

2024

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

BIOSECURITY LEGISLATION AMENDMENT BILL 2024

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Rebecca Vassarotti MLA
Minister for the Environment, Parks and Land Management**

BIOSECURITY LEGISLATION AMENDMENT BILL 2024

INTRODUCTION

This explanatory statement relates to the Biosecurity Legislation Amendment Bill 2024 (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004* (HR Act).

OVERVIEW OF THE BILL

The purpose of the Bill is to support the implementation of the *Biosecurity Act 2023* by making updates to a range of Territory legislation.

The Bill makes amendments to several pieces of legislation that relate to the management of biosecurity risks, including updating references to the following laws to be repealed:

1. *Animal Diseases Act 2005*;
2. *Pest Plants and Animals Act 2005*; and
3. *Plant Diseases Act 2002*.

The Bill also aligns legislation which contains exemptions or explanations in relation to how provisions apply to biosecurity matters, particularly pests. The term pest or declared pest under the Biosecurity Act has been chosen to match the particular circumstances of legislation being amended.

Notably, the Biosecurity Act provides a single, consolidated regulatory framework for the management of plant and animal pests and diseases. As a result, legislation relating to pest plant and animals, and animal and plant diseases, needs to be amended for consistency and clarity.

The passage of the Bill ensures that relevant Territory legislation will align with the Biosecurity Act and that transitional provisions are in place to ensure the smooth transition to the new biosecurity framework.

This Bill does not affect biosecurity risks to the human population, which continue to be regulated under the *Public Health Act 1997* (ACT).

The Bill is separated into 3 schedules for ease of reference:

1. minor amendments;
2. consequential amendments; and
3. technical amendments.

Each piece of legislation amended by the Bill is discussed in turn.

Administrative Decisions (Judicial Review) Act 1989

The Bill creates a 10 business day application period for judicial review of biosecurity emergency declarations (Part 3, Biosecurity Act) and biosecurity control declarations (Part 4, Biosecurity Act) under the *Administrative Decisions (Judicial Review) Act 1989* (ADJR Act).

Further discussion of this amendment is provided for in the section on [Consistency with Human Rights](#) about how the Bill may limit the [right to a fair trial](#), which is protected by section 21 of the HR Act.

The Bill also removes references to the Plant Diseases Act in schedule 1.

Animal Welfare Act 1992

The Bill includes a technical amendment of the *Animal Welfare Act 1992* to relocate the definition of *pest* to section 21.

Biosecurity Act 2023

Correction of drafting error

The Bill fixes a technical drafting error in section 31(5).

Extension of prosecution period

The Bill amends the Biosecurity Act to extend the limitation period for 4 offences under the Biosecurity Act by 12 months.

Further discussion of this amendment is provided for in the section on [Consistency with Human Rights](#) about how the Bill may limit the [right to a fair trial](#), which is protected by section 21 of the HR Act.

Information sharing provisions

The Bill makes amendments to enable information sharing for the purposes of managing biosecurity risk for information collected under the following laws:

- *Animal Welfare Act 1992*;
- *Domestic Animals Act 2000*;
- *Environment Protection Act*;
- *Fisheries Act 2000*;
- *Nature Conservation Act 2014*;
- *Stock Act 2005*; and
- *Urban Forests Act 2023*.

Further discussion of this amendment is provided for in the section on [Consistency with Human Rights](#) about how the Bill may limit the [right to privacy and reputation](#), which is protected by section 12 of the HR Act.

Transitional provisions

The Bill also allows for transitional provisions to ensure the effective and efficient transition from repealed regulatory regimes to the modernised biosecurity framework, including:

- continued recognition of beekeeper registration until the expiration;
- appointments under—
 - section 64, Animal Diseases Act;
 - section 30, Pest Plants and Animals Act; and
 - section 19, Plant Diseases Act.

The provisions also make clear that certain appointments under the above Acts are taken to be statutory instruments under the Biosecurity Act, section 168.

The provisions ensure that on commencement day an authorised person does not need to reissue the registration or appointment again, reducing the administrative burden on administering agencies and beekeepers, and ensuring that biosecurity risks continue to be appropriately managed.

There are a very small number of permits issued under the Pest Plants and Animals Act which can be effectively transitioned without imposing under administrative burden on the administering agencies and the affected parties. As a result, transitional provisions have not been included.

Section 235 (3) is amended as a consequence of ensuring certain appointments under the Animal Diseases Act, the Pest Plants and Animals Act and the Plant Diseases Act are taken to be appointments under the Biosecurity Act.

Environment Protection Act 1997

The Bill aligns the definition of pest with the Biosecurity Act.

Environment Protection Regulation 2005

The Bill updates the exemption to the offence provision in section 10 (Burning certain substances requires environmental) relating to the Animal Diseases Act to refer to the Biosecurity Act.

Similarly, the reference to the Animal Diseases Act in Schedule 1 is also updated to the Biosecurity Act.

Firearms Act 1996

The Bill updates provisions to ensure that authorised persons under the Biosecurity Act can obtain a firearms licence if required in their duties (for example, destruction of animals) and cross-border recognition of licences for those assisting in responding to biosecurity incidents in the ACT.

Firearms Regulation 2008

The Bill updates provisions to ensure that authorised persons under the Biosecurity Act can obtain a firearms licence if required in their duties (for example, destruction of animals) and cross-border recognition of licences for those assisting in responding to biosecurity incidents in the ACT.

The Bill also aligns the definition of pest with the Biosecurity Act.

Fisheries Act 2000

The Bill aligns the definition of pest with the Biosecurity Act.

Land Titles Act 1925

The Bill aligns the definition of pest with the Biosecurity Act.

Prohibited Weapons Regulation 1997

The Bill aligns the definition of pest with the Biosecurity Act.

Stock Act 2005

This Bill modernises several aspects of the Stock Act in light of the development and implementation of the National Livestock Identification System (NLIS).

The NLIS is Australia's system for identifying and tracking the movements of certain animals for disease control, food safety and market access purposes, and includes mandatory requirements for recording movements of certain animals.

Section 234 (2) (d) of the Biosecurity Act allows for regulations to be developed for the marking, branding, tagging, or attaching of a device or other identifier to any biosecurity matter or carrier whether on a voluntary or mandatory basis. The regulations under the Biosecurity Act will implement the NLIS provisions in the ACT.

The Bill:

- replaces alpacas with species of the family Camelidae (which includes camels, llamas and alpacas);
- amend the provisions of the Stock Act regarding the use of earmarks to make this an optional rather than mandatory requirement for small stock; and
- updates provisions relating to the travelling stock permit requirements in Part 4 of the Stock Act.

Camelidae

The Bill expands the coverage of the Stock Act to species of the family Camelidae to more strongly align with other regulations relating to livestock.

Ear marking of stock

The Bill removes the compulsory requirement for earmarking of small stock and extend the current requirement for the agreement of the Director-General to earmark large stock to all stock.

Ear tagging and ear marking are both used to identify livestock; however, most states have, or are in the process of making it an optional, rather than mandatory requirement.

This change will have a positive effect on animal welfare outcomes, noting that the RSPCA opposes ear notching¹.

¹ [RSPCA Position paper B4—Painful farm animal husbandry](#) at paragraph 12.2

Travelling stock permit requirements

The Bill updates the travelling stock permit requirements in Part 4 of the Stock Act to:

- recognise compliance with the NLIS's requirements for recording stock movements as an exemption to the permit requirement;
- extend permitting requirements to species of the family Camelidae; and
- allow for exemptions to the permit requirements.

These changes will:

- reduce the administrative burden on the directorate and business;
- ensure the consistent treatment of similar species (for example, alpacas and llamas); and
- allow for increased flexibility.

Unit Titles (Management) Act 2011

The Bill updates the note at Section 32 (1) to remove repealed legislation and refer to the Biosecurity Act.

Urban Forest Act 2023

The Bill aligns the definition of pest with the Biosecurity Act.

CONSULTATION ON THE PROPOSED APPROACH

Key partners, stakeholders and the Canberra community were engaged throughout the development of the Biosecurity Act.

Consultation during the development of this Bill was targeted to ACT Government stakeholders due to the technical nature of the Bill. Progressing technical alignments will ensure smooth implementation of the Biosecurity Act, which was developed after an extensive review and consultation period.

External stakeholders

The public was consulted during the development of the Biosecurity Act through a public discussion paper in 2018. The consultation indicated public support for legislative reform, including the need for:

- a unified, single-piece of legislation;
- to better align with the NSW biosecurity system to minimise red tape and enhance the efficacy of on-ground risk management operations;
- modernisation of frameworks to better safeguard the ACT's economy, environment and community in response to current and emerging biosecurity issues.

ACT Government agencies

The business units responsible for the legislation that this Bill is amending were consulted during the development of the Bill. This ensured that the changes relating to the Biosecurity Act were understood and provided an opportunity for minor refinements to the draft provisions to be identified to avoid any unintended impacts of the changes.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the Bill due regard was given to its compatibility with human rights as set out in the HR Act, noting the Bill is not a Significant Bill and does not engage human rights to a significant extent.

The *Biosecurity Bill 2023* was considered a significant bill. A significant human rights analysis was undertaken during the development of Biosecurity Bill in the preparation of the explanatory statement for it. Most amendments in this Bill are minor and technical in nature.

Rights engaged

The Bill engages and may limit the following rights under the HR Act under specific situations which may arise when functions under the Bill are undertaken:

- section 9—Right to life (promoted);
- section 12—Right to privacy and reputation (limited);
- section 22—Right to a fair trial (limited); and
- section 22—Right to be presumed innocent (engaged).

Rights Promoted

Section 9—Right to life

Section 9 (1) of the HR Act recognises that everyone has the right to life. In particular, no one may be arbitrarily deprived of life.

The right to life requires the ACT Government to safeguard life where there may be a real and immediate direct or indirect risk to life. The Bill furthers a regulated and risk-based approach to biosecurity management that without, there may be outcomes that pose a risk to the health, safety or economic wellbeing of a person and the broader community.

All authorised persons and entities acting under the function of the Biosecurity Act are required to be adequately and appropriately qualified and experienced. This is to ensure that biosecurity risk management is carried out in accordance with prescribed methods and does not lead to the contamination of human food and water supplies, animal feedstock, or the environment.

Equally, the handling of biosecurity matter may make a person vulnerable to contagions or disease, which could impact on their health or safety. The biosecurity risk-minimisation measures, which this Bill continues, may impact on other rights in the HR Act; however, those measures are designed to reduce the likelihood of exposing a person to such potential biosecurity risks.

Further, if a biosecurity event is not appropriately managed it could result in significant avoidable costs to human, animal or plant health and safety if the biosecurity event spreads beyond the premises.

Rights Limited

The Bill limits:

- the right to privacy and reputation, which is protected by section 12 of the HR Act; and

- the right to a fair trial, which is protected by section 21 of the HR Act.

Right to privacy and reputation—Information sharing provisions

Nature of the right and the limitation (s28(a) and (c))

Section 12 (a) of the HR Act recognises that everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and section 12 (b) recognises the right not to have his or her reputation unlawfully attacked.

The Bill engages the right to privacy in section 12 (a) of the HR Act by allowing for information collected under certain laws to be shared between government agencies for the purposes of managing biosecurity risks.

Legitimate purpose (s28(b))

The object sought to be achieved by these provisions is to ensure that biosecurity risks are effectively managed under Biosecurity Act which seeks to protect the ACT’s economy, environment and community.

Rational connection between the limitation and the purpose (s28(d))

There is a clear connection between the limitation and the legitimate purpose.

Notwithstanding the consolidation of biosecurity legislation into a single piece of legislation, information relevant to biosecurity risks is collected under several laws.

Biosecurity risk means the risk of a biosecurity impact happening (s 13, Biosecurity Act), where biosecurity impact—

- arises from, or has the potential to arise from, biosecurity matter or a carrier, or a dealing with biosecurity matter or a carrier; and
- is related to at least 1 of the following:
 - the introduction, presence, spread or increase of a pest in any part of the ACT;
 - the introduction, presence, spread or increase of a disease or disease agent in any part of the ACT;
 - an animal, plant, animal product or plant product becoming contaminated;
 - any other thing or circumstance prescribed by regulation. (section 12, Biosecurity Act).

Terms such as **biosecurity matter**, **carrier** and **pest** are also defined in the Biosecurity Act.

Sharing of information between agencies in relation to the following legislation is necessary as they are likely to hold information relevant to managing biosecurity risks. The table below provides examples of information relevant to management of biosecurity risk:

Legislation	Example of information relevant to the management of biosecurity risk (not exhaustive)
Animal Welfare Act	s 26, licence to use or breed animals for research, teaching s 54, circus or travelling zoo permit

Legislation	Example of information relevant to the management of biosecurity risk (not exhaustive)
	s 63, trapping permit (commercial and private)
Domestic Animals Act	ss 6 & 84A, registration of dog or cat s 72A, breeding licence
Environment Protection Act	item 1.2 (13) of schedule 1, facility for milking of animals item 1.2 (15) of schedule 1, processing of agricultural crops item 1.2 (17) of schedule 1, operation of a stock feedlot item 1.2 (18) of schedule 1, keeping of poultry item 1.2 (19) of schedule 1, operation of commercial stockyard item 1.2 (20) of schedule 1, operation of an abattoir item 1.2 (21) of schedule 1, commercial cleaning or carbonisation of wool item 1.2 (22) of schedule 1, tanning of animal skins or fellmongery
Fisheries Act	s 45, licence to sell fish s 49, licence to undertake aquaculture using a facility that exceeds the aquaculture capacity limit s 76, licence to import or export live fish or both ss 76A, 76B and 76C licence to traffic, take or possess in a commercial quantity of fish of a priority species
Nature Conservation Act	s 132, taking a native animal for commercial purposes s 133, keeping non-exempt animals s 134, selling non-exempt animal ss 136 and 137, importing or exporting non-exempt animal for commercial purposes s 138, releasing animal from captivity ss 140, 141, 142 and 143. taking plants from unleased land for scientific or research purposes (s140) s 148 selling a native plant that is a protected native species or is a member of a species that has special protection status

Legislation	Example of information relevant to the management of biosecurity risk (not exhaustive)
	ss 150 and 151, importing or exporting a native plant that is protected native species or is a member of a species that has special protection status
Stock Act	s 9, returns for stock levy
Urban Forests Act	part 4, registration of trees

Proportionality (s28 (e))

The limitations on the right to privacy are considered proportionate to the legitimate purpose. The proposed law serves to balance the need to protect the ACT's economy, environment and community from biosecurity risks in a efficient and effective manner against the right privacy rights of individuals.

Information sharing has been limited to information collected under the following laws and does not apply generally to information held by the ACT Government:

- Animal Welfare Act;
- Domestic Animals Act;
- Environment Protection Act;
- Fisheries Act;
- Nature Conservation Act;
- Stock Act; and the
- Urban Forests Act.

The information gained must:

- not be sensitive information, as defined in section 14 of the *Information Privacy Act 2014*; and
- not be personal health information as defined in the *Health Records (Privacy and Access) Act 1997*.

A significant safeguard provided for section 222A (1) is that the information sharing entity must be satisfied on reasonable grounds that the information is necessary for the exercise of the Director-General's or authorised person's functions. The need to form a reasonable belief means that information cannot be shared arbitrarily or without reference to the functions under the Biosecurity Act.

An authorised person accessing information under these provisions must otherwise comply with the Territory Privacy Principles.

For the avoidance of doubt, any privileges or immunities related to the informed shared remains attached to that information.

Several safeguards also exist in relation to ACT Public Servants for official or personal information. As stated at paragraph 54 of the ACT Public Sector Code of Conduct²:

Unauthorised access, disclosure or leaking of official information for personal gain is a serious matter. Public employees have ethical responsibilities to safeguard this information and to ensure it is used only for official purposes. These responsibilities also take the form of legal obligations. Accessing or discussing this information outside of the work context is against these legislative responsibilities under the [Public Sector Management Act 1994] and [Public Sector Management] Standards, the Criminal Code 2002, Privacy Act 1988 (Cth), Workplace Privacy Act 2011 and the Health Records (Privacy and Access) Act 1997.

Information sharing provisions:

- reduce red-tape on individuals by limiting the need for duplicate registrations and other actions under the Biosecurity Act;
- encourage cooperation and integration of biosecurity-related activities across government; and
- facilitate the effective and efficient management of biosecurity risks, such as ensuring relevant people can be consulted or notified about biosecurity risks.

Existing provisions in the Biosecurity Act—such as section 177, power to require information, documents, etc—are inappropriate for these purposes as they largely apply in the compliance and enforcement context and are not relevant to proactive, biosecurity risk assessment, planning and management.

Right to a fair trial—ADJR Act application period

Nature of the right and the limitation (s28(a) and (c))

The right to a fair trial extends to third parties whose substantive legal rights may be affected by a determination, and to having a matter reheard if a party believes the decision is wrong on a question of law.

The Bill would amend the ADJR Act to provide that an application to review the following decisions under the ADJR Act must be made within 10 business days of the decision:

- biosecurity emergency declarations (Part 3 of the Biosecurity Act)
- biosecurity control declarations (Part 4 of the Biosecurity Act).

ADJR Act review without limitation would remain for other decisions under the Biosecurity Act, such as:

- biosecurity permits and group exemptions;
- biosecurity registrations; and
- biosecurity certifiers, auditors and authorities.

² Public Sector Standards Commissioner Policy number: 39/2022, Issue Date: 20 May 2022

Legitimate purpose (s28(b))

The object sought to be achieved by these provisions is to facilitate certainty and confidence in biosecurity measures that will achieve wide policy and public benefit. This will ensure that biosecurity management occurs in a way that supports and enhances the Territory's economy, environment and community.

Rational connection between the limitation and the purpose (s28(d))

Restricting the application period for review of decisions the ADJR Act seeks to improve certainty for biosecurity management in emergency and medium-term control contexts. Such declarations are needed to ensure that measures are in place as soon as possible to prevent:

- the contamination of human food and water supplies, animal feedstock, or the environment; and/or
- a person vulnerable to contagions or zoonotic disease, which could impact on their health or safety.

Limiting application for review of such orders to 10 business days provides certainty for individuals and businesses that are affected by the declarations, particularly when the declaration may require destruction of goods in some instances (for example, destruction of hives infested with varroa mite), and encourages aggrieved individuals to bring forward any concerns about the decisions at the earliest opportunity rather than deferring action.

Proportionality (s28 (e))

The limitations on the right to a fair trial are considered proportionate to the legitimate purpose by balancing the need to protect the ACT's economy, environment and community from biosecurity risks against an existing right to ADJR review.

The limitation the ADJR Act avenues of review removes an avenue of review but does not exclude judicial review under the broad jurisdiction of the ACT Supreme Court³.

Several safeguards exist. For example, ensuring that an emergency measure or control declaration is no more onerous than the Minister considers necessary, considering the nature of the biosecurity risk. There are also specific limitations for measures relating to:

- movement of people;
- treatment of people;
- inspection of people; and
- destruction of things.

This approach has been followed in determining which decisions should not be subject to a restricted application period. For example, decisions about the following are subject to ADJR Act review because they predominantly affect individuals:

- biosecurity permits and group exemptions;
- biosecurity registrations; and

³ Section 48A(1) of the *ACT Supreme Court (Transfer) Act 1992* (Cth) gave the Supreme Court: "... all the original and appellate jurisdiction that is necessary for the administration of justice in the Territory."

- biosecurity certifiers, auditors and authorities.

Whereas biosecurity emergency declarations and biosecurity control declarations have a more general application; however it is noted that they may affect individuals. For example, by requiring the destruction of property or make conditions about the use of private property:

The least restrictive mechanism for achieving the policy outcome of certainty has been chosen through limiting the application period. More restrictive mechanisms, such as total exclusion of ADJR review has not been pursued.⁴

As a comparison, the Commonwealth *Administrative Decisions (Judicial Review) Regulations 2017* exempts the following from judicial review by the Federal Court or the Federal Circuit and Family Court of Australia:

- decisions under Part 1 of Chapter 8⁵ of the Commonwealth *Biosecurity Act 2015* in relation to a declaration made under subsection 443(1) of that Act ie the Governor-General may declare that a biosecurity emergency exists
- decisions under Part 1 of Chapter 8 of the Commonwealth *Biosecurity Act 2015* to determine a requirement, give a direction, take any action or exercise any other power during a biosecurity emergency period (within the meaning of that Act) ie Emergency requirements, directions and actions.

It should further be noted that the Biosecurity Act in the ACT can be distinguished from its federal counterparts in that it does not relate to human biosecurity.

⁴ Currently, certain decisions under the Plant Diseases Act are exempt from review under the ADJR Act, which was enacted prior to the HR Act. The proposed approach for biosecurity emergency declarations (Part 3 of the Biosecurity Act) and biosecurity control declarations (Part 4 of the Biosecurity Act) is less restrictive than this existing approach.

⁵ Decisions under Part 1 of Chapter 8 of the Commonwealth *Biosecurity Act 2015* are largely analogous to the decisions in Part 3 of the *Biosecurity Act 2023* (ACT) for biosecurity emergency declarations.

Right to a fair trial—Prosecution period

Nature of the right and the limitation (s28(a) and (c))

The right to a fair trial relevantly requires that each party have a reasonable opportunity to prepare and present their case, and that the matter be heard expeditiously and without undue delay (which will vary based on the circumstances and complexity of the matter).

The effect of sections 120(3) of the *Magistrates Court Act 1930* and section 192(2) of the *Legislation Act 2001* limit the prosecution period to 1 year. Only those offences punishable by imprisonment for longer than 6 months have an indefinite prosecution period.

The Bill would extend the prosecution period for the following offences by 12 months, making the total prosecution period 24 months:

- section 27 (1), failure to comply with duty to notify biosecurity event;
- section 31 (1), failure to comply with duty to notify presence of notifiable biosecurity matter;
- section 34 (1), dealing with prohibited biosecurity matter; and
- section 36 (1), engage in prohibited dealing.

These amendments also engage the right to be presumed innocent, because it extends the prosecution period for strict liability offences.

Legitimate purpose (s28(b))

The object sought to be achieved by these provisions is to ensure that biosecurity offences are enforceable thereby promoting compliance with the Biosecurity Act which seeks to protect the ACT's economy, environment and community from biosecurity risks.

Under current legislative provisions, offences detected 12 months after it was originally committed cannot be pursued unless an offence punishable by imprisonment for longer than 6 months can be identified. This represents a significant limitation on the enforceability of the Biosecurity Act's provisions, given the context in which the Act operates.

Rational connection between the limitation and the purpose (s28(d))

There is a clear connection between the limitation and the legitimate purpose.

Biosecurity offences provide challenges in investigation and prosecution.

Specialist testing—for example epidemiological testing or referral to specialists to confirm the taxonomy of a specimen—is also often required.

These factors are compounded by the limited biosecurity resources within the ACT and our reliance on NSW biosecurity capabilities.

The most important factor supporting the extension of the prosecution period is that detection of the offence may not occur until several months after the act giving rise to the offence. For example, detection of Varroa mite (*Varroa destructor*) and Red imported fire ant (*Solenopsis invicta*) occurred 6–12 months after the incursions in New South Wales.

Examples of how such situations could apply to the excluded offences is provided below:

Section 27 (1), failure to comply with duty to notify biosecurity event—example

Red imported fire ant are declared as a pest, notifiable and prohibited species.⁶ They are also listed on the following:

- [National Priority Plant Pest List \(2019\)](#); and
- [National Priority List of Exotic Environmental Pests, Weeds and Diseases \(2020\)](#).

An importer of nursery products brings nursery plants into the ACT. Upon arrival, the importer finds live ants on the plants they are unable to identify. The importer sprays the plants with an insecticide and takes no further action.

As a result, an ant Queen flies off to mate and establish a new colony in unleased land. The species is red imported fire ants. The colony is not detected for 12 months.

Section 31 (1), failure to comply with duty to notify presence of notifiable biosecurity matter—example

Varroa mite is a notifiable biosecurity matter under the Biosecurity Act.⁷

An apiarist buys second-hand hives and brings them into the ACT without treatment. The hives are infected with varroa mite, which quickly spreads to their other hives. The apiarist does not report the unusual pest they see in their hives.

The hives swarm in spring and the varroa mite spreads to feral hives in the ACT. The varroa mites are detected several months later, with genetic testing providing evidence of the source of the incursion.

Section 34 (1), dealing with prohibited biosecurity matter—example

Electric ants (*Wasmannia auropunctata*) are a prohibited biosecurity matter under the Biosecurity Act.⁸ Electric ants have significant adverse affects on human health and lifestyle, the environment and agricultural industries. They are also listed on the following:

- National Priority Plant Pest List (2019); and
- National Priority List of Exotic Environmental Pests, Weeds and Diseases (2020).

A hobby ant collector finds a new pest species when visiting Cairns on holidays. The ant collector brings the species back to the ACT to raise in their ant farm and quickly escape.

The hobbyist occasionally sprays for ants around his property but the invasive species become established. The hobbyist moves several months later and the new occupant reports the strange ants.

Section 36 (1), engage in prohibited dealing—example

Dealing with tilapia (*Oreochromis spp.*), a fish species, is prohibited under the Biosecurity Act.⁹

⁶ Example only as declarations under the Biosecurity Act have not yet been made.

⁷ *ut supra*

⁸ *ut supra*

⁹ *ut supra*

A person buys some fish from a seller on GumTree. The purchaser keeps the species for several months until they get bored with keeping fish. Rather than dispose of the fish, they take them to the stormwater drain in their backyard.

As tilapia are highly adaptable and tolerant to a wide range of water quality conditions, they establish themselves in the stormwater drain. They are not detected until they spread further.

Both the purchaser and seller have engaged in a prohibited dealing as tilapia must:

- not be distributed, either by sale or gift, or released into the environment;
- not be kept or fed; and
- be killed and disposed of as soon as practical.

Proportionality (s28 (e))

The limitations on the right to a fair trial are considered proportionate to the legitimate purpose. The proposed law serves to balance the need to protect the ACT's economy, environment and community from biosecurity risks in a timely and expedient manner against the right of an offender to have their matter be heard expeditiously and without undue delay.

Proportionality has been achieved through limiting the application of the extension to 4 specified offences.

The extension of the prosecution period by 12 months has been assessed as an appropriate period to balance the issues raised in biosecurity offences noting that biosecurity offences may not be detected until 12 months after the original offence.

It is emphasised that such an extension does not otherwise limit the offender's recourse to the Courts in such matters and other safeguards such as those relating to all criminal defendants and those in Part 3.8 of the Magistrates Court Act relating to infringement notices.

Biosecurity Legislation Amendment Bill 2024
Human Rights Act 2004—Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004*, I have examined the **Biosecurity Legislation Amendment Bill 2024**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA

Attorney-General

CLAUSE NOTES

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause states that the name of the Act is the *Biosecurity Legislation Amendment Act 2024* (the Act).

Clause 2 Commencement

This clause provides that the Act will commence on the commencement of section 3 of the Biosecurity Act.

Clause 3 Legislation amended

This clause provides for this Act to amend the legislation mentioned in schedules 1, 2 and 3.

SCHEDULE 1 MINOR AMENDMENTS

Part 1.1 *Biosecurity Act 2003*

Clause 1.1 Section 31 (5)

This clause removes the reference to a 'biosecurity event' and inserts 'presence of a notifiable biosecurity matter' in the offence provision for failing to notify the presence of notifiable biosecurity matter.

Clause 1.2 New section 204A

This clause amends the Biosecurity Act to extend the prosecution period for the following offences under the Biosecurity Act by 12 months:

- section 27 (1), failure to comply with duty to notify biosecurity event;
- section 31 (1), failure to comply with duty to notify presence of notifiable biosecurity matter;
- section 34 (1), dealing with prohibited biosecurity matter; and
- section 36 (1), engaging in prohibited dealing.

The clause displaces sections 120(3) of the Magistrates Court Act and section 192(2) of the Legislation Act which limit the prosecution period to 1 year.

For the avoidance of doubt, this amendment does not affect any other rights of defendants.

Clause 1.3 New part 15A

This clause creates an information sharing regime for information created under biosecurity-related legislation and does not apply generally to information held by the ACT Government:

- Animal Welfare Act;
- Domestic Animals Act;
- Environment Protection Act;
- Fisheries Act;
- Nature Conservation Act;
- Stock Act; and the
- Urban Forests Act.

The information gained must:

- not be sensitive information, as defined in section 14 of the *Information Privacy Act 2014*; and
- not be personal health information as defined in the *Health Records (Privacy and Access) Act 1997*.

The information sharing entity must be satisfied on reasonable grounds that the information is necessary for the exercise of the Director-General's or authorised person's functions.

An authorised person accessing information under these provisions must otherwise comply with the Territory Privacy Principles.

For the avoidance of doubt, any privileges or immunities related to the informed shared remains attached to that information.

Clause 1.4 Sections 223 and 224

This clause relocates these sections to part 15A for readability.

Clause 1.5 Dictionary, note 2

This clause inserts veterinary practitioner in the list of terms defined in the Legislation Act.

Part 1.2 Stock Act 2005

Clause 1.6 Section 22 heading

This clause updates the heading of section 22 to reflect the substantive amendments made in clause 1.7.

Clause 1.7 Section 22 (1) (a)

This clause extends the requirement for permission to mark the ear of stock from large to both large and small stock.

Clause 1.8 Section 23

This clause repeals the offence in section 23 of the Stock Act.

Clause 1.9 Section 26A

This clause updates the definition of NLIS requirements to correspond to regulations under the Biosecurity Act.

Section 234 (2) (d) of the Biosecurity Act allows for regulations to be developed for the marking, branding, tagging, or attaching of a device or other identifier to any biosecurity matter or carrier whether on a voluntary or mandatory basis. Regulations being drafted under this provision will implement the NLIS provisions in the ACT.

Clause 1.10 New section 28

This clause inserts a new provision allowing for the Director-General to exempt certain circumstances of travel from the requirement to have a permit as provided for in section 29 (1) of the Stock Act.

The exemption may apply to a:

- class of persons;
- type of animal; or
- an activity or event.

Clause 1.11 Section 29 (2)

The clause extends the exemption to the requirement to have a permit as provided for in section 29 (1) of the Stock Act to:

- a person who has recorded the movement in accordance with NLIS provisions; or
- is travelling the stock to or from a veterinary practitioner.

Clause 1.12 New section 30 (1A)

The clause provides that the requirement to provide a travelling stock permit under section 30 (1) of the Stock Act does not apply to:

- a person who has recorded the movement in accordance with NLIS provisions; or
- is travelling the stock to or from a veterinary practitioner.

Clause 1.13 Dictionary, note 2

This clause inserts veterinary practitioner in the list of terms defined in the Legislation Act.

Clause 1.14 Dictionary, new definition of camelid

This clause inserts the definition of camelid other than vicuna or guanacos to align with the definition used in other livestock regulations.

Clause 1.15 Dictionary, definition of large stock

This clause replaces the term ‘alpaca’ with the term ‘camelid’. Camelid means a species of the family Camelidae including camels, alpacas and llamas. The amendment therefore extends the application of requirements for large stock under the Stock Act to include camels and llamas.

Vicuña and guanacos remain excluded from the Stock Act’s operation consistent with other livestock regulations.

Clause 1.16 Dictionary, new definition of NLIS requirements

This clause inserts a signpost definition for *NLIS requirements* as a consequence of the insertion of the definition of that term in section 26A for part 4.

SCHEDULE 2 CONSEQUENTIAL AMENDMENTS

Part 2.1 *Administrative Decisions (Judicial Review) Act 1989*

Clause 2.1 New section 10 (2A)

This clause inserts a new section 10 (2A), which limits the application period for judicial review under the ADJR Act to 10 business days for decisions made in relation to biosecurity emergency declarations (Part 3, Biosecurity Act) and biosecurity control declarations (Part 4, Biosecurity Act).

Clause 2.2 Schedule 1, item 16

This clause removes a reference to the Plant Diseases Act.

Clause 2.3 Dictionary, note 2

This clause inserts *business day* in the list of terms defined in the Legislation Act.

Part 2.2 *Biosecurity Act 2023*

Clause 2.4 New part 16A

Clause 2.4 inserts a new part 16A in the *Biosecurity Act 2023* to deal with matters of a transitional nature.

New section 234A inserts a definition of *commencement day* for part 16A.

New section 234B ensures that registrations of beekeepers under the Animal Diseases Act remain in force until the expiration of the registration.

New section 234C enables authorised people and inspectors under the following acts to continue until the end of the appointment (unless ended earlier):

- the Animal Diseases Act, section 64;
- the Pest Plants and Animals Act, section 30; and
- the Plant Diseases Act, section 19.

In particular, new section 234C makes it clear that the instruments of appointment mentioned in that subsection are taken to be statutory instruments made under the Biosecurity Act, section 168. This will make it clear for users of the Biosecurity Act that those instruments are taken to be instruments under the Biosecurity Act.

New section 234D enables the Executive to make regulations dealing with transitional matters.

The section contains 2 different regulation making powers.

Section 234D (1) enables the making of a regulation to deal with any transitional matter that arises because of the enactment of the Bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act's purpose.

Section 234D (2) enables the making of a regulation that modifies the Act. A regulation under this section may only modify part 16A of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Section 234D (3) gives a regulation under section 234D (2) full effect according to its terms. A provision of part 16A of the Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The section is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly. Also, any modification by regulation of part 16A of the Act has no ongoing effect after the expiry of that part.

Section 234E provides that the transitional provisions expire 3 years after the commencement of the Act.

Clause 2.5 Section 235 (3)

Section 235 (3) is amended as a consequence of the inclusion of section 234C (3) in new part 16A. This amendment makes it clear that the instruments mentioned in section 235 (3) are not repealed.

Part 2.3 *Environment Protection Act 1997*

Clause 2.6 Schedule 1, section 1.1, new definition of pest

This clause inserts the definition of pest to align with section 11 (1) of the Biosecurity Act.

Clause 2.7 Dictionary, new definition of pest

This clause inserts the definition of pest in the Dictionary.

Part 2.4 *Environment Protection Regulation 2005*

Clause 2.8 Section 10 (2)

This clause replaces the exemption to the offence in section 10 (1) for actions done in accordance with a direction under the Animal Diseases Act. The replacement is with anything required to be done under the Biosecurity Act. Actions under the Biosecurity Act are principally a biosecurity emergency declaration (Part 3) and biosecurity control declaration (Part 4).

The requirements in sections 46, 48, 201, 202 and 203 of the Biosecurity Act relating to destruction of things must be met.

Compensation mechanisms are provided for in Part 14 of the Biosecurity Act.

This amendment does not affect any defence provided for in section 43 of the Criminal Code.

Clause 2.9 Section 10 (4) (b)

This clause replaces the exemption to the offence in section 10 (3) for actions done in accordance with a direction under the Animal Diseases Act. It is replaced with anything required to be done under the Biosecurity Act. Actions under the Biosecurity Act are principally a biosecurity emergency declaration (Part 3) and biosecurity control declaration (Part 4).

The requirements in sections 46, 48, 201, 202 and 203 of the Biosecurity Act relating to destruction of things must be met.

Compensation mechanisms are provided for in Part 14 of the Biosecurity Act.

This amendment does not affect any defence provided for in section 43 of the Criminal Code.

Clause 2.10 Schedule 1, part 1.2, item 5

This clause replaces reference to actions done in accordance with a direction under the Animal Diseases Act. It is replaced with anything required to be done under the Biosecurity Act. Actions under the Biosecurity Act are principally a biosecurity emergency declaration (Part 3) and biosecurity control declaration (Part 4).

This schedule lists exemptions emissions from such activities to (*inter alia*):

- chimney emissions being pollutants taken to cause environmental harm under section 8 of the Environment Protection Regulation; and
- the office provided for in section 9 of the Environment Protection Regulation relating to the prohibition of open-air fires except in certain circumstances.

The requirements in sections 46, 48, 201, 202 and 203 of the Biosecurity Act relating to destruction of things must be met.

Compensation mechanisms are provided for in Part 14 of the Biosecurity Act.

This amendment does not affect any defence provided for in section 43 of the Criminal Code.

Part 2.5 Firearms Act 1996

Clause 2.11 Table 61, item 7

This clause inserts the term 'or authorised by' to align with changes made in the Firearms Regulation.

Clause 2.12 Section 140A (1) (c)

This clause extends the temporary recognition of interstate category D licences for persons exercising a function as an authorised person under the Biosecurity Act. For example, this may be necessary for the destruction of animals in a biosecurity emergency.

Part 2.6 *Firearms Regulation 2008*

Clause 2.13 Section 15 (2) (c) and note

This clause replaces the reference to the repealed Pest Plants and Animals Act with the Biosecurity Act.

Clause 2.14 Section 16

This clause prescribes the agencies responsible for the following legislation as prescribed government agencies for the purposes of table 61, item 4:

- Animal Welfare Act;
- Biosecurity Act;
- Domestic Animals Act; and
- Environment Protection Act.

Table 61, item 4 provides that a person employed by or in, or authorised by, a government agency prescribed by regulation that has functions relating to the control or suppression of vertebrate pest animals has a genuine reason for needing a firearms licence.

Clause 2.15 New section 35 (ca)

This clause inserts a new paragraph to extend the temporary recognition of interstate licences, for possession or use of firearm under section 136 (1) (a) (ii) of the Firearms Act to the exercise of functions of an authorised person under the Biosecurity Act. For example, this may be necessary for the destruction of animals in a biosecurity emergency.

Clause 2.16 Section 52A (4), definition of fauna, paragraph (b)

This clause includes pest in the definition of fauna for the purposes of the exemption in section 52A (4) (d) of the Firearms Regulation.

The exemption applies to a person employed, or authorised, by a government agency to kill fauna, and it is reasonably likely that during transportation of the firearm the person will need to use it for a purpose related to the person's employment or authorisation.

This exemption relates to the requirement to firearm take all reasonable steps to ensure that a firearm is stored safely while the firearm is being transported in sub-section 52A (1) and the requirements in sub-section 52A (2) Firearms Regulation.

This amendment does not affect the requirement of an employee to provide safe systems of work as provided for under the *Work Health and Safety Act 2011*.

Clause 2.17 Section 52A (4), definition of pest animal

This clause replaces the definition of pest animal with the definition of pest to align with section 11 of the Biosecurity Act.

Part 2.7 *Fisheries Act 2000*

Clause 2.18 Section 27 (1) (d)

This clause updates the reference to pest animal with pest.

Clause 2.19 Section 27 (2)

This clause inserts the definition of declared pest to align with section 11 (2) of the Biosecurity Act.

Clause 2.20 Section 78 (3)

This clause exempts a person from the offence of possessing a noxious fish if they are authorised to possess the fish by a permit or group exemption under the Biosecurity Act.

Part 2.8 *Land Titles Act 1925*

Clause 2.21 Section 120 (1) (c)

This clause replaces ‘pest plants or pest animals’ with the term ‘pest’.

Clause 2.22 Section 120 (3)

This clause aligns the definition of pest with section 11 of the Biosecurity Act.

Part 2.9 *Nature Conservation Act 2014*

Clause 2.23 Section 12, definition of native animal, paragraph (b) and note

This clause excludes declared pests under section 11 (2) of the Biosecurity Act from the definition of a native animal under the Nature Conservation Act.

Clause 2.24 Section 14, definition of native plant, paragraph (b) and note

This clause excludes declared pests under section 11 (2) of the Biosecurity Act from the definition of a native plant under the Nature Conservation Act.

Clause 2.25 New section 155 (2) (c)

This clause inserts a new paragraph that requires the conservator to consider the biosecurity risk of a species when making an exempt animal declaration under section 155 (1) of the Nature Conservation Act.

This is an additional requirement to the need to consider:

- the need to protect native species in the ACT; and
- the need to conserve the significant ecosystems of the ACT, New South Wales and Australia.

Clause 2.26 New section 155 (4)

This clause inserts new subsection (4) to include a definition of *biosecurity risk* for section 155, which cross refers to the definition of that term in the Biosecurity Act, section 13.

Biosecurity risk is a broader concept than the concepts of protecting native species and the need to conserve significant ecosystems. This is because it would require the conservator to consider, *inter alia*, if a species has the potential to have an economic or community impacts in addition to the environmental impact of the species.

Clause 2.27 Section 219 (1) (b)

This clause replaces the term pest plant with declared pest for the offence of taking a plant into a reserve.

Clause 2.28 Section 266, definition of suitability information, new paragraph (a) (ia)

This clause inserts a new paragraph (a) (ia) which requires the conservator to consider any conviction of, or finding of guilt against, the person for an offence against the Biosecurity Act in determining if a person is a suitable person to hold a licence under the Nature Conservation Act.

Clause 2.29 Dictionary, new definition of declared pest

This clause inserts the definition of declared pest to align with section 11 (2) of the Biosecurity Act.

Clause 2.30 Dictionary, definitions of pest animal and pest plant

This clause deletes the definitions of pest animal and pest plant.

Part 2.10 *Prohibited Weapons Regulation 1997*

Clause 2.31 Section 12A (3), definition of fauna, paragraph (b)

This clause inserts a new paragraph (b) to include pest in the definition of fauna for the purposes of an authorised purpose for issuing a permit to possess or use a suppressor under section 12A (1) of the Prohibited Weapons Regulation.

The definition of fauna is relevant to the exemptions applying to:

- at the direction, or under the authority, of a conservation officer—killing fauna on public land reserved in the territory plan for a purpose mentioned in , section 385 of the *Planning Act 2023* (Reserved areas of public land);
- for a conservation officer or veterinary practitioner—killing fauna to alleviate its suffering; and
- a lessee of land held under a rural lease or a person authorised by the lessee for killing fauna on the rural lease.

This amendment does not affect the requirements for the suitability of a person to be issued a permit.

Clause 2.32 Section 12A (3), new definition of pest

This clause inserts the new definition of pest to align with section 11 of the Biosecurity Act.

Part 2.11 *Unit Titles (Management) Act 2011*

Clause 2.33 Section 32 (1) note

This clause replaces the reference to the Animal Diseases Act with the Biosecurity Act in an explanatory note that other territory laws apply to keeping animals.

Part 2.12 *Urban Forest Act 2023*

Clause 2.34 Section 11 (2) (a)

This clause replaces the reference to pest plant under the Pest Plants and Animals Act with declared pest under the Biosecurity Act for the purposes of what is not considered a regulated tree under the Urban Forest Act.

Clause 2.35 Section 11 (3), new definition of declared pest

This clause inserts the new definition of declared pest to align with section 11 (2) of the Biosecurity Act.

Clause 2.36 Section 18 (1) (d) (v)

This clause updates the exemptions to the offences in sections 16 and 17 Urban Forest Act relating to a direction under the Plant Diseases Act, section 13 (Direction for seizure, disinfection, destruction etc of plants etc). The exemption will now permit anything done in accordance with the Biosecurity Act.

Clause 2.37 Section 48 (1) (b), example 5

This clause updates the example of a law that may authorise damage to a protected tree from the Plant Diseases Act, section 13 (Direction for seizure, disinfection, destruction etc of plants etc). The example now given is an emergency declaration, control declaration or biosecurity direction under the Biosecurity Act.

SCHEDULE 3 TECHNICAL AMENDMENTS

Schedule 3 contains technical amendments of legislation initiated by the Parliamentary Counsel's Office. Each amendment is explained in an explanatory note in the schedule.

The amendments include the correction of cross-references and other minor changes to update or improve the form of legislation.