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**260 Power to enter place to ascertain if biosecurity risk exists**

- (1) This section applies if an authorised officer reasonably believes there may be a biosecurity risk at a place.
- (2) The authorised officer may, at reasonable times, enter the place to find out whether there is a biosecurity risk at the place.

*Notes—*

- 1 See, however, the restrictions on entry under section 259(2).
- 2 See section 269 for the procedure for entry under this section.

**261 Power to enter place under biosecurity program**

- (1) This section applies to a place situated in an area to which a biosecurity program applies.
- (2) However, this section does not apply to the carrying out of an aerial control measure for biosecurity matter under section 294 that is authorised by a biosecurity program in relation to a place.
- (3) An authorised officer may, at reasonable times, enter the place to take any action authorised by the biosecurity program.

*Notes—*

- 1 See, however, the restrictions on entry under section 259(2).
- 2 See section 270 for the procedure for entry under this section.

**262 Power to enter place to check compliance with biosecurity order**

- (1) This section applies if a person has been given a biosecurity order for a biosecurity risk at a place.
- (2) An authorised officer may, at reasonable times, enter the place to check whether the order has been complied with.

*Notes—*

- 1 See, however, the restrictions on entry under section 259(2).
- 2 See section 270 for the procedure for entry under this section.

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

- (1) This section applies if—
- (a) a person has been given a biosecurity order for a biosecurity risk at a place or because a biosecurity risk may happen at a place; and
  - (b) the biosecurity order requires the person to take steps at the place to remove or reduce the biosecurity risk or prevent the biosecurity risk from recurring; and
  - (c) the person has failed to take the steps as required by the order.
- (2) The issuing authority by its employees or agents, or an authorised officer, may at reasonable times enter the place to take the steps stated in the order.

*Notes—*

- 1 See, however, the restrictions on entry under section 259(2).
- 2 See section 271 for the procedure for entry under this section.

**264 Power to enter place to take action required under direction**

- (1) This section applies if—
- (a) an authorised officer gives a person a direction under this Act other than under a biosecurity order; and
- Example of a direction under this Act—*
- a direction under a biosecurity program, a biosecurity emergency order or a movement control order
- (b) the person fails to take the action required under the direction.
- (2) The issuing authority by its employees or agents, or an authorised officer, may at reasonable times enter the place the subject of the direction and take the action at the place that is required under the direction.

*Notes—*

- 1 See, however, the restrictions on entry under section 259(2).

2 See section 271 for the procedure for entry under this section.

## **Division 2                      Entry by consent**

### **265      Application of div 2**

This division applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 259(1)(a).

### **266      Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, the authorised officer may, without the occupier's consent or a warrant—

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

### **267      Matters authorised officer must tell occupier**

Before asking for the consent, the authorised officer must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

## **268 Consent acknowledgement**

- (1) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers intended to be exercised; and
  - (b) the following has been explained to the occupier—
    - (i) the purpose of the entry, including the powers intended to be exercised;
    - (ii) that the occupier is not required to consent; and
  - (c) the occupier gives the authorised officer or another authorised officer consent to enter the place and exercise the powers; and
  - (d) the time and day the consent was given; and
  - (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.
- (4) However, if it is impractical for the authorised officer to give the occupier a copy of the acknowledgement immediately, the authorised officer must give the copy as soon as practicable.
- (5) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (2) for the entry is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

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## **Division 3                      Entry for particular purposes**

### **269      Entry of place under s 260**

- (1) This section applies to an authorised officer intending to enter a place under section 260.
- (2) The authorised officer must, before entering the place, make a reasonable attempt to locate an occupier and obtain the occupier's consent to the entry.

*Note—*

See division 2.

- (3) If the occupier refuses to consent to the entry, the authorised officer must not enter the place unless the entry is under a warrant.
- (4) If the authorised officer is unable to locate an occupier after making a reasonable attempt to do so, the authorised officer may enter the place.
- (5) If the authorised officer enters the place after being unable to locate an occupier, the authorised officer must leave a notice in a conspicuous position and in a reasonably secure way stating the date, time and purpose of the entry.

### **270      Entry of place under ss 261 and 262**

- (1) This section applies to an authorised officer intending to enter a place under section 261 or 262.
- (2) The authorised officer must, before entering the place, make a reasonable attempt to locate an occupier and obtain the occupier's consent to the entry.

*Note—*

See division 2.

- (3) The authorised officer may enter the place if—
  - (a) the authorised officer is unable to locate an occupier after making a reasonable attempt to do so; or
  - (b) the occupier refuses to consent to the entry.

- (4) If, after the authorised officer enters the place under subsection (3)(a), the officer finds an occupier present at the place, or if the occupier refuses to consent to the entry, the authorised officer must make reasonable attempts to—
- (a) produce the authorised officer's identity card for the occupier's inspection; and
  - (b) inform the occupier—
    - (i) of the reason for entering the place; and
    - (ii) that the authorised officer is authorised under this Act to enter the place without the permission of the occupier; and
    - (iii) if the entry relates to a biosecurity program—
      - (A) of any steps taken, or to be taken, under the biosecurity program; and
      - (B) if steps have been taken, or are to be taken—that it is an offence to do anything that interferes with a step taken or to be taken.

*Note—*

See, however, the restrictions on entry under section 259(2).

- (5) If the authorised officer does not find an occupier present at the place, the authorised officer must leave a notice in a conspicuous position and in a reasonably secure way stating the date and time of the entry and information addressing the matters mentioned in subsection (4)(b).

## **271 Entry of place under ss 263 and 264**

- (1) This section applies to the issuing authority by its employees or agents, or an authorised officer, intending to enter a place under section 263 or 264.
- (2) The person must, before entering the place, make a reasonable attempt to locate an occupier and obtain the occupier's consent to the entry.

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*Note—*

See division 2.

- (3) The person may enter the place if—
  - (a) the person is unable to locate an occupier after making a reasonable attempt to do so; or
  - (b) the occupier refuses to consent to the entry.
- (4) If, after the person enters the place under subsection (3)(a), the person finds an occupier present at the place, or if the occupier refuses to consent to the entry, the person must make reasonable attempts to—
  - (a) either—
    - (i) if the person is an employee or agent of the issuing authority—produce the issuing authority’s written authority to enter the place, and sufficient evidence to identify the person as a person who may enter under the authority, for the occupier’s inspection; or
    - (ii) if the person is an authorised officer—produce the authorised officer’s identity card for the occupier’s inspection; and
  - (b) inform the occupier—
    - (i) of the reason for entering the place; and
    - (ii) that the person is authorised under this Act to enter the place without the permission of the occupier.

*Note—*

See, however, the restrictions on entry under section 259(2).

- (5) If the person does not find an occupier present at the place, the person must leave a notice in a conspicuous position and in a reasonably secure way stating the date, time and purpose of the entry.

## **Division 4                      Entry under warrant**

### **Subdivision 1              Obtaining warrant**

#### **272      Application for warrant**

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

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

#### **273      Issue of warrant**

- (1) The magistrate may issue a warrant for the place only under subsection (2) or (3).
- (2) The magistrate may issue a warrant for the place if the magistrate is satisfied there are reasonable grounds for suspecting that—
  - (a) there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act; or
  - (b) there is a biosecurity risk at the place.
- (3) Also, the magistrate may issue a warrant for the place for the purpose of the authorised officer's performance of the function mentioned in section 256(1)(a) or (b) at the place if—



- (a) the place is a place mentioned in section 259(1)(b) or (d) or a place to which section 259(1)(e) applies; and
- (b) the magistrate is satisfied it is reasonably necessary that the inspector should have access to the place for the purpose of effectively performing the function at the place.

*Example for paragraph (b)—*

The magistrate may be satisfied under paragraph (b) if the inspector has made a reasonable attempt to perform the function at the place without a warrant, but because of obstruction has been unsuccessful.

- (4) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised officer or any authorised officer may, with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the authorised officer's powers; and
  - (c) particulars of the offence, biosecurity risk or other circumstances that the magistrate considers appropriate; and
  - (d) if the warrant is issued under subsection (2), the name of the person suspected of having committed the offence or who caused the biosecurity risk or allowed the biosecurity risk to continue, unless the name is unknown or the magistrate considers it inappropriate to state the name; and
  - (e) the evidence that may be seized under the warrant; and
  - (f) whether the authorised officer may exercise powers under section 320; and
  - (g) if the authorised officer may exercise powers under section 320, the person, if any, who is to pay the costs incurred by the authorised officer in exercising the powers; and

- (h) the hours of the day or night when the place may be entered; and
  - (i) the magistrate's name; and
  - (j) the day and time of the warrant's issue; and
  - (k) except for a warrant allowing for re-entry of the place, the day, within 14 days after the warrant's issue, the warrant ends.
- (5) If the warrant relates to a biosecurity risk, the warrant may also state that an authorised officer may re-enter the place to check compliance with a biosecurity order issued as a result of the authorised officer's entry of the place under the warrant.
- (6) To the extent that the warrant allows for re-entry of the place, it ends on the earlier of the following days—
  - (a) the day that is 7 days after the end of the period stated in the biosecurity order for completing the steps stated in the order;
  - (b) the day stated in the warrant.

## **274 Electronic application**

- (1) An application under section 272 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised officer reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised officer's remote location.
- (2) The application—
  - (a) may not be made before the authorised officer prepares the written application under section 272(2); but
  - (b) may be made before the written application is sworn.

## 275 Additional procedure if electronic application

- (1) For an application made under section 274, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 274; and
  - (b) the way the application was made under section 274 was appropriate.
- (2) After the magistrate issues the original warrant—
  - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised officer the information mentioned in section 273(4); and
    - (ii) the authorised officer must complete a form of warrant including by writing on it the information mentioned in section 273(4) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
  - (a) the written application complying with section 272(2) and (3); and
  - (b) if the authorised officer completed a form of warrant under subsection (2)(b)—the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—

- (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Despite subsection (3), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) the original warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (7) This section does not limit section 272.
- (8) In this section—
- relevant magistrates court***, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

## **276 Defect in relation to a warrant**

- (1) A warrant is not invalidated by a defect in—
- (a) the warrant; or
  - (b) compliance with sections 272 to 274;
- unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
- warrant*** includes a duplicate warrant mentioned in section 275(3).

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## Subdivision 2      Entry procedure

### 277      Entry procedure

- (1) This section applies if an authorised officer is intending to enter a place under a warrant issued under this division.
- (2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person who is an occupier of the place and is present by producing the authorised officer's identity card or another document evidencing the appointment;
  - (b) give the person a copy of the warrant;
  - (c) tell the person the authorised officer is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.
- (3) However, the authorised officer need not comply with subsection (2) if the authorised officer believes on reasonable grounds that immediate entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—

*warrant* includes a duplicate warrant mentioned in section 275(3).

## Part 3                      Emergency powers of inspectors

### 278      Application of pt 3

This part applies if an inspector is satisfied on reasonable grounds—

- (a) an activity is being carried out or there is biosecurity matter at a place, other than a place, or part of a place, used for residential purposes; and
- (b) it is necessary to exercise powers under this part to avoid an imminent and significant biosecurity risk from the activity or biosecurity matter.

## **279 Power and procedure for entry**

- (1) The inspector may, without a warrant or the consent of the occupier of the place, enter the place.
- (2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—
  - (a) comply with section 330(1);
  - (b) tell the occupier the inspector is permitted under this Act to enter the place.
- (3) However, the inspector need not comply with subsection (2) if the inspector reasonably believes that immediate entry to the place is required to avoid an imminent and significant biosecurity risk.

## **280 Power in relation to activity or biosecurity matter**

- (1) The inspector may in relation to the activity or biosecurity matter mentioned in section 278, and to the extent reasonably necessary for managing the activity or matter—
  - (a) direct a person at the place to take stated reasonable steps within a stated reasonable period; or
  - (b) take reasonable steps; or
  - (c) authorise another person to take reasonable steps.
- (2) Without limiting subsection (1), reasonable steps may include steps requiring any person—
  - (a) to remain at the place or not to enter the place; and

- (b) to clean or disinfect the place, a structure or another thing; and
  - (c) to destroy the biosecurity matter or remove the biosecurity matter to another place to destroy it; and
  - (d) to destroy a carrier of the biosecurity matter or remove the carrier to another place to destroy it; and
  - (e) to dispose of the biosecurity matter other than by destroying it; and
  - (f) to do something that assists with a step mentioned in paragraphs (b) to (e); and
  - (g) to stop doing something that may interfere with a step mentioned in paragraphs (b) to (e).
- (3) The direction may be given orally or by notice.
- (4) However, if the direction is given orally, the inspector must as soon as practicable confirm the direction by notice given to the person.
- (5) If the inspector takes the steps, the inspector also may exercise any of the powers of an inspector under this chapter.

## **281 How power may be exercised**

- (1) The inspector may exercise the powers mentioned in sections 279(1) and 280(1)(b) and (5) (the *emergency powers*) with the help, and using the force, that is necessary and reasonable in the circumstances.
- (2) In exercising or attempting to exercise emergency powers, an inspector must take all reasonable steps to ensure the inspector causes as little inconvenience to any person at the place, and does as little damage, as is practicable in the circumstances.
- (3) If an inspector authorises a person to take steps under section 280(1)(c)—
- (a) the person may exercise the powers mentioned in section 280(5); and

- (b) the inspector must inform the person—
  - (i) of the steps the person is authorised to take; and
  - (ii) of the person's powers under this part.

## **282 Requirement to give chief executive notice**

An inspector exercising powers under this part must as soon as practicable after exercising the powers give the chief executive notice of the fact.

## **283 Duration of emergency powers**

An inspector exercising powers under this part may exercise the powers only until the earlier of the following—

- (a) the imminent and significant biosecurity risk from the activity being carried out, or from the biosecurity matter, at a place has been avoided;
- (b) 96 hours after the inspector first exercises the powers.

## **284 Failure to comply with inspector's directions in emergency**

A person to whom a direction is given under 280(1)(a) must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—2000 penalty units.

## **285 Inspector's powers not affected**

This part does not limit any power an inspector has apart from the part.



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## **Part 4                      Other authorised officers’ powers and related matters**

### **Division 1                Stopping or moving vehicles**

#### **286      Application of div 1**

This division applies if an authorised officer reasonably suspects, or is aware, that—

- (a) a thing in or on a vehicle may provide evidence of the commission of an offence against this Act; or
- (b) a vehicle, or a thing in or on the vehicle, may pose a biosecurity risk.

#### **287      Power to stop or move**

- (1) If the vehicle is moving, the authorised officer may, to exercise his or her powers, signal or otherwise direct the person in control of the vehicle to stop the vehicle and to bring the vehicle to, and keep it at, a convenient place within a reasonable distance to allow the authorised officer to exercise the powers.
- (2) If the vehicle is stopped, the authorised officer may direct the person in control of the vehicle—
  - (a) not to move it until the authorised officer has exercised the authorised officer’s powers; or
  - (b) to move the vehicle to, and keep it at, a stated reasonable place to allow the authorised officer to exercise the powers.
- (3) When giving the direction under subsection (2), the authorised officer must give the person in control an offence warning for the direction.

## **288 Identification requirements if vehicle moving**

- (1) This section applies if the authorised officer proposes to give a direction under section 287(1) and the vehicle is moving.
- (2) The authorised officer must clearly identify himself or herself as an authorised officer exercising the authorised officer's powers.

### *Examples—*

- 1 If the authorised officer is in a moving vehicle, he or she may use a loudhailer to identify himself or herself as an authorised officer exercising powers.
  - 2 If the authorised officer is standing at the side of the road, he or she may use a sign to identify himself or herself as an authorised officer exercising powers.
- (3) When the vehicle stops, the authorised officer must—
    - (a) have with him or her the authorised officer's identity card; and
    - (b) immediately produce the identity card for the inspection of the person in control of the vehicle.
  - (4) Subsection (3) applies despite section 330.

## **289 Failure to comply with direction**

- (1) The person in control of the vehicle must comply with a direction under section 287 unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for the person not to comply with a direction if—
  - (a) the vehicle was moving and the authorised officer did not comply with section 288; or
  - (b) to comply immediately would have endangered someone else or caused loss or damage to property, and the person complies as soon as it is practicable to do so.
- (3) Subsection (2) does not limit subsection (1).

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- (4) A person does not commit an offence against subsection (1) if—
- (a) the direction the person fails to comply with is given under section 287(2); and
  - (b) the person is not given an offence warning for the direction.

## **Division 2                      Stopping or moving travelling animals**

### **290      Application of div 2**

This division applies if an inspector reasonably suspects, or is aware, that an animal travelling on a stock route, or on a reserve for the travelling of animals in association with being travelled on a stock route, may pose a biosecurity risk.

### **291      Power to stop or move**

- (1) If the animal is travelling on the stock route, the inspector may, to exercise his or her powers, signal or otherwise direct the person driving the animal—
- (a) to stop the animal; and
  - (b) either—
    - (i) to drive the animal to, and keep it at, a convenient place within a reasonable distance to allow the inspector to exercise the powers; or
    - (ii) to return the animal to the place where the animal is kept to allow the inspector to exercise the powers.
- (2) If the animal is on a reserve for travelling stock, the inspector may direct the person in control of the animal—
- (a) not to move it until the inspector has exercised the inspector's powers; or

- (b) to drive the animal to, and keep it at, a stated reasonable place to allow the inspector to exercise the powers; or
  - (c) to return the animal to the place where the animal is kept to allow the inspector to exercise the powers.
- (3) When giving the direction under subsection (2), the inspector must give the person in control an offence warning for the direction.

## **292 Identification requirements if animal travelling on stock route**

- (1) This section applies if the inspector proposes to give a direction under section 291(1) and the animal is travelling on the stock route.
- (2) The inspector must clearly identify himself or herself to the person driving the animal as an inspector exercising the inspector's powers.
- (3) When the person driving the animal stops the animal, the inspector must—
  - (a) have with him or her the inspector's identity card; and
  - (b) immediately produce the identity card for the inspection of the person driving the animal.
- (4) Subsection (3) applies despite section 330.

## **293 Failure to comply with direction**

- (1) The person driving the animal or in control of the animal must comply with a direction under section 291 unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for the person not to comply with a direction if—
  - (a) the animal was travelling on the stock route and the inspector did not comply with section 292; or

- (b) to comply immediately would have endangered someone else or caused loss or damage to property, and the person complies as soon as it is practicable to do so.
- (3) Subsection (2) does not limit subsection (1).
- (4) A person does not commit an offence against subsection (1) if—
  - (a) the direction the person fails to comply with is given under section 291(2); and
  - (b) the person is not given an offence warning for the direction.

## Division 3                      Aerial control measures

### 294      **Power to carry out aerial control measures under biosecurity program**

- (1) This section applies if a biosecurity program authorises the carrying out of an aerial control measure for biosecurity matter.
- (2) An authorised officer may carry out, or direct another person to carry out, the aerial control measure for the biosecurity matter in relation to a place.
- (3) The authorised officer must give notice of the proposed aerial control measure for the biosecurity matter to an occupier of the place at least 48 hours before carrying out the measure (the *notice period*) unless—
  - (a) the measure will be carried out from a height of more than 350 feet above the place; or  
*Editor's note—*  
350 feet is approximately 110m
  - (b) it would be impractical to give the notice because the measure will not be effective in controlling the biosecurity matter after the end of the notice period.

*Example for paragraph (b)—*

A biosecurity program authorises spraying pesticide on locusts but a swarm of locusts at a place is likely to move on before notice can be given to an occupier of the place.

*Note—*

Another law may require notice to be given to, or consent to be obtained from, an occupier of a place in the circumstances to which this section applies.

- (4) However, if subsection (3)(b) applies, the authorised officer must make reasonable attempts to advise an occupier of the place about the aerial control measure before the measure is carried out.
- (5) A notice under subsection (3) must include—
  - (a) a description of the biosecurity program authorising the aerial control measure; and
  - (b) a description of the aerial control measure; and
  - (c) the period during which the aerial control measure will be carried out.
- (6) In this section—

***aerial control measure***, for biosecurity matter, means an activity, done from the air by an airborne machine or a person in an aircraft, to achieve a purpose of a biosecurity program and includes the following—

- (a) surveying and monitoring the biosecurity matter;
- (b) distributing an agricultural chemical to control the biosecurity matter.

***airborne machine*** means a machine that can operate in air without carrying a person to pilot the machine.

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## Division 4                      General powers of authorised officers after entering places

### 295      Application of div 4

- (1) The powers under this division may be exercised if an authorised officer enters a place under—
  - (a) section 259(1)(a); or
  - (b) section 259(1)(c); or
  - (c) section 259(1)(d); or
  - (d) section 260; or
  - (e) section 261; or
  - (f) section 262; or
  - (g) section 263; or
  - (h) section 264; or
  - (i) part 3; or
  - (j) chapter 6.
- (2) However, if the authorised officer enters under section 259(1)(a) or (c), the powers under this division are subject to any conditions of the consent or terms of the warrant.

### 296      General powers

- (1) The authorised officer may do any of the following (each a *general power*)—
  - (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at the place;
  - (c) take for examination a thing, or a sample of or from a thing, at the place;
  - (d) place an identifying mark in or on anything at the place;

*Example—*

insert a microchip in a horse's neck to indicate that the horse has equine influenza

- (e) place a sign or notice at the place;

*Example of a sign or notice—*

a notice stating the area is subject to a biosecurity emergency order

- (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
  - (g) take to, into or onto the place and use any person, detection animal, equipment and materials the authorised officer reasonably requires for exercising the authorised officer's powers under this division;
  - (h) destroy biosecurity matter or a carrier if—
    - (i) the authorised officer believes on reasonable grounds the biosecurity matter or carrier poses a significant biosecurity risk; and
    - (ii) the owner of the biosecurity matter or carrier consents to its destruction;
  - (i) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The authorised officer may take a necessary step to allow the exercise of a general power.
  - (3) If the authorised officer takes a document from the place to copy it, the authorised officer must copy and return the document to the place as soon as practicable.
  - (4) If the authorised officer takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised officer must produce the document and return the article or device to the place as soon as practicable.



- (5) In this section—

*examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.

*film* includes photograph, videotape and record an image in another way.

*inspect*, a thing, includes open the thing and examine its contents.

## **297 Power to require reasonable help**

- (1) The authorised officer may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the authorised officer reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the authorised officer must give the person an offence warning for the requirement.

## **298 Offence to contravene help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the defendant under this Act.

*Note—*

See, however, section 328.

## **Division 5                      Seizure by authorised officers and forfeiture**

### **Subdivision 1              Power to seize**

#### **299      Seizing evidence at a place that may be entered without consent or warrant**

- (1) An authorised officer who enters a place the authorised officer may enter under this Act without the consent of an occupier of the place and without a warrant under section 273(2) may seize a thing at the place if the authorised officer reasonably believes the thing is evidence of an offence against this Act.
- (2) Subsection (1) applies even if the entry is under a warrant issued under section 273(3).

#### **300      Seizing evidence at a place that may be entered only with consent or warrant**

- (1) This section applies if—
  - (a) an authorised officer is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
  - (b) the authorised officer enters the place after obtaining the consent or under a warrant issued under section 273(2).
- (2) If the authorised officer enters the place with the occupier's consent, the authorised officer may seize a thing at the place only if—
  - (a) the authorised officer reasonably believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.

- (3) If the authorised officer enters the place under a warrant issued under section 273(2), the authorised officer may seize the evidence for which the warrant was issued.
- (4) The authorised officer also may seize anything else at the place if the authorised officer reasonably believes—
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being—
    - (i) hidden, lost or destroyed; or
    - (ii) used to continue, or repeat, the offence.
- (5) The authorised officer may also seize a thing at the place if the authorised officer reasonably believes it has just been used in committing an offence against this Act.

### **301 Seizure of property subject to security**

- (1) An authorised officer may seize a thing, and exercise powers relating to the thing, despite a lien or other security over it claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised officer or a person acting for the officer.

## **Subdivision 2 Powers to support seizure**

### **302 Requirement of person in control of thing to be seized**

- (1) To enable a thing to be seized, an authorised officer may require the person in control of it—
  - (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a stated reasonable time.
- (2) The requirement—

- (a) must be made by notice; or
- (b) if for any reason it is not practicable to give a notice, may be made orally and confirmed by notice as soon as practicable.

### **303 Offence to contravene seizure requirement**

A person of whom a requirement is made under section 302 must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

### **304 Power to secure seized thing**

- (1) Having seized a thing under this division, an authorised officer may—
  - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the authorised officer may, for example—
  - (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
  - (b) for equipment—make it inoperable; or

*Example—*

  - make it inoperable by dismantling it or removing a component without which the equipment can not be used
  - (c) require a person the authorised officer reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an inspector could do under subsection (1)(a).

### **305 Offence to contravene other seizure requirement**

A person must comply with a requirement made of the person under section 304(2)(c) unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

### **306 Offence to interfere**

- (1) If access to a seized thing is restricted under section 304, a person must not tamper with the thing or with anything used to restrict access to the thing without—

- (a) an authorised officer's approval; or
- (b) a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If access to a place is restricted under section 304, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

- (a) an authorised officer's approval; or
- (b) a reasonable excuse.

Maximum penalty—100 penalty units.

## **Subdivision 3 Safeguards for seized things**

### **307 Receipt and information notice for seized thing**

- (1) This section applies if an authorised officer seizes anything under this division unless—
- (a) the authorised officer reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned; or

- (b) because of the condition, nature and value of the thing it would be unreasonable to require the authorised officer to comply with this section.
- (2) The authorised officer must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—
  - (a) a receipt for the thing that generally describes the thing and its condition; and
  - (b) an information notice for the decision to seize it.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and information notice may—
  - (a) be given in the same document; and
  - (b) relate to more than 1 seized thing.
- (5) The authorised officer may delay giving the receipt and information notice if the authorised officer reasonably suspects giving them may frustrate or otherwise hinder an investigation by the authorised officer under this Act.
- (6) However, the delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

### **308 Access to seized thing**

- (1) Until a seized thing is forfeited or returned, the authorised officer who seized the thing must allow an owner of the thing—
  - (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.

- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

### **309 Return of seized thing**

- (1) This section applies if a seized thing has some intrinsic value and is not—
  - (a) forfeited or transferred under subdivision 4 or 5; or
  - (b) subject to a disposal order under division 6.
- (2) The authorised officer must return the seized thing to an owner—
  - (a) for a thing seized under section 299 or 300—
    - (i) generally—at the end of 6 months after the seizure; or
    - (ii) if a proceeding for an offence involving the thing is started within the 6 months, at the end of the proceeding and any appeal from the proceeding; or
  - (b) for a thing seized under section 320, if—
    - (i) the thing ceases to be a biosecurity risk; or
    - (ii) the authorised officer is satisfied the return of the thing is unlikely to result in the recurrence of the biosecurity risk in relation to which it was seized.
- (3) Despite subsection (2), if the thing was seized as evidence, the authorised officer must return the thing seized to an owner as soon as practicable after the authorised officer is satisfied—
  - (a) its continued retention as evidence is no longer required; and
  - (b) its continued retention is not necessary to prevent it being used to continue, or repeat, an offence against this Act; and
  - (c) it is lawful for the owner to possess it.

- (4) Nothing in this section affects a lien or other security over the seized thing.

## **Subdivision 4      Forfeiture**

### **310      Forfeiture by administrator decision**

- (1) The administrator for a relevant entity may decide a seized thing is forfeited to the relevant entity for the seized thing if an authorised officer—
- (a) after making reasonable inquiries, can not find an owner; or
  - (b) after making reasonable efforts, can not return it to an owner; or
  - (c) for a thing seized under section 320—
    - (i) reasonably considers that, because of the thing's inherent nature or condition, the return of the thing is likely to result in a recurrence of the biosecurity risk in relation to which the thing was seized; or
    - (ii) at the end of 6 months, reasonably believes that the return of the thing is likely to result in a recurrence of the biosecurity risk in relation to which the thing was seized; or
  - (d) reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.
- (2) However, the authorised officer is not required to—
- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
  - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

*Example for paragraph (b)—*

the owner of the thing has migrated to another country



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- (3) Regard must be had to the thing's condition, nature and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.
- (4) The **administrator** for a relevant entity is—
- (a) if the relevant entity is the State—the chief executive; or
  - (b) if the relevant entity is a local government—the chief executive officer of the local government; or
  - (c) if the relevant entity is an invasive animal board—the chairperson of the board.
- (5) The **relevant entity** for a seized thing is—
- (a) if the thing was seized by an authorised officer appointed by the chief executive—the State; or
  - (b) if the thing was seized by an authorised officer appointed by the chief executive officer of a local government—the local government; or
  - (c) if the thing was seized by an authorised officer appointed by 2 or more chief executive officers—the local government for whom the authorised officer was performing his or her functions at the time the thing was seized; or
  - (d) if the thing was seized by an authorised officer appointed by an invasive animal board—the board.

### 311 Forfeiture by chief executive decision

The chief executive may decide a seized thing is forfeited to the State if—

- (a) all of the following apply—
  - (i) an inspector believes a seized thing can be changed to make it comply with this Act;

*Example of a seized thing—*

a bag of seed for sowing containing weed seeds that can be separated and removed from the seed

- (ii) the inspector requires an owner of the thing to do what is reasonable within a stated reasonable time to make it comply;
  - (iii) the owner does not comply with the requirement; or
- (b) an inspector believes, on reasonable grounds—
- (i) a seized thing can not be changed to make it comply with this Act; and

*Example of a seized thing—*

a bag of seed for sowing containing weed seeds that can not be separated and removed from the seed

- (ii) it is necessary to retain it to prevent its use in committing an offence against this Act.

## **312 Information notice for forfeiture decision**

- (1) This section applies if—
  - (a) the administrator for the relevant entity decides under section 310(1) to forfeit a thing; or
  - (b) the chief executive decides under section 311 to forfeit a thing.
- (2) The administrator or chief executive must as soon as practicable give a person who owned the thing immediately before the forfeiture (the **former owner**) an information notice for the decision.
- (3) If the seized thing is forfeited under section 310(1)(a) or (b), the information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (4) The information notice must state that the former owner may apply for a stay of the decision if he or she appeals against the decision.

- (5) However, subsections (1) to (3) do not apply if—
  - (a) the decision was made under section 310(1)(a) or (b); and
  - (b) the place where the thing was seized is—
    - (i) a public place; or
    - (ii) a place where the notice is unlikely to be read by the former owner.

### **313 Forfeiture on conviction**

- (1) On the conviction of a person for an offence against this Act, the court may order the forfeiture to the State or a local government of—
  - (a) anything used to commit the offence; or
  - (b) anything else the subject of the offence.
- (2) The court may make the order—
  - (a) whether or not the thing has been seized; and
  - (b) if the thing has been seized—whether or not the thing has been returned to the former owner of the thing.
- (3) The court may make any order to enforce the forfeiture it considers appropriate.
- (4) This section does not limit the court's powers under another law.

### **314 Procedure and powers for making forfeiture order**

- (1) A forfeiture order may be made on a conviction on the court's initiative or on an application by the prosecution.
- (2) In deciding whether to make a forfeiture order for a thing, the court—
  - (a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and

- (b) must hear any submissions that any person claiming to have any property in the thing may wish to make.

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

### **315      When thing becomes property of relevant entity**

A thing becomes the property of the relevant entity for the thing if the thing is forfeited to the relevant entity under section 310(1).

### **316      When thing becomes property of the State or local government**

- (1) A thing becomes the property of the State if—
  - (a) the chief executive decides the thing is forfeited to the State under section 311; or
  - (b) the thing is forfeited to the State under section 313; or
  - (c) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.
- (2) A thing becomes the property of a local government if the thing is forfeited to the local government under section 313.

*Note—*

A thing may also become the property of the State or a local government under section 315.

### **317      How property may be dealt with**

- (1) This section applies if—
  - (a) under section 315, a thing becomes the property of the relevant entity for the thing; or
  - (b) under section 316, a thing becomes the property of the State or a local government.

- (2) The administrator for the relevant entity, the chief executive or the chief executive officer of the local government (each the **relevant administrator**) may deal with the thing as the relevant administrator considers appropriate, including, for example, by destroying it or giving it away.
- (3) The relevant administrator must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this Act.
- (4) If the relevant administrator sells the thing, the administrator may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing.
- (5) This section is subject to any disposal order made for the thing.

### 318 Power of destruction

An authorised officer may destroy a thing seized under this division if—

- (a) the thing consists wholly or partly of contaminated or decomposed matter; or
- (b) the authorised officer reasonably believes the thing poses an immediate biosecurity risk.

## Division 6 Disposal orders

### 319 Disposal order

- (1) This section applies if a person is convicted of an offence against this Act.
- (2) The court may make an order (a **disposal order**), on its own initiative or on an application by the prosecution, for the disposal of any of the following things owned by the person—
  - (a) anything that was the subject of, or used to commit, the offence;

- (b) another thing the court considers is likely to be used by the person or another person in committing a further offence against this Act.
- (3) The court may make a disposal order for a thing—
  - (a) whether or not it has been seized under this Act; and
  - (b) if the thing has been seized—whether or not it has been returned to the former owner.
- (4) In deciding whether to make a disposal order for a thing, the court—
  - (a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and
  - (b) must hear any submissions that any person claiming to have any property in the thing may wish to make.
- (5) The court may make any order to enforce the disposal order that it considers appropriate.
- (6) This section does not limit the court's powers under another law.

## **Division 7                      Power to remove or reduce    biosecurity risk under a warrant**

### **320      Power to remove or reduce biosecurity risk after entering                  place**

- (1) This section applies if—
  - (a) an authorised officer enters a place after obtaining a warrant; and
  - (b) the warrant authorises the authorised officer to exercise powers in relation to a biosecurity risk.
- (2) The authorised officer may take the steps necessary in the circumstances to remove or reduce the biosecurity risk stated

in the warrant, or to prevent the biosecurity risk from recurring, including seizing a thing.

## Division 8                      Other information-obtaining powers of authorised officers

### 321      Power to require name and address

- (1) This section applies if an authorised officer—
  - (a) finds a person committing an offence against this Act; or
  - (b) finds a person in circumstances that lead the authorised officer to reasonably suspect the person—
    - (i) has just committed an offence against this Act; or
    - (ii) is responsible for a biosecurity risk; or
  - (c) has information that leads the authorised officer to reasonably suspect a person—
    - (i) has just committed an offence against this Act; or
    - (ii) is responsible for a biosecurity risk.
- (2) The authorised officer may require the person to state the person's name and residential address.
- (3) The authorised officer may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
  - (a) be in possession of evidence of the correctness of the stated name or address; or
  - (b) otherwise be able to give the evidence.
- (4) When making a personal details requirement, the authorised officer must give the person an offence warning for the requirement.
- (5) A requirement under this section is a *personal details requirement*.

### **322 Offence to contravene personal details requirement**

- (1) A person of whom a personal details requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person may not be convicted of an offence against subsection (1) unless the person is found guilty of the offence, or the court decides the person is responsible for the biosecurity risk, in relation to which the personal details requirement was made.

### **323 Power to require production of documents**

- (1) An authorised officer may require a person to make available for inspection by an authorised officer, or produce to the authorised officer for inspection, at a reasonable time and place nominated by the authorised officer—
  - (a) a document issued to the person under this Act; or
  - (b) a document required to be kept by the person under this Act; or
  - (c) if a document or information required to be kept by the person under this Act is stored or recorded by means of a device—a document that is a clear written reproduction of the stored or recorded document or information.
- (2) A requirement under subsection (1) is a ***document production requirement***.
- (3) For an electronic document, compliance with the document production requirement requires the making available or production of a clear written reproduction of the electronic document.
- (4) The authorised officer may keep the document to copy it.
- (5) If the authorised officer copies the document, or an entry in the document, the authorised officer may require the person



responsible for keeping the document to certify the copy as a true copy of the document or entry.

- (6) A requirement under subsection (5) is a *document certification requirement*.
- (7) The authorised officer must return the document to the person as soon as practicable after copying it.
- (8) However, if a document certification requirement is made of a person, the authorised officer may keep the document until the person complies with the requirement.

### **324 Offence to contravene document production requirement**

- (1) A person of whom a document production requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

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

*Note—*

See, however, section 328.

- (3) The authorised officer must inform the person, in a way that is reasonable in the circumstances—
  - (a) that the person must comply with the document production requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
  - (b) that, under section 328, there is a limited immunity against the future use of the information or document given in compliance with the requirement.
- (4) If the person fails to comply with the document production requirement when the authorised officer has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).

- (5) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the document production requirement.

### **325 Offence to contravene document certification requirement**

- (1) A person of whom a document certification requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

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

*Note—*

See, however, section 328.

- (3) The authorised officer must inform the person, in a way that is reasonable in the circumstances—
- (a) that the person must comply with the document certification requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
  - (b) that, under section 328, there is a limited immunity against the future use of the information or document given in compliance with the requirement.
- (4) If the person fails to comply with the document certification requirement when the authorised officer has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).

### **326 Power to require information**

- (1) This section applies if an authorised officer reasonably believes—

- (a) an offence against this Act has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The authorised officer may, by notice given to the person, require the person to give the authorised officer information about the offence at a stated reasonable time and place.
- (3) A requirement under subsection (2) is an *information requirement*.
- (4) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.
- (5) In this section—  
*information* includes a document.

### **327 Offence to contravene information requirement**

- (1) A person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

## **Division 9 Immunity for particular compliance**

### **328 Evidential immunity for individuals complying with particular requirements**

- (1) Subsection (2) applies if an individual gives or produces information or a document to an authorised officer under section 297, 323 or 326.

- (2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (3) Subsection (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

## **Part 5**

# **Provisions relating to designated officers**

### **Division 1**

## **Identity cards**

#### **329 Issue of identity card**

- (1) The administering executive must issue an identity card to each designated officer.
- (2) The identity card must—
  - (a) contain a recent photo of the designated officer; and
  - (b) contain a copy of the officer's signature; and
  - (c) identify the role of the officer under this Act; and
  - (d) state an expiry date for the card.
- (3) However, the administering executive is not required to issue an identity card to a person if—
  - (a) the person has been appointed under part 1, division 1, 2 or 3; and
  - (b) it is not practicable, in the circumstances, to issue the identity card because the person is required to implement an immediate response to a biosecurity emergency order.

- (4) Also, the identity card issued to the person because of the office ordinarily held by the person, or an identity card that the person otherwise holds, is taken to be the identity card issued to the person as a designated officer provided the identity card contains the information mentioned in subsection (2)(a), (b) and (d).
- (5) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **330 Production or display of identity card**

- (1) In exercising a power in relation to a person in the person's presence, a designated officer must—
  - (a) produce the officer's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the designated officer must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), a designated officer who is an authorised officer does not exercise a power in relation to a person only because the officer has entered a place as mentioned in section 259(1)(b) or (d).

### **331 Return of identity card**

If the office of a person as a designated officer ends, the person must return the person's identity card to the administering executive within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

## Division 2                      Damage

### 332      Duty to avoid inconvenience and minimise damage

In exercising a power, a designated officer must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 334.

### 333      Notice of damage

- (1) This section applies if—
  - (a) a designated officer exercises, or purports to exercise, a power under this Act, other than a biosecurity response; and
  - (b) in exercising, or purporting to exercise the power, any 1 or more of the following persons damages something—
    - (i) the designated officer;
    - (ii) a person (an *assistant*) acting under the direction or authority of the designated officer;
    - (iii) a detection animal used by the designated officer or assistant.
- (2) However, this section does not apply to damage the designated officer reasonably considers is trivial or if the officer reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.
- (3) The designated officer must give notice of the damage to the person who appears to the officer to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the designated officer must—

- 
- (a) leave the notice at the place where the damage happened; and
  - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The designated officer may delay complying with subsection (3) or (4) if the officer reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the officer's functions.
- (6) The delay may be only for so long as the designated officer continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the designated officer believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the officer or the assistant, the officer may state the belief in the notice.
- (8) The notice must state—
- (a) particulars of the damage; and
  - (b) that the person who suffered the damage may claim compensation under section 334.

## **Division 3                      Compensation**

### **334      Compensation**

- (1) A person may claim compensation from the following if the person incurs loss because of the exercise, or purported exercise, of a power by a designated officer, including a loss arising from compliance with a requirement made of the person under this Act—
- (a) if the designated officer was appointed by the chief executive—the State;
  - (b) if the designated officer was appointed by the chief executive officer of a local government—the local government;

- (c) if the designated officer was appointed by 2 or more chief executive officers—the local government for whom the designated officer was exercising the power;
  - (d) if the designated officer was appointed by an invasive animal board—the board.
- (2) However, subsection (1)(a) applies only to loss arising from an accidental, negligent or unlawful act or omission.
- (3) Also, subsection (1) does not include—
  - (a) loss arising from a lawful seizure or a lawful forfeiture; or
  - (b) loss arising from a biosecurity response.
- (4) The compensation may be claimed and ordered in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.
- (5) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (6) In considering whether it is just to order compensation, the court must have regard to any relevant biosecurity offence committed by the claimant.
- (7) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (8) Section 332 does not provide for a statutory right of compensation other than is provided by this section.
- (9) In this section—
  - exercise***, of a power, by a designated officer includes—
    - (a) the exercise of a power for the officer; and
    - (b) the purported exercise of a power by or for the officer.



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*loss* includes costs and damage.

## **Division 4                      Other offences relating to designated officers**

### **335      Giving designated officer false or misleading information**

- (1) A person must not, in relation to the administration of this Act, give a designated officer information, or a document containing information, that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

- (2) Subsection (1) applies to information or a document given in relation to the administration of this Act whether or not the information or document was given in response to a specific power under this Act.

### **336      Obstructing designated officer**

- (1) A person must not obstruct a designated officer, or another person or a detection animal helping a designated officer, exercising a power under this Act unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed a designated officer, or another person or a detection animal helping a designated officer, and the officer decides to proceed with the exercise of the power, the officer must warn the person that—
- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
  - (b) the officer considers the person's conduct an obstruction.

### **337 Impersonating designated officer**

A person must not impersonate a designated officer.

Maximum penalty—100 penalty units.

## **Chapter 11 Compensation for loss or damage from biosecurity response**

### **Part 1 Preliminary**

#### **338 What is a *biosecurity response***

(1) A *biosecurity response* is any lawful action taken—

- (a) by the chief executive or an authorised officer, including a person acting under the authority of the chief executive or an authorised officer, if the action is authorised to be taken under this Act; or

*Example of biosecurity response by an inspector for paragraph (a)—*

an inspector demolishing an outbuilding at a place within a biosecurity emergency area

- (b) by another person as directed or otherwise required by the chief executive or an authorised officer, including by a person acting under the authority of the chief executive or an authorised officer, if the direction or requirement is authorised to be given or made under this Act.

*Example of biosecurity response for paragraph (b)—*

the owner of an animal acting under the direction of an inspector to destroy the animal at a place within a biosecurity emergency area

(2) A *biosecurity response* does not include—

- (a) any action taken under chapter 13, including, for example, action taken under a biosecurity order, or under an order of a magistrate or an injunction, under that chapter; or
  - (b) anything that happens by accident or as a result of negligence.
- (3) In this section—
- authorised officer* does not include an authorised person whose appointment under this Act as an authorised person is by—
- (a) the chief executive officer of a local government; or
  - (b) the chairperson of an invasive animal board.

### 339 What is loss or damage arising out of a biosecurity response

In this chapter, a reference to loss or damage arising out of a biosecurity response is a reference to loss or damage only if—

- (a) it is lawfully caused under this Act; and
- (b) the causing of the loss or damage constitutes all or part of a biosecurity response.

*Note—*

If loss or damage happens in the course of a biosecurity response but is not lawfully caused under this Act, for example because it involves a negligent act, compensation may nevertheless be available under the investigation and enforcement provisions or under the general law.

### 340 What is *property*

- (1) In this chapter, a reference to *property*, in the context of loss of it or damage to it, is a reference to something that is capable of being in the ownership of a person and is capable of being physically destroyed or physically damaged.
- (2) Without limiting subsection (1), *property* may include any animal or plant.

**341 What is *notional value* or *notional reduction in value* of property for statutory compensation**

- (1) The *notional value* of property that is the subject of loss is the amount that would have been received for the property if, at the place where it was destroyed, it had been sold under a lawful direction immediately before it was destroyed.
- (2) The *notional reduction in value* of property that is the subject of damage is the difference between the following amounts—
  - (a) the amount that would have been received for the property if, at the place where it was damaged, it had been sold under a lawful direction immediately before it was damaged;
  - (b) the amount that would have been received for the property if, at the place where it was damaged, it had been sold under a lawful direction immediately after it was damaged.
- (3) For this chapter, property is taken to be the subject of damage rather than loss if, despite its being destroyed, what remains of it still has some commercial value.
- (4) In this section—

*sold under a lawful direction*, in relation to property, means sold at the highest price reasonably obtainable, but under the lawful direction of a person who is required to agree to, and to complete, the sale of the property without delay and without reference to whether the owner of the property would be a willing seller at the price obtained.

**342 What is a *compensation scheme* and what is *scheme compensation***

- (1) A *compensation scheme* is a government and industry agreement that includes provision for the payment of compensation for loss or damage arising out of a biosecurity response.

*Example of agreement—*

The Emergency Plant Pest Response Deed is a formal agreement between Plant Health Australia, the Commonwealth, all the States and territories and particular plant industry bodies establishing, on a basis of cost sharing, a scheme for the management and funding of responses to emergency plant pest incidents, and includes provision for compensation in the form of reimbursement costs for growers who suffer loss or damage as contemplated in the agreement.

- (2) Compensation provided for under a compensation scheme (*scheme compensation*) may be, but need not be, limited to compensation for loss of or damage to property.

### **343 Sources of compensation available under this chapter**

- (1) This chapter deals with the provision of 2 different types of compensation for loss or damage arising out of biosecurity responses.
- (2) Firstly, scheme compensation may be payable for loss or damage.
- (3) Secondly, compensation for loss of or damage to property may be payable by the State in the absence of scheme compensation being payable for the loss or damage.

## **Part 2 Scheme compensation**

### **344 Operation of scheme compensation**

- (1) This section applies if—
  - (a) a person suffers loss or damage arising out of a biosecurity response; and
  - (b) a compensation scheme provides for compensation, in relation to the biosecurity response, for the loss or damage; and
  - (c) the person has, in compliance with the scheme, applied to the chief executive for compensation for the loss or damage.

- (2) The chief executive must take reasonable steps, to the extent of the State's obligations under the scheme, to ensure that the person receives compensation for the loss or damage in accordance with the person's entitlement to compensation under the scheme.

## Part 3                      Statutory compensation

### 345      Operation of statutory compensation

- (1) Subject to this chapter, a person who suffers loss of or damage to property arising out of a biosecurity response is entitled to compensation (*statutory compensation*) for the loss or damage to the extent provided for in this chapter.

*Examples of loss of or damage to property—*

- the destruction of a person's animal by an inspector during a biosecurity emergency
  - the partial demolition of a person's outbuilding by an inspector during a biosecurity emergency
- (2) To receive the statutory compensation, the person must apply to the chief executive for the compensation under this chapter.

### 346      How scheme compensation affects entitlement to statutory compensation

- (1) Statutory compensation is not payable to a person for loss of, or damage to, property suffered by the person and arising out of a biosecurity response if a compensation scheme provides for compensation for the person's loss or damage.
- (2) Subsection (1) applies even if, in the person's particular circumstances, scheme compensation is not actually payable to the person because the person has failed to comply with a requirement of the compensation scheme relating to eligibility for payment.

*Example for subsection (2)—*

During a biosecurity emergency involving a virus outbreak, an infected crop is destroyed by an inspector. A compensation scheme provides for

reimbursement of a crop's owner for the crop loss in circumstances of the loss. However, the scheme requires that, to be eligible to be paid compensation under the scheme, the crop owner must make an annual payment, in the nature of a premium, to a fund established under the scheme. The crop owner has not made an annual payment by the due date for its payment. Because of that, the person is ineligible for payment under the compensation scheme and, because of the existence of the scheme, is not entitled to statutory compensation under this chapter.

### **347 Other limitations applying to entitlement to statutory compensation**

- (1) Statutory compensation is not payable to a person who suffers loss of or damage to property arising out of a biosecurity response—
- (a) if the conduct of the person materially contributed to the loss or damage; or
  - (b) if the biosecurity event that the biosecurity response was directed at addressing could reasonably be expected to have caused the loss or damage, regardless of the happening of the biosecurity response; or

*Examples of loss or damage in the context of paragraph (b)—*

- 1 An authorised officer destroys a dog because it has contracted rabies. The dog could reasonably have been expected to die as a result of contracting the rabies.
  - 2 An inspector demolishes an outbuilding to eradicate an insect borer. As the borer has damaged the outbuilding irreparably and it would have been structurally unsound, it could reasonably be expected that the outbuilding would have had to have been demolished.
- (c) if the biosecurity response was directed at addressing the risk posed by the existence of biosecurity matter and the property was infested or infected with the biosecurity matter when the loss or damage happened; or
  - (d) if the biosecurity response was directed at addressing the risk posed by the existence of biosecurity matter that is a contaminant and the contaminant was present in the

property in an amount more than the maximum acceptable level prescribed under a regulation for the property when the loss or damage happened; or

- (e) if the biosecurity response was directed at addressing the risk posed by the existence of biosecurity matter and when the loss or damage happened, the property was likely to have become infested or infected with the biosecurity matter; or
- (f) if—
  - (i) the biosecurity response was directed at addressing the risk posed by the existence of biosecurity matter; and
  - (ii) before the loss or damage happened, the property became infested or infected with the biosecurity matter; and
  - (iii) the property was no longer infested or infected when the loss or damage happened, whether or not this was known at the time of the loss or damage; or

*Example of damage in the context of paragraph (f)—*

damage caused to an animal by the taking of a sample to find out whether an infection is still present

- (g) if—
  - (i) the biosecurity response was directed at addressing the risk posed by the existence of biosecurity matter; and
  - (ii) the biosecurity response was necessary because of an act or omission of the owner of the property or of a person acting under the owner's express or implied authority; and
  - (iii) the act or omission caused or contributed to, or was likely to cause or contribute to, the spread of the biosecurity matter; or
- (h) if—



- (i) the biorecurecty response was directed at addressing the risk posed by the existence of biorecurecty matter; and
  - (ii) the biorecurecty response was necessary because of an act or omission of the owner of the property or of a person acting under the owner's express or implied authority; and
  - (iii) the owner of the property is found guilty of an offence under this Act constituted completely or partly by the act or omission; or
- (i) to the extent that the loss or damage is recovered or recoverable by the person under a policy of insurance.
- (2) For subsection (1)(e), the chief executive may decide on and publish on the department's website a methodology for calculating whether property was likely to become infested or infected.

### **348 No compensation for consequential loss**

- (1) Statutory compensation for the loss of property is limited to an amount equal to the notional value of the property.
- (2) Statutory compensation for damage to property is limited to an amount equal to the notional reduction in value of the property.
- (3) In particular, compensation for loss of or damage to property does not include compensation for loss flowing as a direct or indirect consequence of the loss or damage.
- (4) Without limiting subsection (3), compensation for loss of or damage to property does not include compensation for any of the following—
  - (a) any loss of anticipated or actual revenue or profits;
  - (b) loss of use of equipment;
  - (c) business interruption, or a failure to realise anticipated savings;

- (d) loss of data;
  - (e) downtime costs or wasted overheads;
  - (f) loss of goodwill or business opportunity;
  - (g) loss or damage suffered because of a breach of contract.
- (5) Also, compensation for loss of or damage to property does not include compensation in the form of, or that is in the nature of or is analogous to, any of the following—
- (a) reimbursement of additional expenses incurred;
  - (b) punitive or exemplary damages;
  - (c) special damages, or damages for indirect loss or damage of any nature whatsoever.

## **Part 4                      Claiming statutory compensation**

### **349      Application for statutory compensation**

- (1) A person (the *applicant*) may apply to the chief executive for statutory compensation.
- (2) The application must be made in the approved form.
- (3) The application must be received by the chief executive within 90 days after the date the loss or damage happens.
- (4) However, the chief executive may accept the application after the period mentioned in subsection (3) if the chief executive is satisfied it is fair and reasonable in the circumstances to accept the application.

### **350      Further information may be required**

- (1) The chief executive may ask the applicant for further information reasonably required by the chief executive to assess an application for statutory compensation.

- (2) The applicant must give the chief executive the information asked for within the reasonable period the chief executive requires.

### **351 Day for making and advising of decision**

- (1) The chief executive must give an applicant for statutory compensation the chief executive's decision on the application—
  - (a) if the applicant and the chief executive agree on a day by which the chief executive will give the applicant the chief executive's decision—by the day agreed; or
  - (b) if paragraph (a) does not apply, but the chief executive asks the applicant for further information to decide the application—within 60 days after the chief executive receives the further information; or
  - (c) if neither paragraph (a) nor paragraph (b) applies—within 60 days after the chief executive receives the application.
- (2) Despite subsection (1), the chief executive may, by notice given to the applicant, extend the period for making and advising a decision on the application by a further 60 days if the chief executive considers that the extension is justified because of the complexity of matters required to be considered in reaching the decision.
- (3) When the chief executive makes a decision on the application, it must be given to the applicant in the form of an information notice.
- (4) If the decision is that the applicant is entitled to be paid compensation, the information notice must state the amount of the compensation.
- (5) If the chief executive fails to give the applicant notice of the decision by the day required under subsection (1) or (2)—
  - (a) the chief executive is taken to have decided that the applicant is not entitled to any statutory compensation for the loss or damage the subject of the application; and

- (b) the applicant is entitled to receive an information notice for the decision under paragraph (a).

## **Chapter 12      Evidence, legal proceedings and reviews**

### **Part 1              Evidence**

#### **352      Application of pt 1**

This part applies to a proceeding under this Act.

#### **353      Appointments and authority**

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the chief executive's appointment;
- (b) a chief executive officer's appointment;
- (c) a designated officer's appointment;
- (d) an auditor's appointment;
- (e) an accredited certifier's accreditation;
- (f) the authority of any of the chief executive, a local government, a chief executive officer, an authorised officer, an auditor or an accredited certifier to do anything under this Act.

#### **354      Signatures**

A signature purporting to be the signature of the chief executive, a chief executive officer, an authorised officer or an accredited certifier is evidence of the signature it purports to be.