

26 September 2023

Stephen Poskett  
Assistant General Manager – Strategy and Policy  
Department of Primary Industries and Regions

Via email: [PIRSA.BiosecurityACT@sa.gov.au](mailto:PIRSA.BiosecurityACT@sa.gov.au)

Dear Mr Poskett

Thank you for the opportunity to provide comment on the *Biosecurity Bill 2023 (SA)* (**'the Bill'**) as drafted and released for public consultation on 1 August 2023. We welcome the opportunity to enhance the legislative framework governing South Australia's biosecurity arrangements and support the government's intention to modernise current laws.

Primary Producers SA (**'PPSA'**) is the peak industry body representing the interests of South Australian primary producers and is the South Australian member of the National Farmers Federation. Our members are the peak commodity organisations of South Australia. Current members include Grain Producers SA, Livestock SA, SA Dairyfarmers' Association, SA Forest Products Association, Horticulture Coalition of SA, and the Wine Grape Council of SA.

We note the Bill aims to provide a contemporary framework to strengthen protection of South Australia's economy, terrestrial and aquatic environments and community from pests and diseases and other biosecurity matter.

PPSA believes that effective biosecurity arrangements are fundamental to the prosperity and sustainability of our \$17.3 billion primary production sector in South Australia<sup>1</sup>. The strength of these arrangements underpins both domestic and international market access of agricultural commodities, and directly impacts on-farm productivity.

It is therefore important that any scheme that is implemented in respect of biosecurity in South Australia provides adequate protection and clarity on managing biosecurity risks.

For these reasons, each peak commodity organisation has considered the application of the proposed draft Bill according to the needs of their respective industry and individual farm business members, and will be providing direct commentary to PIRSA through the formal public consultation process.

---

<sup>1</sup> 2021-22, primary industries and agribusiness revenue reached \$17.3 Billion and supported 71,000 jobs (source: PIRSA Scorecard).

While PPSA supports in principle the objectives of the Bill, PPSA calls for a renewed commitment to work with industry sectors in the development of new regulatory instruments and effective transition arrangements to aid its practical application.

The attached written submission provides commentary and outlines our concerns relating to specific section or sections of the Bill that may improve the current exposure draft, prior to introducing this legislation into parliament.

If you, or the department have any queries regarding this submission, please feel free to contact me via email [admin@ppsa.org.au](mailto:admin@ppsa.org.au)

Yours sincerely



**Caroline Rhodes**  
**Chief Executive Officer**

## SUBMISSION: DRAFT BIOSECURITY BILL 2023

Primary Producers SA ('PPSA') submissions on the Bill are set out below. At the time of writing there are two primary issues for PPSA in relation to the Bill:

- a. Does it go far enough to protect South Australian primary producers from people who access their land; and
- b. Does it not impose unreasonable burdens and red tape on South Australian primary producers?

PPSA notes that as further industry consultation occurs, further improvements in drafting may be identified, which may require additional policy consideration in finalising our response to the proposed laws. We submit the following matters as at the deadline of public consultation.

### Protections for Primary Producers

1. Section 40 of the Bill as drafted will impose a general biosecurity duty on a person "to take, so far as reasonably practicable, measures to prevent, eliminate, minimise, control or manage a biosecurity risk when dealing with biosecurity matter, or a carrier, if the person knows or reasonably ought to know that the biosecurity matter, carrier or dealing poses a biosecurity risk."
2. Relevantly section 8 sets out a long list of matters as to what is meant by 'dealing'- this does not appear to include accessing land.
3. For the purposes of this section we refer to agricultural land as '**primary production land**'- this is intended to encapsulate any land which is used by those people involved in horticulture, crop production, livestock, the dairy industry, the wine grape industry and forestry.
4. On face value, this section imposes this general biosecurity duty on third parties accessing primary production land where there is a chance that their access could pose a biosecurity risk. However, it is the underlined words above that cause us the most concern and which we would like to see strengthened when it comes to third party access to primary production land.
5. **It is our view that the proposed legislation should incorporate provisions which place a requirement on any third party accessing primary production land to take certain steps to ensure biosecurity on primary production land is not compromised.**
6. One of the main biosecurity issues that our producers face on a regular basis is the lack of awareness, care and accountability of third parties seeking access to their land or accessing their land under existing arrangements. It is a significant risk for the introduction and spread of pests, diseases, and invasive species.

7. As an example, under the *Mining Act 1971*, mining companies are able to be granted an exploration licence which allows them to enter land for the purposes of exploring for minerals. There are no conditions imposed that require biosecurity measures or steps to be taken as part of accessing the land.
8. It is important to note that in some instances producers may have the opportunity to negotiate access arrangements and implement biosecurity measures, but this is often not the case. It would therefore ‘fill a gap’ if there was a legislated requirement for companies to take steps or measures to reduce these biosecurity risks. The specific measures to be taken could be dealt with by regulation and may differ depending on the particular land use (for example, the requirements for cropping land might be different from the requirements for horticultural land).
9. **The Bill should therefore be amended to make it clear that when accessing a particular class of land (i.e. primary production land), persons are assumed to pose a biosecurity risk and have to take certain steps to reduce that biosecurity risk.**
10. The approach could tie in with section 42(1) of the Bill, which allows any measure, prescription, rule, duty or other requirement to be imposed under the proposed Act requiring a person or class of persons (i.e. persons entering primary production land) to do one or more of the following for the purpose of preventing, eliminating, minimising, controlling or managing a biosecurity risk or potential biosecurity risk:
  - a. to take specified action or to do a specified thing;
  - b. to refrain from engaging in a specified action or from doing a specified thing;
  - c. to adopt, comply with or implement any standard, code, guideline, program or other specification;
  - d. to comply with any condition, order, determination, direction, permit, notice or other instrument made or issued under this Act or any other Act.

## Unreasonable burdens/red tape

### Regulations – The imposition of levies under the Bill

11. Schedule 5 of the Bill specifies various matters in relation to which associated regulations may be made.
12. Clause 18 of schedule 5 of the Bill provides that regulations may be made with respect to *“the imposition of levies to fund the establishment or operation of any body, facility, program or activity for any purpose under this Act and for the payment, recovery, enforcement, reduction or waiver of any such levy as if it were a charge under that item.”*
13. PPSA notes that such a provision to enable cost-recovery with respect to biosecurity programs or activities is not supported by all peak commodity groups; and appropriate safeguards should be established to enable each industry to consider the application of a

proposal for the imposition of levies in the future, and on the individual merits pertaining to the risk posed to the respective industry.

14. Whilst it is accepted that regulations of this kind will likely be required in the future, it is important to ensure that proper checks and balances are put in place, given that imposition of such levies could potentially impact the wrong parties, be poorly received, and just generally not have the desired outcome.

**15. The Bill should set out that any proposal for the introduction of a new levy which seeks to recover costs for a biosecurity program must go through a proper process which includes, as a minimum:**

**a. a mandatory requirement to consult with in the relevant stakeholders, which must include, as a minimum, the relevant peak industry body/ies; and**

**b. final review and approval by the Minister.**

16. This will provide an extra layer of certainty that new levies are targeted correctly.

#### Identification codes

17. As the Bill is currently drafted, specific details on the future application of identification codes are limited, and it appears they are intended to be dealt with by regulation.

18. It will be important for there to be proper consultation with specific commodity sectors in respect of any such regulations, due to the potential to impose significant cost and regulatory burden on individual primary producers.

19. For example, the Bill may enable the roll-out of further identification codes to plant based industries, beyond the current PIC codes applying to livestock production. PPSA notes this is a policy matter not yet settled at the national level.

#### General biosecurity duty

20. Section 40 places an obligation on a person to take measures to prevent, minimise, control, or manage a biosecurity risk. Section 41 makes it an offence for a person not to do so.

21. The difficulty with this requirement is that it is not evident as to when a person has to do each of prevent, minimise, control or manage a biosecurity risk. For example, when is it necessary to prevent something as opposed to just controlling it? There do not appear to be any criteria as to what will be required in any given situation.

22. This can be contrasted with a 'specified biosecurity requirement', which requires more specific measures to be stipulated- it is expected that this will be more targeted in terms of what can and can't be done.

#### Onus

23. There are a number of sections dealing with the biosecurity duty, including provisions dealing with what occurs where an entity or a person has breached a biosecurity duty.

24. Relevantly, Section 50(3) of the Bill reverses the normal standard of proof when it comes to

a failure to comply with a biosecurity duty.

25. By virtue of this section, a person or entity which has failed to comply with a biosecurity duty is deemed to hold the relevant knowledge in the event that it can be shown that a reasonable person with capacity ought to have known or suspect the occurrence or likely occurrence of the biosecurity event.
26. There is no sensible reason for not putting the onus on the relevant authority to demonstrate that the person or entity held the relevant knowledge in respect of the failure to comply with the biosecurity duty. To take the approach proposed by virtue of section 50(3) is contrary to the laws of natural justice, particularly when it is not even referable to a person in the position of the defendant.

### Reviewable decisions

27. The imposition of biosecurity zones is dealt with in section 159 and by reference to the regulations prescribing zones (and biosecurity zone measures). No scope is provided for any review of the decision to prescribe a zone or, more relevantly, where that zone boundary is. Consideration should be given to some allowance for the review of the extent of a biosecurity zone and/or biosecurity zone measures. There may be instances where the imposition of a biosecurity zone and/or biosecurity zone measures has been done without proper consideration or consideration of all relevant measures.
28. Similarly, Part 11 deals emergency orders, control orders and biosecurity directions. It would appear that Part 13 of the Bill permits reviews of a decision to issue or vary an individual biosecurity direction but not an emergency order or a control order. It isn't evident why there is any need to differentiate between the three items. As a matter of procedural fairness, all three items should be subject to review (noting, in particular, that control orders can be property specific).
29. Part 13 of the Bill deals with reviews of decisions. Whilst this is generally uncontroversial, it is not clear why some internal review decisions are reviewable externally through SACAT and others are not- in this respect see section 222(3). There is no evident reason why all matters that are internally reviewable should not also be externally reviewable, irrespective of whether there is an emergency or if it is in the interests of public safety.

### Liability for employees

30. Sections 249 and 285 make employers or principals liable for offences by employees. Whilst this is understandable to a point, no specific provision is made for an employer or principal not being liable where the employee has acted contrary to directions given to that employee specifically or any employee more generally.

---

## **Regulations**

31. As the regulations are not yet drafted, it is difficult for PPSA to comment on a number of the matters that would otherwise guide the practical implementation of the proposed

framework.

32. For example, the method of determining the value of animal, plant or other property where compensation is to be paid pursuant to section 212. This is potentially a significant issue depending on how compensation is calculated- for example, for livestock does it take into account the genetic or breeding value of the animal?

### Drafting issues

The following matters are brought to the attention of the drafting team to improve readability:

33. Firstly, section 4 lists certain events as being a 'biosecurity event'. This includes an incursion. The words 'of a pest or animal or plant disease' are included after the use of the word incursion, yet the definition of 'incursion' specifies that this is the presence or suspected presence of a pest or disease. These words are therefore unnecessary and superfluous.
34. Similarly, the definition of 'disease agent' includes an 'insect' and 'any other organism'. The definition of 'disease' includes a 'disease agent'. As drafted, arguably any insect or any other organism is a 'disease' for the purposes of the Act, as no limitation is placed on what type of insect or organism constitutes a disease agent.
35. The definition of 'disease' also includes 'disease agent' and 'pathogen'. However, the definition of 'disease agent' includes 'a pathogen'. Accordingly, the definition of 'disease' does not need to specify pathogen as it is already encompassed within the definition of 'disease agent'.
36. Under the Bill, the definition of the concept of 'pest' has its own clause (clause 10). It is not clear why this has not simply been included in the definitions section in section 3.
37. Section 6 sets out the meaning of 'biosecurity matter'. This refers to a 'contaminant' as being a biosecurity matter. The difficulty arises as all of the aspects of a 'contaminant' refer back to the definition of a 'biosecurity matter'. Whilst it is evident that it is intended to apply to a non-living thing which occurs on or in, or can be ingested or absorbed by, an animal, plant or organism, the way in which it is defined makes it somewhat circular.
38. In relation to Part 5 and its interaction with Part 13, Part 5 refers to various decisions regarding registration, renewals, the imposition of conditions and the like. In some instances Part 5 refers to a requirement to notify the applicant of a right to review a decision (see, for example, sections 54(4)(c), 57(6)(c) and 140(4)(c)), whilst in other sections there is no such requirement (see, for example, sections 60, 70, 72 and 141). This appears to contrast with the rights granted in section 218, which makes most decisions reviewable. There should be consistency between these two parts.

**ENDS.**