



**ACT**  
Government



# ACT Biosecurity Act Consultation Paper

## SUMMARY





## Have your say

This summary document explains how biosecurity risks in the ACT will be managed in the future under proposed new biosecurity legislation. It seeks to generate discussion and feedback on the development of the new legislation. The extended version of this summary, the Proposed Framework for an ACT Biosecurity Act, contains more detail about the guiding policies, legal mechanisms and compliance tools within the proposed legislation.

Copies of these documents can be seen at: <https://www.yoursay.act.gov.au/>

Individuals, agencies and groups are invited to make their written submission by Friday 10 August 2018:

- by post to the ACT Biosecurity Manager, ACT Parks and Conservation Service  
Environment, Planning and Sustainable Development Directorate  
GPO Box 158  
CANBERRA CITY 2601
- by email [ACTBiosecurity@act.gov.au](mailto:ACTBiosecurity@act.gov.au)
- by internet at [www.yoursay.act.gov.au](http://www.yoursay.act.gov.au)

Please note that submissions will not be made public. Receipt of submissions will be acknowledged, but detailed responses to individual submissions will not be provided.

## Acknowledgements

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## Part 1. Why do we need new biosecurity legislation?

Biosecurity is the protection of the economy, environment and community from the negative impacts of pests, diseases, weeds and contaminants. A strong biosecurity system is fundamental to the wellbeing and prosperity of everyone in the ACT.

The responsibility for biosecurity is shared among government, industries and individuals. An important role of state and territory Governments is to ensure that biosecurity management is supported by efficient, modern legislation and is consistent with national biosecurity policy.

### 1.1 What has happened so far?

#### ***The ACT Biosecurity Strategy 2016–2026***

In 2016, the ACT Government released the ACT Biosecurity Strategy, which presents a new vision for a more streamlined, effective and integrated biosecurity system, in which:

- biosecurity is a shared responsibility
- biosecurity contributes to sustainable economic growth
- biosecurity protects the environment and the community
- biosecurity is underpinned by a responsive and consistent legislative framework.

#### ***The need for change***

To ensure the biosecurity system remains effective and sustainable into the future, it's important to review and improve existing legislation. Currently there are gaps and limitations in the legislation that prevent government, industry and individuals from working together to effectively manage biosecurity. Revising and improving the legislation will facilitate shared responsibility and improve the ACT's ability to respond rapidly and consistently to biosecurity threats.

#### ***Biosecurity nationally***

The ACT supports a national approach to biosecurity and in January 2012 signed a national agreement on biosecurity between the Commonwealth, states and territories, the Intergovernmental Agreement on Biosecurity (IGAB).

The IGAB strengthens the collaborative approach by the Commonwealth, states and territories in managing biosecurity issues. It is underpinned by three national agreements: the Emergency Animal Disease Response Agreement (EADRA), the Emergency Plant Pest Response Deed (EPPRD) and the National Environmental Biosecurity Response Agreement (NEBRA). Each agreement includes Commonwealth, state/territory and industry commitments, including that state-level legislation must be reviewed to ensure consistency with the national approach.

### ***Biosecurity across the states and territories***

Biosecurity threats do not recognise jurisdictional boundaries, so it is important that state and territory governments work together to limit the spread and impact of biosecurity risks. Complementary and consistent legislation from state to state will facilitate the efficient and responsive management of biosecurity risks. Businesses operating across borders will also benefit if legislation is coordinated.

### ***Responsibility for biosecurity***

Under existing legislation, the government has primary responsibility for biosecurity management. New legislation will promote effective cooperation and develop productive partnerships between government, industry and individuals in biosecurity management.

### ***Modernising biosecurity legislation***

The Biosecurity Act will wholly or partly replace five Acts, which date from a time when animal and plant health management was heavily regulated and administratively cumbersome. Inconsistencies among existing Acts, such as differences in the powers of inspectors and other officers, and in the requirements for notification or management of pests and diseases, will be eliminated.

The ACT needs legislation that:

- supports the aims of the Biosecurity Strategy
- allows the responsibility for biosecurity to be shared between governments, industry and individuals
- provides effective, modern management and regulatory tools
- is responsive to emergencies, unexpected threats and emerging risks
- is consistent with the ACT's policy objectives and other Australian biosecurity legislation
- reduces red tape and regulatory burden for industry and government
- includes mechanisms for cost sharing and recovery.

## Part 2. A framework for a new Biosecurity Act

A framework has been developed for a new Biosecurity Act that will enable biosecurity risks to be prevented, eliminated or minimised.

A range of tools will be provided for the management of biosecurity threats and risks and to ensure the most appropriate and effective response to biosecurity risks.

The Act will also include more relevant compliance and enforcement powers that better match circumstances and biosecurity threats. For instance, strong emergency powers are necessary for the initial management of a high-risk biosecurity threat but lessen as the risk is managed.

### 2.1 What will the Biosecurity Act do?

The aim of the Biosecurity Act is to provide a flexible and responsive statutory framework to help identify and manage biosecurity risks for the benefit of the ACT economy, environment and community.

Specifically, the Biosecurity Act aims to introduce controls to manage:

- threats to terrestrial and aquatic environments arising from pests and diseases
- pests and diseases and contaminants that are economically significant for primary production industries
- animal and plant pests and diseases, pest plants and animals and contaminants that may have an adverse effect on community activities, infrastructure, health and wellbeing.

### 2.2 Where will the Biosecurity Act apply?

The Biosecurity Act will apply to all land within the ACT and all waters within the limits of the Territory.

The Act will **not** cover:

- contamination risks arising from manufacturing or processing facilities; these risks will continue to be dealt with under the *Environment Protection Act 1997*
- animal welfare
- the approval, management or utilisation of genetically modified crops, which will continue to be dealt with under existing Territory and Commonwealth legislation or
- direct human health issues such as influenza and tuberculosis which are covered by the *Public Health Act 1997*; but measures to mitigate the direct risks to human health arising from diseases, toxins and irritants produced by animals or plants will be included.

Note: Invasive species including weeds are not specifically referred to in the framework. Weeds and other invasive species are considered to be either plant or animal pests, so are dealt with in the same way as other biosecurity matters. This is consistent with the IGAB's approach.

## 2.3 Understanding key biosecurity terms and concepts

### *Important definitions*

#### **Biosecurity matter:**

- an animal, plant or living thing other than a human, or part of an animal, plant or living thing other than a human or
- a product of an animal, plant or living thing or
- a disease or the agent of a disease or
- a contaminant or
- any other thing prescribed by regulation that can cause a disease in an animal or plant or
- any other thing prescribed by regulation that can be transmitted via an animal or plant and cause a disease in a human.

**Prohibited matter:** declared under the Act and is biosecurity matter that could have significant adverse consequences for the economy, environment or community.

**Biosecurity event:** a past, present or potential occurrence, for which biosecurity matter could be reasonably thought to be the cause, and which is likely to have, or has had, a significant adverse effect on the economy, environment or community.

*Economy* includes things like industry, production, market access, tourism, employment and transport.

*Environment* includes ecosystems, native flora and fauna and biodiversity.

*Community* includes lifestyle, community infrastructure, social cohesion, human health and wellbeing and cultural values.

**Biosecurity risk:** the risk of an adverse effect on the economy, environment or community caused by, or likely to be caused by, biosecurity matter or a carrier, or by an activity relating to biosecurity matter or a carrier.

**Carrier:** anything that is capable of moving biosecurity matter that is on it, attached to it, or contained in it. The carrier may not itself be affected by the biosecurity matter. Note: Plants and animals can be both carriers and biosecurity matter in their own right.

Carriers may include:

- plants and animals (whether living or dead)
- soil, gravel, sand and other matter
- inanimate objects (such as vehicles, packaging and agricultural equipment)
- humans.

For example, stock feed containing a contaminant, or soil containing invasive weed seeds.

**Contaminant:** any non-living thing occurring in or on an animal or plant (a carrier), or with the potential to be ingested or absorbed by an animal or plant (a carrier), and that causes the carrier to pose a risk of an adverse effect on the economy, environment or the community.

Examples of contaminants include persistent pesticide residues that can be ingested or absorbed

by living things; chemical treatments intended to control pests and diseases in crops and animals that enter the food chain; heavy metals in fertilisers; meat meal in stockfeed intended for ruminant animals; and toxins in stock feed resulting from the presence of food spoilage organisms.



## ***Important concepts***

### **Risk-based decision making**

Risk assessment and management are intrinsic to biosecurity. In a risk-based approach, the best science and intelligence is used to identify, assess and prioritise biosecurity risks, to deliver innovative and cost-effective solutions to biosecurity problems.

The ACT Government will work with stakeholders to develop appropriate responses to identified risks. As a result not every pest, disease or contaminant in the ACT will be addressed using the regulatory measures included in this framework.

### **Shared responsibility**

Effective biosecurity is everyone's business. It's a shared responsibility of government, industry and individuals.

The framework establishes the following:

- That *government* is a stakeholder on behalf of the public. Its role is to protect public benefit by preserving the integrity of the economy, environment (including public land) and community.
- *Risk creators* (where appropriate) have the primary responsibility for the costs of risk management and mitigation.
- *Beneficiaries* (where appropriate) will manage biosecurity risks through management and mitigation activities where the activities provide a net benefit to them.
- *Industry* will be given the opportunity to self-regulate through accredited schemes. Legislation will allow for such schemes, but they will operate within limits to be set according to the risk involved.

### **General biosecurity duty**

The general biosecurity duty applies to anyone who deals with biosecurity matter or a carrier, or carries out an activity in relation to biosecurity matter **and** who knows or should know that the biosecurity matter, carrier or action could pose a biosecurity risk. The duty is to take all reasonable and practicable measures to prevent, eliminate or minimise the biosecurity risks.

### **Management of biosecurity matter**

The Act will provide simpler and more flexible provisions to allow frontline staff to respond quickly and appropriately to new biosecurity risks and threats. Good decision-making and risk analysis will minimise unnecessary delays that currently exist because of existing legislation. For example, currently most biosecurity matter must be declared before a regulatory response can be mounted, which causes unnecessary delays.

While prohibited matter needs to be tightly regulated, reducing direct regulatory control on lower risk biosecurity matter will allow resources to be targeted where they are most needed. Lower risk matter will be managed through the general biosecurity duty, which in some cases may be informed by codes of practice, standards and guidelines.

## Part 3. What the Act aims to cover

The diagrams on the following pages describe the main components of the Biosecurity Act including tools for use in different situations.

For more detailed information please refer to the framework document.

### 3.1 Summary

The benefits of a new Biosecurity Act will be realised by industry, Government, the environment and the community. The Act will ensure that through streamlined and integrated legislation, the ACT can identify, prevent, prepare for and manage biosecurity threats in the future. Any legislative reforms will need to be consistent with the ACT's human rights obligations under the *Human Rights Act 2004*.

## Biosecurity Management Toolbox

<b>Tool</b>	<b>General biosecurity duty</b>	<b>Prohibited matter</b>	<b>Control order</b>
<b>Responsibility</b>	Fundamental principle of the Act	Director-General	Director-General
<b>Status</b>	Ongoing	Long-term management	Duration up to five years
<b>Purpose</b>	To share responsibility for effective biosecurity management	To set obligations for prohibited biosecurity matter	To manage, reduce or eradicate certain biosecurity matter for a defined time.  Where a risk assessment indicates that formal controls are required to manage a specific biosecurity threat to the state.
<b>Main features</b>	<p>The duty applies to anyone who deals with biosecurity matter or a carrier or who carries out an activity in relation to the biosecurity matter and who knows or ought reasonably to know that the matter or activity is likely to pose a biosecurity risk.</p> <p>The duty is to take all reasonable and practical measures to prevent, eliminate or minimise the biosecurity risks associated with all biosecurity matter.</p> <p>Regulations and regulatory standards will set out how a person should deal with specific biosecurity matter in order to meet their duty.</p> <p>There are strong penalties for breaching the general biosecurity duty.</p>	<p>Matter that poses a significant adverse risk to the economy, environment or community is listed in a schedule.</p> <p>Obligations are applied to all prohibited matter which include a duty to notify and to not deal with the matter.</p> <p>Declarations apply to the whole or part of the Territory.</p> <p>Notification can activate emergency provisions.</p>	<p>To prohibit or regulate the movement of or other dealings with biosecurity matter or a carrier.</p> <p>To provide directions or impose requirements to manage, reduce or eradicate biosecurity matter.</p> <p>Can apply to whole or part of the Territory.</p> <p>A control order remains in force for up to five years, however a new order can be issued if the threat is still present.</p>

Tool	Biosecurity zone	Registration	Certification & auditing
<b>Responsibility</b>	By regulation	Director-General	Authorised officers, accredited certifiers and auditors
<b>Status</b>	Reviewed every five years	Duration up to five years	Long-term management
<b>Purpose</b>	For managing biosecurity matter that requires long-term measures to be put in place to manage, reduce or eradicate it.	For managing the risks associated with certain biosecurity matter including: <ul style="list-style-type: none"> <li>the keeping of bees</li> <li>operating saleyards</li> <li>keeping of certain high-risk fish.</li> </ul>	Strategic approach to compliance. Recognition of industry-based certification schemes. Recognition by ACT of biosecurity certificates issued by other Australian jurisdictions.
<b>Main features</b>	Matter subject to a zone prescribed in the regulation. Will prohibit/regulate actions to manage, reduce or eradicate biosecurity matter. Creation will require stakeholder consultation. Minister can establish areas within a zone where less stringent requirements apply. Can apply to the whole Territory or a designated area. Will be issued subject to conditions. May be issued to an individual or a class of persons.	Relevant persons must apply to be registered. Requirements for the management of the biosecurity matter, including animal welfare, will be imposed through conditions of registration which may include compliance with certain standards. Some registered biosecurity entities will be audited to check their compliance with requirements. Audit frequency will increase following non-compliance identified at the last audit.	Certificates state certain facts about biosecurity matter or other things (e.g. its condition, origin, treatment etc). Authorised officers can accept and rely on the facts stated in a certificate without checking further. A person can apply to be an accredited certifier under a certification agreement. Certificates issued by an accredited certifier are an alternative to certification by a government authorised officer. Accredited certifiers will be audited.

## Biosecurity directions

An authorised officer can issue a biosecurity direction:

- to direct a person how to comply with obligations under the Biosecurity Act
- requiring a person to take, or refrain from taking, action, in order to prevent, eliminate or minimise biosecurity risks or suspected biosecurity risks.

A written undertaking can be accepted by an authorised officer as an alternative to issuing a biosecurity direction.

## Permits

- A permit will authorise activities that would otherwise be prohibited under legislation.
- Permits provide operational flexibility and enable business continuity.
- Permits can be issued by the director-general or an authorised officer.

## Biosecurity Emergency Response Tools

<b>Tool</b>	<b>Emergency powers</b>	<b>Biosecurity emergency declaration</b>
<b>Responsibility</b>	Authorised officer directions	Minister declaration
<b>Status</b>	For the duration of the emergency	Maximum six months
<b>Powers</b>	<p>Can use all general powers.</p> <p>Additional emergency powers allow an officer to:</p> <ul style="list-style-type: none"> <li>• restrict or regulate the movement of people</li> <li>• require people to apply specified hygiene procedures</li> <li>• require information even if self-incriminating.</li> </ul> <p>Emergency responses will be protected from interim court rulings that could prevent, restrict or defer emergency actions.</p>	<p>Can use all general powers and emergency powers.</p> <p>Additional powers allow an officer, with the Minister's approval, to:</p> <ul style="list-style-type: none"> <li>• treat non-infected biosecurity matter</li> <li>• destroy non-infected biosecurity matter.</li> </ul> <p>Emergency responses will be protected from interim court rulings that could prevent, restrict or defer emergency actions.</p>
<b>Application</b>	<p>To avoid a current, suspected or imminent significant biosecurity risk arising from biosecurity matter or an activity present in any place except a dwelling.</p> <p>First response to a biosecurity emergency.</p>	<p>The Minister must be satisfied of the actual or potential seriousness of the biosecurity event and the extent of its impact or likely impact, and that a declaration is warranted.</p> <p>Must be primarily directed at taking emergency action to isolate the biosecurity area, stop the spread of any biosecurity matter associated with the biosecurity event, and if practical, eradicate the biosecurity matter.</p>

### Emergency permits

- Authorise activities that would otherwise contravene a biosecurity emergency declaration only if it will not intensify the biosecurity emergency.
- Provide operational flexibility.
- Can be issued to individuals or to classes of persons, for specific periods or for the duration of the declaration