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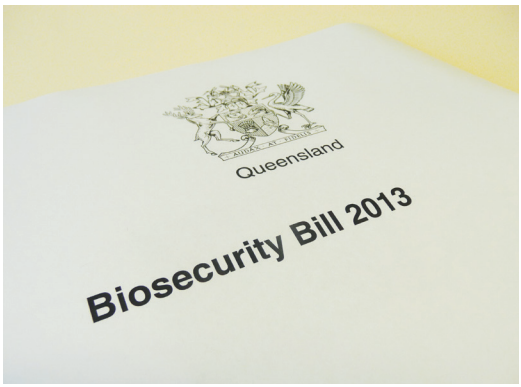

Biosecurity Bill 2013

Report No. 35
Agriculture, Resources and Environment Committee
February 2014

Parliamentary Committees

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Agriculture, Resources and Environment Committee

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Acknowledgements

The committee thanks departmental officers who provided briefings, and the groups and individuals who provided submissions to the inquiry.

Contents

Abbreviations

AgForce	AgForce Queensland Industrial Union of Employers
ALPAA	Australian Livestock and Property Agents Association
DAFF	Department of Agriculture, Fisheries and Forestry
DDMRB	Darling Downs-Moreton Rabbit Board
FLP	Fundamental legislative principles
HIN	Hive identification number
ICA scheme	Interstate Certification Assurance scheme
ISC	Invasive Species Council
LGAQ	Local Government Association of Queensland
MP	Member of Parliament
NLIS	National Livestock Identification System
PIC	Property Identification Code
QFF	Queensland Farmers' Federation Ltd
QLS	Queensland Law Society
SDRC	Southern Downs Regional Council
SO	Standing Orders

Key terms

Animal husbandry activities (Schedule 5)	Includes – (a) Breeding, keeping, raising or caring for animals for commercial purposes; and (b) Establishing and operating a dairy, feedlot, piggery or animal saleyard; and (c) Grazing animals; and (d) Aquaculture; and (e) Beekeeping; and (f) Poultry farming of more than 500 birds; and (g) Testing and inoculation of animals, including using diagnostic agents, serums and vaccines.
Biosecurity certificate (Chapter 15)	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 purpose of a law that is a corresponding law to this Act, free of any stated biosecurity matter; or (d) Is in a stated area; 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.

Biosecurity circumstance (Clause 142)	A biosecurity circumstance is— (a) the keeping of designated animals; or (b) the holding of designated biosecurity matter.
Biosecurity matter (Clause 15)	Biosecurity matter is – (a) A living thing, other than a human or part of a human; or (b) A pathogenic agent that can cause disease in – i. A living thing, other than a human; or ii. A human, by the transmission of the pathogenic agent from an animal to the human; or (c) A disease; or (d) A contaminant
Carrier (Clause 17)	Any animal or plant, or part of any animal or plant, or any other thing – (a) Capable of moving biosecurity matter attached to, or contained in, the animal, plant or other thing from a place to another place; or (b) Containing biosecurity matter that may attach to or enter another animal or plant, or part of another animal or plant, or another thing.
Designated animal (Clause 134)	A designated animal is— (a) an animal that is a member of any of the following groups of animals— (i) cattle; (ii) sheep; (iii) goats; (iv) pigs; (v) bison; (vi) buffalo; (vii) deer; (viii) the family Camelidae (examples of members of the family Camelidae: alpacas, Arabian camels, llamas) (ix) the family Equidae (examples of members of the family Equidae: horses, ponies, donkeys, mules, zebras) (x) captive birds; (xi) bees; or (b) an animal prescribed under a regulation as a designated animal (a prescribed designated animal).
Intergovernmental agreement (Clause 390)	An 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.
Prion	An infectious agent made up of 'misfolded' proteins. Unlike other known infectious agents such as viruses or bacteria, prions do not contain nucleic acids (either DNA or RNA) and are not considered living organisms. Prions cause disease by inducing existing, 'properly folded' proteins inside an

	organism to convert to the disease-associated, prion form. Bovine Spongiform Encephalopathy (also known as "mad cow disease" is one example of a disease caused by prions.
Registrable biosecurity entity (Clause 141)	(1) A person is a registrable biosecurity entity if the person— (a) keeps the threshold number or more of designated animals; or (b) holds the threshold amount or more of designated biosecurity matter. (2) For subsection (1), it does not matter whether the keeping or holding happens at one place or two or more places in the State. (3) However, for identifying a registrable biosecurity entity, two or more persons could, taken together, be a registrable biosecurity entity even though one of those persons, acting separately, could be a separate registrable biosecurity entity.
Registered biosecurity entity (Schedule 5)	An entity that, as a registrable biosecurity entity, has obtained registration under chapter 7, part 2.
Registration details (Clause 169)	Information required to be kept for registered biosecurity entities. (1) The biosecurity register must include, for each registered biosecurity entity in relation to each biosecurity circumstance for which the entity is a registered biosecurity entity, all of the following details (the registration details)— (a) the designated details for the entity; (b) any PIC that applies to the entity's registration; (c) any HIN allocated for the entity's registration; (d) to the extent known to the chief executive—the biosecurity risk status details for the entity. (2) The chief executive may record other information the chief executive considers appropriate about a registered biosecurity entity.
***Threshold number* (of designated animals)** (Clause 137)	(a) For designated animals other than prescribed designated animals— (i) for designated animals other than bees or captive birds—1; or (ii) for bees—1 bee hive; or (iii) for captive birds—100; or (b) For prescribed designated animals— (i) the threshold number prescribed under a regulation; or (ii) if no number is prescribed—1.

Chair's foreword

This report presents the findings from the committee's inquiry into the Biosecurity Bill 2013 introduced by Hon John McVeigh MP, Minister for Agriculture, Fisheries and Forestry.

I would like to congratulate the Minister and the Department of Agriculture, Fisheries and Forestry for all their hard work on what is undoubtedly a landmark Bill for the State of Queensland.

Queensland is unquestionably the front line for biosecurity in Australia, and this new legislation will provide a consolidated and efficient framework for the management of this critically important issue. Biosecurity hazards are like fire – if they aren't contained they can spread. Vigilance is the key, and everyone has a responsibility to remain aware of threats.

From our examination of the mechanics of the Bill, the committee has made a number of sensible recommendations. We have also sought clarifications of a small number of issues that were not entirely clear. The committee looks forward to the Minister's advice on these matters.

I also encourage the Minister to look at a further practical matter concerning the naming of this Bill. The committee noted in its work the existence of a Bill with the same name before the House of Representatives. While that Bill has now lapsed, it is likely to be reintroduced at some time and with the same name. Having Bills of the same names before the federal and state parliaments is unnecessarily confusing to people and could be avoided by including 'Queensland' in the name of the Queensland Bill.

I commend the report to the House.

Ian Rickuss MP
Chair

February 2014

Recommendations

1. Introduction

Role of the committee

The Agriculture, Resources and Environment Committee (the committee) is a portfolio committee established by a resolution of the Legislative Assembly on 18 May 2012. The committee's primary areas of responsibility are agriculture, fisheries and forestry, environment and heritage protection, and natural resources and mines.[1]

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect and the application of fundamental legislative principles (FLPs).[2] Fundamental legislative principles are defined in Section 4 of the *Legislative Standards Act 1992* as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

In relation to the policy aspects of Bills, the committee considers the policy intent, approaches taken by departments to consulting with stakeholders and the effectiveness of the consultation. The committee may also examine how departments propose to implement provisions in Bills that are enacted.

The referral

On 19 November 2013, Hon John McVeigh MP, Minister for Agriculture, Fisheries and Forestry, introduced the Biosecurity Bill 2013 (the Bill). The Legislative Assembly referred the Bill was to the committee for examination and report in accordance with Standing Order 131.

The committee's processes

In its examination of the Bill the committee:

- identified and consulted with likely stakeholders on the Bill
- invited submissions on the Bill
- sought expert advice on possible FLP issues with the Bill
- convened two public briefings (5.12.13 & 12.2.14) by the Department of Agriculture, Fisheries and Forestry (DAFF) and a public hearing (12.2.14) in the Parliamentary Annexe, and
- sought further advice from DAFF on issues raised in the submissions and during the public hearing and possible FLP issues.

A list of submitters is at **Appendix A**.

Briefing officers and hearing witnesses are listed at **Appendix B**.

The advice provided by DAFF to the committee on issues raised in submissions is at **Appendix C**.

[1] Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly of Queensland* as at 12 September 2013.
[2] Section 93 of the *Parliament of Queensland Act 2001*.

2. Examination of the Biosecurity Bill 2013

Background

Australia enjoys relative safety from many of the pests and diseases that are prevalent in other countries, partly because of remoteness and partly through vigilance by quarantine and import agencies. Despite measures that are in place to prevent the entry of biosecurity hazards, and as the global movement of goods and people increases, pests and disease may still enter through a number of pathways such as wind, water, migratory birds, illegal smuggling or accidental cargo. Minister McVeigh noted in his introductory speech for the Bill:

> *Pest and disease threats to Queensland are expected to become more frequent and diverse due to: increases in tourism and business travel; expansion in the trade of animals and animal products; an increased volume, range and geographic distribution of plant species traded; as well as entry of pests and diseases through natural routes. At the same time, analytical methods are constantly becoming more sophisticated, and overseas markets are demanding improved quality and timeliness of information to prove freedom from pests, diseases and contaminants.*[3]

Biosecurity Queensland commented on the risks for Queensland in their briefing for the committee:

> *Queensland is undoubtedly the front-line state for biosecurity in Australia. We get more pests and diseases than any other state of national significance and we have dealt with many more incidents in the last seven years than any other state in Australia. During 2012-13 alone we responded to 11 new significant animal incidents, four significant plant biosecurity incidents and a number of invasive plants and animals. Other threats included the ongoing Bovine Johne's disease case, which is still underway, the Australian bat lyssavirus case in the Southern Downs, red witchweed detection near Mackay and confirmed cases of avian influenza near in Toowoomba in poultry, confirmed cases of potato spindle tuber viroid in Toowoomba, exotic fruit fly detections and obviously, as I said before, the ongoing hendra case. They are very broad and cover a range of different areas. The total cost of responding to these have been many millions of dollars. It is really important that we have a system that allows us to deal with them effectively.*[4]

Good biosecurity management is particularly important to Queensland given the State's extensive agricultural industries, vast coastline and the proximity of North Queensland to our nearest neighbour country, Papua New Guinea. Despite the State's particular susceptibility to biosecurity risks, Queensland's biosecurity systems for the management of biosecurity hazards have in the past been found wanting. Problems with the management of biosecurity hazards by Biosecurity Queensland were highlighted in a performance management system audit by the Auditor-General in 2008. The audit noted the potential impact of disease outbreaks on the Queensland community and economy, and sought to gauge whether adequate systems were in place to prevent, detect and respond to plant and animal biosecurity threats. The report from that audit noted, in particular, problems with the State's biosecurity legislation:

> *Audit noted that the provisions of the Acts for which Biosecurity Queensland is now responsible are not always consistent nor do they reflect current operational best practice. Having to administer multiple Acts addressing similar issues can lead to delays and inconsistent practices across biosecurity programs.*[5]

[3] McVeigh. J. 2013, *Record of Proceedings*, 19 November, p.3907.
[4] Thompson, J. 2013, *Draft briefing transcript,* 5 December, p.1.
[5] Queensland Audit Office, 2008, *Auditor-General's Report to Parliament No. 5 for 2008: Protecting Queensland's primary industries and environment from pests and disease*, p.4.

The Biosecurity Bill 2013 was devised to address a range of shortcomings in existing legislation for the management of biosecurity in Queensland. As noted by Minister McVeigh in his introductory speech for the Bill:

> *Queensland's current disjointed biosecurity legislation was developed in response to specific events since the Stock Act was first introduced in 1915. As a result, it includes overlapping and inconsistent approaches as well as obscure and obsolete provisions. The legislation is difficult for stakeholders to navigate and results in inefficient administration. It is largely reactive and prescriptive and lacks the flexibility to enable efficient responses to Queensland's emerging biosecurity risks.*

And

> *Without reform, current legislation will impede agricultural growth to this core pillar of our economy and delay achievement of our goal of doubling agricultural production at the farm gate by 2040.*[6]

Biosecurity Queensland officers noted in their briefing for the committee:

> *The bill will provide the most comprehensive and complete approach to biosecurity legislation in Australia and is currently being copied in a lot of other places in Australia. A lot of other states are picking up some of the major elements of the bill.*[7]

Policy objectives of the Bill

The key objective of the Bill, as set out in the Explanatory Notes, is to provide for a comprehensive biosecurity framework to manage the impacts of animal and plant diseases and pests in a timely and effective way and ensure the safety and quality of animal feed, fertilisers and other agricultural inputs.[8] The Bill consolidates, modernises and expands existing provisions used by the department to manage and contain biosecurity risks.[9] The Bill:

- **defines biosecurity matter** to include any living thing (other than a human or parts of a human), a pathogenic agent that can cause disease in plants, animals or zoonoses,[10] disease or contaminant. The full definition is at clause 15
- establishes at clause 23 a **universal biosecurity obligation** on all persons which requires them to take an active role in minimising biosecurity risks
- establishes obligations in relation to **'prohibited matter'**[11] and categories of **'restricted matter'**,[12] the identification and movement of animals that may need to be traced, notification of incidents and feeding of animal matter
- specifies **notifiable incidents** (at clause 47), such as abnormalities in animals or plants, that must be reported to an inspector.
- generally **continues to prohibit feeding animal matter** to certain animals as this can spread disease such as mad cow disease

[6] McVeigh, J. 2013, *Record of Proceedings*, 19 November, p.3907.
[7] Thompson, J. 2013, *Draft briefing transcript*, 5 December, p.2.
[8] Biosecurity Bill 2013, Explanatory Notes, p.1.
[9] Explanatory Notes, p1.
[10] 'Zoonoses' are infectious diseases that can pass from animals to humans. They include Anthrax, Avian influenza (bird flu), Bovine spongiform encephalopathy (BSE or 'mad cow disease'), Hendra virus and Lyssavirus. The majority of new human diseases are zoonotic.
[11] Clause 20 provides that 'prohibited matter' is not found in Queensland but could have serious impacts if it entered the State. If found it must be reported and the risks must not be exacerbated. Prohibited matter is listed at Schedule 1.
[12] 'Restricted matter' needs to be managed when it is found. There are seven specific categories of restricted matter and these are listed at Schedule 2. Each category is subject to specific types of action such as immediate destruction or constraints on its movement.

- provides for **swift, but time-limited action to manage emergency biosecurity events** where serious or irreversible damage is possible, but the scientific knowledge is incomplete. Unlike current legislation, it does not require the identification and scheduling of specifically identified pests and diseases before action can be taken
- allows the **Chief Executive to issue a Biosecurity Emergency Order,** if an emergency response is necessary, to isolate the biosecurity emergency area, to stop the spread of any biosecurity matter associated with the biosecurity event and, if practical, to eradicate the biosecurity matter
- allows the **Chief Executive to make a Movement Control Order** to restrict the movement of biosecurity matter or the carriers of biosecurity matter for up to three months
- **empowers inspectors** to enter a place without a warrant or the occupier's consent and take necessary and reasonable steps to mitigate the risk posed by a biosecurity matter if it poses an immediate and significant risk
- provides that during emergencies Queensland Police and Queensland Transport authorised officers may be issued with **powers to stop or direct vehicles**
- will provide for new regulatory instruments and associated powers, including **biosecurity zones** and **biosecurity programs** for addressing specific biosecurity risks, the declaration by the Chief Executive of a place to be a **restricted place**
- empowers the State and local governments to authorise **surveillance programs** and **prevention and control programs**
- **maintains the biosecurity function of local governments** to ensure the management of invasive plants and animals in their respective areas and provides tools to assist them meet their obligations
- provides that the Chief Executive may enter into formal **agreements** with local, state and Commonwealth bodies for the purpose of advancing the objectives of the Bill, and
- provides for the issue of a **biosecurity certificate** to indicate compliance or exemption from particular requirements in the Bill or corresponding interstate requirements about prohibited or restricted matter or about biosecurity matter.

Impacts of the Bill on regulatory burdens

The Biosecurity Bill 2013 will significantly reduce the regulatory burdens on businesses that are imposed by existing biosecurity legislation and requirements. As explained by Minister McVeigh when introducing the Bill:

> *Excluding the 112 pages of repeals, savings, transitional clauses and clauses amending other acts, the Bill is 425 pages in length – a more than 20 per cent count reduction compared to corresponding provisions in the current legislation.*[13]

Clause 504 of the Bill repeals six biosecurity-related acts:

- *Agricultural Standards Act 1994*
- *Apiaries Act 1982*
- *Diseases in Timber Act 1975*
- *Exotic Diseases in Animals Act 1981*
- *Plant Protection Act 1989*, and
- *Stock Act 1915*

The Bill amends a further three Acts:

- *Chemical Usage (Agricultural and Veterinary) Control Act 1988*
- *Fisheries Act 1994*, and
- *Land Protection (Pest and Stock Route Management) Act 2002.*

[13] McVeigh, J. 2013, *Record of Proceedings*, 19 November, p.3907.

Schedule 4 of the Bill lists minor and consequential amendments to 19 other Acts. Provisions in the Bill for Simplified systems of restrictions and permits will also reduce regulatory burdens.

Consultation

There has been extensive public and stakeholder consultation during the development of the *Queensland Biosecurity Strategy 2009-14*[14] and during the development of biosecurity bills introduced by the previous government in 2011 and the 2013 Bill the committee is examining. The 2013 Bill is broadly based on the 2011 Bill. Public consultation has included the release of discussion papers for comment in 2008 and 2009 and the exposure draft of the 2011 Bill released in July 2011. This was prior to the introduction of the 2011 Biosecurity Bill in December 2011. The consultation by DAFF with peak bodies and other stakeholders in relation to the 2013 Bill commenced in late 2012. The committee notes that general strong support in the submissions for a consolidated legislative approach to biosecurity in Queensland, with many submitters having been involved in consultation processes since the early stages of work on the 2011 Bill.

On the passage of the Bill, the department proposes to undertake further consultation on the detailed arrangements to be included in regulations and other subordinate instruments, and for the release of a Regulatory Impact Statement.

Committee Comment:

The committee notes the importance of biosecurity management to the future of the State's agricultural industries and to the economy at large, and the significance of the reforms that are contained in the Biosecurity Bill 2013. These provisions are timely and quite essential to protecting the State's industries and interests.

The committee also notes the significant savings in regulatory requirements for businesses that the Bill promises to achieve compared to current legislative requirements, and the extensive consultation that has been undertaken with stakeholders and the general public about biosecurity management and the provisions in the Bill before the committee.

The committee commends the Minister and his department for their thoroughness and attention to detail, and their efforts to include stakeholders in the development of this landmark legislation.

Should the Bill be Passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. After examining the form and policy intent of the Bill, the committee determined that the Bill should be passed. Given the significance of the legislation, the committee also recommends that the legislation which is passed and implemented be reviewed next parliament to ensure it is working effectively.

Recommendation 1

The committee recommends that the Biosecurity Bill 2013 be passed with the amendments outlined in this report.

Recommendation 2

The committee recommends, given the magnitude of the changes to biosecurity management that are proposed in the Bill, that the Bill's implementation and the operation of each provision of the legislation be reviewed during the Fifty-Fifth Parliament.

[14] Department of Primary Industries and Fisheries, 2008, *Queensland Biosecurity Strategy 2009-14,* Department of Primary Industries and Fisheries: Brisbane.

Key clauses of the Bill

- **Clause 4** (Purposes of Act) - Clause 4 identifies the main purpose of the Bill. The Explanatory Notes explain that the purpose of the Bill is to deliver a framework that facilitates timely and effective responses to protect human health, the economy, the environment and social amenity from animal and plant diseases and pests, whilst also managing the risks of biological, chemical and physical contaminants associated with carriers such as livestock, plants, machinery, animal feed and fertilisers.[15]

- **Clause 5** (How purposes are primarily achieved) - Clause 5 establishes how the purposes of the Bill are primarily achieved by providing the basic safeguards necessary to protect biosecurity considerations through a combination of:

  • imposing a universal obligation (a general biosecurity obligation) on people to prevent or minimise the impacts of biosecurity risks on biosecurity considerations

  • enabling the forging of cooperative ties between all levels of government, industry and the general public and improving capacity generally to respond to biosecurity risks

  • allowing for risk-based decision-making on approaches to the management of, and response to, biosecurity risks while incorporating the precautionary principle in risk-based decision-making to allow for timely responses to biosecurity risks or to prevent a biosecurity event

  • acknowledging best practice in mitigating biosecurity risks by providing for codes of practice relating to a person's obligations, and

  • providing for the effective monitoring and enforcement of compliance with the Act.[16]

- **Clause 23** (What is a general biosecurity obligation) - Clause 23 outlines the general biosecurity obligation. Subclause (1) provides that a general biosecurity obligation applies to a person who deals with biosecurity matter or a carrier, or carries out an activity, and knows or ought reasonably to know that the biosecurity matter or the carrier or activity poses or is likely to pose a biosecurity risk.

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

  Subclause (3) requires a person to do whatever is reasonably required to minimise the adverse effects of dealing with a biosecurity matter or carrier on biosecurity considerations. For example if an animal is infected with a disease, a person could isolate the animal to minimise the risk of the disease spreading to other members of the herd and to other animals in surrounding areas owned by other people.[17]

- **Clause 43** (Distributing or disposing of category 3 restricted matter) - Clause 43 states what a person must do if they have in their possession or under their control, category 3 restricted matter.

  Certain invasive weeds have the capacity to repopulate an area even though they have been killed because their seeds may still be viable. Consequently, it is an offence to distribute or dispose of the restricted matter or anything infected or infested with restricted matter that has been designated to be category 3 unless the distribution or disposal is performed in the way prescribed under a regulation, authorised under a restricted matter permit, or

[15] Biosecurity Bill 2013, Explanatory Notes, p. 12.
[16] Explanatory Notes, p. 12.
[17] Explanatory Notes, p. 17.

performed by an authorised officer in accordance with the authorised officer's functions under the Act.

The term 'distribution' is defined to mean giving, selling or releasing into the environment.

The unlawful release or disposal of category 3 restricted matter carries a penalty of 500 penalty units.[18]

- **Clause 48** (Main function of local government) - Clause 48 identifies the main function of a local government under the Bill is to ensure invasive biosecurity matter is managed within a local government's area in compliance with the Act. The clause identifies invasive biosecurity matter to be:

  • prohibited matter mentioned in schedule 1 (parts 3 and 4)

  • prohibited matter taken to be included in schedule 1 (parts 3 and 4) under a prohibited matter regulation or emergency prohibited matter declaration

  • restricted matter mentioned in schedule 2, part 2, and

  • restricted matter taken to be included in schedule 2, part 2 under a restricted matter regulation.

  Subclause (2) provides that if an invasive animal board has the responsibility of managing an animal then the local government does not also have responsibility for that animal within the area of jurisdiction that the board has within the local government area.

  Subclause (3) allows local governments to make local laws about the management of invasive animals and plants.

- **Clauses 89-103** (Barrier fences) – The Biosecurity Bill also deals with invasive animal management through maintaining the existing invasive animal barrier fences and undertaking other pest animal management activities. Clauses 89-103 contain details outlining the identification of a barrier fence, maintaining barrier fences, offences relating to barrier fences, and information about barrier fence employees. A barrier fence is made up of sections of fencing that are known as the wild dog barrier fence, the wild dog check fence or the rabbit fence. The barrier fence is mapped electronically and the map is held by the department.[19]

- **Clauses 104 – 109** (Codes of Practice) – These clauses relate to the making of codes of practice and guidelines about biosecurity matters. Codes of Practice will be made or adopted under a regulation.[20]

- **Schedule 1 -** Schedule 1 lists biosecurity matter classified as prohibited matter.[21]

- **Schedule 2 -** Schedule 2 lists biosecurity matter classified as restricted matter (refer to clause 21) and attaches categories to certain restricted matter (refer to Chapter 2, Part 3, Division 2) which sets out a person's obligations for that restricted matter.[22]

- **Schedule 5 -** Schedule 5 defines specific terms that are used in the Bill.[23]

[18] Biosecurity Bill 2013, Explanatory Notes, p. 24.
[19] Explanatory Notes, pp. 30, 34 – 36.
[20] Explanatory Notes, p.36.
[21] Explanatory Notes, p. 127.
[22] Explanatory Notes, p. 128.
[23] Explanatory Notes, p. 128.

Key issues

The committee considered a range of issues about the Bill that were raised in written submissions and in evidence at the committee's public hearing on 12 February 2014. A summary of issues raised in submissions, with individual advice provided by the department in response, is at **Appendix C** of this report.

The committee is satisfied that the department's advice has resolved almost all of the issues raised.

The following sections discuss a small number of issues arising from the examination of the Bill which have not been resolved and which the committee draws to the attention of honourable members.

Further issues are discussed in Part 3 of the report under 'Fundamental legislative principles'.

General biosecurity obligation, and education

In both written submissions and in comments made by submitters at the public hearing, there was generally strong support for the change to a general biosecurity obligation that will be enacted by this Bill. For example, the Invasive Species Council (ISC) submitted that they:

> *…strongly support the requirement that all biosecurity participants exercise a general biosecurity obligation to take all reasonable and practical measures to prevent and minimise biosecurity risks.*[24]

However, whilst they generally endorsed the concept, submitters and witnesses were concerned about the level of support and education that would be needed to ensure local government, the community, farmers, and all other stakeholders were capable of operating under the new culture.

The Local Government Association of Queensland (LGAQ) submitted the following:

> *All council employees with a land management or operational role that requires them to work outdoors in any capacity including for example, parking and water meter inspectors, will need to be made aware of their general obligations and what minimum reasonable and practical measures they must take. This presents a resource and training cost to all local governments in Queensland. The LGAQ requests that Biosecurity Queensland prepare information materials that can be used by councils to allow them to easily meet this requirement. Such materials will be needed for State employees also.*[25]

During the public hearing, AgForce spokesperson, Ms Marie Vitelli, and Queensland Farmers' Federation Chief Executive Officer, Mr Dan Galligan, raised the issue as well:

> *There needs to be an ongoing state budget commitment to resource state and local government when it comes to implementing this bill and the associated compliance. Significant resourcing is also required to increase community awareness of each person's general biosecurity obligation and requirement to report prohibited matter.*[26]

> *The government is putting in place, quite rightly, our proposal to have the overarching framework of responsibility to be up to the individual business holder. That places significant risk, because just as workplace health and safety does, rural business owners are not well resourced and are not making good plans at the moment for biosecurity management. So we are going to have some significant challenges to ensure that this bill, if and when it becomes law, is backed up by good implementation right down to industry planning and individual business planning which, to be honest, the track record is not great. So we will certainly be talking to the government about how to ensure that that happens in the future.*[27]

[24] Invasive Species Council, *Submission no. 18*, p.3.
[25] Local Government Association of Queensland, *Submission no. 17*, pp. 2-3.
[26] Vitelli, M. 2014, *Draft public hearing transcript,* 12 February, p.4.
[27] Galligan, D. 2014, *Draft public hearing transcript,* 12 February, p.9.

The department responded specifically to the LGAQ's comments with the following:

> *The department recognises that implementation of the proposed legislation will be a significant task. The department will consult with local government before finalising an implementation plan for the proposed legislation if the Legislative Assembly passes the Bill.*
>
> *Local governments, like other persons, will be obliged under the proposed legislation to take all reasonable and practical steps to minimise biosecurity risks posed by their activities. For employers such as local governments, this may include training for their staff about the general biosecurity obligation, awareness raising about biosecurity risks relevant to their activities and the local area and implementing strategies directed at preventing or minimising risks. Communication materials developed by the department may assist local governments with staff training and awareness raising. Local governments may wish to consider formal planning processes for biosecurity risk management to demonstrate due diligence just as they currently develop and implement plans to address, for example, workplace health and safety risks.*[28]

During the departmental public briefing Dr Jim Thompson, Chief Biosecurity Officer with Biosecurity Queensland, also commented on these concerns:

> *The bill represents a new approach to biosecurity in Queensland. Many of the submissions expressed some concern regarding the role of various parties in maintaining biosecurity. I would like to begin by explaining one facet of this new approach and that is the shared responsibility for biosecurity, which will provide context for the specific issues later.*
>
> *Historically, responsibility for funding and management of biosecurity risks has been disproportionately met by government, even where the benefits are largely with individuals of particular industries. In contrast, shared responsibility is a notion that all parties—those who create or exacerbate the risk and those who benefit from the risk mitigation activities—should bear their proportionate share of responsibility and the cost that goes with that as well. Individuals, business and particularly industries should not be transferring the risks and costs to government unless it is economically efficient for government to be involved in providing services in those areas. Also, the total cost of management will be lower for those who have the greatest capacity to prevent. So prevention before things start, which is on-farm biosecurity in simplest terms, is something we need to push.*[29]

Committee comment:

The committee acknowledges the concerns raised by the Local Government Association of Queensland, Agforce, the Queensland Farmers' Federation and others about the importance public education as part of the implementation of the Biosecurity Bill 2013, if passed by the Legislative Assembly. The committee invited the Minister to clarify the communication and education strategies his department will undertake to explain the responsibilities associated with the general biosecurity obligation that the Bill would establish.

Point for Clarification:

The committee notes the concerns of submitters and asks the Minister to inform the House of the communication and education strategies planned by his department to assist local governments, other organisations and individuals to understand and meet their biosecurity obligations.

[28] DAFF, 2014, *Correspondence*, 10 February.
[29] Thompson, J. 2014, *Draft public briefing transcript,* 12 February, pp.2-3.

Subordinate legislation

Submitters also raised concerns that much of the detail and ultimate implications of the Bill will be contained in subordinate legislation associated with the Bill which has not been released. Mr Dan Galligan, Chief Executive Officer of the Queensland Farmers' Federation in his evidence stated:

> *I am somewhat feeling like a bit of a broken record on this, but we will not know exactly the responsibilities that are required on the individual industries and individual businesses until we see all of those regulations come through and the impact statement completed. Biosecurity Queensland staff have done an excellent job of keeping us informed on the process so far, but until we complete it we are not really sure how it is all going to finish and those responsibilities will play themselves out.*[30]

Biosecurity Queensland's Dr Jim Thompson commented:

> *A number of issues that were raised in the submissions including whether there will be codes of practice or biosecurity zones for specific pests and diseases will be addressed in the development of the regulation if the Legislative Assembly passes the bill. There was quite a bit of discussion about the devil in the detail, and there is no doubt the regulation does have a significant role in those discussions.*[31]

Point for Clarification:

The committee notes the concern regarding the unknown detail of the subordinate legislation for the Bill, and invites the Minister to inform the House of the department's timetable for development of the legislation and any proposed consultation with key stakeholders as part of this process.

Resourcing

The committee's attention was also drawn by Agforce to resourcing issues, particularly in Queensland's northern coastal border, and whether there are adequate numbers of skilled people on the ground in vulnerable areas:

> *There is a lot done through the national quarantine service but once things get into Queensland our understanding is that it is then a Queensland problem. We really need the support behind that. Our understanding of QDAFF is that there are limited resources and limited numbers of people with the detection and surveillance skills we need. There are fewer landholders with those skills as well.*[32]
>
> *The other concern is that there has been a real reduction in surveillance, and we are very concerned about that as an agricultural industry. We know that the time from when something could come in, be detected and then have a response in place is so critical, especially with some diseases such as foot-and-mouth disease where every day is critical to a whole response program to be effective and the costs. We need a lot more surveillance. We really need the Queensland government and the Australian government to resource biosecurity and surveillance, and make sure that the content of the bill can be enacted in a good way. It is very critical for our industries.*[33]
>
> *We need as many eyes and ears out there as possible watching and listening for new risks. As I say, agricultural producers know the risk, but a lot of other land users might not understand the risk so much. You have to create that passion to want to do things.*[34]

[30] Galligan, D. 2014*, Draft public hearing transcript, 12 February*, p.9.
[31] Thompson, J. 2014, *Draft public briefing transcript, 12 February*, pp.2–3.
[32] Vitelli, M.2014, *Draft public hearing transcript, 12 February*, p.5.
[33] Vitelli, M. 2014, *12 February*, pp.6-7.
[34] Vitelli, M. 2014, *12 February*, p.5.

Committee comment:

The committee notes the concerns raised by submitters and seeks the Minister's assurances about the adequacy of staffing and other resourcing for biosecurity management.

Point for clarification:

The committee invites the Minister to assure the House that staffing and other resourcing for biosecurity surveillance and other functions are adequate, especially in high risk areas such as North Queensland.

The biosecurity functions of local government

Further concerns regarding the functions of local government under the new legislation were raised by stakeholders. Submitters raised a number of issues affecting local government, and suggested a range of changes.

The LGAQ requested reassurance that the State will continue to be responsible for responses to incursions of prohibited invasive biosecurity matter,[35] while AgForce reiterated that:

> *It is imperative that sufficient funding and resources are provided to local governments for successful management of invasive biosecurity matter and compliance with the requirements of the Biosecurity Bill 2013. Additional resources are required for local governments to manage common areas such as reserves and fenced stock routes.*[36]

The Southern Downs Regional Council (SDRC) make specific reference in their submission to clause 48 of the Bill:

> *Section 48 of the Bill gives local governments the authority to make local laws about restricted matter. If the State does not intend developing biosecurity zone regulatory provisions to deal with these species, the Council requests that scope be provided within the Bill for these species to be managed as per current class 3 declarations i.e. compliance to be enforced only where the species are threatening the integrity of environmentally significant areas. Also, as many local governments will be affected by this change, the Council believes that the State must prepare model local laws that Councils can easily adopt.*[37]

In response to concerns regarding the role of local government, the department advised the committee that:

> *There would be no substantive change to local government's role under the proposed legislation. The main biosecurity function of each local government would continue to be the management of invasive plants and animals in its area. The State would continue to provide support to local governments in this role.*[38]
>
> *A seven member steering Board comprising four local government representatives, one LGAQ representative and two DAFF representatives have endorsed a draft model for consultation with local governments. The draft model seeks to enhance transparency, accountability and value for money through the establishment of a formal governance structure, with reporting responsibilities direct to the Minister for Agriculture, Fisheries and Forestry.*[39]

Committee comment:

The committee is satisfied with the department's response.

[35] Local Government Association of Queensland, *Submission no.17*, p.4.
[36] AgForce, *Submission no.7*, p.6.
[37] Southern Downs Regional Council, *Submission no.3*, p.2.
[38] DAFF, *Correspondence*, 10 February, p.22.
[39] DAFF, *Correspondence*, 10 february,p.22.

The management of rabbits

The Darling Downs–Moreton Rabbit Board (DDMRB) raised issues about the management of rabbits, and the relationship between the Board and the local governments that contribute to its funding:

> *It is the Rabbit Board's view that a shared responsibility for rabbit management within the board operational area would achieve greater efficiency, both in terms of financial outcomes and rabbit management outcomes. The DDMRB currently expends more than $200,000 per annum on rabbit eradication efforts, but this investment could be more focused on public awareness programs and landholder education in eradication techniques, if the legislation was amended to clearly state that this was a shared responsibility between local government and the Board*.[40]

Concerns were also raised by SDRC about the responsibility for rabbit control and management:

> *The Council believes that section 48 (2) is ambiguous in its wording and that it should be clarified to make explicit each organisation's role in rabbit control and compliance.*[41]

Committee comment:

The committee is aware that the vitally important work of the Darling Downs-Moreton Rabbit Board funded by a small number of councils that are in close proximity to the rabbit fence, while the majority of Queensland councils contribute no funding, though obviously benefit from the board's work. The committee also understands the operational difficulties highlighted by the board and suggest a review would be timely. This would provide an opportunity to examine whether the current funding model is fair and equitable and whether a different approach to operational matters between the State Government, local governments and the board would result in greater efficiencies and better use of the limited available resources.

Recommendation 3

The committee recommends that the Minister reviews the arrangements for the management of rabbits in Queensland to determine whether the current funding model is fair and equitable and whether a different approach to operational matters between the State Government, local governments and the Darling Downs–Moreton Rabbit Board would result in greater efficiencies and better use of the limited available resources.

Clause 115 Effect and duration of biosecurity emergency order

The Queensland Law Society (QLS) in their evidence at the public hearing raised concerns about the wording of clause 115 and whether the clause should be redrafted to read 'earlier of' rather than 'later of' to set limits on the duration of an order. According to the QLS:

> *Our suggestion is that this clause could be interpreted to leave open ended, or largely open ended, the duration of a biosecurity emergency order and more limits are required in that regard. It could be a simple case of changing the drafting to suggest that the order should be even in force until the sooner of the following events taking place, namely, the 21 days or the day stated in the emergency order. What the current drafting does is make 21 days the minimum period essentially, and a much longer period could be contemplated by the order if 2(b) is used instead of 2(a). We make that submission in the context that these are emergency powers. We understand completely and support the need for the department to have the ability to act quickly and decisively in respect of responding to any emergent situations, but our concern is that by leaving it as it is phrased in clause 115 that 21 days is effectively the minimum period and that should, in our view, be the maximum period after*

[40] Darling Downs – Moreton Rabbit Board, *Submission no. 2*, p.2.
[41] Southern Downs Regional Council, *Submission no.3*, p.2.

> *which, after 21 days of a possible emergency, our view is that then there should be further framework in the act to either have these orders extended by an order of the court or by some other more formal consultation process rather than it being open ended as it currently is. As I say, this part of the act is designed to cover emergencies, not simply difficult situations, it is not for managing difficult situations, it is for immediate response to emergencies, so we say that those time frames are too loose in clause 115.*[42]

Departmental officers in the final briefing for the committee advised in response to the concerns raised:

> *In relation to clause 115, around the wording of 'emergency order' and how long the orders can stay in place, we will take that on notice for review… However, the department would submit that this is an appropriate use of a Henry VIII provision. As an example, Marguerite spoke about exemptions to the feeding of animal matter to other animals, which is in the bill. However, during an emergency response, such as to foot-and-mouth disease, the chief executive may want to suspend those exemptions because the feeding of animal matter to other animals may be a means of spreading disease. So we would argue that that provision is an appropriate provision and it is essential for controlling disease in an emergency response.*[43]

In subsequent written advice to the committee after the briefing, the department advised:

> *The department agrees the provision as drafted does not limit the duration of an order. The department will seek clarification of the Government's policy on the duration of a biosecurity emergency order and seek to resolve discrepancies between the provisions and statements in the Explanatory Notes about the duration of an emergency biosecurity order.*[44]

Committee comment:

The committee agrees with the Queensland Law Society that clause 115 as written does not adequately limit the duration of a biosecurity emergency order, and recommends that the clause be amended to address this problem.

Recommendation 4

The committee recommends that clause 115 be amended to limit the duration of a biosecurity emergency order.

Clause 301 Seizure of property subject to security

Clause 301 empowers an authorised officer to seize a thing and exercise power under Division 5 'Seizure by authorised officer and forfeiture' in relation to the thing despite a lien or security over the thing. However, the seizure does not affect the other person's lien or security against a person other than the authorised officer or person acting for the authorised officer.

The QLS in their evidence at the public hearing questioned how a person who has a lien or other security over a seized thing is notified about the seizure.[45]

The department, in subsequent written advice to the committee after the briefing advised:

> *Clause 301 provides 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. The seizure does*

[42] Cranny, G. 2014, *Draft public hearing transcript*, 12 February, p. 21.
[43] Ferguson, F. 2014 *Draft public briefing transcript*, 12 February, p.10.
[44] DAFF 2014, *Correspondence*, 17 February.
[45] Dunn, M. G. 2014, *Draft hearing transcript*, 12 February, p.22.

not affect the persons claim to the lien or other security against a person other than the authorised officer or a person acting for the officer. This provision provides protection for the ability of an authorised officer to seize a thing despite the fact another person may have interest in the thing. It also ensures the legal interests of things are not affected by seizure.

Currently, the department provides the interested party with information about the seizure when it becomes aware there is a security interest in property. The department submits that it is not necessary to mandate such notification.

Clause 314 (Procedure and powers for making forfeiture order) provides that the court, in making a forfeiture order for a thing, may require a notice to be given to anyone the court considers appropriate including for example any person who may have property in the thing. Clause 319 (Disposal order) contains a similar provision for disposal orders.[46]

Committee comment:

The committee is satisfied with the department's advice that there are adequate processes in place to ensure a person who has a lien or other security over a seized thing is notified about the seizure.

Clause 348 No compensation for consequential loss

Clause 348 provides that statutory compensation is payable for loss or damage to property but not for consequential loss.

The Queensland Law Society in their evidence at the public hearing queried why the Bill did not provide for consequential loss that may be suffered by a person as a result of action taken by the department under the Act. According to the QLS:

…there are significant compensation schemes. There is a scheme and also a statutory compensation arrangement in the bill in addition to the common law provisions for negligence and unlawful conduct. With respect to the statutory compensation scheme, clause 348 of the bill excludes consequential loss as a head of compensation under the statutory scheme. That will effectively mean that business owners and operators will not be able to recover any compensation towards loss of business or wasted costs as a result in a situation where there is, say, a stud property or an agistment property that is closed down for the purposes of an equine flu outbreak or something like that. There might be a number of costs et cetera. Our question to the committee is, is it appropriate that consequential loss in some way should be dealt with for those people who suffer loss in that particular regard.[47]

The department, in subsequent written advice to the committee after the briefing advised:

The Bill proposes three types of compensation arrangements:

- *scheme compensation under an agreement between government and industry (for example an outbreak of foot and mouth would be covered by the Emergency Animal Disease Response Agreement);*
- *statutory compensation; and*
- *compensation for loss arising from the exercise of an authorised officer's powers other than loss arising from a biosecurity response or from a lawful seizure or forfeiture.*

Consequential loss may be available under scheme compensation. However, this will depend on the terms of the agreement which underpins the compensation scheme.

Statutory compensation may be payable where scheme compensation is not available. Clause 348 (No compensation for consequential loss) of the Bill explicitly excludes consequential loss under the statutory compensation provisions. Further, clause 347

[46] DAFF, 2014, *Correspondence*, 17 February.
[47] Cranny, G. 2014, *Draft hearing transcript*, 12 February, p.22.

provides that persons are not eligible for statutory compensation if they are negligent or in some way responsible for the loss or damage and in some other circumstances. Limiting the scope and amount of statutory compensation will encourage industry members to obtain insurance or participate in agreements that provide for scheme compensation. Limited statutory compensation forces business to accept some costs as a business risk and limits the financial liability of the State in relation to compensation claims.

The notion of shared responsibility reflected in the Bill is based on the premise that risk and costs should not be transferred from individuals or particular industries to government unless it is economically efficient or there is commensurate payment. It also recognises that the costs of risk management are minimised by obliging those who have greatest capacity to prevent and control the risk to bear proportionate responsibility for its mitigation.

Clause 334 of the Bill provides for compensation which may arise from loss because of the exercise or purported exercise of a power by a designated officer (includes an authorised officer, inspector or barrier fence employee) including a loss arising from compliance with a requirement made by a person under the Act. If the designated officer is appointed by the State, this compensation is only payable for a loss arising from an accidental, negligent or unlawful act or omission. The Bill does not fetter the power of the court to order compensation for consequential loss in these circumstances.[48]

Committee comment:

The committee is satisfied by the department's advice and seeks clarification regarding the availability of compensation for consequential damage under scheme compensation.

Point for clarification:

The committee seeks clarification from the Minister as to whether compensation for consequential loss will be available under scheme compensation and reflected in the terms of the agreement which underpins the compensation scheme.

Clause 349 Application for statutory compensation

Clause 349 provides that applications for statutory compensation must be in the approved form and received by the chief executive within 90 days after the date the loss or damage happens. However the chief executive may accept the application after 90 days of it is fair and reasonable to do so.

The QLS in their evidence at the public hearing raised concerns about the wording of clause 349 and whether the 90 day time limit should commence after the end of a response as opposed to after the date the loss or damage occurred. According to the QLS:

In the circumstance that 90 days may expire while the biosecurity response is still underway the person may not know that they needed to have made that response. There is a power for the chief executive to decide whether they will or will not accept something after the 90 days, but realistically it may be more appropriate for the time period to run from the later of the point where the loss occurs or the cessation of the biosecurity response so that people have got three clear months from when it is all finished and cleaned up to sort out what they need to do rather than having to do it while something is actually still on foot.

The department, in subsequent written advice to the committee after the briefing advised:

Clause 349(1) provides that a person may apply to the chief executive for statutory compensation. Clause 349 (3) states an application for compensation must be received by the chief executive within 90 days after the date of the loss. Clause 349(4) provides the chief

[48] DAFF, 2014, *Correspondence*, 17 February.

executive may accept an application after the period mentioned in clause 349(3) if the chief executive is satisfied it is fair and reasonable in the circumstances to accept the application.

The definition of a biosecurity response for this chapter relates to a particular lawful action that is authorised to be taken under the Act. For example, biosecurity responses could be actions over a period of several months directed at prevention, control or eradication of a pest or disease or a single action extending for several months. Further an action could continue to cause damage or loss for some time after it was taken.

The department considers the provision works in favour of people seeking statutory compensation because the provision allows an application to be made close to the date when the loss or damage occurred rather than at the conclusion of an extended response. Further, where loss or damage occurred some time after the biosecurity response, the provision would allow application to be made within 90 days of that later time.

In practice, the discretion of the chief executive to extend the time in which an application could be made would work in favour of the applicant.

The department considers the provision is drafted appropriately.[49]

Committee comment:

The committee notes the concerns raised by the Queensland Law Society, and the advice provided by the department. The committee is, however, satisfied that the clause, as written, would generally work in favour of people seeking statutory compensation. The committee seeks assurances about the availability of information for potential applicants to explain the process for seeking compensation.

Point for clarification:

The committee requests that the Minister clarify whether his department will provide fact sheets or guidelines for potential applicants on the availability of statutory compensation provided for in clause 349, the application processes and the time limits that will apply.

Schedule 2 Restricted matter and categories

Submissions received from Research into Deer Genetics and Environment Inc and the LGAQ noted that the omission of the word 'feral' on page 432 of the Bill in the listing for rusa deer (*Rusa timorensis*, syn. *Cervus timorensis*) in Schedule 2 Restricted matter and categories Part 2 Restricted matter–invasive biosecurity matter.

The department acknowledged the omission in its advice to the committee on the submissions, and indicated that it will seek to correct the error at an appropriate opportunity.

Committee comment:

The committee thanks Research into Deer Genetics and Environment Inc and the Local Government Association of Queensland for noting in their submissions the error in Schedule 2, and recommends to the House that the error in the schedule be corrected to ensure farmed rusa deer are not listed as 'restricted matter'.

Recommendation 5

The committee recommends that Schedule 2 at page 432 of the Bill be amended by inserting the word 'feral' before 'rusa deer'.

[49] DAFF 2014, *Correspondence, 17 February*.

Schedule 5 Dictionary - definition of 'saleyard'

The Bill at page 527 states:

> ***saleyard*** *means any yard, premises or place where designated animals are-*
>
> *(a) sold or offered or exhibited for sale; or*
>
> *(b) held or kept for the purposes of being sold or offered or exhibited for sale; or*
>
> *(c) held or kept on being sold.*

The Australian Livestock and Property Agents Association (ALPAA) noted in their submission that this definition is too broad and, if not amended, could create responsibilities that may be assumed. This was explained by Ms Andrea Lethbridge, the association's Northern Regional Manager in evidence at the committee's public hearing:

> *Based on this definition, a saleyard could be interpreted as a paddock where a buyer inspects and buys livestock for direct consignment to either another property or an abattoir. Another example is sales to abattoirs whereby the sale is not concluded until the carcass has been weighed. Both examples are technically correct and fit the definition's requirements that a place where animals are 'held or kept for the purpose of being sold or offered or exhibited for sale' is a saleyard. This is far from the intention of the definition and is also a long way removed from the public's perception of a saleyard where a public auction has been undertaken. With such a broad definition, ALPAA is concerned with the implications this may create for responsibilities that may be assumed if this definition is not amended.*[50]

The department acknowledged the concerns in its advice to the committee on the submissions and during the final briefing on the Bill provided on 12 February:

> *In terms of the definition of 'saleyard', the department recognises that the definition in the proposed legislation, although it is exactly what is in the current legislation, is not implementing the nationally agreed approach to the reporting of consignment of stock following private sales. We would want to consult with ALPA, but in general terms we would accept that the sort of approach that they are looking at, which is consistent with the national approach where saleyards are only those places where there is public auction or tender, is probably the right way to go and we would look at seeking to make an amendment to reflect that.*[51]

Committee comment:

The committee thanks the Australian Livestock and Property Agents Association for raising the issue to the committee's attention, and recommends to the House that the definition for saleyard be amended to address the concerns raised.

Recommendation 6

The committee recommends that the definition for 'saleyard' provided in Schedule 5 of the Bill be amended to more narrowly define a 'saleyard' as a place where there is a public auction or tender, as proposed by the Australian Livestock and property Agents Association.

[50] Lethbridge, A. 2014, *Draft public hearing transcript*,12 February, p. 19.
[51] Clark M. 2014, *Draft public briefing transcript*, 12 February, p. 10.

Complaints handling procedures

The committee sought advice from the department about processes for dealing with complaints about the department's handling of, or adverse impacts of, a biosecurity event.

DAFF advised the committee:[52]

> *There are a number of avenues for complaint about treatment received during a response to a biosecurity event. The Bill provides for the review of certain types of administrative decisions. Mechanisms for complaints and review of biosecurity event management are provided for by the department.*
>
> *The Bill allows a person who is unhappy with the impact that an emergency biosecurity order, movement control order or biosecurity zone regulatory provisions is having on them to apply for a permit to authorise their activities. Clause 121 provides for the grant of a biosecurity emergency order permit to allow the person to undertake an activity (or not to undertake an activity) that would otherwise breach a biosecurity emergency order. Clause 132 provides for the grant of a biosecurity instrument permit to allow a person to undertake an activity (or not to undertake an activity) that would otherwise breach a movement control order or biosecurity zone regulatory provisions.*
>
> *Similarly, chapter 8 provides for the grant of prohibited and restricted matter permits to allow dealings with prohibited and restricted matter respectively.*
>
> *The Bill contains provisions for the review of prescribed administrative decisions which affect a person's rights and interests. Clause 362 of the Bill provides that a person may apply for an internal review of a decision if they have been given or are entitled to be given an information notice for the decision or for a decision to seize or forfeit a thing. This would include a decision to refuse to grant a biosecurity emergency order permit, biosecurity instrument permit or prohibited or restricted matter permit. Clause 364 provides that a person may apply for an immediate stay of the original decision until the intenal review is completed. If the internal review upholds an original decision to seize or forfeit a thing, clause 368 provides that the person may appeal to the Magistrates Court and clause 370 allows the court to stay the decision until the court has decided the appeal. If the internal review upholds the original decision for other matters, clause 367 provides that the person may apply to the Queensland Civil and Administrative Tribunal for an external review of the decision.*
>
> *Where a person is otherwise aggrieved by their treatment during a biosecurity response they may direct their complaints to the department or, if they are unsatisfied with the department's response or decision, with the Queensland Ombudsman. Information about how to make a complaint and how complaints are handled is available on the department's website (http://www.daff.qld.gov.au/about-us/contact-us/providing-feedback-or-making-a-complaint). The department is committed to ensuring that complaints are dealt with in a transparent, responsive, efficient, effective and fair way. If the complaint relates to a local problem, it will normally be handled by an officer in the business group or region of the department involved. If the complaint is more serious or in relation to an organisational problem such as misconduct by staff, misuse of resources, maladministration, or danger to the environment or public health, it may be managed or referred to more senior management or Human Resources specialists. If a person is not satisfied with the response from the department they may also make a complaint to the Queensland Ombudsman.*
>
> *After Action Reviews (AARs) are undertaken internally by Biosecurity Queensland (BQ), or external reviews are commissioned, after responses to significant biosecurity events. BQ established a Review Implementation Steering Committee (RISC) in early 2012 to implement*

[52] DAFF 2014, *Correspondence, 17 February*.

a formal process for managing recommendations from these reports. RISC's role is to track, monitor, escalate and coordinate management's response to recommendations issued to BQ concerning its management of incidents and events. RISC is comprised of six senior representatives, including the Chief Biosecurity Officer who is the chair of RISC along with additional members providing coverage over all of BQ programs.

Experience gained during responses to equine influenza, red imported fires ants and Hendra virus highlighted the need to work closely with stakeholders and deal with any stakeholder concerns as the response unfolds. Biosecurity Queensland usually appoints dedicated liaison officers to deal directly with stakeholders during and after a response.

Committee comment:

The committee thanks the department for its detailed advice.

Minor errors in the Explanatory Notes

During the course of the inquiry, the committee noted a number of minor errors in the Explanatory Notes.

Page 72 of the Explanatory Notes explains the intent of clause 255 'Powers of particular authorised officers limited'. It states that the powers of an authorised person '…are limited to the board's operational area, if prescribed, or alternatively within 20km of the barrier fence for which the board is responsible.' Clause 255 of the Bill defines this range as 20m. The 20km reference in the Explanatory Notes is clearly an error.

On **page 93** in relation to clause 345 'Operation of statutory compensation' the fourth dot point is superfluous and should be deleted. This error was noted by Agforce in their submission and acknowledged by the department in their advice to the committee on the submissions.

While these errors are minor in nature, there is the potential for them to create confusion. The committee therefore seeks assurances that the errors will be corrected.

Point for clarification:

The committee seeks assurances that the minor errors on pages 72 and 93 of the Explanatory Notes will be corrected at the first available opportunity.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee sought advice from DAFF in relation to a number of possible fundamental legislative principles issues. The following sections discuss the issues raised by the committee and the advice provided by the department.[53]

Rights and Liberties of Individuals

Section 4(2)(a) *Legislative Standards Act 1992* - Is administrative power sufficiently defined and subject to appropriate review?

a) Definition of administrative power for making biosecurity response instruments

Emergency prohibited matter declaration (clause 31)

Clause 31 provides that the chief executive may declare that a biosecurity matter is or is no longer a prohibited matter, if he or she is satisfied that the biosecurity matter satisfies the prohibited matter criteria, as provided for in section 20; and urgent action is required. In usual circumstances, a prohibited matter is set out in schedule 1 to the Bill. The fact that prohibited matters are specified in primary legislation indicates that the identification of a prohibited matter is of sufficient importance to involve the Legislative Assembly, rather than just the chief executive.

Declaration of *biosecurity emergency order* (clause 113)

Clause 113 provides for the chief executive to declare a biosecurity emergency, if he or she is satisfied on reasonable grounds, having regard to the seriousness or potential seriousness of the biosecurity event and the extent of its impact or likely impact, that an emergency response as provided for in the order is necessary.

A *biosecurity emergency order* must be primarily directed at taking emergency action:

- to isolate the biosecurity emergency area identified in the order;
- to stop the spread of any *biosecurity matter* associated with the *biosecurity event*; and
- if practicable, to eradicate the *biosecurity matter*.

Clause 113 provides an example of a *biosecurity emergency order* addressed at something that *may* happen:

> *…a biosecurity emergency order might be made because a significant number of chickens have been found dead on a poultry farm in the biosecurity emergency area. The deaths could be the result of heat exhaustion. However, tests being urgently undertaken have not yet ruled out the possibility that the deaths have been caused by biosecurity matter, for example avian influenza.*

The Explanatory Notes acknowledged that *"…*imposition of these orders could have significant impact on the rights and liberties of individuals. Significant penalties apply where there are infringements of these orders".[54]

[53] DAFF, 2014, *Correspondence*, 17 February.
[54] Biosecurity Bill 2013, Explanatory Notes, p. 4.

An emergency can be used as a justification for breaches of FLP. However, if an emergency is to be used to justify breaches of this kind, it is important for the emergency to be clearly defined.

For a legislative scheme on biosecurity matters (i.e. plant and animal diseases and pests) some clarity about what constitutes an emergency would be expected. For example, section 319 of the *Public Health Act 2005*, provides that the Minister may declare a public health emergency, if the Minister is satisfied there is a public health emergency (defined as an event or a series of events that has contributed to, or may contribute to, serious adverse effects on the health of persons in Queensland) *and* it is necessary to exercise powers under this chapter to prevent or minimise serious adverse effects on human health.[55]

Clause 113 does not provide for a similar test for the declaration of a *biosecurity emergency*. Rather, it is subjective and depends on the chief executive's satisfaction. Clause 113 also provides no criteria the chief executive must consider, for example, imminent loss of human life or large scale loss of animal or plant life. Essentially, the only ground is reasonable satisfaction that an emergency response is necessary. The committee is concerned that this may not be regarded as an adequate definition of the exercise of administrative power.

Further, considering the nature of the power to declare a biosecurity emergency, and its consequences, it is questionable whether making this declaration requires particular expertise or experience.[56] Given that a biosecurity emergency order can prevail over the Act, it is also questionable whether it is appropriate for the chief executive, rather than the Minister, to declare a biosecurity emergency.[57]

The Explanatory Notes identify the potential impact on the rights and liberties of individuals of clauses 113-115 and 119-120 and state the following:

> *Any imposition on the individual can be balanced against the need to protect biosecurity considerations from the impact of the biosecurity matter which is the subject of the emergency order. There are a number of safeguards around the use of these powers included in the Bill. Emergency orders last for a maximum of 21 days and a movement control order for three months. Both orders require the chief executive to take all reasonable steps to ensure that a person likely to be affected by the orders is made aware of the making of the orders. For emergency orders, the chief executive must consult with both the Minister and the Chief Health Officer unless it is not practicable to do so. Additionally, the Minister must table a report about the biosecurity emergency the subject of the biosecurity emergency order in the Legislative Assembly within six months after the biosecurity emergency ends.*[58]

It is not clear to the committee that, on balance, the exercise of administrative power provided for in clause 113 is sufficiently defined.

Request for advice:

The committee sought advice from the department as to why criteria to assess a *biosecurity emergency* that would help to define the exercise of administrative power were not included in clause 113.

[55] The *Public Health Act 2005*, section 319 (3) provides that the Minister must, if practicable, consult with the chief executive and the chief health officer.

[56] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, January 2008, p. 33.

[57] As is the case in the *Public Health Act 2005*.

[58] Biosecurity Bill 2013, Explanatory Notes, p. 11.

DAFF advice:

The department submits there are sufficient criteria to assess a biosecurity emergency. The relevant clauses of the Bill were largely modelled on those in the Public Health Act 2005 to which they are compared in the request for advice.

When considering the operation of clause 113 it is essential to also consider Chapters 1 and 2 and the definitions of biosecurity event and biosecurity consideration.

- *Clause 113(4) provides the chief executive may make a biosecurity emergency order only if the chief executive is satisfied on reasonable grounds, having regard to the seriousness or potential seriousness of the biosecurity event and the extent of its impact or likely impact, that an emergency response as provided for in the order is necessary.*
- *Clause 14 of the Bill defines a biosecurity event to be an event comprising something that:*
    - *(a) has happened, is happening or may happen; and*
    - *(b) has had, is having or may have a significant adverse effect on a biosecurity consideration; and*
    - *(c) was or is being caused by, or may be or may have been caused by, biosecurity matter.*

Clause 5 provides how the purposes of the Act are to be achieved and defines a biosecurity consideration to be: human health, social amenity, the economy and the environment.

Therefore a biosecurity event is an event that has happened, is happening or may happen which has had, is having or may have a significant adverse effect on human health, social amenity, the economy and the environment. A biosecurity event may impact on one of these factors or a number of these factors. Examples of a biosecurity event are provided in clause 14. One example is a suspected outbreak of foot and mouth disease in another state that may spread to Queensland which would have a significant adverse effect on the economy.

The department considers a biosecurity event has been adequately defined and suggests that the definition is similar in composition to the definition of a public health emergency.

The test for making of an emergency order is consistent with provisions contained in the Public Health Act 2005 relating to a public health emergency. The chief executive can only make an order if satisfied the emergency response as provided for in the order is necessary – the rights and liberties of those affected would be relevant considerations for the chief executive when deciding whether the order is justified. The clause expressly requires consideration of the seriousness or potential seriousness of the biosecurity event and the extent of its impact or likely impact. There is a very similar satisfaction test for the declaration of a public health emergency under the Public Health Act 2005 – the Minister may declare a public health emergency if the Minister is satisfied that there is a public health emergency and it is necessary to exercise powers to prevent or minimise serious adverse effects on human health.

Clause 114 requires the chief executive to define the nature and apparent extent of the emergency. Clause 113(3) of the Bill provides a biosecurity emergency order must be primarily directed at taking emergency action to isolate the biosecurity emergency area identified in order to stop the spread of any biosecurity matter associated with the biosecurity event and if practicable to eradicate the biosecurity matter. This subclause provides some limitation to the area which is to be impacted by the order. Clause 113(3) should be read with the definition of biosecurity matter in clause 15 which limits the subject of the order.

In contrast to the declaration of a public health emergency under the Public Health Act 2005, clause 113 provides that a biosecurity emergency order may be made by the chief executive. In making such an order, the chief executive would rely on advice and expert opinion of officers who have expertise relevant to the emergency. Under clause 113(5) the chief executive must consult with the Minister and if the biosecurity event is likely to have a significant impact on human health, must also consult with the chief health officer.

To provide some scrutiny of decision making in relation to emergency orders, clause 123 of the Bill provides the Minister must table in the Legislative Assembly a report about a biosecurity emergency, the subject of a biosecurity emergency order, within 6 months after the biosecurity emergency ends. Clause 123(2) provides criteria for what the report must contain. The department considers this mechanism provides scrutiny and oversight of making emergency orders.

Committee comment:

The committee is satisfied b- the department's advice that criteria for assessing a *biosecurity emergency*, while not provided in clause 113, are located in other clauses of the Bill.

Movement control order (clause 124)

Clause 124 provides that the chief executive may make a *movement control order* for managing, reducing or eradicating stated biosecurity matter (*controlled biosecurity matter*), only if he or she is satisfied on reasonable grounds that the controlled *biosecurity matter* under the order poses a *biosecurity risk* of enough seriousness to justify the making of the order. A *movement control order* may be directed at managing, reducing or eradicating controlled *biosecurity matter* over a limited period rather than over an extended or indefinite period. Breach of a *movement control order* is punishable by a fine of up to 2000 penalty units or one year's imprisonment.

Clause 124(3) provides that the chief executive may only make a *movement control order*, if he or she is satisfied on reasonable grounds that the controlled *biosecurity matter* under the order poses a *biosecurity risk* of enough seriousness, and that the risk is high enough to justify the making of the order.

As a matter of FLP, administrative power must be sufficiently defined and subject to appropriate review. It would appear that clause 124 potentially permits unfettered action by the chief executive.

Request for advice:

The committee sought advice as to the department's reasons for not including criteria in clause 124 for what constitutes 'reasonable grounds'. The committee also requested the department to explain how the exercise of administrative powers under clause 124 will be subject to appropriate review.

DAFF advice:

The department considers clause 124 of the Bill does not provide the chief executive with unfettered power. Clause 125 of the Bill outlines matters which must be included in a movement control order. These matters include but at are not limited to:

- *why the movement control order is being made;*
- *what the movement control order is intended to achieve;*
- *the areas to which the movement control order relates;*
- *the controlled biosecurity matter for the order and any other biosecurity matter to which the movement control relates;*
- *any carrier including a carrier of a particular type to which the movement control relates; and*

- *the prohibitions and restrictions that must be complied with by persons to whom the order applies.*

The department submits these are matters which the chief executive must also consider in making a movement control order. In making such an order, the chief executive would rely on advice and expert opinion of officers who have expertise relevant to the emergency.

The chief executive can only make an order if satisfied the making of the order is justified – the rights and liberties of those affected would be relevant considerations for the chief executive when deciding whether the order is justified. In the context of clause 124(3) 'reasonable grounds' requires the chief executive to make an assessment of the circumstances and decide if it is reasonable to make the movement control order because the controlled biosecurity matter (as defined) poses a biosecurity risk (as defined) of enough seriousness and that the risk is high enough to justify the order.

The department considers the provisions in clause 124 are not inconsistent with similar provisions in other legislation such as section 319 of the Public Health Act 2005 (as discussed above in relation to making a biosecurity emergency order) and part 4 chapter 7 of the Food Act 2006.

The Bill is intended to provide a comprehensive framework to manage the impacts of a wide range of risks associated with animal and plant diseases and pests, including risks which are unknown or unpredictable. As a result, it is neither possible nor desirable to specifically identify every criteria or circumstance to which a provision may apply. In this context, adding specific criteria or restricting the definitions further could hinder the ability of the department to respond to urgent and emerging risks. The intention of this Bill would not be realised if the provisions did not quite cover a biosecurity situation due to the specificity of a provision.

Committee comment:

The committee is satisfied with the department's advice to clarify what constitutes 'reasonable grounds' for clause 124.

Amendment of relevant authority (clause 483)

Clause 483 empowers the chief executive to amend a relevant authority (a prohibited matter permit, a restricted matter permit, an accreditation or an auditor's approval) if he or she believes a relevant authority should be cancelled, suspended or amended (a *proposed action*). Clause 484 provides that *proposed action* must be accompanied by a *show cause notice*, which attracts a *show cause period*, which must end at least 28 days after the holder is given the *show cause notice*.

The Bill does not specify any criteria which the chief executive must consider when reaching a decision about a relevant authority.

Request for advice:

The committee sought advice as to the department's reasons for not including criteria in clauses 483 and 484 for what the chief executive must consider when reaching a decision about a relevant authority.

DAFF advice:

The department submits that part 3 of Chapter 17 must be read in its entirety to understand the power of the chief executive in making decisions about cancellation, suspension or amendment of a relevant authority.

Clause 482 of the Bill provides grounds for cancelling or suspending a relevant authority. These grounds include obtaining an authority by materially incorrect or misleading information or documents by mistake, the holder of an authority not paying a fee or the

holder of an authority having contravened a condition on the authority. These grounds form the basis for the chief executive to cancel or suspend a relevant licence.

Clause 483 of the Bill provides the chief executive may amend an authority under Part 3 of Chapter 17. Clause 484 (1) of the Bill provides if the chief executive believes a ground exists to cancel or suspend a relevant authority (the proposed action) or if the chief executive proposes to amend a relevant authority (also the proposed action) the chief executive must give the authority a show cause notice.

Clause 484(2) of the Bill provides what a show cause notice must state. The show cause notice must state the proposed action, the grounds of the proposed action and the facts and circumstances forming the basis for the ground. Clause 485 provides the holder of the relevant authority may make written representations about the show cause notice to the chief executive within the show cause period.

The provisions in clauses 484 and 485 are consistent with natural justice as they provide an opportunity to a person whose interests may be affected by an administrative decision with the right to be heard. These provisions provide clear guidance to a decision maker as to the information which must be provided to the holder of a relevant authority in a show cause notice.

Clause 487 applies if there is no accepted representation for the show cause notice or after considering the accepted representations for the show cause notice. The criteria which the chief executive must consider as to whether to amend, cancel or suspend a relevant authority are provided in clause 482 and are relevant in making a decision as to whether to cancel, suspend or amend a relevant authority. For example if the holder of a relevant authority contravened a condition of the authority and during the show cause period did not provide a reasonable explanation for the contravention, the chief executive may proceed with the action which was proposed in the show cause notice.

The department submits that it is not possible to provide an exhaustive list of criteria which the chief executive must consider when reaching a decision about a relevant authority. The department considers these provisions are not inconsistent with other similar legislative provisions relating to suspending, cancelling or amendment of authorities. The department submits the provisions contained in the Food Act 2006 for suspending or cancelling a licence for food businesses are similar.

Committee comment:

The committee is satisfied with the department's advice.

Comments on clauses 31, 113, 124 and 483

The Explanatory Notes identify the issues of FLP presented by clauses 31, 113, 124 and 483, and offer the following justification:

> *There is an imperative to take decisive action in emergency situations to protect the community against the grave outcomes to a biosecurity consideration from known or exotic biosecurity matter. For example, swift action would be required to address highly pathogenic zoonotic diseases (diseases that spread from animals to humans) like the H5N1 strain of avian influenza or bovine spongiform encephalopathy BSE, commonly known as 'mad cow disease.*[59]

The committee is cognisant of the need to act decisively in emergency situations to protect the community, as noted in the Explanatory Notes. The committee remains concerned, however, that

[59] Biosecurity Bill 2013, Explanatory Notes, p. 4.

this need to act may not justify the adverse impacts of undefined administrative power on the rights and liberties of individuals, as set out in clauses 31, 113 and 124 and 483.

Request for advice:

The committee sought assurance from the department that any impacts on rights and liberties as a result of the undefined administrative powers provided in in clauses 31, 113, 124, 483 and 484 are, on balance, justified and warranted.

DAFF advice:

> *The department considers any impact on the rights and liberties which may arise from the operation of clauses 31, 113, 124, 483 and 484 are on balance justified and warranted for the reasons outlined above.*
>
> *Also, the department submits that the administrative powers are defined. For example, when making an emergency prohibited matter declaration under clause 31, the chief executive must be satisfied of the matters specified in subclauses (2) and (3).*

Committee comment:

The committee notes the conditions in clause 31 (2) and (3) on the making of an emergency prohibited matter declaration by the chief executive, and is satisfied with the department's advice.

b) Appropriate review of administrative power (clause 498) – Privative clause ousting judicial review

Clause 498 provides that the chief executive's decisions to make a *biosecurity response instrument* under clauses 31 (emergency prohibited matter), 113 (biosecurity emergency order) and 124 (movement control order) is not subject to judicial review under the *Judicial Review Act 1991* apart from a determination by the Supreme Court that the chief executive's decision to make the biosecurity response instrument is affected by jurisdictional error. Further, as noted in the Explanatory Notes, there is no merit or internal review.[60]

In addition, clause 498 prevents a person bringing a proceeding for an injunction or for any writ, declaration or other order to stop or otherwise restrain the performance of an act directed or authorised under the biosecurity response instrument.

The effect of this is that once an act is authorised under a biosecurity response instrument, it is not subject to any form of review apart from a determination by the Supreme Court of jurisdictional error. Nor is it possible to apply for an injunction or any other writ, declaration or other order to preserve the subject matter of the order pending the final decision of the court (clause 498(2)).

Clause 498 therefore raises FLP issues. The Explanatory Notes include the following justifications:

> *Delays in responding to an incursion caused by legal challenges can have profound negative effects on a biosecurity consideration. The efficacy of responses to emergent situations will be greatly hampered if delays were caused through legal challenges to a decision to declare new threats as prohibited matter or limit the movement of carriers. In these situations, it is considered the balance favours the general rights of the community over an individual's right to be heard. However, in view of the decision in Kirk v Industrial Relations Commission [2010] HCA1, the court may still determine what factors are within ambit for review if assessing whether the chief executive has acted outside of the prescribed power.*[61]

The QLS in their evidence at the public hearing questioned the justification for the privative clause and whether it was possible to allow an action to proceed in parallel with a response rather than preclude the right to any action. According to the QLS:

[60] Biosecurity Bill 2013, Explanatory Notes, p. 4.
[61] Explanatory Notes, p. 5.

Essentially, what that clause does is make those sorts of instruments unreviewable. The only exception is for jurisdictional error which is a very narrow and a very unusual type of error that can be made. In circumstances where we are talking about orders which can affect people's livelihood, their reputation, certainly their income, it can effectively be ruinous to a farmer or an agriculturalist. There should be review mechanisms allowed for that to be challenged appropriately in the Supreme Court. The explanatory notes suggest that one of the reasons for the limitations as it is currently written is to prevent interruptions to the process through legal challenges. With respect to those who drafted that, that carries little weight, in my submission. It would be very easy to have the legislation reflect that the orders remain in place and in force throughout their life and a challenge does not impact upon their enforceability until and unless the court makes a decision to the contrary. It is our submission that further review should be allowed in respect of these very serious orders.[62]

Request for advice:

The committee sought advice from the department regarding the relevant part or parts of the High Court's decision in *Kirk v Industrial Relations Commission* that the comments in the Explanatory Notes refer to, and to clarify how these parts of the decision are relevant to the FLP issues raised by clause 498.

DAFF advice:

The operative effect of the privative clause is contained in clause 498(1) of the Bill.

The High Court's decision in Kirk v Industrial Court (NSW) (2010) 239 CLR 531 [2010] HCA 1 (Kirk), found that a privative clause in the Industrial Relations Act 1996 (NSW) should be read down so that the privative clause could not validly preclude provisions for jurisdictional error. The High Court found it was beyond the power of State legislation to remove the power from a State Supreme Court to grant relief for jurisdictional error which arose from decisions made by inferior courts and tribunals. This is because of the operation of Chapter III of the Constitution and the fact the High Court held the supervisory jurisdiction of a Supreme Court of a State enforcing the limits on the exercise of State executive and judicial power is a defining characteristic of such a body. The High Court in Kirk also considered the defining characteristics of the Supreme Court of a State extended to defining the limits of State executive power.

Accordingly, the privative clause in the Bill (clause 498) does not aim to protect decisions of a State court or tribunal from judicial review. That is, it takes into account the Kirk decision.

As the chief executive's powers to make various biosecurity instruments are limited by statutory criteria, the Court may consider these factors to be within the ambit of review for jurisdictional error, to the extent of assessing whether the chief executive has acted beyond power.

It is also noted that the provisions expressly do not prevent an action for damages or loss arising from negligence or an unlawful act and the Bill also provides statutory entitlements for compensation in certain circumstances.

The department, in subsequent written advice to the committee after the briefing advised on the issues raised by the QLS:

The operative effect of the privative clause is contained in clause 498 of the Bill.

The department considers there is an imperative to take immediate and decisive action in emergency situations to protect the community against the possible grave outcomes to a biosecurity consideration from known or exotic biosecurity matter. Delays in response

[62] Cranny, G. 2014, *Draft hearing transcript*, 12 February, p.22.

caused by legal challenges which may result in a stay of the operation of an emergency order could have profound negative impacts on a biosecurity consideration.

The High Court's decision in Kirk v industrial Court (NSW) (2010) 239 CLR 531 [2010] HCA 1 (Kirk), found that a privative clause in the Industrial Relations Act 1996 (NSW) should be read down so that the privative clause could not validly preclude provisions for jurisdictional error. The High Court found it was beyond the power of State legislation to remove the power from a State Supreme Court to grant relief for jurisdictional error which arose from decisions made by inferior courts and tribunals. This is because of the operation of Chapter III of the Constitution and the fact the High Court held the supervisory jurisdiction of a Supreme Court of a State enforcing the limits on the exercise of State executive and judicial power is a defining characteristic of such a body.

The privative clause in the Bill does not aim to protect decisions of a State court or tribunal from judicial review. Instead it aims to protect decisions of the chief executive to make an emergency prohibited matter declaration, a biosecurity emergency order or movement control orders. However, the High Court in Kirk also considered the defining characteristics of the Supreme Court of a State extended to defining the limits of State executive power.

As the chief executive's powers to make various biosecurity instruments are limited by statutory criteria, the Court may consider these factors to be within the ambit of review for jurisdictional error, to the extent of assessing whether the chief executive has acted beyond power. Therefore, this clause does not preclude a person from making an application for a review of a decision to make a biosecurity response instrument. The clause restricts the court's ambit to jurisdictional error. What the court considers may constitute jurisdictional error is a matter for the court.

This clause does not prevent a person from bringing a proceeding to recover damages or loss arising from a negligent act or omission in the performance of an act or an unlawful act.[63]

Committee comment:

The committee is satisfied with the department's advice.

Clause 498 is subject to the following proviso:

Unless there is a determination by the Supreme Court that the chief executive's decision to make a biosecurity response instrument is affected by jurisdictional error…[64]

In Australian administrative law, jurisdictional error is a term used to describe 'a ground of review available where a tribunal or inferior court purported to exercise jurisdiction in excess of that which had been conferred upon it',[65] or 'failed to exercise its proper jurisdiction'.[66] Because the chief executive is not a tribunal or inferior court, it is difficult to see how the term 'jurisdictional error' can be applied to a decision of the chief executive. Applying the well-accepted meaning of the term 'jurisdictional error', the proviso does not appear to have the effect of preserving an additional ground of judicial review.

The removal of review rights at clause 498 is similar to the *Plant Protection Act 1989*, section 11B. However, section 11B only applies to a regulation made by the Governor in Council or notice made by the Minister under section 11 which declares a quarantine area and the relevant pest being

[63] DAFF 2014, *Correspondence*, 17 February.
[64] Biosecurity Bill 2013, clause 498(1).
[65] Halsbury's Laws of Australia, Lexis Nexis, [10-2290] accessed 20 December 2013, current as at 22 November 2010.
[66] Nygh, P. and Butt. P. (Eds), 1997, *Butterworths Australian Legal Dictionary*, Butterworths, p. 651.

quarantined is a serious pest.[67] The exercise of administrative power to which section 11B applies is therefore more defined and narrower in scope than clause 498.

Clause 498 may have a significant impact on the rights and liberties of individuals. In the example provided regarding chickens with heat stress mentioned above, a biosecurity emergency order could be made for animals to be quarantined, vaccinated or destroyed on the basis that they have avian influenza, even when this has not been confirmed. In these circumstances, there would be no scope for a person affected to apply for internal or merit review of the decision to make the biosecurity emergency order and no avenue for judicial review other than where there is jurisdictional error. Further, it would not be possible to bring a proceeding for an injunction, or for a writ, declaration or other order to stop or otherwise restrain the performance of an act directed or authorised under the order or declaration.

Clause 498 takes effect as a privative clause as it purports to 'oust the inherent and statutory jurisdiction of the Supreme Court to review the legality of decisions and actions'.[68] The former Scrutiny of Legislation Committee considered that:

> *…privative clauses should rarely be contemplated and even more rarely enacted. They represent a parliamentary attempt to deny the courts a central function of their judicial role, preventing courts pronouncing on the lawfulness of administrative action.*[69]

As a privative clause, clause 498 will be restrictively implemented.[70] The rationale for judicial review is, as explained by the SLC, related to the fact that "judicial review differs in nature from, and provides an additional mechanism to, statutory rights of appeal or administrative review. Indeed, a determination of the legality of administrative action by way of judicial review represents an important protection of rights and liberties of individuals''.[71]

This sort of broad administrative power and lack of review mechanism is highly objectionable in principle. The Explanatory Notes set out a number of justifications for this scheme, stating:

> *In these situations, it is considered the balance favours the general rights of the community over an individual's right to be heard.*[72]

Request for advice:

The committee asked the department to explain the meaning of the proviso given in clause 498, and the department's rationale in this clause for seeking to exclude administrative actions in emergency situations from judicial review.

The committee also sought assurance from the department that clause 498 has sufficient regard for the rights and liberties of individuals despite the absence of a review mechanism.

DAFF advice:

> *The department considers there is an imperative to take immediate and decisive action in emergency situations to protect the community against the possible grave outcomes to a biosecurity consideration from known or exotic biosecurity matter.*
>
> *The department considers the rights and liberties of individuals are adequately protected under clause 498 as the provision does not absolutely preclude a person from seeking*

[67] Serious pests are those listed in the *Plant Protection Act 1989*, schedule 1 or declared under section 6P to be a serious pest.
[68] Former Scrutiny of Legislation Committee, *Alert Digest* 5 of 2009, p. 20.
[69] Former Scrutiny of Legislation Committee, *Alert Digest* 5 of 2009, p. 20.
[70] Decision of the High Court in *R v. Blakeley; Ex parte Assn of Architects, Engineers, Surveyors and Draughtsmen of Australia (*1950) 82 CLR 54 at 90, cited in Nygh, P. and Butt, P. (Eds), 1997, *Butterworths Australian Legal Dictionary*, Butterworths, p. 924.
[71] Former Scrutiny of Legislation Committee, *Alert Digest* 5 of 2009, p. 20.
[72] Biosecurity Bill 2013, Explanatory Notes, p. 5.

judicial review of a decision under this provision. In particular, the Court may decide it can review whether the chief executive has acted beyond power having regard to the statutory criteria for making the relevant decision as discussed above.

The department considers that legal challenges on other grounds, especially if they resulted in a stay of the operation of an emergency order, could have profound negative impacts on a biosecurity consideration.

Committee comment:

The committee thanks the department for clarifying the meaning of clause 498. The committee also notes the department's view that clause 498 does not, in effect, preclude a person from seeking judicial review of a decision.

On balance, the committee accepts that the infringement of the rights and liberties of individuals in clause 498 is justified given the imperative to take immediate and decisive action in emergency situations to protect the community against the possible grave outcomes to a biosecurity consideration from known or exotic biosecurity matter.

c) Restricted places (clause 161)

Clause 161 provides that the chief executive may make declarations if satisfied on reasonable grounds that a particular place could pose a *biosecurity risk*. These declarations may include that the place is a restricted place, restrictions on use of the place and on use of designated animals at the place. The only limitation on the making of these declarations is the reasonable satisfaction of the chief executive of a *biosecurity risk*.

The committee is considering the appropriateness of the proposed 'reasonable satisfaction test' given the broad definition of biosecurity risk, and the extent of the potential consequences of such declarations. For example:

If the place is declared to be a restricted place because of the presence of contaminants consisting of heavy metals in soil at a place, a restriction may be that a designated animal at the place must not be sent to a meat processing place to be slaughtered until it has been pastured for a stated period on a place that is not a restricted place.[73]

Request for advice:

The committee sought assurance from the department that clause 161 adequately defines the exercise of administrative power.

DAFF advice:

Clause 161 provides the chief executive with the power to place restrictions on a particular place if the chief executive is satisfied on reasonable grounds that a particular place could pose a biosecurity risk. An example of what may pose a biosecurity risk is provided under clause 161(1) in the Bill. In making a decision that a particular place could pose a biosecurity risk, the chief executive would need to have some evidence that a risk exists. For example, relevant evidence may include the presence of a contaminant in a soil sample taken from the property and a tissue sample taken from an animal which has resided at the place. Guided by policy on acceptable minimum residue levels, the chief executive could make a decision about whether to place the relevant property on the register as a restricted place.

Clause 161(2)(b) provides that if the chief executive decides to declare a place to be a restricted place, the owner, occupier or any entity which is reasonably expected to become a registered biosecurity entity in relation to the place must be given an information notice about the chief executive decision. Under clause 362 a person who has been given or is

[73] Biosecurity Bill 2013, Explanatory Notes, Clause 161 Example, p. 143.

entitled to be given an information notice may apply for an internal review of the decision and, if the decision is upheld, may apply, as provided under the Queensland Civil and Administrative Tribunal Act 2009, to the Queensland Civil and Administrative Tribunal for an external review of the decision.

Further, clause 164 provides that a person may apply to the chief executive for the removal of the entry for a restricted place from the biosecurity register. Under clause 166 the chief executive must consider the application and decide to grant or refuse to grant the application. If the chief executive decides to refuse the application the chief executive must give the applicant an information notice for the decision. Under clause 362 a person who has been given or is entitled to be given an information notice may apply for an internal review of the decision and, if the decision is upheld, may apply, as provided under the Queensland Civil and Administrative Tribunal Act 2009, to the Queensland Civil and Administrative Tribunal for an external review of the decision.

The requirement to declare a place to be a registered place is consistent with the provisions contained in section 11 of the Stock Identification Regulation 2005 which provides for the chief inspector of stock to decide the chemical residue status, disease status or HGP status of a registered place and of stock on or from the place.

The department considers in view of the requirement to provide information notices coupled with the provision of an internal review mechanism, there are sufficient safe guards in place for decisions made by the chief executive under clause 161.

Committee comment:

The committee is satisfied with the department's advice.

Does the Bill confer power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer? Section 4(3)(e) *Legislative Standards Act 1992*

a) Inspectors' Emergency Powers (clauses 278 to 285)

An inspector's emergency powers are set out in chapter 10, part 3. The threshold for the exercise of these powers is set out in clause 278 as follows:

> 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.

Clause 279 authorises entry without warrant or occupier's consent. Clause 280 authorises an inspector to make a direction which may include taking reasonable steps to destroy or remove the biosecurity matter or a carrier of the biosecurity matter. The entry powers under clauses 279 and 280 may be exercised using all reasonable and necessary force. Clause 284 provides that a person to whom a direction is given under clause 280(1)(a) – that is, to take stated reasonable steps within a stated reasonable period; must comply with the direction, unless the person has a reasonable excuse. Breach of clause 284 is punishable by a maximum penalty of 2000 penalty units ($220,000). This is the second-highest penalty provided for in the Bill – the highest being 3000 penalty units ($330,000).

The potential impact of chapter 10, part 3 on the rights and liberties of individuals is that an inspector may enter premises without a warrant or the occupier's consent, and use reasonable and necessary force to remove or destroy *biosecurity matter*. Further, if a person fails to comply with a direction under clause 280(1)(a), he or she may face a fine of up to 2000 penalty units ($220,000).

As a matter of FLP, legislation should authorise entry to premises and seizure of documents or other property only with a warrant issued by a judge or other judicial officer (*Legislative Standards Act 1992* section 4(3)(e)). This issue is addressed in the Explanatory Notes:

> *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. As soon as practicable after exercising the powers the inspector must notify the chief executive of the fact the powers have been used. The ability to exercise the powers under clause 279 is limited by time. Under clause 283 an inspector may only exercise the powers until the earlier of the following: until the imminent and significant biosecurity risks from the activity being carried out or from the biosecurity matter at a place have been avoided or after 96 hours has elapsed since the inspector first exercised the powers.*
>
> *These emergency powers are justified on the basis there is a community expectation that immediate and decisive action needs to be taken in the event of a biosecurity emergency, such as a highly pathogenic exotic animal disease. Any infringement on the freedom and liberty of a person affected by the exercise of these powers can be appropriately balanced with the unacceptable impact a delay in taking such action would have on a biosecurity consideration.*[74]

It is also noted that the entry powers conferred by clause 279 do not apply to residences. However, these entry powers will apply in the context of a highly pathogenic exotic animal disease (for example, a confirmed outbreak of anthrax in response to which it may be appropriate to slaughter animals). They will also apply whenever there is an imminent and significant risk of any adverse effect on a biosecurity consideration. This could include wide range of scenarios including, for example, a cattle truck impacting on the social amenity of a town as it passes through.

The committee sought to determine whether the entry powers are sufficiently justified, and have sufficient regard for the rights and liberties of individuals.

b) Entry powers of authorised officers (clause 260 to 264, 269 and 296)

Clause 260 permits an authorised officer to enter a place without a warrant, if he or she reasonably believes there may be a *biosecurity risk* at a place. As mentioned above, *biosecurity risk* is broadly defined; therefore this provision may be lacking scope. Further, clause 269 provides that if an authorised officer is unable to locate an occupier after making a reasonable attempt to do so, the authorised officer may enter the place. This clause therefore effectively authorises entry without consent.

Clause 261 permits an authorised officer, at reasonable times, to enter a place in an area to which a *biosecurity program* applies to take any action authorised by the *biosecurity program* (a surveillance program or a prevention and control program).

Clause 262 authorises an authorised officer to enter, at reasonable times, a place for which a person has been given a *biosecurity order* for a *biosecurity risk*.

Clause 263 applies where a *biosecurity order* has been given for a *biosecurity risk* at a place or because a *biosecurity risk* may happen at the place, and the *biosecurity order* requires a person to take steps and they have failed to take those steps. In these circumstances, clause 263 permits the employees or agents of the authority who issued a *biosecurity order*, at reasonable times, to enter the place to take the steps stated in the order.

Clause 264 applies when an authorised officer gives a person a direction under the Bill, other than under a biosecurity order, and the person fails to take the action required under the direction. Clause

[74] Biosecurity Bill 2013, Explanatory Notes, pp. 6-7.

264 provides that the employees or agents of the authority who issued the direction may, at reasonable times, enter the place the subject of the direction and take the required action.

An employee or agent entering under clause 263 or 264 may enter even if the occupier refuses to consent.

Clause 296 sets out the general powers an authorised officer may exercise after entering a place under the sections listed at clause 295. These powers include destroying *biosecurity matter* or a *carrier* (if the officer believes on reasonable grounds the *biosecurity matter* or *carrier* poses a significant *biosecurity risk* and the owner consents to the destruction) and taking a thing or sample for examination.

The Explanatory Notes identify issues related to powers of authorised officers to enter places without warrant or consent, and offer the following justification:

> *If entry is made under clauses 260-264 and the authorised officer is unable to find an occupier to obtain consent, the authorised office may enter the place. However, the authorised officer must leave a notice in a conspicuous position and in a reasonably secure way stating the date, time and purpose of entry.*
>
> *If entry is made under clauses 260-264 and an occupier is present at the time the authorised officer must immediately after entering the place produce the officer's identity card and inform the occupier of the reason for entering the place and the fact the authorised officer is able to enter the place without consent.*
>
> *It is considered the prevailing public interest in protecting human health, the environment and public amenity from biosecurity risks far outweighs any infringement on personal liberties and rights which may arise under these powers. The safeguards provided under the Bill ensure any action taken under these provisions will be part of a measured response to biosecurity risks.*[75]

Request for advice:

The committee sought assurance from the department that the extraordinary entry powers provided for inspectors (clauses 278 to 285) and authorised officers (clause 260 to 264, 269 and 296) are justified and have sufficient regard to the rights and liberties of individuals.

DAFF advice:

> *The department submits that the entry powers provided for inspectors under clauses 278 to 285 and authorised officers (clauses 260 to 264, 269 and 296) are justifiable given the need to respond quickly to a biosecurity risk imposed by biosecurity matter. The department considers there are sufficient safeguards contained in the legislation to ensure these powers are exercised in an appropriate way. The department considers any infringements on the rights and liberties of individuals can be balanced against the need to protect the community and individuals from the impact of biosecurity matter on biosecurity considerations.*
>
> *Policies and guidelines on the way in which an authorised person may use these powers will be developed as part of the implementation process for the Act. Under clause 246 (5) the chief executive, a chief executive officer or an invasive animal board may only appoint a person as an authorised person only if the chief executive, a chief executive officer or an invasive animal board is satisfied the person is appropriately qualified.*

[75] Biosecurity Bill 2013, Explanatory Notes, pp. 7 – 8.

Clauses 278 to 285

Clause 278 of the Bill provides an inspector may exercise powers under part 3 of Chapter 10 if satisfied on reasonable grounds an activity is being carried out at a place and it is necessary to exercise powers to avoid an imminent and significant biosecurity risk. The powers are not intended to be used for every day purposes. The department submits they could not be construed as applying to "a cattle truck impacting on the social amenity of a town it passes through" as suggested because this would not represent an imminent and significant biosecurity risk.

The requirement that the exercise of the emergency powers is necessary would preclude these powers being exercised if the normal entry powers provided under part 2 were not sufficient in the circumstance. For example, if an inspector visited a property and found cattle with blisters on the their mouths and hooves (that could indicate the presence of foot and mouth disease) and the occupier of the place had not notified the incident as required by clause 47 and had the animals loaded on a truck to move off the property, then the inspector should have sufficient powers to intervene.

Further, these powers are not without restrictions. The requirement that the exercise of the emergency powers is necessary, limits action (even in response to a significant risk) to what is necessary. Also, the power of entry does not include the power to enter a place used for residential purposes. Under clause 279, an inspector must make a reasonable attempt to identify themselves before entering a place and tell the occupier they have the power to enter the place. Under clause 281(2) an inspector, in exercising powers under part 3, 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. Clause 282 provides that an inspector exercising powers under part 3 must as soon as practicable after exercising the powers give the chief executive notice of the fact. Clause 283 provides an inspector exercising power under part 3 may only exercise powers until the earlier of the imminent and significant biosecurity risk being avoided or 96 hours after the inspector first exercises the powers.

Clauses 260 to 264, 269 and 296

Authorised officer powers under clauses 260 to 264 need to be read in conjunction with clauses 259, 269, 270 and 271.

Under clause 260, an authorised officer may enter a place to find out whether a biosecurity risk exists at a place. The authorised officer must only exercise this power if the officer reasonably believes there may be a biosecurity risk at the place.

However, clause 259(2) provides entry under clause 260 to a place does not include entry to a residence. Clause 269 applies to entry to a place under clause 260. Clause 269 provides an authorised officer must, before entering a place under clause 260, make a reasonable attempt to locate an occupier and obtain the occupiers consent to the entry. If the occupier refuses consent to entry, then entry may only be made under a warrant. If however, the authorised officer is unable to locate the occupier after making reasonable attempts, the authorised officer may enter the place. If the authorised officer has entered the place without being able to locate the occupier, the authorised officer must leave a notice in a conspicuous position and in a reasonably secure way stating the date and time and purpose of entry.

Clause 270 applies to entry under clauses 261 and 262. Clauses 261 and 262 allow an authorised officer to enter a place at reasonable times to take action in relation to a biosecurity program and check compliance with a biosecurity order respectively. A biosecurity program may be a surveillance program or a prevention and control program.

A surveillance program can include confirming the presence or finding out the extent of the presence in the state or part of the state of biosecurity matter. The chief executive must give notice under clause 240 to the persons who may be affected by the program. For example, timely action is required where red important fire ants are detected to treat the ants and ensure the ants are not spread further on risk items such as vehicles. In order to determine the extent of the spread and therefore the area to be treated, a surveillance program may be authorised by the chief executive. The chief executive must give notice to the persons who are affected. While every effort may be made to gain consent of the owner or occupier of each effected property, any delay in responding exacerbates the risk of spread of the fire ants. Therefore, there is a need to have powers to enter and determine the presence or absence of fire ants.

Clause 259(2) provides entry to a place does not include entry to a place where a person resides without their consent. Under clause 270, an authorised officer must make a reasonable attempt to locate an occupier and obtain the occupiers consent before entering a place.

Clause 270(3) provides the authorised officer may enter a place if the authorised officer is unable to locate an occupier after making a reasonable attempt to do so or the occupier refuses to consent to entry. If, after entry is made the authorised officer finds an occupier present at the place or the occupier refuses entry, the authorised officer must present their identity card for the occupier's inspection and explain their powers and the reasons for entering. If the authorised officer does not find an occupier at home and enters, they must leave a notice in a conspicuous position and in a reasonably secure way stating the date and time of the entry and the authorised officer's details, powers of entry and reasons for entry.

The department considers these powers are justified and there are sufficient safe guards under the Bill to protect the rights and liberties of individuals.

Committee comment:

The committee thanks the department for its advice. We note the department's undertaking that policies and guidelines on the ways in which an authorised person may use the powers provided under the Bill will be developed as part of the implementation process for the Act.

The committee invites the Minister to clarify the timeframe for preparation of these policies and guidelines by his department, and whether key stakeholders will be consulted.

Point for clarification:

The committee invites the Minister to clarify the timeframe for the preparation by his department of policies and guidelines on the ways in which an authorised person may use the powers provided under the Bill, and to assure the House that the department will consult with key stakeholders during their preparation of these policies and guidelines.

c) Powers to seize (clause 299)

Clause 299 provides that an authorised officer who enters a place without consent and without a warrant, if he or she reasonably believes a thing is evidence of an offence against the Act, may seize the thing.

As a matter of FLP, a judicial warrant is required for the seizure of property (*Legislative Standards Act 1992*, section 4(3)(e)). Queensland drafting practice requires seizure of property to be particularly justified.[76] The Explanatory Notes do not offer any specific justification for this provision.

[76] Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, p. 46.

It appears that the only justification for seizure of property under clause 299 is a reasonable belief that a thing is evidence of an offence against the Act. Breach of the general *biosecurity obligation* is an indictable offence that is a misdemeanour and may be prosecuted summarily under the *Justices Act 1886* or on indictment. The relevant court is the Magistrates Court (clauses 23 and 356).

The QLS in their evidence at the public hearing requested that limitations on the use of evidence seized under clause 299 and 301 where seizure may occur without the consent of the occupier and without a warrant. The QLS were concerned that evidence not relevant to biosecurity could be seized by an authorised officer and used in a criminal proceeding under other legislation. According to the QLS:

> *Here we are talking about search without warrant and then seizure of items. It could be done by people without much training in this area. It could be done by people who are not police officers and they have extraordinarily broad powers under 119. We do not quibble about those as such in light of the fact that we are talking about emergency situations and they do not apply to residences and so on, so I think there are some appropriate safeguards there, but what there is not a safeguard on is the evidentiary use that is made of any item that is seized under 299 and it would be our suggestion that 299 have a further clause added that the evidence seized pursuant to this act should only be used for the purposes of prosecuting offences in respect of this act.*[77]

Request for advice:

The committee asked the department to advise how the seizure of property provided for in clause 299 is particularly justified, and whether evidence obtained without a warrant under clause 299 would, according to the laws of evidence, be admissible in a trial by indictment in the Magistrates Court of an offence against clause 23.

DAFF advice:

> *Clause 299 provides that an authorised officer who enters a place without the consent of the occupier and without a warrant may lawfully seize a thing as evidence of an offence under the Act. Entry without consent or a warrant is authorised only if certain preconditions are satisfied. The department considers it is justifiable to provide seizure powers such as those provided under clause 299 after such an entry in the event an authorised officer finds evidence of an offence and believes the evidence may be destroyed or lost if not seized immediately. The department considers there are adequate safeguards in place for seized things under clauses 307, 308 and 309 of the Bill.*
>
> *The question of whether evidence seized under clause 299 is admissible in a trial for an indictable offence in the Magistrates Court depends on the nature of the evidence and how it was obtained. If an inspector acts beyond their power in seizing evidence, then it is a matter for the court as to whether the evidence is admissible.*

The department, in subsequent written advice to the committee after the 12 February briefing advised:

> *The department considers clauses 299 and 301 as drafted are appropriate. The seizure, retention and disposal powers under the Bill allow for a thing to be seized and kept by an authorised officer as evidence in a proceeding under the Biosecurity Act.*
>
> *A thing seized under the Act could be used as evidence in a proceeding under other legislation. However, an authorised officer would generally not have the power to bring a proceeding to court under other legislation. Whether the evidence seized by an authorised officer was admissible in another proceeding would be a matter for a court to determine.*

[77] Cranny, G. 2014, *Draft hearing transcript*, 12 February, p.21.

The department considers it is appropriate to leave the issue of admissibility of evidence to the court's discretion rather than narrow the provision as suggested by the QLS.

If an authorised officer found evidence of commission of an offence against other legislation, such as drugs on a property which they had entered using powers under the Biosecurity Act, they would be directed to contact the Queensland Police Service or other relevant agency.[78]

Committee comment:

The committee is satisfied with the department's advice.

d) Power to destroy seized thing (clause 318)

Clause 318 provides that an authorised officer may destroy a thing seized under division 5 (clauses 299 – 318), if it is all or partly contaminated or decomposed matter, or the authorised officer reasonably believes the thing poses an immediate *biosecurity risk*. The term immediate *biosecurity risk* is not defined and this is the only time the term is used in the Bill.

This clause has the potential to impact significantly on the rights and liberties of individuals. For example, a poultry farm has two sheds and hens in one shed have high mortality rates due to heat stress or avian influenza, but the hens in the second shed are fine, on the basis of the precautionary principle and the risk-based assessment principle, an authorised officer may reasonably believe the hens in the second shed pose an immediate biosecurity risk. The officer may therefore destroy the hens in the second shed before the existence of avian influenza has been confirmed.

Chapter 11 deals with compensation for loss or damage from a biosecurity response.

The committee considered whether this power of destruction is justified. The Explanatory Notes do not explain what an immediate *biosecurity risk* is or give justification for this seizure power.

Request for advice:

The committee asked the department to advise precisely what an immediate *biosecurity risk* is, the justification for the seizure power provided in clause 318 and whether there is a similar power to destroy under existing legislation.

The committee also sought advice as to whether statutory compensation or scheme compensation would apply in the case of an authorised officer destroying property because he or she reasonably believes the thing poses an immediate *biosecurity risk*.

DAFF advice:

Clause 16 of the Bill defines a biosecurity risk to be a risk of any adverse effect on a biosecurity consideration caused by or likely to be caused by biosecurity matter, dealing with biosecurity matter or a carrier or carrying out an activity relating to biosecurity matter or a carrier. An immediate biosecurity risk would be a risk which poses an immediate risk to a biosecurity consideration such as human health. For example a chicken infected with avian influenza may pose an immediate risk to human health if the chicken is in close contact with humans.

Clause 318 does not provide seizure powers. Rather it provides the power to destroy things seized under division 5, Chapter 10. It provides the power to an authorised officer to destroy a thing in the event there is a belief the thing may pose a risk to a biosecurity consideration or it may pose a risk to the spreading of biosecurity matter. The department would provide guidelines on the destruction of seized things under clause 318.

[78] DAFF, 2014, *Correspondence*, 17 February.

Similar provisions exist under section 162 of the Animal Care and Protection Act 2001 - an inspector may destroy an animal or cause it to be destroyed if it has been seized under the Act and the inspector reasonably believed that the animal is in pain to the extent it is cruel to keep it alive.

Section 345 of the Health Act 2005 provides an emergency officer responding to a declared public health emergency may: remove an animal, substance or thing form a place; destroy animals at a place or remove animals for a place for destruction at another place and dispose of an animal, substance or thing at a place for example burying the animal substance or thing.

Statutory compensation and scheme compensation only apply in relation to loss or damage arising out of a biosecurity response. A person would only be eligible for compensation for seizure under clause 318 if the seizure was done during a biosecurity response. Biosecurity response is prescribed under clause 338.

The provisions of the Bill do not preclude a person taking civil action for damages.

Committee comment:

The committee thanks the department for its advice, and has no further concerns about the provisions in clause 318.

Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively? – Section 4(3)(g) *Legislative Standards Act 1992*

Head of power for retrospective transitional regulation (clause 515)

Clause 515 inserts a head of power to make a transitional regulation that may have retrospective operation. A regulation made under clause 515 may be backdated to commencement of clause 515.

As a matter of FLP, "strong argument is required to justify a retrospective adverse effect on rights and liberties, or imposition of obligations".[79] The Explanatory Notes do not identify this matter of FLP or offer any justification for this potential retrospectivity [see also under heading 'Institution of Parliament' below]. The committee is therefore considering whether this provision authorising the making of a retrospective regulation is justified, and has sufficient regard to the rights and liberties of individuals.

Request for advice:

The committee asked the department to explain the justification for the potential retrospective adverse effects provided in clause 515, why this was not listed as an FLP issue in the Explanatory Notes and whether the clause has sufficient regard to the rights and liberties of individuals.

DAFF advice:

The transitional provisions in the Bill are extensive and the department has sought to address all situations that may arise. However, the department submits that a one year transitional regulation-making power is an acceptable provision to resolve complex transitional issues that are unforeseeable at the time of repealing or amending Acts. As the power is intended to resolve issues arising from the transition to new provisions, it is appropriate for it to apply from the commencement of the new Act. The department could provide this information in the explanatory notes if the committee believes this is appropriate.

[79] Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, p. 55.

Committee comment:

The committee thanks the department for its advice and acknowledges the justification provided for the retrospective effects of clause 515. We accept the justification provided. In our view it is sufficiently important, however, to warrant its inclusion as an FLP issue in the Explanatory Notes. The committee therefore recommends that it be included.

Recommendation 7

The committee recommends that the Explanatory Notes to the Biosecurity Bill 2013 be amended to include under 'Consistency with fundamental legislative principles' the potential retrospective effects of clause 515.

Clear and precise – Section 4(3)(k) *Legislative Standards Act 1992* -Is the bill unambiguous and drafted in a sufficiently clear and precise way?

a) Biosecurity considerations (clause 5)

Each of these biosecurity considerations at clause 5 is very broad and the term 'social amenity' is potentially ambiguous. It is not defined by the Bill. The Macquarie Dictionary defines 'amenity' as:

> *…the quality of being pleasant or agreeable in situation, prospect, disposition, etc.; pleasantness: the amenity of the climate.* [80]

Of the 10 definitions of 'social' in the Macquarie Dictionary, the following seems the most apt:

> *…of or relating to the life and relation of human beings in a community…*[81]

Request for advice:

The committee asked the department to provide a definition for the term 'social amenity' used in clause 5, and to provide examples of ways in which *biosecurity matter* could cause an adverse effect on social amenity.

DAFF advice:

> *Social amenity includes for example the use of parks and gardens and sporting and recreational areas. The department submits that its use is common and a definition is not necessary in the context of biosecurity.*
>
> *An example of an adverse impact on social amenity is the effect fire ants would have on the enjoyment of parks, gardens and sporting amenities if fire ants were left uncontrolled. In parts of the United States of America where fire ants have become endemic, treatment regimes are required before sporting events can commence. People are unable to sit on the ground and enjoy for example picnics or other recreational activities without the fear of being bitten by fire ants.*

Committee comment:

The committee thanks the department for its advice.

b) Requirement to consult as far as practicable (clause 239)

Clause 239 requires the chief executive, before authorising a biosecurity program, to consult as far as practicable with the local government for the area to which the program applies. Similarly, a local

[80] Macquarie Dictionary Publishers, 2013, *Macquarie Dictionary Online*, http://www.macquariedictionary.com.au <accessed 10 December 2013>.
[81] *Macquarie Dictionary Online*, accessed 10 December 2013.

government must, before authorising a biosecurity program, consult as far as practicable with listed entities including the chief executive and an invasive animal board. Also, an invasive animal board must, before authorising a *biosecurity program*, consult as far as practicable with the chief executive and relevant local government.

It is unclear to the committee that clause 239 would be effective in achieving genuine or thorough consultation. An obligation to *consult as far as practicable* is difficult to implement legislatively. It is not clear exactly what conduct is required: it could range on a spectrum from leaving a telephone message or sending an email or arranging a meeting or a series of community forums. The obligation to *consult as far as practicable* can be contrasted to an obligation to consult with specific entities (for example, clause 50 requires consultation with local government and consideration of local government's views and clause 252 requires the chief executive to consult with the Commissioner of the Police Service), which is more precise.

This concern has a corresponding impact on the legislative force of clause 239.

Request for advice:

The committee asked the department to explain what '*consult as far as practicable'* means, what actions by the department would satisfy this requirement to consult and whether clause 239 in its current form has sufficient legislative force.

DAFF advice:

> *Clause 239 provides the chief executive must before authorising a biosecurity program consult as far as practicable with the local government for the area to which a biosecurity program applies. The term 'as far as practicable' is often used in legislation but the department agrees that these words could be removed to simply require the chief executive to 'consult'.*
>
> *If the chief executive does not consult with the local government before implementing a biosecurity program, the relevant local governments may raise the non-compliance with the chief executive in the first instance.*

Committee comment:

The committee thanks the department for its advice. In our view the inclusion of the words 'as far as practicable' has no intrinsic affect and are superfluous. The committee therefore recommends that the words be removed from clause 239.

Recommendation 8

The committee recommends that clause 239 (1), (2) and (3) be amended to remove the words 'as far as practicable'.

Does the Bill have sufficient regard to the rights and liberties of individuals? - Section 4(2)(a) *Legislative Standards Act 1992*

a) Adequate definition of circumstances imposing liability (clauses 23 and 24)

As a matter of FLP:

> *Legislation should only prescribe acts or omissions as circumstances of an offence or another occasion of liability if the acts or omissions are sufficiently specific to enable all persons to understand what is required of them.*[82]

[82] Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, p. 124.

The Explanatory Notes mention clause 24 (*General biosecurity obligation offence provision*) but do not address the issue of lack of clarity around the *general biosecurity obligation* on any person dealing with a biosecurity matter.[83]

The Explanatory Notes state:

> *Imposing a general biosecurity obligation promotes individual responsibility for the careful management and control of biosecurity matter and is underpinned by the principle that those who are responsible for the risk should manage the risk. The provisions offer safeguards by requiring a person to be in a position to know or reasonably know of the biosecurity risks associated with biosecurity matter, carrier or activity.*
>
> *It is considered that the penalties are proportionate to the seriousness of the offences. Biosecurity events have the potential to significantly impact on human and animal health including causing serious illness and death in humans and animals. They can have serious economic impact, cause significant damage to the environment and result in severe adverse impact on social amenity. Deliberate or reckless acts or omissions may result in accelerated or increased spread of biosecurity matter or delays in eradicating an incursion.*[84]

Similarly to workplace health and safety legislation, clause 23 imposes a broadly-framed obligation. The circumstances imposing liability are not adequately defined. Clause 23 requires a person to take all reasonable and practical measures to prevent or minimise the *biosecurity risk*. However, the term *biosecurity risk* is so broadly drafted that it is not possible to determine exactly what a person must do. The obligation in clause 23 can be contrasted with the primary duty of care in the *Work Health and Safety Act 2011*, section 19, which provides:

> *'A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—*
>
> *(a) workers engaged, or caused to be engaged by the person; and*
>
> *(b) workers whose activities in carrying out work are influenced or directed by the person; while the workers are at work in the business or undertaking.'*

Section 19 is complex, however, its essential meaning is clear: the person conducting the business or undertaking must ensure the health and safety of workers.

Clause 408 sets out the grounds on which the chief executive may suspend a compliance agreement. One of which is 'immediate and serious *biosecurity risk*. This terminology is an example of more precise definition of what may constitute a *biosecurity emergency*.

Request for advice:

The committee asked the department to advise whether it is possible to distil the meaning of clause 23, so as to inform a person's conduct in order to comply with the provision.

The committee also sought assurance from the department that clauses 23 and 24, as drafted, have sufficient regard for the rights and liberties of individuals.

DAFF advice:

> *The Bill is intended to provide a comprehensive framework to manage the impacts of a wide range of risks associated with animal and plant diseases and pests, including risks which are unknown or unpredictable. As a result, it is neither possible nor desirable to specifically identify every criteria or circumstance to which a provision may apply. In this context, adding specific criteria or restricting the definitions further could hinder the ability of the department to respond to urgent and emerging risks. The intention of this Bill would not be*

[83] Biosecurity Bill 2013, Explanatory Notes, p. 4.
[84] Explanatory Notes, p. 4.

realised if the provisions did not quite cover a biosecurity situation due to the specificity of a provision.

The general biosecurity obligation requires a person on whom such an obligation is imposed to discharge the obligation. It also requires the person has knowledge or ought to have knowledge that the biosecurity matter, carrier or activity poses or is likely to pose a biosecurity risk. In pursuing a prosecution under clause 24, the onus would be on the department to prove the person had the knowledge or ought to have the knowledge. It follows that the department's ability to enforce this obligation will turn on the department's ability to demonstrate that the person was indeed aware of the risk, or that the person had received relevant information or was in a position that would require an understanding of the risk. Awareness may be raised, for example, by way of codes of practice, guidelines, notes or educational material relevant to the risk.

Clause 24(2) of the Bill provides it is a defence for a person to whom a biosecurity obligation is imposed to show the person had a reasonable excuse for failing to discharge the obligation. However, this does not apply to an aggravated offence.

Clause 28 of the Bill provides the defence of due diligence in a proceeding against the general biosecurity obligation offence provision. Under this provision it is a defence for a person to prove that the person took all reasonable precautions and exercised proper diligence to prevent the commission of the offence by the person or by another person under the person's control.

Clause 28(2) provides ways in which a person may prove that the person took all reasonable precautions and exercised proper diligence to prevent the commission of the offence. The matters listed under clause 28(2) do not limit the ways in which a person may prove the due diligence.

The department considers the provision of the defence of reasonable excuse and due diligence provides sufficient protection to a person who has properly discharged their general biosecurity obligation.

Committee comment:

The committee thanks the department for its advice. The committee has commented separately in Part 2 of the report on the importance of public education to encourage people to comply with the general biosecurity obligation.

b) Requirement for restricted place notice (clause 160)

Clause 160 requires a registered biosecurity entity, owner or occupier of a designated place to notify the chief executive of a change at a designated place that may cause the designated place to pose a *biosecurity risk*. This is called a *restricted place notice*.

As noted above, "…legislation should only prescribe acts or omissions as circumstances of an offence or another occasion of liability if the acts or omissions are sufficiently specific to enable all persons to understand what is required of them."[85]

The obligation imposed by clause 160 is very broad and potentially involves numerous questions of judgment and degree. It is arguably not sufficiently specific to enable a person to understand what is required of him or her. The Explanatory Notes do not identify or justify this FLP issue. It is also noted that this clause includes a substantial maximum penalty of 50 penalty units ($5,500).

[85] Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, January, p. 124.

Request for advice:

The committee sought the department assurances that clause 160, as presently drafted, has sufficient regard for the rights and liberties of individuals.

DAFF advice:

The department considers that clause 160 as drafted has sufficient regard for the rights and liberties of individuals. A similar requirement exists in current legislation - section 12 of the Stock Identification Regulation 2005 provides that the owner of a registered place who becomes aware of a change that affects or may affect the accuracy of the information contained in the register of places must as soon as practicable give the chief executive notice of the change.

Committee comment:

The committee is satisfied with the department's advice.

c) Surveillance programs – privacy of individuals (clauses 233 to 236)

A *surveillance program* is defined by clause 233. A *surveillance program* is a program directed at any of the following:

(a) monitoring compliance with this Act in relation to a particular matter to which this Act applies;

Examples—

• monitoring compliance with a code of practice for animal husbandry activities in feedlots in south-east Queensland

• monitoring compliance with a biosecurity zone regulatory provision requiring the keeping of records about movement of soil in a biosecurity zone

• monitoring compliance with the conditions of prohibited matter permits held by persons in north-east Queensland

(b) confirming the presence, or finding out the extent of the presence, in the State or the parts of the State to which the program applies, of the biosecurity matter to which the program relates;

(c) confirming the absence, in the State or the parts of the State to which the program applies, of the biosecurity matter to which the program relates;

(d) monitoring the effects of measures taken in response to a biosecurity risk;

(e) monitoring compliance with requirements about prohibited matter or restricted matter;

(f) monitoring levels of biosecurity matter or levels of biosecurity matter in a carrier.

Example—

monitoring levels of contaminants in animal feed

A surveillance program, in particular, paragraphs (b), (c) and (f), has a potentially very broad scope. Surveillance programs can be authorised and carried out by the chief executive, a local government, a combination of the chief executive and local governments, or an invasive animal board (clause 235). The threshold for authorisation of a surveillance program (clause 235(3)) is satisfaction:

(a) that there is, or is likely to be prohibited matter in an area; or

(b) there is in an area any *biosecurity matter* that poses or is likely to pose a significant *biosecurity risk*, or (for example - a colony of red imported fire ants, a plague of locusts or an infestation of water mimosa).

(c) measures are required to prevent the entry or establishment in an area of biosecurity matter that poses or is likely to pose a significant biosecurity risk; or

(d) after consultation with an industry group or community group (each an *interested entity*), that measures carried out jointly with the interested entity are required to control *biosecurity matter* in an area that would have a significant effect on members of the *interested entity*.

The powers an authorised officer may exercise under a surveillance program are set out in the program authorisation. For example,

- monitor a manufacturer mixing animal feed and take samples of the feed to check for the presence of animal matter or contaminants
- use baits and lures to check for the presence of fruit fly in an area
- trap and test mosquitoes to find carriers of arboviruses
- take samples from cattle to decide the presence or absence of Johne's disease.[86]

Implementation of a surveillance program is likely to impact on the rights of privacy of an individual. The exercise of the powers of an inspector implementing a *surveillance program* may also impact on an individual's use of plants and animals and on an individual's business operation. An owner may prefer to be consulted before these powers are exercised.

It would be preferable if the powers an authorised offer may exercise under a surveillance program were exhaustively listed in the Act. As currently drafted, there appears to be no limitation on the powers that may be exercised by an authorised officer under a *surveillance program*. This FLP issue is not identified in the Explanatory Notes, nor is any justification provided.

Request for advice:

The committee sought advice from the department as to the justification for the extraordinary powers afforded to authorised officers under a surveillance program, why this is not addressed in the Explanatory Notes as an FLP and whether clauses 233-236 in relation to surveillance programs have sufficient regard for the rights and liberties of individuals.

DAFF advice:

Significant surveillance powers are required to confirm the presence or absence of particular biosecurity matter, the extent of the spread of biosecurity matter, monitor the effects taken in response to a biosecurity risk and monitor compliance with the Act. The department accepts these are broad powers but are necessary to ensure the State is protected from biosecurity risks and to satisfy trading partners that the State or part of the State is free of particular pests and diseases or is complying with the requirements imposed by trading partners. Without these powers, the department would not be able to monitor for the presence of high risk pests and diseases and maintain the significant trade advantages the State's agricultural industries enjoy as a result of its pest and disease free status.

The department considers the Bill provides sufficient safeguards for the rights and liberties of individuals. Under clause 239 of the Bill, the chief executive must as far as practicable consult with the relevant local government before authorising a biosecurity program. Under clause 240 the authorising officer who authorises the program must give notice under clause 240(3) of the Bill to other government agencies owning land affected by the notice and publish the notice in an appropriate way.

[86] Biosecurity Bill 2013, Clause 236 (g).

Similar powers to undertake surveillance exist under current legislation and are relied on, for example, to satisfy trading partners that, the ban on feeding animal matter to stock is being observed which helps maintain market access for Australian beef. The department could provide this information in the explanatory notes if the committee believes this is appropriate.

Committee comment:

The committee is satisfied with the department's advice and acknowledges the importance of the powers of authorised officers under a surveillance program. In our view the powers afforded in clauses 233-236 are sufficient to warrant their inclusion in the Explanatory Notes as a fundamental legislative principle. We therefore recommend that they be included.

Recommendation 9

The committee recommends that the Explanatory Notes to the Biosecurity Bill 2013 be amended to include under 'Consistency with fundamental legislative principles' the powers afforded to authorised officers in clauses 233-236.

d) Biosecurity order – insufficient basis for triggering entry powers (clause 373)

Clause 373 provides that a *biosecurity order* must be directed at ensuring the recipient discharges his or her general *biosecurity obligation* at the place and may be directed at ensuring the recipient discharges the *general biosecurity obligation* for particular *biosecurity matter*. For example, a *biosecurity order* may require a person to treat a *carrier* of *biosecurity matter* to control the *biosecurity matter*, control or eradicate the *biosecurity matter* in a stated way or prohibit or restrict in a stated way, the removal of *biosecurity matter* or a *carrier* (clause 375).

Non-compliance with a *biosecurity order* is punishable by a penalty of up to 800 penalty units ($88,000) (clause 377). A *biosecurity order* may confer entry powers on an authorised officer to enter a place, vehicle or another place where *biosecurity matter* or a *carrier* the subject of the order is kept to check compliance with the order. Clause 373 provides two grounds on which an authorised officer may give a person a biosecurity order:

- the authorised officer reasonably believes that a person has failed to discharge the person's general biosecurity obligation at a place; or
- the authorised officer reasonably believes that a person may fail to discharge the person's general biosecurity obligation at a place.

This second ground is essentially a suspicion. The committee is considering whether this is a sound basis for triggering the entry powers associated with a *biosecurity order*. Clause 373(1) does not appear to have sufficient regard for the rights and liberties of individuals.

Request for advice:

The committee sought the department's advice regarding the justification for providing entry powers on the basis that the authorised officer reasonably believes that a person may fail to discharge the person's general biosecurity obligation, and whether clause 373 has sufficient regard for the rights and liberties of individuals.

DAFF advice:

Clause 373 provides an authorised officer may give a person a biosecurity order if they reasonably believe that the person has or may fail to discharge their general biosecurity obligation. Under this provision 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.

A biosecurity order provides a mechanism whereby a person may be guided as to how they may discharge their biosecurity obligation. The department considers it appropriate to have mechanisms for ways in which a person may be directed to discharge their general biosecurity obligation. These types of provisions are not without precedent.

Similar provisions exist under the Animal Care and Protection Act 2001 for the provision of an animal welfare direction where a person has committed, is committing or is about to commit an animal welfare offence. An animal welfare direction may also be given if an animal is not being cared for properly, is experiencing undue pain or requires veterinary treatment. An animal welfare direction is linked to the breach of duty of care and cruelty provisions contained in section 17 and 18 of the Animal Care and Protection Act 2001 respectively.

Similar provisions are also provided in sections 191 and 192 of the Work Health and Safety Act 2011 which provide for the giving of an improvement notice if an inspector reasonably believes that a person is contravening or has contravened the Work Health and Safety Act 2011.

A biosecurity order must also set out the effect of clauses 262 and 263. Clause 271 applies to entry under clauses 263 (power to enter place to take steps if biosecurity order not complied with). Under clause 263 if a person has been given a biosecurity order, an authorised officer may at reasonable times enter the place to check whether the order has been complied with. The authorised officer may not enter a place which is a residence. Clause 270 provides that before entering a place under clauses 261 and 262 they must make reasonable attempts to contact the occupier and obtain consent.

The department considers the powers under clause 373 have sufficient regard to the rights and liberties of persons.

Committee comment:

The committee is satisfied with the department's advice.

e) Power to carry out aerial control measure (clause 294)

Clause 294 applies if a biosecurity program authorises an aerial control measure for *biosecurity matter*. Then an authorised officer may carry out, or direct another to carry out, the aerial control measure for the *biosecurity matter* in relation to a place. There is no requirement for landowners to consent to aerial control measures. An authorised officer must give notice of the proposed aerial control measures unless the measure will be carried out from a height of more than 350 feet (110 metres) above the place or giving the notice would be impractical. It is therefore possible for an aerial control measure to be carried out with no prior notice to or consent of owners and occupiers of land. An aerial control measure may damage humans, plants or animals other than those it is intended to target. For example, spraying pesticides on locusts may damage butterflies and prevent them from pollinating a crop.

Request for advice:

The committee requested an explanation from the department regarding: the potential adverse impacts of aerial control measures; the department's justification for seeking to allow aerial control measures with no prior knowledge or consent of landowners; and whether clause 294 has sufficient regard for the rights and liberties of individuals.

DAFF advice:

Aerial control measures may include surveillance, spraying and baiting. The primary biosecurity risks currently targeted using these methods are red imported fire ants and locusts or similar pests where control of the pest may quickly extend beyond the land

holders reach and/or ability to control the pest on their land. Any product used for aerial baiting would have undergone substantial testing before being registered for use.

Before undertaking aerial control measures, authorised officers would seek to inform land owners on the planned measures and any potential impacts. Where a landowner cannot be contacted, it is impractical to stall control measures, particularly where there are broader community interests, until they can be notified and/or consent is obtained.

This provision is consistent with other provisions within the Bill which allows authorised officers to gain access to private property if a biosecurity risk is significant enough to warrant entry to a property without consent.

The 350 feet limit is consistent with (Commonwealth) civil aviation laws.

In terms of practical examples, aerial control measures for fire ant surveillance and baiting are conducted through remote sensing surveillance which is conducted at 500 feet and below 350 feet respectively. Both are deemed to be of minimal impact, with fire ant baiting currently utilising granular bait which is generally benign to other species and humans.

The aerial component of remote sensing surveillance involves image capture by cameras mounted on helicopters where there are no potential adverse impacts. The Department's experience has been that the public is largely supportive of fire ant control measures and do not generally seek to hamper the department's efforts in controlling and eradicating this pest.

Aerial spraying for locusts is currently conducted with the consent of the landholder, and involves the targeted spraying of medium-high density swarms and/or bands, rather than broad scale spraying. Buffer zones of up to 1500m are also observed as per label instructions, with spraying taking place below 20m in order to minimize impacts.

Committee comment:

The committee thanks the department for its advice and acknowledges that, at times, it may be necessary for authorised officers to conduct aerial spraying and baiting without having notified land owners. The committee seeks assurances from the Minister that this will be only in exceptional circumstances. The committee also invites the Minister to clarify whether aerial spraying or bating by authorised officers could compromise the status of farms that hold 'organic' certifications for their produce.

Point for clarification:

The committee seeks assurances from the Minister that authorised officers will only conduct aerial spraying or bating of lands without prior notification of land owners in exceptional circumstances. The committee also invites the Minister to clarify whether aerial spraying or baiting by authorised officers could compromise the status of farms that hold 'organic' certifications for their produce.

f) Exceptions to reporting requirements (clause 192)

Clause 192 provides that sections 186 to 190, which set out requirements for a receiver of a designated animal to advise the National Livestock Identification System (NLIS) do not apply in circumstances set out in paragraph (a) or (b).

The existence of these exceptions appears to undermine the legislative force of proposed sections 186 to 190. The Venice Commission on the Rule of Law has identified that the existence of many exception clauses tends to detract from legal certainty.[87] Legal certainty is a key element of the rule of law.

[87] European Commission for Democracy through Law ('*The Venice Commission'*), 2011 *Report on the Rule of Law*, April, Annex.

Request for advice:

The committee sought the department's advice as to why the exceptions to reporting requirements in clause 192 were inserted and, in view of the exceptions, whether clause 192, as presently drafted, provides legal certainty.

DAFF advice:

Clause 192 provides that a responsible person under clauses 186 to 190 is not required to report the receipt of a special designated animal if a person has already made the required report to the NLIS administrator before the animal movement.

Clause 192 also provides that a responsible person is not required to report under clauses 186 to 190 if a special designated animal that is required to be fitted with an approved device that includes a microchip was not fitted with such a device when it was received. The interface with the NLIS database does not accept the relevant reports if the animal is not identified by its microchip details. Therefore it would be unreasonable to require a report to be made if such a device was not fitted when the animal was received. Instead, clause 193 imposes a number of requirements, including the requirement to notify an inspector within 24 hours of that circumstance and comply with the inspector's reasonable directions (which may include fitting an approved device before any further movements are undertaken) unless the relevant person has a reasonable excuse.

Clause 193 when read in conjunction with the earlier clauses in the Bill provides sufficient certainty about the requirement to fit approved devices and advise the NLIS of the movement of designated animals.

A note has been included in clauses 186 – 190 to ensure a person reading those clauses is aware of the exceptions.

Committee comment:

The committee is satisfied with the department's advice.

INSTITUTION OF PARLIAMENT

Delegation of legislative power – Section 4(4)(a) *Legislative Standards Act 1992*
Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?

a) Transitional regulation-making power (clause 515)

Clause 515 inserts a transitional regulation-making power to make provision of a saving or transitional nature about any matter for which:

(a) *it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from a repealed Act or the amended Act to this Act; and*

(b) *for which this Act does not provide or sufficiently provide.*

Some safeguards are incorporated in clause 515:

- a transitional regulation made under clause 515 must declare it is a transitional regulation, and
- chapter 19, part 3 and any regulation made under it expire after 1 year.

It is of concern, however, that a transitional regulation made under clause 515 may have retrospective operation, although not to a date earlier than commencement of clause 515. (See above for information on retrospectivity).

It is considered preferable for all relevant matters to be thoroughly considered and included in the principal Act, not the regulation. The former Scrutiny of Legislation Committee considered that transitional provisions like this demonstrated insufficient regard for the institution of Parliament because the regulations may amend any other provisions of the Act of Parliament.[88] The former Committee said of such provisions:

> *… it is an inappropriate delegation to provide that a regulation may be made about any matter of a savings, transitional or validating nature 'for which this part does not make provision or enough provision' because this anticipates that the Bill may be inadequate and that a matter which otherwise would have been of sufficient importance to be dealt with in the Act will now be dealt with by regulation.*[89]

Transitional provisions like this are potential Henry VIII provisions. In its 1997 report, the former Scrutiny of Legislation Committee stated that transitional provisions like this may be excusable, depending on the given circumstances, where the clause is to implement urgent legislation.

This issue of FLP is not raised in the Explanatory Notes, nor is any justification provided.

While provisions like clause 515 are common on the statute book, it does not derogate from the fact that they delegate legislative power from the Parliament to the Governor in Council. The committee endeavoured to determine whether the delegation of legislative power in this instance is appropriate.

Request for advice:

The committee asked the department to provide reasons to justify the provision of a transitional regulation-making power in clause 515.

DAFF advice:

> *As discussed above, the transitional provisions in the Bill are extensive and the department has sought to address all situations that may arise. However, a one year transitional regulation-making power is considered an acceptable provision to resolve complex transitional issues that are unforeseeable at the time of repealing or amending Acts.*
>
> *As the power is intended to resolve issues arising from the transition to new provisions, the department considers it is appropriate for it to apply from the commencement of the new Act.*

Committee comment:

The committee is satisfied with the department's advice.

b) Biosecurity emergency order (clause 115)

Clause 115 provides that a biosecurity emergency order made by the chief executive under clause 113 may prevail over the Act or a regulation made under it. This is in effect a delegation of legislative power to the chief executive. It is questionable therefore whether clause 115 has sufficient regard for the institution of Parliament. The Explanatory Notes offer the following justification for this clause:

> *The above provisions may be considered as Henry VIII clauses. The use of Henry VIII clauses can be justified in all cases because of the prevailing community expectation that, in the event of a serous outbreak such as FMD or BSE, immediate action would be taken to protect the community, economy and environment from the potentially catastrophic impact such an outbreak would have.*

[88] Former Scrutiny of Legislation Committee, *Alert Digest* No. 3 of 1996, p. 10.

[89] Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, p. 161.

> *Sufficient safeguards are contained in the Bill to ensure the powers are not used excessively. Provisions contained in the Bill provide time limits on biosecurity emergency orders and movement control orders. Under the Bill, a biosecurity emergency order may only stay in force for 21 days after the order is made. The order may be revoked sooner or by a movement control order. Also the Minister must table in the Legislative Assembly a report about a biosecurity emergency order within six months after the biosecurity emergency ends. Movement control orders may only stay in force until three months have elapsed after the order was made, unless sooner revoked.*[90]

Compliance with a biosecurity emergency order is enforced by a penalty of up to 2000 penalty units ($220,000) or 2 years' imprisonment (clause 116). This matter is raised in the Explanatory Notes:

> *The Bill creates offences for failing to comply with broad statutory instrument making powers in emergency situations. These provisions are considered necessary to ensure there is sufficient flexibility to respond to biosecurity threats and the potentially significant adverse outcomes of biosecurity matter on a biosecurity consideration. It is considered there are sufficient checks and balances contained within the Bill to ensure these provisions do not abrogate the power of Parliament.*[91]

The former Scrutiny of Legislation Committee stated that the maximum penalty in a regulation should be 20 penalty units ($2,200). A *biosecurity emergency order* made by the chief executive is an instrument at a lower level than a regulation. This provision far exceeds this limitation.

Request for advice:

The committee asked the department to specify the checks and balances contained within the Bill to ensure clause 115 does not abrogate the power of Parliament. The committee would also appreciate if the department could advise of other Acts that provide for a chief executive to make orders imposing significant penalties similar to the maximum penalties provided for in clause 116.

The committee also sought assurance from the department that clauses 115 and 116 have sufficient regard to the institution of Parliament.

DAFF advice:

> *Clause 115 provides for the effect and duration of a biosecurity emergency order. Clause 115(4) provides that if the biosecurity emergency order is inconsistent with another provision of the act or its associated regulation, a biosecurity zone regulatory provision, a movement control order (discussed at clause 124) or a code of practice, the biosecurity emergency order will prevail to the extent of the inconsistency. The department submits that this is necessary because some activities that may be relatively low risk and therefore could be appropriately authorised under normal circumstances would become extremely high risk and unacceptable to the community in the event of the outbreak of a relevant disease.*
>
> *For example, Bovine Spongiform Encephalopathy (BSE), or 'mad cow disease' is a disease of cattle which can be transmitted to humans and cause variant Creutzfeldt-Jakob disease. Currently, there is no cure for BSE. Ingestion of animal matter contaminated with the BSE disease agent is recognised as the major cause of BSE spread in outbreaks overseas. To minimise the spread of BSE through the feeding of animal matter it is an offence under the Bill for a person to feed animal matter to a designated animal or not take reasonable steps to ensure designated animals are not fed animal matter. However, there are several exemptions which allow for the feeding of some designated animals with animal matter in prescribed circumstances. The exemptions are provided on the basis there is a low risk of*

[90] Biosecurity Bill 2013, Explanatory Notes, p. 10.
[91] Explanatory Notes, p. 10.

spreading disease through these practices. However, if BSE entered the food chain in Queensland, there would be a need to remove any risk of spreading the disease by removing those exemptions to the feed ban for a period of time until the disease is eradicated.

The department submits that the Henry VIII clause that would allow an emergency biosecurity order to override the current exemptions to the feed ban can be justified because of the prevailing community expectation that, in the event BSE was found in Australia, immediate action would be taken to minimise its spread and impacts. A requirement to amend the legislation to withdraw the exemptions could cause delays which may significantly impact on the containment of the disease and hence human health and the economy.

The Bill includes a number of accountability measures. For example, the chief executive must consult with the Minister and potentially the chief health officer before making the a biosecurity emergency order and the Minister must table a report in Parliament about the biosecurity emergency the subject of the order within six months after the biosecurity emergency ends. These accountability measures aim to ensure that people's rights and liberties are not unnecessarily infringed upon.

Clause 116 carries a maximum penalty of 2000 penalty units or 2 years imprisonment. The department submits that the circumstances in which a biosecurity emergency order can be made are of sufficient seriousness to warrant such a penalty applying.

Committee comment:

The committee is satisfied with the department's advice.

c) Delegation to regulations (clauses 25, 26 and 503)

Clause 25 provides that a person fails to discharge the *general biosecurity obligation,* if the person contravenes the regulation provision. This is a delegation of legislative power. It would be preferable if the entire offence was contained in the Act rather than the regulation. This issue is raised in the Explanatory Notes:

> *There could be a number of ways of discharging a general biosecurity obligation. Given the technical and procedural nature of these requirements, it is considered these requirements are more appropriate for inclusion in subordinate legislation.*[92]

Similar delegations are included in clause 26(4) – non-compliance with a code of practice can be a breach of the *general biosecurity obligation* and 503(2)(b) – a regulation may be made about ways in which a person's *general biosecurity obligation* can be discharged.

The technical and procedural nature of these requirements gives rise to the question whether legislation is the best way to enforce management of impacts of animal and plant diseases and pests.

Whether it is appropriate for a measure to be dealt with by legislation is not specifically listed as one of the FLP in the *Legislative Standards Act 1992*, section 4, however it is a relevant consideration. The following comments are made about the means by which the Bill seeks to achieve its aims, without commenting on the merit of the policy sought to be implemented by the Bill.

The examples provided at clause 23 indicate that whether or not a person has complied with the *general biosecurity obligation,* will often be a question of degree:

> *'Examples of things that may exacerbate the adverse effects, or potential adverse effects, of biosecurity matter, a carrier or an activity—*
>
> *• failing to isolate an infected animal from a herd*

[92] Biosecurity Bill 2013, Explanatory Notes, p. 10.

• failing to wash footwear before leaving a property on which anthrax is present

• inappropriately disposing of leaf litter containing a plant virus or disease

• failing to take reasonable steps to reduce contaminants in plants and animals, including, for example, by allowing designated animals (not including bees) to graze on land contaminated with heavy metals or by using water that may contain a contaminant to irrigate crops

• failing to manage the impact of invasive plants and animals on a person's land'

This means that it may be difficult for the department to enforce the *general biosecurity obligation* and for people to know whether they are complying with the *general biosecurity obligation*. Regulations and codes of practice may provide guidance on compliance with the *general security obligation*. They are however also likely to have an impact on the rights and liberties of individuals because they involve applying regulation to questions of degree. It is questionable therefore whether clauses 25, 26 and 503 have sufficient regard to the rights and liberties of individuals.

Request for advice:

The committee sought the department's advice on the enforceability of the general biosecurity obligation and the department's justification for delegating legislative power (clause 25). The committee also sought assurances that clauses 25, 26 and 503 have sufficient regard for the rights and liberties of individuals.

DAFF advice:

The Bill imposes a universal biosecurity obligation on all persons which requires them to take all reasonable and practical measures to minimise the likelihood of causing a biosecurity risk and minimise the adverse effects of dealing with a biosecurity matter or carrier, and has been adopted in order to respond to a more diverse range of risks threatening industries, the environment, broad economic interests, human health and social amenity than was provided for in the existing legislation.

The general biosecurity obligation provides a flexible framework for managing biosecurity threats, without imposing lengthy, detailed, technical or procedural requirements (which are better suited to subordinate legislation) within the Bill, which is the reason for delegating this legislative power.

In terms of enforceability, the Government has a range of options for promoting compliance with the general biosecurity obligation. These range from education campaigns, providing guidance material and advice, through to issuing specific biosecurity orders where a person has or may fail to fulfil their obligation, possible on-the-spot fines, prosecutions and injunctions.

The Department will prepare a risk-based compliance plan which targets and tailors its education, monitoring and enforcement measures to reflect the circumstances and significance of the matter. This will ensure the effective use of government resources.

Voluntary compliance through education and awareness activities is fundamental to the Government's approach to achieving better biosecurity in Queensland and will be the primary means by which it achieves compliance with the general biosecurity obligation.

Local governments, natural resource management groups and industry groups, among others, will also play a role in achieving compliance with the general biosecurity obligation by emphasising shared responsibility for biosecurity and through education and awareness about specific risks and what steps can be taken to minimise them.

Enforcement action may be taken by the State where non-compliance could have significant impacts, was deliberate or repetitive.

Committee comment:

The committee is satisfied with the department's advice.

Does the Bill allow or authorise the amendment of an Act only by another Act? Section 4(4)(c) *Legislative Standards Act 1992*

a) Delegation of legislative power (clause 31)

Clause 31 provides that the chief executive may, by notice, make an emergency prohibited matter declaration if satisfied of particular listed matters. This clause effectively delegates legislative power from the Legislative Assembly to the chief executive. The question is whether this is appropriate. Some checks and balances on this delegation are featured in clause 31(2) and (3). It would be preferable however if the Act set out more detailed criteria guiding the chief executive's decision to make the declaration. This delegation is identified in the Explanatory Notes:

> *It is impractical to predict every pest and disease which may impact on a biosecurity consideration. Also it is not possible to have a complete list of biosecurity matter which may have an adverse effect on a biosecurity consideration. The Bill provides the flexibility required to accommodate new emergent biosecurity matter which may require immediate action to deal with the impact.*
>
> *Safeguards are contained in the Bill for the use of these powers. Most prohibited and restricted matter will be listed in schedules and any listing about both categories must be kept on the Department's website. The power may only be used if the chief executive considers the situation urgent and involves biosecurity matter that will have a significant adverse impact on a biosecurity consideration.*[93]

Request for advice:

The committee asked the department to explain its reasons for not including detailed criteria in clause 31 to guide the chief executive's decision to make emergency prohibited matter declarations, and whether the delegation of legislative power in this clause is appropriate.

DAFF advice:

> *Subclause 31(2) provides that an emergency prohibited matter declaration can only be made if the chief executive is satisfied the biosecurity matter satisfies the criteria in clause 20 and urgent action is required to declare the biosecurity matter is prohibited matter.*
>
> *Clause 20 provides that biosecurity matter satisfies the prohibited matter criteria if—*
>
> > *(a) the biosecurity matter is not currently present or known to be present in the State; and*
> >
> > *(b) there are reasonable grounds to believe that if it did enter the State or part of the State the biosecurity matter may have a significant adverse effect on a biosecurity consideration.*
>
> *Clause 20 also provides an example of significant adverse effect on a biosecurity consideration - the entry of particular biosecurity matter into the State may have a significant adverse effect on the economy if, for the purposes of trade in or market access for a product, there were to be imposed a requirement to prove that the product is free from the biosecurity matter.*

Committee comment:

The committee is satisfied with the department's advice.

[93] Biosecurity Bill 2013, Explanatory Notes, p. 8.

b) Independence of the Judiciary (clause 334)

Clause 334(6) provides that 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.

Clauses similar to this appear in other legislation regarding compensation, for example, the *Workplace Health and Safety Act 2011*, section 184, *Hospital and Health Boards Act 2011*, section 250 and *Transport Operations Road Use Management Act 1995* section 64. However, this clause is a delegation of legislative power from the Legislative Assembly to the Governor in Council. Further, by creating a head of power for a regulation prescribing matters to which a court may or must have regard when considering whether it is just to order compensation, it potentially affects the independence of the judiciary. The most objectionable aspect of this head of power is the ability for a regulation to prescribe what matters a court must take into account.

Further, it appears that the court would be eminently qualified to decide whether it is just to order compensation, without any direction from a regulation. In the interests of a robust separation of powers, it would be preferable if this sub-clause was deleted from the Bill. The separation of powers is fundamental to a parliamentary democracy based on the rule of law.

Request for advice:

The committee asked the department to explain its justification for including clause 334(6). The committee would also appreciate the department's comments in response to the concerns raised about impacts of the clause on the separation of powers.

DAFF advice:

> *Compensation, as provided for under the Bill, is deliberately narrow in scope to reflect the principle of shared responsibility underpinning the Bill (including that industries and individuals who will benefit from biosecurity responses should bear proportionate responsibility for mitigating biosecurity risks) while respecting the common law right of individuals to be fairly compensated.*
>
> *The explicit provision within clause 334(6) which requires the judiciary to take into consideration any relevant biosecurity offences committed by the claimant is relevant to the concept of shared responsibility and the desire to avoid awarding those who have committed biosecurity offenses.*
>
> *The establishment of such criteria for judicial consideration is a legitimate function of the legislature. The provision does not fetter judicial decision and does not offend the decisional independence of the judiciary.*

Committee comment:

The committee is satisfied with the department's advice.

EXPLANATORY NOTES

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain. Explanatory notes were tabled with the introduction of the Bill.

Identification of clauses raising FLP issues

Pages 8 to 11 of the Explanatory Notes deal with FLPs relating to the Institution of Parliament. However, this part of the Explanatory Notes does not identify the relevant clauses of the Bill.

Request for advice:

The committee sought advice from the department as to why the sections of the Explanatory Notes dealing with FLPs relating to the institution of Parliament do not identify the relevant clauses of the Bill.

DAFF advice:

> *Pages 8 – 11 of the Explanatory Notes provided a high level overview of potential departures from fundamental legislative principles (FLPs) as outlined in section 4(4)(c) of the Legislative Standards Act 1992.*
>
> *A document detailing relevant clauses dealing with FLPs relating to the institution of Parliament was provided by way of email on 16 December 2013 at the request of staff assisting the committee.*

Committee comment:

The committee thanks the department for the advice and encourages the department to ensure that Explanatory Notes for future Bills identify the clauses to which fundamental legislative principles issues refer.

Benefits and costs of implementation and alternatives

The *Legislative Standards Act 1992*, section 24(1)(h) requires explanatory notes for Bills to include:

> *a brief assessment of the benefits and costs of implementing the legislation that—*
>
> *(i) if practicable and appropriate, quantifies the benefits and costs; and*
>
> *(ii) includes a comparison of the benefits and costs with the benefits and costs of any reasonable alternative way of achieving the policy objectives stated under paragraph (g).*

The Department of the Premier and Cabinet has, in its 'Guidelines for the Preparation of explanatory notes'[94] outlined its expectations for this aspect of the explanatory notes. According to the Guidelines, this assessment should 'present more than a simple assertion as even if there are no costs to government, an analysis should be provided', citing Appendix 5.6 of the Auditor-General's Report No 6 of 2009, Providing the information required to make good regulation.

However, the Explanatory Notes tabled with the Bill do not set out an analysis of the implementation costs or compare the benefits and costs of implementation of the Bill with the benefits and costs of alternative means of achieving the stated policy objectives. No reason is provided for these omissions. Therefore, this aspect of the Explanatory Notes does not contain sufficient analysis to meet the requirements of the *Legislative Standards Act 1992* as articulated by the guidelines of the Department of the Premier and Cabinet. This matter is raised for the committee's consideration.

The part of the notes explaining each clause of the Bill is fairly detailed and contains a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and objectives.

Request for advice:

The committee sought an explanation from the department as to why the Explanatory Notes do not provide an analysis of the implementation costs or compare the benefits and costs of implementation of the Bill with the benefits and costs of alternative means of achieving the stated policy objectives, as stipulated in the Guidelines for the Preparation of Explanatory Notes provided by the Department of Premier and Cabinet.

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[94] Department of the Premier and Cabinet, 2013, *Guidelines for the preparation of explanatory notes*, http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/drafting-process/assets/guidelines-preparation-of-explanatory-notes.pdf <accessed 13 November 2013>.

DAFF advice:

As indicated in the explanatory notes, the department will bear costs of implementing the Bill. Implementation costs are estimated to be less than $0.6 million and will be met from existing budget allocations.

There are no plausible alternatives to development of legislation that addresses biosecurity risks. The rationale for replacing Queensland's current legislation is already discussed in the section of the Explanatory Notes titled 'Policy objectives and reasons for the Bill'.

There are, however, plausible alternative options for addressing specific biosecurity risks in subordinate legislation. The benefits and costs of arrangements to be included in subordinate instruments, including the release of a Regulatory Impact Statement for a regulation, will be the subject of consultation if the Legislative Assembly passes the Bill.

Committee comment:

The committee is satisfied with the department's advice.

Commencement of the Bill

Clause 2 provides for the Bill to commence on a day to be fixed by proclamation, or by 1 July 2016 at the latest. Usually, a Bill must commence within two years of the assent date.[95]

Request for advice:

The committee asked the department to explain the reasons for the delayed commencement of the Bill.

DAFF advice:

Clause 12 provides that the proposed legislation is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, public sector entities, local governments, industry, Aborigines and Torres Strait Islanders under Aboriginal tradition and Island custom, interested groups and persons and the community generally.

This process, including the release of a Regulatory Impact Statement for a regulation, is expected to take at least 12 months from the passage of the Bill. Therefore it is necessary to provide that mandatory commencement of the Bill is delayed for sufficiently long to ensure that it does not commence without the support of appropriate subordinate instruments. The delayed commencement will also allow time for awareness raising directed at community acceptance of their shared responsibility for biosecurity and obligations under the Bill. It will also allow time for the administrative and cultural changes required within the State and local governments. A calendar date was proposed as the latest day for commencement of the Act because this was considered more accessible to stakeholders than a time period in relation to assent and the processes. The department submits that if it appears that 1 July 2016 is unlikely to approximate two years after the Bill receives assent, this date could be amended during consideration of the Bill in detail.

Committee comment:

The committee is satisfied with the department's advice.

[95] *Acts Interpretation Act 1954*, section 15DA.

Appendix A – List of submitters

1 South West Natural Resources Management Ltd

2 Darling Downs-Moreton Rabbit Board

3 Southern Downs Regional Council

4 Dr Pam Swepson

5 Australian Wild Country Adventures

6 Sporting Shooters' Association of Australia (Qld.) Inc.

7 AgForce Queensland Industrial Union of Employers

8 Ergon Energy Corporation Limited

9 Powerlink Queensland

10 Australian Veterinary Association Ltd

11 Queensland Farmers' Federation Ltd

12 Research into Deer Genetics and Environment Inc.

13 Australian Livestock and Property Agents Association Ltd.

14 Ms Glenda Pickersgill

15 Department of Transport and Main Roads

16 Mr Ian Christie

17 Local Government Association of Queensland

18 Invasive Species Council

Appendix B – Briefing officers and hearing witnesses

Briefing officers at a public briefing held on 5 December 2013

Department of Agriculture, Fisheries and Forestry

Mr Patrick Bell, General Manager, Strategy and Legislation, Biosecurity Queensland

Ms Marguerite Clarke, Manager, Biosecurity Legislation, Biosecurity Queensland

Dr Jim Thompson, Chief Biosecurity Officer, Biosecurity Queensland

Public hearing witnesses – 12 February 2014

Dr Laurie Dowling, Executive Officer, Queensland Division, Australian Veterinary Association

Mr Ian Burnett, President, AgForce

Mrs Marie Vitelli, Policy Officer, AgForce

Mr Dan Galligan, Chief Executive Officer, Queensland Farmers Federation

Mr Gary Sansom, Biosecurity Spokesperson, Queensland Farmers Federation

Mr Clark McGhie, President, Research Into Deer Genetics and Environment

Ms Dorean Erhart, Principal Advisor, Natural Assets, NRM and Climate Change, Local Government Association of Queensland

Mr Luke Hannan, Manager, Advocacy, Planning, Development and Natural Environment, Local Government Association of Queensland

Miss Andrea Lethbridge, Northern Regional Manager, Australian Livestock and Property Agents Association

Mr Glen Cranny, Chair, Criminal Law Committee, Queensland Law Society

Mr Matthew Dunn, Principal Policy Solicitor, Queensland Law Society

Ms Binny De Saram, Senior Policy Solicitor, Queensland Law Society

Briefing officers at a public briefing held on 12 February 2014

Department of Agriculture, Fisheries and Forestry

Ms Marguerite Clarke, Manager, Biosecurity Legislation, Biosecurity Queensland

Ms Fiona Ferguson, Principal Policy Officer, Biosecurity Queensland

Mr Mark Lightowler, Principal Policy Officer, Biosecurity Queensland

Dr Jim Thompson, Chief Biosecurity Officer, Biosecurity Queensland

Appendix C – Summary of submissions

This summary compiled by committee staff includes advice provided by the Department of Agriculture, Fisheries and Forestry on issues raised by submitters.

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
		General comment		
	1 South West Natural Resources Management Ltd	General comments	Supports the Bill as a constructive amalgamation of older Acts that will help manage a constantly changing biosecurity landscape.	The department notes that the South West Natural Resources Management Ltd supports the Bill.
	3 Southern Downs Regional Council	General comments	The Council is generally quite happy with the provisions regarding the management of invasive plants and animals in the Bill. However we recognise much work is to be done in developing Biosecurity Zone Regulatory provisions, guidelines, codes of practice and other subordinate legislation to give the Bill strategic and practical effect. Southern Downs Regional Council (SDRC) invests considerable resources into invasive pest management and therefore looks forward to the timely, collaborative development of these to improve management outcomes.	The department notes that the Southern Downs Regional Council generally supports provisions of the Bill that provide for the management of invasive plants and animals. The department acknowledges that significant work will be required to develop subordinate instruments should the Legislative Assembly pass the Bill. The department is already discussing with stakeholders how various biosecurity risks could be addressed under the framework of the proposed legislation. More comprehensive consultation on the detailed arrangements to be included in subordinate instruments, including the release of a Regulatory Impact Statement for a regulation, will occur if the Legislative Assembly passes the Bill.
	11 Queensland Farmers' Federation Ltd.	General comment	It should be noted that while we may have no major issues with the Bill as it stands the impact of this complex and legislation will not be clear until the associated regulations and subordinated implementation mechanisms are drafted. This will give a much clearer picture of how the new legislation will impact on industry. Regulation reference groups have been set up with industry to progress the drafting of the new regulations and QFF will remain engaged in this process	The department notes that the Queensland Farmers' Federation Ltd. has no major issues with the Bill. The department acknowledges that significant work will be required to develop subordinate instruments should the Legislative Assembly pass the Bill. The department is already discussing with stakeholders how various biosecurity risks could be addressed under the framework of the proposed legislation. More comprehensive consultation on the detailed arrangements to be included in subordinate instruments, including the release of a Regulatory Impact Statement for a regulation, will occur if the Legislative Assembly passes the Bill.
	17 Local Government Association of Queensland	General comments	Request the inclusion of an offence for persons found interfering with or obstructing an action or planned action to discharge a local government obligation under the Act.	Clause 336 establishes that it is an offence to obstruct a designated officer, or another person or a 'detection animal' helping a designated officer without reasonable excuse. 'Designated officer' means an inspector, authorised person, or a 'barrier fence employee'. Local governments may appoint authorised persons (and barrier fence employees if they are a building authority).

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
	7 AgForce Queensland Industrial Union of Employers	Naming of the Bill	Recommend that a unique name is assigned to the Queensland Government Biosecurity Bill 2013 to avoid confusion with the currently lapsed Australian Government Biosecurity Bill 2012 [2013].	The department believes that "Biosecurity Act" is the most appropriate name for this legislation if passed, as it seeks to provide a comprehensive legislative framework for biosecurity in Queensland. Given that the application and operational effect of any federal biosecurity legislation is distinct from that of states and territories, the opportunity for confusion is considered to be limited. The former Federal Biosecurity Bill lapsed with the dissolution of the Federal Parliament for the 2013 election. It has not been re-introduced to date.
	18 Invasive Species Council	Role of Environment	ISC argue that because of the importance of biosecurity to conservation, the Environment Minister should have a statutory role in decision-making and policy direction on important environmental biosecurity issues, including listing of prohibited and restricted matters and emergency listings.	One of the stated purposes of the proposed legislation is to manage risks associated with emerging, endemic and exotic pests and diseases that impact on biodiversity and the natural environment. The department consults with the department of Environment and Heritage Protection at local and state level about matters relevant to the environment. Further, Cabinet conventions already afford all Ministers an opportunity to comment on listing of prohibited and restricted matter by an amendment Bill or regulation if the impacts are likely to be significant.
		Consultation		
	17 Ms. Pickersgill	Consultation	Ms. Pickersgill raises a concern regarding the ability of stakeholders to comment on the Bill prior to its introduction. She suggests that any draft regulation or subordinate legislation relating to feral deer management obligations be open for public comment before finalization.	The Bill is broadly based on the Biosecurity Bill 2011 (the 2011 Bill) which was the focus of extensive consultation with key industry and peak body groups from the early stages of its policy development. Public submissions were invited on an exposure draft of that bill in July 2011 and again in late 2011 to the Parliamentary Committee examining that bill. During preparation of the current bill, the department has continued to brief key industry and peak body groups, representative groups and particular interest groups. Separate to this, the department has also consulted and gathered stakeholder views on feral deer management during the development of the Feral Deer Management Strategy and through a Feral Animal Summit in Toowoomba. Clause 12 provides that the proposed legislation is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, public sector entities, local governments, industry, Aborigines and Torres Strait Islanders under Aboriginal tradition and Island custom, interested groups and persons and the community generally. The department is already discussing with stakeholders how various biosecurity risks could be addressed under the framework of the proposed legislation. More comprehensive consultation on the detailed arrangements to be included in subordinate instruments, including the release of a Regulatory Impact Statement for a regulation, will occur if the Legislative

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
				Assembly passes the Bill.
	7 AgForce Queensland Industrial Union of Employers	Consultation on associated regulations and codes	The development of the associated Regulations and Codes of Practice need collaborative discussion and technical input as proposed through the Biosecurity Regulations Reference Group (BRRG). It is imperative that local government in addition to peak industry bodies are represented in this new group.	Clause 12 provides that the proposed legislation is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, public sector entities, local governments, industry, Aborigines and Torres Strait Islanders under Aboriginal tradition and Island custom, interested groups and persons and the community generally. There are many forums in which the department is already discussing with stakeholders how various biosecurity risks could be addressed under the framework of the proposed legislation. One of these is the Biosecurity Regulations Reference Group on which local government are already represented by the Local Government Association of Queensland. More comprehensive consultation on the detailed arrangements to be included in subordinate instruments, including the release of a Regulatory Impact Statement for a regulation, will occur if the Legislative Assembly passes the Bill.
		Chapter 1 Preliminary		
4 5	18 Invasive Species Council	Purposes of Act How purposes are primarily achieved	The ISC suggests some additions to the Purposes of the Act, including i) the benefits of adopting an approach based on the hierarchy of prevention, eradication, containment, control and asset protection approach and ii) that the risk creator should bear some responsibility. They also write that the principle of ecologically sustainability development should also be applied to decision-making and referred to in Section 5.	The proposed legislation provides for Government action at every point along the biosecurity continuum – prevention, preparedness, response, recovery, ongoing management. It represents a more preventative approach to biosecurity than the existing legislation which is most clearly expressed in the general biosecurity obligation– the obligation to take all reasonable and practical measures to prevent or minimise risk. The general biosecurity obligation also formalises the notion of shared responsibility for biosecurity. It applies to a person who deals with biosecurity matter or a carrier or carries out an activity if the matter, carrier or activity pose or are likely to pose a biosecurity risk. In this way, it ensures those who create or exacerbate risks play an active role in risk mitigation. Historically, responsibility for funding and management of biosecurity risks has been disproportionately met by government even where the benefit has largely been to individuals or particular industries. In contrast, the notion of shared responsibility is based on the premise that risk and costs should not be transferred from individuals or particular industries to government unless it is economically efficient or there is commensurate payment. It also recognises that the costs of risk management are minimised by obliging those who have greatest capacity to prevent and control the risk to bear proportionate responsibility for its mitigation. While biosecurity is relevant to the achievement of ecologically sustainable development, the department's view is that ecologically sustainable

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
				development is beyond the scope
4	7 AgForce Queensland Industrial Union of Employers	Purposes of Act	Insert 4 (1) (d) Align responses to biosecurity risks with national biosecurity agreements such as Australian Emergency Animal Health Response Deed and the Australian Emergency Plant Pest Response Deed.	Clauses 4(1)(c) and Chapter 14, Part 2 will ensure the government aligns responses with national agreements such as the Emergency Animal Disease Response Agreement (EADRA) and the Emergency Plant Pest Response Deed (EPPRD). Clause 4 (1)(c) provides that a purpose of the proposed legislation is to help align responses to biosecurity risks in the State with national and international obligations for requirements for accessing markets for animal and plant produce, including live animals. Chapter 14, Part 2 allows the government to enter agreements with 1 or more other jurisdictions, industry bodies or natural resource management bodies such as EADRA and EPPRD. Clause 391 provides that the agreement may be directed at ensuring a coordinated process for responding to a biosecurity event or cost sharing for an event. Clause 392 provides that an agreement may include measures the parties to the agreement must undertake for: preparing for a biosecurity event; preventing, controlling or responding to a biosecurity event; undertaking surveillance for biosecurity matter; recovering from a biosecurity matter or ongoing management of biosecurity matter that caused an event. An agreement may also provide for reimbursement of costs incurred or losses suffered due to the response to an event. Further Chapter 11, Part 2 provides that if such an agreement provides for compensation in relation to a biosecurity response, the chief executive must take reasonable steps, to the extent of the State's obligations under the agreement, to ensure the person receives compensation for the loss or damage they are entitled to under the agreement.
4(2)(b)	17 Local Government Association of Queensland	Purpose of Act	As per 2011 submission – recommend changing …'the transfer of diseases from animals to humans and from humans to animals…' to "zoonosis" and define in Dictionary If retaining the sentence as is, consider adding "the transfer of parasites from animals (emerging, non-endemic and exotic pests) to humans and from animals to animals.	The department's views is that the referring to diseases that can be transferred from animals to humans and from humans to animals is more accessible to the general reader trying to understand the purpose of the proposed legislation than the term 'zoonosis'. Subclause 4(1)(a) provides that one of the main purposes of the proposed legislation is to provide a framework for an effective biosecurity system for Queensland that helps to minimise risks and facilitates timely and effective responses to impacts on a biosecurity consideration. This would include risks associated with parasites that can affect human health. Subclause 4(2) highlights some specific characteristics of an effective biosecurity system for Queensland. However, it is not an exhaustive list.
5	18 Invasive	How purposes are primarily achieved	The ISC submits that it is very much in the public interest and beneficial also for commercial interests for governments to support the	Clause 12 provides that the proposed legislation is to be administered, as far as practicable, in consultation with, and having regard to the views and

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
	Species Council		community, including environmental NGOs, to participate in biosecurity processes. They suggest one specific change that could acknowledge the important role of the community would be to allow partnerships with the government to include non-industry bodies.	interests of, public sector entities, local governments, industry, Aborigines and Torres Strait Islanders under Aboriginal tradition and Island custom, interested groups and persons and the community generally. Clause 391 provides for agreements between the State and other jurisdictions, local governments, industry bodies, and natural resource management bodies. This recognises the type of entities the State already has agreements with, particularly national cost sharing agreements. To the extent that environmental NGOs are natural resource management bodies, there is already provision for them to be parties to agreements. Consideration could be given to providing that the State could enter into an agreement with other types of entity if appropriate.
5(c)	18 Invasive Species Council	How purposes are primarily achieved - precautionary approach	The ISCl support the strong reference to the precautionary principle for risk-based decision-making in the legislation.	The department notes that the Invasive Species Council supports the precautionary principle for risk-based decision-making in the proposed legislation.
5(f)&(g)	17 Local Government Association of Queensland	How purposes are primarily achieved	For the full benefit of these new tools to be realised, Biosecurity Queensland will need to be appropriately resourced to facilitate and where required develop the codes of practice and guidelines to support industry and local government in the efficient and timely discharge of their obligations under the Act. Additionally, one of the benefits of these tools is the ability of industry or other sectors (including local government) to identify and develop codes of practice or guidelines they see necessary. However, Biosecurity Queensland will need to have resources available to actively participate in these initiatives. LGAQ request that local governments are actively engaged and invited to provide input to the development of these tools where they directly relate to their operations and obligations.	The proposed legislation will change the way that the State and local governments do their business. In particular, implementation of the proposed legislation is an opportunity for a more outcome-focused approach to ongoing management of pests and diseases with less prescriptive regulation. The department recognises that implementation of the proposed legislation will be a significant task and will involve not only development of subordinate instruments but also gaining community acceptance of shared responsibility for biosecurity and new biosecurity obligations. The department will consult with local government before finalising an implementation plan for the proposed legislation if the Legislative Assembly passes the Bill. There are many forums in which the department is already discussing with stakeholders how various biosecurity risks could be addressed under the framework of the proposed legislation. One of these is the Biosecurity Regulations Reference Group on which local government are already represented by the local Government Association of Queensland. More comprehensive consultation on the detailed arrangements to be included in subordinate instruments, including the release of a Regulatory Impact Statement for a regulation, will occur if the Legislative Assembly passes the Bill.
7(1)	17 Local Government Association of Queensland	Act binds all persons	The State and in particular Biosecurity Queensland, should maintain a coordinating role between all State government departments that have a land management responsibility or that impact on land management responsibilities of other entities such as local government. Councils have reported that there is a lack of common understanding about the	The department is working with state agencies and LGAQ to finalise a State Land Pest Management Framework for pest management action on state lands. The proposed legislation expressly binds the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and other

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
			inspection of State and Commonwealth lands as part of local government surveillance programs. Neither the State nor Commonwealth can be prosecuted under the Act and due to limited resources, it is local governments' view that surveillance of these lands is not its obligation and should be undertaken under agreement between a council and the relevant Department.	States. The express provision is necessary because there is a long-established common law principle that a statute does not bind the Crown (which in Australia is the Commonwealth and State and Territory Governments) unless expressly mentioned. The intention is to make it clear that the State and its officers are bound by and subject to the same obligations under the proposed legislation as ordinary persons, even if they cannot be prosecuted. Subject to any specific laws applicable to that land, local governments would have power to enter State and Commonwealth lands under a biosecurity program under the proposed legislation just as they would have power to enter other land. The State Land Pest Management Framework is focussed on implementing collaborative and feasible actions to support implementation of local/regional biosecurity plans.
7(2)	3 Southern Downs Regional Council	Act binds all persons	The Council notes that the State is bound by the Act (s7(1)) but cannot be prosecuted for an offence against the Act (s7(2)), and requests that s7 (2) be removed.	It would not be appropriate for the state to invest resources and effort to prosecute itself for biosecurity offences under the proposed legislation. For example, a fine imposed would be paid by the State to the State, when the funds would be better spent to achieve the outcomes of the legislation. Such provisions are therefore common in State legislation. Nevertheless, the proposed legislation expressly binds the State. The intention is to make it clear that the State and its officers are bound by and subject to the same obligations under the proposed legislation as ordinary persons, even if they cannot be prosecuted. The express provision is necessary because there is a long-established common law principle that a statute does not bind the Crown (which in Australia is the Commonwealth and State and Territory Governments) unless expressly mentioned.
9	7 AgForce Queensland Industrial Union of Employers	Relationship with particular Acts	There is uncertainty in the event of an outbreak of a prohibited biosecurity matter which also affects or has alternate native hosts (plant or animal) as to what Act has precedence. Who has the power to enact control measures for a biosecurity obligation versus requirements for preserving native plants and animals under the Nature Conservation Act 1992 (Qld) and Vegetation Management Framework Amendment Act 2013 (Qld).	Generally, the proposed legislation does not interfere with the operation of other Acts and vice versa and the powers of officials under the Bill are in addition to and do not limit the powers granted to the same officials under another Act. For example a person may have a biosecurity obligation to manage invasive plants on the person's property. The proposed legislation does not remove the obligation for a person to obtain a permit or such other requirements as might apply under the *Vegetation Management Act 1999* to clear native vegetation if the invasive plants are amongst the native vegetation and clearing the native vegetation is the only way to manage the invasive plants. However, clause 9 provides if activities are authorised under an emergency order or movement control order or undertaken or authorised by an inspector exercising their emergency powers the person undertaking the activities is taken not to have committed an offence under the *Nature Conservation Act 1992* or *Vegetation Management Act 1999*.

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
9(3)	17 Local Government Association of Queensland	Relationship with particular acts	Request the inclusion of the Heritage Act to ensure invasive plants captured under a heritage listing can be appropriately managed under this Act.	Inclusion of the *Heritage Act 1992* in the list of relevant Acts would not have impact except in relation to an inspector's emergency powers, an emergency order or a movement control order. It would not, for example, have any impact on the management of established invasive plants(e.g. trees) that are significant to the cultural heritage of a place. The department is consulting with the Department of the Environment and Heritage Protection about the best approach to dealing with conflict between the requirements of the *Heritage Act 1992* and the proposed legislation if a tree contributes to the cultural significance of a listed place. An exemption certificate allowing the removal of the tree subject to conditions directed at replacement with a similar planting might be an appropriate mechanism for resolving the conflict in some circumstances.
15(2)	17 Local Government Association of Queensland	What is biosecurity matter	Suggest including "seeds and spores" in italicized example.	The department's view is that the examples provided are sufficient to clarify the intent of the provision. Although "egg, larva, pupa, adult" all relate to animals, the provision clearly applies to any biosecurity matter with a life cycle. As such, seeds and spores would be captured. Examples are not intended to be exhaustive and do not limit the interpretation of the legislation.
17	7 AgForce Queensland Industrial Union of Employers	What is a carrier	Include "water" (i.e. rain water, ground water and watercourses) and "wind" within the definition of a carrier which is capable of moving biosecurity matter.	The proposed legislation refers to carrier as being any animal or plant, or part of any animal or plant, or any other thing capable of moving or containing biosecurity matter. The department considers that water would be captured by this meaning in circumstances where it is capable of moving or containing biosecurity matter. Wind can spread biosecurity matter, however it is not considered to be a 'carrier' under the proposed legislation because it is not within the normal meaning of a 'thing'. However, a person would still have a general biosecurity obligation if they carry on an activity that "poses or is likely to pose a biosecurity risk" (see cl 23), such as an activity that exacerbated the risk that biosecurity matter could be spread by the wind. Including wind in the definition of 'carrier' could have unintended consequences. For example, if wind was a carrier then a person's "dealings with" the wind could trigger the general biosecurity obligation – they may be required to take all reasonable and practical steps to minimise the risk the wind carried biosecurity matter and to minimise the potential impacts on human health, social amenity, the economy and the environment.
18	7 AgForce Queensland Industrial Union of Employers	What is a contaminant	Delete "dioxin" as an example of an environmental contaminant for a biosecurity consideration. Most dioxin emissions are a natural by-product of forest fires and bush fires and are found in trace concentrations in the air, water and soil, in all areas around the world. Dioxins are also generated through human activities such as	The proposed legislation defines a contaminant as anything that may be harmful to animal or plant health or pose a risk of any adverse effect on a biosecurity consideration. The draft Australian Feed Standard for Food Producing Animals sets proposed maximum permissible levels for contaminants in animal feeds.

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
			manufacturing, incineration and exhaust emissions which have declined by greater than 90% through regulation of these activities.	This standard proposes to set limits for dioxins in various classes of animal feed. Ultimately these standards may be reflected in some way under Queensland legislation. Feed contamination has caused major food safety incidents in Europe, such as dioxin and polychlorinated biphenyl (PCB) contamination of poultry products in Belgium and lead in feed of dairy cattle in the Netherlands. Also contamination of feed and feed ingredients with dioxins and dioxin-like PCBs (dl-PCBs) has caused billions of dollars of damage to livestock producers in Europe, the USA and Chile in the last 30 years. Dioxins can be present in feed due to both natural and man-made sources. Regardless of source, they remain a biosecurity risk, and it is therefore appropriate that "dioxin" be maintained in the proposed legislation as an example of a contaminant. The general biosecurity obligation would only be triggered by contaminants such as dioxins (as biosecurity matter) where they pose or are likely to pose a biosecurity risk.
21	7 AgForce Queensland Industrial Union of Employers	Restricted matter	The purpose of category numbers (1 to 7) assigned to Restricted Matter in Schedule 2 is not clear. Category numbers 4, 5 and 6 require further explanation. Category 3 includes productivity and environmental weeds and pests, some that are localised and some that are widespread. A wide range of cost-effective management "disposal" options need to be "prescribed" within the regulations for the vast range of Category 3 weeds and pests.	Restricted matter is assigned category numbers as a convenient means of imposing restrictions and obligations on persons in relation to the restricted matter. Clauses 42 – 45 describe these categories and their associated restrictions and obligations. Category 3 restricted matter cannot be distributed or disposed of without authorisation. Such authorisation may be prescribed under a regulation. Consultation on the detailed arrangements to be included in subordinate instruments, including the release of a Regulatory Impact Statement for a regulation which would prescribe some ways that category 3 restricted matter can be distributed or disposed of, will occur if the Legislative Assembly passes the Billl. Alternatively, a restricted matter permit may authorize distribution or disposal of category 3 restricted matter. Category 4 restricted matter cannot be moved unless the movement is authorised. The intention of this prohibition is to limit its distribution or spread. Category 5 restricted matter cannot be possessed or kept under a person's control, due to their high pest potential. Category 6 restricted matter cannot be fed. The intention of this prohibition is to discourage population growth. A restricted matter permit or another Act or law of the Commonwealth may however authorise actions otherwise prohibited under Categories 4, 5 and 6.
21	6 Sporting Shooters' Association of Australia (Qld.)	21. What is restricted matter	Sporting Shooters are concerned that a potential ad hoc approach of regulation is inadequate to protect the viability of the legitimate activities noted without unwarranted or unnecessary bureaucratic impost. Sporting Shooters submit that further consideration and clarification of	Category 3 restricted matter includes invasive animals and plants where disposal or distribution can be a key source of spread. A dead animal (unless it is a pathogenic agent, disease or contaminant) is not, by definition, biosecurity matter (see clause 15) and so is not restricted

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
	Inc.		this issue {Restricted Matter - distribution or disposal) is essential in relation to the noted activities and that these activities are worthy of recognition and inclusion within the Act to ensure consistency of interpretation. Regulation can best administer the potential of a biosecurity event or threat.	matter subject to restrictions on distribution or disposal. Therefore a hunter who kills a feral animal can take the animal's meat, skin or tusks from the property provided it is not diseased or contaminated. A person must not distribute or dispose of live category 3 restricted matter unless it is performed in a way authorised by regulation, it is authorised by a restricted matter permit or an authorised officer performs the distribution or disposal. Consultation on the detailed arrangements to be included in subordinate instruments, including the release of a Regulatory Impact Statement for a regulation which would prescribe some ways that category 3 restricted matter can be distributed or disposed of, will occur if the Legislative Assembly passes the Bill. The Feral Deer Management Strategy 2013–18, developed in consultation with stakeholders, recognises that recreational hunting groups can contribute to the long-term management of feral deer in historic ranges. There would be no impediment to landholders implementing property management plans in historic deer ranges to meet these objectives under the proposed legislation. The general biosecurity obligation will minimise the need for prescriptive regulation about what methods must be used in these areas and enable stakeholders to exploit the full range of risk-reduction methods available for deer. However, discrete or recently established populations or populations with high local impact may become the target of local eradication programs under the strategy. Each local government will decide how it will target its activities and ensure the most effective use of its resources to manage invasive plants and animals, including feral deer, in its area. The restrictions on distribution and disposal of category 3 restricted matter under the proposed legislation are similar to restrictions currently applying to the relevant feral animals under the *Land Protection (Pest and Stock Route Management) Act 2002*.
23-45		Chapter 2 Significant obligations and offences		
	18 Invasive Species Council	Listing structure	The ISC argues that there are strong benefits in using a permitted list approach, particularly for plants. This would require a risk assessment of all new non-indigenous taxa not on a permitted list and allowing the sale and movement only of low-risk plants.	The proposed legislation uses a permitted list approach for animals (28 species) as the lawful introduction of low risk species of animals into Australia is a relatively infrequent event. However, the historical introduction of plant taxa into Australia has been extensive with over 25,000 taxa known. A large number of these are currently "permitted" entry into Australia and are lawfully traded in other states and territories. Trade in these species into Queensland is allowed

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				under the *Mutual Recognition (Queensland) Act 1992* unless a "quarantine" law prevents the introduction to prevent a long term and substantially detrimental effect on the state. This effectively requires a prohibited/restricted list approach. The Australian Government undertakes risk assessments on all new introductions into Australia.
	18 Invasive Species Council	Listing process	ISC argue that the process for declarations should be made much more rapid to expedite early action and eradication.	Unlike current legislation, the proposed legislation does not require the identification and scheduling of specifically identified pests and diseases before action can be taken. The proposed legislation provides proportionate powers and the flexibility to respond in a timely and effective way to risks posed by biosecurity matter regardless of whether it is listed.
23 - 27	18 Invasive Species Council	General biosecurity obligation	The ISC strongly support the requirement that all biosecurity participants exercise a general biosecurity obligation to take all reasonable and practical measures to prevent and minimise biosecurity risks.	The department notes that the Invasive Species Council supports the general biosecurity obligation in the proposed legislation.
23	17 Local Government Association of Queensland	What is a general biosecurity obligation	All council employees with a land management or operational role that requires them to work outdoors in any capacity including for example, parking and water meter inspectors, will need to be made aware of their general obligations and what minimum reasonable and practical measures they must take. This presents a resource and training cost to all local governments in Queensland. The LGAQ requests that Biosecurity Queensland prepare information materials that can be used by councils to allow them to easily meet this requirement. Such materials will be needed for State employees also.	The department recognises that implementation of the proposed legislation will be a significant task. The department will consult with local government before finalising an implementation plan for the proposed legislation if the Legislative Assembly passes the Bill. Local governments, like other persons, will be obliged under the proposed legislation to take all reasonable and practical steps to minimise biosecurity risks posed by their activities. For employers such as local governments, this may include training for their staff about the general biosecurity obligation, awareness raising about biosecurity risks relevant to their activities and the local area and implementing strategies directed at preventing or minimising risks. Communication materials developed by the department may assist local governments with staff training and awareness raising. Local governments may wish to consider formal planning processes for biosecurity risk management to demonstrate due diligence just as they currently develop and implement plans to address, for example, workplace health and safety risks.
23	16 Ian Christie	What is a general biosecurity obligation	Mr Christie suggests rewording clause 23 (3)(c) to say "Examples of things that may exacerbate the adverse effects, or potential adverse effects, of biosecurity matter, a carrier or an activity ***include, but are not limited to*** –"	There is no need to qualify that the examples are not limited as section 14D of the *Acts Interpretation Act 1954* provides the following: If an Act includes an example of the operation of a provision— (a) the example is not exhaustive; and (b) the example does not limit, but may extend, the meaning of the provision; and (c) the example and the provision are to be read in the context of each other

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				and the other provisions of the Act, but, if the example and the provision so read are inconsistent, the provision prevails.
27	17 Local Government Association of Queensland	Aggravated offences-significant damage to health and safety of people or to the economy or environment	Aggravated offences—significant damage to health and safety of people or to the economy or environment. Suggest the inclusion of examples, including defining propagation and sale of a plant species known to be highly invasive as reckless.	The department recognises that examples are useful and relevant in some cases to clarify the intent of a provision. However, the department considers that the intent of section 27 is clear and therefore there is no need for an example in this case.
28 (2)(c)	16 Ian Christie	Defence of due diligence	Delete: "Example – checks carried out by a veterinary surgeon"	The example provided for clause 28(c)(ii) is intended to make it clear that there are scenarios where a person may reasonably rely on a check carried out by another person. This may be in circumstances where that other person can reasonably be expected to have expertise – such as a veterinary surgeon. As provided for under section 14 D of the *Acts Interpretation Act 1954*, this example does not limit the meaning of the provision.
30 (2)(b)	18 Invasive Species Council	Prohibited matter regulation - prohibited/restricted matter lists	ISC submit that they are unable to understand some of the changes to the species listed as either prohibited or restricted matters when comparing the current legislation with the proposed Bill. They also argue that it is unclear why the requirement for the Minister to be satisfied that "prompt action is required to declare the matter to be prohibited matter" before adding to the list of prohibited matter exists, and suggest that it should be removed.	The restrictions and obligations that would apply to prohibited matter under the proposed legislation are much more extensive than those that currently apply to class 1 declared pests under the *Land Protection (Pest and Stock Route Management) Act 2002*. Consequently, it is generally inappropriate for any pests or diseases that are present in Queensland to be listed as prohibited matter. This is reflected in the criteria in clause 20 that apply when prohibited matter is to be listed by regulation or emergency prohibited matter declaration - the prohibited matter must be both not currently present or known to be present in the state; and there must be reasonable grounds to believe it may have a significant adverse effect on a biosecurity consideration. Those current class 1 weeds that are present in the state have not been listed as prohibited matter and are instead listed as restricted biosecurity matter. If they were eradicated from Queensland in future it may be appropriate for them to be listed as prohibited matter. Some current class 1 pests (willows (*Salix* spp.) and gorse (*Ulex europaeus*)) are not present in the state but there is reason to believe that if present the biosecurity matter would not have a significant impact on a biosecurity consideration. These species are class 1 pests under the *Land Protection (Pest and Stock Route Management) Act 2002* to implement a national agreement that Weeds of National Significance should be banned from sale in all jurisdictions. Under the proposed legislation this would be achieved by listing them as category 3 restricted matter. The proposed legislation would allow an emergency response to be

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				undertaken regardless of the listing of something as prohibited matter. Further the general biosecurity obligation applies in relation to any biosecurity matter that poses or is likely to pose a biosecurity risk regardless of whether it is prohibited matter. As a result, declaration of additional biosecurity matter as prohibited matter may occur relatively infrequently. There would be three ways it could occur – by amendment of the proposed legislation, by regulation or by an emergency prohibited matter declaration. The appropriate mechanism would depend on the circumstances that necessitated the declaration.
30(3)(a)(iii)	17 Local Government Association of Queensland	Prohibited matter regulation	Reason to remove a species from the prohibited list: … "the rate of spread of the biosecurity matter means that it is likely to spread over a large area of the State"… This clause requires greater clarification as to why the rate of spread and wide distribution is a reason to remove a species from the prohibited list. These factors are a common reason for including most species on the prohibited list. The demonstrated inability to be able to prevent or control a prohibited species at the time of its introduction to the State could be a valid reason to remove it from the list. Recommend redrafting to: "the rate of spread and lack of effective and economically viable treatment options means that it is likely to spread over a large area of the State".	The Minister must be satisfied that at least one of the scenarios in clause 30(3)(a) applies before recommending that biosecurity matter be declared not to be prohibited. The "rate of spread" of the matter is intended to accommodate a circumstance where the matter is present in Queensland and, although not already widely spread as per cl.30(3)(a)(ii), it is spreading, or likely to spread, rapidly. In such a situation, containment or eradication measures may not be viable, for economic or practical reasons, or may be failing. Whilst economic justifications may be relevant in this instance, it is not appropriate to solely limit the Minister's considerations to this in the legislation.
36	7 AgForce Queensland Industrial Union of Employers	Reporting presence of prohibited matter	Reporting obligation of prohibited matter depends on a person's awareness of the symptoms and/ or identification of prohibited matter. This is a difficult task considering the number of biosecurity matters listed in Schedule 1 and will depend on effective communication, training and awareness.	The proposed legislation provides that a person has an obligation to report prohibited matter if the person is aware of the presence of such matter or that the person believes or ought reasonably believe it is prohibited matter. This reporting obligation is triggered by a person's actual awareness, their belief, or what they should reasonably be expected to believe. It follows that the Department's ability to enforce this obligation will turn on the Department's ability to demonstrate that the person was indeed aware of the prohibited matter, or that the person had received relevant information or was in a position that would require an understanding of the prohibited matter. The department recognises the need to effectively implement the proposed legislation will involve a comprehensive communication strategy. This includes effective and targeted communication campaigns about specific prohibited matter.
38 43	6 Sporting Shooters' Association of	38. Basic restricted matter declaration provision	Sporting Shooters are concerned that a potential ad hoc approach of regulation is inadequate to protect the viability of the legitimate activities noted without unwarranted or unnecessary bureaucratic impost.	The distribution or disposal of live rabbits, feral deer, feral goats and feral pigs is regulated in the proposed legislation because they are biosecurity matter that is listed as category 3 restricted matter. A dead animal (unless it is a pathogenic agent, disease or contaminant) is not, by definition,

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	Australia (Qld.) Inc.	43. Distributing and disposing of category 3 restricted matter	Sporting Shooters submit that further consideration and clarification of this issue {Restricted Matter - distribution or disposal) is essential in relation to the noted activities and that these activities are worthy of recognition and inclusion within the Act to ensure consistency of interpretation. Regulation can best administer the potential of a biosecurity event or threat.	biosecurity matter (see clause 15) and so is not restricted matter subject to restrictions on distribution or disposal. Therefore a hunter who kills a feral animal can take the animal's meat, skin or tusks from the property provided it is not diseased or contaminated. A person must not distribute or dispose of live category 3 restricted matter unless it is performed in a way authorised by regulation, it is authorised by a restricted matter permit or an authorised officer performs the distribution or disposal. Consultation on the detailed arrangements to be included in subordinate instruments, including the release of a Regulatory Impact Statement for a regulation which would prescribe some ways that category 3 restricted matter can be distributed or disposed of, will occur if the Legislative Assembly passes the Bill. The Feral Deer Management Strategy 2013–18, developed in consultation with stakeholders, recognises that recreational hunting groups can contribute to the long-term management of feral deer in historic ranges. There would be no impediment to landholders implementing property management plans in historic deer ranges to meet these objectives under the proposed legislation. The general biosecurity obligation will minimise the need for prescriptive regulation about what methods must be used in these areas and enable stakeholders to exploit the full range of risk-reduction methods available for deer. However, discrete or recently established populations or populations with high local impact may become the target of local eradication programs under the strategy. Each local government will decide how it will target its activities and ensure the most effective use of its resources to manage invasive plants and animals, including feral deer, in its area.
41	17 Local Government Association of Queensland	Up-to-date listing of all restricted matter to be available on the department's website	While there is an obligation on all persons to meet the requirements of the Act, access to information to ensure all persons can meet this obligation is essential. The State has committed to making up-to-date listing of all restricted matter available on the department's website, however, there is a need for a mechanism to provide notifications of changes. Suggest the development of a subscription option and communique to manage amendments as part of the administration of the schedules. Additionally, suggest the publication of amendments to the schedules in relevant State paper and web based publications.	It is intended that relevant stakeholders would be consulted prior to a declaration of restricted matter and would be notified at the time of declaration. Options such as an ability to subscribe to updates and the use of social media will be explored. Management tools in the proposed legislation can be used and the general biosecurity obligation applies in relation to any biosecurity matter that poses or is likely to pose a biosecurity risk regardless of whether it is listed as restricted matter. This compares with the current legislation where requirements generally only apply and response tools may be exercised only for listed threats. As a result, declaration of additional biosecurity matter as restricted matter may occur relatively infrequently.
42	16 Ian Christie	Reporting presence of category 1 or 2 restricted matter	Mr Christie proposes rewording clause 42 (4) to eliminate the "*Example – A person would be required to advise an appropriate authorised officer of the presence of relevant restricted matter in 1 of*	This example has been included to clarify the intent of clause 42(4). There is no reason why an example cannot be longer than the associated provision.

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			the person's animals if the veterinary surgeon who diagnosed the presence of the restricted matter advised an appropriate authorised officer about it as soon as the diagnosis was made."	
43	7 AgForce Queensland Industrial Union of Employers	Distributing or disposing of Category 3 matter	This clause will be very difficult to achieve and check for compliance. The maximum penalty for distribution of Category 3 weed seeds such as parthenium weed, giant rats tail grass, fireweed and prickly acacia is 500 penalty units. Will restricted matter permits (Clause 212) prescribed in regulations include Voluntary Weed Hygiene Declarations, Washdown Certificates and other permits? What other distribution or disposal methods will be considered within the regulations to ensure realistic compliance with Clause 43? Who has the authority to impose a penalty on a person with an infested thing with category 3 restricted matter? How will recreational vehicles, service vehicles for pipeline corridors, road trains be checked for compliance? Who has the right to inform an authorised officer that an offence has occurred? What evidence is required to demonstrate non-compliance with Clause 43? Stored grain quality standards have tolerance levels for foreign seed contaminant such as eight (8) parthenium seeds/ 0.5L samples of sorghum seed. How does the Biosecurity Bill 2013 integrate with national and/ or state industry standards for certain commodities such as stored grain, pasture seeds and fodder?	A person must not distribute or dispose of category 3 restricted matter unless it is performed in a way authorised by regulation, it is authorised by a restricted matter permit or an authorised officer performs the distribution or disposal. The maximum penalty for unauthorised distribution or disposal of Category 3 matter is 500 penalty units (currently $55,000). This should help deter reckless distribution of category 3 weed seeds. The department is also giving consideration to whether a penalty infringement notice (PIN) would be appropriate for this offence. The penalty imposed using a PIN would be much reduced compared to the penalty able to be imposed by a court if this offence was prosecuted. However, the availability of a PIN might facilitate more timely and hence more frequent action against offenders. Any person may provide information to the department or a local government about the suspected commission of an offence. Authorised officers will be guided by the enforcement policies and priorities of the relevant department/local government in deciding how to deal with these reports. It will not be possible to monitor every vehicle movement. This is why community acceptance of their biosecurity obligations will also be key to achieving compliance with category 3 restrictions. The department will finalise an implementation plan for the proposed legislation if the Legislative Assembly passes the Bill and anticipates that promoting shared responsibility for biosecurity will be a focus of the plan. It recognises that weed spread is a key concern for some industries and will address this in its communication planning. The department is already discussing with stakeholders how various biosecurity risks could be addressed under the framework of the proposed legislation. However, discussion of this matter has been very limited to date. More comprehensive consultation on the detailed arrangements to be included in subordinate instruments, including the release of a Regulatory Impact Statement for a regulation which would prescribe some ways that category 3 restricted matter can be distributed or disposed of, will occur if the Legislative Assembly passes the Billl. The role of industry standards for certain commodities will be discussed at this time.
43	12 Research into	Distributing or disposing of category 3	It is submitted that: - The Bill be amended to categorically state that whole or parts of	The distribution or disposal of live rabbits, feral deer, feral goats and feral pigs is regulated in the proposed legislation because they are biosecurity

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	Deer Genetics and Environment Inc.	restricted matter	dead invasive mammal species are not biosecurity material (unless carrying or infested with other biosecurity material) and are not subject to restrictions on distribution or disposal. - The Bill be amended to clarify whether embryo, eggs, ovum, semen or other genetic material or reproductive material within the carcass of a killed animal is biosecurity material.	matter that is listed as category 3 restricted matter. A dead animal (unless it is a pathogenic agent, disease or contaminant) is not, by definition, biosecurity matter (see clause 15) and so is not restricted matter subject to restrictions on distribution or disposal. Therefore a hunter who kills a feral deer can take the animal's meat, skin or tusks from the property provided it is not diseased or contaminated. An embryo, eggs, ovum, and semen are living and would be biosecurity matter so long as they remained alive within the carcass of a killed animal. They would, however, die very quickly without a circulating blood supply. Genetic material is not be a living thing and hence would not be biosecurity matter.
43	14 Ms Glenda Pickersgill	Distributing or disposing of category 3 restricted matter	Ms Pickersgill is concerned about the listing of feral red deer as restricted material category 3, and also at the regulation of its disposal. She suggests that a regulation be written under 43 (1) (a) that recognises the historic cultural and economic values of wild deer be preserved in the historical herds of red, fallow, chital and rusa deer (as described in the Deer Farming Act 1985). Ms Pickersgill also recommends that a permitting system and the use of Ecological Deer Management/Quality Deer Management principles as recommended by Research into Deer Genetics and Environment Group (RIDGE) be recognised by State Government as a "reasonable step" towards wild deer control in designated historical herd areas for landholders or groups of landholders.	There is a considerable body of evidence, primarily from overseas sources, indicating that large deer populations have significant agricultural, environmental and social impacts. These include: competing with livestock for pasture; carrying pests and diseases that can affect livestock; damaging crops ; grazing of certain native plants, causing changes to floristic composition and structure; crossing roads and causing motor vehicle accidents; and damaging reforestation, landscaping, gardens and parks. There is anecdotal evidence that deer abundance is increasing in Queensland. Although the exact rate of population increase has not been accurately quantified, if populations are allowed to expand, the total impact of feral deer in Queensland will increase accordingly. Recreational hunting groups can contribute to the long-term management of feral deer in historic ranges. They can also contribute by monitoring and controlling populations and ensuring they do not expand their range or exceed acceptable levels. The listing of feral deer as category 3 restricted matter is intended to prevent translocation of feral deer and the release of farmed deer into the environment or on to adjoining properties. It does not prevent landholders from allowing hunting access to their properties. A dead animal (unless it is a pathogenic agent, disease or contaminant) is not, by definition, biosecurity matter (see clause 15) and so is not restricted matter subject to restrictions on distribution or disposal. Therefore a hunter who kills a feral deer can take the animal's meat, skin or tusks from the property provided it is not diseased or contaminated. There is also no impediment to landholders implementing property management plans. The general biosecurity obligation will minimise the need for prescriptive regulation and enable stakeholders to exploit the full range of risk-reduction methods available for deer.

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46	10 Australian Veterinary Association Ltd	Designated animals feeding on animal matter	The AVA recommends deleting captive birds from the designated animals list and instead include a clause that gives a head of power for a regulation to be made for a particular species if a significant biosecurity risk becomes apparent.	The department believes that captive birds should remain designated animals in the proposed legislation. Feeding animal matter such as uncooked or undercooked poultry meat and poultry products can be the means by which serious diseases such as avian influenza (AI) and Newcastle disease are transferred to other animals including poultry, aviary birds, domestic animals and humans. For example, H5N1 AI virus is a highly pathogenic strain that was isolated in duck meat imported from China into South Korea in 2001 and into Japan in 2003. Prohibiting feeding such meat to aviary birds minimises the potential of a disease outbreak that could potentially threaten public health. Applying the feed ban to captive birds that are not poultry maintains the existing requirement under the *Stock Act 1915* and is consistent with nationally agreed policy. It is also important to require registration of places where large numbers of birds are kept to ensure that disease spread can be more easily contained in the event of an outbreak. Both Newcastle disease and avian influenza can spread via populations of captive birds that are not commercial poultry species. Registration will assist in traceability in the event that a disease outbreak needs to be managed. A registration threshold of 100 captive birds maintains the existing requirement under the *Stock Act 1915*. However, it is slightly more precautionary than the nationally agreed approach which only extends beyond poultry to the extent of emus and ostriches.
47	7 AgForce Queensland Industrial Union of Employers	Notifiable incidents	At times, it may be difficult to distinguish between symptoms from stock consuming toxic plants to the presence of prohibited, restricted or unknown biosecurity matter. In these cases, it should not be an offence of 1000 penalty units, if the keeper or owner of the animal is genuinely not aware of the cause or difference in symptoms.	In essence, clause 47 requires a person to notify if they are aware of an incident they believe or ought reasonably to believe is likely to be a biosecurity event. The provision clarifies that this includes (among other things) the appearance of blisters on the mouths or feet of designated animals; an abnormally high mortality rate or morbidity rate in plants or in designated animals; and a sudden and unexplained fall in production relating to plants or designated animals. It may later become apparent that the cause of these symptoms was not related to biosecurity. This approach is intended to ensure that a lack of scientific certainty does not postpone notification and investigation of what could be a biosecurity emergency. This notification obligation is triggered by a person's belief, or what they should reasonably be expected to believe. It follows that the Department's ability to enforce this obligation will turn on the Department's ability to demonstrate that the person had received relevant information or was in a position that would require an understanding that the symptoms observed are likely to indicate a biosecurity event.

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				The department recognises the need to effectively implement the proposed legislation will involve a comprehensive communication strategy. This includes effective and targeted communication campaigns about when notification is advisable. The offence does not apply where a person has a reasonable excuse for not notifying.
various	5 Australian Wild Country Adventures	General comments about management of wild deer and other animals	Mr Clark McGhie of Australian Wild Country Adventures finds the Bill objectionable, and believes the Bill can create divisions between 'the people of the land and Government.' He has proposed an alternative, voluntary compliance approach for landholders based on his 'Property Based Management Plan' concept. Mr McGhie also proposes that wild deer should be managed as a resource rather than as a biosecurity pest, and suggests that the deer farming and harvesting could be a viable industry for development if not over-regulated. The submission also discusses control measure for wild deer and suggests control measures for other invasive animals. Other concerns raised relate to - restrictions on the use of 'animal matter or material' (skins, horns, antlers, tusks, tissue, meat etc) from feral animals listed as restricted invasive animals which 'promotes wastage of a resource'; the effects of restrictions on recreational hunting across all deer areas; and whether the use of recreational hunting as a management tool for the control of feral deer will be restricted. Mr McGhie has also sought clarification of whether: - leaseholders are allowed to use firearms to control feral animals and to assign others to perform this task - whether firearms not registered for primary production may be used for pest control for some feral species and, if not, whether this could be provided for - whether landholders in the course of controlling pest animals/weeds on their leases are permitted to utilize these pests in any manner - whether Biosecurity Qld can justify the emphasis being placed on deer control in comparison to the plant pests that are causing landholders huge financial losses and inconvenience Mr McGhie has also queried the proposed controls on deer compared to controls for feral camels and buffalo which are non-declared but cause extensive damage, and draws the distinction between 'hunting' which has cultural origins and 'shooting'.	The Feral Deer Management Strategy 2013–18, developed in consultation with stakeholders, recognises that recreational hunting groups can contribute to the long-term management of feral deer in historic ranges. There would be no impediment to landholders implementing property management plans in historic deer ranges to meet these objectives under the proposed legislation. The general biosecurity obligation will minimise the need for prescriptive regulation about what methods must be used in these areas and enable stakeholders to exploit the full range of risk-reduction methods available for deer. However, discrete or recently established populations or populations with high local impact may become the target of local eradication programs under the strategy. Each local government will decide how it will target its activities and ensure the most effective use of its resources to manage invasive plants and animals, including feral deer, in its area. The distribution or disposal of feral deer would be restricted under the proposed legislation because they are biosecurity matter that is listed as category 3 restricted matter. A dead animal (unless it is a pathogenic agent, disease or contaminant) is not, by definition, biosecurity matter (see clause 15) and so is not restricted matter subject to restrictions on distribution or disposal. Therefore a hunter who kills a feral deer can take the animal's meat, skin or tusks from the property provided it is not diseased or contaminated (subject to other relevant laws such as food safety legislation). The proposed legislation does not prevent the use of firearms to control feral animals. However, other laws (such as weapons legislation) may limit the use of firearms for this purpose in certain legislation. There are several hundred pests and diseases listed as restricted matter and many of these are invasive weeds. Many are category 3 restricted matter as are some species of deer. It is not necessary to list all pests and diseases under the proposed legislation given that the general biosecurity obligation applies to a person who deal with any biosecurity matter that poses a biosecurity risk whether it is listed or not. Further, local governments may choose to declare any biosecurity matter as a local pest under local law and may undertake reactive management of nuisance animals.

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				Camels and water buffalo are not declared as pests under the *Land Protection (Pest and Stock Route Management) Act 2002*. The general biosecurity obligation applies to camels and water buffalo and requires persons who deal with them (including involuntarily possess them) to take all reasonable and practical steps to minimise the risk they pose and the impact on the economy, environment, human health and social amenity. The department's view is that assigning camels and buffalo a restricted matter category number in order to impose specific restrictions or requirements is not justified by current management objectives. In particular, numbers of feral water buffalo are now relatively low in Queensland as a result of the eradication program for brucellosis and tuberculosis (BTEC), in the Northern Territory, and subsequent management and control. Further, water buffalo may only be kept in Queensland under a permit granted under the *Nature Conservation Act 1992*.
48-61		Chapter 3 Matters relating to local government		
48	3 Southern Downs Regional Council	Main function of local government	Section 48 of the Bill gives local governments the authority to make local laws about restricted matter. If the State does not intend developing biosecurity zone regulatory provisions to deal with these species, the Council requests that scope be provided within the Bill for these species to be managed as per current class 3 declarations i.e. compliance to be enforced only where the species are threatening the integrity of environmentally significant areas. Also, as many local governments will be affected by this change, the Council believes that the State must prepare model local laws that Councils can easily adopt.	Under the *Land Protection (Pest and Stock Route Management) Act 2002* a person cannot supply (e.g. sell) or release (includes spread) a class 3 declared pest. Under the proposed biosecurity legislation, a person cannot distribute or dispose of category 3 restricted matter except in the way prescribed in regulation. Listing some weeds that are currently class 3 declared pests as category 3 restricted matter therefore imposes a very similar level of regulation on these weeds. The *Land Protection (Pest and Stock Route Management) Act 2002* also empowers local governments to take action to control a weed where a class 3 pest is causing, or has the potential to cause, an adverse economic, environmental or social impact on land that is in or adjacent to an environmentally significant area. The general biosecurity obligation under the proposed legislation requires a person to take reasonable steps to prevent or minimise the impacts of any biosecurity risk on human health, social amenity, the economy and the environment. Each local government is required to prepare a biosecurity plan and, in that context, will decide how it will target its activities and ensure the most effective use of its resources to manage biosecurity matter in its area. For some weeds that are established in Queensland, such as those that are currently class 3 weeds, a local government may choose to focus its enforcement activities on land that is in or adjacent to what are currently defined as environmentally significant areas. However, a local government may have other priorities. For example, it may also enforce the general

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				biosecurity obligation to minimise risks where a weed is impacting on the economy or social amenity in part of the local government's area that is not listed as an environmentally sensitive area under the *Land Protection (Pest and Stock Route Management) Act 2002*. There is no substantive change to local government's role in biosecurity under the proposed legislation. The main biosecurity function of each local government will continue to be the management of invasive plants and animals in its area. The State will continue to provide support to local governments in this role.
48	7 AgForce Queensland Industrial Union of Employers	Main function of local government	It is imperative that sufficient funding and resources are provided to local governments for successful management of invasive biosecurity matter and compliance with the requirements of the Biosecurity Bill 2013. Additional resources are required for local governments to manage common areas such as reserves and fenced stock routes.	Consistent with the principle of shared responsibility for biosecurity, local governments play an important role in invasive weed and pest animal management in their areas. Local governments derive income from a variety of sources, including rates and charges, to enable them to deliver invasive weed and pest animal management in their areas. This issue of additional resources for addressing a range of biosecurity matters is outside the scope of the proposed legislation. There would be no substantive change to local government's role under the proposed legislation. The main biosecurity function of each local government would continue to be the management of invasive plants and animals in its area. The State would continue to provide support to local governments in this role. The State also collects payments to fund activities that help a local government manage invasive animals and invasive plants. A model for greater involvement by local governments in decisions about the use of these payments is being developed. A seven member steering Board comprising four local government representatives, one LGAQ representative and two DAFF representatives have endorsed a draft model for consultation with local governments. The draft model seeks to enhance transparency, accountability and value for money through the establishment of a formal governance structure, with reporting responsibilities direct to the Minister for Agriculture, Fisheries and Forestry. Additionally, the governance arrangements will ensure that local government representation and direct input to decision making is integrated across all investment components. The proposed "Invasive Plants and Animals Co-investment approach for Local Government Annual Payments" would be an agreement between the Local Government Association of Queensland (LGAQ) and the Department of Agriculture, Fisheries and Forestry (DAFF).
48(1)(a)&(b)	17 Local Government	Main function of local government	Councils have requested reassurance that the State will continue to be responsible for responses to incursions of prohibited invasive biosecurity matter.	There would be no substantive change to local government's role in biosecurity under the proposed legislation. The main biosecurity function of

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	Association of Queensland		Undertaking a prevention and control program for prohibited invasive biosecurity matter requires a level of detection skill and planning and management expertise and capacity that is not reasonably able to be held within an individual local government. The review of the MoU on Local government, State government and regional NRM bodies' roles and responsibilities under the existing Act was deferred until the new Bill was finalised. The LGAQ looks forward to working with the State and regional NRM bodies in the preparation of the new MoU.	each local government would continue to be the management of invasive plants and animals in its area. The State would continue to provide support to local governments in this role. The role of the State and local government in managing class 1 pests was defined in a (recently expired) Memorandum of Understanding for invasive weed and pest animal management between Biosecurity Queensland and the Local Government Association of Queensland Incorporated (and Natural Resource Management groups). In summary: the State was to initiate, coordinate and undertake an eradication program in partnership with relevant stakeholders; while local governments were to carry out inspections for early detection of new incursions, assist with the development and coordination of eradication programs, and assist in on ground control, monitoring and inspection activities in support of eradication. It is not proposed that there would be any diminution of state support for local government's function in managing class 1 declared pests that are to be prescribed as prohibited matter under the proposed legislation. For example, although witchweed was a class 1 declared pest when red witchweed was identified near Mackay in 2013, Biosecurity Queensland undertook an emergency response reflecting the State and national significance of the incursion. Typically local councils take a significant role in the response to class 1 pests that have been present for some time. For example, Toowoomba and Southern Downs Regional Councils are actively involved in the response to Chilean needle grass.
48 (2)	2 Darling Downs-Moreton Rabbit Board	Main function of local government (proposal for local government to play a greater role in the management of rabbits)	It is the Rabbit Board's view that a shared responsibility for rabbit management within the board operational area would achieve greater efficiency, both in terms of financial outcomes and rabbit management outcomes. The DDMRB currently expends more than $200,000 per annum on rabbit eradication efforts, but this investment could be more focused on public awareness programs and landholder education in eradication techniques, if the legislation was amended to clearly state that this was a shared responsibility between local government and the Board.	The proposed legislation would not prevent authorised persons appointed by a local government in the operational area of the DDMRB becoming involved in the management of rabbits. Although clause 48(2) means that these local governments are not responsible for managing rabbits in the operational area of the DDMRB, it does not exclude rabbits from the definition of invasive biosecurity matter. Clause 255(1) allows the exercise of powers by an authorised officer appointed by a local government in relation to invasive biosecurity matter in the local government's area. Involvement in the management of rabbits by officers appointed by local governments who already contribute to the funding of the DDMRB is a matter for negotiation between the relevant parties.
48 (2)	2 Darling Downs-Moreton Rabbit	Main function of local government	The DDMRB proposes that section 48 (2) of the Biosecurity Bill 2013 be deleted.	Clause 48(2) is consistent with section 183(2) of the *Land Protection (Pest and Stock Route Management) Act 2002*. It reflects that local governments fund the DDMRB to undertake management in its operational area on their

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	Board			behalf. The proposed legislation does not preclude local governments further contributing to that task by directing their authorised persons to assist with rabbit management. However, their involvement is a matter for negotiation between the relevant parties.
48 (2)	3 Southern Downs Regional Council	Main function of local government	The Council believes that section 48 (2) is ambiguous in its wording and that it should be clarified to make explicit each organisation's role in rabbit control and compliance.	The proposed legislation would not prevent authorised persons appointed by a local government in the operational area of the DDMRB becoming involved in the management of rabbits. Although clause 48(2) means that these local governments are not responsible for managing rabbits in the operational area of the DDMRB, it does not exclude rabbits from the definition of invasive biosecurity matter. Clause 255(1) allows the exercise of powers by an authorised officer appointed by a local government in relation to invasive biosecurity matter in the local government's area. Involvement in the management of rabbits by officers appointed by local governments who already contribute to the funding of the DDMRB is a matter for negotiation between the relevant parties.
48(3)	17 Local Government Association of Queensland	Main function of local government	A number of councils have expressed the view that Local Laws are ineffectual for the management of locally invasive plants and animals predominantly because the shallow reach and scope and low penalties of local laws fail to act as an incentive to landholders to abide by them. The previous iteration of the Bill allowed local government to include locally significant species in its Biosecurity Plan thereby bringing them into the scope of the Act. Local government's preference is for a streamlined system administered under one Act and Regulation as opposed to the development of further red tape through making an additional Local Law. Recommend the inclusion of a clause/section allowing a local government or groups of local governments to include locally significant species in its/their Biosecurity Plan. Recommend amendment of Section 233 What is a surveillance program to include an example under subsection (a): "A surveillance program is a program directed at any of the following— (a) monitoring compliance with this Act in relation to a particular matter to which this Act applies; Examples—…"monitoring compliance with a Biosecurity Plan	Nothing in the proposed legislation prevents a local government including strategies for addressing locally significant species in their biosecurity plan. A person would have a general biosecurity obligation in relation to a pest of local significance but a local government would only be able to enforce that obligation if the pest was invasive biosecurity matter. Invasive biosecurity matter is defined in clause 48 to include only invasive plants and animals that are listed as prohibited and restricted matter in particular parts of schedules 1 and 2 – broadly these are the declared pests for which local governments are currently responsible under the *Land Protection (Pest and Stock Route Management) Act 2002*. As currently, a local government would need to make a local law for management of other species. In its submission to the former Parliamentary Environment, Agriculture, Resources and Energy Committee Inquiry into a similar bill introduced in 2011, the LGAQ recommended that terminology in that bill be reviewed to ensure it clearly reflected the main function of local government in relation to invasive plants and animals. That bill gave local government powers in relation to any invasive animal or plant. Responsibility for those invasive plants and animals that have traditionally been managed by the State (e.g. noxious fish) could have been inferred by that wording but was not intended. Accordingly, the current Bill defines the main function of local government much more exactly by introducing the term invasive biosecurity matter and limits the power of local governments to authorize biosecurity programs (clause 235) and the powers of authorised persons appointed by local governments (clause 255) to invasive biosecurity matter for the local government's area.

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				If clause 235 and 255 were amended to allow a local government and its authorised persons to exercise powers in relation to any invasive plant or invasive animal it would allow them to address pests of local concern that are not listed as restricted matter but it would reintroduced the ambiguity which was formerly of concern to LGAQ.
49	16 Ian Christie	When State and local government act in partnership	Mr Christie suggests deleting the "*Example - The chief executive makes a biosecurity emergency order in response to a biosecurity event and the biosecurity emergency area for the biosecurity emergency order is in a local government's area. The biosecurity matter associated with the biosecurity event is prohibited matter that is invasive biosecurity matter for the local government's area. The role of a local government in managing the prohibited matter may consist only of providing authorised persons appointed by the local government to respond to the biosecurity event.*"	This example has been included to clarify the operation of clause 49, to ensure that the interaction of the State government and local governments under the legislation is clear. Some legislative provisions need examples to clarify the intent of the provisions. In that regard it is more important to ensure that the example is clear and is consistent with the provision rather than restrict the example to fewer words.
50 (1)	16 Ian Christie	Minister may direct local government to perform function or obligation	Mr Christie suggests deleting "*Example of a local government not performing its functions or obligations—* *a local government not taking reasonable steps to manage invasive biosecurity matter for its local government area*"	This example has been included to clarify the operation of clause 50(1).
52 (1)	16 Ian Christie	Minister may ask for particular information from local government	Mr Christie suggests deleting "*Example—* *a report on the outcomes of consultation for developing or amending a biosecurity plan.*"	This example has been included to clarify the operation of clause 52(1).
53	17 Local Government Association of Queensland	Local government to have biosecurity plan	FOR NOTING: Requirement for local governments to have a Biosecurity Plan (formerly Pest Management Plan) for a local government area. Plans can be used to clearly articulate how a local government may discharge its obligations under the Act. There is now no requirement for Ministerial sign off. Clarification is required as to whether the Biosecurity Plan is intended to be a 'council only' plan or a 'local government area' plan incorporating the roles and responsibilities of other stakeholders as per the current requirements? If not, what avenues are available for other stakeholders to identify their proposed actions/activities to discharge their obligations? Will State departments have an obligation to provide input if asked by a local government? Are the plans to have a fixed term or continue indefinitely?	The Government is committed to empowering local governments to give local people a real say on the future direction of their community. A significant benefit of developing a pest biosecurity plan for a local government area(s) is bringing together the local community to agree on the priorities and strategies for biosecurity in their area. Consistent with local government requests for more flexible planning options and reduced red tape, prescriptive requirements about the process of developing the plans, the requirement for Ministerial approval and the term of a plan in the *Land Protection (Pest and Stock Route Management) Act 2002* have been omitted in the proposed legislation. Best practice for development of a plan would include extensive community involvement and consultation with the department but how this occurs is not mandated. Regular review of the plan is also highly desirable but the frequency and process of review is at the discretion of local government. The proposed legislation would also allow biosecurity plans to be developed and resourced jointly by two or more local governments where there are similar invasive biosecurity matter issues across jurisdictions.
60(4)	17 Local	Minister may require local government to	Comment has been received that it would be valuable to receive the Minister's report at the time of receipt of the invoice for next financial	Clause 61 provides that the Minister is obligated to provide those local governments who are required to pay an amount under clause 60 with an

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	Government Association of Queensland	make annual payment	year's payment to ensure any questions arising about the value for money return on the investment can be answered. Suggest the inclusion of "At the time of issuing the invoice" at the commencement of S61.	annual report on the outcome of services delivered for that local government area. This report relates to the preceding year, rather than the year for which the invoice is payable. The issue of a notice for annual payment would need to be delayed until some time after the financial year had commenced in order to allow the Minister to simultaneously provide a report on activities in the preceding financial year. The department will continue to work with LGAQ and local governments to find a suitable solution.
62-103		Chapter 4 Invasive animal barrier fencing Part 1 Invasive animal boards		
62(2)(b)	17 Local Government Association of Queensland	What is an invasive animal board and what is its operational area	Invasive animal boards may choose to manage more than one animal at some point in the future. Suggest using "animal/s"	Providing for more than one animal in this clause is not necessary. Section 32C of the *Acts Interpretation Act 1954* provides that in an Act (a) words in the singular include the plural; and (b) words in the plural include the singular. As such, clause 62(2)(b) can be interpreted to include animals.
63(2)	17 Local Government Association of Queensland	Legal status	There is currently an invasive animal board that is overseeing a wholly local government funded program. The LGAQ requests clarification about the effect of this clause on this board.	The current Darling Downs Moreton Rabbit Board is established by the *Land Protection (Pest and Stock Route Management) Regulation 2003* as a pest operation board pursuant to the s213 *Land Protection (Pest and Stock Route Management) Act 2002* to manage rabbits in part of the State. In effect, the proposed legislation does not propose any changes to this arrangement. Upon its commencement the former Darling Downs Moreton Rabbit Board will be taken to be an invasive animal board established under section 62 of the proposed legislation. Under *Land Protection (Pest and Stock Route Management) Act 2002*, pest operational boards represent the State. Clause 63(2) of the proposed legislation maintains this status for the continued Darling Downs Moreton Rabbit Board. It is acknowledged that the funding for the Darling Downs Moreton Rabbit Board is provided by local governments. However, the board is a statutory body, with members appointed by the Minister, and a works program approved by the Minister. As such, the ultimate liability for the Board's actions lies with the State.
68 – 84	16 Ian Christie	Division 2– Establishment Division 3 – Board	Relocate Division 2 and 3 to Regulation.	It is not uncommon for the establishment of boards to be contained in an Act rather than subordinate legislation. In instructing on inclusion of provisions in an Act versus a regulation, the Department is guided by the fundamental legislative principles and the advice of Office of the Queensland

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		directors		Parliamentary Counsel.
65 (3)	2 Darling Downs-Moreton Rabbit Board	Board's function	That section 65 (3) be amended so that the local governments of Queensland and within the board's operational area share the responsibility for managing the animal, so that a more collaborative working relationship is formed.	Clause 65(3) is consistent with section 217(1) of the *Land Protection (Pest and Stock Route Management) Act 2002*. It reflects that local governments fund the DDMRB to undertake management in their area. The proposed legislation does not preclude local governments further contributing to that task by directing their authorised persons to assist with rabbit management. However, their involvement is a matter for negotiation between the relevant parties.
70	7 AgForce Queensland Industrial Union of Employers	Appointment of directors – Invasive animal barrier fencing	An example is provided that the regulation may require a person to have legal or business qualification to be appointed. This may restrict landholder representation. Many landholders will have the necessary experience and understanding of the reasons for and management guidelines of a barrier fence for wild dogs and/or rabbits. Excluding landholder representation risks losing a great deal of industry knowledge.	Clause 70 provides that a regulation may prescribe local government representation requirements and the minimum qualification a person must have to be appointed as a director. For example, a regulation could require that of a board of eight for a fictitious invasive animal board, seven directors must be landholders representing the seven local governments whose area includes the relevant part of the barrier fence and one director must a person with legal expertise. However, the proposed legislation does not mandate prescription of any such eligibility requirements by regulation. Clause 70 is consistent with section 224(3) of the *Land Protection (Pest and Stock Route Management) Act 2002* which provides that a regulation establishing a pest operational board may prescribe residential or land ownership or occupation requirements as qualifications for appointment as a director. Currently there are no prescribed eligibility requirements under that Act.
87 – 88	16 Ian Christie	Miscellaneous	Relocate Division 5 to Regulation.	A head of power for fees is usually contained in the Act. The quantum of the fee would be prescribed in regulation. In instructing on inclusion of provisions in an Act versus a regulation, the Department is guided by the fundamental legislative principles and the advice of Office of the Queensland Parliamentary Counsel
89 – 103	16 Ian Christie	Part 2, Barrier fences	Mr Christie suggests that Part 2, Barrier fences could form part of the regulation under "who does what."	In instructing on inclusion of provisions in an Act versus a regulation, the Department is guided by the fundamental legislative principles and the advice of Office of the Queensland Parliamentary Counsel.
89	17 Local Government Association of Queensland	What is the barrier fence	Suggest it may be more efficient to define a barrier fence as a "fence shown on a barrier fence map". This would allow flexibility to accommodate any changes or additions in the future.	Clause 91 provides for amendment of the map by the chief executive to reflect any changes in the fence. Allowing the chief executive to amend the map without the need to amend the proposed legislation or subordinate legislation provides significant flexibility to accommodate any changes or additions in the future.
89	15 Department of Transport and Main Roads	What is the *barrier fence*	Clause 89 (1a-c) does not appear to include the line shown as the 'rabbit fence with top netting for wild dogs' as shown in the following link: http://www.daff.qld.gov.au/__data/assets/pdf_file/0020/70193/IPA-	The link referenced in the submission is to a map that will not be used under the proposed legislation. Satellite and GPS technology has enabled more precise data on the location of the current fence to be collected. A new map in electronic format is being finalised in consultation with relevant

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			Wild-Dog-Barrier-Fence-2010.pdf	stakeholders as the reference document for the proposed legislation.
91	15 Department of Transport and Main Roads	Maintaining barrier fence	It appears this map (as described in Clause 89) is called "Wild Dog Barrier Fence, Queensland".	The link referenced in the submission is to a map that will not be used under the proposed legislation. Satellite and GPS technology has enabled more precise data on the location of the current fence to be collected. A new map in electronic format is being finalised in consultation with relevant stakeholders as the reference document for the proposed legislation.
93	15 Department of Transport and Main Roads	Barrier fence map and amendment of map	The clearing limit of 20m either side of the barrier fence may result in a total clearing of 40m of vegetation either side of the barrier fence. This figure of 20m is excessive to the intent necessary for maintaining a barrier fence and has potential to: create additional maintenance work in maintaining the cleared zone promote the introduction of pest weed species to the cleared area have negative impact to fauna species by the removal of habitat and food trees create undesired disconnection between vegetation communities have other unforseen environmental consequences	It is generally not necessary to clear all vegetation within 20m of the fence and there is no incentive for a building authority to do so. However, the provision of clearing powers out to 20m on both sides of the fence is necessary to allow the selective clearing of large trees that have the potential to impact on the fence (eg dead or diseased trees that could fall or drop limbs).
93	15 Department of Transport and Main Roads	Maintaining barrier fence	It is suggested that the wording for Clause 93 be amended to delete reference to "no more than 20m" and be replaced with a range of options for clearing limits, such as: (a) establishing a more reasonable minimum buffer (such as three metres) AND (b) where required, a clearing limit established from a site-specific assessment of risk to the fence barrier from local vegetation (height), that is approved by the board and referenced in the clearing contract.	It is generally not necessary to clear all vegetation within 20m of the fence and there is no incentive for a building authority to do so. However, the provision of clearing powers out to 20m on both sides of the fence is necessary to allow the selective clearing of large trees that have the potential to impact on the fence (eg dead or diseased trees that could fall or drop limbs).
93	15 Department of Transport and Main Roads	Maintaining barrier fence	a requirement for clearing "no more than 20m" is excessive for maintenance requirements and provides too much leeway for unnecessary over-clearing. It is acknowledged that "no more than" implies a maximum limit, and also that the explanatory notes offer the power for the board to establish the clearing requirements for the site, however risk exists for the clearing contractor to interpret the 20m limit as a standard (referenced) figure to clear to. In addition to environmental impacts of clearing, ongoing cost risks exists for DTMR / Queensland Government to maintain excessively cleared tracts of land where a pest barrier fence is located within land utilised by government supported transport infrastructure.	It is generally not necessary to clear all vegetation within 20m of the fence and there is no incentive for a building authority to do so. However, the provision of clearing powers out to 20m on both sides of the fence is necessary to allow the selective clearing of large trees that have the potential to impact on the fence (eg dead or diseased trees that could fall or drop limbs).
101	7 AgForce	Powers of barrier fence employees	It is not considered appropriate that a general barrier fence maintenance employee provide such notice, rather this task should be	Under section 239 of the *Land Protection (Pest and Stock Route Management) Act 2002*, a pest operational board may delegate its powers to

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	Queensland Industrial Union of Employers		completed by the Manager at the very least, if not by the direction of the Board itself.	an appropriately qualified person. In essence, clause 100 of the proposed legislation continues this approach allowing a building authority to appoint an appropriately qualified person employed or engaged by the authority to exercise its powers.
104-126		Chapter 5 – Guidelines and Codes of Practice		
104 – 109	18 Invasive Species Council		The ISCl support the use of codes of practice and guidelines in the legislation outlined in Chapter 5 of the Bill. However they highlight that there are good reasons to remain sceptical about voluntary codes of conduct. They suggest compliance should be linked with economic incentives with businesses not demonstrating compliance with a code liable to higher 'risk creation' levies or bonds. They also suggest that the circumstances for making a code of practice in the Bill could be expanded by making specific provision for some commonly expected codes of practice that address environmental biosecurity threats.	There are three levels of compliance that may be required in relation to a code of practice under the proposed legislation. A code of practice may provide guidance to the community on management of risks in specific situations. If a regulation states a code of practice is a way of complying with the general biosecurity obligations, then alternative approaches are still permissible but only if they achieve a level of risk mitigation that is at least as good as the code of practice. No alternative approaches are permissible if a regulation states that compliance with a code of practice is mandatory. Implementation of the proposed legislation is an opportunity for a more outcome-focused approach to ongoing management of pests and diseases that reduces red tape. It is not envisaged that there will be many codes of practice or guidelines under the proposed legislation or that all codes of practice will be mandatory. The proposed legislation represents an opportunity to be less prescriptive how biosecurity risk prevention or minimization must be achieved. This will allow community members to use risk mitigation measures best suited to their circumstances and minimise their compliance costs. However, if a person has or may fail to fulfil their general biosecurity obligation, an authorised officer may issue them a biosecurity order requiring them to take specific steps to minimise biosecurity risks. More comprehensive consultation on the detailed arrangements to be included in subordinate instruments, including the release of a Regulatory Impact Statement for a regulation that could include or adopt codes of practice, will occur if the Legislative Assembly passes the Bill.
104	3 Southern Downs Regional Council	Making codes of practice	SDRC are supportive of the intention to develop guidelines and codes to assist define compliance requirements with restricted matter, but express concern that the compliance burden should not be placed too heavily on local government.	A local government will have a range of options for promoting compliance with the proposed legislation, ranging from awareness raising and providing guidance material through to issuing specific biosecurity orders where a person has or may fail to fulfil their general biosecurity obligation, possible on-the-spot fines, and even prosecutions and injunctions. Each local government would be required under the proposed legislation to

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				prepare a biosecurity plan. In that context it will be empowered to decide how it will target its compliance activities and ensure the most effective use of its resources to manage invasive biosecurity matter in its area. A code of practice may assist a local government in managing invasive biosecurity matter by providing guidance to the community on how to comply with the general biosecurity obligation in relation to a particular risk. However, it is not envisaged that there will be many codes of practice or guidelines. The proposed legislation represents an opportunity to be less prescriptive how biosecurity risk prevention or minimization must be achieved.
104 (1)	16 Ian Christie	Making codes of practice	Mr Christie asks what regulation the clause refers to and whether it is part of the update.	Section 104 concerns the making of a code of practice about a biosecurity matter by regulation. More comprehensive consultation on the detailed arrangements to be included in subordinate instruments, including the release of a Regulatory Impact Statement for a regulation that could include or adopt codes of practice, will occur if the Legislative Assembly passes the Bill.
105	8 Ergon Energy Corporation Limited	Consultation and Codes of Practice	Ergon requests the definition of relevant entities as used in section 105, be amended to include utility service providers.	Clause 105 expresses the general principle that the chief executive should consult with interested parties before a code of practice is made. Where appropriate, utility service providers would be consulted before making a code of practice by regulation was recommended to the Governor in Council.
105	17 Local Government Association of Queensland	Consultation about codes of practice	The LGAQ seeks clarification on why the adopted provisions do not require consultation with relevant entities? – suggest removing subsection (2) The LGAQ seeks clarification on why subsection (3) has been included. – request removing subsection (3). It is contradictory to require consultation but allow a code of practice to be valid without it. As local government will be the enforcement agency for many Codes of Practice, Biosecurity Zones and Guidelines relating to weeds and feral animals, the LGAQ recommends that consultation with local government be mandatory.	Section 105(1) requires the chief executive to consult with entities that have an interest in the making of a particular code of practice. While this consultation is important, a deficiency in consultation should not be the reason for invalidating a code of practice. Consequently, section 105(3) provides that the validity of a code of practice is not affected by an entity not being consulted about the code of practice. It can be difficult to anticipate all entities that have an interest and should be consulted in relation to specific biosecurity matters. Subsection 105(2) provides that consultation is not required where a code of practice is adopted. This reflects that the codes of practice that are not developed by the department may already have been the subject of extensive consultation. The extent of consultation undertaken in development of the code of practice would be a relevant consideration in the decision to adopt the code of practice. Clause 12 already provides that the proposed legislation is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of local governments.
104 – 106	9 Powerlink	Chapter 5 – Codes of practice	Powerlink supports the inclusion of provisions in the Bill facilitating the development of codes of practice and guidelines including the	The department notes that Powerlink supports the provisions in the proposed legislation relating to codes of practice, guidelines and compliance

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	Queensland		provisions requiring consultation. The Queensland Energy Network Environment Forum ('QENEF')… has already undertaken some preliminary work which could contribute to the development of a code. Powerlink expects that a code of practice for the electricity industry would outline the reasonable and practical measures undertaken to fulfil the industry's biosecurity obligations. Powerlink also agrees with the introduction of compliance agreements and considers the timeframes specified in the Bill for assessing applications to be reasonable.	agreements.
104-109	17 Local Government Association of Queensland		The Code of Practice and Guidelines have the potential to be important tools that can allow greater definition of obligations and assist local government in enforcement and compliance activities. Local government is seeking a State commitment to the timely development of high quality Codes of Practice, Biosecurity Zones and Guidelines.	Implementation of the proposed legislation is an opportunity for a more outcome-focused approach to ongoing management of pests and diseases that reduces red tape. It is not envisaged that there will be many codes of practice or guidelines. The proposed legislation represents an opportunity to be less prescriptive how biosecurity risk prevention or minimization must be achieved. This will allow community members to use risk mitigation measures best suited to their circumstances and minimise their compliance costs. However, if a person has or may fail to fulfil their general biosecurity obligation, an authorised officer may issue them a biosecurity order requiring them to take specific steps to minimise biosecurity risks. More comprehensive consultation on the detailed arrangements to be included in subordinate instruments, including the release of a Regulatory Impact Statement for a regulation that could include or adopt codes of practice, will occur if the Legislative Assembly passes the Bill.
106	7 AgForce Queensland Industrial Union of Employers	Tabling and inspection of documents adopted in codes of practice	AgForce recommend providing a list of codes of practice on the departmental website.	A regulation may make codes of practice. The provisions of the code of practice may form part of the regulation or the regulation may state that part or all of another document are the code of practice. Regulations may be viewed on the Office of the Queensland Parliamentary Counsel website.
107	8 Ergon Energy Corporation Limited	Chief Executive may make guidelines	Ergon requests the definition used in s1 05 (relevant entity), be applied for the preparation of guidelines in order to ensure utility service providers are not overlooked in any relevant consultation process.	Clause 107 expresses the general principle that the chief executive should consult with interested parties before making a guideline. Where appropriate, utility service providers would be consulted before a guideline was made. It should also be noted that a utility service provider is not obliged to follow a guideline. Clause 109(2) provides that a person who has not followed a guideline is not presumed to have breached their general biosecurity obligation of otherwise failed to comply with the Act.
107	17 Local Government Association of Queensland	Chief executive may make guidelines	The LGAQ seeks clarification on why subsection (5) has been included. – request removing subsection (5) It is contradictory to require consultation but allow a guideline to be valid without it.	Section 107(4) requires the chief executive to consult with entities that have an interest in the making of a particular guideline. While this consultation is important, a deficiency in consultation should not be the reason for invalidating a guideline. Consequently, section 107(5) provides that the validity of the guideline is not affected by an entity not being given an

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				opportunity to provide a written submission about the guideline. It can be difficult to anticipate all entities that have an interest and should be consulted in relation to specific biosecurity matters.
108 – 109	16 Ian Christie	Availability of guidelines Obligation to have regard to guidelines	Mr Christie proposes that the guidelines should not form part of the regulation as the power to make guidelines should only be in the Act, as well as the penalty for failure to comply.	The head of power to make guidelines is contained in the proposed Act which is considered appropriate. The guidelines are not intended to be subordinate legislation. There is no penalty for failing to comply with a guideline Clause 109 provides that it must not be presumed that a person who has failed to follow a guideline has breached the person's general biosecurity obligation or otherwise failed to comply with a provision of the legislation.
		Chapter 6 managing biosecurity emergencies and risks		
113 (1)	16 Ian Christie	Chief executive may make biosecurity emergency order	Mr Christie notes that the example provided in the clause is longer than the requirement and the clause should be rewritten.	This example has been included to clarify the scope of clause 113(1), and in particular make it clear that the biosecurity emergency order can apply to a current or future event. There is no reason why an example cannot be longer than the associated provision.
113 (2)(b)(ii) and 114 (4)	16 Ian Christie	Chief executive may make biosecurity emergency order	Mr Christie suggests deleting the examples.	These examples have been included to clarify the intent and operation of the associated provisions.
114	7 AgForce Queensland Industrial Union of Employers	Matters for inclusion in biosecurity emergency order	Consider how national and state biosecurity emergency zones will integrate, overlap or be managed concurrently or independently for biosecurity matters of national and state significance. There needs to be similarities in time limits for movement control orders (3 months) and biosecurity emergency orders (21 days) between state and national biosecurity responses.	Coordination between all levels of Government is critical to the effectiveness of biosecurity emergency responses of national significance. Chapter 14, Part 2 provides for the State to enter into agreements with one or more other jurisdictions and industry parties directed at ensuring a coordinated process for responding to a biosecurity event or sharing of the response costs between the parties. Three such formal agreements are currently in place covering the management and funding of emergency responses to biosecurity risks of national significance – the Emergency Animal Disease Response Agreement (EADRA), the Emergency Plant Pest Response Deed (EPPRD) and the National Environmental Biosecurity Response Agreement (NEBRA). These agreements set out cost sharing and other responsibilities of the Commonwealth, state and territory governments and relevant industry parties in an emergency response to a biosecurity risk of national significance. Underpinning these arrangements are specific response plans that describe the roles and strategies that will be followed in particular emergency responses. Not all pests or diseases may be of national significance. The proposed

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				legislation provides tools for emergency response that could be used regardless of whether the risk is of local, State or national significance. Biosecurity emergency orders and movement control orders are alternative tools for facilitating an emergency response. The circumstances in which these orders may be made and the powers enlivened by these orders differ. They would be suitable for emergency responses to risks of national significance or emergency responses to pests and diseases of State or local significance.
114	7 AgForce Queensland Industrial Union of Employers	Matters for inclusion in biosecurity emergency order	The Bill lacks clarity about:- (a) Who manages border protection along coastal waters and state boundaries; (b) Management of undetected or non-declared biosecurity risks once humans or things have passed through national border quarantine procedures and are now traversing Queensland. (c) Managing biosecurity risks from increased frequency of business tourists and regular fly-ins from overseas employees to Queensland mining sites and regional Queensland which are in close proximity to agricultural activities. (d) Internet purchases of live material that may harbour biosecurity matter, which are introduced into Queensland and not initially detected by Australian Government quarantine. AgForce requests that this detail be provided prior to the implementation of the Bill.	The Federal Government is responsible for border protection including biosecurity risks related to entry of biosecurity matter or carriers into Queensland from outside of Australia. Anything which is imported or arrives into Australia from overseas either via air craft, ships or passengers is the responsibility of the Federal Government . For example, the Federal government is responsible for inspecting shipping containers, passenger luggage and planes from overseas for biosecurity matter. This is regulated by Commonwealth legislation. However, Biosecurity Queensland is responsible for biosecurity matter which comes from interstate or a ship in Queensland waters. Biosecurity Queensland is responsible for internet purchases of live material which is introduced into Queensland from interstate. Any live material purchased on the internet and brought Queensland from outside Australia is the responsibility of the Federal Government. Once biosecurity matter from outside Australia has passed the border, Biosecurity Queensland is generally responsible for eradicating or controlling the matter if required. The Constitution would enable the Federal Government to legislate and take greater responsibility for post-border biosecurity responsibility but generally it has not. Consistent with the principle of shared responsibility for biosecurity, everyone needs to play a role in addressing the biosecurity risks posed by increased tourist and employee movements from overseas. The Federal Government is responsible for minimising these risks at the border. However, the general biosecurity obligation would also require the relevant companies and their employees to show due diligence in preventing or minimising biosecurity risks posed by their activities.
115 (4) (a) and 115 (5)	16 Ian Christie	Effect and duration of biosecurity emergency order	Insert in examples "*but not limited to*"	There is no need to qualify that the examples are not limited because the *Acts Interpretation Act 1954* provides that an example is not exhaustive and does not limit the meaning of a provision.
117 (2)	16 Ian Christie	Power to stop vehicles	Mr Christie suggests including a transport officer in the clause.	Clause 117(2) provides the power to inspectors who are police to stop moving vehicles other than at biosecurity emergency checkpoints. There is

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				no desire to provide other persons with the power to stop moving vehicles at any place. However, authorised transport officers (along with inspectors who are police) may stop moving vehicles at biosecurity emergency checkpoints.
117 (3)	16 Ian Christie	Power to stop vehicles	Mr Christie suggests replacing the word "might" in the example to "may" so it reads "*A regulation may make provision for the display at a biosecurity emergency checkpoint or other stopping point of signs that can be easily read and understood by the person in control of a vehicle.*"	The example does not form part of the statute. It is merely an example. The terminology used in the example can be less conventional. The department is guided by the Office of the Queensland Parliamentary Counsel as to the wording of examples.
117 (5)	16 Ian Christie	Power to stop vehicles	Mr Christie suggests that under TORUM a regulation cannot direct power over another Act – any restrictions should be in the TORUM Act.	The proposed legislation provides powers to authorised transport officers only during an emergency response to a biosecurity event. These powers are additional powers to those provided under the *Transport Operations (Road Use Management) Act 1995* (TORUM). It was necessary to include these powers in the proposed legislation rather than rely on TORUM because TORUM did not provide sufficient powers to authorised transport officers to act during a biosecurity event. This was made evident during the response to equine influenza. The department is guided by the Office of the Queensland Parliamentary Counsel as to whether the powers should sit in the proposed legislation or TORUM.
118 (6)	16 Ian Christie	Inspection of stopped vehicle	Mr Christie commented that the "note" in the clause is not clear as police officers and transport officers have more powers to stop a vehicle than under the Bill.	These provisions are required under the proposed legislation because the *Police Powers and Responsibilities Act 2000* (PPRA) and the *Transport Operations (Road Use Management) Act 1995* (TORUM) do not provide powers for police officers and authorised transport officers to stop and inspect vehicles in relation to a biosecurity event. TORUM and the PPRA provide powers for other matters relating to traffic infringements and criminal matters which are not within the scope of the proposed legislation. The Queensland Police Service and Department of Transport and Main Roads have been consulted on these provisions.
128-130	17 Local Government Association of Queensland	Part 3 Biosecurity zone regulatory requirements	LGAQ seek the inclusion of a subsection allowing a local government to establish a biosecurity zone for locally declared species contained within its Biosecurity Plan.	In its submission to the former Parliamentary Environment, Agriculture, Resources and Energy Committee Inquiry into a similar bill introduced in 2011, the LGAQ recommended that terminology in the remainder of that bill be reviewed to ensure it clearly reflected the main function of local government under the proposed legislation. Accordingly, the proposed legislation limits the powers of authorised persons appointed by local governments (clause 255) to invasive biosecurity matter for the local government's area. Invasive biosecurity matter is defined in clause 48 to include only invasive plants and animals which are listed in particular parts of schedules 1 and 2 – broadly these are the declared pests for which local governments are currently responsible under the *Land Protection (Pest and Stock Route Management) Act 2002*. If clause 255 was amended to allow authorised persons appointed by a local government to exercise powers in

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				relation to any invasive plant or invasive animal it would allow them to enforce the general biosecurity obligation in relation to pests of local concern but it would reintroduced the ambiguity which was formerly of concern to LGAQ. Local government biosecurity plans could identify different enforcement priorities for a pest in different zones within the local government's areas which would effectively introduce zonal arrangements. An amendment to clause 235 (that limits the power of local governments to authorise biosecurity programs) could also be used to empower local governments to undertake 'Prevention and Control' or 'Surveillance' programs for invasive plants and animals of local significance that differed to reflect a zonal approach to management of these pests.
		Chapter 7 Registration of biosecurity entities and designated animal identification		
141	7 AgForce Queensland Industrial Union of Employers	What is a registrable biosecurity entity	Is there scope for the Biosecurity Bill 2013 to also consider future registration of entities dealing with aquatic biosecurity risks or plant disease biosecurity risks? Does "person" include company, trust or other commercial entity that may own and manage designated animals at one or more places?	The proposed legislation provides for the registration of entities that keep animals listed in clause 134 but potentially a regulation could expand the registration requirements to entities that keep other animals or hold other biosecurity matter. Clause 141 provides a person is a registrable biosecurity entity if the person keeps a threshold number or more of designated animals or holds the threshold amount or more of designated biosecurity matter. Clause 134 lists animals which are designated animals but allows a regulation to prescribe additional animals that are designated animals. Clause 136 allows a regulation to prescribe biosecurity matter (other than designated animals, pathogenic agents, diseases or contaminants) that are designated biosecurity matter. Allowing designated animals and designated biosecurity matter to be prescribed by regulation provides scope for expanding the ambit of registrable biosecurity entities including to those with aquatic biosecurity risks or plant disease biosecurity risks. However, this expansion could only be achieved by regulation which is subject to Parliamentary scrutiny. The *Acts Interpretations Act 1954* provides that "person" includes an individual and a corporation. As an inclusive definition, this does not exclude any type of person that could fall within the context of the section in which it is used. The definition of "corporation" in the *Acts Interpretations Act 1954* includes a body politic or body corporate so this would cover commercial entities that have a status that can act like a person, hold assets etc. Some trusts have this status (eg. corporate trusts) in order to hold assets, manage

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				properties etc. "Person" would not, however, capture an unincorporated association. The department believes this is appropriate because the registration system is intended to identify an entity that takes responsibility for keeping designated animals or designated matter and the biosecurity consequences. A corporate entity can act as a person and therefore can take that responsibility but any other unusual entity/association probably should be registering as an individual person.
145	16 Mr Ian Christie	Registered Biosecurity Entities	Mr Christie argues that there is strong belief amongst the beekeeping fraternity that only 1/3 of all beekeepers are registered, which provides a large biosecurity risk. He argues that this failure to comply is because the penalty of 100 units is not an adequate deterrent. He suggests an increased penalty of 800 points.	Regulation of the keeping of bees under the proposed legislation is very similar to under the existing *Apiaries Act 1982*. The registration of beekeepers is continued under Chapter 7. Registration requirements will continue to apply to both commercial and hobby beekeepers including those who keep a single hive in their backyard. The proposed legislation also provides for the marking of hives with a hive identification number and the display of certain registration information. These Keeping bees that are not in a hive will be an offence carrying a maximum penalty of 50 penalty units (currently $5,500). Failing to register a hive will be an offence carrying a maximum penalty of 100 penalty units (currently $11,000). The potential for a fine of this magnitude is expected to be sufficient encouragement for backyard keepers to apply for registration.
155	7 AgForce Queensland Industrial Union of Employers	Term of registration	Recommend that for commercial entities such as primary producers (as defined by the Australian Tax Office), that the term of registration be continuous or until advised of a change in ownership.	Currently many landowners forget to notify changes in information about a registered place as required under the *Stock Act 1915*. Inaccuracies in the register reduce its effectiveness as a biosecurity tool. Under the proposed legislation, a renewal process is proposed to help improve the accuracy of the biosecurity register. If the Legislative Assembly passes the Bill, consultation on options for the quantum of the fee will be undertaken when a Regulatory Impact Statement (RIS) is released for the regulation. The fee options proposed may not recover the full cost of property registration and related activities in recognition that the whole community derives benefit from the registration.
156	7 AgForce Queensland Industrial Union of Employers	Renewal of registration	The prescribed fee must not be prohibitive for all registrable entities.	If the Legislative Assembly passes the Bill, consultation on options for the quantum of the fee will be undertaken when a Regulatory Impact Statement (RIS) is released for the regulation. The fee options proposed may not recover the full cost of property registration and related activities in recognition that the whole community derives benefit from the registration.
156	16 Mr Ian Christie	Renewal of registration	Mr Christie suggests that the penalty in this clause is also too small.	Keeping bees that are not in a hive will be an offence carrying a maximum penalty of 50 penalty units (currently $5,500). Failing to register a hive is an offence carrying a maximum penalty of 100 penalty units (currently $11,000). The potential for a fine of this magnitude is expected to be sufficient

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				encouragement for backyard keepers to apply for registration.
157	16 Mr Ian Christie	Keeping of bees in a hive	Mr Christie suggests that the current wording of this clause effectively means that a person who lets feral bees build a hive in a hollow tree on their property or has bees living in a possum box or has a swarm of bees make home in the wall of their home is guilty of an offence. He argues there should be a definition of feral bees included in the Bill.	Registration is required under the proposed legislation if a person keeps bees. Clause 139 provides a definition of 'keeps' which is applicable to bees. Under this clause, a person 'keeps' a designated animal if the person effectively has responsibility for the care and control of the animal, whether or not the care and control is exercised through an agent or employee of the person. The registration requirements for beekeeping would therefore not apply to a person who has feral bees living on their property, as they do not have the care and control of the hive. A person with feral bees living on their property will however be captured by the broader definition of "deals with" for the purposes of the general biosecurity obligation. The definition of "deal with" is very broad and includes "possess whether intentionally or otherwise" Therefore a person would have an obligation to minimise risks associated with bees that took up residence in a tree hollow on their land but they would not have to register as a person who keeps bees unless they began to take care or control of them in some way. The department's view is that there is no need to include the concept of feral bees in the proposed legislation.
157	16 Mr Ian Christie	Sale of hives	Mr Christie submits that there should be a section in the Bill that covers the sale of hives. He suggests a system of forms similar to the forms used in the sale of a car.	The department's view is that the specific regulation of the sale of hives is not justified and industry should self-manage the sale of hives. To the extent that the sale could pose a biosecurity risk, the parties to the sale would be required by the general biosecurity obligation to prevent or minimise the risk.
157	7 AgForce Queensland Industrial Union of Employers	Keeping of bees in a hive	Does this clause and Division 2 pertain to introduced honey bees and native bees? There is increasing interest in native bee hives as pollinators.	The department is not proposing any specific regulation of native bees under the proposed legislation. Bee is defined as a honey bee (*Apis mellifera*) or another genus or species declared under a regulation to be a bee. At this time, the department is not aware of any justification for declaring in the regulation that a genus or species of native bee is a bee for the purposes of the proposed legislation. However, the general biosecurity obligation would apply in relation to native bees e.g. if certain native bees posed a risk or were carriers or potential carriers of a disease or pest.
161	7 AgForce Queensland Industrial Union	Inclusion of restricted places in biosecurity register	How does this database of restricted places link to the existing contaminated land register? Is there a duplication of effort across government departments?	The proposed biosecurity legislation empowers the chief executive to declare a particular place that could pose a biosecurity risk to be a restricted place and how the use of the place is to be restricted. The *Environment Protection Act 1994* (EP Act) also has provisions about

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	of Employers			contaminants and how landholders must deal with contaminants on their land. However, the provisions under the proposed biosecurity legislation and the EP Act are different both in their objective and how they are applied. Under the EP Act, notification is required if an activity has the potential to cause land contamination, such as service stations, cattle dips, tanneries, wood treatment sites, landfills, fuel storage and refuse tips. Contamination of agricultural land from previous use of organochlorine pesticides, or lead through old batteries being discarded on the land is not notifiable under the EP ct but does pose a biosecurity risk. Also, livestock grazing on contaminated land can continue to pose a biosecurity risk long after a site has been remediated. In both circumstances, a restricted place declaration under the proposed legislation could be imposed.
168	10 Australian Veterinary Association Ltd	Chief executive's obligation to keep register	The AVA recommends that consideration be given to the resource implications of maintaining an up to date registry of biosecurity entities.	It is imperative that Queensland is able to respond quickly to any disease outbreaks by quickly locating all potentially infected animals as part of a disease response plan. It is therefore necessary to maintain an accurate registry of biosecurity entities. While the costs associated with maintaining a register of this nature are not insignificant, they are easily justified by the benefits. The whole community derives some benefits, but the property owners and producers derive the greatest benefits. Consequently, the proposed legislation provides that a regulation may prescribes fees for property registration so that some or all of the costs associated with property registration may be recovered from those who register. If the Legislative Assembly passes the Bill, consultation on options for the quantum of the fee will be undertaken when a Regulatory Impact Statement (RIS) is released for the regulation. The fee options proposed may not recover the full cost of property registration and related activities in recognition that the whole community derives benefit from the registration.
171	7 AgForce Queensland Industrial Union of Employers	Correction and updating of biosecurity register for registered biosecurity entities	Clause 171 enables the chief executive [suggest insert "or nominated officer"] to correct the designated details or biosecurity risk details ……"	The chief executive is given powers throughout the proposed legislation. Clause 495 allows the chief executive to delegate these responsibilities (with some exceptions) to specified appropriately qualified employees of the department. Delegation instruments would generally be attached to an officer's position within the department to ensure that each officer in the department is aware of the tasks they can perform as a delegate of the chief executive.
172	8 Ergon Energy Corporation Limited	Publication of biosecurity register	Ergon suggest that the biosecurity register should be available in a spatial format so that accurate identification of risk areas in relation to Ergon Energy assets can be undertaken	The register would provide Ergon Energy with little more than information about places where designated animals are being kept. The chief executive may declare a place is a restricted place if there is something at that place that may cause a biosecurity risk and this is also

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				recorded in the register. For example because of the presence of contaminants consisting of heavy metals in soil at a place, plants grown at the place could contain unacceptable levels of the contaminants that could enter the food chain. However, listing as a restricted place would generally not impact on provision of a service utility activity. In relation to other information held by the department, the department acknowledges that utility service providers and emergency service agencies may from time to time require access to a place where biosecurity measures may be being taken or restrictions may be in place and seeks to notify these entities of locations where access may be limited or where, for example, special measures are required to decontaminate vehicles and equipment.
173	7 AgForce Queensland Industrial Union of Employers	Taking copies of biosecurity register	Under what purpose can a person who buys the biosecurity register use the information? How much personal information for each entity would be provided by the department to any person purchasing a copy of the register?	The biosecurity register would include some personal information if the registrable entity was an individual. Clause 169 provides the information which is required to be kept for registered biosecurity entities. This includes the designated details of the entity. Clause 148(1)(c) prescribes designated details to include; (i) the real property description, address, local government area and any name of each place; (ii) the name, address and contact details of the entity or occupier of the place; (iii) Whether the occupier is the owner (iv) the approximate number of each type of designated animals; (v) the approximate area of land. Clause 494 provides that if the chief executive is satisfied that inclusion of a person's address on the register would place at risk the personal safety of the person or another person, the person's address must not be set out in the publicly available part of the register or in a copy of information from the register. Clause 172 provides the chief executive must publish the biosecurity register on the department's website other than information in the register about the biosecurity risk status details for a registered biosecurity entity. Clause 173 provides that a person who applies and pays the prescribed fee may buy a copy of all or part of the information held in the biosecurity register other than the biosecurity risk status details. In other words, they generally only be able to buy a copy of the same information which is published on the department's website. However, the biosecurity risk status of a registered biosecurity entity could be provided to an applicant who was the occupier of a restricted place; with the consent of the registered

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				biosecurity; or if the proposed legislation or another Act expressly authorised the disclosing the details. Clause 173 also provides that the chief executive can also give a copy of all or part of the register, including the biosecurity risk status details to certain entities – broadly the NLIS administrator, Commonwealth or interstate biosecurity officials or where they are satisfied it will contribute to certain biosecurity activities. Release of the information may be subject to conditions. The purpose for which information in the register could be used is not limited by the proposed legislation (unless the information is provided under clause 173(3) subject to conditions on the use of the information).
180	7 AgForce Queensland Industrial Union of Employers	Exemptions from approved device requirement	Seek clarification for approved devices for horses (designated animal), especially in relation to stock horses used for contract mustering purposes and wild horses (brumbies) that are mustered and transported. Would these instances require a travel approval from the chief executive if a brand or tattoo did not mark the designated animal?	Clause 135 does not list horses as "special designated animals". The approved device requirements in Chapter 7, part 3, Division 2 only apply to special designated animals. Clause 135 allows 'designated animals', such as horses, to be prescribed as 'special designated animals' by regulation in future. There is no current national policy for routine mandatory microchipping of horses. (Microchipping of horses is currently mandatory for horses which have received the Hendra Virus vaccine and this requirement is imposed as a condition of the (Commonwealth) permit for the vaccine. Race horses are also required to be microchipped but not for biosecurity reasons.)
195	13 Australian Livestock and Property Agents Association Ltd.	Appropriate form of movement record	The concern lies in the requirement to provide the name and address of the "person" as per S195 (1) (c). In the majority of instances the name of the individual will be unknown. To add to the confusion the Livestock Production Assurance National Vendor Declaration (LPA NVD), which is a recognised movement record, refers to "Consigned to: Name of person or business". ALPA recommends the removal of the reference to the "name of the person" as information required to be provided in a movement record or to incorporate the words "or business" as per the LPA NVD.	The *Acts Interpretations Act 1954* provides that "person" includes an individual and a corporation. This does not include a trust or other commercial entity unless the commercial entity is a corporation.
232-241		Chapter 9 - Programs for surveillance, prevention and control		
	17 Local Government Association of Queensland	Local government CEOconsent	The requirement for a local government's CEO consent prior to the State involving the local government in a State authorised prevention and control program has been removed. LGAQ request re-instatement of the requirement.	Clause 254 provides that an authorised person appointed by a local government, in exercising their powers, is subject to the directions of the chief executive officer of the local government. This would prevent the State requiring authorised officers appointed by a local government to participate in a State-authorised biosecurity program without the consent of the chief executive officer of the local government.

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235	17 Local Government Association of Queensland	Authorising and carrying out biosecurity program	LGAQ seek the inclusion of a subsection allowing locally significant invasive species listed in a Biosecurity Plan to be included in a Biosecurity Program.	In its submission to the former Parliamentary Environment, Agriculture, Resources and Energy Committee Inquiry into a similar bill introduced in 2011, the LGAQ recommended that terminology in that bill be reviewed to ensure it clearly reflected the main function of local government. Accordingly, the proposed legislation limits the main function of local government, the power of local governments to authorise biosecurity programs (clause 235) and the powers of authorised persons appointed by local governments (clause 255) to invasive biosecurity matter for the local government's area. Invasive biosecurity matter is defined in cl ause 48 to include only invasive plants and animals which are listed in particular parts of schedules 1 and 2 – broadly these are the declared pests for which local governments are currently responsible under the *Land Protection (Pest and Stock Route Management) Act 2002*. If clause 235 and 255 were amended to allow a local government and its authorised persons to exercise powers in relation to any invasive plant or invasive animal it would allow them to address pests of local concern using the powers under the proposed legislation as LGAQ have requested but it would reintroduced the ambiguity which was formerly of concern to LGAQ.
236 237	17 Local Government Association of Queensland	What program authorisation must state Giving a direction for prevention and control program	Text in sections 236 and 237 should clarify that the reference to "authorised officers" in relation prevention and control programs means public servants and not local government officers.	Consistent with current legislation the local government's main function under the proposed legislation is to ensure that invasive biosecurity matter is managed for the local government's area. Clause 235 allows a local government to authorize a biosecurity program that relates to places in, and invasive biosecurity matter for, the local government's area. Clause 246 allows a local government to appoint an authorised person. Clause 255 provides that an authorised person appointed by a local government, in exercising their powers, is subject to the directions of the chief executive officer of the local government. Clause 255 limits the exercise of powers by an authorised person appointed by a local government to invasive biosecurity matter in the local government's area. In combination this means that references to authorised officers acting under a biosecurity program in clauses 236 and 237 could be references to authorised persons appointed by a local government acting under a biosecurity program authorised by the local government. Subject to direction from the chief executive officer of the local government, an authorised officer appointed by the local government could also act under a biosecurity program authorised by the State if it was in relation to invasive biosecurity matter in the local government's area.
S239 (2)	17 Local Government	Consultation about proposed biosecurity program	LGAQ request clarification on the reasons for the inclusion of this requirement, and suggest the removal of S239 subsection (2) if not necessary.	This requirement for consultation by local governments before authorisation of a biosecurity program in clause 139(2) should be read with 239(1) and (3) which place similar obligations on the State and an invasive animal board.

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	Association of Queensland			The provision is directed at ensuring that programs are coordinated between entities that share responsibility for biosecurity in an area. For example, it would be desirable to coordinate a prevention and control program for rabbits authorised by the Toowoomba Regional Council (TRC) in that part of the TRC area where they are responsible for the management of rabbits and a program for rabbits in an adjoining part of the TRC area authorised by the DDMRB. The requirement to consult helps is directed at ensuring parties coordinate to maximise the effectiveness of their activities. Consultation approaches are not prescribed but could be undertaken in a number of ways including an email, telephone call between officers.
240	9 Powerlink Queensland	Notice of proposed biosecurity program	Powerlink submits that notices about 'proposed biosecurity programs' should also be given to all government departments and Government Owned Corporations. Without an amendment, Powerlink could find that is not aware that its operations are under surveillance or that a prevention and control program has been made about a particular area, or Powerlink may inadvertently cut across steps taken or to be taken by a biosecurity officer under a biosecurity program.	Clause 240(3)(a) provides that notice must be given at least 14 days before a biosecurity program starts to each department or government owned corporation responsible for land in the area to which the biosecurity program relates. The department acknowledges that public utility service providers and emergency service agencies may from time to time require access to a place subject to a biosecurity program, and seeks to notify these entities of locations where access may be limited or where, for example, special measures are required to decontaminate vehicles and equipment.
240(3)(a) & (b), 240(5)	17 Local Government Association of Queensland	Notice or proposed biosecurity program	LGAQ seek clarification as to the purpose of Section 240(5) – it appears to contradict requirement for Section 240(3)(a)&(b)	Clause 240(3) requires that notice of a biosecurity program must be given to each department or government owned corporation responsible for land in the area to which the biosecurity program relates. While this consultation requirement is important, clause 240(5) ensures that the inadvertent omission of notice would not invalidate the biosecurity program. For example if one government department that was a minor landholder was inadvertantly overlooked it would not invalidate the entire program. Likewise if for some reason the notice was not published on the website 14 days before the program commenced, then it would not invalidate the biosecurity program. This is not an excuse for non-compliance with the notice requirements but provides a safeguard against invalidating a program due to deficiencies.
242-337		Chapter 10 Appointment and powers of officers		
	17 Local Government Association of Queensland	Issue of PINs	LGAQ seek clarification on whether the head of power for local governments to issue PINs has been approved and if so, will it sit in the Biosecurity Regulation or the State Penalties Enforcement Regulation? Local government should be given timely opportunity to comment on the proposed PIN offences.	The State *Penalties Enforcement Act 1999* and the *State Penalties Enforcement Regulation 2000* provide the framework for the prescription of penalty infringement notice (PIN) offences. PIN offences and associated penalty amounts are prescribed in the schedules to this Regulation if they are considered suitable. PIN offences are not appropriate for serious and complex offences or those that cannot be objectively defined. The

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				department is giving consideration to the appropriateness of PINs for offences under the proposed legislation, including for some provisions enforced by local governments. The department will consult with local government about such PINs because their administration will be the responsibility of local governments.
259 – 277	7 AgForce Queensland Industrial Union of Employers	Entry to places by an authorised officer, with or without warrant or consent	The Bill needs to outline if the State government is the entity responsible for the occupational health and safety and personal liability of an inspector/ authorised officer who enters a place that requires mandatory site induction	Modern drafting of legislation does not duplicate provisions contained in other legislation. Instead, the proposed legislation is drafted to ensure it dovetails with legislation administered by other entities which regulates matters such as workplace health and safety, disaster management, public health and nature conservation. Mining companies are subject to specific legislation which regulates who is responsible for safety on a mine site. Inspectors appointed under the proposed legislation would be responsible for ensuring they enter places in a safe manner. If there are specific pre-entry conditions for a place, generally the inspector should determine this before entering the work environment. Generally an inspector must gain the consent of the occupier of a place before entering a property. If the occupier of the place has special entry conditions, the inspector will need to be informed of the specific entry conditions prior to entering the area which is subject to the special entry conditions. Who is responsible for providing the training of the special entry conditions is a matter to be negotiated between the department and the entity. It is not generally a matter for legislation to specify who is responsible for induction training or pre-entry requirements.
294(4), 294(6)	7 AgForce Queensland Industrial Union of Employers	Power to carry out aerial control measures under biosecurity program	294 (4) – The authorised officer should make reasonable attempts to advise neighbours of the place about the aerial control measure if the control measure involves aerial distribution of an agricultural chemical (especially if there is risk of spray drift to adjoining areas). 294 (6) - Definition of aerial control measure for biosecurity matter to also include:- (c) aerial shooting or baiting to control the biosecurity matter	Aerial baiting falls within the scope of 294(6)(b): "distributing an agricultural chemical to control the biosecurity matter". It is expected that aerial baiting may occur relatively frequently under a biosecurity program in reliance on this clause. Many of the scenarios in which animals may need to be shot from the air would occur in the context of an emergency response (e.g. shooting wild dogs if there was an outbreak of rabies or shooting feral goats if there was an outbreak of foot and mouth disease) rather than a biosecurity program. An emergency response is not covered by the provision. There have been some instances, however, where animal have been shot from the air during a longer term program which, under the proposed legislation, might be authorised as a biosecurity program. Specifically, animals that could not be mustered were shot from the air as part of the eradication program for brucellosis and tuberculosis. Clause 294 allows an authorised officer to direct another person to carry out an aerial control measure under a biosecurity program. Given the safety risks associated with aerial shooting, the department's view is that it is not

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				unreasonable to also require an authorised officer be in effective control of the operations and hence it was not mentioned in the meaning of aerial control measure. If clause 294 does not extend to aerial shooting, the effect is that the department must have an authorised officer on the ground throughout the operation. They would attempt to obtain consent before the airspace was entered and then (from the ground) remain in effective control of the activities being undertaken from the air and, where required, leave notice about the activities before leaving.
338-351		Chapter 11 Compensation for loss or damage from biosecurity response		
348	7 AgForce Queensland Industrial Union of Employers	No compensation for consequential loss	Please note there is an error in the Explanatory Notes (Clause 345) on page 93 which contradicts Clause 348 in the Biosecurity Bill. Clause 345, dot point 4 in the Explanatory Notes should be deleted as it refers to "consequential loss" under statutory compensation. This error leads to confusion when interpreting the Bill.	The department acknowledges the error and will seek to correct the error at an appropriate opportunity.
390-410		Chapter 14 Particular agreements between State and other entities Part 2 Government and industry agreements		
391 - 392	18 Invasive Species Council		The ISC support the ability to provide for Queensland to enter into intergovernmental agreements with the Commonwealth or another State to recognise biosecurity certificates and to provide a statutory basis for the Minister or chief executive to enter into a government-industry agreements.	The department notes that the Invasive Species Council supports the provision of the proposed legislation that provide for intergovernmental agreements.
392	4 Dr Pam Swepson	Content of government and industry agreement	Dr Swepson argues that there are deficiencies in the current cost-sharing arrangement for national eradication program. She argues that the current arrangements contain an inherent temptation for governments implementing eradication programs to over-claim progress towards eradication and fail to report serious issues impacting the program in order to keep the 'eradication' dollars coming to the State and to defer for as long as possible, the costs of a on-going management and control regime of an exotic pest. Dr Swepson uses the Queensland example of fire ants to demonstrate how she believes state governments conceal the failure of their eradication program in order to continue receiving money.	As a national cost-shared program the National Red Imported Fire Ant Eradication Program (the Program) is governed by a number of national committees – the Tramp Ant Consultative Committee (TACC) and the National Biosecurity Management Group (NBMG). Funding decisions are referred to the Primary Industry Standing Committee (PISC) and the now disbanded Standing Council of Primary Industries (SCoPI). Queensland implements the response plan for the Program which has been approved by the cost-share partners. Quarterly reports against the triggers and milestones established in the response plan are provided to the cost-share partners. With advances in surveillance technology available to the Program allowing delimitation to be undertaken in a far more effective manner, a new response

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				plan for 2013–18 was developed by the TACC. National funding was then agreed upon for 2013–14 to cover the first year of this plan. The Program is subject to intense scrutiny by national cost-sharing partners. Since 2001, the Program has been independently reviewed thirteen times and internally reviewed three times. These reviews are undertaken with full access to all systems, documents and records of the Program and each review has made satisfactory findings with regard to the veracity of the fire ant operations and reporting. The 2011 and 2012 external scientific and technical reviews by Australian and international experts assessed research and epidemiological analysis completed by the program. These reviews found that eradication is still possible albeit over a 10 to 15 year timeframe. The expert panels recommended that priority should be given to determining the extent of the fire ant infestation. The experts acknowledged that Australia is closer to eradicating the pest than any other country that has become infested. The restricted area now covers 315 287 hectares (Version 46), however the area of known active fire ant infestation is only 2187 hectares or 0.7 percent of the total area (as at 31 December 2013).
392	4 Dr Pam Swepson	Content of government and industry agreement	Dr Swepson recommends the following; "Therefore, I suggest that the Biosecurity Bill 2013, makes explicit the precipitating conditions, management and cost-sharing arrangements of programs transitioning from eradication to on-going control and containment."	It has been acknowledged at a national level that there is a need for a firmer policy to support the transition of pest and disease programs from eradication to ongoing management. A policy gap has been identified to deal with such programs once a decision is made that a pest or disease is not eradicable but further action is in the national interest. To address this issue a draft National Transition Program Policy Framework (the framework) was developed. In October 2012, the Council of Australian Governments' Standing Council on Primary Industries noted the draft framework and consultation commenced with the industry signatories to the national animal and plant emergency response deeds. As the framework has not yet been finalised it cannot be reflected in the proposed legislation. Further, it is likely that the framework will stand alone without the need for legislative support.
		Chapter 20 Amendment of Acts		
	17 Local Government Association of Queensland		LGAQ request that the department provide the rationale and decision making process for downgrading species from prohibited to restricted, and seek the ability to provide input before these lists are finalised.	The restrictions and obligations that would apply to prohibited matter under the proposed legislation are much more extensive than those that currently apply to class 1 declared pests under the *Land Protection (Pest and Stock Route Management) Act 2002*. Consequently, it is generally inappropriate for any pests or diseases that are present in Queensland to be listed as

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				prohibited matter. This is reflected in the criteria in clause 20 that apply when prohibited matter is to be listed by regulation or emergency prohibited matter declaration - the prohibited matter must be both not currently present or known to be present in the state and there must be reasonable grounds to believe it may have a significant adverse effect on a biosecurity consideration. The following current class 1 weeds are present in the state and hence have not been listed as prohibited matter: - alligator weed (*Alternanthera philoxeroides*) - badhara bush (*Gmelina elliptica*) - cabomba (*Cabomba caroliniana*) - Chilean needle grass (*Nassella neesiana*) - honey locust (*Gleditsia triacanthos* including cultivars and varieties) - yellow ginger (*H. flavescens*); - hygrophila (*Hygrophila costata*); - Senegal tea (*Gymnocoronis spilanthoides*) - some willows (*Salix* spp.). These taxa are instead listed as restricted biosecurity matter. If they were eradicated from Queensland in future it may be appropriate for them to be listed as prohibited matter. The following current class 1 pests are not present in the state, however, there is reason to believe that if present the biosecurity matter would not have a significant impact on a biosecurity consideration, hence they do not meet prohibited matter criteria19(b) - some willows (*Salix* spp.) - gorse (*Ulex europaeus*) It should be noted that gorse and willow spp are Weeds of National Significance (WONS). There was national agreement that all WONS species were to be banned from sale in all jurisdictions. Under the *Land Protection (Pest and Stock Route Management) Act 2002* this could only be achieved by listing them as class 1 pests. Under the proposed legislation it is proposed to be achieved by listing them as category 3 restricted matter.
		Schedule 1 Prohibited matter		
Sch 1	3 Southern	Part 3 Invasive biosecurity matter –	The Council is pleased to see tropical soda apple (Solanum viarum) listed as prohibited matter as we believe it has the potential to cause	The department notes that the Southern Downs Regional Council supports tropical soda apple being listed as prohibited matter.

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	Downs Regional Council	invasive plants	significant impacts in and beyond our region.	
Sch 1	3 Southern Downs Regional Council	Part 3 Invasive biosecurity matter – invasive plants	The Council is disappointed to see some current Class 1 species not listed, such as Chilean Needle Grass (Nassella neesiana). SDRC write that they invested considerable resources towards prevention and eradication and will continue to do so. The Council argues that it is imperative that biosecurity zones are put in place to ensure nearby infestations continue to be managed so as to reduce the likelihood of seed spread into the Southern Downs Region.	Chilean needle grass is listed as restricted matter in Schedule 2 because it is present in the State. However, this does not preclude eradication efforts directed at Chilean needle grass. The proposed legislation provides a number of tools that could be relevant to Chilean needle grass. These tools include provisions in a regulation such as a biosecurity zone and biosecurity programs. The general biosecurity obligation which requires a person to take reasonable and practical steps to prevent or minimise the risk of any adverse effect on human health, social amenity, the economy and the environment.is also relevant to Chilean needle grass. If the Legislative Assembly passes the Bill, further consultation will be undertaken with local governments and other key stakeholders on the most appropriate approach to Chilean needle grass under the proposed legislation.
Sch 1	7 AgForce Queensland Industrial Union of Employers	Schedule 2 Restricted Matter	Include scientific name (at least to genus and species level, if known) as well as common name. What is the process to amend Schedule 1 and 2 which are included in the Bill? Would an amendment be easier if these two Schedules were included in the proposed regulations instead of the Bill? Why is African love grass Eragrostis curvula not included in Schedule 2- Part 2 – Restricted matter – invasive biosecurity matter?	The listing of biosecurity matter in schedules 1 and 2 adequately describes the prohibited and restricted matter. In most cases, the biosecurity matter is listed by its scientific name. However, some biosecurity matter, such biosecurity matter that is not a living thing or biosecurity matter that is a disease, is listed using a common name or in some other way the department currently believes is most appropriate for that biosecurity matter. Clause 492 applies where an authoritative document refers to biosecurity matter by a scientific name or common name that varies in a minor way from the scientific name or common name which appears in the proposed legislation. In such circumstances, the biosecurity matter mentioned in the authoritative document is taken to be the same relevant biosecurity matter under the Act. The proposed legislation contains a number of mechanisms to amend the listings of prohibited matter and restricted matter. Clause 31 provides that the chief executive may by notice declare biosecurity matter is prohibited matter if the chief executive is satisfied that certain criteria are met and there is a need for urgent action. The chief executive may also declare that biosecurity matter is no longer prohibited matter if the chief executive is satisfied that at least one pre-condition is met and there is a need for urgent action. Clause 30 and 39 provide that a regulation may declare that biosecurity matter is prohibited matter, biosecurity matter is no longer prohibited matter, biosecurity matter is restricted matter, or biosecurity matter is no longer

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				restricted matter if the Minister is satisfied relevant criteria have been met. On a number of occasions over the past decade, African lovegrass (Eragrostis curvula) has been suggested as a declaration target under the *Land Protection (Pest and Stock Route Management) Act 2002 by some local governments.* However, stakeholders could not agree on the listing. It is not necessary to list all pests and diseases under the proposed legislation given that the general biosecurity obligation applies to a person who deal with any biosecurity matter that poses a biosecurity risk whether it is listed or not. Further, local governments may choose to declare any biosecurity matter as a local pest under local law. African love grass is currently declared under local law by Banana Shire Council, Central Highlands Regional Council and North Burnet Regional Council.
Sch 1	17 Local Government Association of Queensland		Invasive animals – "other than… cat (Felis catus and Prionailurus bengalensis x Felis catus)" should specify derivatives of Prionailurus bengalensis x Felis catus 5 generations removed from Prionailurus bengalensis as per the EPBC Act to avoid misinterpretation/loop holing.	Historically, the administrative approach for determining how hybrid specimens are treated under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) has been based on an assessment of hybrids against the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 5th generation approach. Broadly, a cat or dog was considered to be a domestic animal and potentially eligible for live import meant if it was five or more generations removed from a wild ancestor. As a result, Bengal cats (a hybrid between what is commonly known as a domestic cat (*Felis catus*) and the Asian leopard cat (*Prionailurus bengalensis*) have been imported as domestic cats by application of this approach. While useful for protecting species threatened by trade, the CITES 5th generation approach was not developed to protect the environment from invasive/feral animals. The CITES 5th generation approach does not recognise that a hybrid can pose a unique and significant environmental threat. Bengal cats are not prohibited matter because they are commonly kept in Queensland. Listing the hybrid Bengal cats (*Prionailurus bengalensis* x *Felis catus*) as an exception to the listing of prohibited animals provides clarity with respect to the status of other hybrids ie other hybrids are prohibited matter – eg a Savannah cat (*Felis catus* x serval (*Felis serval*)) cannot be kept in Queensland.
		Schedule 2 Restricted matter and categories		
Sch 2	3 Southern Downs Regional Council	Part 2 – Restricted matter-invasive biosecurity matter	The Council is concerned with the listing of former class 3 weeds as restricted matter due to the enforcement implications this may pose for SDRC, particularly the listing of the following species; • Camphor laurel (Cinnamomum camphora)	Under the *Land Protection (Pest and Stock Route) Management Act* 2002, a person cannot supply (e.g. sell) or release (includes spread) a class 3 declared pest. Under the proposed legislation, a person cannot distribute or

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			• Cat's claw creeper (Dolichandra unguis-cati) • Dutchman's pipe (Aristolochia spp. other than native species) • Lantana (Lantana montevidensis, Lantana camara) • Privet (Ligustrum lucidum, Ligustrum sinense) SDRC is concerned with the resourcing implications for local governments and believes that the best avenue for management of these species is through biosecurity zone regulatory provisions.	dispose of category 3 restricted matter except in the way prescribed in regulation. Listing some weeds that are currently class 3 declared pests as category 3 restricted matter therefore imposes a very similar level of regulation on these weeds. The *Land Protection (Pest and Stock Route) Management Act* 2002 empowers local governments to take action to control a weed where a class 3 pest is causing, or has the potential to cause, an adverse economic, environmental or social impact on land that is in or adjacent to an environmentally significant area. The general biosecurity obligation under the proposed legislation requires a person to take reasonable steps to prevent or minimise the impacts of any biosecurity risk on human health, social amenity, the economy and the environment. Each local government is required to prepare a biosecurity plan and, in that context, will decide how it will target its activities and ensure the most effective use of its resources to manage biosecurity matter in its area. For some weeds that are established in Queensland, such as those that are currently class 3 weeds, a local government may choose to focus its enforcement activities on land that is in or adjacent to what are currently defined as environmentally significant areas. However, a local government may have other priorities. For example, it may also enforce the general biosecurity obligation to minimise risks where a weed is impacting on the economy or social amenity in part of the local government's area that is not listed as an environmentally sensitive area under the *Land Protection (Pest and Stock Route) Management Act* 2002.
Sch 2	3 Southern Downs Regional Council	Part 2 – Restricted matter-invasive biosecurity matter	While the Council is pleased to see blackberry listed as restricted matter, they argue that the following should also be included; • St. John's Wort (Hypericum perforatum) • Firethorn (Pyracantha angustifolia) • Green cestrum (Cestrum parqui)	These species are not currently declared pests under the *Land Protection (Pest and Stock Route Management) Act 2002*. It is not necessary to list all pests and diseases under the proposed legislation given that the general biosecurity obligation applies to a person who dealings with any biosecurity matter that poses a biosecurity risk whether it is listed or not. Further, local governments may choose to declare any biosecurity matter as a local pest under local law. St John's Wort (*Hypericum perforatum),* Green cestrum (*Cestrum parqui*) and firethorn (*Pyracantha angustifolia)* are presently in the area of Southern Downs Regional Council and that council has declared them as local pests. Green cestrum (*Cestrum parqui*) was previously declared under earlier State legislation from 1952 until 2003 when it was decided that provisions of the *Land Protection (Pest and Stock Route Management) Act 2002* were no longer appropriate to statewide management of this pest.

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				Potential distribution modelling for St John's Wort and firethorn predict restricted distributions in southern Queensland, making application of state wide restrictions unnecessary.
Sch 2	7 AgForce Queensland Industrial Union of Employers	Restricted Matter	Include scientific name (at least to genus and species level, if known) as well as common name. What is the process to amend Schedule 1 and 2 which are included in the Bill? Would an amendment be easier if these two Schedules were included in the proposed regulations instead of the Bill? Why is African love grass Eragrostis curvula not included in Schedule 2- Part 2 – Restricted matter – invasive biosecurity matter?	The listing of biosecurity matter in schedule 2 adequately describes restricted matter. In most cases, the biosecurity matter is listed by its scientific name. However, some biosecurity matter, such biosecurity matter that is not a living thing or biosecurity matter that is a disease, is listed using a common name or in some other way the department currently believes is most appropriate for that biosecurity matter. Clause 492 applies where an authoritative document refers to biosecurity matter by a scientific name or common name that varies in a minor way from the scientific name or common name which appears in the proposed legislation. In such circumstances, the biosecurity matter mentioned in the authoritative document is taken to be the same relevant biosecurity matter under the proposed legislation.
Sch 2	14 Ms Glenda Pickersgill	Category 3 restricted matter	Ms Pickersgill is concerned about the listing of feral red deer as restricted material category 3, and also at the regulation of its disposal. She suggests that a regulation be written under 43 (1) (a) that recognises the historic cultural and economic values of wild deer be preserved in the historical herds of red, fallow, chital and rusa deer (as described in the Deer Farming Act 1985). Ms Pickersgill also recommends that a permitting system and the use of Ecological Deer Management/Quality Deer Management principles as recommended by Research into Deer Genetics and Environment Group (RIDGE) be recognised by State Government as a "reasonable step" towards wild deer control in designated historical herd areas for landholders or groups of landholders.	The listing of feral deer as Category 3 restricted matter is intended to prevent translocation of feral deer and the release of farmed deer into the environment or on to adjoining properties. It does not prevent landholders from allowing hunting access to their properties. A dead animal (unless it is a pathogenic agent, disease or contaminant) is not, by definition, biosecurity matter (see clause 15) and so is not restricted matter subject to restrictions on distribution or disposal. Therefore a hunter who kills a feral deer can take the animal's meat, skin or tusks from the property provided it is not diseased or contaminated. The Feral Deer Management Strategy 2013–18, developed consultation with stakeholders, recognises the historic ranges of feral deer and that recreational hunting groups can contribute to the long-term management of feral red deer and fallow deer in historic ranges. It proposes control of feral rusa deer and chital populations in historic areas to stop ranges expanding in accordance with local government area pest management plans. It also suggests they can also contribute by monitoring and controlling populations and ensuring they do not expand their range or exceed acceptable levels. There would be no impediment to landholders implementing property management plans in historic deer ranges to meet these objectives under the proposed legislation. The general biosecurity obligation will minimise the need for prescriptive regulation about what methods must be used in these areas and enable stakeholders to exploit the full range of risk-reduction methods available for deer. However, discrete or recently established populations or populations with high local impact may become the target of local eradication programs under the strategy.

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Sch 2	12 Research into Deer Genetics and Environment Inc.		It is submitted that the drafting error in Schedule 2 should be corrected by omitting "Rusa" and inserting "Feral Rusa"	The department made an error in its instructions for the listing of rusa deer in the Bill. Government policy is for restrictions to apply only for feral rusa deer. The department will seek to correct the error at an appropriate opportunity.
	17 Local Government Association of Queensland		Rusa deer (Rusa timorensis, syn. Cervus timorensis) should read feral rusa deer in line with other established feral deer. Request the removal of yellow crazy ants and the Tramp Ants category generally as invasive biosecurity matter. Seeking an explanation of rationale for the decision not to declare feral camels and feral donkeys. Other recommendations specific to northern Queensland include the listing of: · water buffalo (Bubalus bubalis) as feral water buffalo; · horse (Equus caballus) as feral horse; and · cattle (Bos spp.) be listed as feral cattle.	The department made an error in its instructions for the listing of rusa deer in the Bill. Government policy is for restrictions to apply only for feral rusa deer. The department will seek to correct the error at an appropriate opportunity. The Australian Government has recently provided funds to the Wet Tropics Management Authority in north Queensland for continued control activity for yellow crazy ants. Imposing restrictions on the distribution or disposal of yellow crazy ants will support these control activities. Camels and donkeys are not declared as pests under the *Land Protection (Pest and Stock Route Management) Act 2002.* It is not necessary to list all pests and diseases under the proposed legislation given that the general biosecurity obligation applies to a person who deal with any biosecurity matter that poses a biosecurity risk whether it is listed or not. Further, local governments may choose to declare any biosecurity matter as a local pest under local law and may undertake reactive management of nuisance animals. The department does not support State-wide declaration the restrictions or requirements imposed for the categories of restricted matter are not justified to support current management objectives. Water buffalo, feral horses and feral cattle and not listed as restricted matter for similar reasons. Furthermore, in relation to water buffalo, the eradication program for brucellosis and tuberculosis (BTEC), in the Northern Territory, and subsequent management and control, have largely removed the risk of a significant water buffalo and feral cattle pest problem. The levels of feral water buffalo and feral cattle are relatively low in Queensland. Although there are populations of feral horses in some areas, the impacts at this time are not significant. Water buffalo may only be kept in Queensland under a permit granted under the *Nature Conservation Act 1992*.
		Schedule 3 Savings and transitional provisions		
Sch 3	3 Southern Downs Regional Council	Division 9 Transitional provisions for Stock Act 1915 126. Existing pest management plans and	The Council feel a model plan prepared by the department would be beneficial in guiding the development of local governments' plans in the face of the changed legislative and regulatory arrangements. SDRC's current Pest Management Plan remains in force until the end of 2013/14 and they will be requesting the Minister approve the	A significant benefit of developing a biosecurity plan for a local government area(s) is bringing together the local community to agree on the priorities and strategies that for biosecurity in their area. This is consistent with the Government's commitment to empower local governments to give local

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		draft plans	extension of our current plan to remain in force until after commencement of the Bill.	people a real say on the future direction of their community. The department will assist local governments by providing information that may inform the development of biosecurity plans but local governments are better placed to ensure plans comprise practical and appropriate local solutions to local issues.
		Schedule 5 Dictionary		
Sch 5	7 AgForce Queensland Industrial Union of Employers		Recommend the following terms are included and defined in the dictionary:- Chief executive - is this the Director General, Chief Veterinary Officer / Chief Plant Health Officer/ Chief Biosecurity Officer or another position within government? Endemic – native, naturalised or restricted to a particular place (Clause 4 – "Purpose of the Act is to manage risks associated with emerging, endemic and exotic pests and diseases that impact on….")	Section 33 of the *Acts Interpretation Act 1954* applies to references to Ministers, departments and chief executives in an Act. Generally, it provides that the chief executive would be the Director General of the department that deals with the matters to which the provision relates and is administered by the Minister who also administers the Act. Clause 495 provides the chief executive may delegate the chief executive's functions and powers under the proposed legislation to an appropriately qualified public service employee. However, the chief executive's powers may not be delegated in relation to making an emergency prohibited matter declaration; making a biosecurity emergency order; making a movement control order; acting under the authority of a biosecurity zone regulatory provision or authorising surveillance or a prevention and control program. The department's view is that ordinary meaning of endemic is sufficient for the purposes of the proposed legislation.
Sch 5	9 Powerlink Queensland	Lack of definition of precautionary principle	Powerlink notes a potential discrepancy in the definition of the precautionary principle between the Bill and the Explanatory Notes to the Bill and seeks clarification of the intended definition. Powerlink submits that the terminology "only where there is a risk of serious or irreversible damage" should be inserted in the definition of the Bill.	The proposed legislation provides that its purposes are achieved by (among other things) including in risk-based decision making the principle that a lack of full scientific certainty should not be used as a reason to postpone taking action to prevent a biosecurity event or to postpone a response to a biosecurity risk. In relation to emergency events, the explanatory notes clarify that a lack of scientific certainty should not postpone action to manage emergency biosecurity events where serious or irreversible damage is plausible. The principle, however, has broader application than emergency biosecurity events. That is, there are many instances in the proposed legislation where statutory powers can be exercised in the absence of scientific certainty. Similarly, any obligation for persons to take action to address biosecurity risks cannot be avoided because there is no scientific certainty regarding the risk. The term 'precautionary principle' is not used in the proposed legislation and therefore does not require definition.
Sch 5	12 Research into Deer Genetics and	Schedule 5 – Definition of feral	It is submitted that: For the definition feral – omit "escape proof enclosure", insert "normally escape proof enclosure"	Wild pigs, goats and deer would be considered feral pigs, goats and deer under the proposed legislation if they are not farmed or kept for another purpose in an escape-proof enclosure, cage or other structure. The

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	Environment Inc.			requirement for an escape-proof fence reflects the serious damage that escaped wild pigs, goats and deer could cause to agriculture and the environment. Exceptional circumstances that compromised an enclosure, cage or other structure would be taken into account when the proposed legislation is enforced. Alternative legislative approaches, such as allowing wild animals to be kept in an enclosure that is 'normally' escape proof would compromise the enforcement of those provisions.
Sch 5	13 Australian Livestock and Property Agents Association Ltd.	Saleyard definition	ALPA is concerned the definition of "saleyard" is too broad, and could create responsibilities that may be assumed if the definition is not amended. ALPA believes there is confusion and lack of consistency between the legislative definition, practicalities and intention. ALPA's recommendation is to amend the saleyard definition to be in line with the perception that a saleyard is where a public auction of livestock takes place. One suggestion is the definition from the NLIS (Sheep and Goats) Business Rules which defines a saleyard as: "Any place where stock are aggregated and sold by public auction or tender, and may include on-property sales, circuit sales, sales at shows and sales interfaced with on-line sales."	The department recognizes that the definition of saleyard in the proposed legislation, although consistent with the definition in the current legislation, does not implement the nationally agreed approach to reporting of consignment of stock following private sales. The department will consult with relevant stakeholders before proposing an amendment to the definition is made at an appropriate opportunity.