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BIOSECURITY AND AGRICULTURE MANAGEMENT
ACT 2007

**BIOSECURITY AND
AGRICULTURE MANAGEMENT
(QUALITY ASSURANCE AND
ACCREDITATION)
REGULATIONS 2013**

Western Australia

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

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Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

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Biosecurity and Agriculture Management Act 2007

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette* (**gazettal day**);
- (b) the rest of the regulations —
 - (i) if gazettal day is on or before the day on which the *Biosecurity and Agriculture Management Regulations 2013* (other than regulations 1 and 2) come into operation — on the day on which those regulations (other than regulations 1 and 2) come into operation; or
 - (ii) otherwise — on the day after gazettal day.

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Part 1 Preliminary

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3. Terms used

In these regulations, unless the contrary intention appears —
accreditation means an accreditation granted under regulation 7;

accreditation condition has the meaning given by regulation 9(1);

accreditation document means a document given to the holder of an accreditation by the Director General in relation to the accreditation;

assurance certificate has the meaning given by regulation 6(1);

certified thing, in relation to an assurance certificate or export certificate, means the animals, agricultural products, potential carriers, animal feed or fertilisers to which the certificate relates;

corresponding law means —

- (a) the *Pest Plants and Animals Act 2005* (Australian Capital Territory);
- (b) the *Plant Diseases Act 2002* (Australian Capital Territory);
- (c) the *Plant Diseases Act 1924* (New South Wales);
- (d) the *Plant Health Act 2008* (Northern Territory);
- (e) the *Plant Protection Act 1989* (Queensland);
- (f) the *Plant Health Act 2009* (South Australia);
- (g) the *Plant Quarantine Act 1997* (Tasmania);
- (h) the *Plant Health and Plant Products Act 1995* (Victoria);
- (i) the *Plant Biosecurity Act 2010* (Victoria);

export certificate has the meaning given by regulation 4(1);

holder, in relation to an accreditation, means the person to whom the accreditation is granted;

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Part 1

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interstate assurance certificate means —

- (a) an assurance certificate given by a person accredited under a corresponding law; or
- (b) an assurance certificate given by a person accredited by an authority of another State or a Territory in accordance with the Memorandum of Understanding on Interstate Certification Assurance agreed at the 16th meeting of the Agriculture and Resource Management Council of Australia and New Zealand on 6 August 1999;

interstate export certificate means a certificate that —

- (a) relates to any of the following —
 - (i) plants;
 - (ii) soil;
 - (iii) potting media;
 - (iv) machinery;and
- (b) is given under a corresponding law of another State or a Territory by an inspector, officer or authority of the State or Territory;

person authorised, under an accreditation, means a person authorised to give assurance certificates under the accreditation in accordance with regulation 8.

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Part 2 Export certificates

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Part 2 — Export certificates

4. Inspector may give export certificate

- (1) On request by a person, an inspector may give the person a certificate (an *export certificate*) in relation to any of the following (the *certified thing*) —
 - (a) animals;
 - (b) agricultural products;
 - (c) potential carriers;
 - (d) animal feed;
 - (e) fertilisers.
- (2) An export certificate may be given for either or both of the following purposes —
 - (a) the export of the certified thing out of the State;
 - (b) the movement of the certified thing within the State.
- (3) An export certificate may make any or all of the following statements in relation to the certified thing —
 - (a) that the certified thing is of a particular quality or grade;
 - (b) that the certified thing is in a particular condition;
 - (c) that the certified thing was produced in a particular area or place;
 - (d) that the certified thing was produced in a particular manner;
 - (e) that the certified thing has been treated in a particular way;
 - (f) that the certified thing is free from a particular organism, chemical residue, contaminant or adulterant;
 - (g) that the certified thing complies with particular conditions or requirements.

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Export certificates

Part 2

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- (4) An inspector must not give an export certificate unless the inspector is satisfied that each statement made in the certificate is accurate.
- (5) For the purpose of determining whether to issue an export certificate in relation to animals, agricultural products, potential carriers, animal feed or fertilisers, an inspector may do any or all of the following —
- (a) inspect, analyse or treat the animals, agricultural products, potential carriers, animal feed or fertilisers;
 - (b) take samples or specimens of or from the animals, agricultural products, potential carriers, animal feed or fertilisers;
 - (c) supervise the treatment or grading of the animals, agricultural products, potential carriers, animal feed or fertilisers;
 - (d) inspect materials used to treat or grade the animals, agricultural products, potential carriers, animal feed or fertilisers;
 - (e) do anything else that the inspector considers necessary or desirable.

5. Offences relating to export certificates

- (1) A person commits an offence if —
- (a) the person is not an inspector; and
 - (b) the person purports to give an export certificate.

Penalty: a fine of \$20 000.

- (2) A person commits an offence if —
- (a) the person —
 - (i) exports, or proposes to export, animals, agricultural products, potential carriers, animal feed or fertilisers; or

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Part 2 Export certificates

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- (ii) moves, or proposes to move, animals, agricultural products, potential carriers, animal feed or fertilisers within the State;

and

- (b) the person does any of the things set out in subregulation (3); and
- (c) the doing of the thing results, or is likely to result, in false or misleading information being stated in an export certificate.

Penalty: a fine of \$20 000.

- (3) The things to which subregulation (2) applies are —
 - (a) making a statement that the person knows is false or misleading in a material particular; or
 - (b) making a statement that is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular; or
 - (c) providing, or causing to be provided, information that the person knows is false or misleading in a material particular; or
 - (d) providing, or causing to be provided, information that is false or misleading in a material particular, with reckless disregard as to whether the information is false or misleading in a material particular.
- (4) A person commits an offence if —
 - (a) the person makes a statement or other representation about any of the following (the *relevant thing*) —
 - (i) animals;
 - (ii) agricultural products;
 - (iii) potential carriers;

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Export certificates

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- (iv) animal feed;
 - (v) fertilisers;
- and
- (b) the statement or representation is likely to cause another person reasonably to believe that an export certificate or interstate export certificate has been given in relation to the relevant thing; and
 - (c) no export certificate or interstate export certificate has been given in relation to the relevant thing; and
 - (d) the statement or representation is made —
 - (i) for the purposes of the sale of the relevant thing to a person in the State; or
 - (ii) for the purposes of the movement of the relevant thing into or within the State; or
 - (iii) to an inspector.

Penalty: a fine of \$20 000.

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Part 3 Accreditation to give assurance certificates

Division 1 Assurance certificates

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Part 3 — Accreditation to give assurance certificates

Division 1 — Assurance certificates

6. Person authorised under accreditation may give assurance certificate

- (1) If a person is authorised under an accreditation to do so, the person may give a certificate (an *assurance certificate*) in relation to any of the following (the *certified thing*) —
 - (a) animals;
 - (b) agricultural products;
 - (c) potential carriers;
 - (d) animal feed;
 - (e) fertilisers.
- (2) An assurance certificate may be given for either or both of the following purposes —
 - (a) the export of the certified thing out of the State;
 - (b) the movement of the certified thing within the State.
- (3) The assurance certificate may make any or all of the following statements —
 - (a) that the certified thing is of a particular quality or grade;
 - (b) that the certified thing is in a particular condition;
 - (c) that the certified thing was produced in a particular area or place;
 - (d) that the certified thing was produced in a particular manner;
 - (e) that the certified thing has been treated in a particular way;
 - (f) that the certified thing is free from a particular organism, chemical residue, contaminant or adulterant;

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Accreditation to give assurance certificates

Part 3

Accreditation

Division 2

r. 7

- (g) that the certified thing complies with particular conditions or requirements.
- (4) A person authorised under an accreditation must not give an assurance certificate unless the person is satisfied that each statement made in the certificate is accurate.

Penalty for an offence under subregulation (4): a fine of \$20 000.

Division 2 — Accreditation

7. Accreditation of persons to give assurance certificates

- (1) A person may apply to the Director General for the grant or renewal of an accreditation.
- (2) The application must —
 - (a) be made to the Director General in a manner and form approved by the Director General; and
 - (b) if the applicant is a body corporate — state the names and contact details of the individual officers or employees who will be authorised to give assurance certificates under the accreditation; and
 - (c) if the applicant is a partnership — state the names and contact details of each partner; and
 - (d) be accompanied by the appropriate fee, if any, determined under the Act; and
 - (e) be accompanied by any documents and other information specified on the approved form.
- (3) An application for the renewal of an accreditation must be made not later than —
 - (a) 3 months before the day on which the accreditation is due to expire; or
 - (b) a later time that the Director General allows.

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Part 3 Accreditation to give assurance certificates

Division 2 Accreditation

r. 8

- (4) The applicant must provide the Director General with any further information that the Director General requests in any particular case.
- (5) The Director General may decline to deal with an application if the application does not comply with this regulation, or if a requirement under subregulation (4) is not complied with, and must advise the applicant accordingly.
- (6) On application under subregulation (1), the Director General may, by written notice given to the person —
 - (a) grant or renew the accreditation; or
 - (b) refuse to grant or renew the accreditation.
- (7) A written notice under subregulation (6)(a) must specify —
 - (a) the person or persons who are authorised under the accreditation to give assurance certificates in accordance with regulation 8; and
 - (b) the accreditation conditions that apply under regulation 9.
- (8) If the Director General refuses to grant or renew an accreditation, the written notice under subregulation (6)(b) must state the reasons for the decision.

8. Persons authorised to give assurance certificates

- (1) The following persons are authorised under an accreditation to give assurance certificates —
 - (a) if the accreditation is granted to an individual — the individual;
 - (b) if the accreditation is granted to a body corporate — each officer or employee of the body corporate specified in the written notice under regulation 7(6)(a);
 - (c) if the accreditation is granted to a partnership — each partner specified in the written notice under regulation 7(6)(a).

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Accreditation to give assurance certificates

Part 3

Accreditation

Division 2

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- (2) Despite subregulation (1)(b) and (c), if an accreditation granted to a body corporate or a partnership has been amended under regulation 13 to vary the persons authorised to give assurance certificates, the persons authorised to give assurance certificates are the persons authorised under the accreditation as amended.

9. Accreditation conditions

- (1) The Director General may grant or renew an accreditation subject to any conditions (***accreditation conditions***) that the Director General considers appropriate.
- (2) An accreditation condition may provide for —
- (a) persons authorised under the accreditation to give only a specified kind of assurance certificate; or
 - (b) conditions that must be satisfied before an assurance certificate is given; or
 - (c) other restrictions on the giving of assurance certificates; or
 - (d) the Director General to cancel the accreditation, or to suspend the accreditation —
 - (i) in specified circumstances; and
 - (ii) for a specified period or until the occurrence of a specified event;
- or
- (e) any other matter relating to the accreditation that the Director General considers appropriate.

10. Duration of accreditation

- (1) An accreditation granted by the Director General comes into force on the day on which it is granted that is specified in the written notice of the accreditation.

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Part 3 Accreditation to give assurance certificates

Division 2 Accreditation

r. 11

- (2) Unless it is sooner cancelled by the Director General under regulation 12, an accreditation remains in force until —
 - (a) 12 months after the day on which it is granted; or
 - (b) if the Director General renews the accreditation — 12 months after the last renewal of the accreditation comes into force.
- (3) If an application for renewal of an accreditation is not decided on or before the day on which the accreditation expires (the *expiry day*), the accreditation remains in force after the expiry day until the Director General renews, or refuses to renew, the accreditation, unless before that time —
 - (a) the accreditation is cancelled under regulation 12; or
 - (b) the application for renewal is withdrawn.
- (4) A renewal of an accreditation comes into force —
 - (a) on the day after the expiry day; or
 - (b) if subregulation (3) applies to the application for the renewal — on the day the Director General renews the accreditation that is specified in the written notice of renewal.
- (5) An accreditation is taken not to be in force during any period when it is suspended under regulation 12.

11. Register of accreditations

- (1) The Director General must keep a register of holders of accreditations.
- (2) The register may be kept in the form that the Director General considers appropriate.
- (3) If the holder of an accreditation consents, the Director General may make details of the holder included on the register available to the public.

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Accreditation to give assurance certificates

Part 3

Accreditation

Division 2

r. 12

- (4) The Director General may make the register, or information obtained from the register, available to an officer of an authority of a State or Territory for the purposes of the administration of a corresponding law.

12. Cancellation or suspension of accreditation

- (1) In this regulation —

relevant person, in relation to an accreditation, means —

- (a) the holder of the accreditation; or
 - (b) a person authorised under the accreditation to give assurance certificates; or
 - (c) if the accreditation is granted to a corporation (as defined in the *Corporations Act 2001* (Commonwealth) section 57A) — a related entity (as defined in section 9 of that Act) of the corporation.
- (2) The Director General may cancel or suspend an accreditation on any of the following grounds —
- (a) the application for the accreditation was false or misleading in a material particular;
 - (b) the holder has not paid a fee or charge owing under the Act;
 - (c) a relevant person has contravened an accreditation condition;
 - (d) both —
 - (i) an accreditation condition provides for the Director General to cancel or suspend the accreditation in specified circumstances and for a specified period or until the occurrence of a specified event; and
 - (ii) those circumstances exist;
 - (e) a relevant person has committed an offence against the Act;

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Part 3 Accreditation to give assurance certificates

Division 2 Accreditation

r. 13

- (f) a relevant person has, within 5 years before the cancellation or suspension, been convicted in the State or elsewhere of an offence that involves fraud or dishonesty;
 - (g) both —
 - (i) a relevant person has previously held a similar accreditation (however described) granted under a corresponding law of another State or a Territory or by an inspector, officer or authority of another State or a Territory; and
 - (ii) that accreditation was cancelled (otherwise than on the request of the holder of the accreditation);
 - (h) the holder has requested the Director General in writing to cancel the accreditation.
- (3) If the Director General suspends an accreditation under subregulation (2)(d), the proposed period of suspension must be the period specified in the accreditation condition, or until the event specified in the accreditation condition, as the case may be.

13. Amendment of accreditation

If the Director General considers that an accreditation (including the persons authorised under the accreditation to give assurance certificates or any accreditation condition) should be amended, the Director General may amend the accreditation.

14. Procedures for cancellation, suspension or amendment of accreditation

- (1) If the Director General proposes to do any of the following (the *proposed action*) —
- (a) cancel an accreditation under regulation 12;
 - (b) suspend an accreditation under regulation 12;

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Accreditation to give assurance certificates

Part 3

Accreditation

Division 2

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- (c) amend an accreditation under regulation 13,
- the Director General must give the holder of the accreditation a written notice in accordance with subregulation (2).
- (2) The written notice must —
- (a) state the proposed action; and
 - (b) state the ground for the proposed action; and
 - (c) outline the facts and circumstances forming the basis for the ground; and
 - (d) if the proposed action is to suspend the accreditation — state the proposed period of suspension; and
 - (e) if the proposed action is to amend the accreditation — state the proposed amendment; and
 - (f) invite the holder of the accreditation to make written representations to the Director General in relation to the proposed action within a period specified in the notice (which must not be shorter than 28 days after the notice is given).
- (3) If, after considering any representations made within the period specified in the notice, the Director General still considers that a ground exists to take the proposed action, the Director General may —
- (a) if the proposed action was to cancel the accreditation — suspend the accreditation for a period or cancel the accreditation; or
 - (b) if the proposed action was to suspend the accreditation — suspend the accreditation for no longer than the proposed period of suspension stated in the notice; or
 - (c) if the proposed action was to amend the accreditation — amend the accreditation in accordance with the proposed amendment stated in the notice.

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Part 3 Accreditation to give assurance certificates

Division 2 Accreditation

r. 14

- (4) The Director General must inform the holder of the accreditation of the decision by written notice.
- (5) If the Director General decides to cancel, suspend or amend the accreditation, the notice must state the reasons for the decision.
- (6) The cancellation, suspension or amendment takes effect on the later of —
 - (a) the day on which the notice is given to the holder of the accreditation; or
 - (b) the day stated in the notice.
- (7) Despite subregulations (1) and (2), if the Director General considers it necessary in the public interest, the Director General may, by written notice given to the holder of an accreditation, immediately suspend the accreditation until the earlier of —
 - (a) when the Director General has —
 - (i) complied with subregulations (1) and (2) in relation to the proposed action; and
 - (ii) informed the holder of the accreditation of the Director General's decision under subregulation (4);
 - or
 - (b) 56 days after the notice is given to the holder of the accreditation.
- (8) If the Director General suspends an accreditation in accordance with subregulation (7), the notice must state the reasons for the decision.
- (9) Subregulations (1) to (6) do not apply —
 - (a) if the Director General proposes to amend an accreditation only —
 - (i) for a formal or clerical reason; or

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Accreditation to give assurance certificates

Part 3

Accreditation

Division 2

r. 15

- (ii) in another way that does not adversely affect the interests of the holder of the accreditation;
 - or
 - (b) if the holder of the accreditation asks the Director General to cancel or amend the accreditation and the Director General proposes to give effect to the request.
- (10) The Director General may cancel or amend an accreditation to which subregulation (9) applies by written notice given to the holder of the accreditation.

15. Return of accreditation documents

- (1) This regulation applies if the Director General cancels, suspends or amends an accreditation.
- (2) The Director General may, by written notice given to the holder of an accreditation, require the holder to return an accreditation document to the Director General within 14 days, or a longer period specified in the notice.
- (3) A person must comply with a notice under subregulation (2) unless the person has a lawful excuse.

Penalty for an offence under subregulation (3): a fine of \$5 000.

16. SAT review: accreditation

A person aggrieved by a decision of the Director General to —

- (a) refuse to grant or renew an accreditation; or
- (b) cancel an accreditation; or
- (c) suspend an accreditation; or
- (d) amend an accreditation,

may apply to the State Administrative Tribunal for review of the decision.

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Part 3 Accreditation to give assurance certificates

Division 3 Offences

r. 17

Division 3 — Offences

17. Contravention of accreditation conditions

The holder of an accreditation, or a person authorised under an accreditation to give assurance certificates, must not contravene an accreditation condition.

Penalty: a fine of \$10 000.

18. Offences relating to assurance certificates

(1) A person commits an offence if —

- (a) the person is not authorised under an accreditation to give assurance certificates; and
- (b) the person purports to give an assurance certificate.

Penalty: a fine of \$20 000.

(2) A person commits an offence if —

- (a) the person —
 - (i) exports, or proposes to export, animals, agricultural products, potential carriers, animal feed or fertilisers; or
 - (ii) moves, or proposes to move, animals, agricultural products, potential carriers, animal feed or fertilisers within the State;

and

- (b) the person does any of the things set out in subregulation (3); and
- (c) the doing of the thing results, or is likely to result, in false or misleading information being stated in an assurance certificate.

Penalty: a fine of \$20 000.

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Accreditation to give assurance certificates

Part 3

Offences

Division 3

r. 18

- (3) The things to which subregulation (2) applies are —
- (a) making a statement that the person knows is false or misleading in a material particular; or
 - (b) making a statement that is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular; or
 - (c) providing, or causing to be provided, information that the person knows is false or misleading in a material particular; or
 - (d) providing, or causing to be provided, information that is false or misleading in a material particular, with reckless disregard as to whether the information is false or misleading in a material particular.
- (4) A person commits an offence if —
- (a) the person makes a statement or other representation about any of the following (the *relevant thing*) —
 - (i) animals;
 - (ii) agricultural products;
 - (iii) potential carriers;
 - (iv) animal feed;
 - (v) fertilisers;and
 - (b) the statement or representation is likely to cause another person reasonably to believe that an assurance certificate or interstate assurance certificate has been given in relation to the relevant thing; and
 - (c) no assurance certificate or interstate assurance certificate has been given in relation to the relevant thing; and
 - (d) the statement or representation is made —
 - (i) for the purposes of the sale of the relevant thing to a person in the State; or

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Part 3 Accreditation to give assurance certificates

Division 3 Offences

r. 18

(ii) for the purposes of the movement of the relevant thing into or within the State; or

(iii) to an inspector.

Penalty: a fine of \$20 000.

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Transitional provisions

Part 4

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Part 4 — Transitional provisions

19. Terms used

In this Part —

commencement day means the day on which these regulations (other than regulations 1 and 2) come into operation;

pre-commencement accreditation means any of the following that is of effect immediately before commencement day —

- (a) an accreditation granted by the department in accordance with the Memorandum of Understanding on Interstate Certification Assurance agreed at the 16th meeting of the Agriculture and Resource Management Council of Australia and New Zealand on 6 August 1999; or
- (b) an accreditation granted by the department and known as an accreditation for a Certification Assurance arrangement; or
- (c) an accreditation granted by the department and known as an accreditation for a Compliance Arrangement.

20. Accreditations given before commencement

- (1) On and from commencement day, a pre-commencement accreditation has effect as if were an accreditation granted under regulation 7.
- (2) An accreditation to which subregulation (1) applies —
 - (a) expires at the end of the period for which the pre-commencement accreditation was granted that is stated on the certificate given to the holder for the pre-commencement accreditation; and
 - (b) is taken to authorise each person named in the application for the pre-commencement accreditation as a person responsible for the accreditation to give assurance certificates; and

Biosecurity and Agriculture Management (Quality Assurance and Accreditation) Regulations 2013

Part 4 Transitional provisions

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- (c) is taken to be subject to the following conditions imposed under regulation 9 —
- (i) a condition that persons authorised under the accreditation may only give assurance certificates in accordance with the certificate given to the holder for the pre-commencement accreditation; and
 - (ii) conditions imposing the requirements specified in the operational procedure given to the holder for the pre-commencement accreditation (to the extent those requirements are consistent with the Act and these regulations).
- (3) Subregulation (2) does not prevent the cancellation, suspension or amendment under these regulations of the accreditation or any accreditation condition.

By Command of the Governor,

N. HAGLEY, Clerk of the Executive Council.
