

Biosecurity – Appointment of Biosecurity Auditors

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Management of the biosecurity risk

NSW Department of Primary Industries (DPI), an office within the NSW Department of Industry, is committed to maintaining and encouraging a high level of compliance with the *Biosecurity Act 2015* (the Act) to achieve the effective management of biosecurity risks posed to the economy, environment and communities of NSW.

The purpose of this procedure is to set out how the NSW Government will appoint biosecurity auditors to conduct biosecurity audits under the Act.

Scope

This procedure applies to NSW DPI in their role as an accreditation authority for the appointment of biosecurity auditors as prescribed under the Act.

Biosecurity legislation summary

Part 16 for the Act provides for appointment of biosecurity auditors. The appointment of a biosecurity auditor can remain in force for a maximum period of five years. Once appointed, biosecurity auditors can conduct accreditation audits and compliance audits in accordance with the Act and conditions of their appointment. The conditions of appointment are subject to section 250 of the Act. Further conditions of biosecurity auditor appointment are in Part 9 of the Biosecurity Regulation 2017.

A biosecurity auditor or former biosecurity auditor who contravenes a condition of appointment imposed under Part 16 of the Act is guilty of a category 2 offence.

The collection, use and disclosure of information in accordance with this procedure, including any internal or external discussion or distribution of information, must be in compliance with the *Privacy and Personal Information Protection Act 1998* or be exempted by the operation of section 387 of the Act.

Section 387 (2) of the Act provides authority for the disclosure of information about a person, without the consent of the person: to a public sector agency, or to any other person, but only if the disclosure is reasonably necessary for the purpose of exercising a biosecurity risk function.

Work health and safety

The *Work Health and Safety Act 2011* places an obligation on the agency (NSW DPI) as a person conducting a business or undertaking and workers to provide a safe and healthy workplace. Safe Work Method Statements that support activities included in this procedure must be used in identifying, assessing and controlling risks.

NSW DPI will work to create a safe and supportive work environment when undertaking any activities in this procedure.

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Biosecurity auditor appointment procedure

1. Roles and responsibilities of NSW Department of Primary Industries

- specify the minimum qualification, skills and knowledge requirements for biosecurity auditors
- specify the requirements for the conduct of a biosecurity audit
- provide training for biosecurity auditors
- manage the NSW DPI biosecurity auditor register.

Accreditation authority

The accreditation authority for the purpose of the Act is the Secretary (or delegate). The accreditation authority is responsible for the following:

- appointment of biosecurity auditors, and
- responsibility for the biosecurity auditor until his or her appointment is renewed or cancelled.

Before appointing a biosecurity auditor, the accreditation authority must:

- adopt an appointment policy for the purpose of the Act, and
- determine if the biosecurity auditor will be subject to any conditions or limitations.

Biosecurity auditor:

- authorised by their appointment to conduct biosecurity accreditation audits or biosecurity compliance audits
- conduct biosecurity audits within their jurisdiction as prescribed in the Act.

2. Application of biosecurity auditors

A person can apply to the accreditation authority for appointment as a biosecurity auditor. In order to apply, the applicant must complete an approved application form.

The accreditation authority needs to assess the following when determining whether to grant or refuse an application:

- the applicant has completed the application form
- the applicant has the appropriate qualifications, skills, knowledge and experiences (specified in the Biosecurity - 'Biosecurity Auditors Appointment policy'), and
- whether the applicant has any history of non-compliance or is guilty of an offence under the Act, or the Regulations, or an offence under any other Act in law.

Biosecurity auditors are appointed for a period up to five years.

3. Appointment of a biosecurity auditor

Once an application is submitted, the accreditation authority has up to 60 days to respond to the applicant in writing of their decision of the application. This period can only be extended if the accreditation authority has requested in writing for additional information from the applicant or if the applicant has been notified in writing of a decision to require an accreditation audit of the applicant.

The accreditation authority when appointing a person as a biosecurity auditor must use the Biosecurity - Biosecurity Auditor Appointment policy to assess the following:

- qualifications, skills, knowledge and experience
- capacity to properly discharge the persons functions as a biosecurity auditor
- history of compliance with the Act and Regulation

- has had an appointment cancelled or suspended, and
- whether the accreditation authority has reason to believe the applicant is not suitable to be appointed as a biosecurity auditor.

Biosecurity auditors are appointed for up to five years.

3.1 Appointment policy

The Act requires a publically facing Biosecurity - Auditor Appointment policy which has been approved by the Secretary (or delegate). An accreditation authority must ensure an application for appointment as a biosecurity auditor is assessed to ensure the applicant meets the requirements specified in the Biosecurity - Auditor Appointment policy, the Act and the Regulation.

3.2 Refusal of application

The Act provides for the accreditation authority to grant or refuse an application for a biosecurity auditor. A decision to refuse an application must be consistent with grounds for refusal identified in the Act and the Regulation. The accreditation authority must record if the application was granted or refused and the reason for its grant or refusal.

The accreditation authority must give the applicant notice in writing of a decision to grant or refuse appointment within 60 days of receipt of the application before it is taken that the application has been refused.

3.3 Suspension or cancellation of appointment

The grounds for the suspension or cancellation of the appointment of a biosecurity auditor are provided in the Act and the Regulation. When considering whether to suspend or cancel the appointment, the accreditation authority must ensure the decision to suspend or cancel is supported by the grounds specified under the Act or the Regulation and it is documented. Some of the conditions include:

- accreditation authority has reason to believe the biosecurity auditor has contravened a requirement under the Act
- accreditation authority has reasonably believes the biosecurity auditor has not met their requirements of the accreditation authority's appointment policy
- accreditation authority does not believe the person is suitable to be a biosecurity auditor:
 - person has been found guilty of an offence under the Act, the Regulation or an offence under any other Act or law
 - negative results from a biosecurity audit in relation to the biosecurity auditor.
- the applicant has made a statement or furnished information that is false or misleading material, and
- the applicant has been appointed and that appointment was cancelled within the previous two years and has not been overturned on appeal.

If there are grounds for suspension or cancellation, the accreditation authority can determine that the appointment should be suspended and should inform the applicant by notice in writing.

A notice of cancellation must include the following:

- the date and time from which the suspension take effect, and
- the grounds for the cancellation.

A notice of suspension must include the following:

- the date and time from which the suspension takes effect
- the period of suspension, and

- the grounds for the suspension.

The Act provides for the biosecurity auditor to be given the opportunity to make submissions about suspension or cancellation, respectively. In both circumstances, there is a deadline for submissions of 30 days after the notice was given.

3.4 Appeal to Land and Environment Court

The Act provides for a person to appeal to the Land and Environment Court against a decision to refuse, refuse to renew, cancel or refuse to revoke a suspension of a biosecurity auditor appointment.

Relevant decision makers must keep all the appropriate records of their administration of appointments to ensure matters that are appealed can be dealt with appropriately.

4. Types of biosecurity auditors

4.1 Government employees as biosecurity auditors

Government employees must be employed and working for NSW DPI or the Local Land Services for appointment as a biosecurity auditor. Minimum qualification, experience and training requirements will apply to ensure consistency with third party auditor appointments.

4.2. Third party auditors

NSW DPI biosecurity auditor systems allows for the approval of persons other than government employees to conduct biosecurity audits in NSW. Regulatory biosecurity auditors may also be known as third party or commercially employed auditors. Only business entities with a suitable audit and compliance history from NSW DPI auditors may apply to become a third party auditor.

Third party auditors approved by NSW DPI will be listed on the biosecurity auditor register. Auditors on this register are able to conduct biosecurity audits subject to their approval on behalf of NSW DPI in NSW. Approved third party auditors may include independent, third party or commercially employed auditors. Due to potential conflict of interest, approved third party auditors may not include persons who are directly employed by NSW DPI Biosecurity and Food Safety.

5. Conditions of appointment

An appointed biosecurity auditor must act in accordance with the conditions imposed under or by the Act or the Regulation by the responsible accreditation authority.

The accreditation authority can impose conditions on appointment as a biosecurity auditor:

- at the time of appointment or renewal of appointment, and
- at any time by variation to the appointment.

Biosecurity auditors can be subject to a biosecurity accreditation audit.

5.1 Biosecurity auditor identification

Once an application for appointment as a biosecurity auditor has been approved by the accreditation authority, the applicant will be given a notice of their appointment which is also gazetted and published on the NSW DPI website. Each biosecurity auditor will be issued with an official identification card which are:

- valid for five years for NSW DPI officers
- valid for five years for Third Party Auditors
- the property of NSW DPI
- returned immediately to NSW DPI if an auditor's approval is cancelled or expires.

A biosecurity auditor can only conduct duties after the identification card has been issued and the auditor is listed on the Auditor Register.

5.2 Duration of appointment

An appointment of a biosecurity auditor must not exceed a period of five years and will be specified by the accreditation authority in the conditions of appointment.

6. Variation of appointment

The responsible accreditation authority can at any time by written notice, vary the appointment conditions of the biosecurity auditor. Variations to an application can be for the following reasons:

- addition of new conditions
- substitution of a condition, and
- omission or amendment of a condition.

Fees are also applicable to the variation of an appointment.

7. Renewal of appointment

Renewal of appointment of a biosecurity auditor requires a new application for granting as a biosecurity auditor appointment. This only applies to Third party Auditors, not DPI Officers.

If an application for renewal of appointment as a biosecurity auditor is duly made to the accreditation authority before the expiry of the appointment, the appointment is taken to continue in force until the accreditation authority notifies the applicant of a decision to grant or refuse the application.

8. Training

NSW DPI will provide approved legislative training to ensure all biosecurity auditors are accredited authorised officers as prescribed under the Act. All participants will be awarded a certificate of attainment upon completion.

9. Fees and charges

The accreditation authority may request an application fee to be paid by the applicant for the application for the appointment. These fees prescribed are in Schedule 5 of the Regulation.

10. Record keeping

The accreditation authority is responsible for the maintenance of all records for seven years related to the appointment of biosecurity auditors. Records required are as follows:

- authorised officers and their training, roles and responsibilities
- biosecurity auditor applications, and
- appointments issued.

11. Definitions and acronyms

DPI NSW Department of Primary Industries
LLS Local Land and Services

12. Documentation

Policy - Audit Frequency Policy
Policy - Records Management (IND-I-177)
Policy - Information Security (IND-I-197)
Policy - Classified Information (IND-I-196)
Policy - Government Information (Public Access) (IND-I-178)
Policy - Biosecurity collection, use and disclosure of information
Procedure - Biosecurity collection, use and disclosure of information

13. Revision history

Version	Date issued	Notes	Issued by:
1.0	01/07/2017	New procedure developed in response to the <i>Biosecurity Act 2015</i> .	Compliance Systems Coordinator

14. Contact

Compliance Systems Coordinator
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