Inspector-General of Biosecurity Bill 2012

No. , 2012

(Agriculture, Fisheries and Forestry)

A Bill for an Act to provide for the appointment of an Inspector-General of Biosecurity, and for related purposes
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A Bill for an Act to provide for the appointment of an Inspector-General of Biosecurity, and for related purposes

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the Inspector-General of Biosecurity Act 2012.
Part 1 Preliminary

Section 2

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>2. Sections 3 to 67</td>
<td>At the same time as section 3 of the Biosecurity Act 2012 commences.</td>
<td></td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Definitions

In this Act:

adjacent premises warrant means a warrant issued under section 35.

Agriculture Minister means the Minister administering the Primary Industries Levies and Charges Collection Act 1991.

approved arrangement has the same meaning as in the Biosecurity Act 2012.

Australian territory has the same meaning as in the Biosecurity Act 2012.
biosecurity enforcement officer has the same meaning as in the Biosecurity Act 2012.

biosecurity industry participant has the same meaning as in the Biosecurity Act 2012.

biosecurity officer has the same meaning as in the Biosecurity Act 2012.

biosecurity risk has the same meaning as in the Biosecurity Act 2012.

BIRA (short for Biosecurity Import Risk Analysis) has the same meaning as in the Biosecurity Act 2012.

chief human biosecurity officer has the same meaning as in the Biosecurity Act 2012.

civil penalty provision means a subsection, or a section that is not divided into subsections, that has set out at its foot the words “civil penalty” and one or more amounts in penalty units.

Commonwealth body has the same meaning as in the Biosecurity Act 2012.

conveyance has the same meaning as in the Biosecurity Act 2012.

damage, in relation to data, includes damage by erasure of data or addition of other data.

data includes:

(a) information in any form; and

(b) any program (or part of a program).

Director of Biosecurity has the same meaning as in the Biosecurity Act 2012.

Director of Human Biosecurity has the same meaning as in the Biosecurity Act 2012.

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.
Section 3

*Federal Circuit Court* means the Federal Circuit Court of Australia.

*Federal Court* means the Federal Court of Australia.

*Health Minister* means the Minister administering the *National Health Act 1953*.

*human biosecurity officer* has the same meaning as in the *Biosecurity Act 2012*.

*import* has the same meaning as in the *Biosecurity Act 2012*.

*Inspector-General* means the Inspector-General of Biosecurity referred to in section 5.

*issuing officer* means:

(a) a magistrate; or

(b) a Judge of the Federal Court or the Federal Circuit Court.

Note: For conferral of powers on an issuing officer, see section 36.

*member of staff* means a person referred to in section 58.

*Part 5 review* means a review under Part 5.

*person assisting* the Inspector-General has the meaning given by section 25.

*premises* includes the following:

(a) a structure, building or conveyance;

(b) a place (whether or not enclosed or built on), including a place situated underground or under water;

(c) a part of a thing referred to in paragraph (a) or (b).

*relevant court* has the same meaning as in the *Biosecurity Act 2012*.

*review* means a review under this Act.

Note: See section 6.

*review powers* has the meaning given by sections 21 and 22.

*review warrant* means a warrant issued under section 34.
State or Territory body has the same meaning as in the Biosecurity Act 2012.

4 Extension of Act to Christmas Island, Cocos (Keeling) Islands and other prescribed external Territories

(1) This Act extends to the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

(2) The regulations may extend this Act or any provisions of this Act to any other external Territory that is prescribed by the regulations.
Part 2 Inspector-General of Biosecurity
Division 1 Establishment of the Inspector-General of Biosecurity

Section 5

Part 2—Inspector-General of Biosecurity
Division 1—Establishment of the Inspector-General of Biosecurity

5 Inspector-General

There is to be an Inspector-General of Biosecurity.

6 Functions

(1) The Inspector-General has the following functions:
   (a) to review the performance of functions and the exercise of powers by the following:
      (i) the Director of Biosecurity;
      (ii) biosecurity officers;
      (iii) biosecurity enforcement officers;
   (b) to review the process of conducting BIRAs generally;
   (c) to review the process of conducting a particular BIRA;
   (d) to report on those reviews in accordance with this Act;
   (e) any other functions conferred on the Inspector-General by this Act, the regulations or any other law of the Commonwealth;
   (f) to do anything incidental to or conducive to the performance of the above functions.

(2) The Inspector-General’s review functions under paragraphs (1)(a) and (b) include conducting audits, evaluations and assessments.

(3) The Inspector-General’s review functions do not include reviewing the operation of an approved arrangement covering a biosecurity industry participant.
Division 2—Review program

7 Setting a review program

(1) Each year, the Inspector-General must set a review program.

(2) The review program must be in writing.

(3) In setting the review program, the Inspector-General may exercise powers under Part 3 as if references in that Part to a review or conducting a review were references to setting a review program.

(4) The Inspector-General must consult the Director of Biosecurity and the Agriculture Minister, at least once a year, in setting the review program. The Inspector-General may also consult any other person the Inspector-General considers appropriate.

(5) The Inspector-General is not subject to direction by the Director of Biosecurity in relation to any of the following:
   (a) whether or not a particular subject or matter is to be reviewed;
   (b) the way in which a particular review is to be conducted;
   (c) the priority to be given to any particular review.

Note: The Agriculture Minister may direct the Inspector-General to conduct a review (see subsection 8(2)).

(6) The review program is not a legislative instrument.

8 When reviews are to be conducted

(1) The Inspector-General must conduct reviews in accordance with his or her review program.

(2) The Agriculture Minister may, in writing, direct the Inspector-General to conduct a review referred to in paragraph 6(1)(a), (b) or (c) (other than a Part 5 review).

(3) However, the Inspector-General is not subject to direction by the Agriculture Minister in relation to either of the following:
   (a) the way in which a particular review is to be conducted;
   (b) the priority to be given to any particular review.
Part 2 Inspector-General of Biosecurity
Division 2 Review program

Section 8

(4) If the Inspector-General is directed under subsection (2) to conduct a review, the Inspector-General must include the review in his or her review program.

(5) A direction given under subsection (2) is not a legislative instrument.
Part 3—Powers for conducting reviews: general

Division 1—Application of this Part

9 Application of this Part

This Part does not apply in relation to a Part 5 review.
Part 3 Powers for conducting reviews: general
Division 2 Obtaining information and documents etc.

Section 10

Division 2—Obtaining information and documents etc.

10 Inspector-General may require persons to provide information etc.

(1) This section applies if the Inspector-General has reason to believe that a person:
   (a) has information or documents relevant to a review; or
   (b) is capable of giving evidence that is relevant to a review.

(2) Subject to subsection 61(3), the Inspector-General may, by written notice given to the person, require the person:
   (a) to give the information to the Inspector-General by the time, and in the manner and form, specified in the notice; or
   (b) to produce the documents, or certified copies of the documents, to the Inspector-General by the time, and in the manner, specified in the notice; or
   (c) to attend before the Inspector-General, at the time and place specified in the notice, to answer questions relevant to the review.

Note: See Division 3 of this Part for the consequences of giving information, producing documents or answering questions, or the failure to do so.

(3) The time specified in the notice must be at least 14 days after the notice is given.

Information and answers may be given on oath or by affirmation

(4) The Inspector-General may require either or both of the following:
   (a) that information given under paragraph (2)(a) is to be given in writing, or verified on oath or by affirmation;
   (b) that answers be given on oath or by affirmation.

For this purpose, the Inspector-General may administer the oath or affirmation.

(5) The oath or affirmation is an oath or affirmation that the information or answers are or will be true.
Confidential information or documents

(6) A person may, at the time of giving information under this section, request the Inspector-General:
   (a) not to make some or all of the information available under section 12; and
   (b) not to publish or make available some or all of the information in a report under section 37 or 62;
   because the information is confidential.

(7) A person may, at the time of producing a document under this section, request the Inspector-General:
   (a) not to make the whole or a part of the document available under section 12; and
   (b) not to publish or make available the whole or a part of the document in a report under section 37 or 62;
   because the information contained in the document, or the part of the document, is confidential.

11 Inspector-General may invite submissions

Inviting submissions

(1) The Inspector-General may invite members of the public generally, or particular persons or organisations, to make submissions relevant to a review.

Note: See Division 3 of this Part for the consequences of making a submission.

Process for inviting or making submissions

(2) The Inspector-General has discretion in deciding matters connected with the process for inviting or making submissions, including:
   (a) how to communicate an invitation; and
   (b) how submissions may be made.

Note: For example, the Inspector-General may:
   (a) advertise in the press or other media seeking written submissions from the public; or
   (b) contact particular persons or organisations inviting them to attend a meeting at which they may make oral submissions.
Part 3  Powers for conducting reviews: general
Division 2  Obtaining information and documents etc.

Section 12

Submissions containing confidential information

(3) A person may, at the time of making a submission in response to
an invitation under subsection (1), request the Inspector-General:
(a) not to make the whole or a part of the submission available
under section 12; and
(b) not to publish or make available the whole or a part of the
submission in a report under section 37 or 62;
because of the confidential information contained in the
submission.

(4) If the Inspector-General refuses a person’s request in relation to a
submission:
(a) in the case of a written submission—the person may require
that all or part of the submission be returned to the person;
and
(b) in the case of an oral submission—the person may withdraw
all or part of the submission.

12 Submissions may be made publicly available

(1) Subject to subsections (2) and (3), the Inspector-General may, in
any way he or she thinks appropriate, make available:
(a) information or answers to questions given under section 10;
or
(b) a document produced under section 10; or
(c) a written submission made in response to an invitation under
subsection 11(1); or
(d) a written record (which may be a summary) of an oral
submission made in response to an invitation under
subsection 11(1);
to the public generally or to particular persons or organisations.

(2) The Inspector-General must not make information, an answer to a
question, a document, a submission or a record of a submission
available under subsection (1) to the extent that:
(a) it names, or otherwise specifically identifies:
   (i) an officer or employee of a Commonwealth body (other
       than the Director of Biosecurity); or
(iii) a consultant to the Department; or
(b) it contains information relating to a matter specified in a certificate given by the Agriculture Minister under section 61.

(3) The Inspector-General must not make any of the following available under subsection (1):
(a) information given under section 10 if:
(i) the person who gave the information requested, under subsection 10(6), that the information not be published because the information is confidential; and
(ii) the Inspector-General agreed to the request;
(b) a document, or a part of a document, produced under section 10 if:
(i) the person who produced the document requested, under subsection 10(7), that the document, or the part of the document, not be published because the information contained in the document, or the part of the document, is confidential; and
(ii) the Inspector-General agreed to the request;
(c) a written record of an oral submission made in response to an invitation under subsection 11(1), unless the person who made the submission has verified the content of the record;
(d) a submission made in response to an invitation under subsection 11(1) if the person who made the submission has required its return or has withdrawn it under subsection 11(4);
(e) a part of a submission made in response to an invitation under subsection 11(1) if the person who made the submission has required that part to be returned or has withdrawn that part under subsection 11(4).

13 Assistance from the Director of Biosecurity

(1) The Director of Biosecurity must comply with any reasonable request from the Inspector-General for assistance for the purposes of conducting a review.
Section 14

(2) Without limiting subsection (1), the Inspector-General may request the Director of Biosecurity to give information, produce documents or answer questions relevant to a review.

14 Inspector-General may retain and make copies of documents

(1) If a document is produced under section 10 or 13, the Inspector-General:
   (a) may take possession of, and make copies of, the document, or take extracts from the document; and
   (b) may retain possession of the document for such period as is necessary for the purposes of the review to which the document relates.

(2) If a document is produced under section 10 or 13 for the purpose of setting a review program under section 7, and a review is to be conducted, the document may continue to be kept for as long as is necessary for the purposes of conducting the review.

(3) While the Inspector-General retains possession of a document, he or she must allow a person otherwise entitled to possession of the document (or another person authorised by the person) to do any of the following:
   (a) inspect the document;
   (b) make copies of the document;
   (c) take extracts from the document;
   at the times that the person would ordinarily be able to do so.

15 Inspector-General must consider all evidence provided

(1) In conducting a review, the Inspector-General must have regard to:
   (a) any information given, documents produced and answers to questions given in relation to the review under section 10 or 13; and
   (b) any submission made in response to an invitation under subsection 11(1), unless the person who made the submission has required its return or has withdrawn it under subsection 11(4); and
(c) any part of a submission made in response to an invitation under subsection 11(1), unless the person who made the submission has required that part to be returned or has withdrawn that part under subsection 11(4).

(2) In conducting a review, the Inspector-General may have regard to other information.
Part 3  Powers for conducting reviews: general  
Division 3  Civil penalty and related provisions

Section 16

Division 3—Civil penalty and related provisions

16  Civil penalties—failure to comply with notice etc.

(1) If a person has been given a notice under subsection 10(2) requiring the person:
   (a) to give information specified in the notice; or
   (b) to produce documents or certified copies of documents specified in the notice;
the person must comply with the notice within the period specified in the notice.

(2) If a person has been given a notice under subsection 10(2) requiring the person to attend to answer questions at the time and place specified in the notice, the person must comply with the notice.

(3) If a person is required to take an oath or make an affirmation under subsection 10(4), the person must comply with the requirement.

(4) If a person has been given a notice under subsection 10(2) requiring the person to attend before the Inspector-General to answer questions relevant to the review, the person must answer a question put to him or her by the Inspector-General.

Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (1), (2), (3) or (4).

Civil penalty: 30 penalty units.

Note:  Civil penalty proceedings for a contravention of this civil penalty provision may be brought under the Biosecurity Act 2012 (see section 65 of this Act).

17  Self-incrimination etc.

(1) A person is not excused from giving information, producing a document or answering a question relevant to a review, as required by a notice given under section 10, on the ground that doing so
Powers for conducting reviews: general  Part 3
Civil penalty and related provisions  Division 3

Section 18

might tend to incriminate the person or make the person liable to a penalty.

Use/derivative use indemnity

(2) However, in the case of an individual:
   (a) the information given, the document produced, or the answer given; and
   (b) giving the information, producing the document or answering the question; and
   (c) any information, document or thing obtained as a direct or indirect consequence of giving the information, producing the document or answering the question;
are not admissible in evidence against the individual:
   (d) in any civil proceedings, other than proceedings for a contravention of subsection 16(1), (2) or (4); or
   (e) in criminal proceedings, other than:
      (i) proceedings for an offence against section 137.1 or 137.2 of the Criminal Code (which relate to false or misleading information or documents) that relates to this Act; or
      (ii) proceedings for an offence against section 149.1 of the Criminal Code (which relates to the obstruction of Commonwealth public officials) that relates to this Act.

18 Protection from liability for persons complying with a notice or making a submission

(1) A person who, in good faith, gives information, produces a document or answers a question relevant to a review, as required by a notice given under section 10, is not liable:
   (a) to any proceedings for contravening a law of the Commonwealth, or a State or Territory, because of that conduct; or
   (b) to civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

(2) A person who, in good faith, makes a submission in response to an invitation under section 11 is not liable to civil proceedings for
Part 3 Powers for conducting reviews: general
Division 3 Civil penalty and related provisions

Section 19

1 loss, damage or injury of any kind suffered by another person
2 because of making the submission.

19 No loss of legal professional privilege

Information or a document does not cease to be the subject of legal
professional privilege merely because it is:

(a) given or produced in response, or included or referred to in a response, to a notice given under section 10; or
(b) referred to in answering a question asked in relation to a notice given under section 10; or
(c) included or referred to in a submission made in response to an invitation under section 11; or
(d) given or produced to the Inspector-General in response to a request under section 13.
Powers for conducting reviews: general  
Part 3  
Entering premises  
Division 4  

Section 20

Division 4—Entering premises

Subdivision A—Entering premises to exercise review powers

20 Entering premises to exercise review powers

(1) For the purpose of conducting a review and subject to
subsections (2) and (3), the Inspector-General may enter any of the
following premises:
(a) premises that are owned or controlled by the Commonwealth
where functions are or have been performed, or powers are or
have been exercised, under the *Biosecurity Act 2012* by the
Director of Biosecurity or by biosecurity officers or
biosecurity enforcement officers;
(b) premises at which a biosecurity industry participant carries
out biosecurity activities as authorised by an approved
arrangement covering the biosecurity industry participant;
(c) other premises where functions are or have been performed,
or powers are or have been exercised, under the *Biosecurity
Act 2012* by the Director of Biosecurity or by biosecurity
officers or biosecurity enforcement officers.

(2) The Inspector-General may enter premises referred to in
paragraph (1)(a) or (b) at any reasonable time.

(3) The Inspector-General is not authorised to enter premises referred
to in paragraph (1)(c) unless:
(a) the occupier of the premises has consented to the entry and
the Inspector-General has identified himself or herself if
required by the occupier; or
(b) the entry is made under a review warrant.

Note 1: See Subdivision F in relation to the issue of a review warrant.

Note 2: If entry to the premises is with the occupier’s consent, the
Inspector-General must leave the premises if the consent ceases to
have effect (see section 26).
Part 3  Powers for conducting reviews: general
Division 4  Entering premises

Section 21

21  General review powers

The Inspector-General may exercise any of the following powers (review powers) in relation to premises entered under section 20 (including under a review warrant):

(a) the power to search the premises and any thing on the premises that the Inspector-General thinks may be relevant to a review;
(b) the power to examine or observe any activity conducted on the premises that the Inspector-General thinks may be relevant to a review;
(c) the power to inspect, examine, take measurements of, or conduct tests on any thing on the premises that the Inspector-General thinks may be relevant to a review;
(d) the power to take and keep samples of any thing on the premises that the Inspector-General thinks may be relevant to a review;
(e) the power to make any still or moving image or any recording of the premises or any thing on the premises that the Inspector-General thinks may be relevant to a review;
(f) the power to inspect any document on the premises that the Inspector-General thinks may be relevant to a review;
(g) the power to take extracts from, or make copies of, any such document;
(h) the power to take onto the premises such equipment and materials as the Inspector-General requires for the purposes of exercising powers in relation to the premises;
(i) the powers set out in subsections 22(1) and (3).

22  Operating electronic equipment

(1) The review powers include the power to:

(a) operate electronic equipment on the premises; and
(b) use a disk, tape or other storage device that:
   (i) is on the premises; and
   (ii) can be used with the equipment or is associated with it.
(2) The review powers include the powers mentioned in subsection (3) if information relevant to a review (relevant data) is found in the exercise of the power under subsection (1).

(3) The powers are as follows:

   (a) the power to operate electronic equipment on the premises to put the relevant data in documentary form and remove the documents so produced from the premises;

   (b) the power to operate electronic equipment on the premises to transfer the relevant data to a disk, tape or other storage device that:

      (i) is brought to the premises for the exercise of the power;

      or

      (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;

      and remove the disk, tape or other storage device from the premises.

(4) The Inspector-General may operate electronic equipment as mentioned in subsection (1) or (3) only if the Inspector-General believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Note: For compensation for damage to electronic equipment, see section 31.

23 Expert assistance to operate electronic equipment

(1) This section applies if the Inspector-General enters premises under a review warrant.

   Securing equipment

(2) The Inspector-General may secure any electronic equipment that is on the premises if the Inspector-General suspects on reasonable grounds that:

   (a) there is information relevant to a review (relevant data) on the premises; and

   (b) the relevant data may be accessible by operating the equipment; and
Part 3  Powers for conducting reviews: general
Division 4  Entering premises

Section 23

(c) expert assistance is required to operate the equipment; and
(d) the relevant data may be destroyed, altered, or otherwise
interfered with, if the Inspector-General does not take action
under this subsection.

The equipment may be secured by locking it up, placing a guard or
any other means.

Note:  The expert is authorised to enter premises under section 25 (persons
assisting Inspector-General).

(3) The Inspector-General must give notice to the occupier of the
premises, or another person who apparently represents the
occupier, of:

(a) the Inspector-General’s intention to secure the equipment;
and
(b) the fact that the equipment may be secured for up to 24
hours.

Period equipment may be secured

(4) The equipment may be secured until the earlier of the following
happens:

(a) the 24-hour period ends;
(b) the equipment has been operated by an expert.

Note:  For compensation for damage to electronic equipment, see section 31.

Extensions

(5) The Inspector-General may apply to an issuing officer for an
extension of the 24-hour period if the Inspector-General believes
on reasonable grounds that the equipment needs to be secured for
longer than that period.

(6) Before making the application, the Inspector-General must give
notice to the occupier of the premises, or another person who
apparently represents the occupier, of his or her intention to apply
for an extension. The occupier or other person is entitled to be
heard in relation to that application.
Powers for conducting reviews: general  Part 3
Entering premises  Division 4

Section 24

(7) The provisions of this Division relating to the issue of review
warrants apply, with such modifications as are necessary, to the
issue of an extension.

(8) The 24-hour period may be extended more than once.

Subdivision B—Entering adjacent premises to gain access to
other premises

24 Entering adjacent premises to gain access to other premises

(1) The Inspector-General may enter any premises (adjacent premises)
if it is necessary to do so for the purpose of gaining access to other
premises to conduct a review.

(2) However, the Inspector-General is not authorised to enter adjacent
premises under subsection (1) unless:
   (a) the occupier of the premises has consented to the entry and
the Inspector-General has identified himself or herself if
   required by the occupier; or
   (b) the entry is made under an adjacent premises warrant.

Note 1: See Subdivision F in relation to the issue of an adjacent premises
warrant.

Note 2: If entry to the premises is with the occupier’s consent, the
Inspector-General must leave the premises if the consent ceases to
have effect (see section 26).

(3) If the Inspector-General enters premises under an adjacent
premises warrant, the Inspector-General and any person assisting,
must take all reasonable steps to ensure that they cause as little
inconvenience to the occupier of the premises as is practicable.

Subdivision C—Persons assisting

25 Persons assisting Inspector-General

(1) In entering premises under section 20 or 24 (including under a
review warrant or an adjacent premises warrant) and exercising
powers or performing functions or duties under this Division, the
Inspector-General may be assisted by:
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(a) a member of staff; or
(b) a consultant engaged under section 59; or
(c) a person who has the requisite technical expertise;
if that assistance is necessary and reasonable.

(2) A person giving assistance under subsection (1) is a person assisting the Inspector-General.

(3) A person assisting the Inspector-General:
   (a) may enter the premises; and
   (b) may exercise powers under this Division; and
   (c) must do so in accordance with a direction given to the person assisting by the Inspector-General.

(4) A power exercised by a person assisting the Inspector-General as mentioned in subsection (3) is taken for all purposes to have been exercised by the Inspector-General.

(5) A function or duty performed by a person assisting the Inspector-General as mentioned in subsection (3) is taken for all purposes to have been performed by the Inspector-General.

(6) If a direction is given under paragraph (3)(c) in writing, the direction is not a legislative instrument.

Subdivision D—Obligations and incidental powers of Inspector-General

26 Consent

(1) Before obtaining the consent of an occupier of premises for the purposes of paragraph 20(3)(a) or 24(2)(a), the Inspector-General must inform the occupier of the following:
   (a) the reasons for entering the premises;
   (b) that the occupier may refuse consent.

(2) A consent has no effect unless the consent is voluntary.
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(3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.

(4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.

(5) If the Inspector-General entered premises because of the consent of the occupier of the premises, the Inspector-General, and any person assisting the Inspector-General, must leave the premises if the consent ceases to have effect.

27 Notice of entry etc.

(1) Before entering premises under section 20 or 24 (including under a review warrant or an adjacent premises warrant), the Inspector-General must give reasonable notice of the proposed entry to:
   (a) the occupier of the premises; and
   (b) if the premises are not owned or controlled by the Commonwealth—the Director of Biosecurity.

(2) Before entering premises under a review warrant or an adjacent premises warrant, the Inspector General must:
   (a) announce that he or she is authorised to enter the premises; and
   (b) show identification to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
   (c) give any person at the premises an opportunity to allow entry to the premises.

28 Inspector-General to be in possession of warrant

If the Inspector-General is executing a review warrant or an adjacent premises warrant, the Inspector-General must be in possession of the warrant or a copy of the warrant.
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29 Details of warrant etc. to be given to occupier

(1) The Inspector-General must comply with subsection (2) if:
(a) a review warrant or an adjacent premises warrant is being executed in relation to premises; and
(b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises.

(2) The Inspector-General must, as soon as practicable:
(a) make a copy of the warrant available to the occupier or other person; and
(b) inform the occupier or other person in writing of the rights and responsibilities of the occupier or other person under Subdivision E.

30 Use of force

In executing a review warrant or an adjacent premises warrant, the Inspector-General, or a person assisting the Inspector-General, may use such force against things as is necessary and reasonable in the circumstances.

31 Compensation for damage to electronic equipment

(1) This section applies if:
(a) as a result of equipment being operated as mentioned in this Division:
   (i) damage is caused to the equipment; or
   (ii) the data recorded on the equipment is damaged; or
   (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
(b) the damage or corruption occurs because:
   (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
   (ii) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the
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damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a relevant court for such reasonable amount of compensation as the relevant court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier’s employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

Subdivision E—Occupier’s rights and responsibilities

32 Right to observe exercise of powers

(1) The occupier of premises entered by the Inspector-General under section 20 or 24 (including under a review warrant or an adjacent premises warrant), or another person who apparently represents the occupier, is entitled to observe the exercise of powers by the Inspector-General while on the premises, if the occupier or other person is present at the premises while the powers are being exercised.

(2) The right to observe the exercise of the powers ceases if the occupier or other person impedes the exercise of the powers.

(3) This section does not prevent the Inspector-General exercising powers in 2 or more areas of the premises at the same time.

33 Responsibility to provide facilities and assistance

(1) The occupier of premises entered by the Inspector-General under section 20 or 24 (including under a review warrant or an adjacent premises warrant), or another person who apparently represents the occupier, must provide:

(a) the Inspector-General; and

(b) any person assisting the Inspector-General;
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with all reasonable facilities and assistance for the effective exercise of their powers.

(2) A person commits an offence if:

(a) the person is subject to subsection (1); and
(b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

Subdivision F—Issue of warrants

34 Review warrants

Application for warrant

(1) The Inspector-General may apply to an issuing officer for a warrant under this section in relation to premises.

Issue of warrant

(2) The issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that it is reasonably necessary that the Inspector-General should have access to the premises for the purpose of conducting a review.

(3) However, the issuing officer must not issue the warrant unless the Inspector-General or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

Content of warrant

(4) The warrant must:

(a) describe the premises to which the warrant relates; and
(b) state that the warrant is issued under this section; and
(c) state the purpose for which the warrant is issued; and
(d) authorise the Inspector-General from time to time while the warrant remains in force:
   (i) to enter the premises; and
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(i) to exercise the powers set out in this Division for the
purpose of conducting a review; and
(e) state whether entry is authorised to be made at any time of
the day or during specified hours of the day; and
(f) specify the day (not more than 1 month after the issue of the
warrant) on which the warrant ceases to be in force.

35 Adjacent premises warrants

Application for warrant

(1) The Inspector-General may apply to an issuing officer for a
warrant under this section in relation to premises.

Issue of warrant

(2) The issuing officer may issue the warrant if the issuing officer is
satisfied, by information on oath or affirmation, that it is
reasonably necessary that the Inspector-General should have access
to the premises for the purpose of gaining access to other premises
to conduct a review.

(3) However, the issuing officer must not issue the warrant unless the
Inspector-General or some other person has given to the issuing
officer, either orally or by affidavit, such further information (if
any) as the issuing officer requires concerning the grounds on
which the issue of the warrant is being sought.

Content of warrant

(4) The warrant must:
(a) describe the premises to which the warrant relates; and
(b) state that the warrant is issued under this section; and
(c) state the purpose for which the warrant is issued; and
(d) authorise the Inspector-General from time to time while the
warrant remains in force:
    (i) to enter the premises; and
    (ii) to remain on the premises for such period as is
         reasonably necessary for the purpose of gaining access
         to other premises to conduct a review; and
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(e) state whether entry is authorised to be made at any time of
the day or during specified hours of the day; and
(f) specify the day (not more than 14 days after the issue of the
warrant) on which the warrant ceases to be in force.

36 Powers of issuing officers

Powers conferred personally

(1) A power conferred on an issuing officer by this Division is
conferred on the issuing officer:
(a) in a personal capacity; and
(b) not as a court or a member of a court.

Powers need not be accepted

(2) The issuing officer need not accept the power conferred.

Protection and immunity

(3) An issuing officer exercising a power conferred by this Division
has the same protection and immunity as if the issuing officer were
exercising the power:
(a) as the court of which the issuing officer is a member; or
(b) as a member of the court of which the issuing officer is a
member.
Part 4—Reports on reviews

37 Reporting on reviews

(1) This section does not apply in relation to a Part 5 review.

Note: Section 47 deals with reporting requirements for Part 5 reviews.

(2) After completing a review, the Inspector-General must prepare a written report for the Agriculture Minister setting out:

(a) the subject and findings of the review; and

(b) the evidence and other material on which those findings are based; and

(c) any recommendations resulting from the review.

(3) The report must not include recommendations in relation to, or comments on:

(a) the policy of the Commonwealth Government in relation to managing biosecurity risk; or

(b) particular decisions made under the Biosecurity Act 2012 or any other law of the Commonwealth.

(4) In particular, the report must not include recommendations in relation to, or comments on:

(a) a decision made under Division 3 of Part 3 of Chapter 3 of the Biosecurity Act 2012 relating to a permit to bring or import goods into Australian territory; or

(b) the outcome of a BIRA; or

(c) the scientific analysis of anything done in the performance of a function, or the exercise of a power, under the Biosecurity Act 2012.

(5) The Inspector-General may give a copy of the report to the Health Minister or the Director of Biosecurity, or both.

38 Certain material to be excluded from reports

(1) A report on a review (including a Part 5 review) must not name, or otherwise specifically identify:
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(a) an officer or employee of a Commonwealth body (other than the Director of Biosecurity); or
(b) an officer or employee of a State or Territory body; or
(c) a consultant to the Department; or
(d) a member of the Australian Defence Force;
as being a person whose conduct has been considered in the course of a review.

Note: See section 47 in relation to reporting requirements for Part 5 reviews.

(2) A report on a review must not include any of the following:
   (a) information given under section 10 if:
       (i) the person who gave the information requested that the
           information not be published because the information is
           confidential; and
       (ii) the Inspector-General agreed to the request;
   (b) information contained in a document produced under
       section 10 if:
       (i) the person who produced the document requested that
           the information not be published because the
           information is confidential; and
       (ii) the Inspector-General agreed to the request;
   (c) any submission made in response to an invitation under
       subsection 11(1) if the person who made the submission has
       required its return or has withdrawn it under subsection
       11(4);
   (d) any part of a submission made in response to an invitation
       under subsection 11(1) if the person who made the
       submission has required that part to be returned or has
       withdrawn that part under subsection 11(4).

39 Including criticism in reports

Criticism to which section applies

(1) This section applies if it is proposed to include material in a report
    on a review (including a Part 5 review) that is expressly or
    impliedly critical of any of the following persons:
    (a) the Director of Biosecurity;
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(b) the Director of Human Biosecurity;

(c) a chief human biosecurity officer, a human biosecurity officer or a group of such officers;

(d) a biosecurity officer, a biosecurity enforcement officer or a group of such officers;

(e) an officer or employee of a Commonwealth body;

(f) a member of the Australian Defence Force;

(g) an officer or employee of a State or Territory body;

(h) a consultant to the Department;

(i) a biosecurity industry participant.

Note: See section 47 in relation to reporting requirements for Part 5 reviews.

Opportunity for submissions to be made

(2) The material must not be included in the report unless:

(a) in the case of criticism relating to the Director of Human Biosecurity or a person mentioned in paragraph (1)(c)—the Inspector-General has given the Director of Human Biosecurity a reasonable opportunity to make submissions to the Inspector-General in relation to the material; and

(b) in any other case—the Inspector-General has given the Director of Biosecurity a reasonable opportunity to make submissions to the Inspector-General in relation to the material.

(3) Submissions may be made orally or in writing, or both.

(4) Oral submissions may be made:

(a) by the Director of Human Biosecurity or the Director of Biosecurity personally; or

(b) by another person on behalf of the Director of Human Biosecurity or the Director of Biosecurity.

Protection from liability for respondents making submissions

(5) If the Director of Human Biosecurity or the Director of Biosecurity makes a submission, in good faith, under this section, the Director of Human Biosecurity or the Director of Biosecurity (as the case may be) is not liable:
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(a) to any proceedings for contravening a law of the
Commonwealth because of making the submission; or
(b) to civil proceedings for loss, damage or injury of any kind
suffered by another person because of making the
submission.

No loss of legal professional privilege

(6) Information or a document does not cease to be the subject of legal
professional privilege merely because it is included or referred to
in a submission made under this section.

40 Legal professional privilege

Reports not to include privileged information or documents

(1) Information or a document must not be included in a report on a
review (including a Part 5 review) if the information or document:
(a) has been given or produced to the Inspector-General under
section 10, 13, 39 or 44; and
(b) is either:
   (i) the subject of legal professional privilege; or
   (ii) derived from information or a document that is the
       subject of legal professional privilege.

Note: See section 47 in relation to reporting requirements for Part 5 reviews.

Limited power to refer to privileged legal advice

(2) Despite subsection (1), a report on a review may include a
statement:
(a) to the effect that legal advice (being advice contained in
information or a document that was given or produced as
mentioned in paragraph (1)(a)) was considered in the course
of the review; and
(b) outlining, in general terms, the relevance of that advice, or of
any aspect of it, to the review.
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Privilege not otherwise affected

(3) If a report on a review includes a statement relating to legal advice as mentioned in subsection (2), the advice does not cease to be the subject of legal professional privilege merely because:

(a) the report includes that statement; or
(b) the report is given to the Agriculture Minister; or
(c) the report, or any part of it, is tabled or made publicly available under section 41 or 47.

41 Tabling etc. of reports

(1) This section does not apply in relation to a Part 5 review.

Note: Section 47 deals with publication requirements for reports of Part 5 reviews.

(2) The Agriculture Minister must cause a copy of each report on a review:

(a) to be tabled in each House of the Parliament; or
(b) to be otherwise made publicly available.

(3) If the Inspector-General has recommended that the report not be made publicly available for a specified period, the report must not be tabled or otherwise made publicly available until after the specified period ends.

(4) Unless the report has been made publicly available earlier, the report must be tabled in each House of Parliament within 25 sittings days of that House after:

(a) the day the Agriculture Minister receives the report; or
(b) if the Inspector-General has recommended that the report not be made publicly available for a specified period—the day the specified period ends.
Part 5—Requests for review of BIRA process

42 Person may request Inspector-General to review BIRA process

(1) A person may request the Inspector-General to review the process of conducting a particular BIRA if the person considers that:
   (a) the process did not accord with the process required by the Biosecurity Act 2012; and
   (b) the departure from the process was significant; and
   (c) the person’s interests were, are or may be adversely affected by the failure to conduct the BIRA in accordance with the process required by that Act.

(2) A request under subsection (1) must:
   (a) be in writing; and
   (b) set out the grounds for making the request; and
   (c) be made within the prescribed period after the provisional BIRA report required by section 167 of the Biosecurity Act 2012 has been published.

43 Inspector-General must consider request for review

(1) If a request in relation to a BIRA is made under section 42, the Inspector-General must consider the request as soon as practicable after receiving it.

(2) If the Inspector-General is satisfied, having regard to the grounds set out in the request, that it is appropriate to review the process of conducting the BIRA, the Inspector-General must:
   (a) review the process of conducting the BIRA in accordance with this Part; and
   (b) notify the person who made the request, in writing, when the Inspector-General’s report is published under section 47.

(3) If the Inspector-General is not satisfied, having regard to the grounds set out in the request, that it is appropriate to review the process of conducting the BIRA, the Inspector-General must notify the person who made the request, in writing, of that decision.
44 Assistance from the Director of Biosecurity

(1) The Director of Biosecurity must comply with any reasonable request from the Inspector-General for assistance for the purposes of conducting a review under this Part.

(2) Without limiting subsection (1), the Inspector-General may request the Director of Biosecurity to give information, produce documents or answer questions relevant to the review.

(3) Information given or a document produced to the Inspector-General in response to a request under this section does not cease to be the subject of legal professional privilege merely because it is given or produced to the Inspector-General in response to that request.

45 Inspector-General may retain and make copies of documents

(1) If a document is produced under section 44, the Inspector-General:

(a) may take possession of, and make copies of, the document, or take extracts from the document; and

(b) may retain possession of the document for such period as is necessary for the purposes of the review to which the document relates.

(2) While the Inspector-General retains possession of a document, he or she must allow a person otherwise entitled to possession of the document (or another person authorised by the person) to do any of the following:

(a) inspect the document;

(b) make copies of the document;

(c) take extracts from the document;

at the times that the person would ordinarily be able to do so.

46 Inspector-General must consider all evidence provided

In conducting a review under this Part, the Inspector-General must have regard to:

(a) any information given, documents produced and answers to questions given under section 44; and
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(b) any other information the Inspector-General considers is relevant.

47 Inspector-General must prepare report

(1) After completing a review of the process of conducting a BIRA under this Part, the Inspector-General must prepare a report on the review.

(2) The report must set out:

(a) the subject and findings of the review; and
(b) the evidence and other material on which those findings are based; and
(c) any recommendations resulting from the review.

Note: Certain material must not be included in a report prepared under this section (see sections 38, 39, 40 and 61).

(3) The report must not include recommendations in relation to, or comments on:

(a) the policy of the Commonwealth Government in relation to managing biosecurity risk; or
(b) particular decisions made under the Biosecurity Act 2012 or any other law of the Commonwealth.

(4) In particular, the report must not include recommendations in relation to, or comments on:

(a) a decision made under Division 3 of Part 3 of Chapter 3 of the Biosecurity Act 2012 relating to a permit to bring or import goods into Australian territory; or
(b) the outcome of the BIRA to which the report relates; or
(c) the scientific analysis of anything done in the performance of a function, or the exercise of a power, under the Biosecurity Act 2012.

(5) The Inspector-General must give a copy of the report to the Director of Biosecurity.

(6) The report must be published within the period, and in the manner, prescribed by the regulations.
Part 6—Administrative provisions

Division 1—Appointment etc. of Inspector-General of Biosecurity

48 Appointment

(1) The Inspector-General is to be appointed by the Agriculture Minister by written instrument.

(2) The Agriculture Minister must not appoint a person as the Inspector-General unless the Minister is satisfied that the person has suitable qualifications or experience in relevant scientific, auditing or systems assessment disciplines.

(3) The Inspector-General may be appointed on a full-time or part-time basis.

49 Term of appointment

(1) The Inspector-General holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(2) The Inspector-General must not hold office for a total of more than 10 years.

50 Remuneration and allowances

(1) The Inspector-General is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Inspector-General is to be paid the remuneration that is prescribed by the regulations.

(2) The Inspector-General is to be paid the allowances that are prescribed by the regulations.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.
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51 Leave of absence

(1) The following provisions apply if the Inspector-General is appointed on a full-time basis:
   (a) the Inspector-General has the recreation leave entitlements that are determined by the Remuneration Tribunal;
   (b) the Agriculture Minister may grant the Inspector-General leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(2) If the Inspector-General is appointed on a part-time basis, the Agriculture Minister may grant leave of absence to the Inspector-General on the terms and conditions that the Minister determines.

52 Outside employment

(1) If the Inspector-General is appointed on a full-time basis, he or she must not engage in paid employment outside the duties of his or her office without the Agriculture Minister’s approval.

(2) If the Inspector-General is appointed on a part-time basis, the Inspector-General must not engage in paid employment that, in the Agriculture Minister’s opinion, conflicts or may conflict with the proper performance of his or her duties.

53 Disclosure of interests

The Inspector-General must give written notice to the Agriculture Minister of all interests, pecuniary or otherwise, that the Inspector-General has or acquires and that conflict or could conflict with the proper performance of the Inspector-General’s functions.

54 Other terms and conditions

The Inspector-General holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Agriculture Minister.
55 Resignation

(1) The Inspector-General may resign his or her appointment by giving the Agriculture Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Agriculture Minister or, if a later day is specified in the resignation, on that later day.

56 Termination of appointment

(1) The Agriculture Minister may terminate the appointment of the Inspector-General:

(a) for misbehaviour; or

(b) if the Inspector-General is unable to perform the duties of his or her office because of physical or mental incapacity; or

(c) if the Inspector-General:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(d) if the Inspector-General fails, without reasonable excuse, to comply with section 53.

Additional grounds: full-time Inspector-General

(2) The Agriculture Minister may terminate the appointment of an Inspector-General appointed on a full-time basis if:

(a) the Inspector-General is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(b) the Inspector-General engages, except with the Minister’s approval, in paid employment outside the duties of his or her office (see subsection 52(1)).

Additional grounds: part-time Inspector-General

(3) The Agriculture Minister may terminate the appointment of an Inspector-General appointed on a part-time basis if:
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(a) the Inspector-General is absent, except on leave of absence, for 7 consecutive days or for 14 days in any 12 months; or
(b) the Inspector-General engages in paid employment that, in the Minister’s opinion, conflicts or may conflict with the proper performance of his or her duties (see subsection 52(2)).

57 Appointment of acting Inspector-General

The Agriculture Minister may, by written instrument, appoint a person to act as the Inspector-General:

(a) during a vacancy in the office of the Inspector-General (whether or not an appointment has previously been made to the office); or
(b) during any period, or during all periods, when the Inspector-General:
   (i) is absent from duty or from Australia; or
   (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the Acts Interpretation Act 1901.
Division 2—Staff and consultants

58 Staff

The staff required to assist the Inspector-General are to be persons engaged under the Public Service Act 1999 who are made available by the Director of Biosecurity.

59 Consultants

(1) The Inspector-General may, on behalf of the Commonwealth, engage a person who has suitable qualifications and experience as a consultant to the Inspector-General.

(2) The terms and conditions of engagement are to be determined, in writing, by the Inspector-General.
Part 7—Miscellaneous

60 Inspector-General to have regard to minimising disruption during review

In performing functions or exercising powers under this Act, the Inspector-General must have regard to the desirability of minimising any resulting disruption to:

(a) the performance of functions, or the exercise of powers, by the Director of Biosecurity; and

(b) the operations or work undertaken by:

(i) persons who have been given a notice under section 10; and

(ii) occupiers of premises entered under section 20 or 24.

61 Information that would be prejudicial to the public interest

(1) The Agriculture Minister may give the Inspector-General a certificate stating that the disclosure of information relating to a specified matter would:

(a) prejudice the security, defence or international relations of the Commonwealth; or

(b) prejudice negotiations relating to a treaty or other international agreement; or

(c) be contrary to a treaty or other international agreement to which Australia is a party; or

(d) prejudice relations between the Commonwealth and a State or Territory; or

(e) involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet; or

(f) involve the disclosure of deliberations or advice of the Executive Council; or

(g) prejudice the prevention, investigation or prosecution of an offence against any law; or

(h) prejudice the prevention or investigation of, or the conduct of proceedings for recovery of civil penalties for, a contravention of any law; or
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(i) be contrary to an order of a court or tribunal; or
(j) be contrary to the public interest for any other reason that
   could form the basis for a claim in a judicial proceeding that
   information relating to the matter should not be disclosed or
   documents relating to the matter should not be produced; or
(k) endanger the safety of any person; or
(l) prejudice the revenue of the Commonwealth.

(2) A certificate may be expressed to have effect for the purposes of
either or both of the following:
   (a) the Inspector-General’s information-gathering powers under
       Division 2 of Part 3;
   (b) the Inspector-General’s reporting obligations under Part 4 or
       section 47.

However, a certificate based on the ground referred to in
paragraph (1)(l) must only be expressed to have effect for the
purposes of the Inspector-General’s reporting obligations.

(3) The following provisions apply while a certificate that is expressed
to have effect for the purposes of the Inspector-General’s
information-gathering powers under Division 2 of Part 3 is in
force:
   (a) a person must not be required under section 10 to give
       information, produce documents or answer questions relating
       to the matter specified in the certificate;
   (b) any request made under section 10 before the certificate was
       given ceases to have effect, so far as it relates to the matter
       specified in the certificate.

(4) While a certificate that is expressed to have effect for the purposes
of the Inspector-General’s reporting obligations under Part 4 or
section 47 is in force, information relating to the matter specified in
the certificate must not be included in a report on a review.

62 Annual report

(1) The Inspector-General must, as soon as practicable after the end of
each financial year, prepare and give to the Agriculture Minister a
report, for presentation to the Parliament, on the operations of the
Inspector-General during the year.
Note: See also section 34C of the Acts Interpretation Act 1901, which contains extra rules about annual reports.

(2) The Inspector-General must include in the report:
   (a) details of any directions given by the Agriculture Minister under subsection 8(2) during the year; and
   (b) details of any action taken, or proposed to be taken, by the Director of Biosecurity since the last report made under this section in response to the findings and any recommendations set out in a report prepared by the Inspector-General under section 37 or 47; and
   (c) the number of reviews of the process of conducting a BIRA carried out during the year.

(3) Sections 38, 39, 40 and 61 apply in relation to material relating to a review that is to be included in an annual report required to be prepared under this section as if the annual report were a report on a review.

63 Delegation

(1) The Inspector-General may, in writing, delegate all or any of his or her functions and powers under this Act to a member of staff.

(2) However, the Inspector-General may only delegate his or her functions and powers under sections 10, 20, 34 and 35 to a member of staff who is an SES employee or an acting SES employee.

(3) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Inspector-General.

64 Secrecy

Person must not make record or disclose protected information or protected document

(1) A person who is, or was, the Inspector-General, a member of staff, or a consultant engaged under section 59, must not:
   (a) make a record of protected information, or of all or part of a protected document; or
(b) directly or indirectly disclose protected information, or all or part of a protected document, to another person (other than the person to whom the information or document relates) or to a court;

if in doing so, the person is not acting in the course of performing functions or exercising powers under, or in relation to, this Act.

**Exception**

(2) Subsection (1) does not apply if the person is authorised to make the record or disclosure under subsection (3).

**Note:** A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the **Criminal Code** and section 552 of the **Biosecurity Act 2012** (applied by section 65 of this Act)).

(3) The Inspector-General may:

(a) make a record of protected information, or of all or part of a protected document; or

(b) disclose protected information, or all or part of a protected document, to another person or to a court; or

(c) authorise a member of staff or a consultant engaged under section 59:

(i) to make a record of protected information, or of all or part of a protected document; or

(ii) to disclose protected information, or all or part of a protected document, to another person or to a court;

if the Inspector-General has reasonable grounds to believe that making the record or disclosure is necessary for the purpose of preserving the safety of any person.

**Fault-based offence**

(4) A person commits an offence if the person contravenes subsection (1).

**Penalty:** Imprisonment for 2 years or 120 penalty units, or both.

**Note:** To identify the physical elements of this offence, see section 575 of the **Biosecurity Act 2012** (applied by section 65 of this Act).
Section 65

**Civil penalty provision**

(5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 200 penalty units.

Note: Civil penalty proceedings for a contravention of this civil penalty provision may be brought under the Biosecurity Act 2012 (see section 65 of this Act).

**Court may not require information or documents**

(6) Except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act, a person who is, or was, the Inspector-General, a member of staff or a consultant engaged under section 59 is not to be required:

(a) to disclose protected information to a court; or

(b) to produce all or part of a protected document to a court.

**Definitions**

(7) In this section:

- *court* includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

- *produce* includes permit access to.

- *protected document* means a document that is obtained or made by a person in the course of, or as a result of, performing functions or exercising powers under this Act.

- *protected information* means information that is disclosed to, or obtained by, a person in the course of, or as a result of, performing functions or exercising powers under this Act.

**65 Application of the Biosecurity Act 2012**

(1) Parts 1 and 5 of Chapter 11 of the Biosecurity Act 2012 have effect in relation to a civil penalty provision of this Act as if that provision were a civil penalty provision of the Biosecurity Act 2012.
Section 66

(2) Part 5 of Chapter 11 of the Biosecurity Act 2012 has effect in relation to section 64 of this Act as if that section were a provision of the Biosecurity Act 2012.

66 Protection from civil proceedings

(1) Civil proceedings do not lie against the Commonwealth, the Inspector-General or a member of staff in relation to anything done, or omitted to be done, in good faith:
   (a) by the Inspector-General or a member of staff in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred by this Act; or
   (b) by a person in providing or purporting to provide assistance to the Inspector-General or a member of staff (as a result of a request or direction made by the Inspector-General or a member of staff) in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred by this Act.

(2) Civil proceedings do not lie against a person in relation to anything done, or omitted to be done, in good faith by the person in providing or purporting to provide assistance to the Inspector-General or a member of staff (as a result of a request or direction made by the Inspector-General or a member of staff) in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred by this Act.

67 Regulations

The Governor-General may make regulations prescribing matters:
   (a) required or permitted by this Act to be prescribed; or
   (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.