

DRAFT V08.01

17th August 2014

INDEPENDENT STATE OF PAPUA NEW GUINEA

Draft/BIOSECURITY BILL 2014

ARRANGEMENT OF CLAUSES

PART 1 – PRELIMINARY

1. Short title and commencement and compliance
2. Interpretation
3. Application of the Act
4. Act binds the State
5. Responsibility for the Act
6. Biosecurity functions of the Government
7. Relationship with other Acts

PART 2 – BIOSECURITY AT THE BORDER

8. Regulated pests and diseases and noxious or injurious contaminants
9. Prohibited imports
10. Biosecurity points of entry and departure
11. Designation of biosecurity holding areas
12. Management of biosecurity holding areas
13. Biosecurity clearance agents

PART 3 – CONVEYANCES AND PERSONS

14. Biosecurity arrival declaration
15. Biosecurity arrival clearance
16. Biosecurity port quarantine of conveyances
17. Management of biosecurity port quarantine areas
18. Conduct of conveyances in biosecurity port quarantine
19. Biosecurity port quarantine clearance of conveyances
20. Outgoing conveyances
21. Environmental obligations of masters, captains and drivers
22. Passengers and crewmembers
23. Persons entering or exiting other than passengers

PART 4 – BIOSECURITY IMPORT PROCEDURES

24. Biosecurity entry inspection of incoming articles
25. Biosecurity import clearance of regulated articles
26. Status of persons and agents importing import-regulated articles
27. Grant and refusal of biosecurity import clearance
28. Biosecurity import specifications
29. Biosecurity access arrangements

- 30. Application for a biosecurity import permit
- 31. Issue of a biosecurity import permit
- 32. Revocation of a biosecurity import permit
- 33. Articles and passengers in transit

PART 5 – BIOSECURITY EXPORT PROCEDURES

- 34. Biosecurity export inspection of outgoing articles
- 35. Requirement for biosecurity export clearance
- 36. Issue of sanitary and phytosanitary certificates.
- 37. Biosecurity export specifications
- 38. Application for biosecurity export clearance
- 39. Status of persons and agents exporting export-regulated articles
- 40. Grant of biosecurity export clearance

PART 6 – BIOSECURITY QUARANTINE

- 41. Biosecurity quarantine of regulated articles
- 42. Conditions of biosecurity quarantine
- 43. Release from biosecurity quarantine
- 44. Biosecurity quarantine notices
- 45. No plant or animal to be at large
- 46. Biosecurity quarantine stations
- 47. Management of biosecurity quarantine stations

PART 7 – POWERS OF BIOSECURITY OFFICERS

- 48. General rules as to exercise of powers
- 49. Entry, search and seizure
- 50. Inspection of documents
- 51. Inspection of articles
- 52. Detention of articles
- 53. Taking of samples or specimens
- 54. Destruction of animals and plants for examination
- 55. Testing of articles
- 56. Treatment of articles
- 57. Reconsignment of articles
- 58. Destruction of articles
- 59. Powers to monitor biosecurity areas, premises and activities
- 60. Powers to detain and question a person
- 61. Powers to detain and search a person

PART 8 –INTERNAL BIOSECURITY

- 62. Powers of biosecurity officers in relation to a person
- 63. Pest and disease and noxious or injurious contaminant surveys
- 64. Entry, search and seizure
- 65. Detention, treatment and testing of conveyances, animals, plants, animal and plant products and host material

- 66. Treatment or destruction of animals and plants and their products and host material
- 67. Infested or infected biosecurity controlled areas
- 68. Regulation of infested biosecurity controlled areas
- 69. Pest-free biosecurity controlled areas
- 70. Regulation of pest-free biosecurity controlled areas
- 71. Destruction of wild animals
- 72. Notifiable diseases and pests and noxious or injurious contaminants
- 73. Beneficial organisms and biological control agents

PART 9 – BIOSECURITY EMERGENCIES

- 74. Declaration of a biosecurity emergency area
- 75. Response to a biosecurity emergency
- 76. Action in a biosecurity emergency area
- 77. Biosecurity Emergency Regulations

PART 10 – THE BIOSECURITY AUTHORITY

- 78. Designation of the Authority and the Director of Biosecurity
- 79. Designation of Technical Heads
- 80. Designation of biosecurity officers
- 81. Functions of the Authority
- 82. Functions of the Ministry
- 83. Directions
- 84. Delegation of functions
- 85. Biosecurity register and records

PART 11 - ADMINISTRATION OF THE ACT

- 86. Financial provisions
- 87. Consultation and outsourcing
- 88. Duty to coordinate
- 89. Facilities at biosecurity points of entry or departure
- 90. Safe carriage and safe working environment
- 91. Biosecurity standards
- 92. Compliance agreements
- 93. Biosecurity approved premises
- 94. International cooperation
- 95. Disease and pest and noxious and injurious contaminant status notifications

PART 12 – OFFENCES AND PENALTIES

- 96. Dereliction of duty by officers
- 97. Obstruction, false information etc.
- 98. Fraudulent use of official documents
- 99. Maximum penalties
- 100. Forfeiture
- 101. Fixed penalty system
- 102. Enforceable undertakings

103. Offences by corporate bodies

PART 13 - MISCELLANEOUS PROVISIONS

104. Civil and criminal proceedings
105. Abandoned goods
106. Compensation
107. Appeals from decisions
108. Limitation of liability
109. Evidence
110. Publication of orders and notices
111. Fit and proper persons
112. Specifications
113. Regulations
114. Repeals and savings
115. Transitional provisions
116. Consequential amendments
117. Amendment of Schedule

Schedule Maximum penalties and fixed penalties

(c) the right of freedom of movement conferred by section 52 of the Constitution,

is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

(5) For the purposes of section 41(2) of the Organic Law on Provincial Governments and Local-level Governments, it is declared that this Act relates to a matter of national interest.

(6) For the purposes of Section 41(6) of the Organic Law on Provincial Governments and Local-level Governments, it is declared that this Act is an Act of the Parliament on a matter specified in Section 42 or 44, and prevails over any law made under Section 42 or 44 to the extent of any inconsistency.

(7) For the purposes of Section 53(1) (Protection from unjust deprivation of property) of the Constitution, biosecurity purposes are hereby declared to be public purposes.

Interpretation

2. (1) In this Act, unless the context otherwise requires –
 “aircraft” means any conveyance that may be used in navigation by air, including any airliner, aeroplane, helicopter, gyro-craft, ultra-light, unmanned aerial vehicle, balloon, glider, hang-glider, kite or similar craft, whether or not manned or whether or not self-powered;

“airport” means an area designated under any written law for the control of movement of aircraft

“animal” means any mammal (other than a human), bird, arthropod, amphibian, reptile, worm, fish, mollusc or other member of the animal kingdom, whether alive or dead, and includes the egg, embryo, ova or semen and any organic animal tissue from which another animal could be produced, and the hide, skin, hair, feathers, shell, horns, hoof, viscera or any other part or portion of the body of an animal;

“animal product” means any article or substance derived from an animal, whether or not in combination with any other article or substance, and includes –

- (a) meat, fat, milk, whey, cream, butter, cheese, eggs, honey and other foodstuffs derived from an animal;
- (b) the dung, urine, faeces, saliva, bone or blood of an animal, or any article or substance derived from the dung, urine, faeces, saliva, bone or blood of an animal;
- (c) the secretions of any animal;
- (d) any product or biological preparation derived from any animal tissue or animal secretion;

“article” means a single unit of any goods;

“authorized” means duly authorized by the Authority, the Minister, or a public officer for the purposes of this Act;

“Authority” means the Biosecurity Authority designated by section 78(1);

“baggage” means any goods which accompany a passenger or crew member on a conveyance or a person otherwise entering or leaving the territory of Papua New Guinea, including clothing and any article attached or otherwise connected to the body or clothing of any passenger or crew member or person entering or exiting;

“ballast water” means water with its suspended matter taken on board a ship to control trim, list, draught, stability, or stresses of the ship;

“beneficial organism” and “biological control agent” in section 73 mean a natural enemy, antagonist or competitor of a pest or disease, any organism applied for the purposes of environmental or ecosystem remediation, and any other self-replicating biotic entity used for pest and disease control or environmental remediation

“biosecurity” means the control by legal and administrative means of diseases and pests and noxious or injurious contaminants affecting animals, plants and their products, including those that may consequentially harm humans, agriculture, biodiversity, natural ecosystems and the economy, in order to avoid adverse effects from such diseases and pests and noxious and injurious contaminants on the well-being of Papua New Guinea and its people;

“biosecurity access arrangements” means arrangements under section 29(1) for specifications in respect of new imports;

“biosecurity approved premises” means premises approved for the inspection, testing and treatment of regulated articles under section 93;

“biosecurity arrival clearance” means clearance for a vessel, aircraft, or vehicle to disembark cargo or passengers under section 15;

“biosecurity authority” of a receiving country means the authority or officer in that country which administers its biosecurity Acts;

“biosecurity certificate” means a phytosanitary or sanitary certificate

“biosecurity certification requirement”, in relation to an article, means a requirement by a receiving country for a sanitary or phytosanitary certificate or a certificate of origin in respect of the article;

“biosecurity clearance”, in respect of a regulated article or consignment, means biosecurity import clearance or biosecurity export clearance;

“biosecurity clearance agent” means a person resident in Papua New Guinea appointed by an importer or exporter under section 13 for the purposes of this Act as the agent of the importer or exporter to facilitate and supervise the biosecurity clearance of a conveyance, container, animal, plant, animal or plant product or any other goods;

“biosecurity control” of a regulated article means submission of the article for inspection under this Act, and thereafter taking such biosecurity measures, or permitting such measures to be taken, as are prescribed and applied pursuant to this Act, until biosecurity clearance is granted in respect of the article;

“biosecurity controlled area” means an infested biosecurity controlled area declared under section 67 or a pest-free biosecurity controlled area declared under section 68;

“biosecurity declaration” in relation to an article or consignment means a written statement of the nature, quantity and origin of the article or consignment, and of other details relating to it required by or under this Act;

“biosecurity detention area” means a place designated by order of the Authority under section 65(1) of this Act for detention of a conveyance, an animal, a plant, an animal or plant product or host material for performance of biosecurity measures for biosecurity internal control.

“biosecurity emergency” means the incursion, or suspected incursion of a regulated disease or pest in any area of Papua New Guinea, or the emergence or existence of some other biosecurity threat, which requires urgent action, whether by eradication, containment or other response, and for which the powers under this Act are not otherwise adequate;

“biosecurity emergency area” means an area declared in response to a biosecurity emergency under section 74;

“biosecurity entry inspection” of an incoming article means inspection of it pursuant to section 24;

“biosecurity export clearance” of an article means permission under section 40 for the article or consignment to be exported;

“biosecurity export inspection” of an outgoing article means inspection of it pursuant to section 34;

“biosecurity functions of the Government” means the functions set out in section 6;

“biosecurity goods holding area” means an area of land or upon water at or adjacent to a seaport, airport, post office or frontier post designated under section 11(3) for the biosecurity inspection of incoming or outgoing articles and consignments;

“biosecurity holding area” means a biosecurity port holding area, a biosecurity goods holding area or a biosecurity postal holding area;

“biosecurity import clearance” of an article means permission under section 25 for the article or consignment to be removed from a biosecurity holding area;

“biosecurity import clearance inspection” of an incoming article means inspection of it pursuant to section 24;

“biosecurity import permit” means a biosecurity import permit issued under section 31;

“biosecurity import requirements” in relation to an article or consignment mean -

- (a) the conditions of a biosecurity import permit, if one is required;
- (b) the requirements of any sanitary or phytosanitary certificate relating to the article or consignment;
- (c) any other biosecurity measures specified under section 28(1)(c);

“biosecurity inspection” of an incoming or outgoing conveyance, article or consignment means an examination or inspection to ascertain whether the conveyance, article or consignment presents a biosecurity risk to Papua New Guinea or a receiving country and whether in other respects it conforms to the requirements of this Act;

“biosecurity internal control” means the application of biosecurity measures consistent with this act for the control, other than in relation to import arrival or entry clearance or export departure clearances, on land or in or in water or the seas of Papua New Guinea, a disease or pest or a noxious or injurious contaminant affecting an animal or a plant or an animal or plant product, including a disease, a pest or a noxious or injurious contaminant consequentially harmful to a human, agriculture, the environment or the economy.

“biosecurity measure” means the movement, inspection, detention, quarantining, testing, treatment, re-consignment or destruction of a regulated article to eliminate or reduce the biosecurity threat presented by the article;

“biosecurity officer” means –

- (a) the Director of Biosecurity and his or her deputy, if any;
- (b) any person designated as a biosecurity officer under section 80;
- (c) in respect of any particular function, a biosecurity officer to whom the function has been assigned under sections 80 and 84;

- “biosecurity point of departure” means a seaport, airport, post office or frontier post designated under section 10(5) for the exportation of regulated articles;
- “biosecurity point of entry” means a seaport, airport, post office or frontier post designated under section 10(1) for the importation of regulated articles;
- “biosecurity port holding area” means an area designated under section 11(1) for the biosecurity inspection of an incoming vessel, aircraft or vehicle;
- “biosecurity port quarantine” means quarantine of a vessel, aircraft, or vehicle in a biosecurity port quarantine area under section 16;
- “biosecurity port quarantine area” means an area designated under section 16(1) for the quarantine of vessels, aircraft and vehicles;
- “biosecurity port quarantine clearance” means permission under section 19 for a vessel aircraft or vehicle to unload passengers and cargo after being in biosecurity port quarantine;
- “biosecurity postal holding area” means an area of a mail exchange designated under section 11(5) for the biosecurity inspection of incoming or outgoing postal items;
- “biosecurity quarantine” means confinement in isolation of a regulated article and any conveyance, container or packaging in which the article is carried, for performance of biosecurity measures, including inspection, testing and/or treatment; whereby access to and from and movement of the item in confined isolation shall be strictly controlled in order to prevent or limit the entry, introduction, establishment or spread, including by export, of a regulated pest or disease or of a noxious or injurious contaminant;
- “biosecurity quarantine station” means a facility designated under section 46 for the performance of biosecurity quarantine on animals or plants or their products or goods after entry or before export, and includes a temporary biosecurity quarantine station;
- “biosecurity register” means the register kept by the Authority under section 85;
- “biosecurity risk” means the likelihood of the introduction, emergence, establishment or spread of a pest or disease or of a noxious or injurious contaminant which would adversely affect animals, plants, human beings, the environment or economic activities, and the likely extent of such harm;
- “biosecurity risk assessment” in relation to a regulated article means analysis of the biosecurity risk posed by the article;

- “biosecurity specifications” means biosecurity import specifications made under section 28 or biosecurity export specifications made under section 37 or any other specification made under section 112;
- “biosecurity standard” in relation to any fittings, facilities or premises, or any disease or pest or noxious or injurious contaminant control activity for the purposes of this Act as prescribed pursuant to section 91, means the documented minimum physical, technical and administrative requirements and outcomes that shall be satisfied by provision and operations of the fittings, facilities, premises or activity.
- “biosecurity threat” means the threat of harm being caused or adverse effects resulting to animals, plants, human beings, the environment or economic activities as a result of the introduction, emergence, establishment or spread of a regulated or non-regulated pest or disease or of a noxious or injurious contaminant;
- “captain”, in relation to an aircraft, means the person for the time being in command of the aircraft;
- “Codex Alimentarius Commission” is the Codex Alimentarius Commission of the Food and Agriculture Organization of the United Nations responsible for administering international standards in relation to food safety pursuant to the World Trade Organization, Agreement on the Application of Sanitary and Phytosanitary Measures (WTO-SPS Agreement).
- “codify sub-references”, in relation to a place or premises or area or person means to substitute on a public record reference to their name of position with a corresponding code that is known only to the Authority for the purposes of protecting rights to privacy or confidentiality.
- “compliance agreement” means an agreement between the Authority and another person as provided for in section 92;
- “consignment” means a quantity of goods which arrive or depart in the same vessel, aircraft, vehicle or mail and which in accordance with this Act can be covered by a single import or export permit or sanitary or phytosanitary certificate;
- “container” means anything in which or by which goods are encased, covered, enclosed or packed, including any material in contact with the goods;
- “contamination” means the presence in any item of a pest or disease agent or a noxious or injurious contaminant, not constituting an infestation;
- “conveyance” means a vessel, aircraft, vehicle or other means of transporting people, goods, plants or animals or animal or plant products or host materials from one location to another, while it is being used or prepared for such transport;

- “country of origin” means the country of source of a plant, an animal or their products as defined by the sanitary and phytosanitary certification, including a re-exporting country
- “custodian”, in respect of an item, means the occupier of a place or the person in possession and charge of an article, whether lawfully or not, but does not include a person who has possession or control of the item only for the purpose of taking biosecurity measures in respect of it;
- “designated port” means international seaport, airport, post office or frontier post designated for entry or departure of regulated articles by the Director pursuant to Section 10(1).
- “de-ratting” means a treatment or procedure applied to deter rodents and to treat or remove infestation by rodents
- “disease” means any unhealthy condition or syndrome in an animal or plant which is known or suspected to be caused by an organism or by exposure to a noxious or injurious contaminant, and includes a disease transmissible from animals to humans and a disease capable of harming the environment;
- “disease risk analysis” means the evaluation by a qualified person of biological or other scientific and economic evidence to determine whether a disease should be regulated and the nature of any biosecurity measures to be taken against it;
- “document” means any mode of recording any type of information in a retrievable form for preservation or communication, including electronically;
- “driver”, in relation to a vehicle, means the person for the time being in charge of the vehicle’s movement;
- “dwelling house” means a shelter currently being used for human habitation, including a living quarter, house, hut, tent, caravan, a room or similar place of residential seclusion in privacy, but does not include land, a shed, a vehicle park, a vacant and unoccupied house, or communal facilities within any resort, hotel, motel, guest house, hospice, residential compound, camp, village, hamlet, town or any other place that is not being inhabited in privacy by a person.
- “emergence” in relation to a disease or pest of a noxious or injurious contaminant, means the state of potential or progressive evolutionary change in behavior of a disease or pest or the accumulation of a noxious or injurious contaminant present in any place, ecosystem or environment such that the disease or pest or contaminant develops capability to transmit more effectively, or infect or infest a new host animal or plant species, or cause greater adverse effects for a host, or evade contemporary pest or disease control measures, and is more harmful.

“enforceable undertaking” is a binding written undertaking as prescribed in Section 102 of this Act, entered into by a person with the Authority as an alternative to the person paying a fixed penalty, with an admission of guilt and without prejudice, to guarantee conformance after an offence.

“environment” includes -

- (a) the ecosystem and its biodiversity;
- (b) all natural, non-natural and physical resources;
- (c) the qualities and characteristics of locations, places and areas.

“eradication” means the application of measures to eliminate a pest or disease or noxious or injurious contaminant from an area;

“establishment”, in relation to a pest or disease or noxious or injurious contaminant, means the perpetuation in an area of the pest or disease or contaminant for the foreseeable future after its entry into the area;

“export” means to take or send goods out of Papua New Guinea;

“exporter” means a person or organization who exports or seeks to export goods, other than as the master of the vessel or captain of the aircraft or driver of the vehicle in which the goods are carried; and includes a biosecurity clearance agent;

“fit and proper person” means a person, and in the case of a corporate entity, a member of the entity’s Board of Directors or its senior executive management, who is of demonstrated good character and reputation as determined by the Authority under section 111(2) of this Act.

“fittings” means any stall, box, cage, enclosure, pen, net or other material used for penning, yards, confining or containing any animal or plant and includes any harness, saddlery, rope, bucket, trough, bedding, utensil, tray, pot or implement used in the handling or keeping of animals or animal products, or plants or plant products;

“fixed penalty” means a prescribed spot penalty imposed by a biosecurity officer for an offence pursuant to this Act.

“fodder” means any water, meat, vegetables, grain or material used for the food or litter of animals, or the storage of animal products;

“frontier post” means an area designated under any written law for the control of land at and adjacent to border crossings;

"garbage" means waste material derived in whole or in part from plants, fruit, vegetables, meat or other plant or animal material, or other refuse of any kind that

has been associated with any plants, fruits, vegetables, meat or other plant or animal material, or refuse including a noxious or injurious chemical or substance;

“general”, in relation to an import permit means an import permit granted generally to all importers and intending importers, whether or not subject to specifications under Sections 28 or 112 of this Act, to import a particular class or type of regulated article from a particular place of origin or generally from any place of origin.

“genetic material” means any material of plant, animal, microbial or other origin containing functional units of heredity;

“goods” means any kind of moveable property or thing;

“high court” means National Court

“host material” means any plant or animal and packing materials, containers, fittings, litter, manure, fodder or similar goods that might have had contact with animals or plants or their products and be capable of harboring a disease or pest or a noxious or injurious contaminant;

“import” means to bring goods, or cause goods to be brought, into Papua New Guinea;

“importer” means a person or organization who imports or seeks to import goods, other than as the master of a vessel or captain of the aircraft or driver of the vehicle in which the goods are carried; and includes a biosecurity clearance agent;

“in-transit”, in relation to goods, an article, a consignment of articles or a conveyance intended for import that has not been subjected to biosecurity import clearance means the movement under biosecurity control of the goods, the article, the consignment or the conveyance from a designated point of arrival in Papua New Guinea to another designated point of arrival in Papua New Guinea, whether by the same or another conveyance, during which time they remain enclosed, are not split up, are not combined with other goods or articles and do not have their packaging changed, whereupon biosecurity import clearance shall be performed.

“infected”, in relation to an animal or plant, means a diseased animal or plant, or the presence of a regulated disease causing organism in an animal or plant, or the presence of a noxious or injurious contaminant in an animal or plant, or an animal or plant that may have been exposed to the risk of infection during the preceding six months;

“infested”, in relation an item or area, means that there is present in the item or area a living disease or pest or a noxious or injurious contaminant;

“inspection”, in relation to an item, means an official examination of the item to determine if any pest or disease or noxious or injurious contaminant is present in the item and whether in other respects the item conforms to the requirements of this Act;

“IPPC” means the International Plant Protection Convention of the Food and Agriculture Organization of the United Nations responsible for the administration of international standards relating to plant diseases and pests pursuant to the WTO-SPS Agreement;

“introduction”, in relation to a disease or pest, means the entry of the disease or pest or noxious or injurious contaminant into an area, resulting or likely to result in its establishment in the area;

“item” means any kind of moveable or immovable property or thing, including premises;

“living organism” means any organism capable of transferring or replicating genetic material, including sterile organisms, viruses, viroids, plasmids, bacteriophages and prions;

“magistrate” means a person appointed under the Magisterial Services Act...;

“master”, in relation to a vessel, means the person for the time being in charge of the vessel, not being the pilot;

“microbe” means any organism or biotic entity of microscopic proportions, whether unicellular, multicellular or sub-cellular in common form;

“Minister” means the Minister who has responsibility for agriculture and livestock matters; and “Ministry” means the Ministry of that Minister;

“multiple entry”, in relation to an import permit means an import permit valid for a specified period for entry clearance of multiple consignments of a single class of commodity or good from a single supplier or place of origin.

“NAQIA” means the National Agriculture Quarantine and Inspection Authority constituted by the NAQIA Act, 1997;

“NAQIA Act” means the National Agriculture Quarantine and Inspection Authority Act, 1997;

“notifiable disease or pest” means a disease or pest which is declared under section 72(1) to be notifiable;

“noxious or injurious contaminant” means a contaminating agent other than an organism capable of causing harm or injury to an animal or a plant, or capable of rendering an animal or a plant or an animal or plant product consequentially harmful to another animal or to a human or to the environment, including a toxin, a toxic metabolite, harmful radioactivity or a persistent residue of a pesticide, a herbicide, an antimicrobial, a hormonal promotant or modifier, a drug, a preservative, or a controlled substance.

“OIE” means the World Organization for Animal Health (formerly Organization Internationale des Epizoöties) responsible for administering international standards in relation to health, diseases and pests of animals pursuant to the WTO-SPS Agreement.

“operator under section 89” means authorized agents responsible for management and operation of declared points of entry or ports including a sea port, an airport, a post office and a frontier post.

“order” means a formal declaration or directive or designation or notice made by the Authority, the Minister or the Head of State for the purposes of this Act, through a notice in the National Gazette or a Circular or other document;

“organism” means a biotic entity capable of reproduction or replication, other than a human;

“packing material” means any fabric, paper, cardboard, plastic, wood, straw, grass or leaves used in packing any goods, and any other type of material in which goods are covered, enclosed, contained or wrapped;

“passenger” includes the captain, master, driver and crew

“person” includes a corporate entity and, in respect of an item, means an individual or entity in possession and in charge of an article;

“pest” means any species, strain or biotype of a plant, an animal, a microbe or pathogenic agent, or any organism, which –

- (a) causes disease; or
- (b) is detrimental to or capable of harming or adversely affecting an animal or an animal product, a plant or a plant product, a human being or the environment;

“pest risk analysis” means the evaluation by a qualified person of biological or other scientific and economic evidence to determine whether a pest should be regulated and the nature of any biosecurity measures to be taken against it;

“phytosanitary certificate” means a certificate relating to a plant or a plant product which -

- (a) is issued by the biosecurity authority of the country of origin or re-exporting country;
- (b) certifies that the plant or plant product is substantially free from plant diseases and pests and in other respects meets the plant health import requirements of the receiving country; and
- (c) is designed after the model certificates of the IPPC;

“plant” means any terrestrial, aquatic or marine member of the plant kingdom, including any herb, vegetable, bush, shrub, tree, succulent, fern, moss, lichen, weed, algae, fungus, water-weed or sea-weed, and also includes plantlets, cuttings, seeds, spore, germplasm, any other part of a plant and a dead or preserved plant;

“plant material” means any unmanufactured material of plant origin, including a leaf, a stem, a flower, wood a pod, a fruit, a nut, a root, a tuber and grain, whether or not combined with any other product or thing;

“plant product” means –

- (a) plant material;
- (b) timber; and
- (c) any product extracted or manufactured wholly or partly from one or more plants, whether or not combined with any other product or thing;

“post office” means an area designated under any written law for control of a domestic or international mail exchange

“precautionary principle” means the principle that it is reasonable to refuse permission for an activity that has great potential negative impact, even if there is not sufficient scientific data to support a refusal, as incorporated in Article 5.7 of the WTO-SPS Agreement;

“premises” means any immoveable property, other than land;

“prescribed” means prescribed by this Act or by Regulations made under it;

“prohibited import” means a regulated article the importation or ownership of which is prohibited under section 9;

“public officer” means any State or private employee delegated by the Authority to perform specific tasks for the purposes of this Act

“re-exporting country”, in relation to any goods, means a country which is not the country of origin of the goods, but where a container or consignment of goods is granted unrestricted entry clearance to the market of the intermediate country and the goods may then be opened and re-packed for export;

“receiving country” means a country which is the intended destination of an article being or proposed to be exported;

“reconsign”, in relation to a regulated article or consignment which has been refused biosecurity import clearance, means to send the article or consignment out of Papua New Guinea, either by the vessel, aircraft or vehicle on which it was imported or by another vessel, aircraft or vehicle;

“regulated article” means –

- (a) any animal or animal product;
- (b) any plant or plant product;
- (c) any living organism, whether modified or not;
- (d) soil, sand, gravel, aggregate and rock
- (e) any genetic material;
- (f) human remains;
- (g) any host material;
- (h) a regulated pest or disease;
- (i) any noxious or injurious contaminant or substance
- (j) any clothing, machinery or other article that contains or has adhering to it anything mentioned in paragraph (a), (b), (c), (d), (h) or (i);
- (k) garbage;
- (l) any other article, substance, goods or thing declared by the Authority by order under subsection (2) of this section to be a regulated article for the purposes of this Act;

“regulated consignment” means a consignment of regulated articles;

“regulated disease or pest” means a disease or pest –

- (a) the importation of which into Papua New Guinea is prohibited or restricted under section 8; or
- (b) which is under official control;

“regulations” include, orders and any other subsidiary legislation made under this Act;

“repealed laws” means the Acts and subsidiary legislation repealed by section 114(1);

“sanitary certificate” means an international health certificate relating to an animal or animal product which -

- (a) may include a certificate issued by the competent biosecurity authority of the country of origin or the re-exporting country;
- (b) certifies that the animal or animal product is substantially free from specified animal diseases, pests and from specified noxious or injurious contaminants and in other respects meets the animal health import requirements of the receiving country; and
- (c) complies with relevant requirements of the WTO-SPS Agreement or of the exporting country, as the case may be;

“seaport” means an area designated under any written law for the control of international movement by sea

“single entry”, in relation to an import permit means an import permit valid for a specified period for entry clearance of only a single consignment from a single supplier or place of origin.

“specific”, in relation to an import permit means an import permit granted to a particular person intending to import, whether or not conditional according to specifications under Sections 28 or 112 of this Act, to import a particular regulated article or consignment or multiple consignments of particular regulated articles from a particular supplier or place of origin.

“specified”, in relation to a requirement, document, procedure or any other matter, means specified by the Authority under sections 28, 37 or 112;

“spread”, in relation to a disease or pest or a noxious or injurious contaminant, means the transmission or expansion of the geographical distribution of the pest or disease or contaminant within or beyond the boundary of an area;

“State” means the Independent State of Papua New Guinea

“status”, in relation to a pest or disease or a noxious or injurious contaminant, means its presence, absence, prevalence, incidence, distribution and occurrence in an area;

“stores” means any food or other regulated articles carried on a conveyance for consumption or use on the conveyance;

“superior force” means adverse weather conditions and other natural forces.

“Technical Head” means the superior biosecurity officers responsible for animal biosecurity, plant biosecurity, import and export biosecurity clearance management, and biosecurity compliance and enforcement.

“test” means an examination which goes beyond a visual inspection, to determine if a disease or pest or a noxious or injurious contaminant is, or is likely to be, present or to identify a disease or pest or a noxious or injurious contaminant, and includes chemical tests of plant material and diagnostic tests in respect of an animal or plant or an animal or a plant product;

“this Act” includes regulations made under it;

“timber” includes round wood, sawn wood, wood chips and dunnage, with or without bark;

“transit”, in relation to goods, an article or a consignment of articles, means the goods, article or consignment are not imported into an area, but pass through it to another area, whether by the same or another conveyance, during which time they remain enclosed, are not split up, are not combined with other goods, and do not have their packaging changed;

“treatment” means an authorized procedure for the killing, removal, modification or rendering infertile or non-viable of a disease or pest by way of cleansing, fumigation, inoculation, disinfection, disinfestation, decontamination, or otherwise;

“under official control”, in relation to a disease or pest or a noxious or injurious contaminant, means that its presence is known, its distribution is limited and its further spread is controlled by the exercise of powers under this Act;

“vehicle” includes a bicycle, car, truck, train, cart and any other conveyance on wheels, tracks, skis or skids intended for navigation by land, whether or not manned or self-powered;

“vessel” includes a ship, hovercraft, wing-in-ground-effect, air-boat, boat, ferry, raft, yacht, canoe or pontoon that is used as a conveyance in or on water, whether or not it is manned or self-propelled;

“written” and “in writing” mean any mode of recording information in a retrievable form for preservation or communication, including electronically [as to which see section 110(2)].

“WTO-SPS Agreement” means the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures;

(2) The Authority may, by order, declare any article, substance goods or thing to be a regulated article for the purposes of this Act.

Application of the Act

3. (1) This Act applies to every person in Papua New Guinea, irrespective of the person’s nationality or citizenship.

(2) This Act applies to all conveyances, containers and goods while they are in, or they are intended to arrive at or to enter, Papua New Guinea, including vessels, aircraft and vehicles owned or operated by the government of a foreign State;

(3) This Act applies to persons, conveyances, containers and goods outside Papua New Guinea to the extent needed for its effective enforcement.

Act binds the State

4. This Act binds the State, including every Government department and statutory body and every person in the employment of the Government.

Responsibility for the Act

5. (1) The Minister is responsible to the National Parliament for the implementation of this Act and the performance of the biosecurity functions of the Government, within the resources available to the Ministry.

(2) The Authority is responsible to the Minister for the performance of the functions of the Authority prescribed in section 81.

Biosecurity functions of the Government

6. The biosecurity functions of the Government are, to the extent of the available resources and consistently with this Act –

- (a) to protect Papua New Guinea against the entry of regulated pests and diseases and noxious and injurious contaminants affecting animals or plants, including those consequentially affecting human beings, agriculture, the environment or the economy;
- (b) to perform surveillance and monitoring of pests and diseases and of noxious and injurious contaminants in Papua New Guinea and assess the status of regulated pests and diseases and noxious and injurious contaminants;
- (c) to control the emergence of regulated animal and plant pests and diseases and noxious and injurious contaminants in Papua New Guinea
- (d) to minimize risk of the release of organisms that might adversely affect animals, plants, human beings and the environment in Papua New Guinea;
- (e) to contain or control or eradicate regulated diseases and pests and regulated noxious and injurious contaminants that are already present in Papua New Guinea;
- (f) to minimize risk of the establishment and spread of regulated diseases and pests and regulated noxious and injurious contaminants within and from Papua New Guinea;
- (g) to facilitate the safe importation of animals and plants and their products, and related equipment and technology;
- (h) to facilitate the export of animals and plants and their products in accordance with the biosecurity requirements of the receiving countries;

- (i) to facilitate international cooperation to minimize the risk of the spread of diseases and pests and of noxious and injurious contaminants affecting plants, animals, human beings and the environment.

Relationship with other Acts

7. (1) This Act is in addition to and does not derogate from any other Act. In particular, but without limiting this rule -

- (a) provisions of the NAQIA Act 1997 and the Quarantine Act 1953 that are not expressly repealed by this Act continue to apply unless and in so far as they are inconsistent with a provision of this Act;
- (b) the notification requirements in section 14 relating to human health do not displace any other statutory requirement relating to such notification;
- (c) the notification requirements relating to the environment do not displace any other statutory requirement relating to such notification;
- (d) the provisions of Part 3 relating to biosecurity port quarantine of vessels, aircraft and vehicles do not displace any other provisions relating to quarantine of vessels, aircraft and vehicles.
- (e) the requirements relating to imports and exports in Parts 4 and 5 do not displace any other statutory requirements relating to imports and exports, trade in endangered species, biosafety, biodiversity or environmental Acts generally.
- (f) the functions of the NAQIA conferred on the Authority by this Act are in addition to the functions set out in the NAQIA Act

(2) To the extent of any inconsistency between this Act and any other Act, every other Act shall so far as possible be construed so as to fulfill the purpose of this Act.

PART 2 –BIOSECURITY AT THE BORDER

Regulated pests and diseases and noxious or injurious contaminants

8. (1) The Authority may by order declare the diseases or pests, or the noxious or injurious contaminants, or the permissible levels of noxious or injurious contaminants—

- (a) the importation of which is prohibited for all purposes;

- (b) the importation of which is permitted subject to conditions specified by the Authority under section 28 or 112;
- (c) which are under official control.

(2) A person who imports or attempts to import a disease or pest or a noxious or injurious contaminant at a level which is prohibited under subsection (1)(a), commits an offence.

(3) A person who imports or attempts to import a disease or pest or noxious or injurious contaminant which is regulated under subsection (1)(b) contrary to the conditions of import commits an offence.

(4) Before making a declaration under this section, the Authority shall conduct a biosecurity risk assessment, including a disease risk analysis in relation to the diseases or pest risk analysis in relation to the pests or a contaminant risk analysis in relation to noxious or injurious contaminants to be declared.

Prohibited imports

9. (1) The Authority may by order prohibit the importation of particular—
- (a) regulated articles from all countries; or
 - (b) regulated articles from one or more countries of origin,

(in this Act referred to as “import prohibited articles”) if the importation would present an unacceptable biosecurity risk to Papua New Guinea.

- (2) An order under this section in respect of an article —
 - (a) may be made at any time before biosecurity import clearance is granted in respect of the article;
 - (b) continues in force until the prohibition is revoked or varied.
- (3) In making a decision under this section, the Authority—
 - (a) must have regard to the international obligations of Papua New Guinea in respect of biosecurity;
 - (b) may apply the precautionary principle.

(4) Before making an order under this section the Authority shall perform, cause to be performed or obtain a biosecurity risk assessment, including a disease risk analysis and pest risk analysis and a noxious or injurious contaminant risk analysis in relation to the article;

- (5) If a person imports or attempts to import a prohibited article –
 - (a) the person commits an offence;
 - (b) biosecurity import clearance under section 25 will be refused for the article.

(6) A person who without lawful excuse owns or is in possession of any prohibited article,

commits an offence.

Biosecurity points of entry and departure

10. (1) The Authority may by order designate as biosecurity points of entry the seaports, airports, post office and frontier posts at which regulated articles may enter or transit Papua New Guinea.

(2) In making a designation in relation to a biosecurity point of entry, the Authority shall have regard to:

- a) The biosecurity threat and biosecurity risk at the site and adjacent area posed by the arrival, landing or transit of conveyances, regulated articles and persons;
- b) Assurances of conformance with biosecurity risk management measures upon arrival of vessels, aircraft or vehicles
- c) Presence at the site to be designated, of sufficient infrastructure and services to provide for secure detention, quarantine, inspection, treatment and testing of regulated articles during biosecurity entry clearance or transit; and
- d) Presence of sufficient authorized personnel and support resources to effect efficient biosecurity entry management at the site.

(3) Subject to subsection (8), a master or captain who causes or permits an incoming vessel or aircraft to berth or land, except at a seaport or airport that is a biosecurity point of entry

commits an offence.

(4) The driver of a vehicle who causes the vehicle to enter Papua New Guinea except at a frontier post that is a biosecurity point of entry

commits an offence.

(5) A person who imports, or attempts to import, a regulated article or consignment except at a biosecurity point of entry

commits an offence.

(6) The Authority may by order designate, as biosecurity points of departure, the seaports, airports, post office and frontier posts at which regulated articles may be exported.

(7) A designation of a biosecurity point of entry or departure may be limited to:

- (a) particular types or classes of vessels, aircraft or vehicles; or
- (b) particular types or classes of regulated articles; or
- (c) arrivals from or exports to particular countries.

(8) A vessel, aircraft or vehicle may berth, land or enter or depart elsewhere other than at a biosecurity point of entry or departure—

- (a) if constrained by adverse weather, mechanical failure or superior force; or
- (b) if so directed or permitted by the Authority.

(9) Under subsection (8), the place where the vessel has berthed or the aircraft has landed or vehicle entered is deemed to be a biosecurity point of entry for the purposes of this Act when the Authority has been notified of the berthing or landing or entry.

(10) Before making an order under subsection (1) or (6), the Authority shall obtain the advice of, and consult, as the case may be, the officers or authorities responsible for the movement of vessels, aircraft and vehicles in Papua New Guinea.

(11) The Authority may, at any time, revoke a designation of a biosecurity point of entry or a biosecurity point of departure by notice in writing published in accordance with Section 110, and if so revoked, the authority shall not be liable to compensate for any direct or consequential loss or damage incurred as a result of, or associated with, the action to revoke the designation of a biosecurity point of entry or departure unless negligence or malice is proved.

Designation of biosecurity holding areas

11. (1) The Authority may by order designate —

- (a) any territorial waters or any part of a seaport as a biosecurity port holding area for vessels;
- (b) any part of an airport as a biosecurity port holding area for aircraft.

- (c) any part of the frontier post as a biosecurity port holding area for vehicles.

(2) A biosecurity port holding area is one where incoming or outgoing conveyances may be held for biosecurity inspection pending biosecurity arrival or departure clearance or other disposition under this Act.

(3) The Authority may by order designate any area of land at or adjacent to a seaport, airport, post office or frontier post as a biosecurity goods holding area for incoming or outgoing containers and goods.

(4) A biosecurity goods holding area is one where incoming or outgoing containers or goods may be held for biosecurity inspection pending biosecurity clearance or other disposition under this Act.

(5) The Authority may by order designate any part of a mail exchange as a biosecurity postal holding area for incoming or outgoing postal items.

(6) A biosecurity postal holding area is one where incoming or outgoing postal items may be held for biosecurity inspection pending biosecurity clearance or other disposition under this Act.

(7) A mail exchange may only be designated as a biosecurity holding area in respect of regulated articles that at the time of entry or departure are in a mail bag or other container that conforms to the requirements of the postal legislation of Papua New Guinea.

(8) The Authority may prescribe a biosecurity standard pursuant to section 91 detailing the fittings, facilities and operational requirements for management of biosecurity holding areas designated for the purposes of this Act.

(9) The Authority may apply a test or cause a test to be applied and require that a biosecurity holding area be under the charge, control and management of a fit and proper person in accordance with section 111 of this Act.

Management of biosecurity holding areas

12. (1) Section 46(2) and (4) apply to biosecurity holding areas as they apply to biosecurity quarantine stations.

(2) No person, other than the person in charge of the area or a biosecurity officer acting in the course of duty, may enter a biosecurity holding area without the written permission of the Authority, or the permission of the person in charge of the area or of a biosecurity officer.

(3) A biosecurity officer may, in order to reduce a biosecurity risk, lock, seal or otherwise prevent entry to and exit from a biosecurity holding area or any building in it.

- (4) A person who –
- (a) enters a biosecurity holding area without permission given under subsection (2); or
 - (b) damages, interferes with or in any way reduces the effectiveness of measures taken to secure a biosecurity holding area, or any regulated article or other item in the area,

commits an offence.

(5) The Authority may make and provide written directions to the person in charge of a biosecurity holding area in relation to the management of the area.

(6) A person who removes or attempts to remove from a biosecurity holding area any regulated article without obtaining the written permission of a biosecurity officer or biosecurity clearance in respect of it, unless for the purpose of biosecurity measures being applied to the article in accordance with this Act,

commits an offence.

Biosecurity clearance agents

13. (1) A person who proposes to import or export regulated articles through a declared port and who will not be present when biosecurity inspection is to take place shall–

- (a) in writing appoint a person resident in Papua New Guinea as a biosecurity clearance agent for the purposes of this Act; and
- (b) notify the Authority in writing of the appointment before the agent performs any agency functions.

(2) Section 26 for import clearance and Section 39 for export clearance shall apply in relation to the status of a biosecurity clearance agent.

(3) A biosecurity clearance agent appointed under subsection (1) ceases to be an agent for the purposes of this Act if the Authority notifies the importer or exporter in writing that, in the opinion of the Authority, the agent's conduct in the performance of functions under this Act renders the agent unacceptable for purposes of this Act.

(4) Notice under subsection (3) must be given in sufficient time to allow the importer or exporter to appoint another agent.

(5) A biosecurity clearance agent who performs or purports to perform any functions of an importer or exporter under this Act is liable to the same extent as the importer or exporter for any act or omission which amounts to an offence or which creates any legal obligation under this Act.

(6) If a person referred to in subsection (1) fails to comply with that subsection, biosecurity clearance shall not be granted for any regulated article or consignment which the person seeks to import or export.

(7) A biosecurity clearance agent shall not be an officer authorized under this Act, unless otherwise, the authorized officer is notified in writing by the Authority before performing a clearance agent's function or activity..

PART 3 – CONVEYANCES AND PERSONS

Biosecurity arrival declaration

14. (1) The master or captain or driver of every vessel or aircraft or vehicle destined for Papua New Guinea shall make to the Authority a biosecurity arrival declaration stating –

- (a) the destination seaport or airport or frontier post in Papua New Guinea and the estimated time of arrival of the conveyance;
- (b) the immediately preceding port or place of call of the arriving conveyance;
- (c) the proposed itinerary of the conveyance until it leaves Papua New Guinea;
- (d) the nature and country of origin of cargo on the conveyance;
- (e) the number of passengers and crew on the conveyance;
- (f) the presence of any live animal or live plant on the conveyance;
- (g) the nature of any illness or malady affecting any live animal, plant, crew member, passenger or other individual on board the conveyance; and
- (h) any other matter relevant to facilitating biosecurity arrival clearance of the conveyance that is specified by the Authority.

(2) The declaration required by subsection (1) –

- (a) shall be made not less than forty-eight hours in the case of a vessel, or seventy-two hours in the case of an aircraft before the estimated time of arrival, and upon arrival at a frontier post in the case of a vehicle;

- (b) may be made by electronic means, in accordance with specifications of the Authority issued from time to time;
- (c) may be made through a biosecurity clearance agent;
- (d) may be made in conjunction with or as part of a declaration made for customs or other border control purposes.

(3) A master or captain or driver of a conveyance who fails to make a biosecurity arrival declaration, according to the prescribed period before arrival, either directly or through a biosecurity clearance agent,

commits an offence.

Biosecurity arrival clearance

15. (1) The master of every incoming vessel or captain of every incoming aircraft or driver of every incoming vehicle shall—

- (a) take the conveyance directly to a biosecurity port holding area as directed by a biosecurity officer;
- (b) allow a biosecurity officer to board and search the conveyance in accordance with section 49(1) and (2);
- (c) provide to the officer the log, cargo manifest, bill of lading, stores list, passenger list, crew list, disinfestation records and any other document that is on or in and relates to the conveyance and that the officer reasonably requests for the purposes of this Act;
- (d) complete an incoming conveyance biosecurity certificate, in the form specified or approved by the Authority, certifying that all garbage, live animals, meat or animal products and plants or plant material on board the conveyance not authorized for importation or entry will be lawfully disposed of.

(2) After inspecting relevant documents and conducting any necessary search of an incoming conveyance, and if satisfied that the conveyance does not have on board any regulated article that, upon disembarkation, might pose a biosecurity threat to Papua New Guinea; a biosecurity officer may grant biosecurity arrival clearance to the conveyance.

(3) Biosecurity arrival clearance means that a conveyance may disembark crew members and any cargo or passengers on board, but the crew and any cargo or passengers remain subject to biosecurity control under this Act.

(4) Biosecurity arrival clearance must be refused if a biosecurity officer orders the conveyance into port quarantine pursuant to section 16(2).

(5) A master or captain or driver of a conveyance who contravenes a provision of subsection (1)

commits an offence.

(6) A master or captain or driver who disembarks any crew, cargo or passengers from a conveyance without biosecurity arrival clearance, except with the permission of a biosecurity officer,

commits an offence.

(7) A crew member or passenger who disembarks from a conveyance before it has received biosecurity arrival clearance, except with the permission of a biosecurity officer,

commits an offence.

(8) Biosecurity arrival clearance of a conveyance may be granted unconditionally, or conditional on post-entry biosecurity surveillance or entry into a compliance agreement with the Authority, in the form specified or approved by the Authority, by the master of the vessel or captain of the aircraft or driver of the vehicle, for compliance with any requirements imposed pursuant to this Act in respect of the conveyance or stores or cargo.

Biosecurity port quarantine of conveyances

16. (1) The Authority may by order designate –

- (a) any territorial waters or any part of a seaport as a biosecurity quarantine area for vessels;
- (b) any part of an airport as a biosecurity quarantine area for aircraft;
- (c) any part of a frontier post as a biosecurity quarantine area for vehicles.

(2) If a biosecurity officer reasonably suspects that an incoming conveyance is –

- (a) infected or infested with a regulated pest or disease; or
- (b) carrying any regulated article which might pose a biosecurity risk to Papua New Guinea,

the officer may order the conveyance into biosecurity quarantine.

- (3) If a conveyance is ordered into biosecurity quarantine, a biosecurity officer may –
- (a) order the master or captain or driver to remove the conveyance into a biosecurity quarantine area; or
 - (b) if necessary (if the master or captain or driver refuses to obey the order, or because of the nature of the biosecurity threat) arrange for the conveyance to be removed to the biosecurity quarantine area.
- (4) The cost of removal of a conveyance to biosecurity quarantine is to be borne by the owner or charterer, and no compensation is payable for any loss or destruction or consequential loss caused as a result of any such removal, unless negligence or malice is proved.
- (5) The owner, charterer, agent, and master, captain or driver shall each be given written notice stating the reasons for an order under this section in respect of the vessel or aircraft or vehicle and, if it was removed under subsection (2), the whereabouts of the conveyance.
- (6) If the Authority reasonably believes that a conveyance poses a serious biosecurity risk to Papua New Guinea which cannot adequately be dealt with by appropriate biosecurity measures, the Authority may in writing direct the conveyance to leave Papua New Guinea.
- (7) Before issuing a direction under this section, the Authority shall consult, as the case may be, the officers or authorities responsible for the movement of conveyances in Papua New Guinea.

Management of biosecurity port quarantine areas

- 17.** (1) No person, other than the person in charge of the area or a biosecurity officer acting in the course of duty, may enter a biosecurity quarantine area without the written permission of the Authority or of the person in charge of the area.
- (2) A person who –
- (a) enters a biosecurity quarantine area without permission; or
 - (b) damages, interferes with or in any way reduces the effectiveness of measures taken to secure a biosecurity quarantine area, or any regulated article or other item in the area,
- commits an offence.
- (3) The Authority may make and provide written instructions to the person in charge of a biosecurity quarantine area as to the management of the area.

(4) The Authority may apply a test and require that a biosecurity port quarantine area be under the charge, control and management of a fit and proper person in accordance with section 111 of this Act.

(5) A biosecurity officer may affix a notice at any biosecurity quarantine area, and on any conveyance held in the area, stating the conditions and duration of biosecurity quarantine and other information relating to the area or the item as specified by the Authority.

(6) A person who removes a notice affixed under subsection (5) without lawful authority

commits an offence.

Conduct of conveyances in biosecurity port quarantine

18. (1) The Authority may give written directions to the master of a vessel or captain of an aircraft or driver of a vehicle in biosecurity port quarantine –

- (a) as to the movement of the conveyance while it is in biosecurity quarantine;
- (b) as to the movement of passengers, crew and cargo while the conveyance is in biosecurity quarantine;
- (c) as to any treatment or other biosecurity measure that shall be applied to the conveyance.

(2) The cost of keeping a conveyance in biosecurity port quarantine, and of any treatment or other measures that shall be applied to it, is to be borne by the owner or charterer or agent.

(3) No compensation is payable for any loss or destruction or consequential loss caused by a conveyance being detained in biosecurity quarantine, unless negligence or malice is proved

(4) A master or captain or driver who fails to ensure that the conveyance and its cargo, crew and passengers conform to directions given under subsection (1)

commits an offence.

Biosecurity port quarantine clearance of conveyances

19. (1) If satisfied –

- (a) that a conveyance in biosecurity quarantine is substantially free from regulated pests and diseases;
- (b) that any potential biosecurity risk from stores and other regulated articles on the conveyance is suitably contained; and

- (c) That specified arrangements for payment of the fees and charges of the Authority, if any, have been made to the satisfaction of the Authority.

a biosecurity officer may grant biosecurity port quarantine clearance for the conveyance to disembark passengers and cargo.

(2) Biosecurity port quarantine clearance of a conveyance may be granted unconditionally, or conditioned on entry into a compliance agreement with the Authority, in the form specified or approved by the Authority, by the master of the vessel or captain of the aircraft or driver of the vehicle, for compliance with any requirements imposed pursuant to this Act in respect of the conveyance or stores and cargo.

(3) Biosecurity quarantine clearance of a conveyance has the same effect as arrival clearance granted under section 15.

Outgoing conveyances.

20. (1) If a biosecurity officer has reason to believe that there is on board an outgoing conveyance any regulated article that requires biosecurity export clearance and that has not been cleared, the officer may –

- (a) stop, board, search and if necessary, detain the conveyance or regulated article in accordance with section 49(1) and (2);
 - (b) request the master or captain or driver to produce for inspection the cargo manifest, bill of lading, stores list, passenger list, crew list and any other document that is on or in and relates to the conveyance and that the officer reasonably requires for the purposes of this Act;
 - (c) direct the master or captain or driver not to move the conveyance unless permitted by the officer, and then to move it only as directed by the officer;
 - (d) direct the conveyance to be subjected to any treatment or other biosecurity measure that is prescribed or specified;
 - (e) give to the master or captain or driver any other lawful direction that is reasonably required to protect the destination country from a biosecurity threat posed by the vessel or aircraft.
- (2) A master or captain or driver who –
- (a) refuses to permit a search pursuant to subsection (1)(a); or

- (b) fails to comply with a request or direction given under subsections (1)(b) to (1)(e),

commits an offence.

(3) If a biosecurity officer suspects that a master of an outgoing vessel, or a captain of an outgoing aircraft or a driver of an outgoing vehicle may have committed an offence under subsection (2), the biosecurity officer may direct the conveyance and its master, captain or driver to be detained at a specified place pursuant to section 49(1)(a) until such time as a determination has been made in relation to the commission of an offence, and –

- (a) if the master, captain or driver refuses to move the conveyance and its master, captain or driver into port quarantine detention as directed, cause the conveyance to be so moved; and
- (b) under such circumstances, use reasonable force to place the conveyance and master, captain or driver under detention.

(4) A conveyance and its master, captain or driver that have been placed under detention pursuant to subsection (3) shall be released from detention as directed by the Authority as soon as practicable after a determination has been made concerning commission of an offence and application of penalties, if applicable and if any.

(5) The cost of removal of a conveyance to a specified place of detention and its subsequent detention shall be borne by the owner or charterer or agent, and no compensation is payable for any loss or destruction or consequential loss caused as a result of any such removal, unless negligence or malice is proved.

Environmental obligations of masters and captains and drivers

21. (1) The master of every incoming vessel, captain of every incoming aircraft or driver of every incoming vehicle shall, while the conveyance is in Papua New Guinea -

- (a) to prevent any animal on board the vessel from making contact with any animal on shore or at sea unless permitted by a biosecurity officer, and then only as directed by the officer;
 - (b) seal all hatches and holds and enclosed cargo areas during the hours of darkness, except as needed for the working of the vessel, aircraft or vehicle or its cargo.
- (2) The master of every incoming vessel shall ensure that –
- (a) no garbage containing any animal, plant, animal product or plant product;

- (b) any ballast water or sediments that are discharged from a vessel while the vessel is in the territorial waters or the exclusive economic zone of Papua New Guinea, are discharged in accordance with the provisions of the *International Convention for the Control and Management of Ships Ballast Water and Sediments, 2004*, and any other applicable national legislation that is in force; and
- (c) no sewage or foul waste-water is discharged from the vessel into the sea while the vessel is in Papua New Guinea.

(3) The master of every incoming vessel, captain of every incoming aircraft and driver of every incoming vehicle shall, while the vessel or aircraft or vehicle is in Papua New Guinea, ensure that -

- (a) all garbage generated on the vessel or aircraft or vehicle is placed in a suitable leak-proof container, with a lid, and the container is securely fastened at all times and kept within the conveyance;
- (b) garbage is only removed from the conveyance under and in accordance with the directions of a biosecurity officer.

(4) The master of every incoming vessel, the captain of every incoming aircraft and the driver of every incoming vehicle shall ensure that no stores are removed from the conveyance while it is in Papua New Guinea, except under and in accordance with the directions of a biosecurity officer.

(5) A biosecurity officer shall lock or seal the stores of any incoming conveyance that are not essential for the exclusive operations of the vessel, its crew and its passengers, and place the stores that are essential for the exclusive operations of the conveyance, its crew and its passengers under a compliance agreement while it is in Papua New Guinea.

(6) The cost of disposal of garbage under this section is to be borne by the owner or charterer or agent of the conveyance.

(7) A master of a vessel who contravenes subsection (1)(b), fails to take all reasonable steps as required by subsection (1)(a), (2), (3), (4) or (5) or fails to obey a direction of a biosecurity officer given under any of those subsections

commits an offence.

(8) A captain of an aircraft or a driver of a vehicle who contravenes subsection (1)(b), fails to take all reasonable steps as required by subsection (1)(a), (3), (4) or (5) or fails to obey a direction of a biosecurity officer given under any of those subsections

commits an offence.

(9) If a biosecurity officer suspects that a master of an incoming vessel, or a captain of an incoming aircraft or a driver of an incoming vehicle may have committed an offence under subsections (7) and (8), the biosecurity officer may direct the conveyance and its master, captain or driver to be detained at a specified place pursuant to section 49(1)(a) until such time as a determination has been made in relation to commission of an offence, and –

- (a) if the master, captain or driver refuses to move the conveyance and its master, captain or driver into detention as directed, cause the conveyance to be so moved; and
- (b) under such circumstances, use reasonable force to place the conveyance and master, captain or driver into detention.

(10) A conveyance and its master, captain or driver that have been placed into detention pursuant to subsection (9) shall be released from detention as determined and directed by the Authority as soon as practicable after a determination has been made concerning commission of an offence and application of penalties, if applicable and if any.

(11) The cost of removing a conveyance to detention and its subsequent detention pursuant to subsections (9) and (10) shall be borne by the owner or charterer, and no compensation is payable for any loss or destruction or consequential loss caused as a result of any such removal, unless negligence or malice is proved.

(12) An incoming vessel must comply with any de-ratting requirements prescribed by regulations.

Passengers and crew members

22. (1) Subject to subsections (3) and (4), every passenger or crew member who arrives in or departs from Papua New Guinea on board a conveyance shall make to a biosecurity officer a passenger arrival or a passenger departure biosecurity declaration.

(2) The passenger arrival biosecurity declaration and the passenger departure declaration shall be in the form specified or approved by the Authority and contain all required particulars relating to the person and any baggage that accompanies the person.

- (3) A passenger or crew member does not need to declare -
 - (a) articles of clothing worn on the body;
 - (b) articles visibly attached or connected to the body or clothing; or
 - (c) suit-cases and other visible containers of personal baggage,

unless a biosecurity officer so requests because of the biosecurity risk posed by the item, and in the absence of any such request, the article or container is deemed to have biosecurity entry or exit clearance.

(4) A single declaration under subsection (2) may be made by a person in respect of the person and any member of the family aged sixteen years or less travelling on the same conveyance.

(5) When a declaration is tendered under this section, a biosecurity officer may –

- (a) question the passenger or crew member;
- (b) inspect the baggage to which it relates;
- (c) if necessary, question a family member included on the declaration.

(6) After taking the steps in subsection (5), a biosecurity officer may either grant biosecurity entry or exit clearance of the persons and baggage to which the declaration relates, or –

- (a) detain the passenger or crew member for further questioning and search;
- (b) detain the baggage and other articles in the possession of the passenger or crew member for further inspection and application of other biosecurity measures as the officer considers appropriate.

(7) An arriving or departing passenger or crew member who fails –

- (a) to make a declaration as required by subsection (1); or
- (b) to submit baggage for inspection when so directed under subsection (6),

commits an offence.

(8) Sections 60 and 61 apply to the questioning, detention and searching of persons under this section.

Persons entering or departing other than passengers

23. (1) Subject to subsections (3) and (4), every person who arrives in or departs from Papua New Guinea including a traditional border crossing involving a purpose of commerce or any other purpose that is not customary, shall make to a biosecurity officer a biosecurity entry or departure declaration, except a person entering or departing in circumstance of humanitarian crisis, a person eligible for traditional border

crossing rights entering or leaving for prescribed traditional cultural activities, and passengers and crew of conveyances who shall be subject to section 22.

(2) The biosecurity entry or departure declaration must be in the form specified or approved by the Authority and contain all required particulars relating to the person and any baggage that accompanies the person.

- (3) A person does not need to declare -
- (a) articles of clothing worn on the body;
 - (b) articles visibly attached or connected to the body or clothing; or
 - (c) other visible containers of personal baggage,

unless a biosecurity officer so requests because of the biosecurity risk posed by the item, and in the absence of any such request, the article or container is deemed to have biosecurity entry or exit clearance.

(4) A single declaration under subsection (1) may be made by a person in respect of the person and any member of the family aged sixteen years or less travelling at the same time.

(5) When a declaration is tendered under this section, a biosecurity officer may –

- (a) question the person;
- (b) inspect the baggage to which it relates.
- (c) if necessary, question a family member included on the declaration.

(6) After taking the steps in subsection (5), a biosecurity officer may either grant biosecurity entry or exit clearance of the persons and baggage to which the declaration relates, or –

- (a) detain the person for further questioning and search;
- (b) detain the baggage and other articles in the possession of the person and family members included in the declaration for further inspection and application of other biosecurity measures as the officer deems appropriate.

(7) An arriving or a departing person who fails –

- (a) to make a declaration as required by subsection (1);
- (b) to submit baggage for inspection when so directed under subsection (5),

commits an offence.

(8) Section 60 and section 61 apply to the questioning, detention and searching of persons under this section.

PART 4 – BIOSECURITY IMPORT PROCEDURES

Biosecurity entry inspection of incoming articles

24. (1) Every incoming article or consignment of articles is liable to biosecurity entry inspection by a biosecurity officer at the biosecurity point of entry to ascertain whether it is or includes a regulated article.

(2) If an importer of goods fails to make the goods available for biosecurity entry inspection at the biosecurity point of entry at the request of a biosecurity officer –

- (a) the importer commits an offence; and
- (b) the goods may be reconsigned or destroyed as if they were a regulated article for which biosecurity entry clearance had been refused.

(3) If, after inspecting an incoming article or consignment, a biosecurity officer is satisfied -

- (a) that it is or includes a regulated article - the provisions of this Part apply to it;
- (b) that it is not or does not include a regulated article – the article or consignment may be released from the biosecurity point of entry

(4) Section 51 and section 59 apply to an inspection under this section.

(5) Subject to section 106(*Appeals*), the actual or deemed opinion of a biosecurity officer under this section as to whether an article or consignment is or includes a regulated article is conclusive for the purposes of this Act.

(6) This section does not apply in respect of baggage accompanying passengers or crew members or other entrants, but section 22 and section 23 apply to such baggage and persons.

Biosecurity import clearance of regulated articles

25. (1) Every incoming regulated article or consignment of regulated articles –

- (a) is liable to biosecurity import clearance inspection by a biosecurity officer;

- (b) for that purpose shall be taken to or retained in a biosecurity holding area, or upon notice by a biosecurity officer, a biosecurity approved premises or a place approved for performance of biosecurity, for inspection.

(2) An application for biosecurity import clearance of a regulated article or consignment shall –

- (a) be made to a biosecurity officer in the manner specified or approved by the Authority;
- (b) state the country of origin of the article or consignment;
- (c) state the nature and quantity of the article or consignment;
- (d) attach any sanitary or phytosanitary certificate issued by the country of origin in relation to the article or consignment;
- (e) attach any biosecurity import permit relating to the article or consignment;
- (f) attach documentation relating to any other biosecurity measures specified under section 27(1) and section 28 in relation to the article or consignment.

(3) The importer of a regulated article or consignment shall, on the request of a biosecurity officer –

- (a) if the article or consignment is in a container, open the container or enable the officer to do so;
- (b) allow the officer to inspect the article or consignment in accordance with section 51;
- (c) allow the officer to take samples or specimens and conduct tests in accordance with Part 7 to enable the officer to determine whether biosecurity import clearance should be granted;
- (d) if the article or consignment requires biosecurity measures to be applied to it, submit the article or consignment, or cause it to be submitted, to such measures.

(4) The cost of taking an article to a biosecurity holding area or biosecurity approved premises or a premises approved for performance of biosecurity, and of keeping it there, shall be borne by the importer of the article, and no compensation is payable for any loss or destruction or consequential loss caused as a result of the taking or keeping, unless negligence or malice is proved.

(5) If the importer of a regulated article or consignment fails to comply with any of the requirements of subsection (3) –

- (a) the person commits an offence; and
- (b) a biosecurity officer may refuse to grant import clearance for the article or consignment, and may order the article or consignment to be reconsigned or destroyed.

(6) This section does not apply to baggage accompanying passengers or crew members or other entrants, but section 22 and section 23 apply to such baggage and such persons.

Status of persons and agents importing import-regulated articles

26. (1) A person making an application for biosecurity import clearance of a regulated article shall be, or shall designate an agent to act on their behalf for the purposes of biosecurity import clearance of a regulated article that shall be, at the time of making the application:

- (a) if an individual person, greater than sixteen years of age; and
- (b) if an individual person, either:
 - (i) a citizen of Papua New Guinea; or
 - (ii) a non-citizen of Papua New Guinea holding a current visa issued by the competent Papua New Guinea authority for immigration and citizenship matters that grants the person permanent residency in Papua New Guinea; or
 - (iii) a non-citizen of Papua New Guinea holding a current visa or permission by the competent Papua New Guinea authority for immigration and citizenship matters granting the person temporary visitation or residency in Papua New Guinea; or
 - (iv) a non-citizen of Papua New Guinea legitimately engaged or employed in Papua New Guinea by an international organization exempt under the *International Organizations (Privileges and Immunities) Act 1975*, as amended from time to time, and the *International Organizations (Privileges and Immunities) Regulations*; or
 - (v) a non-citizen of Papua New Guinea legitimately engaged or employed in Papua New Guinea by a diplomatic mission exempt under the *Diplomatic and Consular*

Privileges and Immunities Act 1975, as amended from time to time; or

- (c) if a corporate entity, a trading business, an organization, an association or a person legitimately representing a corporate entity, a trading business, an organization or an association (including a private or family company, trading business or customary landowner association), a corporate entity, trading business, organization or association that is currently registered with the competent Papua New Guinea national authority for registration of companies, trading businesses, organizations and associations under the *Investment Promotion Act 1992*, as amended from time to time, and the *Investment Promotion Regulations 1992*.

(2) A parent, designated guardian or designated agent, being as described in subsections (1)(a) to (1)(c), may make an application for biosecurity import clearance of a regulated article on behalf of an individual person that is sixteen years or less in age.

(3) A regulated article that gains biosecurity import clearance other than upon application by a person as defined in subsections (1)(a) to (1)(c) may, at the discretion of, and as specified by, the Authority, be:

- (a) detained until reconsignment within a reasonable time; or
- (b) forfeit to the Authority for disposal under this Act; or
- (c) destroyed under this Act.

(4) When exercising discretion in relation to the disposition of regulated articles under subsection (3), the Authority shall have regard to the principle of proportionality.

(5) A person, other than a person described in subsections (1)(a) to (1)(c), that applies or fails to properly apply for biosecurity import clearance of a regulated article shall be liable for any cost, expense, loss or damage associated with reconsignment, forfeiture or destruction of the regulated article under subsection (3).

(6) This section applies to baggage accompanying passengers, crew and entrants other than passengers and crew, and an incoming passenger declaration may, when presented to a biosecurity officer, serve as an application for biosecurity entry of a regulated article in the baggage of passengers, crew and other entrants as described in subsections (1)(a) to (1)(c).

(7) In this section the onus of proof regarding the eligible status of persons applying for or failing to properly apply for biosecurity import clearance of a regulated article is upon the person.

(8) No compensation is payable for any damage or loss or destruction or consequential loss caused as a result of the detention, reconsignment, forfeiture or destruction of a regulated article under subsection (3), unless malice or negligence is proved.

(9) A person (including an agent, corporate entity, trading business, organization or association), other than a person described in subsection (1)(a) to (1)(c), that fails to apply or to properly apply for biosecurity import clearance of a regulated article

commits an offence.

Grant and refusal of biosecurity import clearance

27. (1) Before granting biosecurity import clearance of an article or consignment, a biosecurity officer shall be satisfied that the article meets the biosecurity import requirements in relation to it, that is to say: –

- (a) if a biosecurity import permit is required - it has been obtained in respect of the article or consignment and the conditions of the permit have been complied with;
- (b) if a sanitary or phytosanitary certificate is required for an article - the relevant certificate has been issued by the country of origin, and any requirement in it complied with;
- (c) if any other biosecurity measures are specified under section 28(1)(c) - they have been applied to or in respect of the article or consignment;
- (d) the status of a person applying for biosecurity import clearance of the article or consignment is as described in section 26(1); and
- (e) arrangement for payment of all specified fees and charges relating to the article or consignment have been made as specified by the Authority

(2) If satisfied in respect of an article or consignment of the matters mentioned in subsection (1) a biosecurity officer shall grant biosecurity import clearance for the article or consignment.

(3) If the biosecurity risk presented by an incoming regulated article or consignment so requires, a biosecurity officer may refuse to grant biosecurity import clearance for the article or consignment, or may require additional biosecurity measures

to be applied to it, even if the article or consignment meets the biosecurity import specifications in relation to it.

(4) Biosecurity import clearance may be made conditional on the article performing biosecurity quarantine if -

- (a) quarantine is a biosecurity import requirement for the article; or
- (b) during biosecurity entry inspection or biosecurity import clearance inspection the article is found to be, or is suspected to be, infested, infected or contaminated.

(5) Biosecurity import clearance shall be refused for an incoming article that is a prohibited import.

(6) A biosecurity officer may cause any incoming article or consignment in respect of which biosecurity import clearance is refused to be reconsigned or destroyed, but the importer shall be given reasonable time to make arrangements for reconsignment of the article or consignment before it is destroyed.

(7) If the Authority deems the biosecurity risks are too high, destruction shall be done immediately.

(8) No compensation shall be payable in respect of a refusal in good faith to grant biosecurity import clearance or destruction of an article under this section.

Biosecurity import specifications

- 28.** (1) The Authority may specify in respect of incoming regulated articles –
- (a) whether a sanitary or phytosanitary certificate from the biosecurity authority in the country of origin is required for an article and if so the matters that must be certified;
 - (b) whether a biosecurity import permit shall be obtained for the article and if so the conditions to be attached to the permit;
 - (c) what biosecurity measures, if any, shall be applied to the article, before or on arrival, before biosecurity import clearance can be granted.
- (2) Specifications under subsection (1) –
- (a) may be different for different types and quantities of regulated article;
 - (b) may be by reference to the country or area of origin of the article;
 - (c) shall only be those reasonably necessary to reduce or eliminate the biosecurity risk presented by the article.

- (3) In determining specifications under subsection (1), the Authority –
 - (a) shall perform, cause to be performed, or obtain a biosecurity risk assessment for the regulated article;
 - (b) shall have regard to the requirements of the WTO-SPS Agreement and other international standards relating to biosecurity matters;
 - (c) shall have regard to the resources available for biosecurity control;
 - (d) may apply the precautionary principle.
- (4) The biosecurity risk assessment needed for making a specification under this section –
 - (a) may be performed by any qualified person (other than the importer) at the request of the Authority;
 - (b) shall be performed at the importer's expense.
- (5) Specifications made under subsection (1) in respect of an article may be changed at any time before biosecurity import clearance is obtained in respect of the article if the biosecurity risk presented by the article or consignment changes.
- (6) Notice of a change in an import specification in respect of an article should be given to intending importers as soon as practicable, but no liability arises from a failure to do so.
- (7) Specifications made under this section shall be -
 - (a) published in the biosecurity register and at the office of the Authority; and
 - (b) made available for public consumption.

Biosecurity access arrangements

- 29.** (1) A person proposing to import a regulated article of a type that is not the subject of a biosecurity import specification shall apply in writing to the Authority for a specification under section 28 in respect of the article.
- (2) An application under subsection (1) in respect of an article shall–
 - (a) be made in sufficient time before the intended importation; and
 - (b) give adequate information about the biosecurity procedures of the country of origin, the nature of the article and the proposed importation,

to enable the Authority to make a biosecurity risk assessment in relation to the article.

(3) Upon receipt of an application under subsection (1), the Authority shall as soon as practicable, unless the article is or becomes a prohibited import under section 9, make a specification in respect of it in accordance with section 28.

(4) Section 28(2), section 28(3) and section 28(4) apply to the making of a specification under this section.

Application for a biosecurity import permit

30. (1) If a biosecurity import permit is required under section 27(1) in respect of a regulated article or consignment, an application for a permit shall—

- (a) be made before the article or consignment leaves the country of origin or, in the case of re-exported goods, the re-exporting country.
- (b) be made to the Authority in the manner specified or approved by the Authority; and
- (c) be accompanied by a specified fee, if any

(2) An application for a biosecurity import permit shall—

- (a) include evidence of the country of origin of the regulated article or consignment;
- (b) state the nature and quantity of the article or consignment;
- (c) state the expected date of arrival; and
- (d) give any other information the Authority reasonably requires to enable it to make a biosecurity risk assessment and reach a determination regarding eligibility for importation subject to, or not subject to, pre-existing biosecurity import specifications.

(3) A decision on an application for a biosecurity import permit shall be communicated to the applicant as soon as reasonably practicable after the application is received duly completed.

(4) If the decision is to refuse the permit, the applicant shall be notified in writing, with brief reasons.

Issue of a biosecurity import permit

31. (1) If satisfied of the matters set out in section 30(1) and section 30(2), the Authority, shall as soon as practicable issue a biosecurity import permit.

(2) The form of a biosecurity import permit is as specified or approved by the Authority.

- (3) A biosecurity import permit may –
- (a) be general or specific;
 - (b) relate to a single article or to a consignment of articles;
 - (c) be different for different types of regulated article and relate to different countries of origin;
 - (d) be for a single consignment entry or be for continuing entry of multiple consignments, as detailed on the biosecurity import permit, during a defined period of time.

(4) A general permit may relate to all imports of a type specified in the permit, or from an area specified in the permit, and a specific permit will relate to a single article or consignment.

Revocation of a biosecurity import permit

32. (1) The Authority may at any time, on written notice to the holder of a biosecurity import permit, revoke the permit, or vary the conditions of the permit, if a change in the biosecurity risk presented by the article or consignment to which the permit relates so requires.

(2) Biosecurity import clearance shall be refused for an article or consignment in respect of which a biosecurity import permit is revoked, but section 28(6) applies to a revocation as it does to the change of a biosecurity specification.

(3) When a biosecurity import permit is revoked, the holder of the permit shall not utilize it in any way and shall surrender it to the Authority within seven days of the date of revocation.

(4) A person who contravenes subsection (3) commits an offence.

(5) No refund of specified fees and charges or compensation shall be payable in respect of the revocation in good faith of a permit under this section.

Articles in transit

33. (1) Regulated articles in transit shall be liable to biosecurity import control, and require biosecurity supervision at a biosecurity holding area.

(2) The Authority may in writing waive any requirement for a sanitary or phytosanitary certificate or biosecurity import permit that would otherwise apply to articles in transit.

(3) If a waiver is granted under subsection (2), the Authority may attach conditions to the waiver.

- (4) A person who –
- (a) deals with articles to which this section applies other than by way of transit; or
 - (b) contravenes a condition specified under subsection (3) in relation to them,

commits an offence.

- (5) A request for a waiver under this section shall be –
- (a) made in writing to the Authority;
 - (b) made in sufficient time to allow the Authority or a biosecurity officer to give due consideration to the request.

- (6) In the case of regulated articles which accompany a crew member or passenger in transit –
- (a) subsection (5) is deemed to have been conformed to if the passenger or crew member conforms to other requirements for regulated articles in transit;
 - (b) the requirement in subsection (2) for a waiver to be in writing does not apply.

(7) Upon granting arrival clearance to a conveyance and disembarkation of a regulated article at a biosecurity holding area, the Authority may, by written authorization, allow a regulated article or a particular class of regulated articles to in-transit for biosecurity import clearance to be performed at another specified biosecurity holding area, subject to biosecurity control and any specified conditions relating to control and containment and traceability, including a condition that the importer or agent shall enter into a compliance agreement for in-transit.

(8) A biosecurity officer may at any time inspect an article in transit if the officer reasonably suspects the article might pose a biosecurity threat.

PART 5 – BIOSECURITY EXPORT PROCEDURES

Biosecurity export inspection of outgoing articles

34. (1) Each outgoing regulated article or consignment of regulated articles is liable to biosecurity export inspection to enable a biosecurity officer –

- (a) to ascertain whether it is or includes an article that requires biosecurity export clearance pursuant to section 35;
- (b) if so – to decide whether to grant export clearance under section 40.

(2) An exporter of goods who fails to make the goods available for biosecurity export inspection at the request of a biosecurity officer

commits an offence.

(3) The exporter of the outgoing regulated article shall declare the consignment to a biosecurity officer for inspection for biosecurity export clearance.

(4) If, after inspecting an outgoing article or consignment under this section, a biosecurity officer is satisfied –

- (a) that it is or includes an article that requires biosecurity export clearance – the provisions of this Part apply to it;
- (b) that it is not or does not include such an article – the article or consignment may be released for export.

(5) Section 49 applies to an inspection under this section.

(6) This section does not apply in respect of baggage accompanying departing passengers or crew members or other departing persons, but section 22 and section 23 apply to such baggage and persons.

Requirement for biosecurity export clearance

35. (1) An article intended for export to a receiving country that requires -

- (a) a sanitary or phytosanitary certificate for importation into that country; or
- (b) any biosecurity measures to be applied to it under section 38(3) before being exported to that country,

shall have biosecurity export clearance for export to that country.

(2) A person who exports or attempts to export an article or consignment that requires biosecurity export clearance without such clearance

commits an offence.

Issue of sanitary and phytosanitary certificates

36. (1) A person who wishes to obtain a sanitary or phytosanitary certificate in respect of an article in order to comply with the biosecurity certification requirements of the receiving country shall—

- (a) apply to the Authority in writing;
- (b) submit the article for inspection or other biosecurity measures as required by the receiving country.

(2) Upon receipt of an application under subsection (1), the Authority shall—

- (a) ascertain the biosecurity certification and other requirements of the receiving country, from the applicant or directly from the country;
- (b) perform appropriate inspection and apply appropriate biosecurity measures to the article as required by the receiving country;
- (c) if satisfied that the biosecurity certification requirements of the receiving country have been met, issue the appropriate certificate.

(3) A biosecurity certification requirement entered in the biosecurity register —

- (a) if certified by the Authority, is conclusive evidence of the requirement for the purposes of this Act; but
- (b) does not create any liability on the Government or the Authority if relied on by an exporter to the exporter's detriment.

Biosecurity export specifications

37. (1) The Authority may specify in respect of outgoing animals or plants, animal or plant products, or host material, any biosecurity measures, in addition to biosecurity certification requirements of the receiving country, that must be applied to the animal, plant, product or host material before export.

(2) Specifications under subsection (1) may only be made if required by an international agreement to which Papua New Guinea and the receiving country are party in respect of the movement of animals, plants, their products or host material, and must conform to any such agreement.

(3) Specifications under subsection (1) in respect of an animal, plant, their products or host material may be changed at any time before biosecurity export clearance is granted, if there is a change in the relevant international obligations relating to the animal, plant, their products or host material, and section 28(6) applies to exporters in relation to any such change.

(4) Specifications made under this section shall be -

- (a) published in the biosecurity register and at the office of the Authority; and
- (b) made available for public consumption.

Application for biosecurity export clearance

38. (1) An application for biosecurity export clearance of an article or consignment shall be made to the Authority in the manner specified or approved by the Authority.

(2) An application for biosecurity export clearance for a regulated article or consignment shall—

- (a) be made before the regulated article or consignment arrives at a biosecurity point of departure; and
- (b) allow sufficient time for processing of the application.

(3) An application for biosecurity export clearance for an article or consignment shall—

- (a) specify the receiving country;
- (b) specify the nature and quantity of the article or consignment;
- (c) attach documentation relating to any other biosecurity measures required under section 36(1) in relation to animals or plants or animal or plant products.

(4) If the article or consignment requires biosecurity measures to be applied to it, the person seeking to export it shall submit the article or consignment to such measures, failing which biosecurity export clearance shall not be granted.

(5) If a person seeking to export an article or consignment fails to comply with any of the requirements of this section, a biosecurity officer may refuse to grant biosecurity export clearance for the article or consignment.

(6) This section does not apply to passengers or crew members, but section 22 and section 23 apply to such persons.

Status of persons and agents exporting export-regulated articles

39. (1) A person making an application for biosecurity export clearance of a regulated article for which export clearance is required under section 35(1) in conformance to section 36(1)(a) and section 38 shall be, or shall designate an agent to act on their behalf for the purposes of biosecurity export clearance that shall be, at the time of making the application:

- (a) if an individual person, greater than sixteen years of age; and

- (b) if an individual person, either:
 - (i) a citizen of Papua New Guinea; or
 - (ii) a non-citizen of Papua New Guinea holding a current visa issued by the competent Papua New Guinea authority for immigration and citizenship matters that grants the person permanent residency in Papua New Guinea; or
 - (iii) a non-citizen of Papua New Guinea holding a current visa or permission by the competent Papua New Guinea authority for immigration and citizenship matters grants the person temporary visitation or residency in Papua New Guinea; or
 - (iv) a non-citizen of Papua New Guinea legitimately engaged or employed in Papua New Guinea by an international organization exempt under the *International Organizations (Privileges and Immunities) Act 1975*, as amended from time to time, and the *International Organizations (Privileges and Immunities) Regulations*; or
 - (v) a non-citizen of Papua New Guinea legitimately engaged or employed in Papua New Guinea by a diplomatic mission exempt under the *Diplomatic and Consular Privileges and Immunities Act 1975*, as amended from time to time; or
- (c) if a corporate entity, a trading business, an organization, an association or a person legitimately representing a corporate entity, a trading business, an organization or an association (including a private or family company, trading business or customary landowner association), a corporate entity, trading business, organization or association that is currently registered with the competent Papua New Guinea national authority for registration of companies, trading businesses, organizations and associations under the *Investment Promotion Act 1992*, as amended from time to time, and the *Investment Promotion Regulations 1992*.

(2) A parent, designated guardian or designated agent, being a person described in subsections (1)(a) to (1)(c), may make an application for biosecurity export clearance of a regulated article on behalf of an individual person that is sixteen years or less of age.

(3) A biosecurity officer and the Authority may refuse to grant export clearance for an export-regulated article for which an application has been made by a person other than a person described in subsections 1(a) to 1(c), or for which an application for export clearance has not been made.

(4) This section applies to baggage accompanying departing passengers, crew and departing persons other than passengers and crew, and an outgoing passenger declaration may, when presented to a biosecurity officer, serve as an application for biosecurity export of a regulated article in the baggage of passengers, crew and other departing persons as described in subsections (1)(a) to (1)(c).

(5) In this section the onus of proof regarding the eligible status of a person applying for or failing to properly apply for biosecurity export clearance of a regulated article is upon the person.

(6) No compensation is payable for any damage or loss or consequential loss caused as a result of refusal by a biosecurity officer or by the Authority to grant export clearance of a regulated article, unless malice or negligence is proved.

(7) A person (including an agent, corporate entity, trading business, organization or association), other than a person described in subsection (1)(a) to (1)(c), that applies or fails to properly apply for biosecurity export clearance of a regulated article

commits an offence.

Grant of biosecurity export clearance

40. (1) Before granting biosecurity export clearance in respect of an article or consignment, a biosecurity officer shall be satisfied –

- (a) that the biosecurity certification requirements of the receiving country have been complied with;
- (b) that any biosecurity measures specified under section 37(1) in respect of an animal, plant, their products or host material have been applied
- (c) the person applying for biosecurity entry clearance of the article or consignment is as described in section 39(1); and
- (d) arrangements for payment of specified fees and charges relating to the article or consignment have been made as specified by the Authority.

(2) If an outgoing article that requires biosecurity export clearance is found to be infected, infested or contaminated by an export-regulated pest or disease, biosecurity clearance shall be refused in respect of it.

(3) A decision on an application for biosecurity export clearance must be communicated to the applicant as soon as reasonably practicable after the application is received duly completed.

(4) If the decision is to refuse clearance, the applicant must be notified in writing, with brief reasons.

(5) If a biosecurity officer considers it necessary to inspect any outgoing article or consignment, section 51 applies for the purposes of this section..

PART 6 – BIOSECURITY QUARANTINE

Biosecurity quarantine of regulated articles

41. (1) A biosecurity officer may, by notice in writing to the importer, order into biosecurity quarantine any incoming regulated article if –

- (a) the article is a prohibited import and shall, therefore, be reconsigned or destroyed;
- (b) quarantine is a biosecurity import requirement for the article; or
- (c) during biosecurity entry inspection or biosecurity import clearance inspection the article is found to be, or is suspected to be, infested, infected or contaminated.

(2) A biosecurity officer may, by notice in writing to the exporter, order into biosecurity quarantine any outgoing regulated article if –

- (a) the receiving country requires the article to be placed in quarantine for biosecurity purposes for a period before being embarked for export; or
- (b) in the opinion of the Authority, placement of the article in biosecurity quarantine before export is necessary to comply with the pre-export biosecurity requirements of the receiving country.

(3) If an article is ordered into biosecurity quarantine under this section, a biosecurity officer may –

- (a) in writing direct the importer or exporter to remove the article to a specified biosecurity quarantine station or biosecurity holding area or biosecurity approved premises;
- (b) if necessary (because the importer, exporter, owner or custodian refuses to obey the direction, or because of the nature of the biosecurity risk) arrange for the article to be removed to a

biosecurity quarantine station or biosecurity holding area or biosecurity approved premises.

(4) An importer or exporter who refuses to remove an article to biosecurity quarantine as directed under this section

commits an offence.

(5) The cost of removal of an article to biosecurity quarantine shall be borne by the importer or exporter of the article, and no compensation is payable for any loss or destruction or consequential loss caused as a result of any such removal, unless negligence or malice is proved.

(6) If an article is quarantined under this section, the importer or exporter shall be given written notice stating the reasons for the quarantine and, if it was removed under subsection (3)(b), the location of the article.

Conditions of biosecurity quarantine

42. (1) The Authority may make specifications as to –

- (a) the examination, treatment, disposal or destruction of articles while in biosecurity quarantine or in transit to or from biosecurity quarantine;
- (b) the period for which different types of regulated articles shall remain in biosecurity quarantine;

(2) The cost of keeping an article in biosecurity quarantine shall be borne by the importer or exporter of the article.

(3) No compensation is payable for any loss or destruction or consequential loss caused by an item being detained in biosecurity quarantine, unless negligence or malice is proved.

Release from biosecurity quarantine

43. (1) A conveyance, container or article shall not be released from biosecurity quarantine except upon the Authority of a biosecurity quarantine release certificate issued by a biosecurity officer.

(2) Before an article can be released from biosecurity quarantine:

- (a) any examination, test or treatment required as a condition of importation or exportation of the article shall have been applied; and
- (b) arrangement for payment of specified fees and charges relating to performance of biosecurity entry clearance and quarantine on the

conveyance, container, article or consignment shall have been made as specified by the Authority.

(3) Once subsection (2) has been complied with, a biosecurity release certificate shall be issued and the conveyance, container or article shall be released from biosecurity quarantine within twenty-four hours.

(4) A person who releases a conveyance, container or article from biosecurity quarantine contrary to subsection (1)

commits an offence.

Biosecurity quarantine notices

44. (1) A biosecurity officer may affix a notice on any biosecurity quarantine station, biosecurity holding area or biosecurity approved premises, and on any conveyance, container or article held in biosecurity quarantine, stating the conditions and duration of quarantine and other information relating to the station or holding area or premises or the item, as specified by the Authority.

(2) A person who removes, adulterates or interferes with a notice affixed under subsection (1) without lawful authority

commits an offence.

No plant or animal to be at large

45. (1) No person may liberate or cause to be liberated and let go at large from a biosecurity quarantine station, biosecurity port quarantine area, biosecurity holding area or biosecurity approved premises any animal, plant or organism that is subject to biosecurity control under this Act.

(2) A person who contravenes subsection (1) is not entitled to any compensation for loss of or damage to the animal, plant or organism occasioned by its being recaptured and confined or if necessary destroyed in accordance with Parts 7 and 8.

(3) A person who contravenes subsection (1) commits an offence and, in addition to the prescribed penalty, is liable to pay the Authority the cost of recapturing and confining or, if necessary, destroying the animal, plant or organism.

Biosecurity quarantine stations

46. (1) The Authority, may by order designate any public or private land or premises as a biosecurity quarantine station for animals, animal products, plants, plant products, bio-control agents, conveyances, containers, host material or other goods for the purposes of this Act.

(2) Before designating any private land or premises as a biosecurity quarantine station, the Authority shall consult the owner for use of the land or premises as a quarantine station.

(3) The Authority shall prescribe a biosecurity standard pursuant to section 91 detailing the fittings, facilities and operational requirements of a quarantine station designated for the purposes of this Act, as are needed to –

- (a) hold regulated articles in biosecurity quarantine;
- (b) prevent an unauthorized person from entering the quarantine station or removing an item from the station;
- (c) enable the Authority to perform an examination, obtain a sample or specimen, perform a test, provide treatment and apply other biosecurity measures as required by or under this Act;
- (d) provide that the biosecurity measures applied at the station are adequately documented and administered.

(4) The operator of a biosecurity quarantine station, including a department of government or statutory body, shall be responsible and liable for providing fittings and facilities, and managing and administering the quarantine station operations in conformity with the biosecurity standard under subsection (3).

(5) The Authority may apply a test and require that a biosecurity quarantine station be under the charge, control and management of a fit and proper person in accordance with section 111 of this Act.

Management of biosecurity quarantine stations

47. (1) No person, other than the person in charge of the station or a biosecurity officer acting in the course of duty, shall enter or exit from a biosecurity quarantine station without the written permission of the Authority or of the person in charge of the station.

(2) A biosecurity officer may, in order to reduce a biosecurity risk, lock, seal or otherwise prevent entry to and exit from a biosecurity quarantine station or any building in it, regardless of the ownership of the station.

(3) A person who –

- (a) enters or departs a biosecurity quarantine station without permission pursuant to subsection (1); or
- (b) damages, interferes with or in any way reduces the effectiveness of measures taken to secure a biosecurity quarantine station, or any regulated article or other item in the station,

commits an offence.

(4) The Authority may issue written instructions to the person in charge of a biosecurity quarantine station as to the management of the station.

PART 7 – POWERS OF BIOSECURITY OFFICERS

General rules as to exercise of powers

48. (1) The powers conferred by this Act on biosecurity officers may be exercised only for the purpose of ascertaining whether there is a biosecurity risk presented by a conveyance, facility, premises, container or item, eliminating or reducing the risk to an acceptable extent, and competently investigating suspected offences under this Act.

(2) A reference in this Act to a biosecurity officer, when exercising powers, means a duly authorized biosecurity officer acting in the performance of his or her duties.

(3) A biosecurity officer may use reasonable force when exercising a power under this Act, and if necessary, the officer should obtain the assistance of a police officer to effect an arrest or to enter private premises.

(4) Before exercising a power to enter and search premises, to search a conveyance or container or to inspect or test or treat or cause to be tested or treated any article, a biosecurity officer shall, if practical, request the consent and assistance of the person in control of the premises, conveyance, container or article.

(5) Except as otherwise provided in this Act, a biosecurity officer may exercise a power under this Act without a warrant or other order of a magistrate, provided the action is taken in good faith for the purposes of this Act.

(6) A biosecurity officer exercising powers under this Part shall produce for inspection his or her identification as an officer, upon request by the person in charge of the conveyance, premises or area, or the importer, exporter, owner or custodian of the item, in respect of which the power is being exercised.

(7) Before exercising a power in relation to shipping, civil aviation, human health, the environment or any other activity governed by another Act, a biosecurity officer may, if practicable, consult the officer or authority responsible under that Act for that activity.

(8) The powers conferred on biosecurity officers by or under this Act shall be exercised subject to –

(a) any regulations made under this Act in respect of those powers;

- (b) any biosecurity specifications made in respect of regulated articles;
- (c) any written directions of the Authority given under section 83;
- (d) any biosecurity standard made under this Act pursuant to section 91
- (e) any biosecurity compliance agreement entered into under this Act pursuant to Section 92
- (f) the provisions of –
 - (i) the *Vienna Convention on Diplomatic Relations 1961* relating to the premises of a diplomatic mission, diplomatic bags and the personal baggage of diplomatic agents;
 - (ii) the *Vienna Convention on Consular Relations 1963* relating to consular premises, archives and documents.

Entry, search and seizure

49. (1) A biosecurity officer may at any time –

- (a) stop, search and detain, at a place specified, a conveyance reasonably suspected of seeking to enter or leave or within Papua New Guinea with an article subject to this Act; or
- (b) if the master or captain or driver is suspected of committing an offence against this act;

whether or not the conveyance is seeking to enter or depart at a designated biosecurity point of entry or departure.

- (2) A biosecurity officer shall -
 - (a) search an incoming conveyance at a biosecurity port holding area to ascertain whether the vessel or aircraft or vehicle has on board any regulated article that might pose a biosecurity risk;
 - (b) search an outgoing conveyance if the officer has reason to believe there is on board any article that requires export clearance for which clearance has not been obtained from a biosecurity officer;
 - (c) at any time enter and search any premises, building or area, including a biosecurity holding area, biosecurity quarantine station or biosecurity approved premises and land adjacent to a

dwelling house, but not a dwelling house, in order to ascertain the presence of any article that poses biosecurity risk or any article that may be evidence of an offence under this Act that the officer reasonably suspects to be in it;

- (d) at any time with the consent of the owner enter and search a dwelling house for the purposes of this Act
- (e) at any time on a warrant issued under subsection 3 enter and search a dwelling house for any article that poses biosecurity risk or any item that may be evidence of an offence under this Act that the officer reasonably suspects to be in it

(3) If a magistrate is satisfied on affidavit evidence of a biosecurity officer that -

- (a) there may be in a dwelling house an article that poses biosecurity risk or any item or document that may be evidence of an offence under this Act; and
- (b) the consent of the owner or occupier to entry and search of the house cannot be obtained, or the action of obtaining the consent of the owner may jeopardize biosecurity or evidence of an offence against this Act

The magistrate may issue a warrant authorizing the officer to enter and search the dwelling house for an article that poses biosecurity risk and any item, document or other evidence of an offence under this Act

(4) A biosecurity officer may at any time enter and search any market place, shop, store, warehouse, silo, pen or similar premises, or any conveyance, in which an article that is suspected of posing biosecurity risk or item or document that may be evidence of an offence under this Act, may be kept.

(5) A person who keeps or is suspected of keeping an article that poses biosecurity risk in or on any premises, or in a conveyance, prior to entry, export or movement of it shall make the premises or conveyance available for inspection by a biosecurity officer upon request at any reasonable time.

(6) A person who contravenes subsection (5)

commits an offence.

(7) During a search of premises or a conveyance or a dwelling house under this section a biosecurity officer may seize anything which -

- (a) is a regulated article for which clearance may not have been obtained from a biosecurity officer; or

- (b) may be used as evidence of the commission of an offence under this Act.

(8) A biosecurity officer who seizes anything from a person under subsection (7) shall-

- (a) inform the person of the reason for the seizure;
- (b) give the person a receipt for the thing seized; and
- (c) remove the thing to a place of safekeeping and deal with it in accordance with this Act.

(9) A biosecurity officer may, at the expense of the importer or owner, submit to appropriate biosecurity measures any regulated article seized pursuant to this section.

Inspection of documents

50. (1) A biosecurity officer may—

- (a) call for and inspect documents on or in an incoming or outgoing conveyance as provided in section 15 and section 20 respectively;
- (b) at any time, call for the owner or person in control or custody of a document relating to a regulated article or a conveyance or a biosecurity holding area or a biosecurity quarantine station or a biosecurity approved premises or a premises specified for performance of biosecurity detention or biosecurity quarantine or a biosecurity pest infested area or a biosecurity pest free area, or a document that may be or that may contain evidence of an offence under the Act, to provide the document, within a specified period, inspect the document and seize the document;
- (c) open and inspect at a biosecurity point of entry any incoming document, including mail, in order to ascertain whether the document contains or relates to a regulated article or offence under this Act;
- (d) open and inspect at a biosecurity point of departure any outgoing document, including mail, if the officer reasonably suspects that the document contains or relates to -
 - (i) a regulated article for which clearance has not been obtained from a biosecurity officer that requires biosecurity export clearance; or
 - (ii) a regulated article that could pose a biosecurity threat to the country of destination of the document.

(2) The powers relating to mail in subsection (1)(c) and (d) shall only be exercised in respect of a personal letter if the officer reasonably suspects that a letter contains or relates to a biosecurity threat or to an offence under the Act.

(3) A person in possession, custody or control of a document who fails or refuses to provide the document within the specified period, or who fails or refuses to permit the document to be opened or inspected when reasonably requested by a biosecurity officer to provide it or to present it for inspection

commits an offence.

Inspection of articles

51. (1) A biosecurity officer shall, at a biosecurity holding area or biosecurity port quarantine area or biosecurity quarantine station or a biosecurity approved premises or a specified place for the performance of biosecurity, inspect any incoming regulated article, and any conveyance, container or baggage in which the article is carried, in order to assess the biosecurity risk presented by the article, conveyance, container or baggage.

(2) A biosecurity officer shall, at a biosecurity quarantine station, biosecurity approved premises or a specified place for the performance of biosecurity or a biosecurity point of departure, inspect any article, which requires biosecurity export clearance, in order to facilitate such clearance.

(3) The powers of inspection in subsections (1) and (2) are in addition to the powers of inspection in section 24 and section 34 and any other powers of inspection in or under this Act.

(4) For the purpose of exercising the powers of inspection under this Act, a biosecurity officer shall request an importer or exporter to unpack and/or break up a consignment, or to open a container, or to confine and present any animal or plant or any animal or plant product.

(5) The biosecurity officer is not liable to any risk or expenses occasioned in the exercise of duties under subsection (4) of this section.

(6) If an importer or exporter refuses to comply with a request under subsection (4) –

(a) the person,

commits an offence;

(b) the biosecurity officer may break up a consignment or open a container or cause it to be broken or opened, or confine and

present or cause to be confined and presented any animal or plant or any animal or plant product;

- (c) the cost of action under paragraph (b) is a debt owing to the Authority by the importer or exporter, as the case may be;
- (d) no liability lies on the Government, the Authority or any biosecurity officer and no compensation is payable, for the action of breaking up or opening or confining or presenting, unless negligence or malice is proved.

(7) When conducting an inspection under this Act, a biosecurity officer shall seek access to, and may make documents and take copies of any evidence, information, records, documents and things related to the regulated article or consignment that the officer reasonably requires in order to ensure conformity with this Act or to investigate a possible offence under it.

(8) Inspection of articles in transit is governed by section 33(9).

Detention of articles

52. (1) If an incoming regulated article requires biosecurity measures to be taken in respect of it before biosecurity import clearance can be granted, a biosecurity officer shall detain the article, and any conveyance, container or baggage in which the article is carried, for biosecurity measures to be taken.

(2) If an outgoing regulated article that requires biosecurity export clearance has not been cleared, a biosecurity officer may detain the article, and any conveyance, container or baggage in which the article is carried, until clearance or other disposition of the article under this Act.

(3) An article detained under this section shall be detained in a place specified by the biosecurity officer, being a biosecurity holding area, biosecurity quarantine station, biosecurity approved premises or any other suitable specified place.

(4) If an article is to be detained under this section, a biosecurity officer may –

- (a) direct the importer or exporter of the article to remove it to the specified place;
- (b) if necessary (because the importer or exporter refuses to obey the direction, or because of the nature of the biosecurity risk,) arrange for the article to be removed to the specified place.

(5) If an article is detained under this section, a biosecurity officer shall give to the importer or exporter a notice in writing stating the reasons for the detention and, if it was removed under subsection (4)(b), the specified place.

(6) The cost of removal of an article to and its detention in a specified place is to be borne by the importer or exporter, and no compensation is payable for any loss or destruction or consequential loss caused as a result of any such removal or detention, unless negligence or malice is proved.

Taking of specimens or samples

- 53.** (1) A biosecurity officer may, take samples or specimens from -
- (a) any part of an incoming vessel or aircraft or vehicle that has on board regulated articles;
 - (b) any warehouse, premises or place containing regulated articles intended for importation ;
 - (c) any consignment of incoming regulated articles, wherever located;
 - (d) any incoming container, baggage or thing that the officer reasonably suspects to be or include a regulated article.

(2) An importer who refuses either to allow samples or specimens to be taken or to provide samples, when required to do so under this section,

commits an offence.

(3) A biosecurity officer may, take samples or specimens of any outgoing regulated article if the taking of a sample or specimen is necessary for the issue of a sanitary or phytosanitary certificate, or to determine the likely presence or absence of an export-regulated disease or pest or an export-regulated noxious or injurious contaminant.

(4) If the person in charge of a regulated article refuses to provide a sample or a specimen under subsection (3), the sanitary or phytosanitary certificate will not be issued.

(5) A biosecurity officer may request the importer or exporter of a consignment to unpack it or break it up, or to confine and present an animal or a plant or an animal or plant product to facilitate the taking of a sample or a specimen, at the risk and expense of the importer or exporter.

(6) When exercising powers under subsection (1), a biosecurity officer shall give the importer or exporter a written notice, identifying the quantity of the sample or specimen and the place where the sample or specimen shall be analyzed.

(7) In other respects, the procedure for taking and analyzing a sample or a specimen, recording the results and disposing of the sample or specimen is as prescribed or specified.

(8) If, in the course of taking of a sample or a specimen, goods are destroyed or damaged no compensation shall be payable to the importer or exporter of the goods, unless negligence or malice is proved.

(9) The importer or exporter of a regulated article from which a sample or a specimen is taken under subsection (1) shall be notified in writing of the findings in respect of the sample or specimen as soon as reasonably practicable.

Destruction of animals or plants for examination

54. (1) If a biosecurity officer examining an animal or plant pursuant to this Act suspects that the animal or plant is diseased and considers that destruction is necessary to establish a diagnosis, the officer may, on the written direction of the Authority, and without the consent of the owner –

- (a) cause the death of the animal or plant;
- (b) cause an examination to be conducted thereafter to decide whether the animal or plant is diseased; and
- (c) obtain a sample or a specimen from the animal or plant for examination and diagnosis.

(2) If an examination is conducted pursuant to subsection (1), the results of the examination and any reports resulting from the examination must be provided in writing to the Authority and to the owner of the animal or plant, if the owner can be identified and located.

Testing of articles

55. (1) A biosecurity officer may test, or cause tests to be conducted on, any incoming regulated article, in order to ascertain whether the article meets the biosecurity import requirements in respect of it

(2) Following a test of an incoming article, biosecurity import clearance may be granted in respect of it, and the article either released to the importer, or treated in accordance with section 56 or reconsigned in accordance with section 57 or destroyed in accordance with section 58.

(3) Subject to subsection (4) of this section, a biosecurity officer shall test, or cause tests to be conducted on, any outgoing regulated article that requires biosecurity export clearance if such tests are a condition for importation into the receiving country.

(4) The exporter of the regulated article shall conform to the conditions of the receiving country as it relates to such testing

(5) Following tests on an outgoing article, biosecurity export clearance shall either be granted or refused in respect of the article.

(6) Section 52(3) to 52(6) apply to articles detained for testing under this section.

(7) The importer or exporter of a regulated article which is tested under subsection (1) or (3) shall be notified in writing of the results of the test before the article is released or otherwise disposed of.

(8) If a test conducted under subsection (1) or (3) destroys or damages an animal or plant or other article being tested, no compensation is payable to the importer or exporter of the animal or plant or other article unless negligence or malice is proved.

Treatment of articles

56. (1) If an incoming regulated article requires treatment in order to meet the biosecurity import requirements in respect of it, the article shall be treated as specified prior to departure at the country of origin before biosecurity import clearance may be granted in respect of it.

(2) If an incoming article is found to be infected, infested or contaminated by a regulated pest or disease, the article shall be treated to reduce the biosecurity risk to an acceptable level, whether or not treatment is a specified requirement or a condition of an import permit.

(3) Section 52(3) to 52(6) apply to articles detained for treatment under this section.

(4) Once treatment has been administered to the satisfaction of the biosecurity officer, biosecurity import clearance shall be granted in respect of it and the article shall, be released to the importer.

(5) The cost of treatment shall be borne by the importer of the item, and the importer may opt to have the article reconsign or destroyed.

(6) If an importer fails to have an article which requires treatment under this section treated within a reasonable time, the biosecurity officer may require the article to be destroyed.

(7) If –

(a) appropriate treatment is not available;

(b) in the opinion of a biosecurity officer, there would still be a

biosecurity risk after treatment;

the article shall be reconsigned or, if the importer chooses, or if section 57(5) applies, destroyed.

(8) Notice of action to be taken under subsection (6) or (7) shall be provided to the importer in writing before the action is taken, except in relation to articles in passenger baggage which are detained for destruction in the presence of the owner or custodian.

(9) If an outgoing regulated article requires treatment as a condition of importation into the receiving country, the article shall be treated at the expense of the exporter before biosecurity export clearance may be granted in respect of it.

(10) If, in the course of treatment, goods are destroyed or damaged, no compensation shall be payable to the importer or exporter of the goods, unless negligence or malice is proved.

(11) Treatment of an article –

- (a) shall be the minimum required to remove or adequately reduce the biosecurity risk posed by the article;
- (b) may be administered by an appropriately qualified biosecurity officer, or by any other suitably qualified person under the supervision of the Authority.

Reconsignment of articles

57. (1) If an incoming regulated article which requires an import permit or a sanitary or phytosanitary certificate does not have the permit or certificate accompanying with it, a biosecurity officer shall, after detaining the article, notify the importer in writing of the need for reconsignment or destruction of the article.

(2) An incoming article that is a prohibited import shall be reconsigned or destroyed.

(3) Reconsignment shall be at the cost of the importer, and the reconsignment must be effected within a time specified by the biosecurity officer, which shall be reasonable in the circumstances;

(4) The power to order reconsignment of an article under this section applies also to any container, crate, baggage, package or mail which includes it.

(5) If reconsignment is not effected within the time specified under subsection (3), or is not acceptable, the article or consignment shall be destroyed.

(6) No compensation is payable to the importer for the cost of reconsignment or destruction under this section.

Destruction of articles

58. (1) If this Act requires or authorizes an article to be destroyed, other than for the purposes of performing an examination for diagnosis of a disease pursuant to Section 52, the destruction of the article shall be in accordance with this section.

(2) If an incoming article is found to be infected, infested or contaminated by a regulated pest or disease or a noxious or injurious contaminant, and –

- (a) appropriate treatment is not available;
- (b) in the opinion of the Authority, there would still be a biosecurity risk after treatment

the article shall be destroyed.

(3) The power of destruction of articles in subsection (2) is in addition to any other power of destruction in or under this Act.

(4) Destruction of an article under this Act may include any host material, container, crate, baggage, package or mail which includes it.

(5) Packaging and host material accompanying an article may be considered as not part of a consignment and may be destroyed, if considered to pose a biosecurity risk, whether or not the article is destroyed.

(6) The manner of destruction of articles under this section is as specified or approved by the Authority, and the importer or owner of the article shall be invited to witness the destruction.

(7) The Authority shall give notice to destroy any article to the importer or owner in writing before the action is taken.

(8) No compensation shall be payable to the importer for destruction of an article under this section unless malice or negligence is proved.

Powers to monitor biosecurity areas, premises and activities

59 (1) A biosecurity officer may at any time or place, visually observe and record, whether or not physically present at the location, from a distance, by remote means or with the aid of magnification devices, any biosecurity holding area, biosecurity quarantine area, biosecurity quarantine station, biosecurity approved premises or any place designated for performance of biosecurity, including any process or activity relating to the performance of biosecurity at any place, but not including within a dwelling house.

(2) The Authority may install, operate and maintain or cause to be installed, operated and maintained, photographic, closed circuit television or video monitoring and recording equipment at any biosecurity holding area or biosecurity port quarantine area or biosecurity quarantine station or a biosecurity approved premises, but not within a dwelling house, including a dwelling house within a biosecurity holding area, quarantine area, quarantine station or approved premises.

(3) If the Authority causes photographic, closed circuit television or video monitoring and recording equipment to be installed, operated and maintained at any biosecurity holding area or biosecurity port quarantine area or biosecurity quarantine station or a biosecurity approved premises under subsection (2), the expenses of installation, operation and maintenance shall be borne by the owner or operator or custodian of the biosecurity holding area or biosecurity port quarantine area or biosecurity quarantine station or biosecurity approved premises.

(4) A person who interferes with, damages, removes or reduces the effective application of photographic, closed circuit television or video monitoring and recording equipment installed, operated and maintained, or caused to be installed, operated and maintained, by the Authority under subsection (2),

commits an offence.

Powers to detain and question a person:

60 (1) Powers of biosecurity officers under this section shall be subject to the provisions that -

- (a) a person shall not be compelled to answer a question unless compelled by a biosecurity officer to answer a question pursuant to subsection (4)
- (b) a question and an answer that a person provides in response to a question by a biosecurity officer may be taken in evidence;
- (c) the answer provided by a person to a question reasonably posed by a biosecurity officer shall be truthful and shall not be misleading;
- (d) a person who provides an answer to a question reasonably posed by a biosecurity officer that, on balance of probabilities, is untruthful or misleading,

commits an offence.

(2) A biosecurity officer may question, in relation to any relevant matter, any person, including another biosecurity officer, that the biosecurity officer has reason to suspect may have intent to, knowledge of, or involvement with -

- (a) import of an incoming regulated article;
- (b) export of an outgoing regulated article;
- (c) entry of, spread of, or establishment of a disease or pest or a noxious or injurious contaminant capable of affecting an animal or a plant or an animal or plant product;
- (d) custody of, or movement of, an animal, a plant, an animal or plant product, goods including personal baggage, or a conveyance that may be contaminated or infested with a disease or pest or a noxious or injurious contaminant capable of affecting an animal or a plant or an animal or plant product;
- (e) ownership, control or custody of any land, dwelling house, building or premises, that may be contaminated or infested with a disease or pest or a noxious or injurious contaminant capable of affecting an animal or a plant or an animal or plant product, or of any document or thing that may be evidence of an offence under this Act
- (f) an offence under this Act.

(3) If a biosecurity officer is of the opinion that a person is as under subsections 2(a) to 2(f) inclusive, and there is a need to determine the facts in relation to an article, disease or pest or noxious or injurious contaminant to reduce or minimize or eliminate a biosecurity threat, the officer may -

- (a) detain the person for questioning without warrant or reference to a Magistrate or a Court
- (b) only detain the person for such period as is reasonably required to pose questions in relation to those matters and to take into evidence the questions posed and the answers provided
- (c) use reasonable force to detain the person as is reasonably required to pose questions in relation to those matters and to take into evidence the questions posed and the answers provided.

(4) A biosecurity officer may compel a person, including another biosecurity officer, to answer a question -

- (a) this power is subject to the provision that, if a person self-incriminates when answering a question whilst being compelled by a biosecurity officer to answer, that person has immunity against self-incrimination, in so far as it relates to the question and the matter in which the person self-incriminates whilst answering;
- (b) when exercising this power, a biosecurity officer shall caution the person before posing the question, including by advising the person of their right to immunity against self-incrimination when truthfully answering a question whilst being lawfully compelled to answer, and that the answer may be taken into evidence;
- (c) a person who fails to answer a question when compelled by a biosecurity officer to answer pursuant to this subsection

commits an offence.

Powers to detain and search a person

- 61.** (1) If a biosecurity officer is of the opinion that a person –
- (a) seeking to enter or depart Papua New Guinea;
 - (b) employed at a biosecurity point of entry or departure, in a biosecurity holding area or a biosecurity quarantine station, or at biosecurity approved premises, or at a specified place for performance of biosecurity;
 - (c) engaged in importing or exporting regulated articles;
 - (d) in custody of an article or goods intended for import or export
 - (e) in custody of a regulated article or goods intended for movement into a biosecurity disease or pest or a noxious or injurious contaminant free area, or into or out of or within a biosecurity disease or pest or a noxious or injurious contaminant infested area or a biosecurity emergency area
- (f) is in possession or control of an article that poses a biosecurity threat,
- the officer may detain the person.

(2) If a biosecurity officer suspects that there may be upon a person seeking to enter Papua New Guinea an article that would, if imported or entered, constitute an offence under this Act, the officer may cause the person and the person's baggage to be searched.

(3) If a biosecurity officer suspects that there may be upon a person seeking to depart Papua New Guinea an article that would, if exported or taken from Papua New Guinea, constitute an offence under this Act, the officer may cause the person and the person's baggage to be searched.

(4) If a biosecurity officer suspects that there may be upon a person seeking to enter a biosecurity disease or pest or a noxious or injurious contaminant free area, or seeking to enter or depart a biosecurity disease infected or pest or a noxious or injurious contaminant infested area, or entering or departing or within a biosecurity emergency area, an article that would, if entered into or taken from or moved within the area, constitute an offence under this Act, the officer may cause the person and the person's baggage to be searched.

(5) A search of a person under this section shall be performed by two officers of the same sex as the person searched.

(6) A person may be detained under this section only for a period reasonably required to search the person and the person's baggage and to arrange for biosecurity measures to be taken in respect of it.

(7) A person who refuses to submit to a search reasonably required under this section, commits an offence.

PART 8 – BIOSECURITY INTERNAL CONTROL

Powers of biosecurity officers in relation to a person

62. (1) Section 60 and Section 61(1)(e), (4), (5), (6) and (7) apply in relation to this part.

Pest and disease and noxious or injurious contaminant surveys

63. (1) The Authority, may conduct a survey of any area to ascertain the status of pests and diseases and noxious or injurious contaminants in the area and the related biosecurity risk.

(2) For the purposes of a survey under this section, a biosecurity officer may, in the area of the survey –

(a) inspect premises and equipment;

- (b) make documents;
- (c) inspect animals and plants and their products;
- (d) inspect host materials
- (e) question persons;
- (f) collect samples or specimens and perform tests relating to animals, plants, animal and plant products, host materials, land, water and the environment.

(3) For the purposes of a survey under this section, the Authority may direct the owners of an animal or a plant or an animal or plant product or host material in the area of the survey, or persons who have custody or control of them, to make them available for inspection and provision of samples or specimens at a place specified by the Authority.

(4) An owner or person who has custody or control of an animal, a plant or an animal or plant product or host material who refuses to make them available for inspection at a specified place as required under this section,

commits an offence.

(5) The Authority may provide for the publication and transmission of survey results to other interested governments and organizations in compliance with international agreements.

Entry, search and seizure

64. (1) If a biosecurity officer reasonably suspects the presence of a regulated pest or disease or evidence of an offence under this Act, the officer may -

- (a) at any time or place, stop, board and search any conveyance;
- (b) at any time enter and search any premises, building or area, including a biosecurity holding area, biosecurity quarantine station or biosecurity approved premises, and land and waters adjacent to a dwelling house, but not a dwelling house;
- (c) at any time with the consent of the owner enter and search a dwelling house for the purposes of this Act
- (d) at any time on a warrant issued under sub section 2 enter and search a dwelling house for articles that pose biosecurity risk or evidence of an offence under this Act that the officer reasonably suspects to be in it

(2) If a magistrate is satisfied on affidavit evidence of a biosecurity officer that -

- (a) there may be in a dwelling house articles that pose biosecurity risk or evidence of an offence against this Act; and
- (b) the consent of the owner or occupier to entry and search of the house cannot be obtained, or the action of obtaining consent of the owner may jeopardize biosecurity or evidence of an offence under this Act

the magistrate may issue a warrant authorizing the officer to enter and search the dwelling house for articles that pose biosecurity risk or for evidence of an offence under this Act

(3) During a search of premises or a conveyance or a dwelling house under this section a biosecurity officer may seize any article or item which -

- (a) is associated with the regulated pest and disease which the officer reasonably suspects poses a biosecurity risk; or
- (b) may be used as evidence of the commission of an offence under this Act.

(4) A biosecurity officer who seizes anything from a person under subsection (3) shall-

- (a) inform the person of the reason for the seizure;
- (b) give the person a receipt for the thing seized; and
- (c) remove the thing to a place of safekeeping and deal with it in accordance with this Act.

(5) A biosecurity officer may submit to appropriate biosecurity measures any article seized pursuant to this section.

Detention, treatment and testing of conveyances, animals, plants, animal and plant products and host material

65. (1) If a conveyance or an animal or a plant or an animal or plant product or host material is suspected of being infected by a regulated disease or infested by a regulated pest or a noxious or injurious contaminant, a biosecurity officer may direct the conveyance, animal, plant or product or host material be detained and confined in a biosecurity detention area designated by order of the Authority.

(2) Following detention under subsection (1), a biosecurity officer may treat or test, or cause to be treated or tested, any conveyance or animal or plant or animal or plant product or host material.

(3) If after testing or treatment as in subsection (2) the conveyance or animal, plant or product or host material is considered to pose a biosecurity risk, the officer may further detain it in the specified place for biosecurity measures to be taken in respect of it, but only for so long as is required for biosecurity measures to be taken in respect of it.

(4) If a conveyance or an animal or plant, or animal or plant product, or host material is to be detained under this section, a biosecurity officer may –

- (a) direct the owner or custodian to remove it to the place specified under subsection (1);
- (b) if the owner or custodian refuses to obey the direction, or because of the nature of the biosecurity risk, arrange for the conveyance or animal or plant or product or host material to be removed to the specified place.

(5) An owner or person who has custody or control of a conveyance or an animal or a plant or an animal or plant product or host material suspected of being infected with a regulated disease or infested with a regulated pest or a regulated noxious or injurious contaminant and who refuses to remove them to detention at a specified place as required under this section,

commits an offence.

(6) If an animal or plant or animal or plant product or host material is detained under this section, the owner or custodian shall be given a written notice stating the reasons for the detention and, if it was removed under subsection (4)(b), the specified place.

(7) The cost of removal of an article to and its detention in a specified place under this section shall be as prescribed by the Authority, and the owner shall be entitled to compensation, not including for consequential loss, for damage to or destruction of an article caused as a result of any such removal or detention.

(8) Section 12 applies to places specified under this section as it applies to biosecurity holding areas, except that section 12(1) does not apply.

Treatment or destruction of animals and plants and their products and host material

66. (1) If treatment is available to eliminate or reduce to an acceptable level the biosecurity risk posed by a conveyance or an animal or plant or animal or plant product or host material that has been detained under section 65, a biosecurity officer may –

- (a) administer such treatment, or cause it to be administered;
 - (b) after treatment, release the conveyance or animal or plant or product or host material to the owner or custodian.
- (2) If –
- (a) in the opinion of a biosecurity officer, appropriate treatment is not available; or
 - (b) in the opinion of a biosecurity officer, there would still be a biosecurity risk after treatment;

a biosecurity officer shall destroy the animal or plant or product or host material, but may only destroy a conveyance if authorized by the Authority.

(3) Notice of action to be taken under subsection (2) shall be given to the owner or custodian in writing before the action is taken.

(4) The cost of treatment or destruction under this section shall be as specified by the Authority, and the owner shall be entitled to compensation (but not including consequential loss) for destruction of an article under this section.

Infested or infected biosecurity controlled areas

- 67.** (1) If –
- (a) an animal or plant on land or waters or premises in any area is found to be infested by a disease or pest or a noxious or injurious contaminant; and
 - (b) the powers in sections 64, 65, and 66 are inadequate to control the outbreak,

The Minister, on the advice of the Authority, may by order declare the land or waters or premises to be an infested or infected biosecurity controlled area in respect of that pest or disease or the noxious or injurious contaminant.

- (2) An order under this section –
- (a) may include an area of adjacent land or water if necessary to effectively contain the infestation;
 - (b) shall be made as soon as practicable after the finding of the infestation;
 - (c) shall be published as required by section 110(1);
 - (d) comes into effect on making, if so declared.

(3) The Authority may prescribe a standard pursuant to section 91 detailing the fittings, facilities and requirements for management of premises, areas, conveyances, regulated articles, host material and items, being reasonably suspected of being infected with a disease or infested by a pest or by a noxious or injurious contaminant, in an infested or infected biosecurity controlled area.

(4) In an infested or infected biosecurity controlled area, a biosecurity officer may enter upon any land or waters at any time in order to ascertain the status of a regulated pest or disease or a noxious or injurious contaminant.

(5) In an infested or infected biosecurity controlled area, no animal or animal product, or plant or plant product, fodder, fitting or other thing as specified in the declaration, shall be moved out of, into or within the area except with the permission of the Authority and in accordance with any conditions reasonably imposed by the biosecurity officer.

(6) A person who contravenes subsection (5)

commits an offence.

(7) Following a further survey conducted under section 63, and on the advice of the Authority, the Minister may amend or revoke an order made under subsection (1).

(8) Before advising the Minister under this section, the Authority shall obtain appropriate scientific advice.

Regulation of infested or infected biosecurity controlled areas

68. (1) In an infested or infected biosecurity controlled area, the Authority may by order direct -

- (a) the treatment or disposal of diseased or infested animals and plants, an animal or plant product or host material;
- (b) the destocking, cleaning, disinfecting or other treatment of land, waters, premises and conveyances;
- (c) the inspection and treatment of regulated articles in or entering or departing the area;
- (d) any other biosecurity measures the Authority considers necessary to control the infection or infestation.

(2) In respect of an infested or infected biosecurity controlled area, the Authority may by order control -

- (a) the movement of animals or plants or their products, or host materials or other regulated articles into, out of or within the area;
- (b) the movement of humans and conveyances into, out of or within the area;
- (c) any other activity the Authority considers needs to be controlled to prevent the movement of a regulated pest or disease or a noxious or injurious contaminant into, within and out of the area.

(3) An order under subsection (1) or (2) shall create offences for breaches of it and prescribe maximum penalty fine of K10,000 for an individual and K50,000 for a corporate body, or fixed penalty of K1,000 for an individual or K5,000 for a corporate body.

- (4) An order under this section –
 - (a) shall be published as required by section 110(1) within thirty days of the order being made;
 - (b) takes effect from the date it is made.

(5) The cost of treatment or destruction under this section shall be as specified by the Authority, and the owner shall be entitled to compensation (but not including consequential loss) for destruction of an article under this section.

Pest-free biosecurity controlled areas

69. (1) The Minister, on the advice of the Authority may, by order, declare any area to be a pest-free biosecurity controlled area in respect of a specified disease or pest or a noxious or injurious contaminant.

(2) A pest-free biosecurity controlled area is one where the specified pest or disease or noxious or injurious contaminant does not occur, so far as is known, and where incursions of that disease or pest or noxious or injurious contaminant should be prevented.

- (3) An order under this section –
 - (a) shall be published as required by section 110(1) within thirty days of the order being made;
 - (b) takes effect from the date it is made.

(4) The Authority may specify a standard pursuant to section 91 detailing the fittings, facilities and requirements for management of premises, conveyances, regulated articles, host material and items in a pest-free biosecurity controlled area.

(5) Following a further survey conducted under section 63, and on the advice of the Authority, the Minister may amend or revoke an order made under subsection (1).

(6) Before advising the Minister under this section, the Authority shall obtain appropriate scientific advice.

Regulation of pest-free biosecurity controlled areas

70. (1) In respect of a pest-free biosecurity controlled area the Authority may by order direct-

- (a) control of the movement of regulated articles, humans and conveyances into and out of the area;
- (b) the inspection and treatment of regulated articles within or entering or departing the area;
- (c) to establish surveillance procedures for the specified disease or pest or noxious or injurious contaminant in the area.

(2) An order under subsection (1) –

- (a) shall only be made for the purposes of minimizing the risk of incursion, establishment and spread of the specified disease or pest or noxious or injurious contaminant into the biosecurity controlled area;
- (b) may create offences for breaches of the order and prescribe minimum penalty fine of K10,000 for an individual and K50,000 for a corporate body, or fixed penalty of K1,000 for an individual or K5,000 for a corporate body.

(3) An order under this section –

- (a) shall be published as required by section 110(1) within thirty days of the order being made;
- (b) takes effect from the date it is made.

(4) The Authority may by administrative means apply other measures to keep the biosecurity controlled area free of the specified disease or pest or the specified noxious or injurious contaminant.

Destruction of wild, feral or stray animals

71. (1) If the Authority has reason to suspect that a wild, feral or stray animal is infected with a regulated disease or infested with a regulated pest, or contaminated by a regulated noxious or injurious contaminant the Authority may, in order to minimize the risk of the disease or pest or the noxious or injurious contaminant from being established or spreading, cause the animal to be destroyed.

(2) The carcass of an animal destroyed under subsection (1) must be disposed of in a manner that will not create the risk of spread of a regulated disease or pest or noxious or injurious contaminant.

(3) Before destroying an indigenous wild animal and before disposing of animals destroyed under subsection (1), the Authority shall consult the authorities respectively responsible for environment, conservation of indigenous species and natural resources.

Notifiable diseases and pests and noxious or injurious contaminants

72. (1) The Authority shall declare by order each disease and pest and each noxious or injurious contaminant that is notifiable for the purposes of this section;

- (2) A declaration under this section –
 - (a) shall be published as required by section 110(1) within thirty days of the declaration being made;
 - (b) shall take effect from the date it is made.

(3) A person who knows of or suspects the occurrence of a notifiable disease or pest or a noxious or injurious contaminant shall as soon as reasonably practicable notify the Authority.

- (4) A person who fails to conform with subsection (3)

commits an offence.

(5) The Authority shall record in the biosecurity register each occurrence of a notifiable disease or pest or of a noxious or injurious contaminant that is notified under this section or that otherwise comes to the notice of the Authority.

- (6) In reference to a record of a notifiable disease or pest or a noxious or injurious contaminant occurrence in the biosecurity register –
 - (a) the Authority may codify sub-references to the place or premises where the disease or pest or noxious or injurious contaminant occurred for the purposes of preserving the rights of a persons to confidentiality, including commercial confidentiality; and
 - (b) if a sub-reference is not codified, the Authority shall not be liable for any compensation for loss (including consequential loss) that may be incurred by a person as a result of the sub-reference appearing in the biosecurity register, unless negligence or malice is proved.

Beneficial organisms and biological control agents

73. (1) A person intending to import a beneficial organism or biological control agent shall apply to the Authority in writing a reasonable time before proposed importation to enable biosecurity risk assessment to be completed, including by providing necessary information regarding:

- (a) the Latinized scientific name(s) of the beneficial organism or biological control agent and its taxonomic classification;
- (b) the known host-ranges of the beneficial organism or biological control agent from a competent research entity or reputable internationally published source;
- (c) the biology and ecology of the beneficial organism or biological control agent;
- (d) the intended use of the beneficial organism or biological control agent in Papua New Guinea;
- (e) the biosecurity quarantine station or biosecurity approved premises into which the beneficial organism or biological control agent is proposed to enter; and
- (f) any other information deemed relevant by the Authority for biosecurity risk assessment of the proposed importation.

(2) The applicant shall pay the prescribed fee for assessment of the application.

(3) The Authority shall perform or cause to be performed a biosecurity risk assessment, including a pest risk analysis or a disease risk analysis, based on the information supplied and any other relevant information it deems relevant in relation to the beneficial organism or biological control agent.

(4) If, upon completion of the biosecurity risk assessment, the Authority is satisfied that the beneficial organism or biological control agent poses no known or potential biosecurity threat to plant and animal life or consequential harm to human beings or agriculture or the environment or the economy of Papua New Guinea, it may authorize the release of the beneficial organisms or biological control agents in writing, including by specifying any matter or requirement that the Authority considers necessary or appropriate for the control of a particular disease or pest, or for remediation of the environment.

(5) If, following the biosecurity risk assessment under subsection (3), the Authority is of the opinion that the beneficial organism or biological control agent may cause unintended harm to plants or animals or consequentially to humans, agriculture,

the environment or the economy , it shall not grant entry and release of the beneficial organism or biological control agent;

(6) In forming an opinion in relation to subsections (4) and (5), the Authority shall have regard to the precautionary principle.

(7) If permission for entry and release is not granted under subsection (5), the Authority may require that additional information shall be provided or request the applicant for import of the beneficial organism or biological control agent to cause additional host-specificity studies to be performed on plants or animals that are known to occur in Papua New Guinea and that are genotypically or taxonomically closely related to the plant or animal pest that the beneficial organism or biological control agent is intended to control;

(8) Notwithstanding subsection (5), the Authority may grant a conditional import permit for the entry of a limited consignment of the beneficial organism or biological control agent for further research within a certified biosecurity quarantine station or biosecurity approved premises in Papua New Guinea if necessary research cannot practically be performed in the country of origin or a third country;

(9) Before completing a biosecurity risk assessment under subsection 3 or granting a release subsection (4), the Authority shall consult appropriate departments of government and statutory bodies respectively responsible for agriculture, fisheries, forestry, environment and natural resources.

(10) An authorization to release under subsection (4) shall identify –

- (a) the beneficial organism or biological control agent;
- (b) the disease or pest that it is intended to control, or environmental damage or degradation it is intended to remediate;
- (c) the area where it may be released;
- (d) the period during which it may be released;
- (e) the person who may release it; and
- (f) any conditions subject to which the approval is granted.

(11) No liability attaches to the State, the Authority or any public officer in respect of the release of an organism or a biological control agent in accordance with this section, unless negligence or malice is proved.

- (12) The Authority shall record in the biosecurity register -
 - (a) the names of any beneficial organism or biological control agent released under this section;
 - (b) the place of and extent of release of such organism or agent; and
 - (c) monitoring and reporting after release.

PART 9 – BIOSECURITY EMERGENCIES

Declaration of a biosecurity emergency area

74. (1) On receiving evidence that a biosecurity emergency has arisen in the whole or any part of Papua New Guinea, the National Executive Council may declare a biosecurity emergency in respect of the whole of or that part of Papua New Guinea.

(2) Before making a declaration under subsection (1) and revoking or extending the emergency under subsections (6) and (7), the National Executive Council shall obtain the advice of the Authority and shall consult the National Disaster Committee and the Administrator of each Province with territory within a proposed biosecurity emergency area.

(3) A biosecurity emergency area may include an area where an animal or plant is found to be infected or infested, or a disease or pest or noxious or injurious contaminant is found, and adjacent areas to the extent reasonably necessary.

- (4) Notice of a declaration under this section shall be –
 - (a) published as required by section 110(1); and
 - (b) displayed on noticeboards, signboards or similar throughout the biosecurity emergency area.
- (5) A declaration under subsection (1) –
 - (a) takes effect immediately it has been made
 - (b) shall be published as required by section 110(1) within thirty days after the date of being made;
 - (c) shall not remain in force for a period longer than necessary to address the biosecurity emergency situation and shall be revoked as soon as the biosecurity threat is removed or reduced to an acceptable degree.

(6) A declaration under subsection (1) expires on the date which is six months after it comes into force unless it is revoked or extended on or before that date

by a determination by the National Executive Council and subsection (2) applies to such a determination.

(7) An extension of a biosecurity emergency declaration by determination of the National Executive Council shall not be for more than six months from the date of the determination, but may be renewed in the same manner before the end of that period.

Response to a biosecurity emergency

75. (1) When a biosecurity emergency area is declared under section 74, the Authority shall undertake a detailed survey, using the powers in section 63, to ascertain the precise extent and severity of the incursion or other biosecurity threat and the most appropriate measures to take in response.

(2) In deciding on an appropriate response to a biosecurity emergency, the Authority should –

- (a) be guided by any Biosecurity Emergency Response Plan that has been devised by the Authority in consultation with other departments of government and statutory authorities;
- (b) as appropriate, consult and liaise with the National Disaster Committee and the Administrator of each province with territory within an emergency area.

(3) If the cost of a response to an emergency exceeds or is likely to exceed the current budget of the Ministry or the Authority, the Minister shall request the National Executive Council for additional funds, as provided by section 86(2).

Action in a biosecurity emergency area

76. (1) In respect of a biosecurity emergency area –

- (a) the Authority may by order require the Administrator of a province, Commissioner of Police and any department of government or statutory body to use their powers and resources to assist in the control or eradication of any pest or disease or noxious or injurious contaminant in the area;
- (b) the Authority may, after consultation, requisition in writing from any department of government or statutory body or department of the government of a Province with territory within an emergency area, for the use of the Authority, any conveyance or equipment that the Authority reasonably considers is necessary for preventing, eradicating or limiting the spread of a pest or disease or noxious or injurious contaminant;

- (c) a biosecurity officer may enter upon any land or water at any time in order to ascertain the status of a pest or disease or noxious or injurious contaminant;
- (d) the Authority may appoint temporary additional personnel, whether or not having the powers of biosecurity officers, to effectively respond to the biosecurity emergency.

(2) In a biosecurity emergency area, the Authority may do or cause to be done any of the following –

- (a) mark the boundaries of the emergency area;
- (b) set up road-blocks or water passage blocks at all points of departure from the area;
- (c) set up facilities for the cleansing and disinfection of all persons and conveyances entering or departing the area and any other thing likely to spread any disease or pest;
- (d) collect or cause to be collected a sample or specimen from an animal, a plant, an animal or plant product or host material;
- (e) test or cause to be tested a sample or a specimen from an animal, a plant, an animal or plant product or host material.
- (f) disinfect all conveyances, crates, packing, animals, plants, host material and other things which are likely to be contaminated with a disease or pest and which are being sent out of the area;
- (g) inspect and disinfect any person and their possessions leaving the area so as to minimize the risk of any host material that may be contaminated from leaving the area;
- (h) for the purposes of paragraphs (f)(g) and (i), detain any person, animal, plant, animal and plant product, host material, goods, conveyance or article for as long as is necessary to minimize or eliminate the biosecurity risk presented by them;
- (i) perform surveillance activities to ascertain the extent and status of the emergency;
- (j) visually monitor by any means, or install operate and maintain, or cause to be installed operated and maintained any photographic, closed circuit television or video monitoring and recording equipment or devices at any place or time, except in a dwelling house;

- (k) detain and question any person in relation to any matter relevant to the containment, inspection, treatment and management of a pest or disease capable of affecting a plant or an animal, and in relation to the emergency;
 - (l) destroy or cause to be destroyed and disposed, any item infected or infested with the regulated disease, pest or noxious or injurious contaminant to prevent establishment or spread within or from an emergency area.
- (3) A person who –
- (a) resists, obstructs or, without reasonable excuse, fails to conform to a direction of the Authority, a biosecurity officer, a police officer or other person performing duties under this section;
 - (b) enters or departs a biosecurity emergency area except with and in accordance with the permission of the Authority or a biosecurity officer; or
 - (c) moves any article out of or into a biosecurity emergency area, or from one place within the area to another place within that area, except with and in accordance with the written permission of the Authority or a biosecurity officer,

commits an offence.

- (4) Articles moved in contravention of subsection (3)(c) may be detained or seized by a biosecurity officer and –
- (a) held pending criminal proceedings for the contravention; or
 - (b) detained at a place and dealt with in a manner as specified by a biosecurity officer; or
 - (c) if necessary to remove a biosecurity threat, destroyed as the Authority directs, without a court order.
- (5) In respect of action taken under this section –
- (a) the cost of testing, treatment or destruction of any article shall be borne by the State;
 - (b) compensation (but not for consequential loss) shall be payable to the owner of any land, water, premises, conveyance or article that is used, lost, destroyed or damaged.

Biosecurity Emergency Regulations

77. (1) The Minister, on the advice of the Authority and after consulting the Administrator of each Province with territory within an emergency area, may at any time make regulations (“Biosecurity Emergency Regulations”) which –

- (a) supplement the powers given to the Authority and biosecurity officers by section 76; and
- (b) take effect upon the declaration of a biosecurity emergency area under section 74(1) or when they are made if made after declaration of a biosecurity emergency area.

(2) Biosecurity Emergency Regulations may, in respect of a biosecurity emergency area –

- (a) create one or more exclusion zones within the area and control the movement of conveyances, humans, animals and plants, animal and plant products and host material into, out of and within such a zone;
- (b) prohibit specified activities in the area;
- (c) provide for the destruction, testing or treatment of specified goods and the treatment of conveyances, buildings, premises, land and waters, in the area;
- (d) regulate the use of the area for a specified period;
- (e) specify circumstances and conditions under which a person may be required to enter into a compliance agreement with the Authority in relation to the management of an animal, a plant, an animal or plant product, host material, goods, a conveyance, a building, a premises, an article, land and waters for the purposes of disease and pest control into, out of, and within an emergency area;
- (f) generally, specify the conditions or any other convenient or necessary matters which apply to the area for control during the biosecurity emergency.

(3) Biosecurity Emergency Regulations may –

- (a) confer on the Authority and on biosecurity officers powers additional to those conferred by this Act and reasonably needed to deal with the emergency;
- (b) prescribe the treatment destruction, disposal or other measures to be adopted in respect of any item which is infected by a disease, infested by a pest or contaminated by a pest or a noxious or injurious contaminant;

- (c) require the cleansing or disinfecting of soil, a conveyance, machinery, tools, equipment, clothing, footwear or any other thing which may have come into contact with those items;
- (d) prescribe measures to be taken to prevent a disease or a pest from spreading, including, but not limited to, cleansing of a dwelling house and utensils, removal of stagnant water and disposal of garbage;
- (e) prohibit or restrict the use of any seaport or airport or emergency area frontier premises, or of any facilities at any seaport or airport or emergency area frontier premises, to the extent specified.
- (f) prescribe any other relevant matter convenient or necessary for performance of biosecurity during an emergency.

(4) Biosecurity Emergency Regulations shall be published as prescribed under Section 110(1) not more than thirty days after they are made.

(5) Biosecurity Emergency Regulations may create offences for breaches of them and prescribe minimum penalties of a fine of K20,000 for an individual or K100,000 for a corporate body, or a fixed penalty of K2,000 for an individual or K10,000 for a corporate body.

(6) Biosecurity Emergency Regulations come into force on the day on which a biosecurity emergency declaration takes effect under section 74 or the day thereof during an emergency when a Regulation is made, lapse upon the expiry of the declaration under section 74(6), and they come into force again if a further declaration is made under section 74(7).

- (7) In respect of action taken under Biosecurity Emergency Regulations –
 - (a) the cost of treatment or destruction of any article shall be borne by the State;
 - (b) compensation (but not for consequential loss) shall be payable to the owner of any land, premises, conveyance or article that is used, lost, destroyed or damaged.

PART 10– THE BIOSECURITY AUTHORITY

Designation of the Authority and the Director of Biosecurity

78. (1) The National Agriculture Quarantine and Inspection Authority constituted by the National Agriculture Quarantine and Inspection Authority Act, 1997 is the Biosecurity Authority for the purposes of this Act.

(2) The Managing Director of the NAQIA is the Director of Biosecurity for the purposes of this Act.

(3) The deputy to the Managing Director of the NAQIA, if any, is the Deputy Director of Biosecurity for the purposes of this Act and performs the functions of the Director whenever the Director is unable to do so.

(4) If the Director is temporarily absent from Papua New Guinea, or is temporarily unable to perform his or her duties for any other reason, and if there is no Deputy Director, the Director may delegate a suitably qualified biosecurity officer to act in the place of the Director during that period.

(5) The Director and Deputy Director and any delegated person are by virtue of their office biosecurity officers for all purposes of this Act.

(6) The Authority

(a) is a body corporate with perpetual succession and;

(b) shall have a common seal and;

(c) may acquire, hold and dispose of property and;

(d) may sue and be sued in its corporate name and style.

(7) All Courts, Magistrates, Judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and presume that it was duly affixed.

Designation of Technical Heads

79. (1) The Authority shall appoint Technical Heads under this Act.

(2) The Technical Heads appointed under this Act are biosecurity officers for the purposes of this Act.

(3) The functions of the Technical Heads shall be prescribed by Regulation.

Designation of biosecurity officers

80. (1) The Chief Quarantine Officers and Quarantine Officers appointed under the NAQIA Act are biosecurity officers for the purposes of this Act.

(2) The Authority may, by order, appoint suitably qualified officers as additional biosecurity officers for the purposes of this Act.

(3) A biosecurity officer appointed under subsection (2) may be appointed for a particular purpose or at a particular location and for a limited time, provided that -.

- (a) The powers of a biosecurity officer appointed under this subsection are as prescribed by or under this Act;
- (b) A biosecurity officer appointed under this subsection shall perform such duties, consistent with this Act, as are assigned to the officer by the Authority.
- (c) The Authority may limit the functions to be performed by a biosecurity officer to those within the officer's technical sphere of competence.
- (d) The functions assigned to an officer appointed under subsection (2) shall be consistent with the designation under that subsection.

(4) Before appointing a public officer from another ministry or statutory body or agency, the Authority shall consult the administrative head of the relevant ministry or statutory body or agency.

(5) The Authority shall provide every biosecurity officer with a suitable form of identification as such an officer.

- (6) A person who –
 - (a) upon the termination of his or her term of office as a biosecurity officer fails to surrender up any identification issued under subsection (5) within a specified period; or
 - (b) copies, forges or alters a form of identification, including uniforms, issued under subsection (5) without the written approval of the Authority,

commits an offence.

(7) A person who performs duties as a biosecurity officer under this Act shall be given adequate training in biosecurity control measures and in the provisions of this Act before embarking on his or her duties.

Functions of the Authority

81. (1) The Authority shall–

- (a) act as agent of the State in performing the biosecurity functions of the Government;
- (b) perform the functions set out in this Act as functions of the Authority;

- (c) to the extent consistent with this Act, perform the functions set out in the NAQIA Act as functions of the NAQIA;
 - (d) provide services in administering and enforcing this Act and any other law relating to biosecurity matters;
 - (e) advise the Government on matters relating to animal and plant health and biosecurity
 - (f) liaise with appropriate Ministries, statutory bodies, private sector organizations and the public on such matters;
 - (g) report to the Minister as required in writing from time to time;
 - (h) perform any other function relating to biosecurity that the Minister, by directions in writing, confers on the Authority from time to time.
- (2) The Authority shall-
- (a) in consultation with government departments and relevant agencies, devise a Biosecurity Emergency Response Plan to deal with an emergence or incursion of a regulated disease or pest or of a noxious or injurious contaminant and keep the plan under review;
 - (b) define and implement biosecurity risk management parameters, requirements and measures;
 - (c) produce an Operations Manual for the guidance of biosecurity officers in electronic or paper format or both;
 - (d) define and implement biosecurity compliance, enforcement, and intelligence gathering and analysis parameters, requirements and measures;
 - (e) record a Biosecurity Emergency Response Plan, an Operations Manual and operating procedures and biosecurity standards in a biosecurity register pursuant to section 85.
 - (f) to the extent appropriate, publicize the requirements of this Act and increase public awareness of the importance of biosecurity.

Functions of the Minister

- 82.** (1) The Minister -
- (a) has the functions assigned to the Minister by or under this Act;

- (b) may call for reports from the Authority on any matter pertaining to this Act or the biosecurity functions of the Government;
- (c) may seek approval from the National Executive Council to arrange for Papua New Guinea to be represented internationally in respect of matters relating to biosecurity;
- (d) shall endeavor to ensure that adequate staff and funds are available to the Authority for the performance of the Authority's functions under section 81, in accordance with any policy documented by the National Executive Council.

Directions

83 (1) The Minister may issue directions to the NAQIA pursuant to section 19 of the NAQIA Act, as amended.

Delegation of functions

84 (1) Powers and functions of office-holders may only be delegated pursuant to section 18 of the NAQIA Act, as amended

Biosecurity register and records

85. (1) The Authority shall maintain a biosecurity register and other records as prescribed under this Act and Regulations needed for the administration of this Act and the performance of the biosecurity functions of the Government and the functions of the Authority.

(2) The biosecurity register kept pursuant to subsection (1), or parts of it designated by the Authority or Regulation, may be made available for public consumption.

(3) A fee may be specified for copying of relevant extracts from any part of the biosecurity register made available for inspection and copying by members of the public.

(4) A copy of an entry in the biosecurity register that is certified by the Authority to be an accurate copy may be produced in court as *prima facie* evidence of the entry.

(5) The biosecurity register and other records kept under this section may be in electronic format, provided the information is readily retrievable and is protected against unintended loss and unauthorized alteration.

PART 11 - ADMINISTRATION OF THE ACT

Financial provisions

- 86.** (1) The biosecurity funds of the Authority consist of -
- (a) the moneys stated in section 111 of the NAQIA Act; and
 - (b) money derived from the disposal, lease or hire of, or other dealing with, any property vested in or acquired by the Authority in respect of the biosecurity functions of the Government or the functions of the Authority.

(2) The Minister may request the National Government to provide funding for the implementation of this Act in addition to an annual appropriation.

- (3) If -
- (a) there is an incursion of a regulated disease, organism, pest or a noxious or injurious contaminant which may threaten the livelihood and environment of the country or any part of it; and
 - (b) a response is immediately required, whether by way of the declaration of a biosecurity emergency area or otherwise,

the National Executive Council shall approve the funding requested by the Minister.

(4) The Authority may specify fees and charges to provide for the expenses of the Authority when performing biosecurity measures pursuant to this Act provided that -

- (a) fees and charges may only be for recovery of the expenses of the Authority in performing and administering the biosecurity functions and measures prescribed by this Act; and
- (b) fees and charges shall be as prescribed by Section 5(n), Part VIII and Section 109(1)(c) of the NAQIA Act 1997, as amended, as if that Part and those Sections applied to all aspects of biosecurity, including internal biosecurity control of pests and diseases affecting animals and plants, the economy and the environment, and as otherwise prescribed under this Act.

(6) Unless prescribed otherwise under this Act, a person who owns, or is in custody of, or is responsible for, an article or host material, baggage, a conveyances, building, premises, land or water subject to this Act, including passengers, crew and entrants or departing persons other than passengers and crew, are liable to pay fees and charges as specified by the Authority.

(7) A person who fails to pay a specified fee or charge due to the Authority under this Act within one hundred and twenty days after the due date for payment,

unless failure to receive notification of the due payment and the date the payment is due are proved,

commits an offence.

(8) Fines, fixed penalties, fees and charges payable under this Act shall be paid to the Authority and dealt with in accordance with Part X of the NAQIA Act unless specified otherwise in this Act.

(9) If a fee or charge payable under this Act is not paid but—

- (a) the expenses have been incurred— the fee or charge may be recovered as a debt owing to the Authority, in addition to a penalty for an offence if an offence has been committed;
- (b) the fee or charge is in respect of an item in quarantine or under biosecurity control - the item may be disposed by auction, tender or direct sale once it has cleared quarantine or biosecurity entry, or otherwise be treated as unclaimed goods under the *Unclaimed Goods Act*.

(10) Fines and fixed penalties payable under this Act shall be paid by the offending party to the Authority for the administration of this Act.

(11) Fines and fixed penalties shall be recovered as a debt owing to the Authority.

Consultation and outsourcing

87. (1) Before making subsidiary legislation, issuing directions or exercising other powers under this Act, the Minister and the Authority should obtain appropriate technical advice and consult relevant interested parties, but failure to do so does not invalidate the exercise of the relevant powers.

(2) Before exercising a power under this Act that will or might affect matters within the responsibility of another government department or statutory authority (including but not limited to human health, natural resources, environment, tourism, postal services, shipping, aviation, transport and trade), the Authority should consult the relevant department or agency, but failure to do so does not invalidate the exercise of the power.

(3) The Authority may for the effective implementation of this Act, enter into memoranda of understanding or other arrangements with other departments of government, statutory authorities, agencies of government and private organizations in Papua New Guinea or elsewhere.

(4) The Authority may, subject to rules relating to procurement, tenders and other matters governing Government contracts –

- (a) hire the services of a laboratory for examination or testing of samples or specimens;
- (b) hire consultants to perform biosecurity risk assessments and to carry out surveys authorized under this Act;
- (c) hire any treatment or other service deemed necessary for the effective implementation or administration of this Act.

(5) Outsourcing of services under subsection (4) –

- (a) shall be subject to enforceable contract by the Authority;
- (b) shall not confer on any person the powers of a biosecurity officer.

Duty to coordinate

88. (1) Biosecurity officers administering this Act should so far as possible collaborate with officers of other government departments and statutory bodies, in respect of border control, trade facilitation, the movement of conveyances, human health, biosecurity internal control, management of the environment and conformity with the laws of Papua New Guinea generally, however any failure to do so does not invalidate the exercise of any powers under this Act by a biosecurity officer.

Facilities at biosecurity points of entry or departure

89 (1) The operator of every biosecurity point of entry or departure shall, to the extent possible, provide on the premises, for the purposes of this Act and to the satisfaction of the Authority –

- (a) a secure area suitable for use as offices by biosecurity officers stationed at the point;
- (b) secure, functional and reliable telecommunications and electronic data transfer connections;
- (c) adequate space for the display of notices regarding the biosecurity requirements of this Act;
- (d) areas for temporary detention, questioning and, if necessary, physical examination of incoming passengers and crew, in privacy, if required;
- (e) biosecurity holding areas as designated under section 11;
- (f) facilities and suitable containers for garbage collection and incineration or other disposal;

- (g) facilities for the safe and efficient inspection and treatment of goods, and for the incineration or other disposal of regulated articles without creating an unacceptable biosecurity risk;
- (h) drainage and fencing of premises in which garbage holding and disposal equipment is situated;
- (i) any other facilities the Authority reasonably requests in writing as being needed for the performance of biosecurity functions at the point of entry or departure.

(2) The operator of a biosecurity entry or departure point, shall keep the premises and facilities mentioned in subsection (1)(f), (g) and (h) free from weeds and vermin to the satisfaction of the Authority, and an operator who fails to do so

commits an offence.

(3) No charge is payable by the Authority for the facilities to be provided under this section, but if an operator fails to provide facilities as required by this section they may be provided by the Authority and the cost of such provision shall be a debt owing by the operator to the Authority.

Safe carriage and safe working environment

90. (1) If it is necessary for the purposes of this Act for a biosecurity officer to be transported to or on a conveyance, or to a premises or place, the owner of the conveyance, premises or place must ensure that the mode of transport provides safe carriage having regard to the conditions of travel.

(2) If it is necessary for an officer to undertake inspection duties on a conveyance or premises, including a conveyance or premises owned by the State, the person in charge of the conveyance or premises must provide –

- (a) a safe working environment for the officer;
- (b) other necessary support as specified by the Authority.

(3) The power of the Head of State to make regulations under section 113 includes the power to make regulations, consistent with the health and safety Acts of Papua New Guinea, to enforce the obligations stated in subsection (1) and (2).

Biosecurity standards

91. (1) The Authority may prescribe a standard, including but not limited to a Code of Practice, for the purposes of facilitating or providing integrated control of a regulated pest or disease or a regulated noxious or injurious contaminant, or for minimizing a biosecurity risk.

(2) A standard prescribed pursuant to subsection (1) may confer obligations to conform under this Act upon an importer, an exporter, or an owner or an operator or a person in custody or control of -

- (a) a regulated article
- (b) an animal or a plant;
- (c) an animal or plant product;
- (d) host material
- (e) a conveyance;
- (f) a building or premises;
- (g) a biosecurity holding area, a biosecurity quarantine station or a biosecurity approved premises;
- (h) a point of entry or departure of a conveyance or goods or a person or host material
- (i) land or waters.

(3) A standard prescribed pursuant to subsection (1) may be in relation to provision and maintenance of fittings, equipment, facilities and arrangements for management, including but not limited to control of access by or movement, containment, testing, treatment, destruction, documented recording, reporting and administration, of -

- (a) an unauthorized person
- (b) a disease or a pest or a noxious or injurious contaminant;
- (c) an article;
- (d) an animal or a plant;
- (e) an animal or plant product;
- (f) host material
- (g) a building or a premises, but not a dwelling house
- (h) a biosecurity holding area, a biosecurity quarantine station or a biosecurity approved premises

- (i) a point of entry or departure of a conveyance or articles or a person or host material
- (j) a conveyance
- (k) land or waters

(4) An obligation to conform to a standard pursuant to subsection (2) shall be limited to those obligations prescribed under this Act and whatsoever additional obligations as are reasonably necessary to provide for efficient audit, verification and conformity to prescribed provisions under this Act including, but not limited to, the method of unique individual identification and traceability of a consignment, an animal, a plant, an animal or plant product, a trade or service transaction, a conveyance, land or waters.

(5) Before specifying a standard pursuant to subsection (1), the Authority shall obtain competent advice in relation to the physical, technical and administrative requirements and outcomes that shall be defined by the standard and refer as appropriate to any relevant requirement, notification, direction, specification or compliance agreement made in relation to:

- (a) imports or exports under this Act;
- (b) a biosecurity holding area, a biosecurity quarantine station or a biosecurity approved premise under this Act;
- (c) a point of entry or departure;
- (d) an infested biosecurity controlled area or a pest-free biosecurity controlled area under this Act;
- (e) standards for international trade in animals, plants and animal and plant products of the WTO, OIE, IPPC or Codex Alimentarius Commission; and
- (f) any other relevant known and applicable prescribed requirement of Papua New Guinea whether made under this Act or another Act.

(6) Before specifying a standard pursuant to subsection (1), the authority should reasonably consult the owner, operator or person in custody or control of items under subsection (2)(a) to (i) upon whom the standard shall be applied, but failure to consult does not diminish the power of the Authority to specify a standard pursuant to subsection (1).

(7) The cost of application and conformity to a standard specified pursuant to subsection (1) shall, unless otherwise specified by the Authority or prescribed, be borne by

the owner, operator or person in custody or control of items under subsection (2)(a) to (i) to which and upon whom the standard shall be applied.

(8) A standard shall be entered in a biosecurity register maintained under section 84 and does not take effect until so entered.

(9) No liability attaches to the State, the Authority or any public officer in respect of application of a standard prescribed in accordance with this section, unless negligence or malice is proved.

Compliance agreements

92. (1) The Authority may enter into a written agreement with a person in connection with -

- (a) the procedural application of particular biosecurity measures in respect of any item;
- (a) the procedural application of a standard specified pursuant to section 91;
- (c) the procedural method by which any measure or requirement under this Act shall be satisfied by the person; and
- (d) the procedures for supervision, monitoring, testing and auditing of the person's conformity to those measures or that requirement.

(2) A compliance agreement made pursuant to subsection (1) shall bind the person with whom it is made to its terms, conditions, measures, and procedures in so far as they relate to the purposes of this Act.

(3) A compliance agreement may provide that, in circumstances stated in the agreement, the Authority may, by written notice, cancel or vary the agreement or suspend its operation for a period. The circumstances may include, but are not limited to, the a failure by the person to conform to specified measures or procedures or to meet specified requirements.

(4) The person bound by the compliance agreement may at any time also propose in writing to the Authority to vary the compliance agreement, but this shall not limit or invalidate the power of the Authority to administer the compliance agreement whether or not the compliance agreement is varied by mutual agreement of the Authority and the bound person.

(5) If satisfied that an article has conformed to clearance measures and requirements, a biosecurity officer may release an article to which a compliance agreement applies and, if it is a regulated article, grant biosecurity clearance in respect of it, on the basis of a written certificate or declaration, given by a person authorized by the Authority under the agreement to give such a certificate or declaration that all the measures and procedures to which the agreement refers have been complied with in respect of the article.

(6) A person who fails to conform to any term, condition, measure or procedure specified in a compliance agreement,

commits an offence.

Biosecurity approved premises

93. (1) The Authority shall prescribe a standard pursuant to section 91 detailing the facilities and requirements for management of premises approved for the purposes of this Act.

(2) The Authority, on written application by the owner or occupier of any premises, may in writing –

- (a) approve the premises as premises where the detention, inspection, testing, treatment and any other biosecurity measure relating to a regulated articles may be performed; and
- (b) approve specified biosecurity measures being applied under this Act in relation to regulated articles, or specified articles, while they are in the approved premises.

(3) In deciding whether to give approval under subsection (1), the Authority, after inspection of the premises by a biosecurity officer, shall take into account -

- (a) whether the specified biosecurity measures can be applied in the premises without an unacceptable biosecurity risk and without contravening this Act or the conditions or specifications of any permit;
- (b) whether the premises and facilities in them are adequate to enable such measures to be applied efficiently and safely, and conform to the standard prescribed pursuant to subsection (1);
- (c) whether the location of the premises is appropriate having regard to the nature of the articles, the specified measures and the level of biosecurity risk;
- (d) whether the premises is so equipped and is located in a place where biosecurity officers can conveniently verify that this Act and the regulations are being conformed to in the premises;
- (e) whether the premises and arrangements for control of the entry departure and movement of articles or consignments to, from and within the premises are sufficient to guarantee effective control and traceability of the article whilst under detention, inspection, treatment, testing or other measures at the premises until eligible for release from biosecurity control;

(f) whether the premises is to be under the charge and control of a fit and proper person; and

(g) any other matter the Authority considers relevant.

(4) An approval under this section may be expressed to be subject to the standard specified pursuant to subsection (1) and any other condition or specification specified in the approval, and is of no effect if the standard, conditions or specifications are not conformed to.

(5) An approval under this section has effect for a period not exceeding twelve months but may be renewed by following the procedure for a new approval.

(6) An approval under this section shall be revoked if the Authority is satisfied –

(a) that the premises or facilities or action taken do not conform to this Act or the Regulations; or

(b) that the premises is otherwise no longer suitable for approval.

(7) The provisions of this Act relating to a biosecurity quarantine station (other than section 41) apply to premises approved under this section.

International cooperation

94. (1) The Minister, in consultation with the Ministers responsible for foreign affairs and trade matters may, with the approval of the National Executive Council, enter into or withdraw from bilateral or multilateral arrangements with countries and international organizations for effective international cooperation on biosecurity matters.

(2) The Authority may, pursuant to such arrangements –

(a) exchange information with other countries and international organizations;

(b) contribute to the development of international sanitary and phytosanitary and trade standards.

(3) Arrangements under subsection (1) may include arrangements on procedures for implementing this Act, but not so as to vary the effect of any of its provisions except as provided by this Act.

(4) The Authority shall implement international standards and requirements relating to biosecurity in so far as they apply to Papua New Guinea.

Disease or Pest or Noxious or Injurious Contaminant Status Notifications

95 (1) The Authority, on the advice of the relevant Technical Head, may, at any time, make a notice -

- (a) stating that a specified pest or disease or a noxious or injurious contaminant is known to exist in Papua New Guinea or in a specified zone within Papua New Guinea;
- (b) stating that, to the best of the Authority's knowledge, a specified pest or disease or a noxious or injurious contaminant does not exist in Papua New Guinea or in a specified zone of Papua New Guinea;
- (c) specifying the classification, name or identity by which any animal, animal product, plant, plant product, disease or pest or any noxious or injurious contaminant is known in Papua New Guinea.

(2) Before making a notice pursuant to subsection (1), the Authority shall conduct or cause to be conducted a survey for the presence or absence of the disease or pest or the noxious or injurious contaminant pursuant to Section 63 and shall, if necessary, obtain appropriate technical advice in relation to the disease or pest or the noxious or injurious contaminant and the results of the survey.

(3) Upon a notice being made pursuant to subsection (1), the Authority shall conduct or cause to be conducted ongoing survey as necessary to ascertain the continuing validity of the notice.

(4) A notice made pursuant to subsection (1) shall be published in the Biosecurity Register not more than thirty days after it is made.

(5) A notice made pursuant to subsection (1) is, for the purposes of this Act, conclusive until revoked or amended under that subsection and is admissible in any court or other proceedings as evidence of the matters stated in it.

PART 12 – OFFENCES AND PENALTIES

Dereliction of duty by officers

96. (1) A biosecurity officer who -

- (a) fails without reasonable excuse to perform any of his or her duties under this Act or the regulations;
- (b) disposes of a regulated article or other item under the control of the officer other than in accordance with this Act;

- (c) discloses information of a confidential or commercial nature which has come into the officer's possession while performing functions under this Act, except for purposes of this Act;
- (d) in the course of performing his or her duties molests or intimidates or unlawfully assaults any person;
- (e) in connection with his or her duties solicits or accepts a bribe; or
- (f) recklessly makes a false or misleading statement, or issues a false or misleading certificate or other document, while purporting to perform his or her duties,

commits an offence.

Obstruction, false information, etc.

- 97. (1)** A person who –
- (a) fails to conform to a lawful request made or direction given by a biosecurity officer under this Act;
 - (b) obstructs a biosecurity officer in the performance of his or her functions under this Act;
 - (c) intimidates, assaults, or threatens to assault a biosecurity officer performing functions under this Act;
 - (d) bribes or attempts to bribe a biosecurity officer in relation to the performance of functions under this Act;
 - (e) makes a false or incomplete statement, whether orally or in writing, in relation to any matter under this Act, intending to mislead a biosecurity officer in the performance of functions under this Act,
 - (f) for purposes of this Act recklessly –
 - (i) makes a false or misleading biosecurity declaration; or
 - (ii) issues or attempts to issue any false or misleading document;
 - (g) recklessly gives false or misleading information to a biosecurity officer while the officer is performing functions under this Act;
 - (h) impersonates or attempts to impersonate a biosecurity officer whether in relation to purported performance of functions under this Act or otherwise, including by wearing the uniform of a

biosecurity officer or presenting an identification purported to be that of a biosecurity officer,

commits an offence.

Fraudulent use of official documents

98. (1) A person to whom a permit or other document is issued under this Act who –

- (a) forges or unlawfully alters the document;
- (b) allows any person other than their designated agent to use or attempt to use the document for any purpose of this Act,

commits an offence.

(2) A person who, for the purposes of this Act, recklessly produces a document which is false or misleading and intending another person to rely on it,

commits an offence.

(3) A person who uses or affixes an official stamp or seal required under this Act, without lawful authority and with intent to defraud or deceive,

commits an offence.

Penalties

99. (1) An individual who commits an offence under a section of this Act listed in column 2 of Schedule 1 is liable to the maximum penalties respectively listed in columns 4, 5 and 6 of the Schedule.

(2) The penalties listed in the Schedule are maxima and a Court of competent jurisdiction may impose on an individual any penalty for an offence the maximum or lesser.

(3) A body corporate that commits an offence is liable to a fine five times the fine for the same offence if committed by an individual as prescribed in column 4 of the Schedule.

Forfeiture

100. (1) The Authority may, in addition to any other penalty imposed, order that any article used in committing the offence, or, if the article has been sold, the proceeds of the sale, be confiscated.

- (2) If an article or proceeds are confiscated under subsection (1) –
 - (a) the article or proceeds are forfeited to the Authority;

- (b) a forfeited article shall be disposed of as determined by the Authority; or
- (c) if the article poses a biosecurity threat, and treatment cannot be reasonably applied to adequately reduce or eliminate biosecurity risk, it shall be destroyed.

(3) For the purposes of subsection (1), “article used in committing the offence” includes equipment, a conveyance and any other movable thing owned by the offender which was used directly in the commission of the offence, but does not include land or buildings or a dwelling house and fixtures on land.

(4) In deciding whether to order confiscation of any article or proceeds under this section, the Authority shall have regard to the principle of proportionality.

Fixed penalties

101. (1) The Authority, if of the opinion that a person has committed an offence under this Act, may as an alternative to prosecuting the person –

- (a) order the person to pay a fixed penalty as described in subsection (2); and
- (b) the fixed penalty referred to in subsection (1)(a) under this section shall be a spot fine paid to the Authority; and
- (c) order any goods liable to confiscation in connection with the offence to be forfeited to the Authority or, if they pose a biosecurity threat, to be treated or destroyed.

(2) The fixed penalty referred to in subsection (1) is as set out in column 6 of the Schedule and if no figure is shown in that column, the fixed penalty option is not available.

(3) The fixed penalty for a body corporate shall be five times that for an individual.

(4) Before imposing a fixed penalty order on a person for an offence, the Authority must notify the person in writing, giving particulars of the offence, the maximum penalty that a court may impose, the fixed penalty that is proposed, and any item that shall be confiscated.

- (5) If a person on whom a notice is served under subsection (4) -
 - (a) within the time specified in the notice, admits the offence, requests the Authority to deal with it under this section and consents to the confiscation of the item (if appropriate) - the Authority shall impose a fixed penalty order on the person under subsection (1)(a) of this section;

- (b) does not respond as in subsection (5)(a) of this section within the time specified in the notice - the Authority may prosecute the offence; or
 - (c) does not admit the offence, does not request the Authority to deal with it under this section, or does not consent to confiscation of the item (if appropriate) – the Authority may prosecute the offence.
- (6) A fixed penalty under this section shall –
- (a) be in writing and specify the offence that the person has committed, the fixed penalty that is imposed, the place where it is to be paid and the date by which it is to be paid;
 - (b) specify any confiscated item that is to be forfeited or destroyed.
- (7) If a fixed penalty payable under this section, or any part of it, is not paid by the date specified in the order, the sum payable becomes a debt owing to the Authority and the Authority may –
- (a) request the Director of Immigration to place a stop order on the person departing the country until the sum is paid; and either –
 - (b) send a copy of the order to a court of competent jurisdiction, which may enforce payment of the sum outstanding as if it were a fine imposed by the court, including imposing costs and confiscation as appropriate; or
 - (c) prosecute the offence.
- (8) A person against whom an order is made under this section is not liable to any further criminal proceedings in respect of the offence and, if in custody, shall be discharged.
- (9) The Head of State’s power to make regulations under section 113 includes the power to make regulations to supplement the provisions of this section in relation to fixed penalty notices, including the imposition of stop orders to prevent a person departing the country until the sum is paid.

Enforceable Undertakings

- 102.** (1) The Authority, if of the opinion that a person has committed an offence under this Act, may as an alternative to prosecuting the person or applying a fixed penalty to the person –
- (a) order the person to enter into an enforceable undertaking with the Authority as described in subsection (2); and

- (b) order any goods liable to confiscation in connection with the offence to be forfeited to the Authority or, if they pose a biosecurity threat, to be treated or destroyed.

(2) The enforceable undertaking shall be a written undertaking by a person to achieve guaranteed conformance with the prescribed provisions of this Act, a standard prescribed pursuant to Section 91 or procedures specified in a compliance agreement pursuant to Section 92 within a defined time period, at the expense of the person, and may include, without limitation:

- (a) satisfactory completion of approved training or accreditation in matters relating to the offence;
- (b) upgrading of facilities or fittings or equipment or operational systems capabilities operated by or under the control or custody of the person in order to better guarantee conformance to requirements, a standard, a compliance agreement and procedures under this Act;
- (c) conformity with corrective action requests issued pursuant to audit of a compliance agreement under this Act.

(3) An enforceable undertaking in subsection (1) may only be applied in respect of an offence to which a fixed penalty may apply as set out in column 6 of the Schedule and if no figure is shown in that column, the enforceable undertaking option is not available.

(4) Before imposing an enforceable undertaking order on a person for an offence, the Authority must notify the person in writing, giving particulars of the offence, the maximum penalty that a court may impose, the fixed penalty that may be applied as an alternative to the enforceable undertaking, and any item that shall be confiscated.

- (5) If a person on whom a notice is served under subsection (4) -
 - (a) within the time specified in the notice, admits the offence, requests the Authority to deal with it under this section and consents to the confiscation of the item (if appropriate) - the Authority shall impose an enforceable undertaking order on the person under subsection (1)(a) of this section;
 - (b) does not respond as in subsection (5)(a) of this section within the time specified in the notice - the Authority may prosecute the offence, but may not apply a fixed penalty; or
 - (c) does not admit the offence, does not request the Authority to deal with it under this section, or does not consent to

confiscation of the item (if appropriate) – the Authority may prosecute the offence, but may not apply a fixed penalty.

- (6) An enforceable undertaking under this section shall –
 - (a) be in writing and specify the offence that the person has committed, the details of the enforceable undertaking that is imposed, the place and method where it is to be discharged and the date by which it is to be fully discharged;
 - (b) specify any confiscated item that is to be forfeited or destroyed.
- (7) If an enforceable undertaking under this section, or any part of it, is not fully discharged by the date specified in the order, the Authority may –
 - (a) request the Director of Immigration to place a stop order on the person departing the country until the undertaking is discharged in full; and either –
 - (b) send a copy of the order to a court of competent jurisdiction, which may enforce discharge in full of the undertaking as if it were an order imposed by the court, including imposing costs and confiscation as appropriate; or
 - (c) prosecute the offence.
- (8) A person against whom an order is made under this section is not liable to any further criminal proceedings in respect of the offence upon discharge in full of the undertaking and, if in custody, shall be discharged.
- (9) The Head of State’s power to make regulations under section 113 includes the power to make regulations to supplement the provisions of this section in relation to enforceable undertaking notices, including the imposition of stop orders to prevent a person departing the country until the undertaking is discharged in full.

Offences by corporate bodies

103. (1) A corporate body cannot be imprisoned for an offence under this Act or the regulations, but the maximum fine for such an offence by a corporate body is as stated in section 99(3).

- (2) If a corporate body commits an offence against this Act, every person who is a member of the board of management or director or otherwise concerned in the management of the body also commits the offence as an individual, unless the person proves –
 - (a) that the offence was committed without his or her consent or connivance; and

- (b) that he or she exercised reasonable diligence to prevent the commission of the offence, having regard to the nature of his or her functions in the corporate body and to all the circumstances.

PART 13 - MISCELLANEOUS PROVISIONS

Civil and criminal proceedings

104. (1) Notwithstanding any limit on its jurisdiction in any other Act, a magistrate's court is competent to impose any penalty or to make any order provided for in or under this Act.

(2) The Authority may institute and conduct proceedings for an offence under this Act.

(3) The Authority may institute and conduct proceedings for the recovery of a debt owing to the Authority under this Act.

Abandoned goods

105. (1) An article may be treated as abandoned and disposed of under this section if -

- (a) a fee or charge payable by a person under this Act or the regulations in respect of the article is not paid within fourteen days of the notice of the fee or charge falling due being served on the person;
- (b) the article is in a biosecurity holding area and is not removed from the area within fourteen days after biosecurity entry clearance has been granted in respect of it and the importer or importer's designated agent has been notified that biosecurity entry clearance has been granted in respect of it; or
- (c) the article is in biosecurity quarantine and is not removed from a biosecurity quarantine station or biosecurity approved premises within fourteen days after completion of the quarantine in respect of it and the importer or exporter or their designated agent has been notified that biosecurity quarantine has been completed in respect of it.

(2) An article that has been abandoned may be destroyed, sold or otherwise disposed of in the prescribed manner, or, in the absence of regulations, in any manner the Authority thinks fit that does not present a biosecurity risk.

(3) The cost of disposal of an abandoned article is a debt due to the Authority by the person who was the owner of it, and proceeds of any sale or disposal of an abandoned article are forfeit and revert to the Authority.

Compensation

106. (1) Except as otherwise provided in or under this Act, no compensation shall be payable for loss of or damage to or consequential loss due to any item as a result of any search, inspection, examination, taking of samples or specimens, testing, detention, treatment, quarantine, application of a standard, application of a compliance agreement or other biosecurity measure taken under this Act or the regulations, unless negligence or malice on the part of the person applying the measure or the Authority is proved.

(2) Compensation is not payable under this Act, or may be reduced proportionately, if the biosecurity measures that caused the loss or damage were occasioned by a willful, reckless or negligent act or omission by the person claiming compensation.

(3) If this Act provides for payment of compensation in any circumstances, the compensation must be –

- (a) claimed in accordance with a prescribed procedure;
- (b) if not agreed, determined by the Authority in accordance with prescribed rates, not exceeding the market value of the item plus consequential loss reflecting contemporary costs;
- (c) paid from the funds of the State.

(4) An appeal against a determination under subsection (3) lies to the High Court.

Appeals from decisions

107. (1) A person who is aggrieved by a decision of a biosecurity officer under this Act made at a biosecurity point of entry or departure, in a biosecurity holding area, at a biosecurity quarantine station, in a biosecurity approved premises or at any biosecurity control point associated with a biosecurity controlled area, may within twenty-four hours appeal to the officer's supervisor in relation to that place.

(2) A person, who is aggrieved by any other decision of a biosecurity officer, or by the decision of a supervisor under subsection (1), may within seven days appeal in writing to the Director of the Authority whose decision shall be final.

(3) The lodging of an appeal in respect of an article does not prevent biosecurity measures being taken in respect of the article as necessary to reduce or eliminate the biosecurity risk posed by the article, and section 108 applies to the taking of such measures.

(4) The person deciding an appeal must give the appellant and the respondent the opportunity to be heard, in writing or in person, and to produce evidence and call witnesses, and shall give reasons for the decision on the appeal.

(5) If an appeal involves a technical issue, the person hearing the appeal shall obtain the advice of the relevant technical section head, not being the person appealed from or against.

(6) An appeal in respect of compensation is to be dealt with as provided in section 106(4).

Limitation of liability

108. (1) Neither the Authority nor any biosecurity officer or other public officer is personally liable for action taken under this Act in good faith and without negligence.

(2) A non-conformity in relation to a duty imposed on the Authority, a biosecurity officer or any other public officer by or under this Act does not give rise to any civil liability except as provided by or under this Act.

Evidence

- 109.** (1) In any proceedings under this Act -
- (a) a document purporting to have been issued by the Minister, the Authority, a biosecurity officer or any other public officer for the purposes of this Act is presumed, until the contrary is proved, to have been duly executed or signed by that person;
 - (b) a copy of or extract from a document issued by the Minister, the Authority or any biosecurity officer or other public officer, and certified by the Authority or person to be true and correct is, unless the contrary is proved -
 - (i) presumed to be a true and correct copy or extract;
 - (ii) on its production in court *prima facie* proof of any matter contained in it.
- (2) In any proceedings under this Act -
- (a) a certificate, in a form approved by the Authority, of performance of any treatment or the results of any test conducted on an article by the person who conducted the treatment or test may be tendered in evidence and is *prima facie* evidence of the facts stated in it;
 - (b) a certificate of analysis of a sample or a specimen of any article or thing may be tendered in evidence and is *prima facie* evidence of the facts stated in it if the procedure prescribed in relation to the sample or specimen has been substantially followed.

(3) A document may include any photographic images.

(5) Section 85(4) governs the evidential status of the biosecurity register and records kept under this Act.

Publication of orders and notices

110. (1) Regulations and legislative orders made under this Act may be published –

- (a) in the *National Gazette*;
- (b) at the offices of the Authority and on the Authority's website, if any;
- (c) on any radio or television station that broadcasts;
- (d) in any newspaper that circulates;
- (e) at any public places,

and made available for public consumption including in areas affected by the Regulations or legislative orders.

(2) Unless under circumstances warranting immediate effect and without limiting their ultimate effect, regulations, legislative orders and specifications intended to have an effect upon a general condition of trade and commerce made under this Act shall be published by the Authority a reasonable period before coming into effect so as to enable persons effected by the regulation or order or specification to adjust and respond to its intended effect.

(3) Regulations and legislative orders made under this Act do not take effect until published in the *National Gazette*, unless otherwise provided.

(4) Unless otherwise provided, and subject to subsection (5), a notice required by this Act to be given may be given electronically –

- (a) by a person to the Authority;
- (b) by the Authority to a person, if the person has given the Authority an electronic address for receipt of such a notice.

(5) If service of a notice or other document on a person is to be proved in a court, it must be effected by personal service on the person.

(6) The Director, Deputy Director and Technical Heads may give instructions and directions to biosecurity officers by electronic means.

(7) A printed copy of an electronic record of a notice, instruction or direction given or received by electronic means is *prima facie* evidence of the notice if the record purports to have been made at the time of sending or receipt.

Fit and proper persons

111. (1) A person designated or assigned to be in charge or control of a biosecurity holding area, a biosecurity port quarantine area, a biosecurity quarantine station or a biosecurity approved premises shall, to the satisfaction of the Authority, be a fit and proper person.

(2) When being satisfied of the fit and proper status of a person for the purposes of subsection (1), the Authority shall, without limitation, give due consideration to the following:

- (a) a history or prima facie evidence of the person being convicted of a criminal offence, or aiding and abetting a criminal act, during the preceding ten years;
- (b) a history or prima facie evidence of the person being engaged in a dishonest, deceptive or fraudulent act, whether or not convicted by a court of competent jurisdiction;
- (c) a history or prima facie evidence of non-compliance by the person with any procedure or requirement relating to lawful control or clearance of the entry or the departure of goods at the border or at an internal control point for the movement of goods;
- (d) a condition of impaired mental capacity or psychological abnormality likely to limit the person's capability to effectively perform the functions and role of a person in charge or control of a biosecurity holding area, port quarantine area, quarantine station or approved premises; and
- (e) any other matter the Authority considers relevant to the persons suitability or fitness to perform the function.

(3) If, during the operation of a designated biosecurity holding area, a biosecurity port quarantine area, a biosecurity quarantine station or a biosecurity approved premises, the fit and proper status of a person designated or assigned to be in charge or control of the holding area, port quarantine area, quarantine station or approved premises changes in kind, the Authority may revoke the biosecurity designation or approval of the holding area, port quarantine area, quarantine station or approved premises in writing.

(4) If the biosecurity designation or approval of a biosecurity holding area, biosecurity port quarantine area, biosecurity quarantine station or biosecurity approved

premises is revoked by the Authority under Subsection (3), no compensation shall be payable by the Authority for any direct or consequential loss or damage to the operator of the holding area, port quarantine area, quarantine station or approved premises or to the person designated or assigned to be in charge or control of the holding area, port quarantine area, quarantine station or approved premises unless negligence or malice by the Authority is proved.

Specifications

- 112.** (1) The Authority may in writing specify –
- (a) documents and forms for use in connection with this Act, including the format of documents transmitted by electronic means;
 - (b) the procedures for applying for and issuing permits and other documents;
 - (c) all other matters that can or must be specified, as provided for in this Act.
- (2) If a matter is prescribed by Regulations or an Order, the Regulations or Order take precedence over a specification on the same matter.
- (3) Specifications shall be entered in a biosecurity register maintained under section 85(2) and do not take effect until so entered.
- (4) Section 85(4) governs the evidential status of a specification contained in a biosecurity register.
- (5) Unless otherwise provided, section 110(1) does not apply to specifications made under this Act and entered in a biosecurity register, but they may be –
- (a) published in the biosecurity register and at the offices of the Authority;
 - (b) published in any operations manual provided to biosecurity officers pursuant to section 81(2)(b); and
 - (c) made available for public consumption.

Regulations

- 113.** (1) The Head of State may make regulations consistent with this Act for the effective implementation of this Act and the performance of the biosecurity functions of the Government.
- (2) Without limiting subsection (1) or affecting any other regulation-making power in this Act, regulations made by the Head of State may –

- (a) prescribe the method of taking and analyzing a sample or a specimen, recording the results and disposing of the sample or the specimen;
 - (b) prescribe matters and details that shall be recorded in the biosecurity register in respect of biosecurity facilities, permissions, arrangements and requirements other than those provided for by the Act
 - (f) prescribe matters and details that shall be recorded in the biosecurity register in respect of the biosecurity requirements of recipient countries for exports
 - (g) prescribe matters relating to the biosecurity functions of Government and the Authority
 - (h) the manner by which the records in the biosecurity register may be maintained, made available to the public and the time that the records in the biosecurity register shall be kept
 - (f) prescribe the manner of disposal of abandoned goods under Section 105 and forfeited articles;
 - (g) prescribe the procedure for claiming compensation, and the rates payable, pursuant to section 106;
 - (h) regulate the procedure on appeals under section 107;
 - (i) provide for the de-ratting of vessels, and the form of de-ratting certificate;
 - (j) regulate the disposal of garbage and waste and second-hand clothing and bedding so as to minimize any biosecurity risk;
 - (k) prescribe additional measures, consistent with this Act, to implement in Papua New Guinea the international standards and requirements relating to biosecurity of the WTO, IPPC, the OIE and the Codex Alimentarius Commission;
 - (l) prescribe any other matter which this Act requires to be prescribed by the Head of State or which is convenient and necessary for performing the biosecurity functions of the Government.
- (3) Before making regulations under this section, the Head of State shall –
- (a) obtain the advice of the Authority and the Minister; and

- (b) consult any Provincial Administration whose area of jurisdiction will be affected, and other government departments and statutory authorities as appropriate.

(4) Regulations made under this section may create offences for breaches of them and prescribe maximum penalties not exceeding a fine of K10,000 for an individual or K50,000 for a body corporate, or a fixed penalty for an individual of K1000 and for a corporate body of K5000.

Repeals and savings

114. (1) The following Acts and any items of subsidiary legislation made under them are repealed –

- (a) Plant Pest and Disease and Control Act (Cap. 220);
- (b) Animal Disease and Control Act (Cap. 206);
- (c) Part 6 and sections 89, 90 and 91 of the Quarantine Act 1953;
- (d) Parts IV to IX inclusive and section 122 of the National Agriculture Quarantine and Inspection Authority Act 1997;

(2) Subsidiary legislation repealed by subsection (1) which could have been made under an equivalent provision of this Act is deemed to have been made under that provision and remains in force as if so made until repealed by subsidiary legislation made under this Act, unless and to the extent that –

- (a) the matter is provided for in this Act;
- (b) the subsidiary legislation is inconsistent with the provisions of this Act or any other Act.

(3) Provisions of regulations made under the repealed laws dealing with the treatment of animals, plants and their products on arrival in Papua New Guinea –

- (a) are deemed to have been made by the Authority as specifications under section 28 or section 111;
- (b) may be varied by the Authority under that section;
- (c) if included in a biosecurity register are governed by section 85(4) as to their evidential status.

(4) Delegations, directions, notices, agreements and other administrative actions or decisions of the Minister, the Authority and any other officer or person issued or made under the repealed laws which could be issued or made by equivalent officers or persons under this Act continue to have effect as if issued or made under this Act until varied or revoked under this Act.

Transitional provisions

115. (1) Permits equivalent to import permits issued under any provision of the repealed laws remain in force until they expire in accordance with their terms, or until revoked under this Act.

(2) Any bond, agreement, instrument or arrangement to which the NAQIA is a party subsisting immediately before the commencement of this Act and relating to the functions of the NAQIA continues to have effect after that date and is enforceable by or against the NAQIA as if it had been entered into under the provisions of this Act.

(3) Subject to subsection (4), any action, arbitration, proceeding or cause of action that subsisted immediately before the commencement of this Act is pending or existing by, against, or in favor of the NAQIA, or to which the NAQIA is a party, may be continued and enforced under the provisions of the repealed law.

(4) A prosecution for an offence committed against a repealed law before the commencement of this Part must be brought and continued under that law.

Consequential amendments

116. (1) A reference in another Act to any of the repealed laws is, to the extent possible, to be read as a reference to this Act.

(2) A reference in another Act to a quarantine officer is, to the extent possible, to be read as a reference to the Authority or a biosecurity officer exercising equivalent functions under this Act.

Amendment of Schedule

117. (1) The Minister, after consultation with the Authority, may by order amend column 4, 5 or 6 of the Schedule.

(2) An order under subsection (1) must be laid before the National Parliament and does not come into effect until it has been passed by affirmative resolution of the National Parliament.

SCHEDULE 1[Sections 96, 97, 98, 99,
101 and 102]**MINIMUM PENALTIES AND FIXED PENALTIES**

Item	Section	Offence	Fine (Kina)	Prison	FP (Kina)
(1)	(2)	(3)	(4)	(5)	(6)
1	8(2)	Import prohibited pest/disease	100,000	5 Yrs	10,000
2	8(3)	Import regulated pest/disease	50,000	2 yrs	5,000
3	9(5)	Import a prohibited article	50,000	2 Yrs	5,000
4	9(6)	Own or possess a prohibited article	50,000	2 Yrs	5,000
5	10(3)	Vessel/Aircraft landing except at point of entry	100,000	5 Yrs	10,000
6	10(4)	Vehicle arriving except at frontier post	50,000	2 Yrs	5,000
7	10(5)	Import except at point of entry	100,000	5 Yrs	10,000
8	12(4)(a)	Unauthorized entry to/exit from a biosecurity holding area	100,000	5 Yrs	10,000
9	12(4)(b)	Interference with holding area	50,000	2Yrs	5,000
10	12(6)	Removal from a biosecurity holding area without clearance	50,000	2 Yrs	5,000
11	14(3)	Fail to make an arrival declaration	50,000	2 Yrs	5,000
12	15(5)(a)	Fail to take conveyance to port holding area when requested	50,000	2 Yrs	5,000
13	15(5)(b)	Fail to permit a biosecurity officer to board and search a conveyance	50,000	2 Yrs	5,000
14	15(5)(c)	Fail to provide arrival documents to a biosecurity officer when requested	50,000	2 Yrs	5,000
15	15(5)(d)	Fail to complete a conveyance biosecurity certificate for animal, plants and products on board.	50,000	2 Yrs	5,000
16	15(6)	Disembarkation of crew, passengers or cargo by the Master/Captain/Driver without arrival clearance	50,000	2 Yrs	5,000
17	15(7)	Crew or passenger disembarking without authorization	20,000	1 Yr	2,000
18	17(2)(a)	Unauthorized entry to/exit from a port quarantine area	50,000	2 Yrs	5,000
19	17(2)(b)	Interference with a port quarantine area	50,000	2 Yrs	5,000
20	17(5)	Removing a port quarantine notice	50,000	2 Yrs	5,000
21	18(4)	Fail to conform to port quarantine	50,000	2 Yrs	5,000
22	20(2)(a)	Master/Captain/Driver fail to allow boarding and search of conveyance	20,000	1 Yr	2000
23	20(2)(b)	Master/Captain/Driver Fail comply with request or direction of a	20,000	1 Yr	2000

SCHEDULE 1[Sections 96, 97, 98, 99,
101 and 102]**MINIMUM PENALTIES AND FIXED PENALTIES**

Item	Section	Offence	Fine (Kina)	Prison	FP (Kina)
(1)	(2)	(3)	(4)	(5)	(6)
		biosecurity officer, etc.			
24	21(7)	Failure by Master to secure animal from contact with another animal	50,000	2Yrs	5,000
25	21(7)	Failure by Master to secure hatches during hours of darkness	100,000	5 Yrs	10,000
26	21(7)	Improper discharge of garbage by Master	100,000	5 Yrs	10,000
27	21(7)	Improper discharge of ballast or bilge by Master	50,000	2 Yrs	5,000
28	21(7)	Failure by Master to keep garbage contained	50,000	2Yrs	5,000
29	21(7)	Unauthorized removal of garbage by Master	100,000	5 Yrs	10,000
30	21(7)	Failure by Master to prevent unauthorized removal of stores	100,000	5 Yrs	10,000
31	21(8)	Failure by Captain/Driver to secure animal from contact with another animal	50,000	2 Yrs	5,000
32	21(8)	Failure by Captain/Driver to secure hatches	100,000	5 Yrs	10,000
33	21(8)	Failure by Captain/Driver to keep garbage contained	50,000	2 Yrs	5,000
34	21(8)	Unauthorized removal of garbage by Captain/Driver	100,000	5 Yrs	10,000
35	21(8)	Failure by Captain/Driver to prevent unauthorized removal of stores	100,000	5 Yrs	10,000
36	22(7)(a)	Passenger fail to make arrival/departure declaration	5,000	3mths	500
37	22(7)(b)	Passenger or crew fail to submit baggage for inspection	5,000	3mths	500
38	23(7)(a)	Other entrant/exit fail to make arrival/departure declaration	5,000	3mths	500
39	23(7)(b)	Other entrant/exit fail to submit baggage for inspection	5,000	3mths	500
40	24(2)(a)	Fail to make incoming goods available for entry inspection	50,000	2 Yrs	5,000
41	26(9)	Application, or failure to make proper application, for import clearance of regulated article by eligible person	20,000	1 Yr	2,000
42	32(4)	Fail to surrender a revoked permit	20,000	1 Yr	2,000

SCHEDULE 1[Sections 96, 97, 98, 99,
101 and 102]**MINIMUM PENALTIES AND FIXED PENALTIES**

Item	Section	Offence	Fine (Kina)	Prison	FP (Kina)
(1)	(2)	(3)	(4)	(5)	(6)
43	33(4)(a)	Dealing with an article in transit other than by way of transit	50,000	2Yrs	5,000
44	33(4)(b)	Fail to conform to condition of transit waiver	20,000	1 Yr	2,000
45	34(2)	Exporter fail to make outgoing goods available for inspection	20,000	1 Yr	2,000
46	35(2)	Export without clearance	50,000	2Yrs	5,000
47	39(7)	Application, or failure to make proper application, for export clearance of regulated article by eligible person	20,000	1 Yr	2,000
48	41(4)	Refusal to move an article to biosecurity quarantine	50,000	2 Yrs	5,000
49	43(4)	Unlawful removal from biosecurity quarantine	100,000	5 Yrs	10,000
50	44(2)	Removing a quarantine notice	50,000	2 Yrs	5,000
51	45(3)	Permitting an animal or plant under quarantine to go at large, etc.	100,000	5 Yrs	10,000
52	47(3)(a)	Unauthorized entry or exit of a person at a quarantine station	100,000	5 Yrs	10,000
53	47(3)(b)	Interference with quarantine station	100,000	5 Yrs	10,000
54	49(6)	Failure by person keeping regulated article on premises to make available for inspection	50,000	2 Yrs	5,000
55	50(3)	Failure by a person to provide documents and make them available for inspection	50,000	2Yrs	5,000
56	51(6)	Refusal by importer or exporter to unpack and break open for inspection on request.	50,000	2 Yrs	5,000
57	53(2)	Refusal to permit sample or specimen to be taken	20,000	1 Yr	2,000
58	59(4)	Interfering with, damaging, removing or reducing the effectiveness of photographic, CCTV or video monitoring and recording equipment	50,000	2 Yrs	5,000
59	60(1)(d)	Person providing untruthful or misleading answer to a question by a biosecurity officer.	20,000	1 Yr	2,000
60	60(4)(c)	Person failing to answer a question	5,000	3mths	500

SCHEDULE 1[Sections 96, 97, 98, 99,
101 and 102]**MINIMUM PENALTIES AND FIXED PENALTIES**

Item	Section	Offence	Fine (Kina)	Prison	FP (Kina)
(1)	(2)	(3)	(4)	(5)	(6)
		when compelled to answer by a biosecurity officer.			
61	61(7)	Person refusing to submit to a search	20,000	1 Yr	2,000
62	63(4)	Refusal to make animals/plants/products available for survey examination and sample/specimen collection	20,000	1 Yr	2,000
63	65(5)	Refusal to remove conveyance to detention	20,000	1 Yr	2,000
64	66(5)	Refusal to remove animal/plant/product to detention	20,000	1 Yr	2,000
65	68(5)	Unauthorized movement of animal/plant/ product within infested controlled area	50,000	5 Yrs	5,000
66	69(3)	Failure to conform to an Order to treat diseased animals/plant in infested area	50,000	2 Yrs	5,000
66	69(3)	Fail to conform to an Order to destock or treat land/ water/premises/conveyance in infested area	50,000	2 Yrs	5,000
68	69(3)	Fail to conform to an Order to treat animals/plants/conveyance entering or leaving infested area	50,000	2 Yrs	5,000
69	69(3)	Fail to conform to any other lawful Order or direction to treat at an infested area	50,000	2 Yrs	5,000
70	69(3)	Fail to conform to an Order for movement of animals/plants/products into, in and out of infested area	50,000	2 Yrs	5,000
71	69(3)	Fail to conform to an Order for movement of people/conveyances into, in and out of infested area	50,000	2 Yrs	5,000
72	73(4)	Fail to notify occurrence of notifiable disease or pest	50,000	2 Yrs	5,000
73	77(3)(a)	Resisting or obstructing or failing to conform to directions in an emergency area	100,000	5 Yrs	10,000
74	77(3)(b)	Unauthorized entry to or exit from an emergency area	100,000	5 Yrs	10,000
75	77(3)(c)	Unauthorized movement of any article	100,000	5 Yrs	10,000

SCHEDULE 1[Sections 96, 97, 98, 99,
101 and 102]**MINIMUM PENALTIES AND FIXED PENALTIES**

Item	Section	Offence	Fine (Kina)	Prison	FP (Kina)
(1)	(2)	(3)	(4)	(5)	(6)
		into, out of and within an emergency area			
76	80(6)(a)	Failure to surrender official identification	20,000	1 Yr	2,000
77	80(6)(b)	Copy, Forge or alter official identification	50,000	2 Yrs	5,000
78	86(7)	Failure to pay fee or charge within 120 days	5,000	3mths	500
79	89(2)	Failure to keep facilities for garbage collection, incineration and disposal free of weeds and vermin	20,000	1 Yr	2,000
80	92(5)	Failure to conform to a specification in a compliance agreement	5,000	3mths	500
81	96(1)(a)	Officer neglecting to perform duty as directed	50,000	2 Yrs	5,000
82	96(1)(b)	Officer disposing of an article other than in conformity	50,000	2 Yrs	5,000
83	96(1)(c)	Officer disclosing confidential information	50,000	2 Yrs	5,000
84	96(1)(d)	Officer molesting, intimidating or unlawfully assaulting	50,000	2 Yrs	5,000
85	96(1)(e)	Officer soliciting or accepting a bribe	50,000	2 Yrs	5,000
86	96(1)(f)	Officer providing false or misleading statement, certificate or document	50,000	2 Yrs	5,000
87	97(1)(a)	Person failing to conform to lawful request or direction or order	100,000	5 Yrs	10,000
88	97(1)(b)	Person obstructing a biosecurity officer	100,000	5 Yrs	10,000
89	97(1)(c)	Person assaulting or threatening to assault a biosecurity officer	100,000	5 Yrs	10,000
90	97(1)(d)	Person bribing a biosecurity officer	100,000	5 Yrs	10,000
91	97(1)(e)	Person making a false or misleading statement intending to mislead a biosecurity officer	100,000	5 Yrs	10,000
92	97(1)(f)(i)	Person making a false or misleading declaration	100,000	5 Yrs	10,000
93	97(1)(f)(ii)	Person issuing a false or misleading document	100,000	5 Yrs	10,000
94	97(1)(g)	Person giving false or misleading information to an active biosecurity	100,000	5 Yrs	10,000

SCHEDULE 1[Sections 96, 97, 98, 99,
101 and 102]**MINIMUM PENALTIES AND FIXED PENALTIES**

Item	Section	Offence	Fine (Kina)	Prison	FP (Kina)
(1)	(2)	(3)	(4)	(5)	(6)
		officer			
95	97(1)(h)	Person impersonating a biosecurity officer	100,000	5 Yrs	10,000
96	98(1)(a)	Person altering a permit or document issued to them	100,000	5 Yrs	10,000
97	98(1)(b)	Person permitting other than a designated agent to use a permit or document issued to them	100,000	5 Yrs	10,000
98	98(2)	Person producing a false or misleading document intending others to rely upon	100,000	5 Yrs	10,000
99	98(3)	Person using an official stamp or seal with intent to defraud or deceive	100,000	5 Yrs	10,000

- Notes:
1. *The fines and periods of imprisonment are minimum for individuals.*
 2. *If the offence is committed by a body corporate, the minimum fine is 5 times that for an individual and there is no imprisonment – see section 99.*
 3. *‘FP’ means the fixed penalty for the offence under section 100. If no figure is shown, the fixed penalty option is not available. The FP for a body corporate is 5 times that shown.*
 4. *The description of the offence in column 3 is for purposes of this Schedule only.*

Passed by the National Parliament this day of 20....
