until the earliest of the following happens—
 - (i) the chief executive cancels the remaining period of the suspension;
 - (ii) the show cause notice is finally dealt with;
 - (iii) 56 days have passed since the notices were given to the other party.

Division 4 Offences about compliance agreements

409 Complying with compliance agreement

- (1) A person who is a party to a compliance agreement with the State must comply with the agreement unless the person has a lawful or reasonable excuse.

Maximum penalty—600 penalty units.

- (2) In a proceeding for an offence against subsection (1), it is a defence for the person to prove that the person took all reasonable steps to comply with the compliance agreement.

410 False statements and false advertising

A person (the *first person*) who is not a party to a compliance agreement must not—

- (a) state, either orally or in writing, anything to another person that is likely to induce the person to believe the first person is a party to a compliance agreement; or
- (b) publish, or cause to be published, an advertisement stating or implying the first person is a party to a compliance agreement.

Maximum penalty—100 penalty units.

Chapter 15 Accredited certifiers

Part 1 Interpretation

411 Definitions for ch 15

In this chapter—

approved biosecurity accreditation scheme means a biosecurity accreditation scheme approved by the chief executive under part 5.

approved operator, for an approved biosecurity accreditation scheme, means a person approved, under part 5, to operate an approved biosecurity accreditation scheme.

biosecurity accreditation scheme see section 435A.

biosecurity accreditation system, of an approved operator of, or an applicant for approval to operate, an approved biosecurity accreditation scheme, means the processes, equipment, personnel and resources developed for operating the scheme.

ICA scheme means the national scheme, based on an intergovernmental agreement, that provides for the operational procedures known generally as Interstate Certification Assurance.

ICA system, of an applicant, means the processes, equipment, personnel and resources developed for use by the applicant for complying with the requirements of each operational procedure identified in the application.

operational procedure means a procedure—

- (a) to identify, prevent, minimise or mitigate the biosecurity risks relating to particular biosecurity matter, a carrier of the matter or activities dealing with the matter; and
- (b) that, if followed, provides a sound basis for issuing a biosecurity certificate in relation to the matter, carrier or activity.

owner, of a biosecurity accreditation scheme, means a person who has the right to manage, administer and change the scheme.

relevant accreditation offence means any of the following offences—

- (a) an offence against this Act;
- (b) an offence against a repealed Act;
- (c) an offence involving the supply or use of a chemical for agricultural purposes, including an offence against a law relating to the supply or use of agricultural chemical products, as defined under the Agvet Code of Queensland applying under the *Agricultural and Veterinary Chemicals (Queensland) Act 1994*;
- (d) an offence against a law applying, or that applied, in the Commonwealth, another State or a foreign country if the offence substantially corresponds to an offence mentioned in paragraph (a), (b) or (c).

Part 2

Purpose and operation of biosecurity certificates and the accreditation system

412 What is a *biosecurity certificate*

A *biosecurity certificate* is a certificate about whether stated biosecurity matter or another stated thing, including, for example, a carrier of prohibited matter or restricted matter—

- (a) is free of any stated prohibited matter or restricted matter; or
- (b) is free of any stated regulated biosecurity matter; or
- (c) is, for the purposes of a law that is a corresponding law to this Act, free of any stated biosecurity matter; or
- (d) is in a stated condition; or
- (e) is from a stated area; or
- (f) has been the subject of a stated treatment; or
- (g) meets stated requirements, including, for example, that it complies with requirements for certification as stated in an accreditation.

413 Purpose and operation of acceptable biosecurity certificates

- (1) An acceptable biosecurity certificate is intended to provide a convenient basis on which a person may be taken to comply with, or may be exempted from, particular requirements of this Act or of a corresponding law to this Act about prohibited or restricted matter or about biosecurity matter that may pose a risk to a biosecurity consideration.
- (2) Subsection (3) applies if—
 - (a) an accredited certifier, in compliance with this Act, gives a biosecurity certificate for biosecurity matter or

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- another stated thing (an *acceptable biosecurity certificate*); or
- (b) an interstate accredited certifier or interstate officer, in compliance with a corresponding law to this Act, gives a biosecurity certificate, however called, for biosecurity matter or another stated thing, and there is an intergovernmental agreement that provides for recognition in Queensland of the certificate (also an *acceptable biosecurity certificate*); or
 - (c) an interstate officer, in compliance with a corresponding law to this Act, gives a certificate that is, or is in the nature of, a biosecurity certificate, however called, for biosecurity matter or another stated thing (also an *acceptable biosecurity certificate*).
- (3) If the acceptable biosecurity certificate makes a statement about the existence of a fact, an authorised officer may accept and, without further checking, rely and act on the acceptable biosecurity certificate.

Example—

An authorised officer's functions include carrying out an inspection of a carrier of biosecurity matter. An acceptable biosecurity certificate has been given for the biosecurity matter stating that the measures stated for preventing or managing exposure to biosecurity risks relating to the biosecurity matter have been carried out. The authorised officer is not required to carry out the inspection of the carrier.

- (4) In this section—

interstate accredited certifier means a person who holds accreditation, however called, in another State under a corresponding law to this Act and the accreditation is recognised, under an intergovernmental agreement, as being equivalent to accreditation held by an accredited certifier.

interstate officer means a person who holds a position, however called, equivalent to an authorised officer in a department of the Commonwealth or of another State that deals with the same matters as this Act or a provision of this Act under a corresponding law to this Act.

414 Purpose and operation of accreditation system

The purpose of the accreditation system under this chapter is to allow for persons to gain accreditation for the purposes of giving biosecurity certificates under this Act.

415 Giving biosecurity certificates

- (1) An accredited certifier may refuse to give a person a biosecurity certificate if the accredited certifier has not, to the accredited certifier's reasonable satisfaction, done any of the following in relation to anything intended to be the subject of the certificate—
 - (a) inspect, test or treat the thing;
 - (b) take samples of the thing;
 - (c) supervise the treatment or grading of the thing;
 - (d) examine materials or equipment used to treat or grade the thing;
 - (e) do anything else the accredited certifier reasonably considers necessary or beneficial for the purposes of giving the biosecurity certificate.
- (2) A biosecurity certificate may be given under this Act personally by an accredited certifier or, if accreditation conditions permit, by another person acting under the direction of the accredited certifier.
- (3) Subject to accreditation conditions and to this Act, an accredited certifier may give a biosecurity certificate in relation to the person's own biosecurity matter or other thing or another person's biosecurity matter or other thing.

Part 3 Accreditation of inspector or authorised person

416 Application of part limited to authorised officers appointed by chief executive

- (1) This part applies to an inspector only if the inspector was appointed by the chief executive under chapter 10, part 1, division 1.
- (2) This part applies to an authorised person only if the authorised person was appointed by the chief executive under chapter 10, part 1, division 2.

417 Accreditation of inspectors

An inspector is an accredited certifier subject to any conditions, including limitations—

- (a) included in the inspector's instrument of appointment as an inspector; or
- (b) as advised to the inspector from time to time by the chief executive.

418 Accreditation of authorised persons appointed by chief executive

- (1) A person appointed as an authorised person by the chief executive is an accredited certifier if—
 - (a) the authorised person's accreditation is provided for in the authorised person's instrument of appointment or in any advice given to the authorised person by the chief executive at any time after appointment; and
 - (b) the chief executive has not withdrawn the accreditation by advice given to the authorised person.
- (2) The authorised person's accreditation is subject to any conditions, including limitations—

- (a) included in the authorised person's instrument of appointment as an authorised person; or
- (b) as advised to the authorised person from time to time by the chief executive.

419 Fees

A regulation may provide for the fees payable for the giving of a biosecurity certificate by an authorised officer who is also an accredited certifier.

Part 4 Accreditation by chief executive

Division 1 Application for accreditation

420 Application for accreditation

- (1) A person may apply to the chief executive for the grant of an accreditation.
- (2) An application for accreditation must—
 - (a) be made in the approved form; and
 - (b) be accompanied by the fee prescribed under a regulation.
- (3) If the applicant or, if the applicant is a corporation or an incorporated association, if an executive officer of the corporation or a member of the association's management committee has a conviction for a relevant accreditation offence, other than a spent conviction, the application must include details of the offence and the circumstances of its commission.
- (4) Subsection (3) does not limit the information that may be required under the approved form.

- (5) A person who applies to the chief executive for a grant of an accreditation must not, in making the application, give the chief executive information that the person knows or ought reasonably to know is false or misleading in a material particular.

Maximum penalty—200 penalty units.

421 Additional application requirements for ICA scheme

If the grant of accreditation is for the purposes of the applicant's participation in the ICA scheme, the application must—

- (a) identify the operational procedures provided for under the scheme and that are directly relevant to the proposed grant of accreditation; and
- (b) include details of the applicant's ICA system relevant to each operational procedure; and
- (c) identify the biosecurity matter to be covered by the accreditation; and
- (d) if relevant to the accreditation, identify the chemicals to be covered by the accreditation and include evidence that the applicant is suitably authorised to deal with the chemicals.

422 Consideration of application

The chief executive must consider the application and decide to—

- (a) grant the accreditation applied for or another accreditation; or
- (b) grant the accreditation on conditions; or
- (c) refuse to grant the accreditation.

423 Criteria for granting accreditation

- (1) The chief executive may grant accreditation only if satisfied the applicant—
 - (a) has the necessary expertise or experience to perform the functions of an accredited certifier; and
 - (b) is a suitable person to be an accredited certifier.
- (2) Subsections (3) and (4) apply if the grant of accreditation is for the purposes of the applicant's participation in the ICA scheme.
- (3) The chief executive must ensure that an audit is conducted of each of the applicant's ICA systems, or proposed ICA systems, relevant to the application, and must have regard to the results of the audit in deciding whether to grant accreditation.
- (4) Without limiting subsection (3), the chief executive must have regard to whether each ICA system or proposed ICA system satisfies the requirements of any operational procedure to which the system is directed.

424 Inquiry about application

- (1) Before deciding the application, the chief executive—
 - (a) may make inquiries to decide the suitability of the applicant to be an accredited certifier; and
 - (b) may, by notice given to the applicant, require the applicant to give the chief executive within the reasonable period of at least 30 days stated in the notice, further information or a document the chief executive reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with a requirement under subsection (1)(b).
- (3) A notice under subsection (1)(b) must be given to the applicant within 30 days after the chief executive receives the application.

- (4) The information or document under subsection (1)(b) must, if the notice requires, be verified by statutory declaration.

425 Suitability of person for accreditation

In deciding whether the applicant is a suitable person for accreditation, the chief executive may have regard to the following—

- (a) whether the applicant has been refused an accreditation under this Act or a similar accreditation under a repealed Act or a corresponding law to this Act;
- (b) whether the applicant held an accreditation under this Act or a similar accreditation under a repealed Act or a corresponding law to this Act, that was suspended or cancelled;
- (c) whether the applicant or, if the applicant is a corporation or an incorporated association, whether an executive officer of the corporation or a member of the association's management committee has a conviction for a relevant accreditation offence, other than a spent conviction;
- (d) any other matter the chief executive considers relevant to the person's ability to perform the functions of an accredited certifier.

426 Decision on application

- (1) If the chief executive decides to grant the accreditation, the chief executive must give the accreditation to the applicant.
- (2) If the chief executive decides to refuse to grant the accreditation, or to impose conditions on the accreditation under section 430(1), the chief executive must as soon as practicable give the applicant an information notice for the decision.

427 Failure to decide application

- (1) Subject to subsections (2) and (3), if the chief executive fails to decide the application within 30 days after its receipt, the failure is taken to be a decision by the chief executive to refuse to grant the application.
- (2) Subsection (3) applies if—
 - (a) a person has made an application for an accreditation; and
 - (b) the chief executive has, under section 424(1)(b), required the applicant to give the chief executive further information or a document.
- (3) The chief executive is taken to have refused to grant the accreditation if the chief executive does not decide the application within 30 days after the chief executive receives the further information or document.
- (4) If the application is taken to be refused under this section, the applicant is entitled to be given an information notice by the chief executive for the decision.

428 Term of accreditation

Unless sooner cancelled or suspended, an accreditation remains in force for the period, of not more than 3 years, decided by the chief executive and stated in the accreditation.

429 Form of accreditation

An accreditation may be given in a way the chief executive considers appropriate.

Example—

The chief executive may give an accreditation in the form of a certificate, or an agreement or arrangement with the accredited certifier.

430 Accreditation conditions

- (1) The chief executive may grant an accreditation on conditions (*accreditation conditions*).
- (2) A condition may provide for any of the following—
 - (a) the particular type of biosecurity certificate the accredited certifier may give;
 - (b) conditions on which a biosecurity certificate may be given;
 - (c) other restrictions on the use of the accreditation;
 - (d) security for the performance of the conditions by the accredited certifier and the enforcement of the security, even if there is a penalty or liability under this Act;
 - (e) payment to the chief executive by the accredited certifier of the reasonable costs stated in the conditions for ensuring that the conditions are complied with;
 - (f) records required to be kept by the accredited certifier;
 - (g) auditing of the accredited certifier's activities as an accredited certifier;
 - (h) providing information to the chief executive as and when required by the chief executive;
 - (i) another matter prescribed under a regulation.
- (3) Subsection (2) does not limit conditions that may be imposed by the chief executive.
- (4) The chief executive may impose conditions when the accreditation is issued or renewed.
- (5) In this section—

security includes mortgage, bond, insurance and surety.

Division 2 Register

431 Register

- (1) The chief executive must keep a register of accredited certifiers.
- (2) The register must contain the following particulars for each accredited certifier—
 - (a) the accredited certifier's name and contact details;
 - (b) the accreditation conditions imposed on the accredited certifier's accreditation;
 - (c) the term of the accreditation.
- (3) The register may be kept in the form, including electronic form, the chief executive considers appropriate.
- (4) The chief executive may publish the register on the department's website.

Division 3 Renewal of accreditations

431A Application of division

This division does not apply to an accredited certifier who holds accreditation under an approved biosecurity accreditation scheme.

432 Application for renewal

- (1) An accredited certifier may apply to the chief executive for renewal of the person's accreditation.
- (2) The application must—
 - (a) be made within 60 days before the term of the accreditation ends; and
 - (b) be made in the approved form; and

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- (c) be accompanied by the fee prescribed under a regulation.
- (3) The chief executive must consider the application and decide to renew, or refuse to renew, the accreditation.
- (4) In deciding the application, the chief executive may have regard to the matters to which the chief executive may have regard in deciding whether an applicant for an accreditation is a suitable person to be an accredited certifier.
- (5) If the chief executive decides to refuse to renew the accreditation, or to impose conditions on the accreditation, the chief executive must as soon as practicable give the applicant an information notice for the decision.
- (6) An accreditation may be renewed by issuing another accreditation to replace it.

433 Inquiry about application

- (1) Before deciding an application under this part for renewal of a person's accreditation, the chief executive may, by notice given to the applicant, require the applicant to give the chief executive, within the reasonable period of at least 30 days stated in the notice, further information or a document the chief executive reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.
- (3) A notice under subsection (1) must be given to the applicant within 30 days after the chief executive receives the application.
- (4) The information or document under subsection (1) must, if the notice requires, be verified by statutory declaration.

434 Failure to decide application

- (1) Subject to subsections (2) and (3), if the chief executive fails to decide the application within 30 days after its receipt, the

failure is taken to be a decision by the chief executive to refuse to grant the application.

- (2) Subsection (3) applies if—
 - (a) a person has made an application for renewal of the person's accreditation; and
 - (b) the chief executive has, under section 433(1), required the applicant to give the chief executive further information or a document.
- (3) The chief executive is taken to have refused to grant the application if the chief executive does not decide the application within 30 days after the chief executive receives the further information or document.
- (4) If the application is taken to be refused under this section, the applicant is entitled to be given an information notice by the chief executive for the decision.

435 Accreditation continues pending decision about renewal

- (1) If an accredited certifier applies for renewal of an accreditation under this part, the accreditation is taken to continue in force from the day it would, apart from this section, have ended until the application is decided or, under this part, taken to have been decided or is taken to have been withdrawn.
- (2) However, if the chief executive decides to refuse to renew the accreditation, or is taken to refuse to renew the accreditation, the accreditation continues in force until the information notice for the decision is given to the applicant.
- (3) Subsection (1) does not apply if the accreditation is earlier suspended or cancelled.

Part 5 **Approved biosecurity accreditation schemes**

Division 1 **Preliminary**

435A What is a *biosecurity accreditation scheme*

A *biosecurity accreditation scheme* is a scheme that provides for the following functions—

- (a) accrediting persons to issue biosecurity certificates under the scheme, including—
 - (i) the terms and conditions of accreditation; and
 - (ii) auditing a person's activities under an accreditation; and
 - (iii) responding to a person's noncompliance with the person's accreditation, including by suspending or cancelling the accreditation;
- (b) reviewing decisions made, and resolving disputes, under the scheme;
- (c) developing, and seeking appropriate approval of, operational procedures to apply under the scheme.

Division 2 **Application for approval**

435B Applying for approval of biosecurity accreditation scheme

- (1) The owner of a biosecurity accreditation scheme may apply to the chief executive for approval of the scheme.
- (2) The application must be accompanied by a document that sets out—

[s 435C]

- (a) governance and administration arrangements for the ownership, operation and management of the scheme; and
 - (b) arrangements, procedures and controls for each of the functions of a biosecurity accreditation scheme mentioned in section 435A.
- (3) Subsection (2) does not limit the information that may be required under the approved form for the application for approval.

435C Criteria for approving a biosecurity accreditation scheme

The chief executive may approve a biosecurity accreditation scheme if the chief executive is satisfied the scheme has—

- (a) governance and administration arrangements that appropriately provide for the ownership, operation and management of the scheme; and
- (b) arrangements, procedures and controls that provide a sound basis for the operation of a biosecurity accreditation scheme that provides for each of the functions mentioned in section 435A.

Division 3 Approval to operate approved biosecurity accreditation scheme

435D Applying for approval to operate approved biosecurity accreditation scheme

- (1) A person may apply to the chief executive for approval to operate an approved biosecurity accreditation scheme.
- (2) An application for approval must—
 - (a) identify the scheme; and
 - (b) identify the places where the applicant proposes to implement and operate the scheme; and

- (c) include details of the applicant's proposed plan for operating the scheme; and
 - (d) include details of the applicant's biosecurity accreditation system relevant to the scheme.
- (3) Subsection (2) does not limit the information that may be required under the approved form for the application for approval.

435E Criteria for approving operator

- (1) The chief executive may approve a person to operate an approved biosecurity accreditation scheme only if satisfied the person—
- (a) has the necessary expertise and experience to implement and operate the scheme; and
 - (b) is a suitable person to operate the scheme; and
 - (c) can implement and operate the scheme effectively and comply with any proposed approval conditions.
- (2) The chief executive must—
- (a) ensure an audit is conducted of the applicant's biosecurity accreditation system, or proposed biosecurity accreditation system, relevant to the application; and
 - (b) consider the results of the audit when deciding whether to grant the approval.

435F Suitability of person for approval as operator

When deciding whether the applicant is a suitable person to operate an approved biosecurity accreditation scheme, the chief executive may consider—

- (a) whether the applicant has been refused approval to operate an approved biosecurity accreditation scheme under this Act or a similar approval under a corresponding law; and

- (b) whether the applicant has been approved to operate an approved biosecurity accreditation scheme under this Act or a similar approval under a corresponding law, and whether that approval was suspended or cancelled; and
- (c) whether the applicant has been refused an accreditation under this Act or a similar accreditation under a repealed Act or a corresponding law; and
- (d) whether the applicant held an accreditation under this Act or a similar accreditation under a repealed Act or a corresponding law, that was suspended or cancelled; and
- (e) whether any of the following persons have a conviction for a relevant accreditation offence, other than a spent conviction—
 - (i) the applicant;
 - (ii) if the applicant is a corporation—an executive officer of the corporation;
 - (iii) if the applicant is an incorporated association—a member of the association’s management committee; and
- (f) any other matter the chief executive considers relevant to the person’s suitability to operate the scheme.

435G Term of approval

Unless sooner suspended or cancelled, an approval to operate an approved biosecurity accreditation scheme remains in force for the period, of not more than 3 years, decided by the chief executive and stated in the approval.

435H Approval conditions

- (1) This section applies if the chief executive approves a person to operate an approved biosecurity accreditation scheme.
- (2) The approval is granted on the following conditions (*approval conditions*)—

- (a) the approved operator must implement and comply with the approved biosecurity accreditation scheme;
- (b) the approved operator may only accredit, however described, a person under the scheme to give biosecurity certificates if the person has the necessary expertise or experience to perform the functions of an accredited certifier under the scheme;
- (c) the approved operator must have a compliance audit of the operator's operation of the scheme at the intervals stated in the conditions;
- (d) the approved operator must keep a register of accredited certifiers under the scheme that contains the following particulars for each accredited certifier—
 - (i) the accredited certifier's name and contact details;
 - (ii) the conditions imposed on the accredited certifier's accreditation;
 - (iii) the term of the accreditation.
- (3) The chief executive may grant the approval on other conditions (also *approval conditions*).
- (4) Another condition may provide for any of the following—
 - (a) the particular type of biosecurity certificate that may be given under the scheme;
 - (b) conditions on which a biosecurity certificate may be given under the scheme;
 - (c) other restrictions on the operation of the scheme;
 - (d) records required to be kept by the approved operator;
 - (e) providing information to the chief executive as and when required by the chief executive;
 - (f) another matter prescribed by regulation.
- (5) Subsection (2) does not limit the conditions that may be imposed by the chief executive.

- (6) The chief executive may impose conditions when the approval is granted, amended or renewed.

Division 4 Renewal of approval to operate scheme

435I Applying for renewal

- (1) An approved operator for an approved biosecurity accreditation scheme may apply to the chief executive for renewal of the person's approval to operate the scheme.
- (2) The application must be made within 60 days before the term of the approval ends.

435J Deciding renewal application

- (1) When deciding the application, the chief executive may consider the matters the chief executive may consider when deciding whether an applicant for approval to operate an approved biosecurity accreditation scheme is a suitable person to operate the scheme.
- (2) An approval may be renewed by issuing another approval to replace it.

435K Accreditation continues pending decision about renewal

- (1) This section applies if an approved operator of an approved biosecurity accreditation scheme applies for renewal of the approval to operate the scheme.
- (2) The approval continues in force until—
 - (a) the application is withdrawn or taken to have been withdrawn under this division; or
 - (b) if the chief executive decides to approve the application for renewal—the application is decided; or

- (c) if the chief executive decides to refuse the application for renewal, or is taken to refuse the application for renewal—the chief executive gives an information notice for the decision to the applicant.
- (3) Subsection (2) does not apply if the approval is earlier suspended or cancelled.

Division 5 General provisions for applications

435L Application of division

This division applies for making and deciding applications under this part.

435M Form of application

- (1) An application must be made in the approved form.
- (2) The following applications for approval may be combined—
 - (a) an application for approval of a biosecurity accreditation scheme;
 - (b) an application by the owner of the scheme to be an approved operator of the scheme.
- (3) If any of the following persons have a conviction for a relevant accreditation offence, other than a spent conviction, the application must include details of the offence and the circumstances of its commission—
 - (a) the applicant;
 - (b) for an applicant that is a corporation—an executive officer of the corporation;
 - (c) for an applicant that is an incorporated association—a member of the association’s management committee.
- (4) Subsection (3) does not limit the information that may be required under the approved form.

435N Giving false or misleading information

A person who applies to the chief executive under this division must not give the chief executive information for the application that the person knows or ought reasonably to know is false or misleading in a material particular, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

435O Consideration of application

The chief executive must consider the application and decide to—

- (a) approve the application; or
- (b) approve the application on conditions; or
- (c) refuse to approve the application.

435P Inquiry about application

- (1) Before deciding the application, the chief executive—
 - (a) may make inquiries to decide the suitability of the applicant under section 435E (1)(b); and
 - (b) may, by a notice given to the applicant, require the applicant to give the chief executive within the reasonable period of at least 30 days stated in the notice, further information or a document the chief executive reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with a requirement under subsection (1)(b).
- (3) A notice under subsection (1)(b) must be given to the applicant within 30 days after the chief executive receives the application.
- (4) The information or document under subsection (1)(b) must, if the notice requires, be verified by statutory declaration.