

- to provide a framework for risk-based decision-making in relation to biosecurity,
- to give effect to intergovernmental biosecurity agreements to which the State is a party,
- to provide how biosecurity requirements in other jurisdictions can be met, so as to maintain market access for industry.

The purpose of this discussion paper is to engage the community and industry in the discussion and to encourage individuals and organisations to prepare submissions to the review. It outlines:

- How to make a submission by the
 - Department's website, or the
 - NSW Government *Have Your Say* website
- Background to the Act
- Key themes and issues.

How to make a submission

The Department values the views of all members of the community and encourages interested parties to make a submission. This Discussion Paper includes questions to prompt consideration. Readers are encouraged to respond to as many or as few topics as they wish, and comment on any other issues relevant to the objectives of the review. The questions in this Discussion Paper are intended to prompt discussion and are not indicative of a proposed course of action.

For ease of reference, Appendix A contains a list of all the questions in the document for readers who may want to respond to a range of issues.

Submissions can be lodged online

Visit [DPI Biosecurity-Statutory Review of the Biosecurity Act 2015](#) or [NSW Government - Have Your Say](#).

All submissions received will be listed in the review report.

Submissions not marked 'confidential' may be publicly released.

Submissions close 11 February 2023.

Contacts

If you have any questions regarding the review, please contact Biosecurity and Food Safety New South Wales via biosecuritylegislation@dpi.nsw.gov.au.

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1.0 Background

1.1 Biosecurity in NSW

Biosecurity protects our economy, environment and community from pests, diseases, weeds, and contaminants. NSW and Australia are fortunate to be free of many pests and diseases that impact other countries. We have great access to fresh food, fibre, open spaces, and a unique environment.

However, increased global trade, recreational travel, climate change and population are contributing to increased biosecurity risks.

In NSW the primary industries sector has a gross value exceeding \$23.1 billion per annum, with \$10.9 billion in exports in 2021-22¹. More than 83,000 people directly and 76,000 people in the agri-food manufacturing sector are employed in primary industries, with approximately 40 per cent of the State's food processing businesses located in regional areas

By managing biosecurity in NSW, we:

- prevent the entry of new pests, diseases, and weeds into NSW
- prevent risks to human health, including those directly through the transfer of diseases between animals and humans (i.e., zoonosis diseases), or through weeds species that may cause problems such as asthma and allergic reactions, or managing chemically affected food producing animals.
- quickly find, contain, and eradicate any new pests, diseases, and weeds
- effectively minimise the impacts of pests, diseases, weeds, and contaminants that cannot be eradicated by implementing robust management arrangements.

Good biosecurity practices:

- Provide NSW businesses and farmers with good access to premium markets around the globe
- Can deliver better yields and decrease costs of primary production
- Can ensure we have a good source of locally grown, safe food and products
- Prevent spill over events to human health
- Protect our unique native environments and our open spaces so we can continue to enjoy outdoor life as a community in NSW.

¹ NSW DPI (2022): New South Wales Department of Primary Industries (2022), Performance Data and Insights, <https://www.dpi.nsw.gov.au/about-us/publications/pdi/2022/statistics-tables>

1.2 Contemporary Australian biosecurity policy

The rising complexity of Australia's biosecurity environment and the need for new and innovative approaches to biosecurity into the future has been recognised in several recent policy statements and strategies from all levels of government, with the support of industry, researchers, and environmental groups.

The Australian Government released its [National Biosecurity Statement](#) in 2018 and more recently the strategic roadmap for protecting Australia's [Commonwealth Biosecurity 2030](#). The Australian Government's 2030 roadmap highlighted that the changing biosecurity environment is driving the need to accelerate reform. The impacts of globalisation including higher trade, travel and international freight volumes and international vessel movements are increasing the number of opportunities for pests and diseases to hitchhike into Australia and New South Wales. This is further complicated by the increasing number of stakeholders involved in global supply chains, making identification of potential risks even more complex.

Similarly, in its 2020 report '[Australia's Biosecurity Future](#)', the CSIRO indicated that despite the relatively consistent level of new incursions in Australia, the costly ongoing management of established species coupled with the increasing risk of new incursions is placing growing strain on the biosecurity system which is already experiencing resourcing challenges. Furthermore, scaling the current system through additional funding allocation will not be sufficient to reduce biosecurity risks. CSIRO concluded that the system requires more transformational change in approaches and responsibilities to generate greater efficiencies and effectiveness. This should involve a focus on system connectivity, shared responsibility, and innovation in science and technology.

Consequently, Agricultural Ministers from all Australian jurisdictions agreed strong and efficient biosecurity is ever more essential as Australia, and the rest of the world, respond to changing global and domestic travel, trade, and climate patterns. The [National Biosecurity Strategy](#) builds on existing work to provide a strategic direction for Australia's biosecurity system. It aligns collective efforts towards a common purpose and provides a clear commitment to prioritized action and investment, to ensure the system remains fit to meet the challenges of the next decade. The Strategy was released on 9 August 2022.

Given the future challenges for biosecurity across Australia and in NSW, we need to ensure that our legislation remains contemporary and fit-for-purpose to continue to protect the economy, environment and community from pests, diseases, weeds, and contaminants.

2.0 NSW Biosecurity Legislation and Strategy

2.1 Biosecurity Act 2015

The Act commenced 1 July 2017 in New South Wales, to underpin a proportionate risk-based approach for responding to pests, diseases, weeds and contaminants, and minimisation of biosecurity risks. The Act replaced wholly or in part 14 separate pieces of biosecurity related legislation and was introduced to facilitate greater flexibility in management of biosecurity risks, introduce the concept of shared responsibility, and from a government perspective, reduce red tape and simplify existing policies and procedures.

The Act is divided into twenty-three parts and 6 schedules to protect the economy, environment, and community from the negative impacts of pests and diseases, weeds and contaminants.

- **Part 2** outlines interpretation, key concepts, and principles of the Act.
- **Part 3 General biosecurity duty** outlines that people have a duty to be aware of the risks posed by pests, diseases, weeds, and contaminants in their surroundings and take action to prevent their introduction and spread. See [section 3.1](#) of this discussion paper for more detail.
- **Part 4 to Part 17 and Part 21** outline the various management tools and powers under the Act. See [section 3.2](#) of this discussion paper for more detail.
- **Part 18 Offences and criminal proceedings** details maximum penalties for offences, criminal proceedings, defences, court orders, penalty notices, and ancillary offences.
- **Part 19 Compensation** outlines compensation provisions including grounds for compensation and grounds for refusal or reduction of claims
- **Parts 20, 22 and 23** outline administrative and miscellaneous considerations.
- **Schedules 1 to 4** outline special provisions relating to weeds, prohibited matter, prohibited dealings, and registrable dealings.
- **Schedule 5 and 7** outline regulation making powers of the Act and savings, transitional and other provisions.

2.2 Statutory Instruments

Subordinate legislation is law made under the authority of a power conferred by an Act of Parliament. Under the Act there are three statutory instruments:

- Biosecurity Regulation 2017 (the 'Regulation')
- Biosecurity (National Livestock Identification System) 2017 (the 'NLIS Regulation')
- Biosecurity Order (Permitted Activities) 2019 (the 'BOPA').

Biosecurity Regulation 2017

The Regulation specifies actions and mandatory measures required to be taken by a person to prevent, eliminate or minimise a specific biosecurity risk. In other words, the Regulation outlines what you cannot do with regards to biosecurity risks and threats. Mandatory measures may apply generally or only in specified circumstances such as only to certain classes of persons or in relation to certain activities. If mandatory measures apply to a particular dealing or activity, then the relevant person must comply with those measures like any other regulation. In most cases, if a person complies with the relevant mandatory measures, they will have discharged their general biosecurity duty.

The Regulation also clearly outlines requirements in relation to Biosecurity Management Plans, exemptions relating to dealings with prohibited matter, declared biosecurity events, and biosecurity zones. The Regulation also provides powers for the biosecurity registration of certain animals, accreditation of biosecurity certifiers, appointment of biosecurity auditors, approval of accreditation authorities, and permits.

A range of amendments have been made to the Regulation since 2017, to minimise the likelihood of biosecurity impacts or risks and improve the effectiveness and efficiency of the Regulation; as well as include additional provisions around biosecurity management plans.

CASE STUDY - IMPLEMENTATION OF BIOSECURITY MANAGEMENT PLANS IN DOMESTIC ABATTOIRS AND KNACKERIES IN NSW

During 2020-2021, NSW DPI led the implementation of Biosecurity Management Plans (the Plan) in domestic abattoirs and knackeries in NSW. The implementation of Plans assisted these businesses to maintain compliance with the Act and improve biosecurity risk management at their facilities.

Abattoirs and knackeries are instrumental in the detection of notifiable endemic and emergency animal disease (EAD) events, playing a key role in frontline disease response. EAD planning forms a component of a complete Plan. NSW DPI partnered with Local Land Services and domestic processing plant representatives to develop an informative and actionable benchmark Plan that could be specifically tailored to a plant operation. To complement this, the National Meat Industry Training Advisory Council (MINTRAC) also conducted a national training program to address EAD awareness and preparedness gaps in domestic processing plants, funded by the Department of Agriculture, Water and the Environment (DAWE). As a result, MINTRAC have prepared a range of resources, including a flip book guide, online training modules and an EAD preparedness template for plants to complete as part of their Plans.

In NSW, there are 13 domestic red meat abattoirs and 6 knackeries currently licensed with the NSW Food Authority. The Biosecurity Management Plan Implementation Program was developed and put in place at each plant in 2020 to help licensed abattoirs and knackeries apply measures that reduce the biosecurity risks involved with operations. As of 30 June 2021, seven of these facilities (37%) have returned their completed plans. A General Circular titled 'Biosecurity Management Plan implementation for abattoirs and knackeries' was sent to all licensed abattoirs and knackeries in February 2021 outlining the implementation program.

The General Circular also provided a practical guide to assist these businesses implementing and complying with a Plan. All abattoirs and knackeries had their biosecurity management plans inspected in 2021, forming a third tier in current auditing requirements of domestic abattoir and knacker plants alongside food safety and animal welfare monitoring by NSW DPI. An online abattoir and knacker industry group meeting is also held every quarter to discuss current and evolving issues relating to the industry with government and other industry stakeholders.

Whilst the implementation of a Plan is not mandatory in NSW, they provide businesses with a structured system for controlling and recording authorised activities at the plants. The adoption of a Plan also provides for harsh penalties for breaches of the authorised activities that subject the property to biosecurity risks.

QUESTION – Comment is sought from community and industry if they understand the purpose of the Biosecurity Regulation 2017 and if they know how to use the Biosecurity Regulation 2017 to find relevant information for their industry?

Biosecurity (National Livestock Identification System) Regulation 2017

The NLIS Regulation commenced in July 2017 as subordinate legislation under the *Biosecurity Act 2015*. The National Livestock Identification System (NLIS) is Australia's scheme for the identification and tracing of livestock and is crucial in protecting and enhancing Australia's reputation as a producer and high-volume exporter of quality meat and meat products. The NLIS also enhances Australia's ability to respond quickly to a major food safety or disease incident using the NLIS database as a critical tracing tool. The NLIS Regulation outlines mandatory measures for the identification and tracing of livestock in NSW with regards to:

- Property Identification Codes (PICs)
- Identification of stock
- Information requirements for stock transactions
- The maintenance of registers, and
- Other miscellaneous provisions.

The National Biosecurity Committee (NBC) working with SAFEMEAT, an industry body that provides a platform for engagement and collaboration on policy that ensures Australian meat products adhere to the highest standards of safety from paddock to the plate, have recognised that urgent action needs to be taken to improve livestock traceability across Australia. In its February 2020 report, SAFEMEAT made several recommendations to the NBC to address barriers to effective traceability. The NBC gave in principle agreement to SAFEMEAT's reform recommendations but agreed that further work was needed to explore and scope options to achieve the intent of the recommendations, given the complexity of implementing the proposed approach. Work on the SAFEMEAT recommendations is being progressed by the NBC's National Livestock Traceability Enhancement Working Group.

In addition to the SAFEMEAT reforms, a meeting of Australian Agriculture Ministers in July 2022 has resulted in unanimous support for the development of a national, industry-led mandatory sheep and goat electronic identification (eID) system. Mandatory electronic sheep and goat identification has been operating in Victoria since 2016. The agreed national scheme underway will ensure consistency and functionality across all states and be developed hand in hand with industry to ensure it is practical and cost-effective. Individual traceability for sheep and goats will be crucial during an emergency disease outbreak such as Foot and Mouth Disease and will deliver benefits across the supply chain. This new system will strengthen traceability for biosecurity, food safety, and supports market access requirements

In September 2022, all Agricultural Ministers in Australia agreed to work towards mandatory implementation of sheep and goat eIDs nation-wide by 1 January 2025. Due to that commitment, the NSW Government and sheep and goat industries are working together to develop a plan to transition to mandatory individual electronic identification for sheep and goats.

QUESTION- Comment is sought from stakeholders if they understand the purpose and obligations under the Biosecurity (National Livestock Identification System) Regulation 2017 for their industry with regards to the NLIS?

QUESTION- Comment is sought from industry and the community as to how livestock traceability might be further enhanced in NSW?

Biosecurity Order - Permitted Activities

The Act provides powers for a biosecurity order (permitted activities) (BOPA) to be published on the on the NSW legislation website to permit an activity that would otherwise be prohibited by a mandatory measure or by a regulatory measure implemented in relation to a biosecurity zone.

Since the commencement of the Act, one order has been published, the Biosecurity Order (Permitted Activities) 2019 (BOPA). The BOPA 2019 permits activities. for animal pests and diseases, plant pests and diseases, invasive species, and weeds that are otherwise be prohibited by a mandatory measure or by a regulatory measure implemented in relation to a biosecurity zone.

A key benefit of the BOPA is that it can be easily amended as required when new information comes to hand about managing biosecurity risks and threats, including enabling permission for operations that would otherwise be prohibited; however, it must also be read in conjunction with the Regulation and Act to ensure that industry and the community are fully aware of what they can and cannot do to manage biosecurity risks and threats.

QUESTION – Comment is sought from stakeholders if they understand the purpose of the Biosecurity Order (Permitted Activities) 2019 and if it clearly outlines requirements for their industry?

QUESTION – Comment is sought from stakeholders if they understand how the Biosecurity Order (Permitted Activities) 2019 interacts with the Act and the Regulation for their industry?

2.3 NSW Biosecurity Strategy

The New South Wales Biosecurity Strategy 2021 has been in place since 2013. Its goals are to ensure stakeholders more effectively promote the concept of biosecurity as a shared responsibility, ensure biosecurity contributes to sustainable economic growth, ensure biosecurity protects the environment and community, and ensure biosecurity is underpinned by a responsive and consistent legislative framework.

This strategy was replaced in November 2022 by the New South Wales Biosecurity and Food Safety Strategy 2022-2030. This new strategy has three key themes:

- Capability and capacity – Investing in people, partnerships, and knowledge and information systems to improve performance and meet current and emerging challenges.
- Shared Responsibility – Being active and working closely together to build strong biosecurity and food safety, and secure the economy, environment, and the community.
- Tools and Technology – Strategic investment in tools and technologies to improve productivity, profitability, and sustainability for farming and other commercial enterprises.

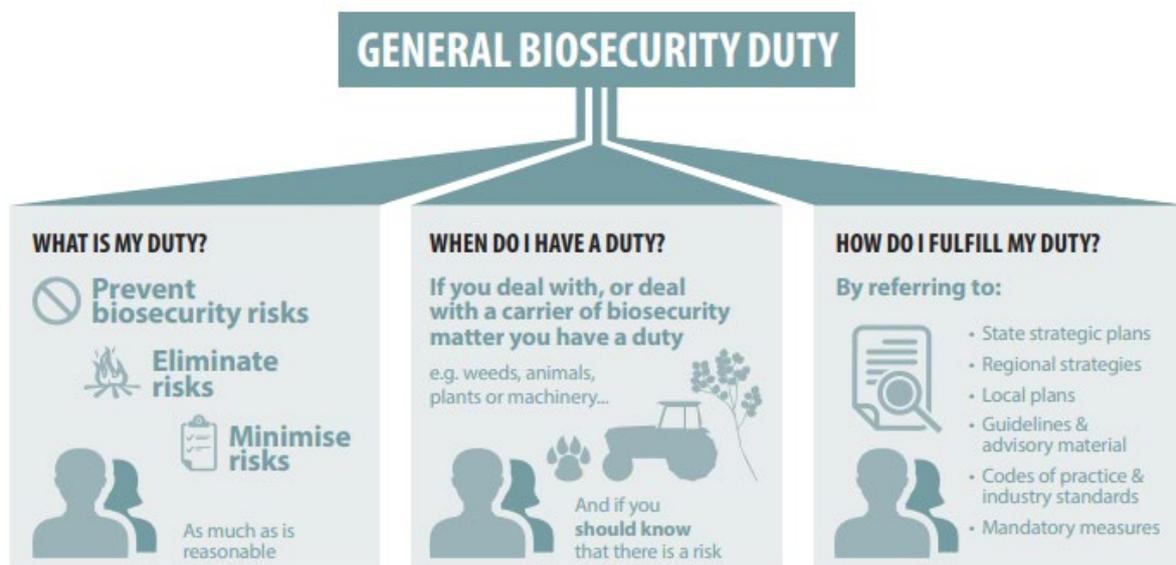
3.0 Key Tools, Instruments and Compliance Concepts

3.1 Biosecurity Duties

A biosecurity duty is a duty imposed on a person to prevent, eliminate, or minimise a biosecurity risk as far as is reasonably practicable. There are several biosecurity duties imposed under the Act. These include:

- A duty to take action when dealing with **biosecurity matter** or carriers
- A requirement to notify a prohibited matter event
- A requirement to prevent, eliminate or minimise a risk posed by prohibited matter
- A duty to notify a suspected or existing biosecurity event.

The Act also outlines the general biosecurity duty. People have a general duty to be aware of the risks posed by pests, diseases, weeds, and contaminants in their surroundings and take action to prevent their introduction and spread. Specifically, section 22 of the Act outlines that any person who deals with biosecurity matter or a carrier and who knows, or ought reasonably to know, the biosecurity risk posed or likely to be posed by the biosecurity matter, carrier or dealing has a biosecurity duty to ensure that, so far as is reasonably practicable, the biosecurity risk is prevented, eliminated, or minimised.



The general biosecurity duty approach recognises that in most circumstances, the person with the general biosecurity duty is best placed to decide what is reasonably practicable in the circumstances to prevent, eliminate or minimise the particular biosecurity risk and should have the flexibility to make this decision. Whilst this provides an opportunity for innovation in how to manage a biosecurity risk, advisory material, industry standards and codes of practice as well as fact sheets prepared by government can inform how a person may discharge their general biosecurity duty.

The Act also makes provision for mandatory measures that must be complied with in meeting a biosecurity duty. It is important to note that compliance with a mandatory measure does not necessarily completely discharge the general biosecurity duty as there may be other relevant measures that should also be taken, depending on the circumstances that apply in each case.

Specific mandatory measures are detailed in the Biosecurity Regulation (2017) and the [Biosecurity \(National Livestock Identification System\) Regulation 2017](#).

It is recognised that a biosecurity duty approach, such as the general biosecurity duty under the Act, can have challenges in implementation. Essentially, the general biosecurity duty moved NSW biosecurity legislation away from more prescriptive and reactive regulation to legislation which created a responsibility on all duty holders to prevent or minimise the risk of adverse impacts.

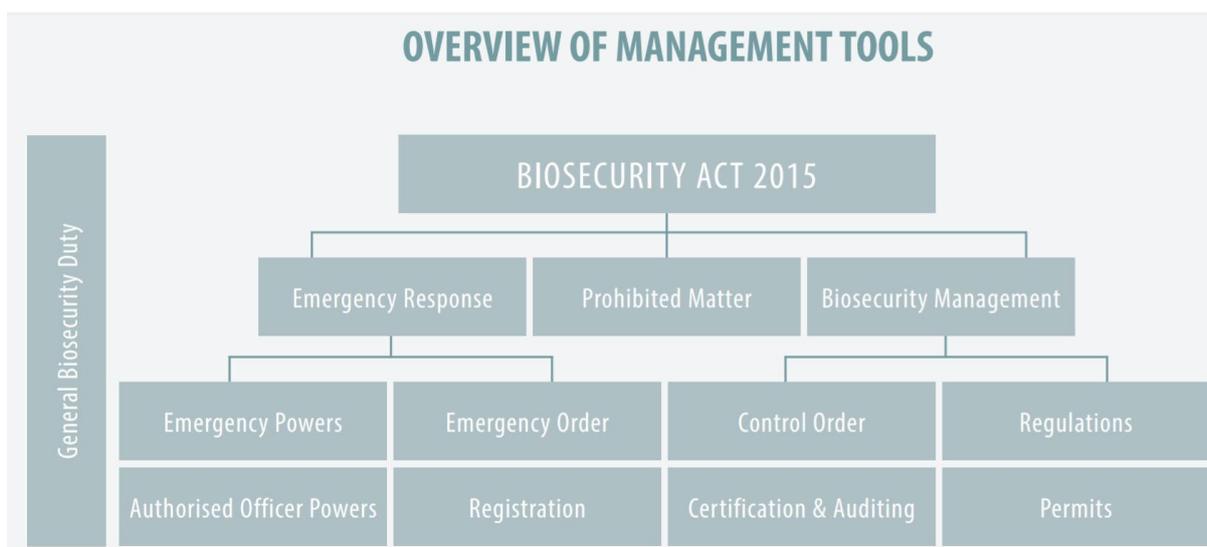
This means stakeholders need to clearly understand and be comfortable with their new requirements. For the NSW Government, it means a continuing strong commitment to supporting and working with stakeholders to build that understanding and confidence, including through biosecurity awareness raising activities. Only this can ensure the general biosecurity duty becomes embedded understanding for industry and community stakeholders.²

QUESTION– Comment is sought on whether industry and the community understand what is meant by the general biosecurity duty and what it means for them to have a responsibility to uphold their general biosecurity duty?

3.2 Management tools and powers

There are nine key management tools for biosecurity risk available to NSW DPI under the Act. The management tool used, or the combination of tools used to manage a biosecurity risk are determined according to the biosecurity risk posed by the biosecurity matter or carrier, the desired management outcome, and the cost of achieving that outcome.

² Arie Freiberg, “General Duties as Regulatory Tools in Environmental Protection: Principles, Practice, Problems,” *Environmental and Planning Law Journal* 36, no. 1 (2019): 47.



The management tools available under the Act are:

- Prohibited matter
 - Animal and plant pests and diseases, aquatic diseases, pest terrestrial invertebrates, terrestrial and freshwater weeds, and aquatic pests which are prohibited matter are listed in Schedule 2 of Act. Most prohibited matter species are exotic to Australia and if they are introduced and become established here, could impact severely on agriculture, fisheries, forestry, the environment, trade, human health, or community amenity.
- Emergency orders
 - An emergency order can be made when a biosecurity risk occurs or is about to occur that is or may have a significant biosecurity impact on the economy, environment or community and emergency measures are required. Emergency orders allow swift action to be taken to respond to a significant biosecurity risk to the economy, environment, and community.
- Control orders
 - Control orders can prohibit, regulate, or control the doing of anything, subject to certain limitations, to prevent the introduction or eradicate biosecurity matter that poses or is likely to pose a biosecurity risk. There are currently [19 control orders](#) in place in NSW.
- Biosecurity zones
 - Biosecurity zones are used for the long-term management of an ongoing key biosecurity risk or impact. There are 10 biosecurity zones listed in the Biosecurity Regulation for a range of animal pests, aquatic diseases, plant diseases, and weeds.
- Mandatory measures
 - Mandatory measures are requirements or regulations for persons who deal with biosecurity matter or carriers to take specified actions to prevent, eliminate or minimise a biosecurity risk posed or likely to be posed by the biosecurity matter, carrier or dealing.

- Prohibited dealings
 - Dealings with a non-indigenous amphibian, bird, mammal, or reptile that is listed in Schedule 3 of the Act is a prohibited dealing. Dealings with this listed matter could have significant adverse consequences to the economy, environment, or community. There are only two exceptions to these dealings: for example, if the animal is exhibited under a relevant approval (e.g., in a zoo), or if the animal is being kept for approved research purposes.
- Registrable dealings
 - Registrable dealings are listed in Schedule 4 of the Act. Persons are required to be registered under the Act to engage in a registrable dealing.
- Certification
 - Biosecurity certifiers may issue a biosecurity certificate to an individual or organisation as evidence that a biosecurity matter or any other thing or areas is free from a specific pest, disease, weed or other contaminants; that it is in a specified condition, that it has been subject to a specific treatment, or that it meets specific requirements.
- Auditing
 - Auditing programs are used to monitor compliance and inform management and communication requirements with respect to the issue of registrations and permits, and certification requirements. The Act identifies two types of biosecurity audits: an accreditation audit and a compliance audit.
 - Accreditation audits are carried out for the purpose of assessing an application for the grant or renewal of, or variation to a biosecurity registration, accreditation as a biosecurity certifier, appointment as a biosecurity auditor, a permit, or approval to exercise any of the functions of an accreditation authority under the Act.
 - A compliance audit is carried out to assess and identify compliance with requirements under the Act, contraventions, or suspected contraventions of the requirements under the Act, and measures for improved compliance with requirements under the Act.
 - Since 2018/19 there have been 2,249 compliance or accreditation audits undertaken by NSW DPI.

There are also four compliance and operational management tools available under the Act that can be used in conjunction with the management tools. These are:

- Authorised officer powers
 - An authorised officer is a person that has been authorised under the Act to manage biosecurity risk by performing certain functions, such as investigating, monitoring, and enforcing compliance with the Act. An authorised officer can request information, investigate a biosecurity risk, enter premises in particular circumstances, accept a biosecurity undertaking and where the risk is significant give a biosecurity direction to a person to take particular actions.

- Biosecurity directions
 - A biosecurity direction is a direction given by an authorised officer which has legal force. It may be given to an individual or class of persons and specifies what they are required to do to prevent, eliminate or minimise a particular biosecurity risk or to otherwise comply with the requirements of the Act.
- Biosecurity undertakings
 - A biosecurity undertaking is a written agreement that specifies the agreed actions that a person will take to remedy a contravention of the Act. Undertakings may be given in certain circumstances instead of a biosecurity direction being issued.
- Permits
 - Permits allow a person to undertake activities that would otherwise not be allowed under the Act.

Since commencement of the Act, the tools have been used extensively to manage biosecurity risks.

CASE STUDY - BIOSECURITY (SALMONELLA ENTERITIDIS) CONTROL ORDER ASSESSMENT 2019-2021

In September 2018, Salmonella Enteritidis (SE) was detected in NSW poultry for the first time when cases of human illness were linked to locally consumed food. SE is a bacterial disease that can pass through eggs and can make people sick with gastroenteritis.

This initial detection of SE sparked a large scale response to manage the risk to industry and the public. The response was led by NSW DPI and was supported operationally by Local Land Services and industry. During the initial response, movements of biosecurity matter (e.g. eggs, poultry, litter) on and off high-risk egg farms and processing facilities were managed by issuing Individual Biosecurity Directions and Biosecurity Permits to allow for poultry sheds to be safely destocked and decontaminated.

In order to manage the ongoing risk of SE to consumers, complementary legislation was used through the issuing of the Biosecurity (Salmonella Enteritidis) Control Order which came into effect on 1 August 2019. The objective of the Control Order was to prevent, eliminate, minimise and manage the biosecurity risk posed or likely to be posed by the spread of Salmonella Enteritidis within NSW.

To assist with the implementation of the Control Order, the NSW DPI developed and implemented the SE Egg Management Program which outlines all biosecurity and food safety controls that must be implemented to comply with the Control Order. The Program included existing food safety programs requirements, as well as new hygiene and biosecurity practices that are required in response to SE. The Control Order was amended on 30 June 2020 to introduce mandatory SE testing requirements from 1 July 2020.

Compliance with, and enforcement of, the Control Order was conducted between 2019-2021 where authorised officers inspected NSW Food Authority licensed egg production and processing facilities to determine baseline compliance with the Control Order. A total of 440 inspections were conducted resulting in 202 Individual Biosecurity Directions being issued. As of 1 July 2021, all licensed egg farms in NSW were considered compliant with the Control Order and this Control Order has been effectively managing further outbreaks of SE.

QUESTION – Comment is sought if industry and the community are aware of the range of management, compliance, and operational tools available to NSW DPI to manage biosecurity risks?

4.0 Review of Objectives

The Statutory Review of the Act must assess whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. As outlined previously, the primary policy objective of the Act is to provide a framework for the prevention, elimination and minimisation of biosecurity risks posed by biosecurity matter, dealing with biosecurity matter, carriers and potential carriers, and other activities that involve biosecurity matter, carriers or potential carriers.

Also as outlined previously, the other objects of this Act are —

- to promote biosecurity as a **shared responsibility** between government, industry, and communities,
- to provide a framework for the **timely and effective management** of the following—
 - pests, diseases, contaminants, and other biosecurity matter that are economically significant for primary production industries,
 - threats to terrestrial and aquatic environments arising from pests, diseases, contaminants, and other biosecurity matter,
 - public health and safety risks arising from contaminants, non-indigenous animals, bees, weeds, and other biosecurity matter known to contribute to human health problems,
 - pests, diseases, contaminants, and other biosecurity matter that may have an adverse effect on community activities and infrastructure,
- to provide a framework for **risk-based decision-making** in relation to biosecurity,
- to give effect to **intergovernmental biosecurity agreements** to which the State is a party,
- to provide the means by which biosecurity requirements in other jurisdictions can be met, so as to maintain **market access** for industry.

4.1 Shared responsibility

Biosecurity as a shared responsibility is a fundamental principle of the Act and policies. Government, industry, and community have a responsibility to work together to protect the economy, environment, and community from the negative impacts of animal and plant pests, diseases and weeds for the benefit of all people in NSW.

The concept of shared responsibility is not a new concept. Shared responsibility exists in many forms such as codes of practice where risks are jointly managed. Shared responsibility means that we all have a responsibility to protect NSW from biosecurity risks to the best of our ability. Biosecurity management is not, and cannot be, the sole responsibility of government. Governments provide the strategic direction and legislative underpinning to implement appropriate management arrangements in response to biosecurity risks. Industry and community also play a crucial role in managing the biosecurity risk from their business, recreation, or hobbies by, for example:

- adopting biosecurity management plans to minimise the risk of spread of pest and diseases associated with their businesses
- managing weeds on their properties
- participating in coordinated pest, weed and disease control with neighbours at a scale that effectively and efficiently manages the risk
- ensuring recreational equipment such as hiking boots, mountain bikes, boats/kayaks and fishing gear are thoroughly cleaned after use, and
- reporting suspect sightings of biosecurity risks such as, for example, unexplained mortalities in livestock, and
- and participating in programs that relate to surveillance for pests, diseases, and weeds.

Within the Act, shared responsibility is also promoted by the various management, compliance and operational tools available to manage biosecurity risk (see [section 3](#)). These include the general biosecurity duty, mandatory measures, biosecurity directions, biosecurity undertakings, and biosecurity zones.

CASE STUDY – RED EARED SLIDER TURTLES

Certain non-indigenous vertebrates that have not established widespread populations in NSW but have been assessed as representing a significant establishment risk, or a danger to people and or the NSW economic, environmental and community assets, are prohibited under Schedule 3 of the Act.

As an example, red-eared slider turtles from North and Central America pose a serious biosecurity threat, preying on native species, fish, and frogs, competing for food, nesting areas and basking sites, and potentially spreading infectious salmonella bacteria to people, pets, and other animals.

The NSW Department of Primary Industries (DPI), working in collaboration with Local Land Services, Centennial Parklands Trust, local councils, and University of Canberra, is developing and trialling a new range of tracking and trapping devices for red-eared slider turtles.

A specially trained squad of scent detector dogs who 'nose out' invasive pests has been working across Sydney's parklands to remove the alien turtle species from our waterways and wetlands.

Through the assistance and notification from the community identifying unusual looking non-native animals, including turtles, snakes, lizards and other reptiles, mammals, birds, and amphibians, as well as private veterinarians and bushwalkers, hundreds of invasive environment pests have been removed. This includes hundreds of red-eared slider turtles from Sydney waterways and the hands of illegal keepers. However, there is still the ongoing risk that these species are being smuggled into, illegally kept and illegally released in Australia. In NSW they have been found across the Sydney basin, from Camden north to Woy Woy and west to Windsor.

QUESTION – Comment is sought on whether the Act does enough to support the concept of shared responsibility between government, industry, and communities?

QUESTION – Comment is if industry and the community understand the concept of shared responsibility and where their individual responsibilities lie?

4.2 Timely and effective management of biosecurity threats and risks

The Act supports a range of different management, compliance and operational tools that provide NSW DPI with the ability to respond to a wide range of biosecurity threats, risks, and emergencies in a timely and effective manner. This is critical for NSW's response capability.

For example, under the NSW State Emergency Management Plan (EMPLAN), NSW DPI is the appointed combat agency for biosecurity (animal and plant) emergencies and will lead other agencies in prevention of, preparation for, response to and recovery from emergencies affecting animals and plants, both terrestrial and aquatic. Part 5 of the Act, emergency orders, enables NSW DPI to provide a response that is consistent with the national emergency response agreements, will minimise the impact of emergencies arising from an incursion of biosecurity matter into NSW or parts of NSW, and will be exercised in a consistent and appropriate manner.

Biosecurity Directions are another effective and timely tool that can be used to manage biosecurity threats and risks.

CASE STUDY – QX DISEASE OUTBREAK 27 AUGUST 2021 – GENERAL BIOSECURITY DIRECTION MANAGEMENT

A general biosecurity direction was issued to help manage the recent detection of QX disease in aquaculture oyster lease areas in parts of the Port Stephens estuary. The NSW oyster industry is a valuable and productive industry worth more than \$37 million to the NSW economy each year. QX is a seasonally occurring disease of Sydney rock oysters known to have caused impacts in several estuaries in NSW. NSW already had a QX biosecurity zone in place covering the entire state which uses a risk-based approach and places NSW estuaries into categories according to their risk, with Port Stephens ranked as Low Risk in the QX biosecurity zone. However, by acting in a timely way and issuing the general biosecurity direction to place restrictions on movements out of the Port Stephens estuary, NSW DPI has been able to help contain the biosecurity risk of QX spreading further while investigations are undertaken to determine the distribution of QX in the estuary, and make recommendations for revised risk rating for Port Stephens based on this oyster disease

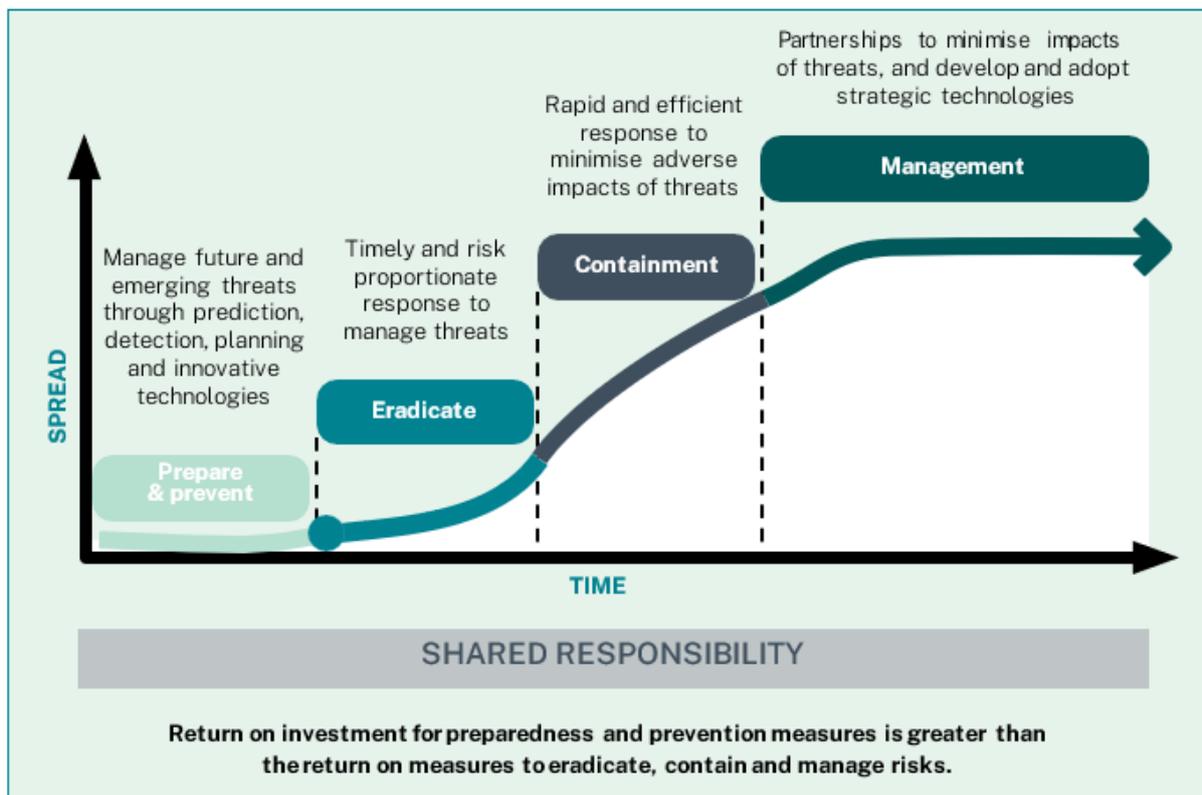
QUESTION – Comment is sought on whether the Act provides an appropriate framework for the timely and effective management of biosecurity threats and risks?

4.3 Risk-based decision making

The Act, and its subordinate legislation and instruments provide NSW DPI and stakeholders with the tools to manage biosecurity risks and protect the NSW economy, environment, and community from the negative impacts of pests, diseases, weeds, and contaminants. In the absence of government regulation, biosecurity risks are likely to increase as insufficient levels of controls are provided.

Further, processes are required to support good decision making underpinned by robust analysis of risk. Risk analysis involves identifying high-risk biosecurity threats, prioritising activities, developing, and delivering targeted biosecurity programs, and providing for an equitable spread of costs for delivering those programs.

NSW DPI understands the importance of prioritising activities and investment to address the risks and impacts of invasive species, plant, animal (including aquatic) diseases and contaminants. The invasion curve (below) shows that invasive species management is classified under four approaches: prepare and prevent, eradication, containment, and management. The most cost-effective way to minimise the impacts of invasive species is to prevent their incursion in the first instance. This Invasion curve indicates how the return on investment is greatest for activities to “Prepare & prevent” compared to those for “Management”. This requires being able to identify high risk species, thoroughly assess their potential invasiveness, and implement effective barriers to prevent their establishment. This applies equally to animal and plant disease management.



NSW DPI also uses a 'Biosecurity Threat Decision Tree' to inform decisions on biosecurity investment. No measure or strategy can completely remove the risk of a pest, disease or weed entering, becoming established or spreading in NSW. However, NSW aims to minimise biosecurity risks while simultaneously maximising trade.

As outlined in [section 3.2](#), the Act provides a range of management tools which enables NSW DPI and partner agencies such as Local Land Services and local governments to apply a graduated and proportionate approach to the identified non-compliance. In practice, this results in the application of mild enforcement tools to offenders in the first instance where the biosecurity risk posed by the non-compliance is less serious; to be followed by more severe tools should the non-compliant activity continue. Should the circumstances surrounding an offence be considered sufficiently serious (e.g., an imminent risk to Australia's biosecurity status or public health and safety), multiple enforcement tools may be employed at the same time.

For example, the Act provides that for a person to keep certain lower risk non-indigenous animals, they must register to keep that animal. Some other higher risk species may be kept

under a biosecurity permit but only in exceptional circumstances due to the higher risk these non-native species pose. Most very high-risk non-native terrestrial vertebrate animals, including exotic reptiles, amphibians, mammals, and certain birds, are not allowed to be privately kept in NSW as that is classified as a prohibited dealing. In 2020-2021 NSW DPI officers conducted several investigations, in collaboration with other regulators, into reports of persons possessing non-indigenous animals in NSW. The Act lists non-native animal species that are classified as prohibited dealings. During the 2020-2021 financial year, ten penalty notices were issued for breaches of the Act. There was also a successful prosecution of a person in possession of 90 highly invasive red-eared slider turtles, which are listed by the International Union for Conservation of Nature (IUCN) as 'one of the world's worst invasive alien species', and two alligator snapping turtles.

QUESTION – Comment is sought on whether the Act provides an effective framework which enables risk-based decision-making in relation to biosecurity?

4.4 Harmonisation with national legislation

The NSW Government is party to the Intergovernmental Agreement on Biosecurity (IGAB) which helps set out how the Commonwealth, state and territory governments work together to manage biosecurity in Australia.

The NSW Government is also party to a series of agreements and deeds that set out how we work with other jurisdictions to respond to biosecurity incidents and emergencies and how this will be paid for. This includes the Emergency Animal Disease Response Agreement (EADRA), Emergency Plant Pest Response Deed (EPPRD), and National Environmental Biosecurity Response Agreement (NEBRA). NSW DPI also has a representative on the National Biosecurity Committee, which is the body that drives collaboration between jurisdictions to effectively manage biosecurity under the Intergovernmental Agreement on Biosecurity. There are a range of NBC subordinate committees which NSW DPI is also represented on, such as the Marine Pest Sectoral Committee, Animal Health Committee, Environment and Invasives Committee and Plant Health Committee

The Act seeks to achieve nationally consistent and effective biosecurity legislation without imposing a higher regulatory burden than the biosecurity legislation of other states and territories and to support cost sharing arrangements.

For example, State and Territory departments individually establish and enforce the regulatory requirements for the NLIS in their jurisdiction. In NSW, NLIS requirements for the identification and movement of livestock are outlined in the NLIS Regulation. NSW DPI is committed to continued collaboration with interstate and national governments to deliver a more harmonised NLIS. For example, NSW supports recommendations for each jurisdiction to remove any existing NLIS exemptions and remains an active participant on the Cross Jurisdictional Traceability Group.

QUESTION – Comment is sought as to whether the Act sufficiently meets requirements and gives effect to intergovernmental biosecurity agreements?

4.5 Flexibility – incident response and market capability

Prior to the introduction of the Act, a variety of tools and powers were used to respond to and manage biosecurity risks across all risk areas (animal and plant pests and diseases, pest animals, weeds, and contaminants). The introduction of the single Act meant the adoption of a more consistent approach to the management of biosecurity, which provided greater flexibility in the management of existing and emerging biosecurity risks.

An example of flexibility within the Act is under Part 13 which supports market access through the provision of biosecurity certificates. The NSW Certification Assurance (CA) scheme allows businesses to meet the specific quarantine requirements for interstate and intrastate trade. The CA scheme is complimentary to the national Interstate Certification Assurance (ICA) scheme which allows accredited businesses to self-certify plants and plant products as meeting specific interstate quarantine restrictions. The ICA and CA Scheme is a national plant health certification scheme accepted by all States and Territories. The ICA and CA arrangement is an agreement between the business and NSW Department of Primary Industries. To become accredited a business must apply for accreditation and pass an accreditation audit that demonstrates their ability to implement effective in-house procedures which will be followed and documented to ensure that the produce meets all specified requirements and that they are compliant with the Act. Accredited businesses are also subject to regular (usually annual) compliance audits to ensure their ongoing compliance. This approach is a cost-effective alternative to traditional government issued plant health certification.

QUESTION– Comment is sought on whether the Act provides an effective framework for responding to biosecurity incidents?

QUESTION– Comment is sought on whether the Act provides the means by which biosecurity requirements in other jurisdictions can be met, so as to maintain market access for industry?

5.0 Issues for Consideration

While the results of the NSW State of Biosecurity Report 2018-2021 and the [2022 Biosecurity Attitudinal Research Report](#) indicate that the Act is largely considered a successful piece of legislation and meets its policy objectives, we are interested in gathering views on some specific areas of the Act.

5.1 Prohibited Matter, Prohibited Dealings, and Registrable Dealings

It has been identified that the current listings for Prohibited Matter, Prohibited Dealings, and Registrable Dealings (Schedules 2, 3 and 4 of the Act respectively) are extensive and could contain outdated listings. Further, the ability of NSW DPI to update these listings in the case of a new biosecurity threat or risk can be constrained by legislative processes.

In other jurisdictions, for example Tasmania, they manage their listings of prohibited matter species in a slightly different way. Once it commences, Tasmania will use a permitted list system rather than a prohibited list approach with three categories of list:

- prohibited matter – biosecurity matter or carriers of greatest concern. A person cannot possess or deal with prohibited matter without a special permit.

- permitted matter – biosecurity matter of least concern and assessed to not pose a biosecurity risk to Tasmania. Permitted matter can be brought into Tasmania without a permit so long as listing conditions relating to import and dealing with the matter are followed.
- restricted matter – a catch-all which covers any plant or plant product, animal or animal product that is not listed as either prohibited or permitted matter. Restricted matter cannot be imported into Tasmania without a permit.

Listing will be by Ministerial declaration and then notified in the Government Gazette. Section 9 of the Tasmanian *Biosecurity Act 2019* also requires publication of a Tasmanian biosecurity compendium on its departmental website to aid in transparency and promote public awareness of Tasmania's biosecurity requirements. The compendium will contain up-to-date lists of all prohibited matter, permitted matter and restricted matter declared under the Act.

QUESTION– Comment is sought as to whether or not the current listings for prohibited matter, prohibited dealings and registrable dealings should be reviewed?

QUESTION– Comment is sought as to whether or not the current approach to species listing is working well in NSW, or if NSW should consider adopting an alternative approach to species listing?

There is also currently a requirement under section 30 of the Act to immediately notify if there is a prohibited matter event. However, there is not a similar requirement in the Act to notify of prohibited dealings. NSW DPI considers that inclusion of such a provision in the Act would improve government's ability to investigate biosecurity threats and illegally kept prohibited dealings.

QUESTION– Comment is sought if NSW DPI should strengthen its powers under the Act by including a new requirement in the Act for notification of prohibited dealings?

Schedule 3 Part 1(1) of the Act provides an exemption for people for committing an offence if they are working under a 'permitted pest animal incursion program' for prohibited dealings. However, there is no similar power for anyone working under a permitted pest animal incursion program for prohibited matter. This means that anyone dealing with prohibited matter as part of a permitted pest animal incursion program is committing an offence unless they obtain a permit prior to undertaking their work.

Including an exemption in Schedule 2 Prohibited Matter for working under a permitted pest animal incursion program would reduce red tape and subsequent breaches of the legislation.

QUESTION– Comment is sought if the Act should exempt people from committing an offence if they are dealing with prohibited matter as part of a 'permitted pest animal incursion program'?

5.2 Powers of Authorised Officers – Seizure and Destruction

Part 8 of the Act outlines the powers of authorised officers under the Act. As part of these powers, authorised officers can seize, destroy, or eradicate any thing if there is an authorised purpose for their action. Authorised purposes are detailed in section 89 of the Act.

Recent compliance activities involving seizure and destruction have highlighted some limitations for authorised officers in their ability to carry out seizure and destruction activities. NSW DPI considers that amendments could be made to the Act to:

- clarify arrangements around destruction of things that have been moved off the premises (section 102)
- clarify exemptions for the requirement to give a 21-day notice period in certain circumstances (section 110), for example, when an owner cannot be identified or located, and it is not lawful for the person to have the 'thing', such as prohibited matter, and
- allow for destruction of a thing without waiting for a one-day notice period in certain circumstances (section 114). For example, in circumstances where the destruction is expressly authorised by an emergency order, control order or biosecurity zone regulation.

QUESTION– Comment is sought from industry and the community if they support proposed amendments to the Act which enable authorised officers to more effectively carry out their roles with regards to seizure and destruction of things?

5.3 Other Issues?

This discussion paper has provided opportunity for readers to comment on a wide range of aspects of the Act. However, there could be other issues that NSW DPI are not aware of that should be assessed as part of the review.

QUESTION– Comment is sought from industry and the community if there any other issues relevant to the objectives of review that should be considered?

Appendices

A – List of questions

1. QUESTION – Comment is sought on whether industry and the community understand what is meant by the general biosecurity duty and what it means for them in having a responsibility to uphold their general biosecurity duty?
2. QUESTION – Comment is sought from stakeholders if they understand the purpose of the Biosecurity Regulation 2017 and if they know how to use the Biosecurity Regulation 2017 to find relevant information for their industry?
3. QUESTION – Comment is sought from stakeholders if they understand the purpose and obligations under of the Biosecurity (National Livestock Identification System) Regulation 2017 for their industry with regards to the NLIS?
4. QUESTION – Comment is sought from stakeholders if they understand the purpose of the Biosecurity Order (Permitted Activities) 2019 and if it clearly outlines requirements for their industry?
5. QUESTION – – Comment is sought from stakeholders if they understand how the obligations under the Biosecurity Order (Permitted Activities) 2019 interacts with the Act and the Regulation for their industry? QUESTION – Comment is sought if industry and the community are aware of the range of management, compliance, and operational tools available to NSW DPI to manage biosecurity risks?
6. QUESTION – Comment is sought on whether the Act does enough to support the concept of shared responsibility between government, industry, and communities?
7. QUESTION – Comment is sought if industry and the community understand the concept of shared responsibility and where their individual responsibilities lie?
8. QUESTION – Comment is sought on whether the Act provides an appropriate framework for the timely and effective management of biosecurity threats and risks?
9. QUESTION – Comment is sought on whether the Act provides an effective framework which enables risk-based decision-making in relation to biosecurity?
10. QUESTION – Comment is sought as to whether the Act sufficiently meets requirements and gives effect to intergovernmental biosecurity agreements?
11. QUESTION – Comment is sought on whether the Act provides an effective framework for responding to biosecurity incidents?
12. QUESTION – Comment is sought on whether the Act provides the means by which biosecurity requirements in other jurisdictions can be met, so as to maintain market access for industry?
13. QUESTION – Comment is sought as to whether or not the current listings for prohibited matter, prohibited dealings and registrable dealings should be reviewed?
14. QUESTION – Comment is sought as to whether or not the current approach to species listing is working well in NSW, or if NSW should consider adopting an alternative approach to species listing?
15. QUESTION – Comment is sought if NSW DPI should strengthen its powers under the Act by including a new requirement in the Act for notification of prohibited dealings?

16. QUESTION – Comment is sought exempt people from committing an offence if they are dealing with prohibited matter as part of a 'permitted pest animal incursion program'?
17. QUESTION – Comment is sought from industry and the community if they support proposed amendments to the Act which enable authorised officers to more effectively carry out their roles with regards to seizure and destruction of things?
18. QUESTION – Comment is sought from industry and the community if there any other issues relevant to the objectives of review that should be considered?

Appendix B – Key Concepts

The key concepts of the Act are contained in the table below:

Concept	Definition
Biosecurity matter	<p>Biosecurity matter is:</p> <ul style="list-style-type: none"> • any living thing, part of a living thing or product of a living thing (other than a human), or • a disease, prion or contaminant, or • a disease agent that can cause disease in a living thing (other than a human) or that can cause disease in a human via transmission from a non-human host (i.e., zoonosis).
Carriers	<p>A carrier means anything (whether alive, dead or inanimate, and including a human) that has, or is capable of having any biosecurity matter on it, attached to it, or contained in it.</p>
Dealings	<p>Dealing is used in the context of 'dealing with' biosecurity matter or a carrier or to 'engage in a dealing'. A dealing can include any of the following: to keep, possess, care for, have custody of, control, produce, manufacture, supply, import, acquire, buy, sell, dispose of, move, release, use, treat, breed, propagate, grow, raise, feed, culture, experiment with, display, enter into an agreement that deals with, agree to deal with, and/or cause or permit a dealing.</p>
Biosecurity impact	<p>An adverse effect on the economy, environment or the community that arises or has the potential to arise from biosecurity matter or a carrier, and that relates to:</p> <ul style="list-style-type: none"> • the introduction, presence, spread or increase of a disease, disease agent or pest, • stock food, fertilisers, liming materials, and trace element products, • animals, plants, or animal products becoming chemically affected, • risk to public safety caused by bees or non-indigenous animals. <p>If the adverse effect does not relate to any of the above, then it is not a biosecurity impact.</p>
Biosecurity risk	<p>The risk of a biosecurity impact occurring.</p>
Biosecurity event	<p>A biosecurity event is something that has occurred, is occurring or is likely to occur and that has had, is having, or is likely to have, a significant adverse effect on the economy, environment, or community. For example, an unexplained mass mortality in birds could be a biosecurity event.</p>

Prohibited Dealing	Dealings that are specified in Schedule 3 of the Act. These include dealing with certain non-indigenous animals.
Reasonably practicable	Reasonably practicable is used in relation to the prevention, elimination, or minimisation of biosecurity risks. What is reasonably practicable means that which is reasonably able to be done, taking into account and weighing up all relevant matters including the nature of the biosecurity risk concerned, the availability and suitability of ways to manage the biosecurity risk concerned, and the cost involved.