

PIRSA

Technical Directions Paper

Supporting information for public consultation

Developing a new Biosecurity Act for South Australia



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Further information about the project

Further information can be found on the PIRSA Website: https://pir.sa.gov.au/biosecurity/biosecurity_act

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Introduction

The development of a new Biosecurity Act is an opportunity for all of us to contribute to the future management and protection of South Australia's vitally important industries, environment and community.

This Directions Paper outlines the proposed approach the State Government will take to develop a new Biosecurity Act, including the proposed reforms, key concepts and principles.

Since early 2019, when the State Government first announced its plans to develop a new Biosecurity Act, we have directly engaged with over 60 key stakeholders across a wide range of sectors to develop this proposed approach.

We have formed a Stakeholder Reference Group with 23 industry and statutory authority members, who provide expertise, knowledge and experience-based advice to PIRSA and who will have an important role in the co-development of the new Act.

We have also conducted more than 53 workshops, meetings and presentations to various industry, commercial and government bodies to discuss the path forward and to inform this approach.

The State Government is engaging across industry, government and wider public to ensure we:

- develop modern legislation
- bring consistency to the management of biosecurity across all industries
- identify current strengths and weaknesses
- seek opportunities to build a better, more cohesive biosecurity system for the State's future growth.

Have your say

Now is the time to have your say in the future management and protection of this state's vitally important and secure biosecurity system.

The State Government is undertaking public consultation on the proposed approach being taken to develop a new Biosecurity Act. Individuals, agencies and groups can provide feedback on the proposed new Act up until 11:45pm, 24 November 2020 by:

- Providing a written submission via:
 - post to "Biosecurity Act Project - Office of the Chief Executive" c/o- GPO Box 1671, ADELAIDE SA 5001
 - email to PIRSA.biosecurityact@sa.gov.au
- Responding to the online survey or contributing to the online discussion forum at www.yourSAy.sa.gov.au/biosecurity-act

A number of stakeholder meetings and webinars to help explain the detail and stages required to develop this new Act will also occur during public consultation.

A suite of information has been developed to support public consultation including a Public Consultation Paper, this Technical Directions Paper, fact sheets, a video and a range of digital assets. You will find this information and times on future webinars at pir.sa.gov.au/biosecurity-act

Feedback received through targeted and public consultation and engagement will help shape the development of a Biosecurity Bill. This will ensure a more responsive and effective Biosecurity Framework is developed. There will also be future opportunities to engage and influence the direction and details in this Act.

Scope

The new Act will apply to all land and people within South Australia and all waters within the limits of the state. The development of the new Biosecurity Act will consolidate existing South Australian Acts, as well as a number of regulations.

An internal review of all South Australian legislation relevant to biosecurity management was undertaken by PIRSA in early 2019. This review identified any Acts with a clear focus on managing a pest or disease (pathogen) as part of South Australia's biosecurity system for possible consideration and inclusion under a new, consolidated Biosecurity Act for South Australia.

Four Acts are proposed to be fully incorporated into the new Act, along with the relevant parts of one other Act. These separate Acts have been established over the last century to manage pests and diseases of plants, livestock and fish, and to manage wild dogs and stray livestock.

The new Biosecurity Act will retain the arrangements established by these individual Acts that are working well, whilst building improvements outlined in this Technical Directions Paper. When the individual Acts are consolidated, they will create a new Biosecurity Act with general powers to manage biosecurity matter, or goods, rather than have specific provisions, e.g. for livestock or plant health. This approach will ensure that South Australia's ability to effectively manage biosecurity risks is enhanced.

There are risks associated with consolidating Acts into a new Biosecurity Act. Individual Acts bring a level of focus and clarity for the issues they manage (e.g. animal health). This focus and clarity may be reduced as the new Act moves towards a more streamlined and general approach to all biosecurity related matters. Implementing the new Biosecurity Act may also cause a level of initial confusion, as the requirements of the new Act are being understood during the transition period. Transition to and implementation of the new Act will be supported by clear supporting information and education. These risks have been identified and considered low - outweighed by the benefits of having contemporary legislation and a consistent approach to biosecurity across all industries and jurisdictions (where possible).

The Acts that are proposed to be consolidated in full, include:

- *Plant Health Act 2009*
- *Livestock Act 1997*
- *Dog Fence Act 1946*
- *Impounding Act 1920*

The Act proposed to be included in part is the *Fisheries Management Act 2007*.

Plant Health Act 2009

The *Plant Health Act 2009* provides for the protection of plants from pests¹, the regulation of the movement of plants into, within and out of the State, and the control, destruction and suppression of pests. The Act is the responsibility of the Minister for Primary Industries and Regional Development.

The *Plant Health Act 2009* is a fundamental component in the context of developing a Biosecurity Act for South Australia, given its significant role in dealing with plant pest and disease issues. The *Plant Health Act 2009* creates a list of prohibited matter, with the Plant Quarantine Standard outlining the requirements for importing plants and plant material into South Australia.

¹ A pest is any species, strain or biotype of plant, animal, or pathogenic agent injurious to plants or plant products.

South Australia remains the only Australian mainland state that is fruit fly free, which protects the state's commercial production of fruit and vegetables. In 2018-19, the estimated farmgate value of the state's horticultural produce vulnerable to fruit fly was \$1.3 billion.

In 2018-19, the field crops industry produced 5.8 million tonnes of grain², with a total farmgate value of \$1.9 billion, and in 2018-19, the viticulture industry produced about 769,000 tonnes of grapes valued at \$632 million. The wine industry generated \$2.27 billion in the same year. Fruit, nuts and vegetables make up South Australia's horticulture industry, growing more than one million tonnes in 2018-19 and generating \$1.77 billion in revenue for the state's economy.

It is proposed that the *Plant Health Act 2009* is repealed and replaced by the new Biosecurity Act

Key provisions of the *Plant Health Act 2009* include the ability to take action on "reasonable suspicion", a requirement for registration of importers of plants / plant products, enabling government to verify import requirements on arrival, and the provision for industry accreditation / certification.

Livestock Act 1997

The *Livestock Act 1997* regulates matters relating to animals kept (or usually kept) in a domestic or captive state and includes bees, poultry and aquaculture. Its primary purpose is to enable the response to, and management of, biosecurity threats in order to minimise the impact of diseases and contaminants to the State's livestock industries. The Act is the responsibility of the Minister for Primary Industries and Regional Development.

Beef and dairy cattle, sheep, pigs, chickens, turkeys, goats, alpacas, deer, rabbits, buffalo and bees are among the species farmed over much of South Australia for meat, wool, hides, milk, eggs and honey. In 2018-19, South Australian livestock industries contributed approximately \$4.5 billion to state revenue, or about 30% of total agriculture, food and wine industry revenue. The state's 11.8 million sheep represent about 16% of the national flock, and South Australia is Australia's largest pig processor, processing about 1.3 million pigs annually – a quarter of Australia's tally. In 2018-19, South Australia produced 20.9 million dozen eggs and 496 million litres of milk from the 66,000 dairy cows.

The *Livestock Act 1997* is a fundamental component in the context of developing a Biosecurity Act for South Australia, given its significant role in dealing with animal disease and contaminant issues. It is proposed that the *Livestock Act 1997* is repealed and replaced by the new Biosecurity Act

The *Livestock Act 1997* makes provision for the registration of specific industries which have biosecurity implications and identification codes for properties where animals are kept or handled. Provisions ensure appropriate legal powers exist to enable action to be taken to control or eradicate a disease (or contaminant) in both day-to-day and emergency situations. This includes a requirement to report notifiable diseases, restricting the entry and movement of animals, undertaking investigations and the implementation of directives to eradicate or control disease (including destruction and disinfection/decontamination). Provisions focused on prevention are also important, such as the restrictions on Swill feed and Ruminant feed to prevent exposure to pathogens.

² The state's 10-year average is about 8 million tonnes.

Dog Fence Act 1946

The *Dog Fence Act 1946* provides for the establishment and maintenance of landscape-scale dog-proof fences in the State in order to prevent the entry of wild dogs into pastoral areas, where they impact livestock. The Act is the responsibility of the Minister for Primary Industries and Regional Development.

The Dog Fence Board oversees owners (Local Dog Fence Boards and one private owner) of sections of the fence to ensure that they regularly patrol and maintain the fence, and control dogs in the vicinity of the fence.

It is proposed that the *Dog Fence Act 1946* is repealed and replaced by the new Biosecurity Act, with review of the provisions to ensure they are still fit for purpose.. The only changes as a result of this proposal would be any improvements identified to existing provisions, and that there is no longer a standalone, dedicated Act. This approach will ensure that the statutory authority, the Dog Fence Board, remains legally and financially unaffected and their role in protecting South Australia's dog-proof fences continues. It will also highlight the importance of investing in secure borders (the Fence) to control wild dog incursions in the biosecurity continuum.

Parts of the *Dog Fence Act 1946* are outdated and unworkable, such as the inability to revoke a declared section of Dog Fence. Replacing the *Dog Fence Act 1946* provides an opportunity to modernise outdated parts of the Act in a timely and efficient way, with a review considering provisions that better define and permit control of wild dogs by the owners, clarify responsibilities of road owners to maintain dog-proof grids along the Fence, and review the governance of Local Dog Fence boards.

It is acknowledged that this proposal could risk losing specific focus on the Dog Fence in South Australia by not having a dedicated Act, but improved outcomes for the Dog Fence will result from a thorough review of the Dog Fence legislation through the development of the Biosecurity Act.

Impounding Act 1920

The *Impounding Act 1920* is an Act providing for the impounding of livestock and is the responsibility of the Minister for Primary Industries and Regional Development.

Under the Act, compliance powers mainly sit with local government, and provide the option for a local government to establish a pound. The Act also provides for landholders to impound stray livestock, however the process required for a council and a landholder to impound livestock is considered complex and the compensation provisions inadequate. Issues have also been raised regarding agisted livestock being abandoned by their owners, leaving the landholder with an obligation to care for the animal with no financial compensation.

As the majority of the *Impounding Act 1920* is no longer used, nor appropriate in current times. It is proposed that the *Impounding Act 1920* is repealed and replaced by the new Biosecurity Act with significant reforms to modernise and simplify the approach to stray and abandoned livestock. The new Biosecurity Act will only include the provisions regarding the responsibilities and rights of councils and landowners in relation to the management of stray and abandoned livestock. The new Biosecurity Act will include the right to keep, sell or destroy straying or abandoned livestock after a reasonable period of time, during which all reasonable effort has been made to return the stray or abandoned livestock to its rightful owner.

The repeal of the *Impounding Act 1920* may present some risks when it comes to managing stray livestock on roads or public land, however feedback received suggests that these issues are mostly managed informally, outside of the *Impounding Act 1920*. This is an opportunity to clarify responsibilities, especially in the context of the provisions relating to confinement of stray livestock in section 254 of the

Local Government Act 1999 (if they are a traffic hazard), as well as the *Landscape South Australia Act 2019*, neither of which are consistently used for stray livestock, despite many cases being reported.

Fisheries Management Act 2007

The *Fisheries Management Act 2007* provides for the conservation and management of the State's aquatic resources, the management of fisheries and aquatic reserves, the regulation of fishing and the processing of aquatic resources, the protection of aquatic habitats, aquatic mammals and aquatic resources and the control of exotic aquatic organisms and disease in aquatic resources.

It is proposed that the new Biosecurity Act complements the *Fisheries Management Act 2007* by moving the responsibility for biosecurity related matters managed by section 78 and 83 (e.g. declaration of noxious species) to the new Biosecurity Act, while still retaining provisions within the *Fisheries Management Act 2007* to manage other matters consistent with the objects of the Act (e.g. 'put and take' fisheries, release and escape of aquaculture fish, and conservation restocking).

It is proposed that section 130 of the *Fisheries Management Act 2004* is repealed and replaced by the new Biosecurity Act, where the prevention, control and eradication of exotic aquatic organisms and disease in aquatic resources more appropriately resides.

This proposed approach will ensure clarity on what is a fisheries management matter versus a biosecurity matter. This proposal will also have the benefit of enabling fit-for-purpose improvements to manage biofouling, ensuring a consistent approach for biosecurity for terrestrial and aquatic environments and improving our marine biosecurity emergency responses. It will also provide additional instruments for clear and decisive directions to stakeholders in order to reduce aquatic biosecurity risks and strengthen border controls relating to aquatic plants and animals being brought into the state (e.g. aquarium trade).

A single piece of framework legislation

An Act is essentially a sequence of provisions containing statements and rules designed to give effect to a particular policy. An Act generally deals with all matters of importance for the implementation of a particular policy, with the detail and areas likely to experience frequent change generally contained within subordinate legislation.

The new Biosecurity Act is proposed to be a framework law that lays down general obligations and principles, with more specific measures provided within subordinate legislation (i.e. regulations.) and subordinate instruments (i.e. standards, code-of-practice, policies etc.) created under the Act, rather than within the Act itself (see Figure 1 below).

Subordinate legislation is law made under an Act by the executive branch of government (Cabinet) with the authorisation of Parliament. Subordinate legislation includes regulations, rules, by-laws, certain policies, proclamations and notices.

Policies are made in accordance with a particular process set out in the Act under which they are made and this usually requires public consultation.

Regulations are the most common form of "subordinate legislation". Most Acts include a section providing general regulation making power. Regulations provide a lot of the detail within the statutory structure or framework that has been created by the Act.

Regulations must:

- be within the limits of power to make regulations
- comply with any preconditions set out in the principal Act, such as consultation with specified office-holders or bodies
- be consistent with the purpose and intent of the principal Act
- not confer discretionary power, unless the principal Act allows this sort of delegation.

Regulations may also be challenged within the courts on various grounds, including:

- repugnance to the common law
- being unreasonably oppressive or unjust
- being uncertain
- being for an improper purpose.

Section 10 of the *Subordinate Legislation Act 1978* sets out the process for making most regulations and all regulations are published in the Government Gazette on the day on which they are made in Executive Council. Regulations must be laid before each House of Parliament within 6 sitting days of that House after being made. There is a period of 14 sitting days within which a Member of Parliament may give a notice of motion for the disallowance of the regulation. If a regulation is disallowed, notice of the resolution is published in the Government Gazette and the regulation ceases to have effect.

With this approach to the new Biosecurity Act, subordinate legislation and instruments would support the operation of the Act by prescribing the detail, providing a measure of flexibility and responsiveness and enabling future challenges in biosecurity to be effectively addressed without the need for a full redevelopment of the Act.

The requirements for any subordinate legislation and instruments will be considered and identified, as far as possible, in parallel to the development of the new Act. Once the Biosecurity Bill has been introduced into Parliament, the focus will be on the development and consultation on the subordinate legislation and instruments, with their creation and implementation commencing once the new Biosecurity Bill has passed through the Parliamentary process and receives Royal assent (becomes law).

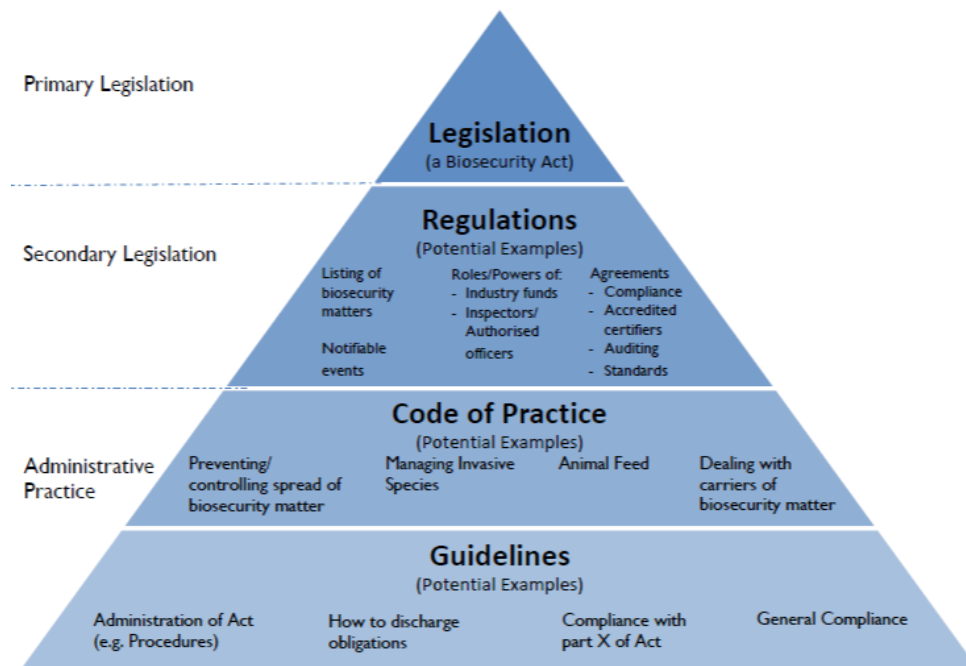


Figure 1 – Framework for the new Biosecurity Act (picture source: Biosecurity Tasmania)

Interaction with other Acts

The new Biosecurity Act will interact with other legislation when dealing with biosecurity issues in South Australia, for example the *Landscape South Australia Act 2019*. Some Acts may require cross-referencing or minor amendments to ensure alignment and correct referencing to the new Biosecurity Act.

Some examples of key interactions are as follows:

Fisheries Management Act 2007

The *Fisheries Management Act 2007* provides for the conservation and management of the State’s aquatic resources, the management of fisheries and aquatic reserves, the regulation of fishing and the processing of aquatic resources, the protection of aquatic habitats, aquatic mammals and aquatic resources and the control of exotic aquatic organisms and disease in aquatic resources.

The *Fisheries Management Act 2007* will remain as a separate Act, with the new Biosecurity Act taking the lead on biosecurity related matters managed by section 78 and 83, while still retaining provisions within the *Fisheries Management Act 2007* to manage other matters consistent with the objects of the Act.

Landscape South Australia Act 2019

The *Landscape South Australia Act 2019* promotes sustainable and integrated management of the State’s landscapes and makes provisions for the protection of the State’s natural resources. The Act establishes Landscape boards and a Green Adelaide Board, who have the role of promoting the management of natural resources within the regions and preparing regional landscape plans.

The management of pest plants and animals (Part 9) will remain separate to the new Biosecurity Act. However, the two Acts will need to interact to ensure that pest animal and plant control, environmental biosecurity and wildlife diseases can be managed effectively.

Phylloxera and Grape Industry Act 1995

The *Phylloxera and Grape Industry Act 1995* provides for the protection of vineyards from disease and to assist and support the grape industry in South Australia. The Act is the responsibility of the Minister for Primary Industries and Regional Development with the Phylloxera and Grape Industry Board of South Australia, trading as Vinehealth Australia, responsible for administering the *Phylloxera and Grape Industry Act 1995*.

Based on feedback from representatives of the viticulture industry, the *Phylloxera and Grape Industry Act 1995* will remain separate to the new Biosecurity Act. The Government is providing the viticulture industry the discretion to change this position as more details on the new Biosecurity Act become available.

Current references in the Act to the *Plant Health Act 2009* will be updated to reference the new Biosecurity Act.

Public Health Act 2011

As per the current arrangements, the new Biosecurity Act will continue to assist in the prevention, elimination or minimisation of impacts from zoonotic diseases, which are animal diseases (i.e. rabies and anthrax) that can be transmitted to humans. South Australia has established a One Health South Australian Working Group (OHSAWG), which is a public health partnership including PIRSA Biosecurity SA, SA Health and the Department of Environment and Water. This working group reviews proposed changes to the South Australian *Public Health Act 2011* and implications regarding animal health and biosecurity. It also confidentially shares, compares and cross-monitors a variety of human and animal health notifiable diseases with the aim of early detection and prevention of diseases, including zoonotic diseases. In emergency situations involving zoonotic diseases, responses will be coordinated on a whole-of-government level pursuant to the *Emergency Management Act 2004* and/or the *Public Health Act 2011*. The new Biosecurity Act will have a role in supporting the One Health outcomes.

Agricultural and Veterinary Chemical (South Australia) Act 1994

The registration of all agricultural and veterinary chemical products into the Australian marketplace is centralised with the Australian Pesticides and Veterinary Medicines Authority (APVMA). The *Agricultural and Veterinary Chemical (South Australia) Act 1994* applies certain laws of the Commonwealth relating to agricultural and veterinary chemical products as laws of South Australia. The *Agriculture and Veterinary Product (Control of Use) Act 2002* relates to agricultural chemical products, fertilizers and veterinary products, which are important tools in managing biosecurity risks.

The new Biosecurity Act will not regulate the use of agricultural and veterinary chemicals and products. There may be merit in providing inspectors/authorised officers under the AgVet legislation with inspector/authorised officer powers under the Biosecurity Act.

Animal Welfare Act 1985

Animals in South Australia must be treated in accordance with the *Animal Welfare Act 1985* and the Animal Welfare Regulations 2012.

The Act applies equally to all animals regardless of their value or status (i.e. threatened or pest species). Compliance with the requirements of the Act is mandatory.

Under Section 13 of the Act, anyone who ill-treats an animal is guilty of an offence. The Act lists the types of actions which constitute ill-treatment. This Act is enforced by the RSPCA, departmental wardens, livestock animal health officers, biosecurity officers and the police.

Animal welfare will remain separate to the new Biosecurity Act and continue to be managed by the Minister for Environment and Water.

Primary Produce (Food Safety Schemes) Act 2004

The *Primary Produce (Food Safety Schemes) Act 2004* enables Food Safety Schemes (regulations) to apply to primary food production and processing. Each scheme states the food safety standards that apply to a business, the accreditation or approved food safety arrangement required, and the food safety arrangements.

The food safety schemes will remain separate to the new Biosecurity Act. However, the new Biosecurity Act could provide for cross-authorisation of inspectors, enabling biosecurity issues to be addressed while inspecting premises on food safety grounds.

International and National biosecurity

International

There are a number of international agreements and instruments of relevance to which Australia is a signatory. The World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (known as the SPS Agreement) establishes biosecurity principles and rules for food safety as well as animal and plant health. The International Plant Protection Convention (IPPC) coordinates work to prevent the spread and introduction of pests of plants and plant products, and to promote appropriate measures for their control, with minimal disruption to trade. The World Organisation for Animal Health (OIE) is the intergovernmental organisation responsible for improving animal health worldwide and is recognised as a reference organisation by the World Trade Organization (WTO)

The prevention of the spread of harmful aquatic organisms from one region to another is guided by the International Maritime Organisation's (IMO): International Convention for the Control and Management of Ships Ballast Water and Sediments (Ballast Water Management Convention) and The *Guidelines for the control and management of ships' biofouling to minimise the transfer of invasive aquatic species* (Biofouling Guidelines). The IMO has established standards and procedures for the management and control of ships' ballast water and sediments and ships' biofouling. Shipping has been identified as a major pathway for introducing invasive aquatic pests and diseases to new environments.

The United Nations Convention on Biological Diversity (CBD) sets out a comprehensive strategy for sustainable development with parties producing national strategies to achieve the objectives of the Convention (United Nations, 2015). The CBD requires that parties shall 'as far as possible and as appropriate, prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species' (Australian Government, 2015).

National

The Intergovernmental Agreement on Biosecurity (IGAB) between the Commonwealth, state and territory governments outlines the national biosecurity system (see Figure 2 and 3 below) and the roles and responsibilities of the government parties. The goal of the national biosecurity system is to minimise

adverse impacts of pests and diseases on Australia's economy, environment and the community while facilitating trade and the movement of plants, animals, people and products.

As per Australia's Constitution, the Commonwealth oversees the prevention of pests and diseases reaching and entering Australia through pre-border and border activities. This is regulated by the Commonwealth *Biosecurity Act 2015*, which is administered by the Department of Agriculture, Water and the Environment (DAWE). The *Environment Protection and Biodiversity Conservation Act 1999*, which is also administered by the DAWE, also provides for biosecurity import provisions through its live import list.

State and territory governments' focus is on preventing the entry, establishment, spread and impact of pests and diseases within their borders. Under the IGAB, State and Territory biosecurity responsibilities include:

- enforcement actions and regulatory interventions
- managing eradication and containment programs for nationally agreed and other pest and disease incursions
- undertaking surveillance and diagnostics to support early detection and diagnosis
- biosecurity activities on public lands under their jurisdiction and, under certain circumstances, on private lands
- regulating the keeping and movement of plants and animals that pose significant risks
- monitoring pest and disease status, including data for international and domestic market access
- negotiating and facilitating domestic trade that is consistent with international obligations
- maintaining capacity to prepare for, detect and respond to exotic pest and disease incursions
- supporting landholders and the community to manage established pests and diseases
- maintaining and administering systems to support agreed national traceability requirements.

The Intergovernmental Agreement on Biosecurity is underpinned by three national biosecurity emergency response agreements: The Emergency Animal Disease Response Agreement (EADRA), Emergency Plant Pest Response Deed (EPPRD), and the National Environmental Biosecurity Response Agreement (NEBRA). These are based on a principle of shared responsibility, and set out decision-making processes and cost-sharing arrangements. National agreements relating to exotic production weeds and aquatic animal diseases are also in preparation.

The National Biosecurity Committee (NBC) is the intergovernmental policy forum for the coordination and co-development of the national biosecurity system. It reports to the Agriculture Senior Officials Committee (heads of primary industries agencies), which in turn reports to the Agriculture Ministers Forum, chaired by the Commonwealth Minister for Agriculture and Water Resources. The National Biosecurity Committee oversees committees that focus on plant health, animal health, environmental biosecurity/invasive species and marine pests and leads on the implementation of the Intergovernmental Agreement on Biosecurity.

In addition, there are many nationally agreed policies that require legislative underpinning. The National Livestock Identification System (NLIS) for improving traceability of cattle, sheep and goats in a food security or animal disease event, and the Interstate Certification Assurance (ICA) scheme for horticulture and nursery produce are examples of such policies.

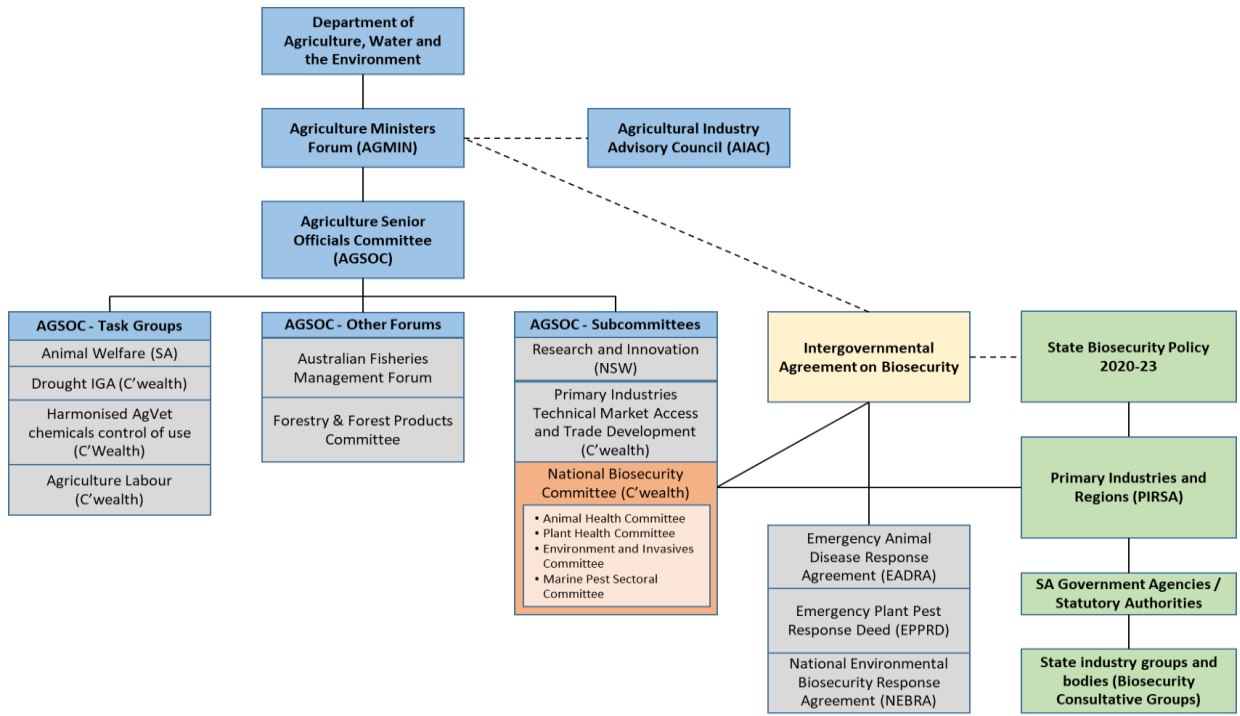


Figure 2 – National Biosecurity Framework.

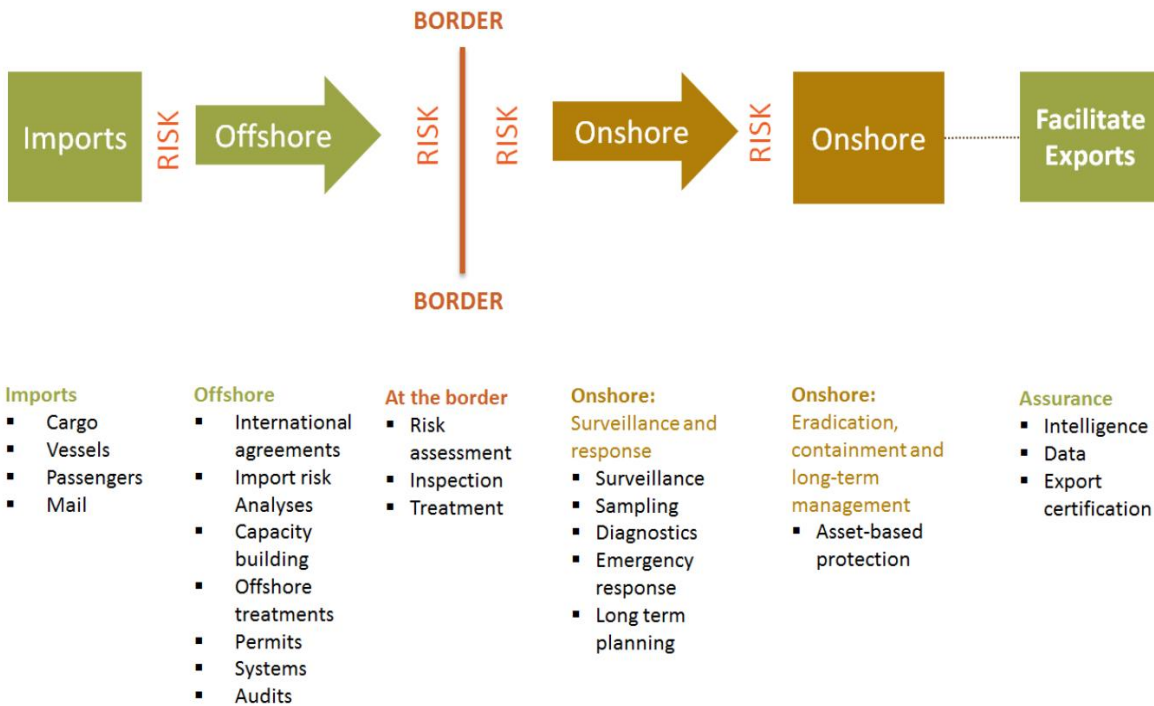


Figure 3 – The biosecurity continuum

Other jurisdictions

The legislative frameworks for biosecurity adopted across other states and territories can be classified into two broad groups: those that have a primary Act encompassing traceability, diseases and pests of plants and animals, and invasive species (e.g. weeds, pest animals, aquatic pests) and those that have multiple Acts regulating these issues separately.

Consolidated biosecurity legislation is in place in the Commonwealth, Tasmania (TAS), New South Wales (NSW), Queensland (QLD) and Western Australia (WA). Of these four states TAS and NSW are the only ones to have standalone legislation dealing with biosecurity matters, with QLD and WA having retained some additional laws that regulate biosecurity matters, such as exhibiting of animals and stock routes. For the remaining states multiple Acts exist, noting that the Australian Capital Territory (ACT) Government has developed and consulted on a framework for its new Biosecurity Act, which is proposed to closely align with the NSW legislation.

South Australia

Primary Industries and Regions SA (PIRSA) is the lead South Australian Government agency for state level biosecurity policy and management, including emergency animal and plant pest and disease response. PIRSA collaborates with South Australian Government agencies, statutory boards and authorities on biosecurity management and represents South Australia on the National Biosecurity Committee (NBC), which develops and reviews national biosecurity policies.

The state's biosecurity system is guided by *South Australia's Biosecurity Policy 2020-23*. This policy is aligned with the Intergovernmental Agreement on Biosecurity and its principles, and guides the development and implementation of the State's legislative framework to conform to national agreements and nationally agreed policies.

This State Policy outlines how, together, we can protect and improve the state's economy, environment, amenity and public health by preventing and reducing pest and disease impacts to sustain business continuity. The State Government recognises the nature of our national and international markets and the interconnection between businesses and supply chains. The Government prioritises biosecurity activities by taking into account the risks, feasibility of control, cost effectiveness, and public interest, and relies on a partnership approach and shared responsibility between government, industry and the community. There are six key priority areas contained within South Australia's Biosecurity Policy, which form the basis for the approach to biosecurity legislation within the State:

1. Securing primary production and food safety
2. Detection and response to new pests and diseases
3. Minimising the economic, social and environmental impacts of pests and diseases
4. Government, industry, and the community working collaboratively to enhance biosecurity
5. Biosecurity technical expertise
6. Modern fit for purpose infrastructure.

Through these activities the State Government aims to:

- retain pest and disease-free status
- protect and improve market access
- increase farm productivity
- protect public safety, and
- protect biodiverse landscapes.

Research and education

PIRSA is proactive in educating agency staff, industry, natural resource managers and the community about policy, strategies, new tools and advice for the prevention, detection, response and management of pests and diseases. PIRSA, through the Minister for Primary Industries and Regional Development, is a member of the Centre for Invasive Species Solutions (CISS) which invests in research and development on pest control and detection tools as well as community engagement and extension. In particular, PIRSA is a partner on projects to reduce impacts of feral deer, cats, rabbits, weeds and new introduced species. PIRSA also hosts a number of State Pest Coordinators to invigorate community-led control and detection programs for pests of State priority

PIRSA conducts and contributes to biosecurity research through both Biosecurity SA and the South Australian Research and Development Institute (SARDI). Biosecurity SA contributes to oversight and collaboration in research projects conducted under the Plant Biosecurity Science Foundation and predecessor Cooperative Research Centres.

SARDI has expertise in entomology, mycology, nematology, microbiology and molecular diagnostics. It provides disease management and biosecurity solutions for plant industries collaboratively, with a research network that extends nationally and internationally. Targeted plant health research is conducted into cereal, pulse, oilseed, horticulture and viticulture crops and forestry. Services are provided in plant disease diagnostics, post-entry quarantine and disease and pesticide resistance screening. The SARDI Biosecurity sub-program specialises in biosecurity research with key strengths in diagnostics, surveillance and impact management. SARDI also undertakes aquatic biosecurity research, as well as projects that inform risk assessments, policy, emergency responses and approaches.

SARDI's international research program in collaboration with Cornell University in the USA, aims to develop diagnostic protocols and incursion response strategies to minimise the economic impact of eradication. SARDI entomologists are experts in insect taxonomy, ecology and molecular biology, and apply their expertise to diagnostic services, integrated pest management and biosecurity programs. The program supports market access and provides information and management systems for biosecurity surveillance and response, including fruit flies and locusts.

The development and implementation of the new Biosecurity Act will involve open, robust and constructive engagement and education across a wide range of stakeholders to ensure the new Biosecurity Act accurately reflects their needs and value and strengthens important partnerships.

It is also an important opportunity to raise awareness, educate, and enable meaningful connections with key stakeholders and the general public that acknowledges the importance of strong biosecurity to this state and the shared responsibility we all have to protect our state from unwanted pests and diseases.

A suite of communication and education material will be developed to support the consultation and implementation of the new Act.

Core concepts

The new Biosecurity Act will be built on a foundation of core concepts. Some of these concepts already exist within South Australia's biosecurity system and are applied to current practices as outlined in South Australia's Biosecurity Policy 2020-23. Other concepts have been developed by aligning our approach to other jurisdictions with consolidated biosecurity legislation.

Shared responsibility

The proposed core concept of shared responsibility will underpin and further strengthen government, industry and the people of South Australia working together to protect our economy, environment and community from the negative impacts of pests and diseases, weeds and contaminants for the benefit of all South Australians.

Strong and effective biosecurity is in the best interest of government, industry and the community and relies on a partnership approach. To continue to protect South Australia's biosecurity, government will continue to provide adequate resourcing and lead and coordinate where appropriate (e.g. in emergencies), but empower industry and the community to take a stronger leadership and ownership role.

Shared responsibility is not a new concept for South Australia, but will require some new additions to our legislation, along with education and training.

The new Biosecurity Act will:

- Establish a new legislated General Biosecurity Duty
- enable a third-party (e.g. industry body/company/authority) to be recognised as an accreditation authority and/or auditor for the purposes of the Biosecurity Act.
- enable existing industry schemes (e.g. code of practice/audit program/certification) to be formally recognised by the Biosecurity Act.
- enable appropriate biosecurity programs developed by an industry/community to be recognised (and possibly funded) by the Minister.

Across Australia, arrangements for sharing the responsibility for biosecurity are becoming more prevalent. Codes of practice, regulatory standards, quality and market assurance schemes, and joint management plans are just a few examples of Government-industry partnerships, whereby biosecurity risks are managed together.

The new Act is proposed to establish a new General Biosecurity Duty, which creates an obligation for all South Australians to use reasonable standards of care when dealing with any material that presents a biosecurity risk. The inclusion of the General Biosecurity Duty emphasises the importance of shared responsibility and will apply to everyone within South Australia, whether a landowner, agricultural producer, food manufacturer, transporter, tourist or member of the community.

The General Biosecurity Duty will legally require any person who is aware, or reasonably should be aware, that a biosecurity risk exists, to ensure, as far as reasonably practical, that the risk is mitigated, eliminated or reduced. Similar requirements already exist in South Australia, e.g. prohibiting moving of diseased stock to saleyards or the selling of fruit infested with fruit fly. Determining what a person should 'reasonably' be aware of is a matter for the courts, however guidance on how a person's general duty of care can be discharged will be provided, e.g. ensuring your boat has a clean hull before moving into a sensitive region, wearing appropriate clothing and footwear, or observing an exclusion period before travelling between intensive livestock farms.

The General Biosecurity Duty will be legally enforceable and non-compliance will be an offence. This is not an entirely new concept in South Australia, with section 6 of the *Plant Health Act 2009* requiring a person to report pest affected plants and products and take all reasonable measures to prevent any spread. New South Wales, Tasmania and Queensland all have a General Biosecurity Duty (or Obligation) within their biosecurity Acts.

It is proposed the new Act will provide opportunities for organisations who choose to work cooperatively with others in their industry sector, or with government, to manage biosecurity risks and impacts. For example, the new Act will enable the State Government to recognise non-government organisations as accreditation authorities, who will be authorised to accredit biosecurity certifiers and auditors to audit and inspect business operations, and provide product certification. This is not a new concept, but is currently not consistently applied as it exists within the *Plant Health Act 2009*, but not the *Livestock Act 1997*. An example is the National Nursery Growers establishing the Greenlife Industry Australia accreditation/certification scheme for nursery stock, which is recognised under the *Plant Health Act 2009*.

This approach could also see a formal recognition of industry-based quality assurance programs for regulatory purposes. One such scheme already operating across Australia is the Interstate Certification Assurance (ICA) Scheme – a national system of plant health certification based on quality management principles.

In Western Australia, the *Biosecurity and Agriculture Management Act 2007* enables landholders to come together and establish a Recognised Biosecurity Group. This is an expression of shared responsibility, as it enables communities and industry to partner with a range of organisations, including State Government agencies and potentially access funding for their biosecurity program. The Western Australian Act allows a rate to be raised for the purposes of biosecurity in a recognised group's operational area. Funds collected are matched equally by the State Government. The groups undertake a planning process to inform what funds are required to carry out the work, with the rate to be charged set by the Minister after consultation and engagement with affected landholders.

Tasmania has a similar approach in their *Biosecurity Act 2019*, which provides for biosecurity programs that can be administered by Government, an industry group, or a non-profit environmental organisation. Tasmania's biosecurity programs can be established for outcomes such as eradicating weeds or feral animals from a particular regional area, or to promote the adoption of industry-wide disease control and prevention measures, by a particular commodity sector. The biosecurity programs must set out in writing the actions which the various parties will undertake, and how costs will be met e.g. through sector or industry specific mechanisms, co-funding by Government, or other means. Programs are another key way of promoting shared responsibility for biosecurity management between the Government, industry and the community.

Case Study – Moving cattle tick through Queensland

A successful prosecution has been made under Queensland's *Biosecurity Act 2014* for a failure to comply with a general biosecurity obligation (duty), with a Queensland transport company fined \$25,000 and a truck driver \$5,000.

The prosecution arose after the company moved cattle from the cattle tick infested zone through the cattle tick free zone, without undertaking reasonable actions to prevent a cattle tick infestation in the free zone.

The judgment found that it was self-evident that the cattle should not have been moved from the infested zone into the free zone, but instead treated and subject to inspection before the journey.

During an unscheduled stop in the cattle tick free zone, several cattle escaped from the truck, leading to a cattle tick infestation on two nearby properties inside the cattle tick free zone. As a result, the two properties were placed under movement restrictions and had to undertake a cattle tick eradication program.

This case study highlights how everybody must take reasonable and practical actions to manage biosecurity risks that are under their control and that they know about, or should reasonably be expected to know about. These risks could have been managed by travelling a different route, or treating the cattle before moving.

Risk-based decision making

One of the guiding principles for biosecurity in South Australia is a risk management approach being applied to setting priorities and investment across biosecurity management. The aim of risk-based decision making is to ensure that the steps taken to manage a biosecurity risk are effective and proportionate to the risk. This allows greater flexibility and more responsive approaches to manage each specific circumstance. As per the current approach, risk-based decision making is proposed to be a core concept in the new Biosecurity Act.

For example, Biosecurity SA has identified those plant pests that are the state's highest priorities for preparedness, based on an assessment of the likelihood of entry, establishment and spread, and the likely impacts. Biosecurity SA has also contributed, through Plant Health Committee, to the identification of National Priority Plant Pests, and is part of national activities to identify and bridge gaps in surveillance, diagnostics, contingency planning, research, development and extension. Pest Risk Analysis (PRA) refers to the whole process of risk assessment (determining the likelihoods of entry, establishment and spread of a pest and its likely impact) and risk management (regulation of movement of risk materials). Pest Risk Analysis is routinely used to underpin market access decisions in the plant health biosecurity space.

Risk assessments are also used to determine the course of action during a response to a new detection of an aquatic pest, with assessments considering the likely impact of the new pest, the cost benefits of control, the potential social/economic impacts of the control action.

The Act will focus on biosecurity risks that are, or are likely to become, a significant problem for the economy, environment or social amenity.

The identification, assessment and prioritisation of biosecurity risks will help ensure resources are deployed to the highest risk areas and the most appropriate response is provided. To manage biosecurity risks, all reasonable and practical steps need to be taken to mitigate, eliminate or reduce the risk. The steps taken may depend on the likelihood of the risk occurring, and how serious the impact could be.

A risk-based framework would provide the highest level of regulation in relation to biosecurity matter declared as 'prohibited matter'. This matter is likely to have significant adverse impacts and therefore needs to be tightly regulated. As the biosecurity risk decreases, the need for direct regulatory control also decreases, with low-risk biosecurity matter likely managed through the General Biosecurity Duty.

Underpinning science and responsive research capability, along with engagement with industry, would be used to inform risk analyses, policy development and decision-making in order to prevent, respond to and manage biosecurity risks in South Australia. For example, it is through science that we identify new technologies and approaches to new and emerging biosecurity challenges.

Proactive biosecurity management

The new Act will have a strong focus on prevention and provide the ability to be proactive in response to emerging biosecurity risks, while also providing strong and effective powers to respond in emergencies. These biosecurity practices follow a continuum of prevention, detection, eradication and ongoing management (containment and impact mitigation).

Figure 4 shows that generally, prevention gives the most public benefit and the lowest long-term costs in avoiding new pests (or diseases) establishing. This is then followed by eradication where it is feasible, cost-effective and the pest poses a high risk of future impacts. Where pests and diseases are established in South Australia, the management focus is on containing their further spread and providing land owners and managers with the information and control tools to reduce their impacts, often through an industry-government collaboration.

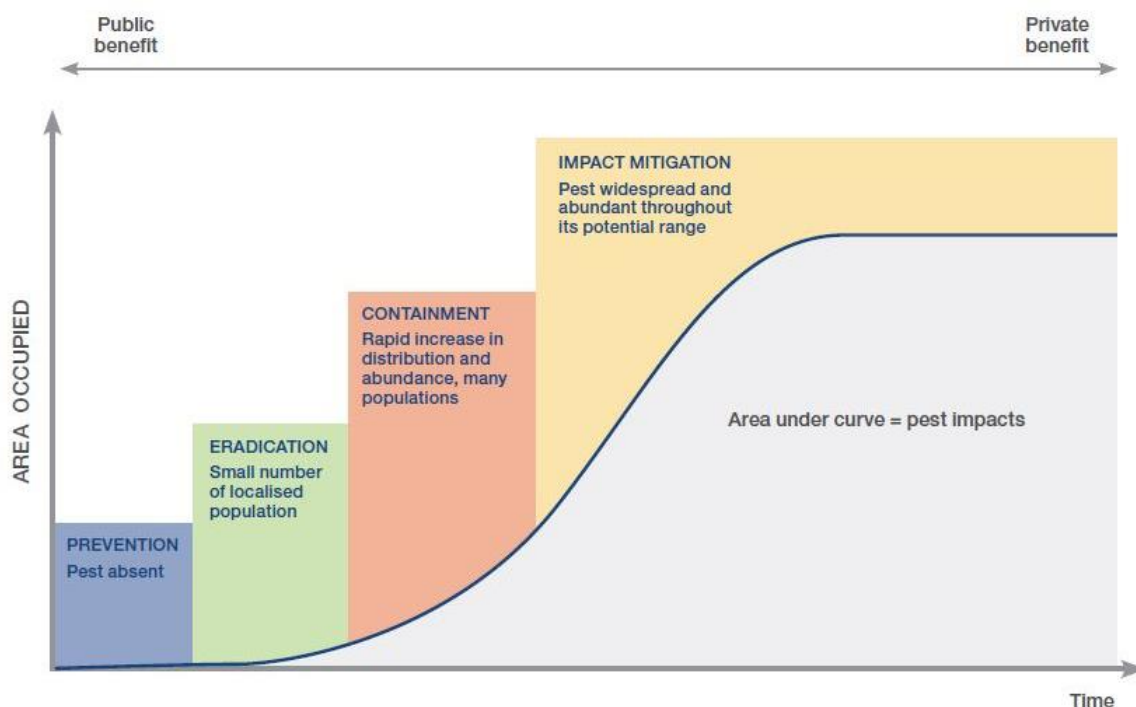


Figure 4 – Generalised Invasion Curve.

The new Biosecurity Act will:

- Enable clear action to be taken based on a reasonable suspicion that a pest or disease is present
- enable a flexible and rapid ability to list a pest, disease or host to enable management actions to be put into place
- provide for biosecurity directions and orders to enable a biosecurity officer to manage risks quickly and effectively
- develop extraterritorial powers to enable action to be taken outside of the state if it directly relates to South Australia's biosecurity.

South Australia's current biosecurity legislation already provides the ability to be proactive in managing most biosecurity risks. The new Act will build on this capacity and ensure that gaps are addressed and South Australia can continue to take immediate action to manage biosecurity risks, e.g. ability to require vessel owners to proactively manage biofouling, enable a vessel to be directed based on a reasonable suspicion that a pest or disease is present, or regulate a seller of biosecurity risk into the state, not just the importer.

The *Plant Health Act 2009* and the *Livestock Act 1997* allow action based on a reasonable suspicion and use proactive management tools, such as the Plant Quarantine Standard, to impose entry conditions and manage the risk to our plant industries, and section 9 orders to put actions in place quickly while

further information (and evidence) is gathered. Registration, certification and auditing is also an important contribution to regulate business that deal in biosecurity matter to proactively manage the risk that these businesses create. Other non-legislated programs, such as One Biosecurity are also important contributions.

The new Act will have the clear ability to take pre-emptive action based on a reasonable suspicion (precautionary principle) that a serious biosecurity risk exists, without having to wait for scientific confirmation (e.g. interstate laboratory diagnostic test results). This will enable a rapid response and improve South Australia's ability to prevent establishment of new pests and diseases across all our industries and the environment.

Case Study – Managing biofouling risk in South Australia

Issues surrounding an ability to respond to biosecurity threats coming into South Australia were made clear during 2016, with a biofouled barge coming into South Australian waters and heading to Port Adelaide.

PIRSA were informed that an operator was intending to move a construction barge to Port Adelaide for cleaning. The vessel had been moored in Sydney Harbour for an extended period of time and had macro biofouling present. The concern for South Australia was in relation to the presence of the Pacific Oyster Mortality Syndrome (POMS) virus in New South Wales waters and the risk this posed to South Australia's Oyster growing industry. In addition, there was also a risk that marine pests not found in South Australia, may be present in the biofouling.

The difficulty for PIRSA officers was in relation to being able to prove on suspicion that the vessel posed risks to South Australia by carrying Pacific Oysters (exotic disease) which may likely be carrying the POMS virus or other marine pests. Through discussions with PIRSA, the operator was willing to voluntarily conduct in water inspections of the vessel through an independent biosecurity surveyor, which subsequently advised only a small number of oysters were visible on the vessel, and were removed. PIRSA were of the strong opinion that the vessel should be slipped and cleaned before being transported to South Australia, given the remaining levels of biofouling.

The *Fisheries Management Act 2007* was unable to stop the movement of the vessel into South Australia purely on suspicion, and could not direct the vessel to conduct an in-water inspection. There was a reliance on the goodwill of the vessel owner to undertake such an action. As a result, PIRSA could only indicate to the vessel operator that the vessel should be slipped immediately on arrival to Port Adelaide (within South Australia's jurisdiction). When the vessel was slipped it was clear there were significant amounts of Pacific Oysters on the barge, samples of which were taken and sent to the State Veterinary laboratory, which subsequently tested positive for the POMS virus. To be clear, there is no evidence this event caused the POMS detection in 2018 in Port Adelaide.

The new Biosecurity Act will introduce stronger powers to allow directions to be made, including where there is a suspicion of an aquatic pest or disease being present on a vessel (even if the vessel owner is not knowingly transporting the organism). The proposed extraterritorial powers would also aid risk mitigation by allowing officers to direct vessels interstate to undertake mitigation processes to reduce potential biosecurity risks, prior to entering South Australia.

Governance and administration

It is proposed the new Biosecurity Act would contain improved and clearly defined roles and responsibilities to provide an ability for a rapid response to biosecurity risks. Part of this proposed approach is that high-level decisions that are likely to have a broad strategic, social, economic or

environmental ramification would remain the responsibility of the Minister, with high-level administrative functions proposed to be appropriately allocated between the Chief Executive of PIRSA, Chief Veterinary Officer, and the Chief Plant Protection Officer.

Clear decision-making authority in a biosecurity emergency and the ability to provide timely approvals, appoint biosecurity officers, and delegate powers as required and appropriate, will create a more efficient biosecurity program.

Statutory positions

It is proposed that the new Biosecurity Act provides for statutory positions of Chief Veterinary Officer and Chief Plant Protection Officer as the principal authorised officers. Statutory positions are not new in South Australia, with the *Livestock Act 1997* and the *Plant Health Act 2009* already establishing Chief Inspectors (i.e. Chief Inspector of Stock and Chief Inspector, respectively).

It is proposed for the Minister to have the power to appoint a person employed in PIRSA as each respective chief officer, if satisfied that the person holds appropriate tertiary qualifications and expertise in the relevant discipline. These positions may be held in conjunction with other State government employment.

It is also proposed for the Minister to have the power to appoint one or more officers to be deputy chief officers. The deputy chief officers will be able to exercise all the functions and powers of chief officers, subject to any conditions or limitations placed on their appointment, providing continuity in exercising powers under the Act in the absence of the chief officer. This is particularly critical during an emergency response to ensure there are no delays in enacting powers to manage risks, as the chief officer is not available 24/7, with staff commonly working in shifts.

This approach is proposed, rather than establishing a single Chief Biosecurity Officer, as it ensures the roles are clearly defined and the distinct technical expertise required in the decision-making process is attached to the role. This approach also ensures that the chief officers are independent in their decision-making, as they have their own roles, powers and responsibilities pursuant to the Act, rather than through delegation from another position (e.g. Chief Executive or Minister). This approach also provides a separation of powers within the legislation.

The statutory positions, along with authorised biosecurity officers, will be responsible for most of the day to-day technical and operational functions under the new Act.

The new Biosecurity Act will:

- clarify the powers, roles and responsibilities of each chief officer position and ensure that day-to-day technical and operational decisions are made by the chief officers
- align the powers of the chief officers to ensure they are consistent in their application
- provide deputy chief officers with the same powers as the chief officers, for administrative and operational efficiency
- enable the chief officers to delegate their powers
- ensure the chief officers can respond rapidly and take decisive action in an emergency situation.

Chief Veterinary Officer

The Chief Veterinary Officer provides strategic leadership for animal health related matters in South Australia, including setting a framework for prevention, preparedness, response and extension programs and activities. The Chief Veterinary Officer (CVO) is the high-level decision maker, exercising powers relating to prevention, control and eradication of animal pests and pathogens, as well as interstate accreditation, certification of interstate trade of livestock, and property certification for livestock exports.

The Chief Veterinary Officer also has strong powers to manage emergency responses to pest or disease incursions into South Australia, such as issuing orders, establishing quarantine areas, or managing risks posed by disease outbreaks in other jurisdictions.

The Chief Veterinary Officer works collaboratively with the Department of Health to minimise risk to public health through zoonoses prevention and preparedness, and with the Department of Environment and Water to support the management of wildlife disease events and animal welfare. The Chief Veterinary Officer also provides leadership to industry funded endemic disease management programs, ensures that surveillance activities support South Australia's animal health status and market access through developing partnerships with industry.

In this capacity, the Chief Veterinary Officer represents and advocates for South Australia at national committees and bodies including the Animal Health Committee, Animal Health Australia, Consultative Committee on Emergency Animal Diseases and Aquatic Consultative Committee of Emergency Animal Diseases.

Chief Plant Protection Officer

The Chief Plant Protection Officer (CCPPO) is responsible for decision making and exercising high level powers relating to prevention, control and eradication of plant pests and pathogens, as well as interstate accreditation and certification of interstate trade in horticultural produce. The Chief Plant Protection Officer has strong powers to manage emergency responses to pest or disease incursions into South Australia, such as issuing orders and establishing quarantine areas to prevent an outbreak or contain a pest or disease.

The Chief Plant Protection Officer provides strategic leadership for plant health related matters in South Australia, including setting a framework for prevention, preparedness, response and extension programs and activities, and working across a wide range of industries and commodities, to prevent and control pests and diseases. Two key areas of focus for the Chief Plant Protection Officer are the maintenance of South Australia's status as the only mainland state free of fruit fly, protecting our \$1.3 billion fruit fly vulnerable horticultural industries from this pest, as well as keeping South Australia phylloxera free, so that the state's \$2.27 billion dollar wine industry can continue to prosper.

The Chief Plant Protection Officer also represents and advocates for South Australia at national committees and bodies including the Plant Health Committee, Plant Health Australia, Consultative Committee on Exotic Plant Pests and the National Fruit Fly Council.

Statutory authorities

Biosecurity in South Australia is delivered in partnership with key statutory authorities. Each statutory authority has defined roles and responsibilities as articulated in the Acts that establish them, providing an important contribution and sharing responsibility for South Australia's strong biosecurity system.

Vinehealth Australia (Phylloxera and Grape Industry Board of South Australia)

The *Phylloxera and Grape Industry Act 1995* establishes the Phylloxera and Grape Industry Board of South Australia, trading as Vinehealth Australia. Vinehealth Australia drives biosecurity action for the grape and wine industries to protect vineyards from biosecurity risk and impact. This sector-specific, industry funded approach to biosecurity is acknowledged as a distinct advantage for the grape and wine industries.

While prevention of phylloxera remains a core focus, Vinehealth Australia's remit under the *Phylloxera and Grape Industry Act 1995* is broad, being to protect vineyards from any condition that could impact the health of vines. This includes any bacterium, fungus, insect, mite or other arthropod, protozoan, virus or other organism or pathogen or any other condition that may affect vines.

As detailed in the *Phylloxera and Grape Industry Act 1995*, Vinehealth Australia is responsible for:

- Delivering ten primary functions focused on investment in identifying and assessing biosecurity risks, biosecurity training and awareness, developing policies and procedures to mitigate risks, endorsement of schemes to ensure high health propagation material, supporting research and development on priority areas, and preparedness, prevention and response activities;
- Assisting and supporting the grape industry in its initiatives;
- Maintaining a Register of all vineyards of 0.5 hectares or greater in South Australia;
- Managing a system to levy, collect and recover contributions (levies) owing, with industry being the primary funding source for Vinehealth Australia;
- Being inspectors under the *Plant Health Act 2009* ex officio;
- In the event of an incursion and in conjunction with the Chief Inspector, determine the appropriate action to be taken to control the outbreak and provide ongoing advice to the Minister regarding the outbreak and the action being taken to control it; and
- Ensuring close communication networks with regions and industry.

A board maintains oversight over Vinehealth Australia's strategy, finances, operations and reporting obligations and is made up of the Chief Inspector for South Australia, an expert in viticultural research and up to seven members nominated to the Minister by an industry Board Nominations Committee. This skills-based board functions according to contemporary board governance principles, with accountability to industry and the Minister.

Vinehealth Australia plays a crucial role in preparedness, prevention and response activities vital for minimising the impact of biosecurity threats to South Australia's wine and grape industries. The focus that Vinehealth Australia brings to the issues it deals with, along with its close links to industry, and strong collaborative relationship with PIRSA Biosecurity SA, helps ensure South Australia remains free of phylloxera and other viticultural pests and diseases.

Landscape South Australia Boards

The *Landscape South Australia Act 2019* establishes eight regional landscape boards and the Green Adelaide Board, and is the key framework for managing the state's land, water, pest plants and animals, and biodiversity across the state. The Minister for Environment and Water is responsible for the Act, with Part 9 – Control of Animals and Plants providing an important contribution to South Australia's Biosecurity.

The Landscape boards play a key role in the management of pest plants and animals in our landscapes, with community at the centre. The Boards are the 'eyes and ears on the ground' for many biosecurity challenges across the State.

Landscape boards identify new incursions, and provide advice, education and compliance to landholders and industries to destroy and control declared species.

Dog Fence Board

The *Dog Fence Act 1946* is the responsibility for the Minister for Primary Industries and Regional Development and establishes the Dog Fence Board. The Board is the governing body set up to administer and manage the approximately 2,150 kilometre long South Australian section of the Dog Fence in order to prevent the entry of wild dogs into the pastoral areas.

Biosecurity SA and the Dog Fence Board work in partnership to manage the dog fence to protect South Australia's \$4.3 billion livestock industry by stopping dingoes from migrating into land used for sheep production. A \$25 million dollar investment is being made to replace and fortify 1,600 kilometres of the current fence line in South Australia. The rebuild of the Dog Fence is being funded by the Commonwealth Government (\$10 million), the State Government (\$10 million) and the livestock industry (\$5 million).

Power to create statutory authorities

In recognition of the benefits of creating an industry-led and co-funded statutory authority for biosecurity management outcomes, it is proposed the new Biosecurity Act will have the power to establish any board by regulation for specific purposes that may be required in the future.

Registration

A registration system is a fundamental prerequisite for the operation of an effective traceability system and biosecurity responses. The *Livestock Act 1997* requires that a person must be registered to keep certain livestock, run an artificial breeding centre or carry out artificial breeding procedures, or operate a veterinary diagnostic laboratory. The *Plant Health Act 2009* requires the registration of accredited production areas, persons accredited, and importers.

The new Biosecurity Act will continue to provide for a registration system as per the existing legislation. The requirements for what types of business, produce, activities, facilities or circumstances will trigger a requirement for registration will be determined by regulation, which will be developed with further consultation. For example, registration may be required for people who keep bees, keep high-risk biosecurity matter for research or education purposes, or operate saleyards or abattoirs etc. Registration will be granted by the chief officers.

The registration system will need to be flexible and ensure there is no unnecessary burden on our industries. Flexibility may be in the form of exemptions (general or case by case) in certain circumstances, the use of permits in lieu of registration (e.g. movements by zoos or circus) when appropriate, or an ability to provide a single enterprise registration for a business that would require a number of activities to be registered. The new Biosecurity Act will also provide the capacity to recognise interstate registration e.g. where businesses reach across borders, or South Australia's requirements are met.

The new Biosecurity Act will:

- provide for regulations to detail what triggers the need for registration

- provide for exemptions from registration in certain circumstances
- provide for the issuing of permits in lieu of registration when appropriate
- provide for enterprise registration
- recognise appropriate interstate registrations.

It is proposed that registrations would be for a period up to 5 years and able to be renewed, with registration periods for each class determined in the regulations, e.g. currently the *Livestock Act 1997* provides for up to 2 years registration for deer keepers and up to 5 years for artificial breeding centres. Interstate certification schemes require renewal of registration every year.

Registration will assist with the management of the biosecurity risks posed by the relevant biosecurity matter. For example, through enhanced tracing capacity, advisory opportunities and the ability to notify about relevant developments in a timely manner.

Traceability

Traceability is defined as the ability to track produce through all stages of production, processing and distribution - including importation and at retail. The ability to trace produce from its origin and along the supply chain is critical to managing biosecurity, as it enables rapid identification of relevant properties in response to a pest or disease outbreak. Traceability is also important for product assurance in accessing domestic and international markets. Traceability assists to identify where properties with susceptible crops or relevant supply chain premises are located, within areas of equal biosecurity risk. This enables protections to be implemented to manage biosecurity risks and help prevent further spread of a pest or disease.

The new Biosecurity Act will continue to support traceability through industry registration (see above) and Property Identification Codes (PIC). Current traceability systems will continue (e.g. PICs, Livestock Identification and movement requirements, Plant product labelling, and Physi-trace) while also ensuring the Act is structured in a way that can facilitate any expansion or new traceability systems in the future.

The new Biosecurity Act will:

- Enable property identification codes for plant industries to be established (in line with National arrangements)
- facilitate any expansion or new traceability systems in the future.

National traceability project

The Australian Government is working with the jurisdictions to enhance traceability systems to ensure our agricultural products are well supported into the future and able to respond to international drivers for change.

A National Traceability Framework has been developed as a tool to guide Australian agricultural industries and food producers, governments and related businesses in enhancing traceability systems. The framework sets out a common vision, principles for traceability systems, roles and responsibilities of industries, governments and other stakeholders, suggestions for developing an industry action plan to implement the framework, traceability objectives and measures of success.

Traceability systems can assist in increasing market access or share in certain domestic and international markets. They have also become an increasingly important tool in building trust and offering

further assurances to consumers of Australian agricultural products, and trading partners. Traceability is a key focus and is increasingly gaining international attention. Many Australian agricultural and food producers, exporters and related businesses realise the commercial benefits of enhancing traceability, especially with the growing desire of consumers and trading partners wanting to know more about the products they buy.

Alongside the commercial benefits and opportunities provided by a national approach to our traceability systems, it is also clear that a food safety or biosecurity incident involving a particular product or food can impact the entire sector, or even extend to other sectors, if the cause of the incident cannot be traced quickly and accurately. Reputational damage can take some time to repair, possibly years. Increasing global production and movement of agricultural products and food means that the risk of such an incident occurring is also increasing.

Property identification codes

A Property Identification Code system is an important pre-requisite for product traceability, allowing produce to be linked with the place of production and all places where the produce has been handled, processed or consolidated through the supply chain. By allocating a code or number to a property, parcels of land can be uniquely identified, avoiding confusion with enterprises that may have a similar name.

Property Identification Code systems require registration, which is underpinned by the *Livestock Act 1997* and *Livestock Regulations 2013*. Property registration is mandatory under the *Livestock Act 1997* as is part of the national agreement to maintain a register of the locations of livestock and property owner, or manager contact details. The Property Identification Code records data about property owners, property information, species and number of animals. This information is critical in cases of disease outbreaks, bushfires or animal emergencies. Property Identification Codes can also be of significant benefit for industry in dealing with authorities in importing countries when negotiating market access.

Property identification reforms

A National Property Identification Code Working Group, an Inter-Jurisdictional Committee, is working to ensure the systems that underpin Australia's emergency response and traceability arrangements across animal, plant and food industries are enhanced. These enhancements aim to assist in managing pest and disease outbreaks, food safety, trade and market access requirements, as well as address increasing consumer interest in product sustainability, ethics and provenance. Feedback was sought on draft guidelines and principles between August and November 2019.

The proposed changes will result in nationally harmonised property identifiers being issued for properties involved in the major plant production sectors, including properties that are part of the supply chain. A rigorous and consistent National approach to identifying properties involved in animal and major plant production, processing and distribution is a key building block to develop a robust traceability system.

All governments, including South Australia, have committed to deliver nationally harmonised property identification arrangements across the sectors. This involved agreeing on a set of principles and business rules by the end of 2019, with necessary legislative changes in place by the end of 2022. South Australia will deliver these legislative changes through the new *Biosecurity Act*.

In South Australia, there is already a requirement for a level of traceability within the viticulture industry. Vinehealth Australia maintains a register of persons who own vineyards comprising 0.5 hectares or more of planted vines pursuant to the *Phylloxera and Grape Industry Act 1995*. This Register contains owner name, contact details and planting information (including hectares, variety, rootstock and year planted). Whilst this Register is likely to contain more information than what would be required for a plant PIC

system, this successful approach is essentially an example of property identification for a plant industry and will help guide South Australia's transition to these broader reforms.

Livestock identification and movement

Livestock identification and movement systems, such as the National Livestock Identification System (NLIS) and PigPass, are important animal identifiers to record an animal identifier and property identification code status, and to track movements for disease control, biosecurity, food safety, market access and other industry related purposes.

The National Livestock Identification System is Australia's system for the permanent identification and lifetime traceability of certain livestock. As per the current Livestock Regulations 2013, the new Biosecurity Act will continue to support this system in South Australia.

The National Livestock Identification System brings together three concepts:

- identification of a physical location for the animal (property identification code)
- an animal identifier - a visual or electronic tag or brand
- a database of correlation and storage.

PigPass is a national tracking system which provides real time information on the movements of all pigs in Australia. PigPass enables a source of a disease outbreak to be quickly identified and people with pigs in the affected area notified to take action and stop any spread of disease. Like the National Livestock Identification System, PigPass links pigs to parcels of land using the Property Identification Code, and tracks the movements of pigs along the supply chain using a registered pig identification (e.g. ear tags). PigPass helps to ensure that the transport of pigs meet agreed industry and government standards relating to food safety, animal disease control and animal welfare.

Australia's export markets are particularly sensitive to our disease free status and product integrity. Livestock production and related industries benefit from favourable animal health status, and a number of export markets require (or moving towards) mandatory identification and traceability from property of birth through to the consumer, which is not possible to deliver without livestock identification and movement systems.

Accreditation authorities

Part 4 of the *Plant Health Act 2009* provides for the establishment of accreditation schemes. The accreditation authorises a person to issue assurance certificates in relation to the movement of a plant or plant related product and verify assurance certificates or other documents, or the packaging or labelling of plants and plant related products, in accordance with the terms and conditions of the accreditation.

The *Livestock Act 1997* does not provide for accreditation schemes.

The new Biosecurity Act will continue to provide for accreditation schemes, with the ability to be applied more broadly than what currently exists for the plant industries. It is proposed that the chief officers will be an accreditation authority in their own right with the ability to accredit biosecurity certifiers and appoint biosecurity auditors.

The new Biosecurity Act will also provide the ability to recognise non-government organisations as accreditation authorities, who in turn may accredit biosecurity certifiers and biosecurity auditors to audit and inspect business operations and provide product certification. If an industry already participates in an appropriate certification or auditing scheme, the new Biosecurity Act will have the ability to recognise

these schemes, along with appropriate interstate schemes. This is part of promoting shared responsibility and enables industry to self-manage biosecurity risks.

The new Biosecurity Act will:

- provide for certification and auditing schemes across all industries
- enable formal recognition of appropriate industry-based schemes
- enable formal recognition of appropriate interstate, certification and auditing schemes
- provide for non-government third-parties to be recognised as an accreditation authority
- provide for chief officers to approve entities as accreditation authorities.

It is proposed the chief officers under the new Biosecurity Act would approve the accreditation or renewal of accreditation of entities as accreditation authorities, impose and vary conditions on the approval of an accreditation authority and cancel, suspend or revoke the approval if a condition is breached, or at the request of the accreditation authority. Accreditation would generally only be granted in relation to specified biosecurity matter or specified types of certification and would be subject to conditions.

It is anticipated approved accreditation authorities are likely to be industry groups or independent consultancy businesses.

An accreditation authority that has the power to accredit biosecurity certifiers and appoint biosecurity auditors is required to adopt an accreditation policy for biosecurity certifiers and an appointment policy for biosecurity auditors. Such policies may make provision regarding certain matter, such as:

- the qualifications, skills, knowledge and experience required with respect to the conduct of biosecurity audits or the issue of biosecurity certificates by biosecurity auditors or biosecurity certifiers appointed by the accreditation authority
- the suitability of individuals to carry out the function of conducting biosecurity audits or of issuing biosecurity certificates for biosecurity auditors appointed or biosecurity certifiers accredited by the accreditation authority.

Opportunities for accredited authorities in the livestock industries could be the inspection of stock as being pest or disease free, for example.

Auditing

The new Biosecurity Act will provide for biosecurity audit schemes (including third party schemes) that enable an effective approach to compliance and market access. Auditing is a requirement of some existing interstate and international market access agreements, e.g. the interstate certification assurance scheme for horticulture products and the stock food audit program that supports Australia's status as a low risk country for Transmissible Spongiform Encephalopathies (such as mad cow disease).

It is proposed that the new Biosecurity Act will require auditing as a condition of registration for high-risk biosecurity entities to check for compliance with legislation. For example, high-risk biosecurity entities would include importers of high-risk materials that require specific treatments. Audits would also be used during the assessment of applications for registration and accreditation as a biosecurity certifier, and for approval as an accreditation authority. Audits may also be used to check compliance with the conditions of registration and biosecurity certifier accreditation.

Biosecurity auditors, approved by a relevant accreditation authority, will be required to operate within the conditions and timeframes specified in their appointment and the legislation.

The new Biosecurity Act will:

- Provide for auditing of biosecurity related entities
- enable third-party, non-government entities to be approved as accreditation authorities with the ability to appoint biosecurity auditors
- enable appropriate existing industry compliance programs and standards to be recognised.

Primary Industries and Regions SA will be the authority responsible for the appointment of accreditation authorities and provide training. Primary Industries and Regions SA will also identify any proposed audit targets, audit frequency and develop appropriate audit procedures and guidelines.

This proposed approach is aimed to encourage compliance and identify areas of non-compliance and facilitate a process for improvement. The frequency of audits will be determined by risk with reference to factors such as the degree of non-compliance identified in previous audits, and general compliance policies which identify compliance risk.

Certification

The new Biosecurity Act will support a certification scheme. This concept is not new, with South Australia's current involvement in the national certification scheme, which relates to the movement of plants and plant products known as the Interstate Certification Assurance Scheme (ICA Scheme).

The Interstate Certification Assurance Scheme is a national system of plant health certification that provides a harmonised approach to the audit and accreditation of businesses in Australia and the mutual recognition of Plant Health Assurance Certificates accompanying consignments of produce moving interstate. The new Biosecurity Act will be developed to enable biosecurity certification of produce to be expanded across other industries, if required e.g. to enable the certification that livestock are free of a pest or disease.

Under the Interstate Certification Assurance Scheme, a business can become accredited to issue Plant Health Certificates for its produce. To become accredited a business must be able to demonstrate it has, in place effective in-house procedures that ensure produce consigned to interstate markets meets specified quarantine requirements.

Documented operational procedures developed by PIRSA Biosecurity SA, in conjunction with industry and interstate quarantine authorities, describe the management system, processes and process controls that must be implemented and maintained by a business to become accredited to certify a specific quarantine requirement has been met. Once accredited, a biosecurity certifier is able to issue documents known as Plant Health Assurance Certificates that are accepted by plant quarantine authorities of other states and the Northern Territory as evidence of conformance to the specified quarantine requirements covered by the certificate.

The new Biosecurity Act will:

- Enable the certification scheme to be expanded across other industries
- enable third-party, non-government entities to be approved as accreditation authorities with the ability to accredit biosecurity certifiers.

Continuing to provide for biosecurity certificates in the new Biosecurity Act will provide assurance that allows for the transit of certified produce within South Australia and interstate. This creates increased flexibility of a businesses' operations, improve awareness of quality issues and reduce certification costs.

Permits

It is proposed that the new Biosecurity Act would enable permits to be issued that allow for a broad range of actions to be undertaken which would otherwise be in breach of the Act. Permits would only be provided where the chief officer is satisfied that there is good and valid reason for the proposed activity and may be subject to conditions or limitations, e.g. enabling business continuity where possible.

The new Biosecurity Act will:

- establish a permit system for a range of actions that would otherwise be in breach of the Act
- establish an audit system for compliance with permit conditions.

Applications for permits would be assessed on an individual basis, considering risks and government policy, and would remain current for up to 2 years. The approver for a permit would be determined by such factors as the relative biosecurity risk of pest or disease, the proposed activity, the level of risk management required in permit conditions and the time length required for the permit. For example, a biosecurity officer may issue a permit if satisfied that the specified activity will not materially increase the level of biosecurity risk (e.g. the movement of materials contaminated by a declared pest to a site for deep burial). Where there are substantial risks and accordingly a high level of risk management required, permits would be issued by the chief officers.

Prohibited Matter Permit

A permit to enable a person or class of persons to deal with biosecurity matter (see below) that is declared to be 'prohibited matter' within South Australia. Prohibited matter permits would need to include strict conditions to manage the risks. This would cover such scenarios as the movement of goods contaminated with a declared disease.

Control Order and Biosecurity Zone Permit

A permit to allow certain actions, or failure to perform certain actions, that would otherwise be in breach of a control order or biosecurity zone provision.

Permit Varying the Conditions of Registration

A permit for one-off or temporary circumstances for which the conditions of registration may be relaxed or additional conditions are applied.

Biosecurity Emergency Permit

A permit to allow action which would not otherwise be permitted while a biosecurity emergency declaration is in force.

Prohibited matter declaration and listing

The new Biosecurity Act will continue to provide for all prohibited matter to be declared and publicly listed, along with the requirement to notify PIRSA Biosecurity SA if prohibited matter is discovered. Prohibited matter is biosecurity matter that would have a significant adverse impact on the economy or the environment if it entered the state. Prohibited matter can be pests, diseases/pathogens (plant, animal and aquatic) or carriers of disease/pathogens. The *Plant Health Act 2009* also enables the declaration of things other than pests/diseases to be regulated, for example packaging, timber, equipment, machinery etc. This ability will continue in the new Biosecurity Act.

It is proposed that the Chief Executive of Primary Industries and Regions SA will have authority to declare prohibited matter. This approach will ensure appropriate level of authority when declaring newly identified biosecurity risks, or in response to national agreements or biosecurity emergencies. A list of prohibited matter will be published on Primary Industries and Regions SA's website.

The new Biosecurity Act will:

- Enable the Chief Executive of Primary Industries and Regions SA to declare prohibited matter
- Listing of prohibited matter will be on an appropriate website (e.g. Primary Industries and Regions SA's website)
- Listing of prohibited matter could apply to the whole or only a specified part of the state
- Allow for the conditional handling of prohibited matter.

Currently, listing of prohibited matter pursuant to the *Plant Health Act 2009* is undertaken through the publication of a notice in the Government Gazette, with the Plant Quarantine Standard outlining the requirements for importing plants and plant material into South Australia. The *Livestock Act 1997* also lists notifiable diseases through publication in the Government Gazette.

Listing of noxious species (exotic aquatic organisms) declared under the *Fisheries Management Act 2007* is also undertaken through the publication of a notice in the Government Gazette. South Australia will continue to have an aquatic species noxious list for species assessed as high risk to assist with providing legislated management controls relating to entry to South Australia, trade and possession. The prohibition on the release of exotic aquatic organism applies to all exotic species regardless of declaration under the *Fisheries Management Act 2007*.

Funding, fees and charges

Under existing practices, the government already charges for a range of services for biosecurity management. Biosecurity services which confer a direct benefit on an individual or business, and are of minimal or indirect value to the community, may be subject to charges. Fees for service directly relate to the service provided, with government policy setting the processes and rates at which the costs of services are recovered.

In line with the policy objective of developing a framework for shared responsibility, it is proposed that sharing the costs of biosecurity management will continue. The new Biosecurity Act will enable cost recovery initiatives to be established for appropriate services provided under the new Biosecurity Act or its regulations, including appropriate costs of compliance action to be recovered from the entity that is subject to the action being taken. Fees and charges may also be payable for certain services.

The new Biosecurity Act will prescribe fees by regulation for services such as the issuing of permits, application for registration, preparation of a biosecurity certificate, or application for accreditation as a

biosecurity certifier or auditor. The new Biosecurity Act will also cost-recover some services, such as auditing or compliance action taken by a biosecurity officer (where the person subject to compliance has failed to take the action).

Funding arrangements could be further supported if the new Biosecurity Act had the power to facilitate issues-based co-funding measures, such as regional or industry-based contributions to a fund that is matched by government and used for preventing or managing a particular pest. If this power was created, it would only be enacted after close collaboration with industry in a transparent manner with consideration of the public good and in the context of existing industry funding schemes.

The Exotic Diseases Eradication Fund established by the *Livestock Act 1997* is an example of a fund that can be established for a specific purpose. This fund may be applied to expenses directly connected with the control or eradication of exotic disease, compensation, and contributions under an intergovernmental, or intergovernmental and livestock industry, agreement for sharing the costs of control or eradication of exotic disease.

Primary Industries and Regions SA manages the Biosecurity Fund, which is an annual allocation of funding from State Appropriation for biosecurity management in South Australia. It is proposed that the new Biosecurity Act establishes the Biosecurity Fund as a statutory fund, which receives contributions from the Treasurer, fees, charges, fines and penalties generated in the operation of the new Biosecurity Act. This fund would then be invested in management of biosecurity in South Australia.

Compensation / reimbursement

During a biosecurity response, actions may be required which result in the loss or damage of property.

The Emergency Animal Disease Response Agreement (EADRA) and Emergency Plant Pest Response Deed (EPPRD), are agreements that engage government and affected primary industries in preparedness, cost sharing arrangements and decision making with respect to nationally significant animal and plant emergency pests and diseases respectively. Reimbursement (in respect to biosecurity) is effectively limited to livestock, crops or equipment destroyed in a biosecurity response when it is covered by one of these national cost-sharing deeds. However, these deeds generally only cover biosecurity emergencies involving pests and diseases that are exotic to Australia and generally do not cover pests and diseases within Australia, such as fruit fly.

In South Australia, compensation will continue to be payable in accordance with the already existing national emergency response agreements (the EADRA and EPPRD) or in circumstances where a biosecurity program specifically allows for compensation to be payable. In addition to this, the new Biosecurity Act will contain compensation provisions, carried over from the *Livestock Act 1997* and the *Plant Health Act 2009*.

The *Livestock Act 1997* provides for compensation to be payable from the Exotic Diseases Eradication Fund for an owner of livestock certified by an inspector as having died of a declared exotic disease and would have been destroyed if they had not died, as well as an owner of livestock or other property destroyed for the purposes of controlling or eradicating a declared exotic disease during a declared period, or on animal welfare grounds.

The Primary Industry Funding Schemes (Cattle Industry Fund) Regulations 2015 also provides for the owner of cattle destroyed in accordance with the *Livestock Act 1997* for the purposes of controlling or eradicating a disease to claim compensation.

The *Plant Health Act 2009* provides for compensation to any person who has suffered loss or damage as a direct consequence of a notice or an order made under Part 2 (Protection of plant health) of the Act.

Environmental Biosecurity

Environmental biosecurity is the protection of the environment and social amenity from the negative effects of invasive species. Invasive species (which also impact on primary industries) is a broad biosecurity term and includes weeds, vertebrate pests, aquatic pests of freshwater and marine environments, terrestrial invertebrates impacting on the environment and social amenity, and wildlife disease.

PIRSA, regional landscape boards, Green Adelaide and the Department for Environment and Water have responsibilities for managing South Australia's environmental biosecurity. Managing risk to South Australia's environment is a crucial part of maintaining a modern and robust biosecurity system.

Invasive species are recognised globally as one of the greatest threats to biodiversity. In addition they can severely degrade ecosystem functioning (e.g. provision of clean water, pollination) and substantially reduce tourism and recreational values of parks and heritage areas. Social impacts of invasive species include risks to public safety and amenity (e.g. stinging insects), carriers of human diseases and fouling of buildings and infrastructure. A high profile example is the red imported fire ant (RIFA), which is presently under eradication in south east Queensland and Perth. It is estimated that the red imported fire ant would cost Australia around \$1.5 billion in impacts per year if it were to become widely established.

A national independent review of Australia's biosecurity, released in 2017, recommended putting environmental biosecurity considerations on similar footing with biosecurity measures for primary industries. This includes pre-border preparedness, border protection and post-border management and control. Since the review there has been the establishment of the office of the Commonwealth Chief Environmental Biosecurity Officer and the intergovernmental Environment and Invasives Committee. There has also been the development of a national priority list of exotic environmental pests and diseases. Managing risk to South Australia's environment is a crucial part of maintaining a modern and robust biosecurity system to limit significant incursion risks to Australia.

In South Australia invasive species currently fall across multiple Acts. Weeds and vertebrate pests (excluding fish) are in the *Landscape South Australia Act 2019*. Terrestrial invertebrates and native plant diseases fall within the *Plant Health Act 2009*. Aquatic pests (fish, invertebrates, algae) are in the scope of the *Fisheries Management Act 2007*. There is uncertainty over wildlife diseases, with the *Livestock Act 1997* having some scope for listing exotic diseases of wildlife but limited scope for emergency response. Biosecurity provisions in the *National Parks and Wildlife Act 1972* are limited to a basic requirement to include objectives for weed, pest animal and disease control and eradication in reserve management plans. Zoonotic diseases are within scope of both the *Livestock Act 1997* and the *South Australian Public Health Act 2011*.

Stakeholders in environmental biosecurity include the Department for Environment and Water, Landscape Boards and Green Adelaide, PIRSA Biosecurity SA, non-government conservation organisations, local government, SA Health, zoos and wildlife parks, and the nursery, aquaria and pet industries.

The new Biosecurity Act will include some but not all aspects of environmental biosecurity within its scope. For example, terrestrial invertebrates such as red imported fire ant would come across from the *Plant Health Act 2009*, but weeds would remain with the *Landscape South Australia Act 2019*. PIRSA and the Departments for Environment and Water will continue to work together on environmental biosecurity.

Biofouling

Biofouling of vessels is considered to be responsible for approximately 60-70% of exotic marine plants and animals that have been introduced to Australia. Biofouling is regarded as the most important pathway for introducing and spreading potential marine pests. In addition, marine pests may be carriers of aquatic diseases such as Pacific Oyster Mortality Syndrome (POMS). The greater the amount of biofouling on a vessel, the higher the number of non-indigenous species present, and subsequently disease.

Biofouling is the accumulation of aquatic organisms, such as micro-organisms, plants and animals on surfaces and structures immersed in or exposed to the aquatic environment (i.e. boat hulls or niche areas such as sea chests and internal water systems). Given the nature of the biofouling (out of sight), it is often difficult for vessel owners and inspection officers to identify from the surface that biofouling is present.

Biofouling risks can be managed by regular effective application of antifouling coatings, inspections and cleaning. This is vessel specific and should be recorded in a Biofouling Management Plan with the use of a Biofouling Record Book (consistent with the International Maritime Organisation (IMO) Guidelines, the proposed Commonwealth approach for international arrivals to Australia (and New Zealand and Californian approach).

Available information suggests that current self-management of hulls and niches for marine biosecurity is not occurring effectively in the absence of legislated requirements. South Australia currently has limited requirements and powers for managing biofouling risks.

It is proposed the new Biosecurity Act considers tools to manage biofouling biosecurity risks and align with the work being undertaken nationally to ensure consistency. The application of the General Biosecurity Duty, which would be supported by an expected level of cleanliness prior to coming to South Australia and moving between regions, could be one legislative mechanism to foster prevention.

Consistency with international vessel movement requirements and domestic movements around Australia will be important for industry. PIRSA Biosecurity SA would work with owners, where vessels or equipment/infrastructure has spent extended periods of time in water, for improvement to management practices with use of a biofouling management plan and record book.

Tools to address biofouling risk under the Biosecurity Act could include the ability to:

- create requirements for a level of cleanliness (in relation to biofouling) prior to coming to South Australia and moving between regions, demonstrated through development and implementation of an effective biofouling management plan and record book
- give directions to high risk vessel operators where there is a suspicion of high risk pests or heavy fouling is present on their vessel or equipment
- declare zones for biofouling management prior to entering high value areas or leaving high risk areas, which could include areas declared as 'infected zones' during emergency response.

Stray and abandoned livestock

Land managers have a responsibility to ensure their stock do not wander from their property onto other private land or public property. The *Fences Act 1975* defines what a sufficient dividing fence is and outlines the responsibilities of owners for doing fencing work. The *Impounding Act 1920* currently

provides for the impounding of livestock and is proposed to be included in the scope of the development of the new Act.

Stock have the potential to create a human safety and biosecurity risk if they are allowed to wander and may become exposed to pests and diseases. Straying and abandoned stock may also create a risk to the spread of weeds between properties and weed control areas.

A majority of the *Impounding Act of 1920* is no longer relevant or used, therefore the new Biosecurity Act will only include the provisions regarding the responsibilities and rights of councils and landowners in relation to the management of stray and abandoned livestock. The new Biosecurity Act will include the right to keep, sell or destroy straying or abandoned livestock after a reasonable period of time, during which all reasonable effort has been made to return the stray or abandoned livestock to its rightful owner.

Compliance and enforcement

Primary Industries and Regions SA is responsible for monitoring and enforcing compliance with all South Australia's biosecurity legislation. The new Biosecurity Act will create a flexible and responsive compliance framework that is commensurate to the risk being managed. The new Biosecurity Act will take a differentiated approach, focusing on promoting voluntary compliance, creating effective deterrence and responding to non-compliance in a way that takes into account the circumstances and behaviors and the public interest.

Figure 5 provides an example of a biosecurity compliance management model that the new Biosecurity Act will be modelled on. This model is sourced from the Department of Agriculture, Water and the Environment's Biosecurity compliance statement 2016, which was adapted from the Ayres and Braithwaite (1992) "Responsive Regulation: Transcending the deregulation debate". New York: Oxford University Press.

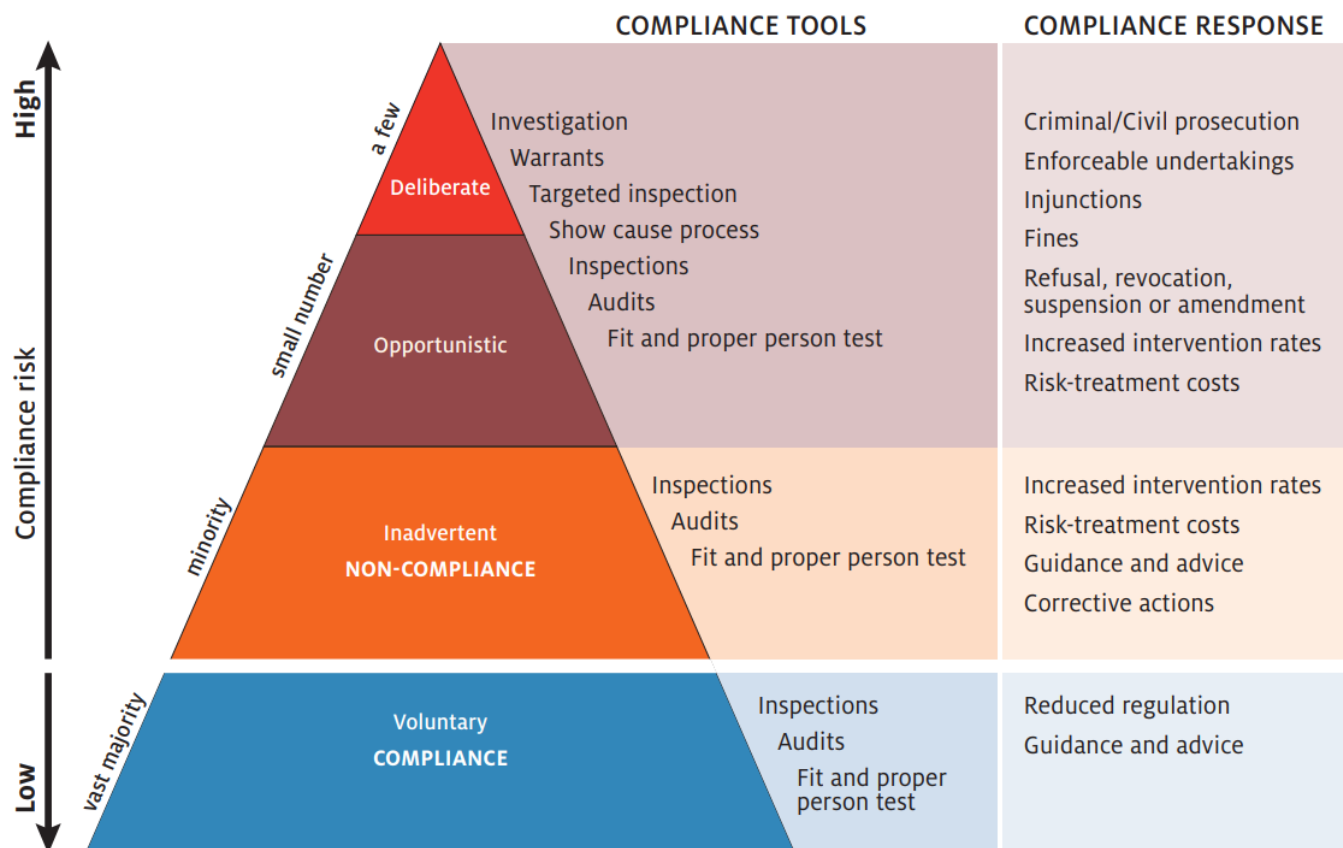


Figure 5 - Differentiated approach to biosecurity compliance.

This model of compliance assumes that most people will comply, or try to comply, with their obligations. The government responds by providing clear guidance and advice to facilitate voluntary compliance, and for people who are able to demonstrate ongoing compliance, the government may enter into compliance arrangements that reward compliance with reduced intervention levels, e.g. cheaper registrations, less auditing etc.

Despite having good intentions, some people inadvertently fail to comply because they don't understand their biosecurity requirements. In this situation, the government may increase monitoring/auditing rates until compliance can be established. Some people may choose to knowingly do the wrong thing if an opportunity arises, so it is important to ensure there are effective deterrence strategies in place to deter people from making the wrong choices. These strategies can be supported with the knowledge that deliberate non-compliance will likely result in targeted intervention activities and a formal investigation, and where appropriate, enforcement to address the issues and deter non-compliance.

A small number of people may choose to deliberately contravene the law to avoid regulatory actions or gain an advantage. The government will respond with the appropriate enforcement action including criminal prosecution before a Court of law. The new Biosecurity Act will also contain strong provisions to respond to bioterrorism, where a person takes reckless and indifferent action in order to cause harm to a business, industry, or the South Australian economy.

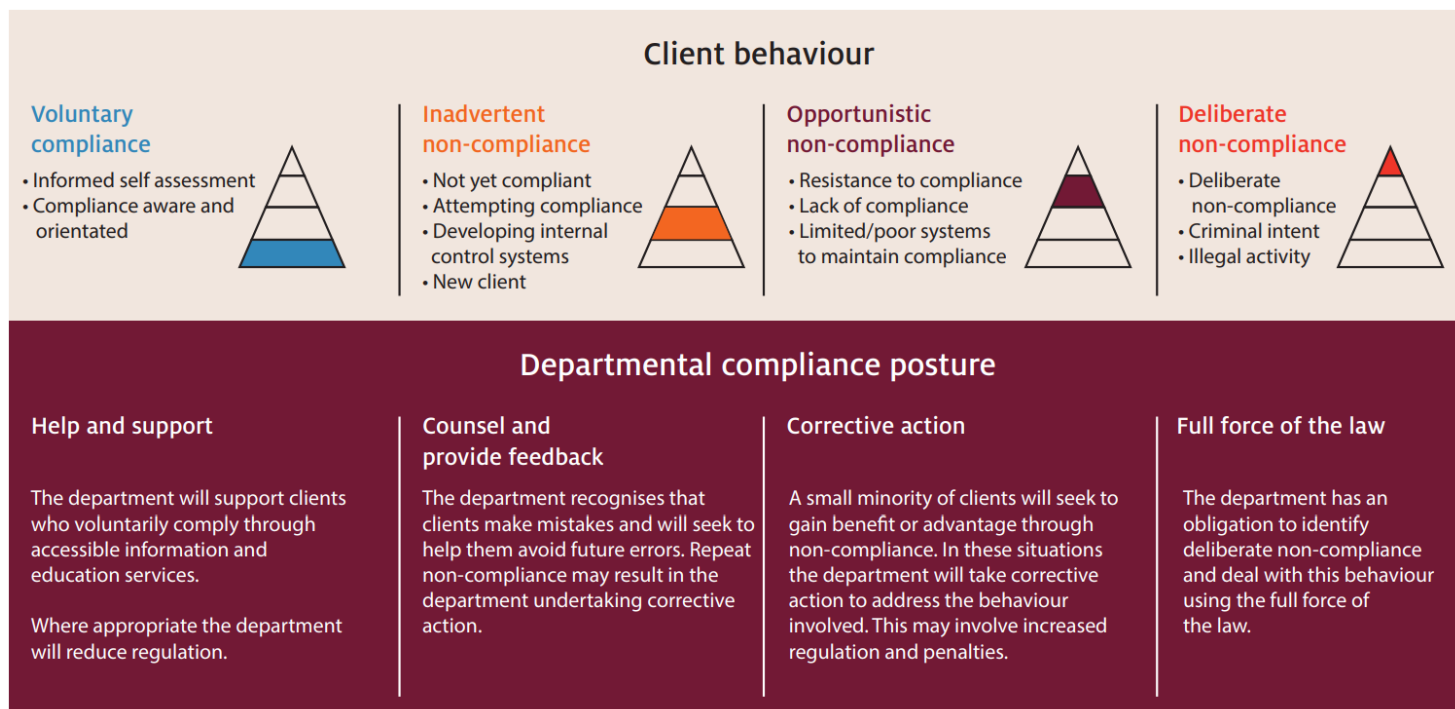


Figure 6 – Differentiated compliance and government response (source: Department of Agriculture, Water and the Environment’s Biosecurity compliance statement 2016)

Biosecurity officers

To enable an effective and proportionate response to a biosecurity risk, it is critical authorised biosecurity officers have sufficient powers to act under the new Biosecurity Act. Because South Australia’s biosecurity is currently administered through a number of different Acts, they each have inconsistencies in how they manage biosecurity and empower biosecurity officers. The new Biosecurity Act will not remove or diminish any powers from the current system, but seek to strengthen appropriate powers of biosecurity officers by consolidating corresponding powers across animal health and plant health to nationally accepted best practice standards of compliance and enforcement. This will create a set of standardised and contemporary powers for biosecurity officers to take a broad focus across all biosecurity management.

This approach would be consistent with other jurisdictions, who have introduced modern and consistent biosecurity officer powers to investigate, monitor and enforce compliance with the Act, manage biosecurity risks and obtain information for purposes connected with the administration and enforcement of the legislative framework.

The new Biosecurity Act will:

- enable a biosecurity officer under the Biosecurity Act to take action based on a reasonable suspicion that a serious risk exists, without having to wait for scientific confirmation
- enable action taken on a reasonable suspicion to be on the basis of “suspicion of contamination of bacteria or virus” or “exposure”, rather than the current “suspicion of infection or disease”
- ensure powers across animal health and plant health are consistent
- create new powers to manage biosecurity risks associated with online markets
- enable monitoring and surveillance for pests and diseases, including the placement of traps and the use of sentinel animals (e.g. dogs)

- ability to search for and destroy infected or infested biosecurity matter or carriers of infected or infested biosecurity matter
- allow the use and support of technology, including recognising the ability of technology to form a 'reasonable suspicion'
- allow automatic appointment of police officers and fisheries officers as authorised biosecurity officers under the Biosecurity Act. These appointments can be subject to conditions and limitations
- share information collected with other jurisdictions in relation to shared biosecurity threats (e.g. a vessel's biofouling practices)
- provide for authorised officers from another jurisdiction or non-government organisation to be biosecurity officers under the Biosecurity Act.

Biosecurity officer powers

As per the current *Livestock Act 1997*, *Plant Health Act 2009* and *Fisheries Management Act 2007*, biosecurity officers appointed under the new Biosecurity Act will have general powers covering the following areas:

- **Entry and search of a premises**

In exceptional circumstances, enable entry (break in and open) based on a reasonable suspicion that something has been done or omitted, or is being done or omitted or is intended to be done or omitted in contravention of the act. This excludes a premises used as a private dwelling, which would require a warrant.

- **Gathering of evidence and investigation**

Enable a biosecurity officer who reasonably suspects a person is engaging or intending to engage or has engaged in a regulated activity, to provide their full name, usual place of residence and any documentation as proof of their identity.

Require a person who is suspected to have knowledge of matters in respect of which information is required for the administration or enforcement of the Act to answer questions, produce documents and follow directions.

Empower biosecurity officers to carry out an investigation and collect evidence, including the power to take samples, carry out a procedure, take measurements, place markers and pegs to assist testing or monitoring, examine or test any vehicle, plant or equipment, and take photographs, films, audio, video or other recordings.

- **Seizure**

Power to seize anything related to or suspected to be related to an offence. Seized material can be retained, cleansed, tested, returned or destroyed.

- **Modify, tag or alter**

Enable the marking and tagging and the installation of signage, as well as making public statements to provide warnings.

- **Notification**

Make public statements or erect signs at a public place identifying and giving warnings or information about biosecurity risks, such as products or other property that, in the opinion of the

chief officer, is affected with, or in danger of becoming affected with, a disease, pathogen or contaminant, or if practices pose a risk of the spread of a disease/pathogen or its introduction.

- **Obstructive behaviour**

Offence to hinder or obstruct a biosecurity officer, fail to comply with a lawful request, use threatening or insulting language, fail to answer questions, or impersonate.

- **False or misleading statements**

Offence for providing false information.

- **Seek assistance**

Enable a biosecurity officer to seek assistance, with the person assisting taking on the powers of a biosecurity officer.

- **Directions**

Enable a biosecurity officer to direct a person in connection with the exercise of powers in the Act.

- **Exotic species**

Enable a biosecurity officer to take reasonable action to limit the consequences of exotic species, even if the act may constitute trespass or cause loss or damage. For example, a biosecurity officer who suspects Koi Carp are being kept in a reported backyard may enter and search and seize or destroy.

- **Reparation Orders**

Allow for reparation orders to make good any resulting damage caused by the introduction or presence of exotic species, pest or disease.

- **Vicarious liability**

Vicarious liability for the employer and directors of a company for the actions of an employee if those actions are in line with the requirements of their role.

- **Continuing offences**

Continuing offences will result in the application of additional penalties.

- **Prosecution and expiation**

Proceedings for an offence to be commenced within five years. In the case of expiation, a notice must be sent within 2 years, other than for prescribed offences.

- **Warrant procedures**

Warrants may be issued for enforcement or for using reasonable force to break into or open any part of, or anything. A warrant will be required to enter and search any residential premises.

The new Biosecurity Act will also build in the following protections against the general powers of biosecurity officers:

- **General defence**

Provide for a general defence if the person in question did not fail to take reasonable care to avoid the offence.

- **Self-incrimination**

Provide protection against providing self-incriminating evidence with the evidence being inadmissible in court. This does not apply to false or misleading statements.

- **Review**

Allow for the review of decisions, either internally, by tribunal or the ERD Court.

Biosecurity direction

The new Biosecurity Act will provide the ability for a biosecurity officer to issue a biosecurity direction, for example a direction to wash down equipment before leaving an area, or a direction to secure a premises to prevent escape of a pest. There is proposed to be two types of biosecurity directions - a general biosecurity direction, or an individual biosecurity direction. A general biosecurity direction will apply to the public generally, or to a specified class of persons. An individual biosecurity direction will apply to a particular person or business. A biosecurity officer will issue a biosecurity direction if they reasonably believe it is necessary to manage any biosecurity risk or impact, or to enforce the new Biosecurity Act.

The concept of biosecurity directions is not a new concept in South Australia. Under the current *Livestock Act 1997* general notices can be issued by the Minister and published in the Government Gazette for the purposes of controlling or eradicating disease or contamination. A notice may impose requirements reasonably required in the circumstances. The *Livestock Act 1997* also provides for individual orders to control or eradicate a disease or contamination. The *Plant Health Act 2009* provides for the chief inspector to issue an order (with permission from the Minister) to prevent or minimise the outbreak or spread of the pest. The *Landscape South Australia Act 2019* provides for authorised officers to issue instructions for keeping an animal or plant. The *Fisheries Management Act 2007* provides for fisheries officers to give a direction to limit the consequences of presence of the exotic aquatic organisms.

The new Biosecurity Act will:

- Enable biosecurity directions to be issued by a biosecurity officer, either generally or to an individual
- enable biosecurity directions to be issued if the biosecurity officer reasonably believes it is necessary to manage a biosecurity risk or enforce the Act.

The biosecurity directions will set out the actions that must be taken, the grounds for the directions and if applicable, the nature of the non-compliance. A biosecurity direction would take effect immediately and continue to operate until compliance has been achieved. The direction would specify a reasonable period of time in which compliance is required, but allow an extension of time for compliance, or to seek a review. If a person does not comply, the biosecurity officer could undertake the action personally, or authorise another person to undertake the action. In addition to any penalty incurred through non-compliance with the biosecurity direction, the reasonable costs associated with that work are proposed to be recoverable from the person subject to the direction.

Biosecurity control orders

Both the *Plant Health Act 2009* and the *Livestock Act 1997* currently provide for the issuing of orders to allow for the control and eradication of a pest/disease or contaminant.

The new Biosecurity Act will continue to provide for control orders that enable directives to be given that can be applied regionally or statewide. Control orders will provide for a rapid response where a new biosecurity risk is identified, but an emergency response is not warranted. A control order will be for a

period up to two years, but may be extended by the Chief Executive or delegate for a further period not exceeding two years. There is proposed to be no limit to the number of extensions that can be made.

It is proposed that a control order can prohibit, regulate or control activities to prevent the introduction or eradicate biosecurity matter that poses a biosecurity risk. A control order will be made by chief officers if there are reasonable grounds that it is necessary to prevent, eliminate, minimise or manage a biosecurity risk or impact. Control orders will generally be made to eradicate or prevent the spread of biosecurity matter and are not intended to be long-term management tools. Control orders will have the ability to be made quickly, providing an immediate response to a biosecurity risk while the longer-term management arrangements are being developed. For example, a control order could be used to implement quarantine controls on a property on which a pest or disease has been found to require the owner to apply control measures and undertake decontamination procedures to prevent further spread. A control order could also be used to transition from an emergency situation once the emergency has been contained and the management arrangements are known.

A control order will work by defining certain control measures that are required in (or out) of the defined area. The order will state the subject (target) of the order and who the control measures apply to and how long the order will be in force. A control order will be able to be applied to a specified property, an area or the whole of the State.

This approach will provide greater flexibility to respond in a timely manner and reduce the administration associated with such actions where flexibility and a rapid response is imperative. Where eradication of particular biosecurity matter is not achievable, a biosecurity control order could be used while a long-term management approach is developed. To maintain flexibility, permits could be used to allow actions to be taken, which would otherwise be in breach of a biosecurity control order.

Biosecurity zones

Under the *Plant Health Act 2009*, the Minister may declare the whole or a portion of the state a quarantine area for the purposes of controlling or eradicating disease or contamination. Under the *Livestock Act 1997* the Minister may, prohibit entry into, or movement within or out of, the State or a specified part of the State of livestock, livestock products, or other property.

It is proposed the new Biosecurity Act will continue to enable the establishment of biosecurity zones to allow flexible responses to biosecurity risks in situations where specific management initiatives are required. A biosecurity zone may be used for the long term-management of an ongoing biosecurity issue or impact. Biosecurity zones will be related to a specific, defined area where actions must be taken when interacting with the biosecurity zone. The defined area of the biosecurity zone could be the whole state, a defined part of the state, or down to the scale of an individual property.

Biosecurity zones would generally be used when eradication is not feasible, but there is still a high biosecurity risk requiring action to manage the impacts. Biosecurity zones may also be used where different management actions are needed in different parts of the state, or to protect part of the state from a biosecurity risk that occurs elsewhere in the state e.g. the Port River could be declared a Biosecurity Zone to manage Pacific Oyster Mortality Syndrome, or Kangaroo Island could be declared a Biosecurity Zone to help protect the Ligurian bee populations.

Biosecurity zones would be established by regulation and, similar to a control order, will work by defining certain actions that are required in (or out) of the biosecurity zone. The regulation will state the subject (target) of the biosecurity zone and to who the control measures apply and will be able to require, prohibit, regulate or control activities. A biosecurity zone regulation will not be able to require the sampling, testing or treatment of a person or restrict their movement.

To maintain flexibility, permits could be used to allow actions to be taken, which would otherwise be in breach of a biosecurity zone.

Extraterritorial powers

It is proposed that the new Biosecurity Act will contain extraterritorial powers to support the management of biosecurity risks across state and territory borders. Extraterritorial powers are provided for in New South Wales' *Biosecurity Act 2015* and Tasmania's *Biosecurity Act 2019*.

For example, the new Biosecurity Act would provide powers to cover the activities of persons in other jurisdictions who are engaged in importing and certifying imports to South Australia. These powers may also be beneficial when managing a consignment of stock into the state with a biosecurity risk, by improving the ability to gather information and records, and the ability to issue expiations, as consignment processes are often undertaken interstate.

These powers may also be useful in helping manage online sales and help address issues with the pet trade, such as the sale of koi carp into South Australia where they are prohibited.

Offences

As per the current legislation, the new Biosecurity Act will include a range of offences that can be expiated or prosecuted. These offences will be provided for in each section of the new Biosecurity Act where there is a need to create an offence. The proposed offences and the associated penalties will be clearly articulated in the draft Bill for consultation.

It is proposed the new Biosecurity Act will provide for two categories of offences - individuals and corporations, with offences by corporations attracting a higher penalty. The *Livestock Act 1997* only provides for one category of offence, with the *Plant Health Act 2009* providing for two.

It is proposed the new Biosecurity Act also provides for vicarious liability and offences by a body corporate, which are a form of a strict, secondary liability. It is proposed that continuing offences are also established, enabling penalties to be continually applied until compliance is achieved. These offences are currently provided for in the *Plant Health Act 2009* and the *Livestock Act 1997*.

Vicarious liability

An act or omission of an employee or agent will also be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

Offences by body corporate

If a body corporate is guilty of an offence, each director of the body corporate is guilty of an offence and liable to the same penalty as prescribed for the principal offence, unless the director proves that they could not have prevented the offence. The prosecution would need to prove that the director knew, or ought reasonably to have known, that there was a significant risk that the offence would be committed, and was in a position to influence the conduct of the body corporate, and failed to exercise due diligence.

Continuing offence

If an offence committed by a person continues to be committed, the person or body corporate is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues. If the offence continues after the person is convicted, the person is guilty of a further offence and liable, in addition to the penalty otherwise applicable, to a penalty for each day during which the offence continues.

The new Biosecurity Act will:

- Create two categories of offences, an individual and a corporation
- provide for vicarious liability
- provide for offences by a body corporate
- provide for continuing offences.

In some circumstances, it may be a more appropriate to cancel an accreditation or impose conditions on an accreditation, rather than impose a penalty or prosecute. These options will be available in the new Biosecurity Act as part of the registration and accreditation schemes.

Serious offences

The new Biosecurity Act will identify specific serious offences and provide appropriate maximum penalties to enable the Courts to address these serious actions that create unacceptable biosecurity risks to South Australia, and potentially other jurisdictions.

Farm trespass

South Australia's new Summary Offences (Trespass on Primary Production Premises) Amendment Bill passed through the South Australian Parliament on 28 April 2020. The legislation has created a new, standalone aggravated farm trespass offence for illegal farm invasions, which if found guilty, a person can face a \$10,000 fine or 12 months imprisonment. Farmers will also be able to seek compensation.

Other changes include increased penalties for interfering with farm gates (from \$750 to \$1500) and introducing on-the-spot \$375 fines for the offence, increased penalties for disturbing farm animals (\$2500 or six months' imprisonment) and the doubling of fines for other trespassing offences if they take place on primary production land.

South Australia has strong trespass laws, with trespass regulated pursuant to the *Summary Offences Act 1953*. The new Biosecurity Act will not replace the *Summary Offences Act 1953* or take on the criminal issue of trespass. The new Biosecurity Act will seek to complement the protections provided against farm trespass by considering any further provisions that are required to provide additional support to producers in trespass situations that pose a biosecurity risk.

For example, these provisions could include situations where there is a gathering of animals (e.g. sport or shows) and protests or activists place the biosecurity of these events at risk, as well as enabling those who promote, enlist, coordinate and incite others to commit trespass, harassment or damage to farms and farmers to be prosecuted. Options to strengthen the provisions related to farm trespass will be discussed with the Attorney-General's Department in the development of the Biosecurity Bill.

Bioterrorism

Bioterrorism, in the context of the new Biosecurity Act, would be defined as the deliberate release of viruses, bacteria, toxins or other harmful agents to infect or kill animals or plants. This action would be intentional to and aim to disrupt an industry or the economy. An example would be the release of the foot-and-mouth disease virus, which is capable of causing widespread economic damage and estimated to cost the Australian economy up to \$50 billion over 10 years. Another example may be the release of a virus onto a person's own property to trigger compensation payment.

The new Biosecurity Act will contain offence provisions for bioterrorism activities to ensure the full force of the law can be applied and act as a deterrent to this behaviour.

Commercial or personal gain

The new Biosecurity Act will create offences and commensurate penalties in relation to the biosecurity risks associated with any action taken by a person or corporation to seek commercial and/or personal gain. For example, this could be illegally importing a prohibited plant product under a false label that provides a competitive advantage, but has a high-biosecurity risk associated with it. Personal gain considerations would also be included in any submission to the court in proceedings for an offence (see additional orders on conviction, below).

Penalties

The current legislation no longer provides an effective deterrent commensurate to the impact of the offence or the risk created. For example, if an exotic notifiable disease (e.g. Foot and Mouth) was introduced into South Australia, the maximum penalty under the *Livestock Act 1997* would be \$20,000. However, introduction of this disease is estimated to cost Australia \$16 billion for a large scale 12-month outbreak and up to \$50 billion over 10 years.

All penalties within the new Biosecurity Act will be significantly increased in line with other jurisdictions and more contemporary South Australian legislation. By way of a comparative example, New South Wales' *Biosecurity Act 2015* provides a maximum penalty for a Category 1 offence of \$1.1 million or imprisonment for 3 years (or both) for an individual, and \$2.2 million for a corporation.

The proposed offences and the associated penalties will be clearly articulated in the draft Bill for consultation.

Additional orders on conviction

It is proposed that the new Biosecurity Act provides for additional orders on conviction. If a person or body corporate is convicted of an offence against this Act, the court may, in addition to any penalty that it may impose, may make an order requiring the person or body corporate to take any specified action (including an order to rectify the consequences of any contravention of this Act, or to ensure that a further contravention does not occur) or an order that the person pay to the Crown an amount determined by the court to be equal to a fair assessment or estimate of the financial benefit that the person, or an associate of the person, has gained, or can reasonably be expected to gain, as a result of the commission of an offence against this Act.

This is not a new concept in South Australia and is currently provided for in the *Landscape South Australia Act 2019* and the *Fisheries Management Act 2007*. This however, would be new to plant and animal health biosecurity legislation providing the opportunity for strong, consistent and modern protections.

Appeals

As per the current biosecurity legislation in South Australia, the new Biosecurity Act will continue to provide for appeal and review processes of Government decisions. It is proposed the new Biosecurity Act will enable a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of certain determinations. Appeals would be conducted consistent with the process outlined by the South Australian Civil and Administrative Tribunal (SACAT).

Appeals would not be available in respect to high-level decisions applying generally, such as control orders or listing declarations of prohibited matter.

Emergency management

The new Biosecurity Act will provide the legal framework required to deal with biosecurity emergencies. In the development and operation of the new Biosecurity Act, South Australia will also continue to be guided by national approaches, such as the national emergency response deeds, agreements and plans e.g. Australian Veterinary Emergency Plan (AUSVETPLAN), the Emergency Plant Pest Response Deed (EPPRD), and the Australian Emergency Plant Pest Response Plan (PLANTPLAN).

The current *Plant Health Act 2009* and the *Livestock Act 1997* provide for emergency action to be taken if the inspector considers on reasonable grounds that urgent action is required for the purposes of controlling or eradicating disease or contamination.

The new Biosecurity Act will enable quick and decisive action to be taken in the most urgent situations, even where there is a high level of uncertainty, through the issuing of an emergency order. Emergency orders will be able to establish emergency zones and emergency measures that need to be followed. Emergency zones and emergency measures will be similar to the operation of biosecurity zones and measures, with the difference being the speed at which an emergency zone can be declared (emergency will not require a regulation), the duration they will be in force (emergency orders up to 6 months, with the option to extend for a further period not exceeding 6 months), and the types of measures that can be enforced (e.g. require external treatments to a person).

Emergency orders will be used to isolate an emergency zone or biosecurity matter and take steps to eradicate it (if practical) or prevent its spread. An emergency zone is a zone declared as part of an emergency order and can consist of any premises, group of premises, region, or the whole or part of the state. Emergency measures are measures to be followed as declared in an emergency order and must not be any more onerous than the chief officer considers necessary in the circumstances.

It is proposed that emergency measures would cover the following:

- prohibit, regulate or control activities
- isolate or confine any biosecurity matter or carrier
- require a treatment to be carried out in relation to biosecurity matter or carrier
- erection or repair of fencing, gates or any other method of enclosure
- require testing and/or the provision of samples
- installation or use of a device for the purpose of detecting or monitoring the presence (or absence) of any biosecurity matter or other thing

- destruction, disposal or eradication of any biosecurity matter or other *thing*
- prohibit, regulate or control entry into, or exit from, any specified premises or area
- require persons entering or leaving any specified premises or area to stop and be inspected
- carry out external treatment measures in relation to the person and any *thing* in their care, custody or control.

An emergency order would not be able to include measures that require a treatment, other than an external treatment measure, to be carried out on an individual or a requirement for an individual to provide samples of the person's blood, hair, saliva or any other body part or body fluid.

Emergency orders will expire after a maximum of six months, unless remade. Emergency orders will be made by the chief officers and will be in force immediately, with provisions to prevent a court from issuing an interim or interlocutory injunction to stay the operation of an emergency order, however a court is not prevented from making final orders to that effect. The new Biosecurity Act will facilitate the following changes:

- enable emergency orders to be declared by chief officers and be in force for up to 6 months
- enable emergency zones to be declared
- enable emergency measures to be declared.

While emergency orders may mandate special measures (such as requiring people to undergo an external treatment to decontaminate their clothing before entering or leaving an area) the types of measures will likely be similar to those used in control orders and biosecurity zones.

Case Study – Mediterranean Fruit Fly Response in Metropolitan South Australia

The current Mediterranean fruit fly outbreak in metropolitan Adelaide provides a good example of the complexities and scope of actions the Biosecurity Act would need to be able to provide for.

On 16 December 2019, a householder reported detection of larvae in apricots from their property. A sample was collected and tested (in this instance South Australia has specialist laboratory capability to do this), confirming that the larvae came from Mediterranean fruit fly (*Ceratitis capitata*).

This confirmation required a Ministerial Notice to be issued (17 December 2019) defining the geographic area to which movement restrictions for susceptible host fruit and vegetables apply.

After declaration, households in the outbreak area are advised on the actions they need to implement and that biosecurity officers will attend their premises at least once weekly to apply bait to attract any Mediterranean flies in the region and to undertake surveillance of host fruit and vegetables to monitor the infestation. These activities continue for around six weeks after which sterile insect technology (i.e. release of sterile male flies) is applied.

Commercial businesses (primary or secondary production) that fall within the outbreak or suspension areas must introduce agreed treatment options to reduce spread of fruit fly outside of the area.

The initial outbreak area of this response was 7.7 km² – however within just over a month this area increased to 20.19 km² involving around 16,500 residential properties.

Every time a detection of Mediterranean fruit fly occurs outside of, or towards the edge of, the outbreak area, a new Ministerial Notice is required defining the new boundaries or declaring a new response area.

At time of writing, detection of Mediterranean fruit fly has required the declaration of seven responses (Angle Park, Blair Athol, Campbelltown, Croydon Park, Pooraka, Rosewater and Semaphore Park) involving 110 suburbs and approximately 95,176 residences in the outbreak area, with a further 240 suburbs and 325,591 residences in the suspension area.

Responses are complex, and expensive, as they involve:

- Detection and confirmation of the presence of a pest or disease.
- Determining the spread of the pest or disease – which requires sample collection and testing (permission to cross state borders may also be required because of where the test can be done).
- Preventing the movement of the agent (where possible) to minimise establishment of new pockets of infection/infestation whilst minimising market access impacts for produce outside of the infected/infested area.
- Treating the affected area to eliminate the pest or disease (this may be by chemical application, vaccine or removal of the spreading agent).
- Monitoring to confirm successful eradication of the pest/disease and proof of freedom.

The new Biosecurity Act will need to ensure that:

- People (whether the owner or not) have an obligation to report suspicious pest or disease observations, as early detection improves the likelihood of eradication
- Government personnel have authority to enter private property for the purpose of collecting samples and applying necessary treatment
- Provision of laboratory test results of exotic conditions to be provided to PIRSA as part of early detection
- Orders, accreditation programs etc. are able to be used to ensure required biosecurity activities to minimise risk of pest/disease spread are implemented
- Compliance powers for movement and biosecurity practice breaches
- Ministerial Notices issued to support movement restrictions can be actioned quickly, and
- Zoning to facilitate market access.

Unlike pest outbreaks in commercial horticultural areas, metropolitan outbreaks directly affect members of the public and their homes. This means that it is very difficult to engage all stakeholders, as there is not a single representative organisation to engage. Strong, broad powers are required in the new Biosecurity Act which will compel all residents to undertake specific actions to manage the risk of fruit fly on their properties, and require residents to take steps to prevent outbreaks or further spread. A degree of consistency with the legislation of interstate trading partners will facilitate continued market access during a period of outbreak, and allow similar requirements to be implement to manage the risk of spreading the outbreak via commercial consignments.

