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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BIOSECURITY AMENDMENT (ENHANCED RISK MANAGEMENT) BILL 2021

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture and Northern Australia,
the Hon. David Littleproud MP)

BIOSECURITY AMENDMENT (ENHANCED RISK MANAGEMENT) BILL 2021

GENERAL OUTLINE

The Biosecurity Amendment (Enhanced Risk Management) Bill (Bill) would amend the *Biosecurity Act 2015* (the Biosecurity Act) to enhance the ability to manage the risk of pests and diseases entering, emerging, establishing or spreading in Australian territory and causing harm to animal, plant and human health, the environment and the economy. It would strengthen the management of biosecurity risks posed by maritime and aviation arrivals, improve the efficiency and effectiveness of the administration of the Biosecurity Act, and increase a range of civil and criminal penalties to deter non-compliance and provide proportionate penalties.

The Biosecurity Act provides the regulatory framework for managing the risk of pests and diseases entering Australian territory and gives effect to Australia's relevant international rights and obligations.

Australia's biosecurity system is a central pillar of our defence against current and emerging biosecurity threats, including those posed by exotic pests and diseases such as African Swine Fever, hitchhiker pests such as Khapra beetle, and infectious diseases posing a significant risk to human health such as COVID-19. This Bill would enhance the biosecurity framework to ensure Australia's biosecurity system effectively and efficiently protects Australia's human, plant and animal health, environment, and economy against these potentially devastating threats.

The Bill would amend the Biosecurity Act to:

- strengthen pratique and human health requirements by:
 - expanding pre-arrival reporting requirements for aircraft and vessels;
 - strengthening penalties for non-compliance with negative pratique requirements; and
 - creating a mechanism to make a human biosecurity group direction;
- increase civil and criminal penalties for contraventions of Chapter 3 of the Biosecurity Act which deals with managing the biosecurity risks relating to goods;
- streamline the process for making certain determinations specifying prohibited, conditionally non-prohibited and suspended goods or granting permits based on risk assessments; and
- increase efficiency and ensure transparency of expenditure on biosecurity-related programs and activities by permitting the Agriculture Minister and Health Minister to authorise the expenditure directly through the Biosecurity Act.

International vessels at Australia's borders have emerged as a key risk pathway for the entry of infectious diseases into Australian territory, including COVID-19 cases on cruise passenger ships and commercial vessels. The Inspector-General of Biosecurity's report *Confidence testing for at-border delivery of critical human biosecurity functions – Ruby Princess cruise ship incident* (Inspector-General's Report) examined the management of this risk. The ability to effectively respond to and manage biosecurity risks entering Australia

through the maritime and aviation pathways will be a significant consideration in reopening Australia's borders. This Bill would strengthen the legislative framework for international arrivals via these key pathways. The amendments would contribute to Australia's pandemic preparedness and response at the border. New requirements for pratique and pre-arrival reporting aim to specifically support the safe recovery of tourism and related industries.

As evidenced by the spread of COVID-19, the recent detections of Khapra beetle and the emergence of a new variant of African Swine Fever, the number of biosecurity threats and the speed with which they travel continues to increase. The growth in trade and travel anticipated as part of the economic recovery from COVID-19 will accentuate these threats. The evolving biosecurity risk environment requires the strengthening of the current penalty regime under the Biosecurity Act to ensure it remains an effective deterrent against non-compliance, particularly in a regulatory environment where non-compliance with current penalties may be seen as 'a cost of doing business'. The increase to pecuniary penalty amounts in this Bill would also ensure that the civil and criminal penalty units more appropriately reflect the impact the contraventions may have on Australia's biosecurity status, market access and economy than the current penalty regime does.

The Bill would increase transparency around the process for conducting risk assessments for the purposes of making a determination to prohibit or restrict the bringing or importation of particular goods into Australian territory where the goods present an unacceptable level of biosecurity risk, or for granting an import permit. These determinations and permits play a central role in enabling the Australian Government to manage biosecurity risks. This Bill would provide greater clarity to stakeholders around the process to make a determination or grant an import permit. The amendments would identify the matters the decision-makers must be satisfied of, while maintaining the requirement to apply the Appropriate Level of Protection (ALOP) for Australia to manage biosecurity risk.

The Bill would also ensure that the process required to authorise expenditure for biosecurity-related programs and activities will appropriately fall within the Biosecurity Act, such as surveillance programs for pests and diseases including Avian influenza, and emergency Foot and Mouth Disease vaccine programs. These activities are vital in protecting Australia's favourable biosecurity status, and a more efficient process would support timely implementation and a responsive biosecurity framework to effectively protect the health of Australia's people, animals, plants, environment, and economy.

The majority of the amendments will commence on the day after the Bill receives the Royal Assent. The amendments to strengthen pratique and human health requirements will commence on a single day to be fixed by Proclamation, or on the day after the end of the period of 6 months beginning on the day the Bill receives the Royal Assent, if not proclaimed earlier.

Consultation has been undertaken with Commonwealth agencies including the Department of Health, the Department of Prime Minister and Cabinet, the Attorney-General's Department, the Department of Finance, the Department of Foreign Affairs and Trade, the Department of Home Affairs, the Department of Infrastructure, Transport, Regional Development and Communications, the Australian Public Service Commission, the Australian Maritime Safety Authority and the National Indigenous Australians Agency. Consultation has also been undertaken with State and Territory health departments, through the cross-jurisdictional Chief Human Biosecurity Officer Forum chaired by the Commonwealth's Chief Medical Officer.

FINANCIAL IMPACT STATEMENT

The Bill would have no financial impact on the Australian Government Budget.

REGULATORY IMPACT STATEMENT

The Regulation Impact Statement is attached to this explanatory memorandum (**Attachment A**).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The full statement of compatibility with human rights for the Bill is included in this explanatory memorandum (**Attachment B**).

BIOSECURITY AMENDMENT (ENHANCED RISK MANAGEMENT) BILL 2021

NOTES ON CLAUSES

Section 1 Short title

1. Section 1 would provide for the short title of the proposed Act to be the *Biosecurity Amendment (Enhanced Risk Management) Act 2021* (the proposed Act).

Section 2 Commencement

2. Subsection 2(1) would provide that each provision of the proposed Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table.
3. Table item 1 would provide that sections 1 to 3, and anything in the proposed Act not elsewhere covered by the table, would commence on the day the proposed Act receives the Royal Assent.
4. Table item 2 would provide that Schedule 1 to the proposed Act would commence on a single day to be fixed by Proclamation, or on the day after the end of the period of 6 months beginning on the day the proposed Act receives the Royal Assent, if not proclaimed earlier.
5. Table item 3 would provide that Schedules 2 to 4 to the proposed Act would commence on the day after the proposed Act receives the Royal Assent.
6. Subsection 2(2) would provide that any information in column 3 of the table is not part of the proposed Act. It would clarify that information may be inserted in column 3 of the table, or information in it may be edited, in any published version of the proposed Act.

Section 3 Schedules

7. Section 3 would provide that legislation specified in a Schedule to the proposed Act is amended or repealed as set out in the applicable items of the Schedule, and any other item in a Schedule has effect according to its terms.

SCHEDULE 1—PRATIQUE AND HUMAN HEALTH MEASURES

Background

8. Schedule 1 to the Bill would amend provisions relating to pratique requirements, human health measures and pre-arrival reporting requirements in the Biosecurity Act.
9. The Biosecurity Act repealed the *Quarantine Act 1908* to provide a modernised framework for managing biosecurity risk of pests and diseases under joint portfolio responsibility of the Minister for Health and the Minister for Agriculture. Chapter 2 of the Biosecurity Act provides a dedicated biosecurity framework which provides for the management of the risk of contagion of a listed human disease or any other infectious human disease, and the risk of such diseases entering, emerging, establishing or spreading in any part of Australian territory. The Director of Human Biosecurity may determine that a human disease is a ‘listed human disease’ under section 42 of the Biosecurity Act, following consultation with the Director of Biosecurity and the chief health officer of each State and Territory, if the Director of Human Biosecurity considers that the disease may be communicable and cause significant harm to human health. The Biosecurity Act gives effect to Australia’s international rights and obligations, including World Health Organization’s *International Health Regulations 2005* (International Health Regulations).
10. The emergence and global spread of COVID-19 has tested Australia’s biosecurity systems and public health responses in an unprecedented way. International maritime vessels continue to represent a significant risk pathway for infectious disease entry to Australian territory, including incidents of COVID-19 infections on cruise passenger ships and commercial vessels.
11. The Bill would strengthen the legislative framework under the Biosecurity Act for responding to biosecurity risks arising from incoming aircraft and vessels in Australian territory. In helping manage the ongoing risks in relation to maritime and aviation pathways, the amendments would contribute to Australia’s improved health risk preparedness and response at the border. New requirements for pratique and pre-arrival reporting specifically aim to ensure the safe recovery of tourism and related industries.
12. The Commonwealth departments with joint portfolio responsibility for the Biosecurity Act, the Department of Health and the Department of Agriculture, Water and the Environment, have identified the measures in this Bill concerning pratique requirements, human health measures and pre-arrival reporting as key legislative reforms. This has been supported by consultation with State and Territory health departments through the cross-jurisdictional Chief Human Biosecurity Officer Forum chaired by the Commonwealth’s Chief Medical Officer and other key agencies including the Department of Infrastructure, Transport, Regional Development and Communications and the Australian Maritime Safety Authority.
13. This Schedule would commence by Proclamation, or on the day after the period of 6 months beginning on the day the proposed Act receives the Royal Assent, if not proclaimed earlier. The amendments made to the pratique requirements, human health measures and pre-arrival reporting requirements by this Schedule would not have effect until that day.

Part 1—Pratique

Biosecurity Act 2015

Item 1 Subsection 48(1)

14. Subsection 48(1) of the Biosecurity Act currently provides that an operator of an incoming aircraft or vessel that arrives at a landing place or port in Australian territory is liable to a civil penalty if the operator contravenes the requirement not to unload or load any thing or disembark or embark any persons, unless pratique has been granted under subsection 48(2) or subsection 49(4) of the Biosecurity Act.
15. Item 1 would amend subsection 48(1) by inserting the words “, or the person in charge of an incoming aircraft or vessel” after “An operator of an incoming aircraft or vessel”. Amended subsection 48(1) would extend the scope of the civil penalty provision, such that a person in charge of an incoming aircraft or vessel would, in addition to the operator of the aircraft or vessel, also be liable to a civil penalty if the pratique requirements are not complied with. This amendment is intended to address the disjuncture between the practical and legal responsibility for compliance with pratique requirements under the Biosecurity Act. This was recognised by the Inspector-General, who recommended that the Biosecurity Act should be amended to “[...] *make the ‘person in charge’ (and operator) of a conveyance [...] also responsible for any non-compliance with negative pratique*”. This amendment would strengthen the regulatory framework by providing that both the operator and the person in charge of the incoming aircraft or vessel should be liable to a civil penalty for non-compliance with subsection 48(1).

Item 2 Subsection 48(1) (penalty)

16. Subsection 48(1) of the Biosecurity Act currently provides that an operator of an incoming aircraft or vessel that arrives at a landing place or port in Australian territory is liable to a civil penalty if the operator contravenes the requirement not to unload or load any thing or disembark or embark any persons, unless pratique has been granted under subsection 48(2) or subsection 49(4) of the Biosecurity Act. The maximum civil penalty for contravention of subsection 48(1) is currently 120 penalty units.
17. Item 2 would repeal and substitute the civil penalty in subsection 48(1) to provide that the maximum civil penalty that a court may order against an individual for contravention of subsection 48(1) would be:
 - 1,000 penalty units for the operator of the aircraft or vessel; or
 - 300 penalty units for a person in charge of the aircraft or vessel.

If the court orders a civil penalty against a body corporate for a contravention of subsection 48(1), the maximum civil penalty must not be more than 5 times the maximum amount for an individual (see subsection 82(5) of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act), as enabled by section 519 of the Biosecurity Act).

18. The higher civil penalty proposed by item 2 recognises the serious consequences posed by the potential entry, spread and transmission of a listed human disease in Australian territory. It is appropriate in a commercial context in which a delay in obtaining a grant of pratique is likely to result in significant financial cost and loss of market advantage to an aircraft or vessel, such as a large cruise vessel, that is not permitted to disembark passengers or unload goods. The proposed increase to the civil penalty is intended to be more proportionate to deter those who may consider non-compliance as a cost of doing business.

Item 3 Application provision

19. Item 3 would provide that the amendments of section 48 of the Biosecurity Act made by this Part would apply in relation to an incoming aircraft or vessel that arrives at a landing place or port in Australian territory on or after the commencement of this item. Item 3 makes clear that the amendments in items 1 and 2 are proposed to have prospective effect.

Part 2—Human biosecurity group directions

Biosecurity Act 2015

Item 4 Section 3

20. Section 3 of the Biosecurity Act sets out a simplified outline of the Biosecurity Act. Item 4 would amend the description of Chapter 2 in the simplified outline to include a reference to the methods of managing risks to human health. The methods would include the existing mechanism to impose a human biosecurity control order on an individual, and the new mechanism to make a human biosecurity group direction for a class of individuals, where the individual or individuals have, or have been exposed to, a listed human disease. This item is consequential to the changes proposed by item 16 of this Schedule which inserts a new Part 3A in Chapter 2 of the Biosecurity Act to manage risks to human health through human biosecurity group directions.
21. The simplified outline, and the amendments made by this item, are not intended to be comprehensive and have been included to assist readers to understand the substantive provisions of the Biosecurity Act and the amendments made by this Schedule, rather than to replace those provisions. It is intended that readers would rely on the substantive provisions in the Biosecurity Act and this Schedule.

Item 5 Section 9

22. Section 9 provides definitions for the Biosecurity Act. Item 5 would insert a new definition of *human biosecurity group direction*. This new definition would provide that a *human biosecurity group direction* means a direction made under new section 108B. This would be consequential to the insertion of new section 108B proposed by item 16 of this Schedule.

Item 6 Section 9 (at the end of the definition of *prescribed contact information*)

23. Section 9 provides definitions for the Biosecurity Act. Item 6 would insert a new paragraph (d) at the end of the definition of *prescribed contact information*. New paragraph (d) would provide that *prescribed contact information* in relation to new subsection 108K(1), means the contact information prescribed by the regulations for the purposes of that subsection. This would be consequential to the insertion of new subsection 108K(1) proposed by item 16 of this Schedule.

Item 7 Subsection 34(1)

24. Subsection 34(1) currently provides that section 34 applies to a person who is making a decision to exercise a power in relation to, or impose a biosecurity measure on, an individual under Chapter 2 of the Biosecurity Act, in order to manage certain risks associated with a listed human disease. Section 34 is subject to subsections 34(3) and 34(4), which provide for certain circumstances in which subsection 34(2) does not apply. Subsection 34(2) sets out certain principles affecting the making of decisions.
25. Item 7 would amend subsection 34(1) by inserting the words “or a class of individuals” after “an individual”. Amended subsection 34(1) would extend the application of

section 34 to decisions to exercise a power in relation to, or impose a biosecurity measure on, a class of individuals under Chapter 2 of the Biosecurity Act, in addition to decisions in relation to an individual.

26. This amendment would require the principles set out in subsection 34(2) of the Biosecurity Act to be applied to decisions to exercise a power in relation to, or impose a biosecurity measure on, a class of individuals under the new Part 3A of Chapter 2 of the Biosecurity Act. These are important principles to be considered by a person when deciding whether to exercise a power in relation to a human biosecurity group direction, or to impose a biosecurity measure under that direction. The application of these principles would provide for consideration of the rights enshrined in the *International Covenant on Civil and Political Rights*, the *Convention on the Rights of the Child*, and the personal protections enshrined in the International Health Regulations. Further consideration would also be given to the seriousness of the circumstances as well as the public interest in giving a direction or including a measure balanced against the public interest in upholding an individual's liberty or other rights to ensure that appropriate protections are considered.

Item 8 Section 35

27. Section 35 currently provides that the exercise of a power, or the imposition of a biosecurity measure, in relation to an individual under Chapter 2 of the Biosecurity Act must not interfere with any urgent or life-threatening medical needs of the individual.
28. Item 8 would amend section 35 by inserting the words “or a class of individuals” after “an individual”. When read with the amendments proposed by item 9 of this Schedule, amended section 35 would provide that the urgent or life-threatening medical needs of an individual, or an individual within a particular class of individuals, would prevail over the provision of any measures under Chapter 2 of the Biosecurity Act to manage risks to human health in relation to the individual or the class of individuals. This is in addition to consideration of the principles set out in section 34, as amended by item 7 of this Schedule.

Item 9 At the end of section 35

29. Section 35 currently provides that the exercise of a power, or the imposition of a biosecurity measure, in relation to an individual under Chapter 2 of the Biosecurity Act must not interfere with any urgent or life-threatening medical needs of the individual.
30. Item 9 would insert the words “or an individual in that class” at the end of section 35. When read with the amendments proposed by item 8 of this Schedule, amended section 35 would provide that the urgent or life-threatening medical needs of an individual, or an individual in a particular class of individuals, would prevail over the provision of any measures under Chapter 2 of the Biosecurity Act to manage risks to human health in relation to the individual or the class of individuals. This is in addition to consideration of the principles set out in section 34, as amended by item 7 of this Schedule.

Item 10 After paragraph 38(4)(b)

31. Section 38 of the Biosecurity Act provides that a direction may be given to an accompanying person for a child or incapable person, where the direction is for the purpose of ensuring the compliance of the child or incapable person with a requirement under Chapter 2 of the Biosecurity Act. Subsection 38(4) currently provides that a person commits a fault-based offence if a person is an accompanying person, who fails to comply with a direction that is given under section 38.
32. Item 10 would insert new paragraph 38(4)(ba) to provide an additional element for the commission of a fault-based offence in subsection 38(4). New paragraph 38(4)(ba) would require that direction that is given under section 38 to ensure the compliance of the child or incapable person is in relation to a requirement that is not included in a human biosecurity group direction. This amendment is consequential to the insertion of new subsection 38(5), proposed by item 12 of this Schedule. The intention of this amendment is to ensure that a person who is liable to a civil penalty provision under new subsection 38(5) cannot be found to have committed a fault-based offence under subsection 38(4), thereby precluding the risk of double jeopardy.

Item 11 At the end of paragraph 38(4)(c)

33. Section 38 of the Biosecurity Act provides that a direction may be given to an accompanying person for a child or incapable person, where the direction is for the purpose of ensuring the compliance of the child or incapable person with a requirement under Chapter 2 of the Biosecurity Act. Subsection 38(4) currently provides that a person commits a fault-based offence if a person is an accompanying person, who fails to comply with a direction that is given under section 38.
34. Item 11 would add the words “under this section” at the end of paragraph 38(4)(c). This amendment would clarify that a person would only commit a fault-based offence under subsection 38(4) where they fail to comply with the direction under section 38. This is a minor technical amendment that is intended to assist readers to understand that the reference to “a direction” in this context means a direction under section 38, instead of another kind of direction given under the Biosecurity Act.

Item 12 At the end of section 38

35. Section 38 of the Biosecurity Act provides that a direction may be given to an accompanying person for a child or incapable person, where the direction is for the purpose of ensuring the compliance of the child or incapable person with a requirement under Chapter 2 of the Biosecurity Act.
36. Item 12 would insert new subsection 38(5) at the end of section 38, which would provide for a new civil penalty provision. New subsection 38(5) would provide that a person is liable to a civil penalty if the person is an accompanying person, who fails to comply with a direction that is given to them under section 38 in relation to a requirement that is included in a human biosecurity group direction. The maximum civil penalty that a court may order a person who is an individual to pay where that person is liable to a civil penalty under new subsection 38(5) is 30 penalty units.

37. The maximum civil penalty proposed by new subsection 38(5) is intended to be proportionate to the likely harm that may result and to adequately deter a worst-case contravention of the provision. This amendment would ensure that the maximum civil penalty for contravention of new subsection 38(5) by a person who is an accompanying person is the same as the maximum civil penalty for contravention of a human biosecurity group direction in new subsection 108T, as proposed by item 16 of this Schedule. The maximum civil penalty also aligns with similar civil penalty provisions in the Biosecurity Act relating to a failure by an individual to comply with certain entry and exit requirements under section 46. The civil penalty is otherwise consistent with the principles set out in the Australian Government *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide). New subsection 38(5) would be subject to the infringement notice scheme under the Biosecurity Act, as proposed by item 17 of this Schedule.

Item 13 At the end of subsection 40(1)

38. Subsection 40(1) currently provides that an accompanying person for a child or incapable person may give consent on behalf of the child or incapable person for the purposes of Part 3 of Chapter 2 of the Biosecurity Act, in relation to human biosecurity control orders.
39. Item 13 would add the words “or Part 3A of this Chapter (human biosecurity group directions)” at the end of subsection 40(1). Amended subsection 40(1) would provide that an accompanying person for a child or incapable person may also give consent on behalf of the child or incapable person for the purposes of new Part 3A of Chapter 2 of the Biosecurity Act, as proposed by item 16 of this Schedule. This amendment would allow an accompanying person to either consent or refuse consent on behalf of the child or incapable person for the purposes of a human biosecurity group direction.

Item 14 After paragraph 55(1)(a)

40. Subsection 55(1) currently provides that an officer may require an individual to answer questions, or provide written information, if a human biosecurity control order is in force in relation to the individual, or the individual is in a human health response zone. The officers who may require answers to questions or written information under Division 6 of Part 2 of Chapter 2 are set out in subsection 54(1).
41. Item 14 would amend subsection 55(1) by inserting new paragraph 55(1)(aa). New paragraph 55(1)(aa) would provide that another circumstance in which an officer described in subsection 54(1) may require an individual to answer questions, or provide written information is where the individual is included in the class of individuals specified in a human biosecurity group direction that is in force. This amendment would be consequential to the insertion of new Division 3 of Part 3A of Chapter 2 of the Biosecurity Act, proposed by item 16 of this Schedule.
42. This amendment would allow the officer to ask questions of an individual in the particular class, for the purposes of assessing biosecurity risks determining the level of risk to human health associated with the individual.

Item 15 At the end of subsection 60(1)

43. Subsection 60(1) provides that a chief human biosecurity officer, human biosecurity officer or biosecurity officer may impose a human biosecurity control order on an individual.
44. Item 15 would add a new note 4 after subsection 60(1). New note 4 would refer the reader to new subsection 108J(2), which provides that where a human biosecurity control order is imposed on an individual, who is included in the class of individuals specified in a human biosecurity group direction that is in force, then the individual ceases to be included in that class at the time the order comes into force. This amendment would be consequential to the insertion of new section 108J, proposed by item 16 of this Schedule.

Item 16 After Part 3 of Chapter 2

45. Item 16 would insert a new Part 3A into Chapter 2 of the Biosecurity Act. The new Part 3A would set out provisions relating to managing risks to human health through human biosecurity group directions.

Part 3A—Managing risks to human health: human biosecurity group directions

Division 1—Introduction

Section 108A – Simplified outline of this Part

46. New section 108A would provide a simplified outline of the new Part 3A of Chapter 2 of the Biosecurity Act. The outline is not intended to be comprehensive and has been included to assist readers to understand the substantive provisions of new Part 3A, rather than to replace those provisions. It is intended that readers would rely on the substantive provisions in new Part 3A.

Division 2—Making human biosecurity group directions

Section 108B – Making human biosecurity group directions

47. New section 108B would provide that a human biosecurity group direction can be made under new Part 3A of Chapter 2 of the Biosecurity Act to manage risks of the entry, emergence, establishment or spread of a listed human disease in Australian territory or a part of Australian territory, posed by a class of individuals.
48. Currently, Part 3 of Chapter 2 of the Biosecurity Act provides for the use of a human biosecurity control order to manage risks to human health. However, as human biosecurity control orders can only be imposed on an individual, they are not a suitable mechanism to assess and manage the biosecurity risks posed by a group of individuals, such as in the context of large passenger vessels. While a group quarantine direction mechanism had been available under the *Quarantine Act 1908*, when that Act was repealed and replaced by the Biosecurity Act, the new legislation did not provide for a mechanism that could operate to apply to a group of individuals.

49. The COVID-19 pandemic has highlighted the need for a Commonwealth mechanism under the Biosecurity Act to effectively and efficiently conduct preliminary assessment and management of the human health risks posed by groups of individuals. The Inspector-General also recommended that the Biosecurity Act be amended to provide broader mechanisms for “*managing large numbers of passengers and crew with potential Listed Human Diseases onboard foreign vessels*”. New section 108B is intended to address this gap in Commonwealth processes. It would also give effect to Australia’s international obligations under the International Health Regulations, consistent with the objects of the Biosecurity Act under subsection 4(b).
50. New subsection 108B(1) would allow a chief human biosecurity officer or human biosecurity officer to make a human biosecurity group direction that applies to each individual included in a class of individuals specified in the direction. The direction must be made in writing, in a form approved by the Director of Human Biosecurity, but is not a legislative instrument for the purposes of the *Legislation Act 2003* (see new section 108D). Only a chief human biosecurity officer or human biosecurity officer has the ability to make the human biosecurity group direction. This is because the exercise of this function will require clinical expertise or qualifications to make informed public health and medical decisions about the assessment and management of a class of individuals in relation to risks posed by a listed human disease.
51. Note 1 following new subsection 108B(1) would explain that there is a civil penalty for failing to comply with a human biosecurity group direction, referring to new section 108T. Note 2 following new subsection 108B(1) would draw to the reader’s attention that the officer must be satisfied of the principles set out in section 34 before making such a direction. The principles set out in section 34 are discussed above in the paragraphs addressing item 7 of this Schedule. Note 3 following new subsection 108B(1) would refer the reader to new section 108H, which would require the Director of Human Biosecurity to be notified of the making of a human biosecurity group direction.
52. New subsection 108B(2) would provide that the class of individuals specified in a human biosecurity group direction must be all the individuals, or a group of individuals, who:
- are on board an aircraft or a vessel that is in Australian territory (new paragraph 108B(2)(a)); or
 - the officer is satisfied are at a landing place or port in Australian territory, or at a place that is in close proximity to a landing place or port in Australian territory, where an aircraft or vessel has arrived at the landing place or port (new paragraph 108B(2)(b)).
53. This would set distinct parameters for when a human biosecurity group direction can be made in relation to a class of individuals. The intention is that only individuals who are on board an aircraft or a vessel, or individuals that the officer is satisfied are at a landing place or port (or the close proximity to those locations) could be made the subject of a direction. For example, this may include a class of individuals who are in close proximity to the landing place or port, and who, despite not having been on board the aircraft or vessel concerned, may be at a heightened risk of contagion of a listed human disease, by their exposure to an ill individual who had disembarked from that

aircraft or vessel. The intention is that once the officer is satisfied that the individuals have departed from a place that is in close proximity to a landing place or port, the ability to make a human biosecurity group direction would no longer be available. Section 9 of the Biosecurity Act defines **landing place**, in relation to an aircraft, to mean any place where the aircraft can land, including an area of land or water, and an area on a building or a vessel. Section 9 defines **port** as including a harbour.

54. New subsection 108B(3) would further clarify that the class of individuals for the purposes of new paragraph 108B(2)(b) may be, or may include, all the individuals, or a group of individuals, who were on board the aircraft or vessel. New subsection 108B(3) would not otherwise limit new paragraph 108B(2)(b).
55. New subsection 108B(4) would stipulate the grounds for a chief human biosecurity officer or human biosecurity officer to make a human biosecurity group direction under new subsection 108B(1). This is where the officer is satisfied that one or more individuals who are, or were, on the aircraft or vessel have one or more signs or symptoms of a listed human disease, or have been exposed to a listed human disease or one or more other individuals with such signs or symptoms. This would limit intervention by an officer to only those diseases identified by the Director of Human Biosecurity under section 42 of the Biosecurity Act as warranting Commonwealth intervention because they may be communicable and cause significant harm to human health. Section 17 of the Biosecurity Act provides that a person or thing is taken to have been **exposed to** another person or thing if the first person or thing has been, or is likely to have been, in physical contact with, in close proximity to or exposed to contamination infestation or infection from the other person or thing.
56. New subsection 108B(5) would allow a chief human biosecurity officer or a human biosecurity officer to include one or more biosecurity measures specified in new Division 3 of Part 3A of Chapter 2 of the Biosecurity Act in a direction made under new section 108B. Such biosecurity measures are important to manage the risk of contagion of a listed human disease, as well as the risk of a listed human disease entering, emerging, establishing itself or spreading in Australian territory or a part of Australian territory.
57. New subsection 108B(6) would provide that the chief human biosecurity officer or a human biosecurity officer may include a biosecurity measure in a human biosecurity group direction under new section 108B only in certain circumstances. This would be where the officer is satisfied that the biosecurity measure contributes to managing the risk of contagion of a listed human disease or the risk of a listed human disease entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory.

Section 108C – Contents of human biosecurity group direction

58. New section 108C would set out the contents of a human biosecurity group direction made under new subsection 108B. This would provide information for the class of individuals and other officers to facilitate the management of a listed human disease.

59. New subsection 108C(1) would provide that a human biosecurity group direction must specify the following information:
- the ground in new subsection 108B(4) under which the direction is made, that is, which limb of that threshold test has been satisfied;
 - the listed human disease in relation to which the direction is made. This can include more than one listed human disease where the signs or symptoms are not sufficiently clear to point to only a single disease, and noting that some listed human diseases will initially exhibit the same signs and symptoms, and may require further assessment for identification or diagnosis;
 - any signs or symptoms of the listed human disease;
 - a unique identifier for the direction;
 - each biosecurity measure (specified in new Division 3 of Part 3A of Chapter 2 of the Biosecurity Act) with which each individual included in the class of individuals specified in the direction must comply;
 - an explanation of why each biosecurity measure is required and how the biosecurity measure under new section 108N (undergoing an examination) and new section 108P (requiring body samples for diagnosis) would be undertaken (if included in the direction);
 - the period during which the direction is in force – up to a maximum of 8 hours;
 - the effect of new section 108T, which would provide a civil penalty for failing to comply with the direction;
 - details of a chief human biosecurity officer who can be contacted for information and support in relation to the direction;
 - any other information considered appropriate by the officer making the direction; and
 - any other information required by the regulations.
60. The requirement to provide an explanation for why a particular biosecurity measure is being included in the human biosecurity group direction helps the class of individuals to understand why they are subject to the direction and support them to make informed decisions in relation to their health. It would also ensure that the officer has had regard to the reasons for imposing a measure, and that they have considered the principles in section 34 in making the decision.
61. A maximum duration of a human biosecurity group direction of 8 hours has been specified as the direction is only intended to be a preliminary measure to assess and manage the immediate risk of contagion of a listed human disease in a class of individuals, and take steps to prevent the onward spread of that listed human disease to the Australian community more broadly. The direction can only be extended for one further period of 4 hours, as provided for in new subsection 108F(3). If the time of the initial direction (including any extension) expires, and the class of individuals or a group of individuals within the class previously covered by that direction still requires assessment or management, a new human biosecurity group direction can be made. The principles in clause 34 would apply to ensure an officer does not apply a biosecurity measure or enforce the human biosecurity group direction for longer than is reasonably necessary to address the risk.

62. The provision of contact details for a chief human biosecurity officer is to ensure that each individual in the class of individuals has an avenue to contact a medical practitioner who can provide expert advice during the period that the direction is in force. This is in addition to consular assistance that may be offered to non-Australian citizens under new section 108V.
63. New subsection 108C(2) would clarify that the maximum period for a human biosecurity group direction does not prevent a second direction from being made after the first direction ceases to be in force. The second direction may be made in relation to a class of individuals covered by new subsection 108B(2), and regardless of whether that class is the same class of individuals specified in the first direction. Any subsequent human biosecurity group direction would have effect from the time it comes into force. The ability to make a subsequent direction is necessary in circumstances where the first direction has expired and risks to human health posed by a class of individuals still requires further management.

Section 108D – Form of human biosecurity group direction

64. New subsection 108D(1) would provide that a human biosecurity group direction must be in the form approved, in writing, by the Director of Human Biosecurity. This allows for consistent application of the requirements of the Biosecurity Act.
65. New subsection 108D(2) would provide that a human biosecurity group direction is not a legislative instrument for the purposes of the *Legislation Act 2003*. This reflects that the human biosecurity group direction is administrative in nature.

Section 108E – Notification of a human biosecurity group direction

66. New subsection 108E(1) would require a chief human biosecurity officer, human biosecurity officer or biosecurity officer to give notification to the class of individuals specified in the human biosecurity group direction. The notification by the officer must be given to the class of individuals specified in the direction and must include the contents of the direction. The notification to the class of individuals is intended to make the individuals aware of the biosecurity measures they are required to comply with under a human biosecurity group direction that applies to them, as well as providing relevant information to those individuals about the direction, including its purpose. The note following new subsection 108E(1) would refer the reader to new section 108T, which provides that there is a civil penalty for failing to comply with the direction.
67. New subsection 108E(2) would provide that a chief human biosecurity officer, human biosecurity officer or biosecurity officer may require the person in charge of an aircraft or vessel to instead give notification of the direction, if a class of individuals is on board the aircraft or vessel concerned. The notification by the person in charge must be given to the class of individuals specified in the direction and must include the contents of the direction. The intention is to ensure that notice of the direction may be given in circumstances where it may be more efficient and effective for the person in charge to give notification of the direction to the class of individuals on board the aircraft or vessel. For example, if a human biosecurity group direction has been made in relation to a class of individuals on board a vessel in Australian territory but not moored at a

port, it may not be reasonably practicable for the officer to board the vessel in the open water to give the notification. In such circumstances, the officer may require the person in charge of the vessel to instead provide the notification of the direction to the class of individuals. The note following new subsection 108E(2) would refer the reader to new section 108U, which provides that the person in charge would be liable to a civil penalty for failing to comply with the notification requirement given by the officer.

68. New subsection 108E(3) would require that a notification under new subsection 108E(1) or 108E(2) be given in accordance with the regulations. It is intended that the regulations may provide for a range of different methods by which notification of the direction can be given, depending on what is most appropriate for the circumstances of each case and having regard to technological or operational requirements. For example, the regulations may require that the notification method would involve the contents of a human biosecurity group direction being read out to the class of individuals either in person or via the onboard communication system, or by distributing a written copy of the contents of the direction in person or electronically to the class of individuals. The regulations would also allow for consistent application of the notification requirements to the class of individuals. The notification must also be given before the time the direction comes into force. This would ensure that the class of individuals will be aware of the requirements for complying with the direction before they take effect.

Section 108F – Varying a human biosecurity group direction

69. New subsection 108F(1) would allow a chief human biosecurity officer or a human biosecurity officer to vary a human biosecurity group direction. The variation must be made in writing and is not a legislative instrument for the purposes of the *Legislation Act 2003*. Only a chief human biosecurity officer or human biosecurity officer has the ability to vary a human biosecurity group direction. This is because the exercise of this function will require clinical expertise or qualifications to make informed public health decisions about the assessment or management of a class of individuals in relation to risks posed by a listed human disease.
70. Note 1 following new subsection 108F(1) would draw to the reader's attention that the officer must be satisfied of the principles set out in section 34 before varying a human biosecurity group direction. The principles set out in section 34 are discussed above in the paragraphs addressing item 7 of this Schedule. Note 2 following new subsection 108F(1) would refer the reader to new section 108H, which would require that the Director of Human Biosecurity be notified of a variation of a human biosecurity group direction.
71. New subsection 108F(2) would provide that the variation of a human biosecurity group direction cannot change the class of individuals specified in the direction, and must be in relation to one or more matters covered by new subsection 108C(1). This would set distinct and appropriate parameters for when a direction may be varied in relation to a class of individuals.
72. New subsection 108F(3) would set an additional requirement that must be met if a variation extends the period during which a human biosecurity group direction is in force. The direction can only be extended for a further period of up to 4 hours, and the period may only be extended once. If the time expires and the officer is satisfied that

the class of individuals still requires management, the officer may consider the making of a new human biosecurity group direction. The principles in clause 34 would apply to ensure an officer does not apply a biosecurity measure or enforce the human biosecurity group direction for longer than is reasonably necessary to address the risk.

73. New subsection 108F(4) would stipulate the grounds for a chief human biosecurity officer or human biosecurity officer to vary a human biosecurity group direction under new subsection 108F(1). This would require the officer to be satisfied that the variation contributes to reducing the risk of contagion of a listed human disease or the risk of a listed human disease entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory. Alternatively, the officer would need to be satisfied that the variation removes or varies a provision that no longer contributes to reducing such a risk, or that the variation is of a minor technical nature.
74. New subsection 108F(5) would provide that the variation must specify the time at which the variation takes effect.
75. New subsection 108F(6) would require a chief human biosecurity officer, human biosecurity officer or biosecurity officer to give notification of the variation, if a human biosecurity group direction is varied. The notification by the officer must be given to the class of individuals specified in the direction and must include the contents of the variation. The intention is that by providing notification of the variation to the class of individuals, this ensures that the individuals will be aware of the requirements for complying with a variation of a direction that applies to them, as well as providing relevant information to those individuals about the variation made to the direction. The note following new subsection 108F(6) would refer the reader to new section 108T, which provides that there is a civil penalty for failing to comply with the direction.
76. New subsection 108F(7) would provide that a chief human biosecurity officer, human biosecurity officer or biosecurity officer may require the person in charge of an aircraft or vessel to instead give notification of the variation, if a class of individuals is on board the aircraft or vessel concerned. The notification by the person in charge must be given to the class of individuals specified in the direction and must include the contents of the variation. The intention is to ensure that notice of the variation may be given in circumstances where it may be more efficient and effective for the person in charge to give notification of the variation to the class of individuals on board the aircraft or vessel. For example, if a direction has been varied in relation to a class of individuals on board a vessel in Australian territory but not yet moored at a port, it may not be reasonably practicable for the officer to board the vessel in the open water to give the notification. In such circumstances, the officer may require the person in charge of the vessel to instead provide the notification of the variation to the class of individuals. The note following new subsection 108F(7) would refer the reader to new section 108U, which provides that the person in charge would be liable to a civil penalty for failing to comply with the notification requirement given by the officer.
77. New subsection 108F(8) would require that a notification under new subsection 108F(6) or 108F(7) be given in accordance with the regulations. It is intended that the regulations may provide for a range of different methods by which notification of the variation can be given, depending on what is most appropriate for the circumstances of each case and having regard to technological or operational requirements. For example,

the regulations may require that the notification method would involve the contents of the variation being read out to the class of individuals either in person or via the onboard communication system, or by distributing a written copy of the contents of the variation in person or electronically to the class of individuals. The regulations would also allow for consistent application of the notification requirements to the class of individuals. The notification must also be given before the time the variation takes effect. This would ensure that the class of individuals will be aware of the requirements for complying with the variation before they take effect.

Section 108G – Revoking a human biosecurity group direction

78. New subsection 108G(1) would allow a chief human biosecurity officer or a human biosecurity officer to revoke a human biosecurity group direction. The variation must be made in writing and is not a legislative instrument for the purposes of the *Legislation Act 2003*. The ability to revoke the human biosecurity group direction is vested with a chief human biosecurity officer or human biosecurity officer only, as the exercise of this function will require clinical expertise or qualifications to make informed decisions about the management of a class of individuals in relation to risks posed by a listed human disease.
79. The note following new subsection 108G(1) would refer the reader to new section 108H, which would require that the Director of Human Biosecurity be notified of a revocation of a human biosecurity group direction.
80. New subsection 108G(2) would stipulate the grounds for a chief human biosecurity officer or human biosecurity officer to revoke a human biosecurity group direction under new subsection 108G(1). This would require the officer to be satisfied that the class of individuals specified in the direction is not at risk of contagion, or that the direction no longer contributes to reducing the risk of a listed human disease entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory. Alternatively, the officer would need to be satisfied that, in all the circumstances, it is appropriate to revoke the direction. For example, the officer may be satisfied having regard to other mechanisms that have been implemented under the Biosecurity Act, other Commonwealth legislation or relevant State or Territory legislation that it is no longer necessary for the human biosecurity group direction to be in effect.
81. New subsection 108G(3) would provide that the revocation must specify the time at which the revocation takes effect.
82. New subsection 108G(4) would require a chief human biosecurity officer, human biosecurity officer or biosecurity officer to give notification of the revocation, if a human biosecurity group direction is revoked. The notification by the officer must be given to the class of individuals specified in the direction and must include the contents of the revocation. The intention is that by providing notification of the revocation to the class of individuals, this ensures that the individuals will be aware that the requirements for complying with a direction no longer applies to them.
83. New subsection 108G(5) would provide that a chief human biosecurity officer, human biosecurity officer or biosecurity officer may require the person in charge of an aircraft

or vessel to instead give notification of the revocation, if a class of individuals is on board the aircraft or vessel concerned. The notification by the person in charge must be given to the class of individuals specified in the direction and must include the contents of the revocation. The intention is to ensure that notice of the revocation may be given in circumstances where it may be more efficient and effective for the person in charge to give notification of the revocation to the class of individuals on board the aircraft or vessel. For example, if a direction has been revoked in relation to a class of individuals on board a vessel in Australian territory but not yet moored at a port, it may not be reasonably practicable for the officer to board the vessel in the open water to give the notification. In such circumstances, the officer may require the person in charge of the vessel to instead provide the notification of the revocation to the class of individuals. The note following new subsection 108G(5) would refer the reader to new section 108U, which provides that the person in charge would be liable to a civil penalty for failing to comply with the notification requirement given by the officer.

84. New subsection 108G(6) would require that a notification under new subsection 108G(4) or 108G(5) be given in accordance with the regulations. It is intended that the regulations may provide for a range of different methods by which notification of the revocation can be given, depending on what is most appropriate for the circumstances of each case. For example, the regulations may require that the notification method would involve the notification of the revocation being read out to the class of individuals and followed up with a written copy of the notification to be distributed electronically or in person to the class of individuals. The regulations would also allow for consistent application of the notification requirements to the class of individuals. The notification must also be given before the time the revocation takes effect. This would ensure that the class of individuals will be aware of when the requirements for complying with the direction no longer need to be met.

Section 108H – Notifying Director of Human Biosecurity of making, varying or revoking of human biosecurity group direction

85. New section 108H would provide that a chief human biosecurity officer or human biosecurity officer must notify the Director of Human Biosecurity, as soon as reasonably practicable, if the officer makes a human biosecurity group direction, or varies or revokes a human biosecurity group direction. This allows for the Director of Human Biosecurity to maintain appropriate oversight over the circumstances in which a human biosecurity group direction is made, varied or revoked, as well as when a direction is or is not in effect.

Section 108J – Relationship with Part 3

86. New subsection 108J(1) would provide that new Part 3A of Chapter 2 of the Biosecurity Act, in relation to human biosecurity group directions, does not limit Part 3 of Chapter 2, in relation to human biosecurity control orders. The note following new subsection 108J(1) explains that Part 3 of Chapter 2 allows a human biosecurity control order to be imposed on an individual.
87. New subsection 108J(2) would further clarify that where a human biosecurity control order is imposed on an individual, who is included in the class of individuals specified in a human biosecurity group direction that is in force, then for the purposes of new

Part 3 of Chapter 2 of the Biosecurity Act, the individual ceases to be included in that class at the time the order comes into force. This would ensure that a particular individual is not subject to the requirements of both a human biosecurity control order and human biosecurity group direction at the same point in time. This would also be consistent with the operation of subsection 572(3) of the Biosecurity Act, which would have the effect that a later human biosecurity group direction would override an earlier human biosecurity group direction, to the extent of any inconsistency.

88. Further, while the effect of new subsection 108J(2) would be that an individual ceases to be included in a class of individuals specified in a human biosecurity group direction at the time that a human biosecurity control order in relation to that individual comes into force, the intention is that the direction would continue to apply to any other individuals who remain subject to the direction.

Division 3—Biosecurity measures that may be included in a human biosecurity group direction

Section 108K – Managing information

89. New subsection 108K(1) would relate to managing contact information. This would provide that a human biosecurity group direction may require each individual (the **relevant individual**) included in the class of individuals to provide certain information. This information must be provided to a specified biosecurity officer, human biosecurity officer or chief human biosecurity officer, within the period and in the way specified in the direction. The required information would be the prescribed contact information for any other individuals, with whom the relevant individual has been, or will be, in close proximity, where the relevant individual is aware of that contact information.
90. Note 1 following new subsection 108K(1) explains that this section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws. Note 2 following new subsection 108K(1) would clarify that this section is not subject to the privilege against self-incrimination, referring to section 635 of the Biosecurity Act (which is discussed below in the paragraphs addressing item 18 of this Schedule 1).
91. New subsection 108K(2) would relate to managing location information. This would provide that a human biosecurity group direction may require each individual included in the class of individuals to provide information prescribed by the regulations relating to the individual's past location. This information must be provided to a specified biosecurity officer, human biosecurity officer or chief human biosecurity officer, within the period and in the way specified in the direction. The note following new subsection 108K(2) would clarify that this section is not subject to the privilege against self-incrimination, referring to section 635 of the Biosecurity Act (which is discussed below in the paragraphs addressing item 18 of this Schedule 1).
92. The intention is that new subsections 108K(1) and (2) would provide for contact-tracing functions. For example, an individual who is subject to a human biosecurity group direction may have exposed other persons that they have been in close contact with, or other persons in past locations that they have previously visited, to a listed human disease, before the direction has been made by an officer. In these circumstances, it is important for the Commonwealth to be able to identify and contact

any other persons who have been in close contact with, or who have been in the same location as, the ill individual. Depending on the risk of contagion of a listed human disease, there may be particular locations that the ill individual had visited, which are susceptible to a heightened risk of transmission of the disease to other persons (including locations within the aircraft or vessel on which they were travelling or locations that they visited prior to boarding the aircraft or vessel). The intention is that the information that would be provided under new subsections 108K(1) and (2) would allow the Commonwealth to follow up with other persons and their contacts to inquire after their health and to ascertain if they have any signs or symptoms of a listed human disease. The intention is that the information may be provided to the officer in a way that is most appropriate for the circumstances of each case and having regard to technological or operational requirements. This may include information being provided in person, in writing (including by completing a form or questionnaire), or by phone or other communication devices.

93. The public benefit of abrogating the privilege against self-incrimination in relation to new subsections 108K(1) and (2) is high, as it is critical for the management of human biosecurity risks that personal information required to be shared under this clause is on hand so that person can be contacted and other close contacts can be identified. Whilst the privilege against self-incrimination is abrogated in relation to these provisions, subsection 635(2) provides individuals with the protection that self-incriminatory disclosures cannot be used against the person who makes the disclosure, either directly in court or indirectly to gather other evidence against the person.

Section 108L – Managing location of individuals

94. New section 108L would provide that a human biosecurity group direction may require each individual included in the class of individuals to comply with certain requirements relating to their location. This would comprise a requirement that each individual must remain at, or go to and remain at, a specified place for a specified period (new subsection 108L(1)) or that each individual must not visit a specified place, or specified class of place, for a specified period (new subsection 108L(2)).
95. The intention is that new section 108L would provide for the management of the location of a class of individuals who are specified in a human biosecurity group direction. For example, this may include requiring the class of individuals to remain at, or go to and remain at, a specified place where there is a lower risk of contagion of a listed human disease, or where the class of individuals can undertake certain activities (such as, eating, sleeping, personal hygiene, or undergoing an examination). This may also include restricting the class of individuals from going to a specified place where there is a higher risk of contagion of a listed human disease, or a class of place that may be more likely to contribute to the spreading of the listed human disease to other persons (such as, avoiding areas designated for food preparation on an aircraft or vessel, or avoiding recreational areas on a passenger vessel where there is a heightened risk of transmission). The specified period for which the requirement under new section 108L would apply must not be longer than the period during which the direction is in force.

Section 108M – Wearing of protective clothing and equipment

96. Subject to new section 108M, new subsection 108M(1) would provide that a human biosecurity group direction may require each individual included in the class of individuals to comply with certain requirements for protective clothing and equipment. This would be a requirement to wear either or both specified clothing and equipment that is designed to prevent a disease from emerging, establishing itself or spreading.
97. New subsection 108M(2) would require the direction to specify the circumstances in which each individual is required to wear the clothing or equipment. The direction must also specify the period during which, or the times at which, each individual included in the class of individuals is required to wear the clothing or equipment, as well as instructions for wearing the clothing or equipment.
98. New subsection 108M(3) would provide that a chief human biosecurity officer or human biosecurity officer may give an individual included in the class of individuals an exemption from the requirement in new subsection 108M(1) to wear protective clothing and equipment. New subsection 108M(4) would explain that, where an exemption is given in writing, the exemption is not a legislative instrument for the purposes of the *Legislation Act 2003*.
99. The intention is that new section 108M would minimise the risk of contagion of a listed human disease, through the wearing of appropriate protective clothing and equipment, and appropriate instruction in its use. For listed human diseases that are respiratory in nature, effective mitigation measures may include the correct wearing of facemasks and gloves to prevent the spread of airborne disease particles and surface contamination. If individuals were required to wear a facemask, the direction may also specify times when facemasks do not have to be worn (for example, when eating or drinking). A chief human biosecurity officer or human biosecurity officer would also have the ability to give an individual an exemption from the requirement to wear protective clothing or equipment, where appropriate in the circumstances and drawing upon their clinical expertise or qualifications (for example, where the officer considers that the individual has a disability that would prevent the individual from wearing a facemask or gloves).

Section 108N – Undergoing an examination

100. New subsection 108N(1) would provide that a human biosecurity group direction may require each individual included in the class of individuals to undergo a specified kind of examination. The examination must be related to determining the presence in the individual of the listed human disease specified in the direction and any other listed human disease. The operation of new subsection 108N(1) would be subject to the other provisions in new section 108N. The note following new subsection 108N(1) would draw the reader's attention to new section 108R, which would set out the manner in which the examination must be carried out.
101. New subsection 108N(2) would require the direction to specify each kind of examination that requires the prior consent of an individual in the class of individuals, and how that consent is to be given. If a direction specifies that consent is required for a kind of examination, then the requirement to undergo the examination does not apply to

an individual unless they give consent to undergoing that examination. The consent must be given in accordance with the direction (new subsection 108N(3)).

102. The intention is that new section 108N would allow for a specified examination to be undertaken, relating to the assessment and diagnosis of a listed human disease. For example, this may include requiring each individual in the class of individuals to undergo temperature checking (where fever is a sign or symptom of the specified listed human disease). Alternatively, it may be necessary to conduct a nasal or throat swab, and to collect a saliva sample (see new section 108P) in order to accurately diagnose the specified listed human disease. The method by which the examination will be undertaken will vary according to the listed human disease and in accordance with the available medical testing technology. Depending on the circumstances of the specified examination and consistent with relevant medical and other professional standards (see new section 108R), certain examinations would require consent. Where consent is required, this would be specified in the direction. This will ensure clarity around the examinations requiring consent and will ensure that individuals are aware of the requirement for consent.
103. A note following new subsection 108N(3) would refer the reader to new section 108J, which provides that new Part 3A of Chapter 2 of the Biosecurity Act, in relation to human biosecurity group directions, does not limit Part 3 of Chapter 2, in relation to human biosecurity control orders. If an individual does not consent to undertaking an examination that is specified in the direction as requiring consent, then the requirement to undergo an examination in new section 108N would not apply to the individual. However, a chief human biosecurity officer, human biosecurity officer or biosecurity officer would still have other mechanisms available to them in other provisions of the Biosecurity Act to manage the risks posed by the listed human disease or to require further information. Depending on the circumstances of each case, it may be appropriate for a human biosecurity control order under Part 3 of Chapter 2 to be imposed on an individual. The note following new subsection 108N(3) would make clear that the ability to impose a human biosecurity control order is not limited by the making of a human biosecurity group direction.

Section 108P – Requiring body samples for diagnosis

104. New subsection 108P(1) would provide that a human biosecurity group direction may specify the circumstances in which each individual included in the class of individuals, who has undergone an examination under new section 108N, is required to provide specified body samples. The provision of body samples must be for the purpose of determining the presence in the individual of the listed human disease specified in the direction and any other listed human disease. The operation of new subsection 108P(1) would be subject to the other provisions in new section 108P. The note following new subsection 108P(1) would draw the reader's attention to new section 108R, which would set out the manner in which the provision of body samples must be carried out, and to new subsection 108P(4) which contains requirements for body samples.
105. New subsection 108P(2) would provide that the requirement to provide a body sample does not apply to an individual unless they give consent to providing the body sample. New subsection 108P(3) would require the direction to specify how the prior

consent is to be given. In such circumstances, the consent must be given in accordance with the direction.

106. The intention is that new subsections 108P(1) to (3) would allow for body samples to be provided during an examination under new section 108N, for the purposes of diagnosis of a listed human disease. For example, it may be necessary to require an individual to provide a saliva sample when conducting a nasal or throat swab in order to accurately diagnose a listed human disease. Consistent with relevant medical and other professional standards (see new section 108R), it would be necessary to specify in the direction that the consent of the individual to provide a body sample is required. This will ensure clarity around the requirement for consent to provide body samples and will ensure that individuals are aware of the requirement for consent.
107. A note following new subsection 108P(3) would refer the reader to new section 108J, which provides that new Part 3A of Chapter 2 of the Biosecurity Act, in relation to human biosecurity group directions, does not limit Part 3 of Chapter 2, in relation to human biosecurity control orders. If an individual does not consent to providing a body sample as specified by the direction, then the requirements in new section 108P would not apply to the individual. However, a chief human biosecurity officer, human biosecurity officer or biosecurity officer would still have other mechanisms available to them in other provisions of the Biosecurity Act to manage the risks posed by the listed human disease or to require further information. Depending on the circumstances of each case, it may be appropriate for a human biosecurity control order under Part 3 of Chapter 2 to be imposed on an individual. The note following new subsection 108N(3) would make clear that the ability to impose a human biosecurity control order is not limited by the making of a human biosecurity group direction.
108. New subsection 108P(4) would provide that the regulations must prescribe requirements for taking, storing, transporting, labelling and using body samples provided under subsection 108P(1). A note following new subsection 108P(4) would explain that the regulations may prescribe offences and civil penalties in relation to a failure to comply with a prescribed requirement, referring to subsection 645(2) of the Biosecurity Act.
109. New subsection 108P(5) would allow the Health Minister the discretion to give all or part of a sample provided under new subsection 108P(1) to the World Health Organization, if it so requests, for the purposes of detecting, assessing or responding to a listed human disease. This is consistent with Australia's obligations under the International Health Regulations to assist the World Health Organization and State Parties in addressing international disease threats.

Section 108Q – No loading or unloading of items from the aircraft or vessel

110. New subsection 108Q(1) would provide that a human biosecurity group direction may prohibit each individual included in the class of individuals from loading or unloading specified items from the aircraft or vessel concerned. There would be an exception to this requirement, where the loading or unloading of items is in accordance with a permission given under new subsection 108Q(2).

111. New subsection 108Q(2) would allow a chief human biosecurity officer, human biosecurity officer or biosecurity officer to give a permission for the loading or unloading of specified items. New subsection 108Q(3) would explain that, where a permission is given in writing, the permission is not a legislative instrument for the purposes of the *Legislation Act 2003*.
112. The intention is that new section 108Q would support the management of the risks of a listed human disease, by preventing specified items from being loaded or unloaded from an aircraft or vessel. For example, where a class of individuals who have a listed human disease are on board a vessel, resulting in a risk that certain baggage or bedding may be contaminated by a listed human disease, it may be necessary to prevent the unloading of baggage or bedding from the vessel. In such circumstances, it may also be necessary to prevent the baggage belonging to new passengers who may have intended to board the vessel from being loaded, in order to minimise the risk of contagion of the listed human disease. The chief human biosecurity officer, human biosecurity officer or biosecurity officer would have the ability to give a permission for the loading or unloading of the baggage or any other items, where appropriate in the circumstances. For example, a permission could be given to allow fuel or other equipment to be loaded onto the vessel on an urgent basis, in order to make mechanical repairs, or to allow food and drinks to be loaded onto a vessel where a class of individuals are required to remain pursuant to a human biosecurity group direction. New section 108Q is not intended to affect any other mechanisms available under other Commonwealth legislation for the loading or unloading of specified items onto aircraft or vessels, including, for example, the implementation of Australia's international obligations that would apply under the Safety of Life at Sea Convention or the Maritime Labour Convention.

Section 108R – Appropriate medical or other standards to be applied

113. New section 108R would provide that a biosecurity measure set out in new section 108N or 108R must be carried out in a manner consistent with appropriate medical standards and/or appropriate other relevant professional standards. The intention is that new section 108R would ensure that appropriate medical and professional standards are complied with when undertaking specified examinations and requiring the class of individuals to provide specified body samples.

Section 108S – No use of force to require compliance with biosecurity measures

114. New section 108S would provide that force must not be used against an individual to require the individual to comply with a biosecurity measure imposed under new sections 108K to 108Q. The intention is that new section 108S would ensure protection to individuals and clarify that physical force on an individual who is subject to a human biosecurity group direction cannot be used to require compliance by the individual with the biosecurity measures specified under the direction.

Division 4—Civil penalties

Section 108T – Civil penalty for failing to comply with a human biosecurity group direction

115. New section 108T would provide that an individual is liable to a civil penalty for failing to comply with a biosecurity measure that is included in a human biosecurity group

direction. This would be in circumstances where a direction is in force, the individual is included in the class of individuals specified in the direction, and there has been notification of the direction (and if applicable, the variation) in accordance with new section 108E (and if applicable, new section 108F). There would also be a requirement that the failure to comply is in relation to a biosecurity measure that applies to the individual. If an individual does not consent to a biosecurity measure in the circumstances set out in new subsections 108N(3) and 108P(2), then that requirement does not apply to the individual. The maximum civil penalty that a court may order an individual to pay where that individual is liable to a civil penalty under new section 108T would be 30 penalty units.

116. The civil penalty provision in new section 108T is necessary to deter non-compliance with biosecurity measures, which have been specified in a human biosecurity group direction to manage the risks posed by a listed human disease. If the biosecurity measures in the direction are not complied with, significant risks to human health may ensue and result in significant harm to the health of the class of individuals or to other persons. The exercise of the mechanism to make such a direction would have involved the application of clinical expertise and qualifications to make informed decisions about the management of the class of individuals.
117. The maximum civil penalty proposed by new section 108T is intended to be proportionate to the likely harm that may result and to adequately deter a worst-case contravention of the provision. The maximum civil penalty also aligns with similar civil penalty provisions in the Biosecurity Act relating to a failure by an individual to comply with certain entry and exit requirements under section 46. The civil penalty is otherwise consistent with the principles set out in the Guide.

Section 108U – Civil penalty for person in charge of aircraft or vessel failing to give notification of human biosecurity group direction etc.

118. New section 108U would provide that a person in charge of an aircraft or vessel is liable to a civil penalty if they are required under new section 108E, 108F or 108G to give a notification of the making, variation or revocation of a human biosecurity group direction, and they fail to do so. The maximum civil penalty that a court may order a person in charge to pay where the person is liable to a civil penalty under new section 108U would be 300 penalty units.
119. The civil penalty provision in new section 108U is necessary to deter non-compliance by the person in charge with the requirements under new subsection 108E(2), 108F(7) or 108G(5) to give a notification. In circumstances where it is not reasonably practicable for the officer to give the notification, and the officer has required the person in charge to instead give the notification, it is important that the person in charge complies with the requirement. This is necessary to ensure that the class of individuals who are subject to a direction have the required information and are aware of the measures that apply to them. Regulated entities, especially the person in charge of an aircraft or vessel, have a responsibility to know and understand their obligations under the Biosecurity Act and to take steps to ensure compliance with the law. Failure by the person in charge to notify the class of individuals of a human biosecurity group direction can result in increased contagion of the listed human disease with the potential

to cause harmful consequences, including to the health of the class of individuals on board the aircraft or vessel.

120. The maximum civil penalty proposed by new section 108U is intended to effectively disincentivise the financial benefit that a person in charge is likely to stand to gain from non-compliance with the requirement to give the notification. The integrity of the notification framework for human biosecurity group directions would be undermined if the civil penalties for contravention of new section 108U are calculated into profit margins and simply seen as being a ‘cost of doing business’. Further, the maximum civil penalty is proportionate to the likely harm that may result and to adequately deter a worst-case scenario that jeopardises the health of the class of individuals. The maximum civil penalty also aligns with similar civil penalty provisions in the Biosecurity Act relating to a failure by the person in charge to comply with directions given under sections 124 and 128. The civil penalty is otherwise consistent with the principles set out in the Guide.

Division 5—Consular assistance

Section 108V – Consular assistance

121. New subsection 108V(1) would provide additional requirements that must be complied with where a human biosecurity group direction includes a requirement that each individual included in the class of individuals is required to remain at, or go to and remain at, a specified place for a specified period, and the chief human biosecurity officer or human biosecurity officer who has made the direction is aware that an individual in that class is not an Australian citizen.
122. New subsection 108V(2) would provide that as soon as reasonably practicable after making the direction and where new subsection 108V(1) applies, the officer must do the following:
- inform the individual that they may request that the consular office of the country of which the individual is a citizen, or the country to which the individual claims a special connection, to be notified of the requirement;
 - inform the individual that they may communicate, or attempt to communicate, with that consular office; and
 - give the individual a reasonable opportunity to do so.
123. This amendment would ensure that the officer provides relevant information to an individual who is not an Australian citizen, as well as a reasonable opportunity for the individual to contact their consular office for assistance, if required. This amendment gives effect to elements of the *Vienna Convention on Consular Relations 1963*.

Item 17 Subsection 523(1) (before table item 1)

124. Subsection 523(1) of the Biosecurity Act provides that certain provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act. Part 5 of the Regulatory Powers Act creates a framework for the use of infringement notices where an infringement officer reasonably believes that a provision has been contravened.

Item 17 would insert new items 1A, 1B and 1C into the table in subsection 523(1) of the Biosecurity Act.

125. New table item 1A would provide that new subsection 38(5) would be a provision that is subject to an infringement notice. New subsection 38(5) would provide that a person is liable to a civil penalty if the person is an accompanying person, who fails to comply with a direction that is given under section 38, where the requirement given under such a direction is a requirement that is included in a human biosecurity group direction. It is appropriate to apply the infringement notice scheme to this civil penalty provision, as it is a relatively minor penalty, where a high volume of contraventions is possible, and the civil penalty provision does not require proof of fault. The ability to issue an infringement notice for contravention of new subsection 38(5) would allow the notice with the stated amount to be issued immediately and to be effective in managing alleged non-compliance with a human biosecurity group direction.
126. The maximum civil penalty that a court may order a person who is an individual to pay where that person is liable to a civil penalty under new subsection 38(5) is 30 penalty units. The amount to be stated in an infringement notice for the alleged contravention of new subsection 38(5) would be 6 penalty units, or a lower amount as prescribed by the regulations under subsection 524(4). This is because 6 penalty units is one-fifth of the maximum penalty that a court could impose on the person for the contravention, by application of paragraph 524(4)(a). This approach is consistent with the maximum infringement notice amount stated in the Guide. The amount to be stated in an infringement notice is appropriate to deter non-compliance by an individual and is proportionate to the likely harm that may result from minor contraventions of new subsection 38(5).
127. New table item 1B would provide that new section 108T would be a provision that is subject to an infringement notice. New section 108T would provide that an individual is liable to a civil penalty for failing to comply with a biosecurity measure that is included in a human biosecurity group direction. It is appropriate to apply the infringement notice scheme to this civil penalty provision, as it is a relatively minor penalty, where a high volume of contraventions is possible, and the civil penalty provision does not require proof of fault. The ability to issue an infringement notice for contravention of new section 108T would allow the notice with the stated amount to be issued immediately and to be effective in managing alleged non-compliance a human biosecurity group direction.
128. The maximum civil penalty that a court may order an individual to pay where that individual is liable to a civil penalty under new section 108T would be 30 penalty units. The amount to be stated in an infringement notice for the alleged contravention of new section 108T would be 6 penalty units, or a lower amount as prescribed by the regulations under subsection 524(4). This is because 6 penalty units is one-fifth of the maximum penalty that a court could impose on the person for the contravention, by application of paragraph 524(4)(a). This approach is consistent with the maximum infringement notice amount stated in the Guide. The amount to be stated in an infringement notice is appropriate to deter non-compliance by an individual and is proportionate to the likely harm that may result from minor contraventions of new section 108T.

129. New table item 1C would provide that new section 108U would be a provision that is subject to an infringement notice. New section 108U would provide that a person in charge of an aircraft or vessel is liable to a civil penalty if they are required under new section 108E, 108F or 108G to give a notification of the making, variation or revocation of a human biosecurity group direction, and they fail to do so. It is appropriate to apply the infringement notice scheme to this civil penalty provision, as the civil penalty provision does not require proof of fault. The ability to issue an infringement notice for contravention of new section 108U would allow the notice with the stated amount to be issued immediately and to be effective in managing alleged non-compliance with the notification requirement.
130. The maximum civil penalty that a court may order a person in charge to pay where the person is liable to a civil penalty under new section 108U would be 300 penalty units. The amount to be stated in an infringement notice for the alleged contravention of new section 108U would be 12 penalty units, or a lower amount as prescribed by the regulations under subsection 524(4). This is because paragraph 524(4)(b) sets 12 penalty units as the amount to be stated in an infringement notice for the alleged contravention of the provision by a natural person, and the person in charge would be a natural person. This approach is consistent with the maximum infringement notice amount stated in the Guide. The amount to be stated in an infringement notice appropriately reflects the potential damaging consequences of non-compliance by the person in charge with the requirement to give notification of a human biosecurity group direction. This amount would also align with similar amounts stated in infringement notices relating to a failure by the person in charge to comply with directions given under sections 124 and 128 of the Biosecurity Act.

Item 18 Paragraph 635(1)(a)

131. Subsection 635(1) provides that a person is not excused from answering a question, providing information or producing a document, under certain provisions, on the ground that doing so might tend to incriminate the person or make the person liable to a penalty. Currently, paragraph 635(1)(a) provides that section 44, 45, 69, 70 and 85 and Division 6 of Part 2 of Chapter 2 of the Biosecurity Act are provisions to which this requirement applies.
132. Item 18 would omit the words “and 85”, and substitute “, 85 and 108K” in paragraph 635(1)(a). This would have the effect that a person is not excused from answering a question, providing information or producing a document under new section 108K, on the ground that doing so might tend to incriminate the person or make the person liable to a penalty.
133. The public benefit of abrogating the privilege against self-incrimination in relation to new section 108K is high, as it is critical for the management of human biosecurity risks that personal information required to be shared under this clause is on hand so that person can be contacted and other close contacts can be identified. Whilst the privilege against self-incrimination is abrogated in relation to this provision, subsection 635(2) provides individuals with the protection that self-incriminatory disclosures cannot be used against the person who makes the disclosure, either directly in court or indirectly to gather other evidence against the person.

Item 19 Application provisions

134. Subitem 19(1) would provide that the amendments of section 38 of the Biosecurity Act made by this Part would apply in relation to a direction given under section 38 on or after the commencement of this item.
135. Subitem 19(2) would provide that paragraph 108B(2)(a), as inserted by this Part, would apply in relation to an aircraft or vessel that is in Australian territory on or after the commencement of this item, whether the aircraft or vessel entered Australian territory before, on or after that commencement.
136. Subitem 19(3) would provide that paragraph 108B(2)(b), as inserted by this Part, would apply in relation to an aircraft or vessel that arrives at a landing place or port in Australian territory on or after the commencement of this item.

Part 3—Pre-arrival reporting

Biosecurity Act 2015

Item 20 Before subsection 193(1)

137. Subsection 193(1) requires the operator of an aircraft or vessel to give a report in certain circumstances, including if the aircraft or vessel enters, or is intended to enter, Australian territory. Item 20 would insert a subheading titled “Initial report” before subsection 193(1). This would assist readers to distinguish between a report given under subsection 193(1) and other reports given under new subsection 193(1A), as inserted by item 21 of this Schedule.

Item 21 After subsection 193(1)

138. Subsection 193(1) requires the operator of an aircraft or vessel to give a report in certain circumstances, including if the aircraft or vessel enters, or is intended to enter, Australian territory. Item 21 would insert new subsection 193(1A), which would provide that the operator must give one or more other reports in relation to the aircraft or vessel in the circumstances prescribed by the regulations. The intention is that the other reports prescribed under new subsection 193(1A) would be given in relation to an aircraft or vessel for which a report is required to be given under subsection 193(1). A note following new subsection 193(1A) explains that the regulations may prescribe different circumstances for the giving of reports for different classes of aircraft or vessels, with reference to subsection 33(3A) of the *Acts Interpretation Act 1901*.
139. This amendment is intended to allow biosecurity risks to be assessed and managed in an accurate and timely manner by requiring other reports to be provided by the operator in the prescribed circumstances. This is necessary as biosecurity officers can use the other reports to determine what risk management activities might be required in relation to the aircraft or vessel. For example, if there are a large number of passengers and crew members on board a cruise vessel, it is possible for there to be significant increases in the number of individuals with a listed human disease or significant changes in the reported signs or symptoms of a listed human disease, after the time at which an initial report was given and before the vessel moors at a port. In such circumstances, the ability for the regulations to prescribe additional circumstances in which other reports must be given by the operator provides a further mechanism for the management of biosecurity risks.

Item 22 Before subsection 193(2)

140. Item 22 would insert a subheading titled “Requirements for reports” before subsection 193(2). This would provide a useful signpost for readers and assist them to identify that subsection 193(2), as amended by item 23 of this Schedule, contains the requirements for reports given under section 193.

Item 23 Subsection 193(2)

141. Subsection 193(2) currently provides requirements for the information to be included in a report given under subsection 193(1). Subsection 193(2) also sets out the manner and

form in which the report is to be given, the person to whom it is to be given, and the time at which or period during which it is to be given.

142. Item 23 would omit the words “The report” and substitute “A report under this section” in subsection 193(2). This would have the effect that the requirements in subsection 193(2) would apply to all reports given under section 193, including other reports given under new subsection 193(1A), as inserted by item 21 of this Schedule.

Item 24 Paragraph 193(4)(a)

143. Subsection 193(4) currently provides that a person contravenes the provision if they are required to give a report under subsection 193(1) and they do not give the report in accordance with subsection 193(2).
144. Item 24 would insert the words “or (1A)” after “subsection (1)” in paragraph 193(4)(a). This would have the effect that, where a person is required to give a report under new subsection 193(1A) and they do not give the report in accordance with subsection 193(2), then they would also contravene subsection 193(4).

Item 25 Subsection 193(5) (penalty)

145. When read with the amendments proposed by items 21 and 24 of this Schedule, the operator of an aircraft or vessel contravenes subsection 193(4) if they are required to give an initial report or other reports under subsection 193(1) or (1A), and they do not give the report in accordance with subsection 193(2). Subsection 193(5) provides that the operator commits a fault-based (criminal) offence if they contravene subsection 193(4).
146. Item 25 would amend subsection 193(5) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 120 penalty units to 1,000 penalty units. Where a body corporate is convicted of the offence, a court may, if the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to 5 times this amount (see subsection 4B(3) of the *Crimes Act 1901* (Crimes Act)).
147. Initial reports and other reports given under subsections 193(1) and (1A) allow the Commonwealth to gather important information about a conveyance to assist with the accurate and timely assessment and management of biosecurity risk. This may include information about where a conveyance has travelled, information about the people and goods on board, or information about the conveyance itself. Regulated entities, such as an operator of an aircraft or vessel, should take active steps to understand and comply with the requirements under the Biosecurity Act, including in relation to reporting obligations.
148. Failure to provide reports in accordance with the requirements in subsection 193(2) can undermine the ability of biosecurity officers to determine what risk management activities might be necessary when an aircraft or vessel arrives in Australian territory. Depending on the risks posed by the diseases and pests on an aircraft or vessel, this may result in harmful consequences to the Australian environment, economy,

agricultural industry, export markets, and the health of individuals in Australian territory.

149. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the offending conduct in this regulatory context where offences may be committed by a natural person or bodies corporate. The potential consequences of failing to provide reports in accordance with the requirements in subsection 193(2), are such that it is appropriate to set a higher maximum penalty to punish non-compliance. The increased pecuniary penalty also aligns with similar offences in the Biosecurity Act relating to the contravention of importation requirements under sections 185 to 187.
150. In sentencing an offender and determining the level of penalty to impose, a court has regard to a number of factors, including the facts and circumstances of the case; the nature and significance of the offending conduct; and any previous history of non-compliance. The increased criminal penalty is intended to reinforce the retributive effect of the current penalty regime while allowing a court greater capacity to respond meaningfully and proportionately to the worst contraventions of Australia's biosecurity laws, including where they are committed by bodies corporate.

Item 26 Subsection 193(6) (penalty)

151. When read with the amendments proposed by items 21 and 24 of this Schedule, the operator of an aircraft or vessel contravenes subsection 193(4) if they are required to give an initial report or other reports under subsection 193(1) or (1A), and they do not give the report in accordance with subsection 193(2). Subsection 193(6) provides that the operator is liable to a civil penalty if they contravene subsection 193(4).
152. Item 26 would amend subsection 193(6) to increase the maximum penalty that a court may order a person who is an individual to pay where that person contravenes subsection 193(4) from 120 penalty units to 1,000 penalty units. If the person is a body corporate, the maximum penalty must not be more than 5 times this amount (see subsection 82(5) of the Regulatory Powers Act, as enabled by section 519 of the Biosecurity Act).
153. Initial reports and other reports given under subsections 193(1) and (1A) allow the Commonwealth to gather important information about a conveyance to assist with the accurate and timely assessment and management of biosecurity risk. This may include information about where a conveyance has travelled, information about the people and goods on board, or information about the conveyance itself. Regulated entities, such as an operator of an aircraft or vessel, should take active steps to understand and comply with the requirements under the Biosecurity Act, including in relation to reporting obligations.
154. Failure to provide reports in accordance with the requirements in subsection 193(2) can undermine the ability of biosecurity officers to determine what risk management activities might be necessary when an aircraft or vessel arrives in Australian territory. Depending on the risks posed by the diseases and pests on an aircraft or vessel, this may result in harmful consequences to the Australian environment, economy,

agricultural industry, export markets and to the health of individuals in Australian territory.

155. The maximum civil penalty proposed by item 26 is intended to be proportionate to the likely harm that may result and to adequately deter a worst-case scenario that jeopardises Australia's biosecurity status than the current civil penalty regime. The increased civil penalty also aligns with similar civil penalty provisions in the Biosecurity Act relating to the contravention of importation requirements under sections 185 to 187.

Item 27 Section 194 (heading)

156. Item 27 would repeal the heading of section 194 and substitute "Pre-arrival reporting—requirement to give more information". This would be consequential to the insertion of new subsection 194(1A), as proposed by item 29 of this Schedule.

Item 28 Paragraph 194(1)(a)

157. Subsection 194(1) of the Biosecurity Act currently requires the operator of an aircraft or vessel to provide additional or corrected information to a biosecurity officer as soon as practicable, if a report was given under section 193 of the Biosecurity Act and the person in charge or the operator becomes aware that the information included in the report was incomplete or incorrect.
158. Item 28 would omit "section 193" and substitute "subsection 193(1) or (1A)" in paragraph 194(1)(a). This would be consequential to the insertion of new subsection 193(1A), as proposed by item 21 of this Schedule and new subsection 194(1A), as proposed by item 29 of this Schedule.

Item 29 After subsection 194(1)

159. Subsection 194(1) of the Biosecurity Act currently requires the operator of an aircraft or vessel to provide additional or corrected information to a biosecurity officer as soon as practicable, if a report was given under section 193 of the Biosecurity Act and the person in charge or the operator becomes aware that the information included in the report was incomplete or incorrect.
160. Item 29 would insert new subsection 194(1A), which would provide that the regulations may prescribe the circumstances in which the operator must give a biosecurity officer further information in relation to a report that has been given under subsection 193(1) or (1A). The regulations may also prescribe the kind of further information and when that information must be given to a biosecurity officer.
161. Note 1 following new subsection 194(1A) draws to the reader's attention that a person may commit an offence or contravene a civil penalty provision, if the person provides false or misleading information or documents, referring to sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of the Biosecurity Act. Note 2 following new subsection 194(1A) explains that the obligation in this subsection applies regardless of whether the operator is in Australian territory when they are required to

give the further information, referring to subsection 194(5) (as amended by item 35 of this Schedule).

162. A significant gap in the reporting requirements under the Biosecurity Act is that section 194 in its current form does not create a clear obligation to update information that becomes superseded after the pre-arrival report is submitted.
163. This amendment is intended to allow biosecurity risks to be assessed and managed in an accurate and timely manner by requiring further information to be provided by the operator in the prescribed circumstances. This is necessary as biosecurity officers can use the further information to determine what risk management activities might be required in relation to the aircraft or vessel. For example, the regulations may prescribe that further information is required from the operator where information about the numbers of individuals with a listed human disease, or signs or symptoms of a listed human disease, have been superseded by subsequent events. In such circumstances, the ability for the regulations to prescribe that further information must be given by the operator, provides a further mechanism for the management of biosecurity risks.

Item 30 After subsection 194(2)

164. New subsection 194(1A), as inserted by item 29 of this Schedule, would provide that the regulations may prescribe the circumstances in which the operator must give a biosecurity officer further information in relation to a report that has been given under subsection 193(1) or (1A).
165. Item 30 would insert a new subsection 194(2A) after subsection 194(2). A person contravenes new subsection 194(2A) if they are required to give information under regulations made for the purposes of new subsection 194(1A) and the person does not give the information to a biosecurity officer as required. A note following new subsection 194(2A) would explain that this subsection sets out the physical elements of an offence against subsection 194(3), referring to section 534.
166. Failure to provide further information in relation to a report in the prescribed circumstances can undermine the ability of biosecurity officers to determine what risk management activities might be necessary when an aircraft or vessel arrives in Australian territory. Depending on the risks posed by the diseases and pests on an aircraft or vessel, this may result in harmful consequences to the Australian environment, economy, agricultural industry, export markets and to the health of individuals in Australian territory.

Item 31 Subsection 194(3)

167. Subsection 194(3) currently provides that a person commits a fault-based (criminal) offence if they contravene subsection 194(2).
168. Item 31 would omit the words “subsection (2)” and substitute “subsection (2) or (2A)” in paragraph 194(3). This would have the effect that, where a person is required to give information under regulations made for the purposes of new subsection 194(1A) and the person does not give the information to a biosecurity officer as required, then they would also contravene subsection 194(3).

Item 32 Subsection 194(3) (penalty)

169. When read with the amendment proposed by item 31 of this Schedule, the operator of an aircraft or vessel commits a fault-based (criminal) offence if they contravene subsection 194(2) or (2A).
170. Item 32 would amend subsection 194(3) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 120 penalty units to 1,000 penalty units. Where a body corporate is convicted of the offence, a court may, if the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to 5 times this amount (see subsection 4B(3) of the Crimes Act).
171. Providing further information in relation to reports given under section 193 allows the Commonwealth to gather important and up-to-date information about a conveyance to assist with the accurate and timely assessment and the proportionate management of biosecurity risks. Regulated entities, such as an operator of an aircraft or vessel, should take active steps to understand and comply with the requirements under the Biosecurity Act, including in relation to requests for further information.
172. Failure to provide further information in accordance with the requirements can undermine the ability of biosecurity officers to determine what risk management activities might be necessary when an aircraft or vessel arrives in Australian territory. Depending on the risks posed by the diseases and pests on an aircraft or vessel, this may result in harmful consequences to the Australian environment, economy, agricultural industry, export markets, and the health of individuals in Australian territory.
173. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the offending conduct in this regulatory context where offences may be committed by a natural person or bodies corporate. The potential consequences of failing to provide further information in accordance with the requirements, are such that it is appropriate to set a higher maximum penalty to punish non-compliance. The increased pecuniary penalty also aligns with similar offences in the Biosecurity Act relating to the contravention of importation requirements under sections 185 to 187.
174. In sentencing an offender and determining the level of penalty to impose, a court has regard to a number of factors, including the facts and circumstances of the case; the nature and significance of the offending conduct; and any previous history of non-compliance. The increased criminal penalty is intended to reinforce the retributive effect of the current penalty regime while allowing a court greater capacity to respond meaningfully and proportionately to the worst contraventions of Australia's biosecurity laws.

Item 33 Subsection 194(4)

175. Subsection 194(4) currently provides that a person is liable to a civil penalty if they contravene subsection 194(2).
176. Item 33 would omit the words “subsection (2)” and substitute “subsection (2) or (2A)” in paragraph 194(4). This would have the effect that, where a person is required to give information under regulations made for the purposes of new subsection 194(1A) and the person does not give the information to a biosecurity officer as required, then they would also contravene subsection 194(4).

Item 34 Subsection 194(4) (penalty)

177. When read with the amendment proposed by item 33 of this Schedule, the operator of an aircraft or vessel is liable to a civil penalty if they contravene subsection 194(2) or (2A).
178. Item 34 would amend subsection 194(4) to increase the maximum penalty that a court may order a person who is an individual to pay where that person contravenes subsection 194(2) or (2A) from 120 penalty units to 1,000 penalty units. If the person is a body corporate, the maximum penalty must not be more than 5 times this amount (see subsection 82(5) of the Regulatory Powers Act, as enabled by section 519 of the Biosecurity Act).
179. Providing further information in relation to reports given under section 193 allows the Commonwealth to gather important information about a conveyance to assist with the accurate and timely assessment and management of biosecurity risk. This may include information about where a conveyance has travelled, information about the people and goods on board, or information about the conveyance itself. Regulated entities, such as an operator of an aircraft or vessel, should take active steps to understand and comply with the requirements under the Biosecurity Act, including in relation to requests for further information.
180. Failure to provide further information in accordance with the requirements can undermine the ability of biosecurity officers to determine what risk management activities might be necessary when an aircraft or vessel arrives in Australian territory. Depending on the risks posed by the diseases and pests on an aircraft or vessel, this may result in harmful consequences to the Australian environment, economy, agricultural industry, export markets and to the health of individuals in Australian territory.
181. The maximum civil penalty proposed by item 34 is intended to be more proportionate to the likely harm that may result and to more adequately deter a worst-case scenario that jeopardises Australia’s biosecurity status than the current civil penalty regime. The increased civil penalty also aligns with similar civil penalty provisions in the Biosecurity Act relating to the contravention of importation requirements under sections 185 to 187.

Item 35 Subsection 194(5)

182. Subsection 194(5) currently provides that subsections 194(2), (3) and (4) apply regardless of whether the person is in Australian territory when the person is required to give the information.
183. Item 35 would insert the words “(2A),” after “Subsections (2),” in paragraph 194(5). This would have the effect that new subsection 194(2A) would also apply regardless of whether the person is in Australian territory when the person is required to give the information. This aligns the application of new subsection 194(2A) with subsections 194(2), (3) and (4), ensuring consistency of application across section 194 as it relates to contraventions, offences and civil penalties.

Item 36 Subsection 195(1)

184. Subsection 195(1) currently allows a biosecurity officer to exercise certain powers for the purpose of assessing the level of biosecurity risk associated with an aircraft or vessel that is the subject of a report under paragraph 193(1)(a), in certain circumstances.
185. Item 36 would insert the words “, or a report under subsection 193(1A) where paragraph 193(1)(a) applies,” after “193(1)(a)” in paragraph 195(1). This would have the effect that a biosecurity officer may also exercise certain powers for the purpose of assessing the level of biosecurity risk associated with an aircraft or vessel that is the subject of a report under new subsection 193(1A), where paragraph 193(1)(a) applies.

Item 37 Application provisions

186. Subitem 37(1) would provide that new subsection 193(1A), as inserted by this Part, would apply in relation to an aircraft or vessel in relation to which a report is required to be given under subsection 193(1) of the Biosecurity Act on or after the commencement of this item.
187. Subitem 37(2) would provide that the amendments of subsections 193(5) and (6) of the Biosecurity Act made by this Part would apply in relation to a person required to give a report under subsection 193(1) or (1A) on or after the commencement of this item.
188. Subitem 37(3) would provide that the amendments of section 194 of the Biosecurity Act made by this Part would apply in relation to a report given under subsection 193(1) or (1A) on or after the commencement of this item.
189. Subitem 37(4) would provide that the amendment of section 195 of the Biosecurity Act made by this Part would apply in relation to a report given under subsection 193(1A) on or after the commencement of this item.

SCHEDULE 2—STRENGTHENING PENALTIES

Background

190. Schedule 2 to the Bill would increase the pecuniary penalties that apply to specified criminal offences and civil penalty provisions in the Biosecurity Act, and would also align maximum penalties across key provisions of the Biosecurity Act.
191. The proposed amendments relate to key provisions of the Biosecurity Act that, if not complied with, may significantly undermine the integrity of the biosecurity regulatory framework, with potentially devastating consequences for Australia's agricultural industries, jobs, plant, animal and environmental health, and the confidence of trading partners. Many of the specified provisions apply to the person in charge or operator of an aircraft or vessel bringing goods into Australian territory, and these individuals and bodies corporate should reasonably be aware of their obligations under the Biosecurity Act.
192. The increases to the civil penalties are intended to deter non-compliance with the Biosecurity Act, and to ensure that the maximum penalties available reflect the gains that individuals and businesses might obtain, or seek to obtain, from engaging in conduct that jeopardises Australia's biosecurity status. It is important that civil penalties are set at a level that means the penalty is not merely perceived as a cost of doing business. This is particularly the case for bodies corporate.
193. The increases to the pecuniary penalties for criminal offences would allow for more proportionate and appropriate punishment to reflect the impact the contraventions may have on Australia's biosecurity status, market access and economy.
194. In relation to all increases to the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for a fault-based (criminal) offence described in items 1, 3, 5, 7, 9, 11, 13-15, 18-20, 22-24, 27 and 29 of Schedule 2, it should be noted that, where a body corporate is convicted of any of these offences, a court may, if the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to 5 times the amount specified for each relevant offence (see subsection 4B(3) of the Crimes Act).
195. In relation to the fault-based (criminal) offences described in items 1, 3, 5, 7, 9, 11, 13-15, 18-20, 22-24, 27 and 29 of Schedule 2, it should also be noted that, in sentencing an offender and determining the level of penalty to impose for any of these offences, a court may have regard to a number of factors, including the facts and circumstances of the case; the nature and significance of the offending conduct; and any previous history of non-compliance. Each increased criminal penalty outlined in the items set out above has been considered individually and each such increase is intended to reinforce the retributive effect of the current penalty regime under the Biosecurity Act, while allowing a court greater capacity to respond meaningfully and proportionately to the worst contraventions of Australia's biosecurity laws.
196. In relation to all increases to the maximum civil penalty that a court may order a person who is an individual to pay for contravening the proposed subsections described in items 2, 4, 6, 8, 10, 12, 16-17, 21, 25-26 and 28 of Schedule 2, it should be noted that,

if the person is a body corporate, the maximum penalty must not be more than 5 times the amount specified in each relevant proposed subsection (see subsection 82(5) of the Regulatory Powers Act, as enabled by section 519 of the Biosecurity Act).

197. This Schedule would commence on the day after the proposed Act receives the Royal Assent. The amendments made to the specified criminal offences and civil penalty provisions by this Schedule would apply prospectively.

Biosecurity Act 2015

Item 1 Subsection 120(6) (penalty)

198. Subsection 120(1) of the Biosecurity Act provides that a notice must be given for goods that are, or are intended to be, brought into Australian territory and unloaded at a landing place or port in Australian territory, other than certain goods originating in Australian territory. The notice must be given by a person as prescribed by regulations made under subsection 120(2) and the notice must comply with certain requirements set out in subsection 120(3).
199. A person contravenes subsection 120(5) if goods are unloaded as referred to in subsection 120(1), the person is a person prescribed by regulations made under subsection 120(2), a notice is not given by the person in accordance with subsection 120(3), and no other person gives a notice in relation to the goods in accordance with subsection 120(3). Subsection 120(6) provides that a person commits a fault-based (criminal) offence if that person contravenes subsection 120(5).
200. Item 1 would amend subsection 120(6) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 120 penalty units to 300 penalty units.
201. The notice required under section 120 allows the Commonwealth to gather important information about goods, such as the country of origin and a description of the goods, that assists with the accurate and timely assessment and management of biosecurity risks. This information can be used by biosecurity officers to determine what risk management activities are necessary to deal with goods subject to biosecurity control when a conveyance (which includes an aircraft or vessel) arrives in Australian territory.
202. Persons to whom section 120 applies (as prescribed by regulations) should be aware of what they are conveying and are in a position to seek the required information from third parties if they do not have it themselves. Failure to provide a notice as required under section 120 may mean the goods by-pass standard inspection and risk mitigation activities (including post-entry quarantine requirements) as required by law. This puts Australia's agricultural industry at risk of biosecurity threats as the department cannot assess and manage any associated biosecurity risks appropriately.
203. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. The higher pecuniary penalty proposed by item 1 is intended to reflect the seriousness of the contravention more appropriately than the current penalty and is proportionate to the likely harm that may result.

Item 2 Subsection 120(7) (penalty)

204. As noted above, subsection 120(1) of the Biosecurity Act provides that a notice must be given for goods that are, or are intended to be, brought into Australian territory and unloaded at a landing place or port in Australian territory, other than certain goods originating in Australian territory. The notice must be given by a person as prescribed by regulations made under subsection 120(2) and the notice must comply with certain requirements set out in subsection 120(3).
205. A person contravenes subsection 120(5) if goods are unloaded as referred to in subsection 120(1), the person is a person prescribed by regulations made under subsection 120(2), a notice is not given by the person in accordance with subsection 120(3), and no other person gives a notice in relation to the goods in accordance with subsection 120(3). Subsection 120(7) provides that a person that contravenes subsection 120(5) is liable to a civil penalty.
206. Item 2 would amend subsection 120(7) to increase the maximum civil penalty that a court may order a person who is an individual to pay for contravening subsection 120(5) from 120 penalty units to 300 penalty units.
207. The notice required under section 120 allows the Commonwealth to gather important information about goods such as the country of origin and a description of the goods, that assists with the accurate and timely assessment and management of biosecurity risks. This information can be used by biosecurity officers to determine what risk management activities are necessary to deal with goods subject to biosecurity control when a conveyance (which includes an aircraft or vessel) arrives in Australian territory.
208. Persons to whom section 120 applies (as prescribed by regulations) should be aware of what they are conveying and are in a position to seek the required information from third parties if they do not have it themselves. Failure to provide a notice as required under section 120 may mean the goods by-pass standard inspection and risk mitigation activities (including post-entry quarantine requirements) as required by law. This puts Australia's agricultural industry at risk of biosecurity threats as the department cannot assess and manage any associated biosecurity risks appropriately.
209. The higher civil penalty proposed by item 2 is intended to be proportionate to the likely harm that may result from a worse-case scenario and to adequately deter those considering jeopardising Australia's biosecurity status. The proposed increase in the civil penalty also aligns with the current penalties under subsections 126(2) and 127(3) of the Biosecurity Act, which relate to requirements to provide information and produce documents to biosecurity officers.

Item 3 Subsection 121(3) (penalty)

210. Subsection 121(1) of the Biosecurity Act provides that a person who gave a notice under section 120 must as soon as practicable give a biosecurity officer additional or corrected information if that person becomes aware that information in that notice was incomplete or incorrect.

211. A person contravenes subsection 121(2) if they are required to give information to a biosecurity officer under subsection 121(1) and does not do so. Subsection 121(3) provides that a person commits a fault-based (criminal) offence if that person contravenes subsection 121(2).
212. Item 3 would amend subsection 121(3) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 120 penalty units to 300 penalty units.
213. The requirement for a person to give additional or corrected information under section 121 while goods are subject to biosecurity control is as important from a biosecurity perspective as the need to provide the notice under section 120 in the first place. It ensures the department has access to the best possible information when assessing and managing biosecurity risk.
214. Persons to whom section 121 applies should be aware of what they are conveying and are in a position to seek the required information from third parties if they do not already have it. Failure to provide additional or corrected information as required under section 121 puts Australia's agricultural industry at risk of biosecurity threats as the department cannot assess and manage any associated biosecurity risks appropriately if the information provided to it is incomplete or incorrect.
215. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the contravening behaviour. The higher pecuniary penalty proposed by item 3 is intended to reflect the seriousness of the contravention more appropriately than the current penalty and is proportionate to the likely harm that may result.

Item 4 Subsection 121(4) (penalty)

216. As noted above, subsection 121(1) of the Biosecurity Act provides that a person who gave a notice under section 120 must as soon as practicable give a biosecurity officer additional or corrected information if that person becomes aware that information in that notice was incomplete or incorrect.
217. A person contravenes subsection 121(2) if they are required to give information to a biosecurity officer under subsection 121(1) and does not do so. Subsection 121(4) provides that a person that contravenes subsection 121(2) is liable to a civil penalty.
218. Item 4 would amend subsection 121(4) to increase the maximum civil penalty that a court may order a person who is an individual to pay for contravening subsection 121(2) from 120 penalty units to 300 penalty units.
219. The requirement for a person to give additional or corrected information under section 121 while goods are subject to biosecurity control is as important from a biosecurity perspective as the need to provide the notice under section 120 in the first place. It ensures the department has access to the best possible information when assessing and managing biosecurity risk.

220. Persons to whom section 121 applies should be aware of what they are conveying and are in a position to seek the required information from third parties if they do not already have it. Failure to provide additional or corrected information as required under section 121 puts Australia's agricultural industry at risk of biosecurity threats as the department cannot assess and manage any associated biosecurity risks appropriately if the information provided to it is incomplete or incorrect.
221. The higher civil penalty proposed by item 4 is intended to be proportionate to the likely harm that may result from a worse-case scenario and to adequately deter those considering jeopardising Australia's biosecurity status. The proposed increase in the civil penalty also aligns with the current penalties under subsections 126(2) and 127(3) of the Biosecurity Act, which relate to requirements to provide information and produce documents to biosecurity officers.

Item 5 Subsection 122(6) (penalty)

222. Subsection 122(1) of the Biosecurity Act permits a biosecurity officer to exercise their powers under subsections 122(2), (3) and (4) to require a person to provide extra information for the purposes of assessing the level of biosecurity risk associated with the goods that are the subject of a notice given under section 120 but have not become subject to biosecurity control. The extra information allows biosecurity officers to make a preliminary assessment of the level of biosecurity risks associated with the goods, ensuring that appropriate resources can be allocated to assess the risks once the goods are unloaded in Australia.
223. A person contravenes subsection 122(5) if they do not comply with the requirement under subsection 122(2) to answer questions or provide information to a biosecurity officer, or the requirement under subsection 122(3) to produce documents specified by a biosecurity officer. Subsection 122(6) provides that a person commits a fault-based (criminal) offence if that person contravenes subsection 122(5).
224. Item 5 would amend subsection 122(6) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 120 penalty units to 300 penalty units.
225. The information or documents to be provided under section 122 are necessary to assist biosecurity officers with the accurate and timely assessment and management of biosecurity risks. Biosecurity officers use this information to determine what risk management activities are necessary to deal with goods subject to biosecurity control when a conveyance (which includes an aircraft or vessel) arrives in Australian territory.
226. Persons to whom section 122 applies should be aware of what they are conveying and are in a position to seek the required information from third parties if they do not already have it. Failure to provide accurate and timely information under section 122 puts Australia's agricultural industry at risk of biosecurity threats as the department cannot assess and manage any associated biosecurity risks appropriately.
227. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the contravening behaviour. The higher

pecuniary penalty proposed by item 5 is intended to reflect the seriousness of the contravention more appropriately than the current penalty and is proportionate to the likely harm that may result.

Item 6 Subsection 122(7) (penalty)

228. As noted above, subsection 122(1) of the Biosecurity Act permits a biosecurity officer to exercise their powers under subsections 122(2), (3) and (4) to require a person to provide extra information for the purposes of assessing the level of biosecurity risk associated with the goods that are the subject of a notice given under section 120 but have not become subject to biosecurity control. The extra information allows biosecurity officers to make a preliminary assessment of the level of biosecurity risks associated with the goods, ensuring that appropriate resources can be allocated to assess the risks once the goods are unloaded in Australia.
229. A person contravenes subsection 122(5) if they do not comply with the requirement under subsection 122(2) to answer questions or provide information to a biosecurity officer, or the requirement under subsection 122(3) to produce documents specified by a biosecurity officer. Subsection 122(7) provides that a person that contravenes subsection 122(5) is liable to a civil penalty.
230. Item 6 would amend subsection 122(7) to increase the maximum civil penalty that a court may order a person who is an individual to pay for contravening subsection 122(5) from 120 penalty units to 300 penalty units.
231. The information or documents to be provided under section 122 are necessary to assist biosecurity officers with the accurate and timely assessment and management of biosecurity risks. Biosecurity officers use this information to determine what risk management activities are necessary to deal with goods subject to biosecurity control when a conveyance (which includes an aircraft or vessel) arrives in Australian territory.
232. Persons to whom section 122 applies should be aware of what they are conveying and are in a position to seek the required information from third parties if they do not already have it. Failure to provide accurate and timely information under section 122 puts Australia's agricultural industry at risk of biosecurity threats as the department cannot assess and manage any associated biosecurity risks appropriately.
233. The higher civil penalty proposed by item 6 is intended to be proportionate to the likely harm that may result from a worse-case scenario and to adequately deter those considering jeopardising Australia's biosecurity status. The proposed increase in the civil penalty also aligns with the current penalties under subsections 126(2) and 127(3) of the Biosecurity Act, which relate to requirements to provide information and produce documents to biosecurity officers.

Item 7 Subsection 143(5) (penalty)

234. Subject to any direction given by a biosecurity officer under subsection 143(3), or in accordance with the requirements in sections 145, 146, 147, 148 and 151, a person in charge of an aircraft or vessel can allow the unloading of goods at a landing place or port at which the aircraft or vessel has arrived. This approach allows goods which do

not pose a biosecurity risk to move smoothly through the border, reducing delays on individuals and businesses.

- 235. Subsection 143(3) of the Biosecurity Act permits a biosecurity officer to give a person in charge of an aircraft or vessel, a direction relating to the unloading of goods from an aircraft or vessel. This direction may relate to not allowing some or all of the goods to be unloaded from the aircraft or vessel. For example, where a particular shipping container is suspected of posing a high level of biosecurity risk, a biosecurity officer may direct the person in charge not to unload that particular shipping container. Subsection 143(4) requires a person given a direction under subsection 143(3) to comply with that direction.
- 236. Subsection 143(5) provides that a person given a direction under subsection 143(3) commits a fault-based (criminal) offence if that person engages in conduct that contravenes the direction.
- 237. Item 7 would amend subsection 143(5) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 300 penalty units to 1,000 penalty units.
- 238. Failure to comply with a direction given by a biosecurity officer under subsection 143(3) may result in an inability to manage the unacceptable level of biosecurity risk posed by the goods in an efficient, timely and suitable manner, potentially exacerbating the risk. If a direction is not complied with, significant biosecurity risks may ensue and result in serious damage to plant and animal health, Australia's local industries, the economy and the environment.
- 239. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the contravening behaviour. The maximum pecuniary penalty proposed by item 7 is intended to reflect the seriousness of the offending conduct where a person fails to comply with a direction, and to allow for more appropriate punishment of offences than under the current penalty regime. The proposed increase will align with the current penalty in subsection 140(2) of the Biosecurity Act, which relates to complying with a direction given by a biosecurity officer in relation to the export, movement, treatment or destruction of goods.

Item 8 Subsection 143(6) (penalty)

- 240. As noted above, subsection 143(3) of the Biosecurity Act permits a biosecurity officer to give a person in charge of an aircraft or vessel, a direction relating to the unloading of goods from an aircraft or vessel at a landing place or port at which the aircraft or vessel has arrived. Subsection 143(4) requires a person given a direction under subsection 143(3) to comply with that direction.
- 241. Subsection 143(6) provides that a person that contravenes subsection 143(4) is liable to a civil penalty.

- 242. Item 8 would amend subsection 143(6) to increase the maximum civil penalty that a court may order a person who is an individual to pay for contravening subsection 143(4) from 120 penalty units to 300 penalty units.
- 243. Failure to comply with directions given by a biosecurity officer under subsection 143(3) may result in an inability to manage the unacceptable level of biosecurity risk posed by the goods in an efficient, timely and suitable manner, potentially exacerbating the risk.
- 244. The higher civil penalty proposed by item 8 is intended to be proportionate to the likely harm that may result from a worse-case scenario and to adequately deter those considering jeopardising Australia's biosecurity status. The proposed increase in the civil penalty also aligns with the current penalties under subsections 124(2) and 125(4) of the Biosecurity Act, which relate to complying with directions to secure goods and deliver samples.

Item 9 Subsection 144(6) (penalty)

- 245. Subsection 144(3) of the Biosecurity Act permits a biosecurity officer to give a person a direction relating to the unloading of goods from an aircraft or vessel at a landing place or port at which the aircraft or vessel has arrived. If a person in charge of the aircraft or vessel is given a direction by a biosecurity officer under subsection 143(3), subsection 144(4) permits the person in charge of the aircraft or vessel, for the purposes of giving effect to that direction, to give another person a direction relating to the unloading of the goods from the aircraft or vessel.
- 246. Subsection 144(5) provides that a person given a direction under subsection 144(3) or (4) must comply with that direction. Subsection 144(6) provides that a person commits a fault-based (criminal) offence if the person is given a direction under subsection 144(3) or (4) and engages in conduct that contravenes the direction.
- 247. Item 9 would amend subsection 144(6) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 300 penalty units to 1,000 penalty units.
- 248. Failure to comply with a direction given under subsection 144(3) or (4) may result in an inability to manage the unacceptable level of biosecurity risk posed by the goods in an efficient, timely and suitable manner, potentially exacerbating the risk. If directions are not complied with, significant biosecurity risks may ensue and result in serious damage to plant and animal health, Australia's local industries, the economy and the environment.
- 249. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the contravening behaviour. The increase to the maximum pecuniary penalty proposed by item 9 is intended to reflect the seriousness of the offending conduct where a person fails to comply with a direction, and to allow for more appropriate punishment of offences than under the current penalty regime. The proposed increase will align with the current penalty in

subsection 140(2) of the Biosecurity Act, which relates to complying with a direction given by a biosecurity officer.

Item 10 Subsection 144(7) (penalty)

- 250. As noted above, subsection 144(3) of the Biosecurity Act permits a biosecurity officer to give a person a direction relating to the unloading of goods from an aircraft or vessel at a landing place or port at which the aircraft or vessel has arrived. If a person in charge of the aircraft or vessel is given a direction by a biosecurity officer under subsection 143(3), subsection 144(4) permits the person in charge of the aircraft or vessel to, for the purposes of giving effect to that direction, give another person a direction relating to the unloading of the goods from the aircraft or vessel.
- 251. Subsection 144(5) provides that a person given a direction under subsection 144(3) or (4) must comply with that direction. Subsection 144(7) provides that a person that contravenes subsection 144(5) is liable to a civil penalty.
- 252. Item 10 would amend subsection 144(7) to increase the maximum civil penalty that a court may order a person who is an individual to pay for contravening subsection 144(5) from 120 penalty units to 300 penalty units.
- 253. Failure to comply with a direction given under subsection 144(3) or (4) may result in an inability to manage the unacceptable level of biosecurity risk posed by the goods in an efficient, timely and suitable manner, potentially exacerbating the risk.
- 254. The higher civil penalty proposed by item 10 is intended to be proportionate to the likely harm that may result from a worse-case scenario and to adequately deter those considering jeopardising Australia's biosecurity status. The proposed increase in the civil penalty also aligns with the current penalties under subsections 124(2) and 125(4) of the Biosecurity Act, which relate to complying with directions to secure goods and deliver samples.

Item 11 Subsection 145(2) (penalty)

- 255. Subsection 145(1) of the Biosecurity Act provides that the person in charge of the aircraft or vessel must not allow the goods to be unloaded from the aircraft or vessel at a landing place or port that is not a first point of entry for those goods, unless permission has been given under subsection 146(2) for the goods to be unloaded at that landing place or port.
- 256. Subsection 145(2) provides that a person in charge of an aircraft or vessel commits a fault-based (criminal) offence if the person allows goods that are subject to biosecurity control to be unloaded from the aircraft or vessel at a landing place or port in Australian territory that is not a first point of entry for those goods, and permission has not been given under subsection 146(2) for the goods to be unloaded at that landing place or port.
- 257. Item 11 would amend subsection 145(2) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 300 penalty units to 1,000 penalty units.

258. First points of entry may be determined to receive specific goods, depending on the biosecurity risks associated with the goods and the facilities at the first point of entry to manage the biosecurity risks. Section 145 ensures that, in the event a first point of entry is determined to receive specific goods, the first point of entry is not circumvented by unloading goods at an alternative point of entry. It also ensures that biosecurity risks associated with unloading goods at places that are not first points of entry are appropriately managed.
259. Non-compliance with section 145 would jeopardise Australia's agricultural industry through a biosecurity threat potentially entering, spreading and establishing itself within Australia. If goods are unloaded from an aircraft or vessel at a landing place or port that is not a first point of entry for those goods, without relevant permission having been given under subsection 146(2), significant biosecurity risks may ensue and result in serious damage to plant and animal health, Australia's local industries, the economy and the environment.
260. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the contravening behaviour. The increase to the maximum pecuniary penalty proposed by item 11 is intended to reflect the seriousness of the offending conduct and would allow for more appropriate punishment of offences than under the current penalty regime.

Item 12 Subsection 145(3) (penalty)

261. As noted above, subsection 145(1) of the Biosecurity Act provides that the person in charge of the aircraft or vessel must not allow the goods to be unloaded from the aircraft or vessel at a landing place or port that is not a first point of entry for those goods, unless permission has been given under subsection 146(2) for the goods to be unloaded at that landing place or port.
262. Subsection 145(3) provides that a person that contravenes subsection 145(1) is liable to a civil penalty.
263. Item 12 would amend subsection 145(3) to increase the maximum civil penalty that a court may order a person who is an individual to pay for contravening subsection 145(1) from 120 penalty units to 300 penalty units.
264. First points of entry may be determined to receive specific goods, depending on the biosecurity risks associated with the goods and the facilities at the first point of entry to manage the biosecurity risks. Section 145 ensures that, in the event a first point of entry is determined to receive specific goods, the first point of entry is not circumvented by unloading goods at an alternative point of entry. It also ensures that biosecurity risks associated with unloading goods at places that are not first points of entry are appropriately managed.
265. Non-compliance with section 145 would jeopardise Australia's agricultural industry through a biosecurity threat potentially entering, spreading and establishing itself within Australia.

266. The higher civil penalty proposed by item 12 is intended to be proportionate to the likely harm that may result from a worse-case scenario and to adequately deter those considering jeopardising Australia's biosecurity status. The proposed increase in the civil penalty also aligns with similar civil penalty provisions relating to a failure to comply with directions under sections 124 to 130 of the Biosecurity Act.

Item 13 Subsection 146(4) (penalty)

267. Subsection 146(1) provides that a person in charge or the operator of the aircraft or vessel may, in writing, request the Director of Biosecurity to give permission for the goods to be unloaded at a landing place or port that is not a first point of entry for those goods. The Director of Biosecurity may give such permission, by notice in writing, under subsection 146(2). Under subsection 146(3), this permission may be given subject to any conditions specified in the notice. Section 146 provides flexibility for industry by ensuring that alternative arrangements can be made to unload particular goods at a landing place or port that is not a first point of entry for the goods.
268. Subsection 146(4) provides that the person in charge or the operator of an aircraft or vessel commits a fault-based (criminal) offence if the person has been given permission under subsection 146(2), the permission is subject to conditions, and the person engages in conduct that contravenes those conditions.
269. Item 13 would amend subsection 146(4) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 300 penalty units to 1,000 penalty units.
270. The flexibility for industry provided by section 146 must be balanced by the need to ensure that biosecurity risks are appropriately assessed and managed. A person in charge or the operator of an aircraft or vessel should take active steps to understand and comply with requirements in the Biosecurity Act. Where the person has specifically requested permission to unload goods at a landing place or port that is not ordinarily a designated first point of entry for particular goods, and received written notice of the Director of Biosecurity's decision, they should take reasonable steps to understand the permission, including the conditions attached to the permission. In accordance with subsection 146(2), any permission must be given by written notice.
271. When a person engages in conduct that contravenes the conditions of a permission, they risk the potential entry and spread of pests and disease in Australia territory. The person should expect there to be significant legal consequences because of the serious biosecurity risks likely to be posed by their conduct.
272. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the contravening behaviour. It is appropriate for the higher pecuniary penalty to apply to these provisions than under the current penalty regime, as it better reflects the seriousness of the harm that may result from the offending conduct. The increase in maximum penalty proposed by item 13 also aligns with the current penalties for subsections 186(2) and 187(1) of the Biosecurity Act,

which relate to contravening conditions that apply to conditionally non-prohibited goods and the conditions of a permit.

Item 14 Subsection 146(5) (penalty)

273. An outline of the provisions, effect and purpose of section 146 is set out in the paragraphs addressing item 13 above.
274. Subsection 146(5) provides that a person in charge of an aircraft or vessel commits a fault-based (criminal) offence if the operator of the aircraft or vessel has been given a permission under subsection 146(2), the permission is subject to conditions, and the conditions are not complied with.
275. Item 14 would amend subsection 146(5) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 300 penalty units to 1,000 penalty units.
276. The flexibility for industry provided by section 146 must be balanced by the need to ensure that biosecurity risks are appropriately assessed and managed. A person in charge or the operator of an aircraft or vessel should take active steps to understand and comply with requirements in the Biosecurity Act. Where the person has specifically requested permission to unload goods at a landing place or port that is not ordinarily a designated first point of entry for particular goods, and received written notice of the Director of Biosecurity's decision, they should take reasonable steps to understand the permission, including the conditions attached to the permission. In accordance with subsection 146(2), any permission must be given by written notice.
277. When a person engages in conduct that contravenes the conditions of a permission, they risk the potential entry and spread of pests and disease in Australia territory. The person should expect there to be significant legal consequences because of the serious biosecurity risks likely to be posed by their conduct.
278. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the contravening behaviour. It is appropriate for the higher pecuniary penalty to apply to these provisions than under the current penalty regime, as it better reflects the seriousness of the harm that may result from the offending conduct. The increase in maximum penalty proposed by item 14 also aligns with the current penalties for subsections 186(2) and 187(1) of the Biosecurity Act, which relate to contravening conditions that apply to conditionally non-prohibited goods and the conditions of a permit.

Item 15 Subsection 146(6) (penalty)

279. An outline of the provisions, effect and purpose of section 146 is set out in the paragraphs addressing item 13 above.
280. Subsection 146(6) provides that the operator of an aircraft or vessel commits a fault-based (criminal) offence if the person in charge of the aircraft or vessel is given a

permission under subsection 146(2), the permission is subject to conditions, and the conditions are not complied with.

- 281. Item 15 would amend subsection 146(6) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 300 penalty units to 1,000 penalty units.
- 282. The flexibility for industry provided by section 146 must be balanced by the need to ensure that biosecurity risks are appropriately assessed and managed. A person in charge or the operator of an aircraft or vessel should take active steps to understand and comply with requirements in the Biosecurity Act. Where the person has specifically requested permission to unload goods at a landing place or port that is not ordinarily a designated first point of entry for particular goods, and received written notice of the Director of Biosecurity's decision, they should take reasonable steps to understand the permission, including the conditions attached to the permission. In accordance with subsection 146(2), any permission must be given by written notice.
- 283. When a person engages in conduct that contravenes the conditions of a permission, they risk the potential entry and spread of pests and disease in Australia territory. The person should expect there to be significant legal consequences because of the serious biosecurity risks likely to be posed by their conduct.
- 284. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the contravening behaviour. It is appropriate for the higher pecuniary penalty to apply to these provisions than under the current penalty regime, as it better reflects the seriousness of the harm that may result from the offending conduct. The increase in maximum penalty proposed by item 15 also aligns with the current penalties for subsections 186(2) and 187(1) of the Biosecurity Act, which relate to contravening conditions that apply to conditionally non-prohibited goods and the conditions of a permit.

Item 16 Subsection 146(7) (penalty)

- 285. An outline of the provisions, effect and purpose of section 146 is set out in the paragraphs addressing item 13 above.
- 286. Subsection 146(7) provides that the person in charge and the operator of an aircraft or vessel are each liable to a civil penalty if the person in charge or the operator of the aircraft or vessel has been given a permission under subsection 146(2), the permission is subject to conditions, and the conditions are not complied with.
- 287. Item 16 would amend subsection 146(7) to increase the maximum penalty that a court may order a person who is an individual to pay where that person is liable to a civil penalty under subsection 146(7) from 120 penalty units to 300 penalty units.
- 288. The flexibility for industry provided by section 146 must be balanced by the need to ensure that biosecurity risks are appropriately assessed and managed. A person in charge or the operator of an aircraft or vessel should take active steps to understand and comply with requirements in the Biosecurity Act. Where the person has specifically

requested permission to unload goods at a landing place or port that is not ordinarily a designated first point of entry for particular goods, and received written notice of the Director of Biosecurity's decision, they should take reasonable steps to understand the permission, including the conditions attached to the permission. In accordance with subsection 146(2), any permission must be given by written notice.

- 289. When a person engages in conduct that contravenes the conditions of a permission, they risk the potential entry and spread of pests and disease in Australia territory. The person should expect there to be significant legal consequences because of the serious biosecurity risks likely to be posed by their conduct.
- 290. The higher civil penalty proposed by item 16 is intended to be proportionate to the likely harm that may result from a worse-case scenario and to adequately deter those considering jeopardising Australia's biosecurity status. The proposed increase in the civil penalty also aligns with similar civil penalty provisions in the Biosecurity Act relating to a failure to comply with directions under sections 124 to 130 of the Biosecurity Act.

Item 17 Subsection 147(2) (penalty)

- 291. Section 147 applies where an aircraft or vessel has arrived at a first point of entry and there is a biosecurity entry point at the first point of entry for goods that are to be unloaded from the aircraft or vessel.
- 292. Subsection 147(2) provides that the person in charge of an aircraft or vessel must ensure that goods that are to be unloaded from the aircraft or vessel are brought to the biosecurity entry point for those goods as soon as practicable, unless a biosecurity officer has given a direction under subsection 147(3) or permission has been given under subsection 148(2) for the goods to be brought to an alternative biosecurity entry point. A person is liable to a civil penalty under subsection 147(2) if they contravene the requirements of the subsection.
- 293. Item 17 would amend subsection 147(2) to increase the maximum penalty that a court may order a person who is an individual to pay where that person is liable to a civil penalty under subsection 146(2) from 120 penalty units to 300 penalty units.
- 294. Biosecurity entry points are designated areas within a landing place or port that an aircraft, vessel or goods must enter as soon as practicable upon arriving at a first point of entry. They allow biosecurity risks associated with the aircraft, vessel or goods to be managed at a specific location within the landing place or port. A person in charge of an aircraft or vessel should take active steps to understand and comply with the requirements under the Biosecurity Act, including those relating to designated biosecurity entry points for first points of entry.
- 295. Failure to bring goods to a biosecurity entry point as required under subsection 147(2) may prevent biosecurity officers from properly assessing and managing any biosecurity risk associated with the goods, potentially resulting in serious damage to plant and animal health, Australia's local industries, economy and the environment.

296. The increase to the maximum civil penalty proposed by item 17 is intended to be proportionate to the likely harm that may result from a worse-case scenario and to adequately deter those considering jeopardising Australia's biosecurity status. The proposed increase in the civil penalty also aligns with similar civil penalty provisions in the Biosecurity Act relating to a failure to comply with directions under sections 124 to 130 of the Biosecurity Act.

Item 18 Subsection 147(4) (penalty)

297. A description of section 147 is set out in the paragraphs addressing item 17 above. Subsection 147(3) permits a biosecurity officer to give the person in charge or the operator of the aircraft or vessel a direction requiring goods that are to be unloaded from the aircraft or vessel to be brought to a biosecurity entry point that is not a biosecurity entry point for those goods.
298. Subsection 147(4) provides that the person in charge or the operator of the aircraft or vessel commits a fault-based (criminal) offence if the person has been given a direction under subsection 147(3), and the person engages in conduct which contravenes the direction.
299. Item 18 would amend subsection 147(4) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 300 penalty units to 1,000 penalty units.
300. Biosecurity entry points allow biosecurity risks associated with the aircraft, vessel or goods to be managed at a specific location within the landing place or port. A person in charge or the operator of an aircraft or vessel should take active steps to understand and comply with the requirements under the Biosecurity Act, including those relating to designated biosecurity entry points for first points of entry.
301. Failure to bring goods to a biosecurity entry point that is not a biosecurity entry point for particular goods in accordance with a direction given under subsection 147(3) may prevent biosecurity officers from properly assessing and managing any biosecurity risk associated with the goods, potentially resulting in serious damage to plant and animal health, Australia's local industries, economy and the environment.
302. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the offending conduct. The potential consequences of failing to bring goods to a biosecurity entry point as specified in a direction given under subsection 147(3), are such that it is appropriate to set a higher maximum penalty to punish non-compliance.

Item 19 Subsection 147(5) (penalty)

303. Descriptions of subsections 147(1) and 147(3) are set out above in the paragraphs addressing items 17 and 18 respectively.

304. Subsection 147(5) provides that the person in charge of an aircraft or vessel commits a fault-based (criminal) offence if the operator of the aircraft or vessel has been given a direction under subsection 147(3) and the direction is not complied with.
305. Item 19 would amend subsection 147(5) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 300 penalty units to 1,000 penalty units.
306. Biosecurity entry points allow biosecurity risks associated with the aircraft, vessel or goods to be managed at a specific location within the landing place or port. A person in charge of an aircraft or vessel should take active steps to understand and comply with the requirements under the Biosecurity Act, including those relating to designated biosecurity entry points for first points of entry.
307. Failure to bring goods to a biosecurity entry point that is not a biosecurity entry point for particular goods in accordance with a direction given under subsection 147(3) may prevent biosecurity officers from properly assessing and managing any biosecurity risk associated with the goods, potentially resulting in serious damage to plant and animal health, Australia's local industries, economy and the environment.
308. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the offending conduct. The potential consequences of failing to bring goods to a biosecurity entry point as specified in a direction given under subsection 147(3), are such that it is appropriate to set a higher maximum penalty to punish non-compliance.

Item 20 Subsection 147(6) (penalty)

309. Descriptions of subsections 147(1) and 147(3) are set out above in the paragraphs addressing items 17 and 18 respectively.
310. Subsection 147(6) provides that the operator of an aircraft or vessel commits a fault-based (criminal) offence if the person in charge of the aircraft or vessel has been given a direction under subsection 147(3) and the direction is not complied with.
311. Item 20 would amend subsection 147(6) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 300 penalty units to 1,000 penalty units.
312. Biosecurity entry points allow biosecurity risks associated with the aircraft, vessel or goods to be managed at a specific location within the landing place or port. An operator of an aircraft or vessel should take active steps to understand and comply with the requirements under the Biosecurity Act, including those relating to designated biosecurity entry points for first points of entry.
313. Failure to bring goods to a biosecurity entry point that is not a biosecurity entry point for particular goods in accordance with a direction given under subsection 147(3) may prevent biosecurity officers from properly assessing and managing any biosecurity risk

associated with the goods, potentially resulting in serious damage to plant and animal health, Australia's local industries, economy and the environment.

314. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the offending conduct. The potential consequences of failing to bring goods to a biosecurity entry point as specified in a direction given under subsection 147(3), are such that it is appropriate to set a higher maximum penalty to punish non-compliance.

Item 21 Subsection 147(7) (penalty)

315. Descriptions of subsections 147(1) and 147(3) are set out above in the paragraphs addressing items 17 and 18 respectively.
316. Subsection 147(7) provides that the person in charge and the operator of an aircraft or vessel are each liable to a civil penalty if the person in charge or the operator of the aircraft or vessel has been given a direction under subsection 147(3) and the direction is not complied with.
317. Item 21 would amend subsection 147(7) to increase the maximum penalty that a court may order a person who is an individual to pay where that person is liable to a civil penalty under subsection 147(7) from 120 penalty units to 300 penalty units.
318. Biosecurity entry points allow biosecurity risks associated with the aircraft, vessel or goods to be managed at a specific location within the landing place or port. A person in charge or operator of an aircraft or vessel should take active steps to understand and comply with the requirements under the Biosecurity Act, including those relating to designated biosecurity entry points for first points of entry.
319. Failure to bring goods to a biosecurity entry point that is not a biosecurity entry point for particular goods in accordance with a direction given under subsection 147(3) may prevent biosecurity officers from properly assessing and managing any biosecurity risk associated with the goods, potentially resulting in serious damage to plant and animal health, Australia's local industries, economy and the environment.
320. The maximum civil penalty proposed by item 21 is intended to be proportionate to the likely harm that may result from a worse-case scenario and to adequately deter those considering jeopardising Australia's biosecurity status. The proposed increase in the civil penalty also aligns with similar civil penalty provisions in the Biosecurity Act relating to a failure to comply with directions under sections 124 to 130 of the Biosecurity Act.

Item 22 Subsection 148(4) (penalty)

321. Subsection 148(1) of the Biosecurity Act permits the person in charge or the operator of the aircraft or vessel to request in writing that the Director of Biosecurity give permission to bring the goods to a biosecurity entry point (known as "the alternative biosecurity entry point") that is not a biosecurity entry point for those goods. The Director of Biosecurity may give permission by notice in writing under subsection

148(2). Subsection 148(3) provides that this permission may be subject to any conditions specified in the notice.

322. Section 148 provides flexibility to industry by ensuring that alternative arrangements can be made to unload goods at alternative biosecurity entry points, subject to abiding by any conditions specified in the permission.
323. Subsection 148(4) provides that the person in charge or the operator of an aircraft or vessel commits a fault-based (criminal) offence if the person has been given a permission under subsection 148(2) which is subject to conditions, and the person engages in conduct that contravenes the conditions.
324. Item 22 would amend subsection 148(4) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 300 penalty units to 1,000 penalty units.
325. Subsection 148(4) ensures that biosecurity risk assessment processes for determining biosecurity entry points at first points of entry are not circumvented and that biosecurity risks associated with unloading the goods at places that are not a biosecurity entry point (including an alternative biosecurity entry point) for those goods are appropriately managed.
326. A person in charge or the operator of an aircraft or vessel should take active steps to understand and comply with requirements in the Biosecurity Act. Where the person has specifically requested permission to bring goods to an alternative biosecurity entry point, and received written notice of the Director of Biosecurity's decision, they should take reasonable steps to understand the permission, including the conditions attached to the permission. In accordance with subsection 148(2), any permission must be given by written notice.
327. When a person engages in conduct that contravenes the conditions of a permission, they risk the potential entry and spread of pests and disease in Australia territory. The person should expect there to be significant legal consequences because of the serious biosecurity risks likely to be posed by their conduct.
328. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the higher pecuniary penalty more appropriately reflects the potential damaging consequences of non-compliance than the current penalty regime.
329. The maximum pecuniary penalty proposed by item 22 is appropriate and more adequately reflects the seriousness of the offending conduct. It also aligns with the current penalties in subsections 186(2) and 187(1) of the Biosecurity Act, which relate to contravening conditions that apply to conditionally non-prohibited goods and the conditions of a permit.

Item 23 Subsection 148(5) (penalty)

330. A description of the provisions of subsections 148(1) to (3) of the Biosecurity Act and an outline of the purpose of section 148 are set out above in the paragraphs addressing item 22.
331. Subsection 148(5) provides that the person in charge of an aircraft or vessel commits a fault-based (criminal) offence if the operator of the aircraft or vessel has been given a permission under subsection 148(2) which is subject to conditions, and the conditions are not complied with.
332. Item 23 would amend subsection 148(5) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 300 penalty units to 1,000 penalty units.
333. Subsection 148(5) ensures that biosecurity risk assessment processes for determining biosecurity entry points at first points of entry are not circumvented and that biosecurity risks associated with unloading the goods at places that are not a biosecurity entry point for those goods, are appropriately managed.
334. A person in charge or the operator of an aircraft or vessel should take active steps to understand and comply with requirements in the Biosecurity Act. Where the person has specifically requested permission to bring goods to an alternative biosecurity entry point, and received written notice of the Director of Biosecurity's decision, they should take reasonable steps to understand the permission, including the conditions attached to the permission. In accordance with subsection 148(2), any permission must be given by written notice.
335. When a person engages in conduct that contravenes the conditions of a permission, they risk the potential entry and spread of pests and disease in Australia territory. The person should expect there to be significant legal consequences because of the serious biosecurity risks likely to be posed by their conduct.
336. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the higher pecuniary penalty more appropriately reflects the potential damaging consequences of non-compliance than the current penalty regime.
337. The maximum pecuniary penalty proposed by item 23 is appropriate and more adequately reflects the seriousness of offending conduct. It also aligns with the current penalties in subsections 186(2) and 187(1) of the Biosecurity Act, which relate to contravening conditions that apply to conditionally non-prohibited goods and the conditions of a permit.

Item 24 Subsection 148(6) (penalty)

338. A description of the provisions of subsections 148(1) to (3) of the Biosecurity Act and an outline of the purpose of section 148 are set out above in the paragraphs addressing item 22.

- 339. Subsection 148(6) provides that the operator of an aircraft or vessel commits a fault-based (criminal) offence if the person in charge of the aircraft or vessel has been given a permission under subsection 148(2) which is subject to conditions, and the conditions are not complied with.
- 340. Item 24 would amend subsection 148(6) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 300 penalty units to 1,000 penalty units.
- 341. Subsection 148(6) ensures that biosecurity risk assessment processes for determining biosecurity entry points at first points of entry are not circumvented and that biosecurity risks associated with unloading the goods at places that are not a biosecurity entry point for those goods are appropriately managed.
- 342. A person in charge or the operator of an aircraft or vessel should take active steps to understand and comply with requirements in the Biosecurity Act. Where the person has specifically requested permission to bring goods to an alternative biosecurity entry point, and received written notice of the Director of Biosecurity's decision, they should take reasonable steps to understand the permission, including the conditions attached to the permission. In accordance with subsection 148(2), any permission must be given by written notice.
- 343. When a person engages in conduct that contravenes the conditions of a permission, they risk the potential entry and spread of pests and disease in Australia territory. The person should expect there to be significant legal consequences because of the serious biosecurity risks likely to be posed by their conduct.
- 344. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the higher pecuniary penalty more appropriately reflects the potential damaging consequences of non-compliance than the current penalty regime.
- 345. The maximum pecuniary penalty proposed by item 24 is appropriate and more adequately reflects the seriousness of offending conduct. It also aligns with the current penalties in subsections 186(2) and 187(1) of the Biosecurity Act, which relate to contravening conditions that apply to conditionally non-prohibited goods and the conditions of a permit.

Item 25 Subsection 148(7) (penalty)

- 346. A description of the provisions of subsections 148(1) to (3) of the Biosecurity Act and an outline of the purpose of section 148 are set out above in the paragraphs addressing item 22.
- 347. Subsection 148(7) provides that the person in charge and the operator of an aircraft or vessel are each liable to a civil penalty if the person in charge or the operator of the aircraft or vessel has been given a permission under subsection 148(2) which is subject to conditions, and the conditions are not complied with.

348. Item 25 would amend subsection 148(7) to increase the maximum penalty that a court may order a person who is an individual to pay where that person is liable to a civil penalty under subsection 148(7) from 120 penalty units to 300 penalty units.
349. Subsection 148(7) ensures that biosecurity risk assessment processes for determining biosecurity entry points at first points of entry are not circumvented and that biosecurity risks associated with unloading the goods at places that are not a biosecurity entry point for those goods are appropriately managed.
350. A person in charge or the operator of an aircraft or vessel should take active steps to understand and comply with requirements in the Biosecurity Act. Where the person has specifically requested permission to bring goods to an alternative biosecurity entry point, and received written notice of the Director of Biosecurity's decision, they should take reasonable steps to understand the permission, including the conditions attached to the permission. In accordance with subsection 148(2), any permission must be given by written notice.
351. When a person engages in conduct that contravenes the conditions of a permission, they risk the potential entry and spread of pests and disease in Australia territory. The person should expect there to be significant legal consequences because of the serious biosecurity risks likely to be posed by their conduct.
352. The maximum civil penalty proposed by item 25 is intended to be proportionate to the likely harm that may result from a worse-case scenario and to adequately deter those considering jeopardising Australia's biosecurity status. The proposed increase in the civil penalty also aligns with similar civil penalty provisions in the Biosecurity Act relating to a failure to comply with directions under sections 124 to 130 of the Biosecurity Act.

Item 26 Subsection 149(1) (penalty)

353. Subsection 149(1) of the Biosecurity Act provides that a person is liable to a civil penalty if they receive, or have in their possession, goods that have been unloaded from an aircraft or vessel in Australian territory, where a direction given under subsection 143(3), 144(3), 144(4) or 147(3) has been contravened; the goods were unloaded in contravention of subsection 145(1); a condition of a permission imposed under subsection 146(3) or 148(3) has been contravened; or subsection 147(2) has been contravened. This provision is designed to deter people from receiving or possessing goods that are unlawfully unloaded in Australian territory as the result of a failure to comply with the requirements in Division 6 of Part 1 of Chapter 3 of the Biosecurity Act. It ensures that anyone contemplating the receipt or possession of imported goods takes reasonable steps to ascertain the provenance of goods and how they came to be in Australia.
354. Item 26 would amend subsection 149(1) to increase the maximum penalty that a court may order a person who is an individual to pay where that person is liable to a civil penalty under subsection 149(1) from 120 penalty units to 300 penalty units.
355. Receiving or being in possession of goods that have by-passed biosecurity control could have a detrimental effect on the Australian environment, economy and export

markets as the biosecurity risk associated with the goods may not have been assessed and managed by biosecurity officers. The current civil penalty does not adequately reflect the seriousness of the contravening behaviour. The potential consequences of non-compliance are such that it is appropriate to increase the maximum civil penalty.

356. The maximum civil penalty proposed by item 26 is therefore more appropriate and proportionate than under the current civil penalty regime. It better reflects the seriousness of receiving or being in possession of goods, where the requirements under the Biosecurity Act in relation to the unloading of goods, directions given relating to the goods, and conditions relating to the goods have been contravened. The higher civil penalty is intended to achieve the necessary deterrent effect to promote compliance with the Biosecurity Act while also indicating the magnitude of likely harm arising from the relevant wrongdoing.
357. The proposed increase is comparable to the current penalty in sections 124 to 130 of the Biosecurity Act, which relate to a failure to comply with directions.

Item 27 Subsection 155(2) (penalty)

358. Section 154 of the Biosecurity Act permits the Director of Biosecurity to determine, by legislative instrument, that an act, omission or event is a reportable biosecurity incident in relation to goods that are subject to biosecurity control.
359. Subsection 155(1) of the Biosecurity Act provides that if goods that are subject to biosecurity control are, or were, on board an aircraft or vessel and the person in charge of the aircraft or vessel becomes aware of a reportable biosecurity incident in relation to the goods, the person must report the incident to a biosecurity officer or the Director of Biosecurity as soon as practicable after becoming aware of the incident.
360. Subsection 155(2) provides that the person in charge of an aircraft or vessel commits a fault-based (criminal) offence if the aircraft or vessel is, or was, carrying goods that are subject to biosecurity control, the person becomes aware of a reportable biosecurity incident in relation to the goods, and the person fails to report the incident as required by subsection 155(1).
361. Item 27 would amend subsection 155(2) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 120 penalty units to 1,000 penalty units.
362. It is important that reportable biosecurity incidents are reported as soon as practicable to ensure that any biosecurity risks associated with the incident can be managed to an acceptable level and to limit the risk associated with any pest or disease entering, establishing or spreading into Australian territory. The person in charge of an aircraft or vessel carrying the goods that are subject to biosecurity control should be aware of and clearly understand the requirements under the Biosecurity Act and take reasonable steps to comply.
363. Failure to report such biosecurity incidents as soon as practicable after becoming aware of them is likely to result in a delay in responding to the biosecurity risk associated with

the incident, which could exacerbate the nature and magnitude of the risk, and any required response activity.

364. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the offending. The maximum pecuniary penalty proposed by item 27 is therefore more appropriate and proportionate than under the current penalty regime, and more adequately reflects the likely effects that non-compliance may have on the Australian environment, economy and export markets. The higher penalty more adequately reflects the seriousness of failing to report a reportable biosecurity incident as soon as practicable after becoming aware of the incident, and is intended to allow for more appropriate punishment of serious offending.

Item 28 Subsection 155(3) (penalty)

365. As noted above, subsection 155(1) of the Biosecurity Act provides that if goods that are subject to biosecurity control are, or were, on board an aircraft or vessel and the person in charge of the aircraft or vessel becomes aware of a reportable biosecurity incident in relation to the goods, the person must report the incident to a biosecurity officer or the Director of Biosecurity as soon as practicable after becoming aware of the incident.
366. Subsection 155(3) provides that a person is liable to a civil penalty if they contravene subsection 155(1).
367. Item 28 would amend subsection 155(3) to increase the maximum penalty that a court may order a person who is an individual to pay for contravening subsection 155(1) from 120 penalty units to 300 penalty units.
368. It is important that reportable biosecurity incidents are reported as soon as practicable to ensure that any biosecurity risks associated with the incident can be managed to an acceptable level and to limit the risk associated with any pest or disease entering, establishing or spreading into Australian territory. The person in charge of an aircraft or vessel carrying the goods that are subject to biosecurity control should be aware of and clearly understand the requirements under the Biosecurity Act and take reasonable steps to comply.
369. Failure to report such biosecurity incidents as soon as practicable after becoming aware of them is likely to result in a delay in responding to the biosecurity risk associated with the incident, which could exacerbate the nature and magnitude of the risk and any required response activity. The current civil penalty does not adequately reflect the seriousness of the contravening behaviour. An increased maximum civil penalty reflects the likely effects that non-compliance may have on the Australian environment, economy and export markets. The potential consequences of non-compliance are such that it is appropriate to increase the civil penalty.
370. The maximum civil penalty proposed by item 28 is therefore more appropriate and proportionate than under the current civil penalty regime. It better reflects the seriousness of failing to report a reportable biosecurity incident as soon as practicable after becoming aware of the incident. The higher civil penalty is intended to achieve the

necessary deterrent effect to promote compliance with the Biosecurity Act while also indicating the magnitude of likely harm arising from the relevant wrongdoing.

371. The proposed increased civil penalty is set at an amount adequate to deter those considering jeopardising Australia's biosecurity status. It also aligns with similar civil penalty provisions in the Biosecurity Act relating to the contravention of conditions that apply to a failure to comply with directions under sections 124 to 130 of the Biosecurity Act.

Item 29 Subsection 156(2) (penalty)

372. Subsection 156(1) of the Biosecurity Act provides that a person in charge of goods that are subject to biosecurity control must report a reportable biosecurity incident to a biosecurity officer or the Director of Biosecurity as soon as practicable after becoming aware of the incident.
373. Subsection 156(2) provides that a person in charge of goods that are subject to biosecurity control commits a fault-based (criminal) offence if a person becomes aware of a reportable biosecurity incident in relation to the goods and the person fails to report the incident as required by subsection 156(1).
374. Item 29 would amend subsection 156(2) to increase the maximum pecuniary (monetary) penalty that can be imposed when a court convicts an individual for the fault-based (criminal) offence from 120 penalty units to 1,000 penalty units.
375. It is important that reportable biosecurity incidents are reported as soon as practicable to ensure that any biosecurity risks associated with the incident can be managed to an acceptable level and to limit the risk associated with any pest or disease entering, establishing or spreading into Australian territory. The person in charge of the goods that are subject to biosecurity control should be aware of and clearly understand the requirements under the Biosecurity Act and take reasonable steps to comply.
376. Failure to report such biosecurity incidents as soon as practicable after becoming aware of them is likely to result in a delay in responding to the biosecurity risk associated with the incident, which could exacerbate the nature and magnitude of the risk, and any required response activity.
377. The proposed maximum pecuniary penalty departs from the standard fine to imprisonment ratio in the Guide. However, this is necessary as the current penalty does not adequately reflect the seriousness of the offending. The maximum pecuniary penalty proposed by item 29 is therefore more appropriate and proportionate than under the current penalty regime, and more adequately reflects the likely effects that non-compliance may have on the Australian environment, economy and export markets. The higher penalty more adequately reflects the seriousness of failing to report a reportable biosecurity incident as soon as practicable after becoming aware of the incident and is intended to allow for more appropriate punishment of serious offending.

Item 30 Subsection 156(3) (penalty)

378. As noted above, subsection 156(1) of the Biosecurity Act provides that a person in charge of goods must report a reportable biosecurity incident to a biosecurity officer or the Director of Biosecurity as soon as practicable after becoming aware of the incident.
379. Subsection 156(3) provides that a person is liable to a civil penalty if they contravene subsection 156(1).
380. Item 30 would amend subsection 156(3) to increase the maximum penalty that a court may order a person who is an individual to pay for contravening subsection 156(1) from 120 penalty units to 300 penalty units.
381. It is important that reportable biosecurity incidents are reported as soon as practicable to ensure that any biosecurity risks associated with the incident can be managed to an acceptable level and to limit the risk associated with any pest or disease entering, establishing or spreading into Australian territory. The person in charge of the goods that are subject to biosecurity control, should be aware of and clearly understand the requirements under the Biosecurity Act and take reasonable steps to comply.
382. Failure to report such biosecurity incidents as soon as practicable after becoming aware of them is likely to result in a delay in responding to the biosecurity risk associated with the incident, which could exacerbate the nature and magnitude of the risk, and any required response activity. The current civil penalty does not adequately reflect the seriousness of the contravening behaviour. An increased maximum civil penalty reflects the likely effects that non-compliance may have on the Australian environment, economy and export markets. The potential consequences of non-compliance are such that it is appropriate to increase the civil penalty.
383. The maximum civil penalty proposed by item 30 is therefore more appropriate and proportionate than under the current civil penalty regime. It better reflects the seriousness of failing to report a reportable biosecurity incident as soon as practicable after becoming aware of the incident. The higher civil penalty is intended to achieve the necessary deterrent effect to promote compliance with the Biosecurity Act while also indicating the magnitude of likely harm arising from the relevant wrongdoing.
384. The proposed increased civil penalty is set at an amount adequate to deter those considering jeopardising Australia's biosecurity status. It also aligns with similar civil penalty provisions in the Biosecurity Act relating to the contravention of conditions that apply to a failure to comply with directions under sections 124 to 130 of the Biosecurity Act.

Item 31 Application provisions

385. Item 31 of Schedule 2 would provide that the amendments to the maximum pecuniary penalties made by items 1 to 30 of this Schedule apply in relation to specified circumstances that occur on or after the commencement of item 31. The amendments would apply prospectively.

386. Subitem 31(1) would provide that the amendments to section 120 of the Biosecurity Act, proposed by items 1 and 2 of this Schedule, apply in relation to goods that are unloaded on or after the commencement of item 31. Subitem 31(1) makes clear that the amendments in items 1 and 2 are proposed to have prospective effect.
387. Subitem 31(2) would provide that the amendments to section 121 of the Biosecurity Act, proposed by items 3 and 4 of this Schedule, apply in relation to a notice given under section 120 of the Biosecurity Act on or after the commencement of item 31. Subitem 31(2) makes clear that the amendments in items 3 and 4 are proposed to have prospective effect.
388. Subitem 31(3) would provide that the amendments to section 122 of the Biosecurity Act, proposed by items 5 and 6 of this Schedule, apply in relation to a requirement made under subsection 122(2) or (3) of the Biosecurity Act on or after the commencement of item 31. Subitem 31(3) makes clear that the amendments in items 5 and 6 are proposed to have prospective effect.
389. Subitem 31(4) would provide that the amendments to section 143 of the Biosecurity Act, proposed by items 7 and 8 of this Schedule, apply in relation to a direction given under subsection 143(3) of the Biosecurity Act on or after the commencement of item 31. Subitem 31(4) makes clear that the amendments in items 7 and 8 are proposed to have prospective effect.
390. Subitem 31(5) would provide that the amendments to section 144 of the Biosecurity Act, proposed by items 9 and 10 of this Schedule, apply in relation to a direction given under subsection 144(3) or (4) of the Biosecurity Act on or after the commencement of item 31. Subitem 31(5) makes clear that the amendments in items 9 and 10 are proposed to have prospective effect.
391. Subitem 31(6) would provide that the amendments to section 145 of the Biosecurity Act, proposed by items 11 and 12 of this Schedule, apply in relation to goods that are unloaded on or after the commencement of item 31. Subitem 31(6) makes clear that the amendments in items 11 and 12 are proposed to have prospective effect.
392. Subitem 31(7) would provide that the amendments to section 146 of the Biosecurity Act, proposed by items 13 to 16 of this Schedule, apply in relation to a permission given under subsection 146(2) of the Biosecurity Act on or after the commencement of item 31. Subitem 31(7) makes clear that the amendments in items 13 to 16 are proposed to have prospective effect.
393. Subitem 31(8) would provide that the amendments to section 147 of the Biosecurity Act, proposed by items 17 to 21 of this Schedule, apply in relation to an aircraft or vessel that arrives at a first point of entry for the aircraft or vessel on or after the commencement of item 31. Subitem 31(8) makes clear that the amendments in items 17 to 21 are proposed to have prospective effect.
394. Subitem 31(9) would provide that the amendments to section 148 of the Biosecurity Act, proposed by items 22 to 25 of this Schedule, apply in relation to a permission given under subsection 148(2) of the Biosecurity Act on or after the commencement of

item 31. Subitem 31(9) makes clear that the amendments in items 22 to 25 are proposed to have prospective effect.

- 395. Subitem 31(10) would provide that the amendment to section 149 of the Biosecurity Act, proposed by item 26 of this Schedule, applies in relation to goods that are unloaded on or after the commencement of item 31. Subitem 31(10) makes clear that the amendment in item 26 is proposed to have prospective effect.
- 396. Subitem 31(11) would provide that the amendments to section 155 of the Biosecurity Act, proposed by items 27 and 28 of this Schedule, apply in relation to goods that become subject to biosecurity control on or after the commencement of item 31. Subitem 31(11) makes clear that the amendments in items 27 and 28 are proposed to have prospective effect.
- 397. Subitem 31(12) would provide that the amendments to section 156 of the Biosecurity Act, proposed by items 29 and 30 of this Schedule, apply in relation to goods that become subject to biosecurity control on or after the commencement of item 31. Subitem 31(12) makes clear that the amendments in items 29 and 30 are proposed to have prospective effect.

SCHEDULE 3—RISK ASSESSMENT

Background

398. Schedule 3 to the Bill would amend a number of provisions in the Biosecurity Act in relation to the conduct of risk assessments. A risk assessment is conducted for particular goods or class of goods to ensure the biosecurity risk associated with the goods or class of goods is appropriately managed for the purposes of making a determination under subsection 173(1), 174(1) and 182(1), or for deciding to grant a permit under subsection 179(1). The Appropriate Level of Protection (ALOP) for Australia, which aims to reduce biosecurity risks to a very low level, but not to zero, is applied when conducting a risk assessment.
399. The amendments proposed by this Schedule seek to increase transparency about the process by which risk assessments are conducted for the purposes of these determinations or decisions to grant permits made under subsection 179(1). The amendments would identify the matters that the decision-makers must be satisfied of before making such a determination or decision, as well as setting out the considerations that the decision-makers must or may consider before making such a determination or decision. This would provide greater certainty and clarity to stakeholders about the process by which risk assessments are conducted, thereby enhancing good public administration.
400. Schedule 3 to the Bill would not alter the requirement that ALOP be applied in conducting a risk assessment, consistent with Australia's international obligations under the *World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures 1994*. Similarly, the amendments proposed would not change the role of the Director of Biosecurity and Director of Human Biosecurity as decision-makers for these determinations and permits.
401. This Schedule would commence on the day after the proposed Act receives the Royal Assent. The amendments made by this Schedule would not have effect until that day.

Biosecurity Act 2015

Item 1 Section 5 (note 2)

402. Section 5 of the Biosecurity Act defines the ***Appropriate Level of Protection (ALOP)*** for Australia as a high level of sanitary and phytosanitary protection aimed at reducing biosecurity risks to a very low level, but not to zero.
403. Note 2 following section 5 currently notifies the reader that the ALOP must be applied in conducting, among other things, a risk assessment for the purposes of deciding whether particular goods, or a particular class of goods, can be brought or imported into Australian territory (referring the reader to subsections 173(4), 174(3), 179(3) and 182(4) of the Biosecurity Act).
404. Item 1 would amend note 2 following section 5 to omit the reference to subsection 179(3) and substitute this with a reference to subsection 179(1A). This amendment would be consequential to the amendments proposed by items 6 and 8 of this Schedule.

Item 2 Section 9

405. Section 9 of the Biosecurity Act provides definitions for the Biosecurity Act. Item 2 would insert a new definition of *biosecurity worker*. This new definition would provide that *biosecurity worker* has the meaning given by new section 14A. This would be consequential to the insertion of new section 14A proposed by item 3 of this Schedule.

Item 3 After section 14

406. Item 3 would insert new section 14A after section 14 of the Biosecurity Act. Section 14A would provide for the definition of *biosecurity worker*.
407. New subsection 14A(1) would provide that a *biosecurity worker* is:
- an APS employee in the Agriculture Department or Health Department (new paragraph 14A(1)(a)); or
 - a person who is an employee of an Agency (within the meaning of the *Public Service Act 1999*) and whose services are made available to the Agriculture Department or Health Department (new paragraph 14A(1)(b)); or
 - a person who is engaged as a consultant or contractor to perform services for the Agriculture Department or Health Department and is specified in a determination under subsection 14A(2) (new paragraph 14A(1)(c)); or
 - a person who is engaged or employed by a person to whom new paragraph 14A(1)(c) applies, is performing services for the Agriculture Department or Health Department in connection with that engagement or employment and is specified in a determination under subsection 14A(3) (new paragraph 14A(1)(d)).
408. New subsection 14A(2) would provide that for the purposes of new subparagraph 14A(1)(c)(ii), that the Agriculture Secretary or Health Secretary may specify a person by written determination. New subsection 14A(3) would provide that for the purposes of subparagraph 14A(1)(d)(iii), the Agriculture Secretary or Health Secretary may specify a person by written determination. New subsection 14A(4) would provide that a determination under new subsections 14A(2) or (3) is not a legislative instrument.
409. The intention is that a biosecurity worker who conducts a risk assessment under new paragraphs 173(4)(a), 174(3)(a), 179(1A)(a) and 182(4)(a) would do so with specialised knowledge and skills that would enable them to make an accurate scientific assessment of the relevant biosecurity risks posed by particular goods or a class of goods. The sheer volume of the different goods or different classes of goods that may be the subject of a risk assessment means that, inevitably, there will be differences in the particular training, qualifications and expertise that is necessary to conduct each risk assessment. However, through appropriate knowledge-sharing and capacity building within the Agriculture Department and Health Department, biosecurity workers would be adequately supported in the conduct of the risk assessments.

Item 4 Subsection 173(4)

410. Section 173 of the Biosecurity Act provides for prohibited goods. Subsection 173(1) of the Biosecurity Act allows the Director of Biosecurity and the Director of Human Biosecurity to jointly determine that specified goods, or a specified class of goods, must not be brought or imported into Australian territory. Under subsection 173(2), goods specified in a determination in force under subsection 173(1) or goods included in a class of goods specified in a determination in force under subsection 173(1) are prohibited goods.
411. Subsection 173(4) currently provides that the Director of Biosecurity and the Director of Human Biosecurity must apply the ALOP for Australia in conducting a risk assessment for the purpose of deciding whether to make a determination under subsection 173(1) specifying particular goods or a particular class of goods.
412. Item 4 would repeal and substitute subsection 173(4). Amended subsection 173(4) would provide that before a determination under subsection 173(1) is made:
- a risk assessment must be conducted by a biosecurity worker in relation to the making of that determination; and
 - the Director of Biosecurity must be satisfied that the ALOP for Australia was applied in the conduct of the risk assessment, must consider the risk assessment and may also consider any other matters that the Director of Biosecurity considers relevant; and
 - the Director of Human Biosecurity must be satisfied that the ALOP for Australia was applied in the conduct of the risk assessment, must consider the risk assessment and may also consider any other matters that the Director of Human Biosecurity considers relevant.
413. The intention of new subsection 173(4) is to clarify the process by which risk assessments are conducted for the purposes of the Director of Biosecurity and Director of Human Biosecurity making a determination under subsection 173(1). This increases transparency about the process by clearly identifying the matters that the decision-makers must be satisfied of, as well as the considerations that the decision-makers must or may consider before making such a determination. This amendment would not create or change classes of goods listed in a determination made under subsection 173(1).

Item 5 Subsection 174(3)

414. Section 174 of the Biosecurity Act provides for conditionally non-prohibited goods. Subsection 174(1) allows the Director of Biosecurity and the Director of Human Biosecurity to jointly determine that specified classes of goods must not be brought or imported into Australian territory unless specified conditions (including conditions for administrative purposes) are complied with. Under subsection 174(2), goods included in a class of goods specified in a determination in force under subsection 174(1) are conditionally non-prohibited goods.
415. Subsection 174(3) currently provides that the Director of Biosecurity and the Director of Human Biosecurity must apply the ALOP for Australia in conducting a risk

assessment for the purpose of deciding whether to make a determination under subsection 174(1) specifying a particular class of goods.

416. Item 5 would repeal and substitute subsection 174(3). Amended subsection 174(3) would provide that before a determination under subsection 174(1) is made:

- a risk assessment must be conducted by a biosecurity worker in relation to the making of that determination; and
- the Director of Biosecurity must be satisfied that the ALOP for Australia was applied in the conduct of the risk assessment, must consider the risk assessment and may also consider any other matters that the Director of Biosecurity considers relevant; and
- the Director of Human Biosecurity must be satisfied that the ALOP for Australia was applied in the conduct of the risk assessment, must consider the risk assessment and may also consider any other matters that the Director of Human Biosecurity considers relevant.

417. The intention of new subsection 174(3) is to clarify the process by which risk assessments are conducted for the purposes of the Director of Biosecurity and Director of Human Biosecurity making a determination under subsection 174(1). This increases transparency about the process, by clearly identifying the matters that the decision-makers must be satisfied of, as well as the considerations that the decision-makers must or may consider before making such a determination. This amendment would not create or change classes of goods listed in a determination made under subsection 174(1) or the conditions that are imposed on conditionally non-prohibited goods.

Item 6 After subsection 179(1)

418. Section 177 of the Biosecurity Act allows a person to apply to the Director of Biosecurity for a permit authorising the person, or a person acting on behalf of the person, to bring or import particular goods into Australian territory. Subsection 179(1) allows the Director of Biosecurity to grant a permit where a person has made an application under section 177.

419. Item 6 would amend the Biosecurity Act by inserting new subsection 179(1A) after subsection 179(1). New subsection 179(1A) would require that, before a permit in relation to the goods is granted, a risk assessment is conducted in relation to the goods by a biosecurity worker, and the Director of Biosecurity is satisfied that the ALOP for Australia was applied in the conduct of the risk assessment.

420. The intention of new subsection 179(1A) is to clarify the process by which risk assessments are conducted for the purposes of the Director of Biosecurity granting a permit in relation to goods under subsection 179(1). This increases transparency about the process, by clearly identifying the matters that the Director of Biosecurity must be satisfied of before granting such a permit.

421. A decision of the Director of Biosecurity under subsection 179(1) to refuse to grant a permit is a reviewable decision under subsection 574(1) of the Biosecurity Act. The amendment proposed in this item does not change this position. A person who applies

for a permit under section 177 may seek to review a decision to refuse to grant that permit.

Item 7 Before paragraph 179(2)(a)

422. As noted above, section 177 of the Biosecurity Act allows a person to apply to the Director of Biosecurity for a permit authorising the person, or a person acting on behalf of the person, to bring or import particular goods into Australian territory. Subsection 179(1) allows the Director of Biosecurity to grant a permit where a person has made an application under section 177. Subsection 179(2) of the Biosecurity Act provides the matters that the Director of Biosecurity must consider in deciding whether to grant a permit under subsection 179(1).
423. Item 7 would amend the Biosecurity Act by inserting new paragraph 179(2)(aa) before paragraph 179(2)(a). New paragraph 179(2)(aa) would provide that the risk assessment that was conducted in relation to the goods, is a matter that the Director of Biosecurity must consider in deciding whether to grant the permit.
424. The intention of new subsection 179(1A) is to clarify the process by which risk assessments are conducted for the purposes of the Director of Biosecurity granting a permit in relation to goods under subsection 179(1). This increases transparency about the process, by clearly identifying the matters that the Director of Biosecurity must consider in deciding whether to grant such a permit.
425. A decision of the Director of Biosecurity under subsection 179(1) to refuse to grant a permit is a reviewable decision under subsection 574(1) of the Biosecurity Act. The amendment proposed in this item does not change this position. A person who applies for a permit under section 177 may seek to review a decision to refuse to grant that permit.

Item 8 Subsection 179(3)

426. Subsection 179(3) of the Biosecurity Act currently provides that the Director of Biosecurity must apply the ALOP for Australia in conducting a risk assessment for the purposes of deciding whether to grant the permit in relation to the goods.
427. Item 8 would amend the Biosecurity Act by repealing subsection 179(3). This amendment would be consequential on the insertion of subsection 179(1A) proposed by item 6 of this Schedule.

Item 9 Subsection 182(4)

428. Subsection 182(1) of the Biosecurity Act provides that the Director of Biosecurity may determine that specified goods or a specified class of goods (including conditionally non-prohibited goods), must not be brought or imported into Australian territory for a specified period which is not longer than 6 months. Under subsection 182(2), goods specified in a determination in force under subsection 182(1) or goods included in a class of goods specified in a determination in force under subsection 182(1) are suspended goods.

429. Subsection 182(4) currently provides that the Director of Biosecurity must apply the ALOP for Australia in conducting a risk assessment for the purpose of deciding whether to make a determination under subsection 182(1) specifying particular goods or a particular class of goods.
430. Item 9 would amend the Biosecurity Act by repealing and substituting subsection 182(4). Amended subsection 182(4) would provide that before a determination under subsection 182(1) is made:
- a risk assessment must be conducted by a biosecurity worker in relation to the making of that determination; and
 - the Director of Biosecurity must be satisfied that the ALOP for Australia was applied in the conduct of the risk assessment, must consider the risk assessment, and may also consider any other matters that the Director of Biosecurity considers relevant.
431. The intention of new subsection 182(4) is to clarify the process by which risk assessments are conducted for the purposes of the Director of Biosecurity making a determination under subsection 182(1). This increases transparency about the process, by clearly identifying the matters that the Director of Biosecurity must be satisfied of, as well as the considerations that the Director of Biosecurity must or may consider before making such a determination. This amendment would not create or change classes of goods listed in a determination made under subsection 182(1).

Items 10 and 11 Subsection 541(4) (note)

432. Section 541 of the Biosecurity Act provides for the functions and powers of the Director of Biosecurity. Subsection 541(4) provides that in performing functions or exercising powers under the Biosecurity Act, the Director of Biosecurity:
- must have regard to the objects of the Biosecurity Act; and
 - must comply with certain directions given by the Agriculture Minister.
433. The note following subsection 541(4) currently notifies the reader that the Director of Biosecurity must apply the ALOP for Australia in conducting, among other things, a risk assessment for the purpose of deciding whether particular goods, or a particular class of goods, can be brought or imported into Australian territory and, if so, whether this should be subject to conditions (referring the reader to subsections 173(4), 174(3), 179(3) and 182(4)).
434. Item 10 would amend the note following subsection 541(4) by omitting the words “The Director of Biosecurity must apply the ALOP for Australia” and substituting this with “The ALOP for Australia must be applied”. Item 11 would amend the note following subsection 541(4) by omitting the word “179(3)” and substituting this with “179(1A)”.
435. The amendments proposed by items 10 and 11 would align the Biosecurity Act with the other amendments proposed by item 1 of this Schedule and would be consequential to the amendments proposed by items 4 to 9 of this Schedule.

Item 12 Application provisions

- 436. Item 12 would provide for the application provisions for the amendments proposed by this Schedule.
- 437. Subitem 12(1) would provide that the amendment of section 173 of the Biosecurity Act made by this Schedule applies in relation to a determination made under subsection 173(1) on or after the commencement of item 12, and therefore makes clear that the amendment will have prospective affect. This makes clear that the amendment will have prospective affect.
- 438. Subitem 12(2) would provide that the amendment of section 174 made by this Schedule applies in relation to a determination made under subsection 174(1) on or after the commencement of item 12, and therefore makes clear that the amendment will have prospective affect. This makes clear that the amendment will have prospective affect.
- 439. Subitem 12(3) would provide that the amendments of section 179 of the Biosecurity Act made by this Schedule applies in relation to an application for a permit made on or after the commencement of item 12, and therefore makes clear that the amendment will have prospective affect. This makes clear that the amendment will have prospective affect.
- 440. Subitem 12(4) would provide that the amendment of section 182 of the Biosecurity Act made by this Schedule applies in relation to a determination made under subsection 182(1) on or after the commencement of item 12, and therefore makes clear that the amendment will have prospective affect. This makes clear that the amendment will have prospective affect.

SCHEDULE 4—ARRANGEMENTS AND GRANTS FOR DEALING WITH RISKS POSED BY DISEASES OR PESTS

Background

441. The Australian Government currently delivers numerous programs to manage biosecurity risks which may cause harm to animal, plant and human health, the environment and the economy. The programs are designed to identify, prevent, prepare for, and manage the risk of pests and diseases entering Australian territory.
442. Legislative authority for expenditure for such programs is generally provided by section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (FFSP Act) by inserting new items for each program into the relevant Schedule to the *Financial Framework (Supplementary Powers) Regulations 1997* (FFSP Regulations). The FFSP Act and the FFSP Regulations provide general expenditure authority for programs across the Commonwealth that are not otherwise specifically authorised in portfolio legislation. Examples of such programs include:
- Funding to improve Australia’s capacity to respond to pest and disease incursions;
 - Increased economic opportunities for Indigenous persons, entities and communities through activities that target biosecurity risks in northern Australia; and
 - Investment in projects that support planning and preparedness for management of environmental biosecurity risks.
443. Schedule 4 to the Bill would provide legislative authority for arrangements and grants for dealing with risks posed by diseases or pests, such as the National Citrus Canker Eradication Program which ran in response to the detection of citrus canker in a Darwin retail nursery. Having tailored legislative authority provisions in the Biosecurity Act would assist the Australian Government to respond quickly to fast-changing circumstances where there is a pest or disease threatening the health of the Australian population, the environment or the agricultural sector. Including the authority for expenditure on biosecurity activities and programs in the Biosecurity Act would support a more agile biosecurity system, and ensure transparency and accountability for Commonwealth expenditure on biosecurity activities and programs. Expenditure on biosecurity activities and programs would be reported by the relevant Agriculture or Health portfolio.
444. This approach would be consistent with the approach taken in other Commonwealth legislation to provide legislative authority for arrangements and grants, including the *Aged Care Act 1997*, *Child Care Act 1972*, *Emergency Response Fund Act 2019*, *Fair Entitlements Guarantee Act 2012*, *Future Drought Fund Act 2019* and *National Disability Insurance Scheme Act 2013*.
445. This Schedule would commence on the day after the proposed Act receives the Royal Assent. The amendments made by this Schedule would not have effect until that day. Any arrangements made prior to this day would still require legislative authority from other sources, such as by amendments to a Schedule to the FFSP Regulations.

Biosecurity Act 2015

Item 1 Section 3

446. Section 3 of the Biosecurity Act sets out a simplified outline. Item 1 would amend the description of Chapter 11 in the simplified outline to include a reference to arrangements and grants for dealing with risks posed by diseases or pests. This item is consequential to the changes proposed by item 6 of this Schedule which inserts a power of the Agriculture Minister or Health Minister to make, vary or administer such arrangements.
447. The simplified outline, and the amendments made by this item, are not intended to be comprehensive and has been included to assist readers to understand the substantive provisions of the Biosecurity Act and the amendments made by this Schedule, rather than to replace those provisions. It is intended that readers would rely on the substantive provisions in the Biosecurity Act and this Schedule.

Items 2 and 3 Section 4 (note)

448. Section 4 sets out the objects of the Biosecurity Act, which includes to provide for managing biosecurity risks. The note following section 4 explains that the expression ‘biosecurity risk’ has different meanings in the Biosecurity Act.
449. Item 2 would insert the words “, Part 3A of Chapter 11 (arrangements and grants for dealing with risks posed by diseases or pests)” after “response)” in the note. Item 3 would omit “and 310” and substitute “, 310 and 614B” in the note. The amended note following section 4 would provide that the expression ‘biosecurity risk’ has different meanings depending on whether it is for the purposes of Chapter 6, Part 3A of Chapter 11, or another part of the Biosecurity Act, referring to sections 9, 310 or 614B. This amendment would be consequential to the insertion of new Part 3A of Chapter 11, as proposed by item 6 of this Schedule.

Item 4 Section 9 (definition of *biosecurity risk*)

450. Section 9 provides definitions for the Biosecurity Act. Item 4 would insert the words “or 614B” after “section 310” in the definition of ***biosecurity risk***. This would provide that the definition of ***biosecurity risk*** has the meaning set out in in section 9, except where otherwise provided by section 310 or 614B. This amendment would be consequential to the insertion of new section 614B, as proposed by item 6 of this Schedule.

Item 5 Section 9 (at the end of the note to the definition of *biosecurity risk*)

451. Section 9 provides definitions for the Biosecurity Act. Item 5 would insert the words “and section 614B applies this modified meaning in relation to Part 3A of Chapter 11 (arrangements and grants for dealing with risks posed by diseases or pests)” at the end of the note to the definition of ***biosecurity risk***. This would explain to readers that new section 614B applies the modified meaning of ***biosecurity risk*** in section 310 in relation to new Part 3A of Chapter 11. This would be consequential to the amendments proposed by items 4 and 6 of this Schedule.

Item 6 After Part 3 of Chapter 11

452. Item 6 would insert a new Part 3A into Chapter 11 of the Biosecurity Act. The new Part 3A would set out provisions relating to arrangements and grants by the Commonwealth for dealing with risks posed by diseases or pests.

Section 614A – Simplified outline of this Part

453. New section 614A would provide a simplified outline of the new Part 3A of Chapter 11 of the Biosecurity Act. The outline notes that Part 3A of Chapter 11 would allow the Agriculture Minister or the Health Minister, on behalf of the Commonwealth, to make, vary or administer an arrangement for the making of payments by the Commonwealth, or make, vary or administer a grant of financial assistance, for dealing with risks posed by diseases or pests.
454. The outline is not intended to be comprehensive and has been included to assist readers to understand the substantive provisions of new Part 3A, rather than to replace those provisions. It is intended that readers would rely on the substantive provisions in new Part 3A.

Section 614B – Arrangements and grants for dealing with risks posed by diseases or pests

455. New section 614B would provide for arrangements and grants by the Commonwealth for dealing with risks posed by diseases or pests.
456. New subsection 614B(1) would provide that the Agriculture Minister or the Health Minister may, on behalf of the Commonwealth, make, vary or administer an arrangement for the making of payments by the Commonwealth, or make, vary or administer a grant of financial assistance, in relation to one or more specified activities.
457. These activities would be specified to be the following:
- activities or research relating to identifying, preventing, preparing for or managing biosecurity risks (new paragraph 614B(1)(a));
 - activities in or outside of Australian territory relating to dealing with the risk covered by new subsection 614B(2), including, but not limited to, improving the capacity of foreign countries to respond to or manage that risk (new paragraph 614B(1)(b));
 - activities relating to communicating information in or outside Australian territory about the identification of, prevention of, preparation for or management of biosecurity risks or the risk covered by new subsection 614B(2) (new paragraph 614B(1)(c));
 - activities relating to supporting or enhancing State or Territory or industry led biosecurity incident response programs, or biosecurity incident recovery programs, dealing with biosecurity risks (new paragraph 614B(1)(d));
 - activities relating to identifying or managing established pests or established diseases to stop the spread of such pests or diseases (new paragraph 614B(1)(e));

- activities relating to furthering the objects of the Biosecurity Act (new paragraph 614B(1)(f));
 - a matter that is incidental or ancillary to an activity covered by the above paragraphs (new paragraph 614B(1)(g)).
458. The reference to the spread of established pests or established diseases in new paragraph 614B(1)(e) is intended to include the introduction of such pests or diseases to a part of Australian territory where it is not already established, from another part of Australian territory where these pests or diseases are established. For the purposes of new subsection 614B(1), **biosecurity risk** is defined in new subsection 614B(6). **Australian territory** is defined in section 12 of the Biosecurity Act.
459. The activities listed in new subsection 614B(1) would provide clear parameters on the types of arrangements and grants of financial assistance that either Minister may make, vary or administer.
460. It is appropriate to enable both the Agriculture Minister and the Health Minister to make, vary or administer arrangements and grants of financial assistance under subsection 614B(1) in order to reflect that the Biosecurity Act is administered by both the Agriculture Department and the Health Department. It is intended that the Health Minister would be able to make, vary or administer arrangements and grants of financial assistance relating to diseases or pests that cause harm to human health, while the Agriculture Minister would be able to make, vary or administer arrangements and grants of financial assistance for other diseases or pests. However, this is a starting position only, and does not serve as qualification to, or delineation of, the types of arrangements and grants of financial assistance that either Minister can make, vary or administer (within the parameters set out by new subsection 614B(1)). As there are some diseases or pests which may cause harm to both human health and animal health, it is appropriate for arrangements and grants of financial assistance relating to such diseases to be made, varied or administered by either Minister.
461. Funding for these arrangements and grants of financial assistance would come from annual appropriations made through the Federal Budget process. Government decisions in relation to these activities would therefore still be subject to those requirements, including the Budget Process Operational Rules, and would be published in the Portfolio Budget Statements including Additional and Supplementary Statements. The Parliament would continue to have the ability to scrutinise expenditure on, and the operation of, arrangements and grants of financial assistance made under new section 614B, through regular parliamentary processes such as Senate Estimates.
462. In accordance with usual Commonwealth processes, expenditure for activities being provided under the proposed arrangements and grants of financial assistance would require the policy approval of the Cabinet or the Prime Minister as appropriate, prior to either Minister exercising their power under new subsection 614B(1). This would ensure compliance with the Budget Process Operational Rules.
463. Funding decisions and payments for arrangements and grants of financial assistance made under new section 614B would be subject to the requirements of the Commonwealth resource management framework including, where relevant, the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the

Commonwealth Grants Rules and Guidelines 2017 and the Commonwealth Procurement Rules. These documents outline, among other things, requirements relating to the publication of applicant guidelines, development of eligibility and assessment criteria, and publication of details relating to the successful applicant and the arrangement and grant subsequently made.

464. Funding decisions made in connection with arrangements and grants of financial assistance made under new section 614B may be subject to independent merits review, where appropriate. In addition, the review and audit process undertaken by the Australian National Audit Office provides a mechanism to review Australian Government spending decisions and report any concerns to the Parliament. These requirements and mechanisms would help to ensure the proper use of Commonwealth resources and appropriate transparency around decisions relating to making, varying or administering arrangements and grants under new subsection 614B(1).
465. Further, the right to review under paragraph 75(v) of the Constitution and review under section 39B of the *Judiciary Act 1903* may still be available. Persons affected by spending decisions made in relation to arrangements and grants made under this new subsection 614B(1) may also have recourse to the Commonwealth Ombudsman where appropriate.
466. New subsection 614B(2) would set out certain types of risks that are to be covered by the activities in subsection 614B(1), including those outlined in new paragraph 614B(1)(b) and subparagraph 614B(1)(c)(ii).
467. New subsection 614B(2) would provide that the risk covered by this subsection is the likelihood of a disease or pest entering a foreign country or a part of a foreign country; or the likelihood of a disease or pest emerging, establishing itself or spreading in a foreign country or a part of a foreign country; and the potential for any of the following:
- the disease or pest to cause harm to human, animal or plant health in that foreign country;
 - the disease or pest to cause harm to the environment in that foreign country;
 - economic consequences in that foreign country associated with the entry, emergence, establishment or spread of the aforementioned disease or pest.
468. One of the key benefits of arrangements and grants to support activities dealing with risks posed by disease or pests in foreign countries is to strengthen the capability of those foreign countries to manage those risks to prevent them from entering Australia. For example, a pest may be prevalent in a foreign country that is a trading partner, and it is necessary to make, vary or administer arrangements or grants of financial assistance to assist that country to deal with the spread of that pest, to reduce the risk that it may enter in Australian territory through trade or other means.
469. The key difference between new subsection 614B(2) and the definition of **biosecurity risk** in new subsection 614B(6) is the likelihood of a disease or pest entering, emerging, establishing or spreading in a particular location. This location may be in or outside of Australian territory. In some cases, it would be appropriate and more effective to address the risk of disease or pest outside of Australian territory.

470. The combined effect of new subsections 614B(3), (4) and (5) would be to clarify that an arrangement or grant of financial assistance under new subsection 614B(1) may provide for the Commonwealth to reimburse, or partly reimburse, costs or expenses, but that this would not limit the operation of subsection 614B(1).
471. New subsection 614B(6) would set out the definitions of key terms used in new section 614B. In this section, the following definitions would apply:
- **arrangement** would include a contract, agreement, deed or understanding;
 - **biosecurity risk** would have the same meaning as in Chapter 6 of the Biosecurity Act (see section 310); and
 - **make**, in relation to an arrangement, would include entering into an arrangement.

These definitions would clarify the operation of these terms in this section for the benefit of readers.

Section 614C – Terms and conditions for grants

472. New subsection 614C(1) would require the terms and conditions on which a grant of financial assistance under new section 614B is made to a State or Territory to be set out in a written agreement between the Commonwealth and the State or Territory.
473. New subsection 614C(2) would allow the Agriculture Minister or the Health Minister to enter into an agreement under new subsection 614C(1), on behalf of the Commonwealth. New subsection 614C(3) would explain that any variation of the grant of financial assistance must be in accordance with the terms or conditions of the grant.
474. New subsection 614C(3) would clarify that new section 614C does not, by implication, prevent a grant of financial assistance under new section 614B to a person other than a State or Territory from being made subject to terms and conditions.

Section 614D – Additional operation of this Part

475. New subsection 614D(1) would provide that, in addition to Part 3 of Chapter 1 of the Biosecurity Act, this new Part 3A of Chapter 11 also has effect as provided by new section 614D. Part 3 of Chapter 1 sets out the constitutional and international law provisions that are relevant to the Biosecurity Act. In particular, section 24 sets out the various constitutional heads of power upon which the Bill may seek to draw if its operation is expressly confined to acts or omissions under those constitutional powers.
476. New subsection 614D(2) would provide that new Part 3A of Chapter 11 also applies in relation to an arrangement or grant of financial assistance referred to in section 614B that is with respect to the granting of financial assistance to a State or Territory (referencing section 96 of the Constitution), or with respect to a Territory (referencing section 122 of the Constitution), or with respect to people to whom paragraph 51(xxvi) of the Constitution applies (that is, the people of any race for whom it is deemed necessary to make special laws). This would mean that new section 614B may seek to

draw upon those various constitutional heads of power, as set out in new subsections 614D(1) and (2).

Section 614E – Relationship of this Part with other Acts

477. New section 614E would clarify that this new Part 3A of Chapter 11 of the Biosecurity Act does not, by implication, limit the operation of the *Financial Framework (Supplementary Powers) Act 1997*.

Section 614F – Executive power of the Commonwealth

478. New section 614F would clarify that this new Part 3A of Chapter 11 of the Biosecurity Act does not, by implication, limit the executive power of the Commonwealth.

Section 614G – Inclusion of information in annual reports

479. New section 614G would set out additional reporting requirements for when an arrangement or grant of financial assistance is made under new section 614B to ensure that such arrangements and grants are transparent and accountable.
480. The operation of section 46 of the PGPA Act and new subsection 614F(1) of the Biosecurity Act would require the Agriculture Secretary to include in the Agriculture Department's annual report:
- The total of the amounts paid in that period under arrangements or grants of financial assistance made by the Agriculture Minister under new section 614B;
 - The total number of such arrangements or grants made by the Agriculture Minister under new section 614B in that period.
481. The operation of section 46 of the PGPA Act and new subsection 614D(2) of the Biosecurity Act would require the Health Secretary to include in the Health Department's annual report:
- the total of the amounts paid in that period under arrangements or grants of financial assistance made by the Health Minister under new section 614B;
 - the total number of such arrangements or grants made by the Health Minister under new section 614B in that period.
482. Annual reports for Commonwealth entities are required to be presented in the Parliament by the responsible Minister under section 46 of the PGPA Act and are subject to parliamentary scrutiny by the Joint Committee of Public Accounts and Audit. The inclusion of information in the Annual Report relating to arrangements and grants of financial assistance made under section 614B would provide an additional mechanism for parliamentary scrutiny and ensure transparency on the arrangements and grants being made.
483. This requirement to include information in the annual report is not intended to displace or limit any existing reporting requirements. Rather, this requirement would be in addition to the Commonwealth's regular practices and requirements for publishing expenditure-related information, for example, through the Federal Budget process.

Section 614H – Delegation

484. New subsection 614H(1) would provide that the Health Minister may, by writing, delegate any of all of the Health Minister's powers under new section 614B to the Health Secretary, or to an SES employee, or acting SES employee, in the Health Department or in a Department of State of the Commonwealth other than the Health Department. This means that the ability to make, vary or administer arrangements or grants of financial assistance for dealing with risks posed by diseases or pests can be delegated by the Health Minister.
485. New subsection 614H(2) would provide that the Health Minister may, by writing, delegate the Health Minister's powers under new section 614C to the Health Secretary, or to an SES employee, or acting SES employee, in the Health Department. This means that the ability to make, vary or administer grants of financial assistance to a State or Territory for dealing with risks posed by diseases or pests can be delegated by the Health Minister.
486. A note following new subsections 614H(1) and (2) would refer readers to section 643 of the Biosecurity Act for the delegation of powers by the Agriculture Minister. Subsection 643(1) provides that the Agriculture Minister may, by writing, delegate any of the Agriculture Minister's powers under the Biosecurity Act to the Director of Biosecurity, or an SES employee, or acting SES employee, in the Agriculture Department. This would include any delegation of powers under new section 614B or 614C. In addition, new subsection 643(1A), as proposed by item 7 of this Schedule, would provide that the Agriculture Minister may, by writing, delegate the Agriculture Minister's powers under new section 614B to an SES employee, or acting SES employee, in a Department other than the Agriculture Department. It is intended that the delegation of the Health Minister's powers, insofar as they relate to those powers provided for in new section 614B or 614C, would align with the Agriculture Minister's ability to delegate powers under new section 614B or 614C.
487. As noted above, the Australian Government currently delivers numerous programs designed to identify, prevent, prepare for and manage the risk of pests and diseases entering Australian territory which may cause harm to animal, plant and human health, the environment and the economy. This Schedule would insert tailored legislative authority provisions in the Biosecurity Act to allow the Australian Government to respond rapidly to the emergence, establishment or spreading of a pest or disease threatening the health of the Australian population, the environment or the agricultural sector. Given that programs may need to be administered and delivered quickly in order to mitigate such threats in a timely manner, it is important that the Health Minister's powers under new sections 614B and 614C are delegable to the Health Secretary or an SES employee (or acting SES employee) in the Health Department so that arrangements and grants of financial assistance may be made, varied and administered on potentially short notice to respond to fast-changing circumstances. This would include powers relating to the management, administration and payment of any approved expenditure. It is the intention that the delegates would be senior officials of the Health Department, who have overall responsibility and direct oversight of the relevant arrangement or grant, therefore making them best placed to exercise the power under new section 614B or 614C. In addition, for the powers under new section 614B,

it is intended that such delegates may also include senior officials of other Departments that are involved in the management and delivery of the relevant arrangement. For example, this would include programs delivered via the Business Grants Hub (operated by the Department of Industry, Science, Energy and Resources) or the Community Grants Hub (operated by the Department of Social Services), in accordance with existing Commonwealth policy. Where programs may be required quickly to mitigate relevant threats and risks, an inability to delegate the powers under new section 614B or 614C would require the Health Minister personally to make, vary and administer all arrangements and grants, including those of a more bureaucratic nature relating to the management, administration and payment of expenditure, thus potentially exacerbating and increasing those threats and risks.

488. Further, and as provided by paragraph 34AB(1)(d) of the *Acts Interpretation Act 1901*, a delegation of the power under section 614B or 614C by the Health Minister does not prevent the exercise of that power by the Health Minister. Any delegates of the Health Minister would be able to further consult with and seek approval from the Health Minister in relation to a specific arrangement or grant, if necessary, in the particular circumstances of each case. Similar considerations apply to the ability for the Agriculture Minister to delegate powers under new section 614B or 614C to the Director of Biosecurity or an SES employee (or acting SES employee) in the Agriculture Department or in a Department other than the Agriculture Department (as applicable).
489. New subsection 614H(3) would provide that, when exercising any powers under a delegation of the power under section 614B by the Health Minister, the delegate must comply with any directions of the Health Minister. This is similar to the requirement in subsection 643(6), which provides that when exercising any powers under a delegation, a delegate of the Agriculture Minister must also comply with any directions of the Agriculture Minister.

Item 7 After subsection 643(1)

490. Subsection 643(1) provides that the Agriculture Minister may, by writing, delegate any of the Agriculture Minister's powers under the Biosecurity Act to the Director of Biosecurity, or an SES employee, or acting SES employee, in the Agriculture Department.
491. Item 7 would insert new subsection 643(1A) after subsection 643(1) of the Biosecurity Act. New subsection 643(1A) would provide that the Agriculture Minister may, by writing, delegate the Agriculture Minister's powers under new section 614B to an SES employee, or acting SES employee, in a Department of State of the Commonwealth other than the Agriculture Department. This would align the Agriculture Minister's ability to delegate powers under new section 614B or 614C with the delegation of the Health Minister's powers under new section 614H, as proposed by item 6 of this Schedule.



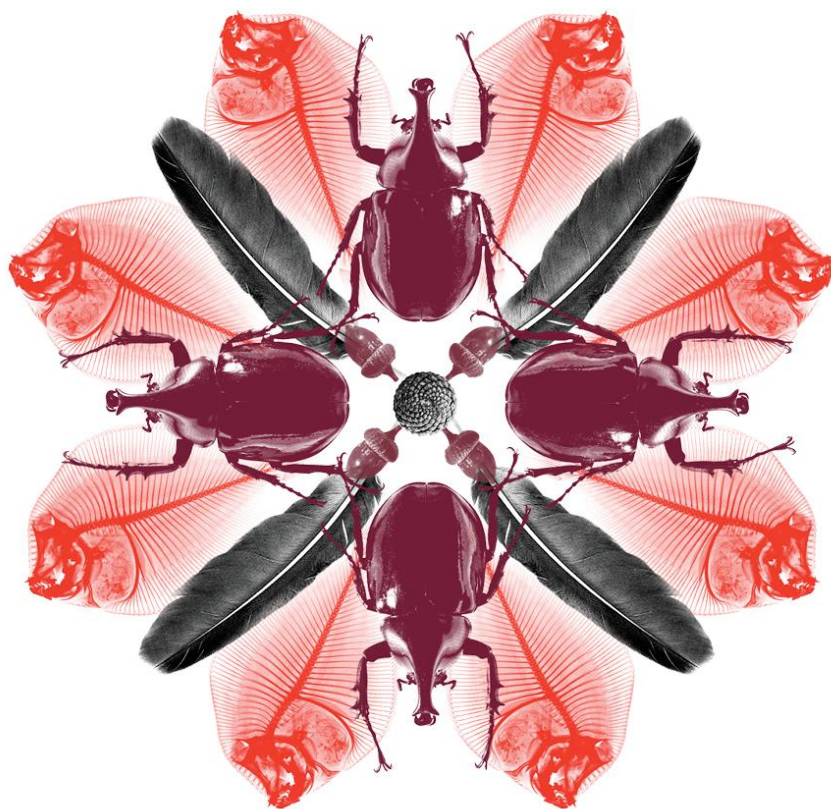
Australian Government
Department of Agriculture,
Water and the Environment

Pratique and human health: amendments to the Biosecurity Act 2015

Regulation Impact Statement

Department of Agriculture, Water and the Environment

Biosecurity Operations Division, OBPR ID 44166



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Executive Summary

This Regulatory Impact Assessment addresses priority issues with the Commonwealth biosecurity legislation identified in the context of the COVID-19 pandemic. The emergence and global spread of the COVID-19 pandemic since early 2020 has tested Australia's human biosecurity systems in an unprecedented way.

Significant scrutiny has been focussed on the laws underpinning biosecurity, and in particular the ability of the Commonwealth to respond under the *Biosecurity Act 2015*. The berthing of the Ruby Princess cruise ship in Sydney on 19 March 2020 represented a significant biosecurity issue.

The problem

Independent reviews of the Ruby Princess incident have identified key areas for targeted reform to the Biosecurity Act to provide a better management framework for human biosecurity risks onboard vessels and aircraft entering Australia. These reviews include the New South Wales *Special Commission of Inquiry into the Ruby Princess Cruise Ship Incident* Report and the Inspector-General of Biosecurity Review *Confidence testing for at-border delivery of critical human biosecurity functions - Ruby Princess cruise ship incident*. Both reviews recommended changes to the scheme set out in the *Biosecurity Act 2015* for managing human health risks for incoming passengers to Australia.

The recommendations from these reviews and the lessons learnt through the pandemic response to COVID-19 have highlighted specific issues with the Biosecurity Act relating to:

- The operation of pratique provisions within the Biosecurity Act
- Pre-arrival reporting obligations and the importance of human health assessments prior to entry to a port
- Powers to manage human health of groups of arriving passengers.

Need for action

The regulatory actions being assessed address the risk of listed human diseases entering Australian territory through international vessel and aircraft arrivals and would apply in the context of the current COVID-19 pandemic, while also providing flexibility to manage infectious disease risks that Australia may face in the future. Specifically, the objectives of the reforms being assessed are to:

- better support human health risk assessments and operational responses to the threat of COVID-19 and other listed human diseases on vessels and aircraft entering Australian territory.
- support the national COVID-19 economic recovery, including steps towards the resumption of the cruise ship industry in Australia, and shoring up the human health biosecurity framework into the future.

The independent reviews raised concerns that issues identified through the arrival of the Ruby Princess cruise ship at the Port of Sydney on 19 March 2020 could apply in similar measure to other cruise ships, in other ports, or for entirely different biosecurity risk pathways. Of particular concern are risk circumstances where the probability of occurrence may be assessed to be low, but the consequences of biosecurity failure are potentially large or extreme.

In the circumstances of the emerging pandemic in early 2020, the government undertook several responses. Regular jurisdictional meetings were introduced and new human health processes for commercial vessels were implemented. While these responses improve the management of biosecurity risks, they do not solve the legislative gaps identified in the reviews so the need for legislative amendments remains. Without the proposed amendments, Australia's industries and people remain at risk, particularly upon the recommencement of the cruise industry.

Options

This RIS outlines three policy options for Australian Government action:

1. **Status quo** - The Biosecurity Act includes an existing scheme for managing human biosecurity risks. The scheme allows biosecurity officers to refuse to grant pratique where listed human diseases have been reported, and to issue Human Biosecurity Control Orders to manage individuals with symptoms of, or exposure to, listed human diseases. Under the status quo, the Commonwealth's human biosecurity legislative powers remain limited. Extra human health reporting and risk assessment criteria cannot be enforced, and there is too heavy a reliance on state and territory public health powers to respond to risks identified at the first point of entry. The Australian community will continue to be at a heightened risk of exposure to COVID-19 and other listed human diseases through commercial and cruise vessel and aircraft operations.
2. **Emergency powers and legislative instruments** - Option 2 would seek to use existing legislative authority to manage relevant human biosecurity risk, including legislative instruments and the Biosecurity Regulation 2016 and the Biosecurity Human Health Regulation 2016. A short-term solution could include use of emergency powers while a human biosecurity emergency is declared. This option does not fully address identified issues relating to preparedness for future emergence of novel illnesses and pandemics. It may generate uncertainty for regulated industries and for the interaction of Commonwealth agencies with state and territory counterparts.
3. **Amendments to the Biosecurity Act** - Option 3 would seek to amend the Biosecurity Act and associated regulations to address the identified risk of listed human diseases entering Australia through international vessel arrivals. The specific amendment proposals include: multiple pre-arrival reporting requirements for aircraft and vessels; requirements to update pre-arrival reporting; new and increased penalties for non-compliance with pratique and reporting requirements; and a new mechanism to issue human biosecurity group directions to groups of people.

Amending the Biosecurity Act – the preferred option

The targeted reform proposed in Option 3 represents a critical step towards the national COVID-19 economic recovery, including towards the resumption of the cruise ship industry in Australia, and shoring up the human health biosecurity framework into the future. The proposed legislative amendments aim to address the risk of listed human diseases entering Australian territory through international vessel arrivals and would apply in the context of the current COVID-19 pandemic, while also providing flexibility to manage infectious disease risks that Australia may face in the future.

A key benefit expected to materialise from the preferred option is the support it lends toward the recovery of the cruise industry, to pre-pandemic levels. This includes refilling the 18,135 jobs that existed at the end of the 2018-19 financial year and building back up to the \$5.2 billion in annual economic output that was generated directly and indirectly by the industry. Any regulation that will support the recovery of the industry will be of significant value to the Australian economy and community as a whole.

The proposed changes address the desired policy objectives, with the benefits significantly outweighing quantifiable increases in the regulatory burden for businesses. The quantifiable regulatory burden is estimated at \$0.275 million per year or \$2.750 million in total over ten years (expressed in present value terms), over maintaining the current regulatory framework (Option 1). The likely impacts of the preferred option arise primarily from the extra reporting requirements and the new mechanism to issue human biosecurity group directions to groups of people. The increased regulatory burden would be offset at least partly by savings due to the more nuanced human health risk management regime. However, it was not possible to estimate the quantum of these savings.

These proposed changes can only be implemented by the government amending the existing legislative scheme. Without the proposed legislative amendments, the Commonwealth's biosecurity framework would continue to be limited in its capacity to effectively secure the objectives of the Biosecurity Act. Australian society would continue to be at a heightened immediate risk of being exposed to COVID-19 or other novel communicable diseases through present and future commercial and cruise vessel operations. This risk has materialised multiple times with commercial vessels during the COVID-19 pandemic.

Current setting

Overview

All aircraft and maritime vessels arriving in Australian territory from overseas are subject to Australian biosecurity requirements to manage the risk of infectious human diseases entering Australian territory. Cruise ships in particular can provide an ideal environment for transmission of communicable diseases. They bring diverse populations, of unknown health status, into close proximity for many days. They move rapidly from one port to another, interfacing with local community members. Also, large numbers of passengers and crew members interact in the confined environment of cruise ships, so there is further potential for spread of communicable diseases.

These risks are managed by the Commonwealth primarily through the *Biosecurity Act 2015* (Biosecurity Act) and consistent with Australia's international rights and obligations under the *International Health Regulations (2005)*. States and territories have their own statutory frameworks for public health, including the emergency responses required to address issues such as the COVID-19 pandemic. Each of these jurisdictions also has a principal medical advisor. National responses to health emergencies, such as COVID-19, are coordinated through bodies such as the Australian Human Health Protection Principal Committee and the Chief Human Biosecurity Officer Forum.

International Health Regulations

The *International Health Regulations (2005)* (IHR) are the key binding international legal instrument for preventing and responding to acute public health risks that have the potential to cross borders and threaten people worldwide. The IHR are designed to prevent the international spread of infectious diseases while avoiding interference with international traffic and trade. The IHR is binding on 196 countries across the globe, including all Member States of the World Health Organization (WHO). As a Member State of the WHO, Australia is obliged to comply with the IHR.

The IHR establishes a minimum standard for public health prevention, preparedness and response. These standards include activities and functions such as ship sanitation and points of entry (pratique). Australia has incorporated key IHR standards into domestic law, including at the national level through the Biosecurity Act and the *National Health Security Act 2007*.

Biosecurity Act 2015

The Biosecurity Act commenced on 16 June 2016. It is co-administered by the Ministers responsible for the Agriculture and Health portfolios. The Act provides a range of powers for managing biosecurity risks to human health, including entry and exit screening, management of ill travellers, vector monitoring and control, and flexible emergency and preventative powers. It also gives effect to Australia's IHR obligations in relation to ship sanitation, points of entry, Public Health Emergencies of International Concern, and yellow fever vaccination.

Chapter 2 of the Biosecurity Act deals with managing risks to human health. That Chapter sets out a framework for the determination of listed human diseases by the Director of Human Biosecurity. The *Biosecurity (Listed Human Diseases) Determination 2016* lists eight human diseases including human coronavirus with pandemic potential. Powers available to manage the risk of listed human diseases entering, emerging, establishing or spreading in Australian territory include pratique requirements and the imposition of individual human biosecurity control orders (HBCO).

Pratique

The Biosecurity Act provides for the grant of pratique. If pratique is not granted, goods are not permitted to be loaded or unloaded from, or persons to embark or disembark from, vessels or aircraft. An aircraft means any machine or craft that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth's surface. A vessel means any kind of vessel used in navigation by water, for example a ship or yacht. The Act refers to two types of pratique, positive pratique and negative pratique.

Positive Pratique

Ordinarily, most aircraft and vessels are granted pratique on their arrival in Australian territory by force of section 48 of the Biosecurity Act. This means that a decision is not required by a biosecurity officer before people can embark or disembark, and goods can be unloaded or loaded. Pratique will be granted to an aircraft or vessel by operation of the Act.

Negative Pratique

The *Biosecurity (Negative Pratique) Instrument 2016* prescribes the following classes of aircraft or vessels for the purpose of negative pratique:

- Class 1 – aircraft for which disinsection measures have not been carried out
- Class 2 – aircraft or vessels where there is an individual with signs or symptoms or possible exposure to a Listed Human Disease, or a death onboard (as advised through a pre-arrival report or otherwise)
- Class 3 – non-commercial vessels, for example private yachts
- Class 4 – vessels that fail to submit a pre-arrival report.

If a vessel or aircraft falls into any of these categories, it will be subject to negative pratique under section 49 of the Biosecurity Act. If a vessel or aircraft is subject to negative pratique, it will not be able to disembark passengers or unload goods until a Biosecurity Officer affirmatively grants pratique.

Compliance with pratique

The Biosecurity Act includes civil penalties for breaches of pratique obligations. The penalty applies to the operator of the aircraft or vessel. Section 21 defines operator of a conveyance to mean the body corporate or an unincorporated body responsible for the operation of the conveyance, that is the owner. If there is no body corporate and no unincorporated body responsible for operation of the conveyance, the person in charge of the aircraft or vessel is the operator.

As almost all cruise ships are commercially operated by crews, it is the operator's responsibility (that is, the body corporate or unincorporated body) to ensure the vessel's compliance. Therefore, in some cases, only the operator can be held responsible and liable to potential civil sanction where contravention of the pratique requirements in the Biosecurity Act is alleged.

Human biosecurity control orders (HBCO)

A HBCO can be imposed on an individual if a Human Biosecurity Officer is satisfied the individual has signs or symptoms of a listed human disease or has been exposed to a listed human disease. A HBCO that is in force in relation to an individual may require the individual to comply with certain biosecurity measures. Those measures include vaccination, restricting the individual's behaviour and ordering the individual to remain isolated.

An individual may consent to a biosecurity measure included in a HBCO that is in force in relation to the individual. An individual who refuses to consent to such a measure (other than an isolation measure or traveller movement measure) is not required to comply unless a direction has been given by the Director of Human Biosecurity requiring the individual to do so.

HBCO's apply in relation to individuals – they cannot be applied to a group or class of persons. Consistent with the potentially intrusive scope of its powers and intrusion on personal rights and liberties, there is a very stringent test that must be met for it to apply. As HBCOs are applied to individuals, if more than one person has signs or symptoms or has been exposed to a listed human disease, then a separate HBCO is required for each individual.

Pre-arrival reporting

Chapter 4 of the Biosecurity Act deals with managing biosecurity risks in relation to aircraft and vessels that enter Australian territory from outside Australian territory, including provisions for pre-arrival reporting. The human health pre-arrival reporting required by the Act provides the information required for the assessment and management of human health risks on aircraft and vessels. The grant of pratique is contingent on this assessment and civil sanctions apply for non-compliance with the reporting requirements. The reporting requirements are prescribed by the *Biosecurity Regulation 2016*.

Under section 193 of the Act, the operator of an aircraft or vessel must give a report that complies with the prescribed requirements (including as required by the *Biosecurity Regulation 2016*, details of any persons with signs or symptoms of a listed human disease) in the following circumstances:

- if it is intended that the aircraft or vessel enter, or if the aircraft or vessel enters into, Australian Territory, either on a flight or voyage that commenced outside Australian territory, or after being exposed to another conveyance while outside Australian territory; or
- it is intended that the aircraft or vessel be, or is, exposed to a conveyance that is subject to biosecurity control, or goods that are subject to biosecurity control and are of a kind prescribed by the regulations.

For vessels other than non-commercial vessels, the *Biosecurity Regulation 2016* requires the pre-arrival report to be submitted within 96 to 12 hours of estimated time of arrival at a First Point of Entry (as defined under section 18 of the Act). Different reporting times apply to other conveyances such as non-commercial vessels (for example, private yachts) and aircraft.

Section 194 of the Act requires operators of aircraft and vessels to rectify incorrect or incomplete reports by providing additional or corrected information to a biosecurity officer. However, if the human health status onboard a vessel changes after the pre-arrival report is submitted, the wording of the section does not provide a clear obligation to update information in a report. A person is liable to a fault-based (criminal) offence or a civil penalty if they fail to provide the information required under section 194.

1. What is the problem you are trying to solve?

Overview

This Regulatory Impact Assessment (RIS) assesses the effectiveness of Commonwealth biosecurity legislation to address priority issues identified in the context of the COVID-19 pandemic. The emergence and global spread of the COVID-19 ‘once in a century’ pandemic since early 2020 has tested Australia’s human biosecurity systems in an unprecedented way. Significant public and parliamentary scrutiny has been focussed on the laws underpinning biosecurity, and in particular the ability of the Commonwealth to respond under the Biosecurity Act.

The berthing of the Ruby Princess cruise ship in Sydney on 19 March 2020 represented a significant human biosecurity issue. Reviews of the Ruby Princess incident identified key areas for targeted reform to the Biosecurity Act to provide a better management framework for the risks. These reviews include the NSW *Special Commission of Inquiry into the Ruby Princess Cruise Ship Incident Report* and the Inspector-General of Biosecurity’s *Review Confidence testing for at-border delivery of critical human biosecurity functions - Ruby Princess cruise ship incident*.

The recommendations from these reviews and the lessons learnt through the pandemic response to COVID-19 have highlighted specific issues with the Biosecurity Act relating to:

- The operation of pratique provisions within the Biosecurity Act;
- Pre-arrival reporting obligations and the importance of accurate and timely human health assessments prior to arrival at a port; and
- Powers to manage the human health risks of groups of arriving passengers.

Maritime vessels are a key risk pathway for infectious disease

International maritime vessels have continued to present a significant risk pathway for infectious disease entry to Australian territory, particularly in relation to cruise vessels. There have also been multiple incidents of COVID-19 infections involving crew on commercial vessels such as bulk carriers and livestock ships.

Data sourced from the department show that 1,020 positive cases of COVID-19 were detected in travellers arriving on commercial and cruise vessels from February 2020 to October 2020. The cases and types of vessels associated with the infections has been broken down in [Table 1](#) below.

• Vessel Class	• COVID Cases
Cruise	935
Commercial	101
Non-commercial	1

Table 1 – Number of COVID-19 cases by class of vessel as at June 2021

The cases compounded the ongoing economic disruptions in Australia. To manage the cases, government interventions were required, resulting in disruptions that included state-wide lockdowns, national border closures and the banning of cruise vessels. These actions have negatively impacted industries by reducing their economic activity and inhibiting their ability to trade locally and internationally.

To understand the government response to these cases, it is important to recognise that the actions undertaken occurred within an ongoing government response in an evolving situation. In January 2020, prior to the events of the Ruby Princess, the Director of Human Biosecurity had determined ‘human coronavirus with pandemic potential’, including COVID-19, as a listed human disease, which enabled the implementation of additional COVID-19 screening requirements at First Points of Entry. The Australian Government subsequently advised self-isolation for all international travellers and banned the entry of foreign-flagged cruise vessels into Australian waters, with limited exceptions, from 18 March 2020.

Key issues

Pratique

Once a vessel has arrived at the port precinct at the first point of entry, and has been granted pratique, it cannot be revoked. In this situation, cargo can be unloaded, and passengers may disembark.

On the other hand, if pratique is not granted, no cargo can be loaded or unloaded, and no passengers can embark or disembark. There is no provision to grant pratique subject to conditions. When a human health concern (death or illness onboard) is notified through the pre-arrival report, the ship is in negative pratique.

To an extent this results in an ‘all or nothing’ outcome. Negative pratique is a fairly blunt and binary tool which does not permit a more tailored and nuanced approach to the management of risk which could be appropriate in certain circumstances. The human biosecurity risk managed by pratique rests primarily in people embarking on or disembarking a vessel. In doing so, they are potentially becoming exposed or exposing others to a listed human disease. When pratique has not been granted, the movement of all passengers and crew are affected, regardless of whether the presence of the risk factors are contained to a single deck or an even smaller area. Additionally, no loading or unloading of cargo can take place when the vessel has not been granted pratique, regardless of whether these actions would pose a human biosecurity risk. The current arrangements would be enhanced by allowing more flexible options to be available to target risk.

Non-compliance with pratique requirements

Before pratique is granted, the operator of an aircraft or vessel must not allow anything to be loaded or unloaded or any person to embark or disembark the aircraft or vessel. There are civil penalties for any breaches of this requirement. But as noted above, these penalties only apply to the operator of the aircraft or vessel, which in the case of commercial vessels, the operator would generally be a corporation, which may be located overseas.

As the Inspector-General of Biosecurity reported, it appears that any passenger or crew member, who knowingly disembarks a vessel that is in negative pratique, may not be in breach of the Biosecurity Act. Further, the Inspector-General of Biosecurity noted that the person in charge of an aircraft or vessel would also not be responsible for any non-compliance with negative pratique requirements.

the current framework of the Biosecurity Act does not impose a penalty on the person in charge of an aircraft or vessel for any breaches of pratique requirements, such as passengers disembarking before pratique is granted.

Pre-arrival reporting

The ability of officers to make decisions about granting pratique depends on access to reliable and up-to-date information on the health of passengers and crew aboard vessels.

Section 193 of the Biosecurity Act requires the operator of an aircraft or vessel entering Australia to provide a pre-arrival report. The pre-arrival report facilitates a preliminary biosecurity assessment of the vessel or aircraft and any people onboard, including passengers and crew. The pre-arrival report is important to the determination of the vessel's pratique status. If an illness is identified in the report, the vessel enters Australian territory with negative pratique and is not permitted to disembark passengers or load or unload cargo, unless pratique is subsequently granted by a biosecurity officer.

For cruise ships, the pre-arrival report must be provided between 12 and 96 hours before the estimated time of arrival at an Australian port, under the requirements in the *Biosecurity Regulation 2016*. This gives sufficient time for the information to be assessed.

As the pre-arrival report may be provided up to 96 hours before the ship berths, there can be significant changes to the health status of passengers in the period before berthing. Given the large numbers of passengers and crew on board cruise ships, it is possible for there to be significant increases in the number of persons with a listed human disease risk or significant changes in the types of reported symptoms from the time the report is submitted.

Under section 194, the vessel operator is required to give additional or corrected information once they become aware that the information included in the pre-arrival report was incomplete or incorrect. Both the NSW Special Commissioner and the Inspector-General of Biosecurity observed that section 194 is limited in its application. On its face, it requires updated information only where the information on the pre-arrival report could be considered 'incomplete or incorrect' at the time it was submitted. The reviews considered it open to contention that illness onboard a vessel that becomes evident after submitting the pre-arrival report does not trigger the reporting requirement under s 194.

As noted in the NSW Commission report at paragraph 4.42:

Section 194 of the Biosecurity Act requires vessel operators to update the report if they become aware that the information in the report is incomplete or incorrect. Section 194 is expressed in a way which creates an obligation to correct a report which is found to be incomplete or incorrect. The section does not convey a clear obligation to update case numbers if and when those case numbers increase: i.e. the number of cases reported at a specified time does not make that report "incomplete or incorrect" when the number of cases later increases. Consequently, it is doubtful whether updating is required by s 194.

As it stands, there appears to be no requirement to update the information if there is illness or death after the pre-arrival report is provided. Both reviews considered this to be a significant gap in the current human biosecurity reporting requirements and recommended that it be mandatory to provide updated human health information after submission of a pre-arrival report.

Enforcement of Pre-arrival Reporting

There may be commercial pressures on the master of a vessel to not report illnesses in certain circumstances. While the Inspector-General of Biosecurity considered that most vessel masters comply with Australia's requirements by correctly declaring illness onboard vessels, there were some inconsistencies in reporting:

On reporting signs or symptoms of a Listed Human Disease, the vessel is subject to negative pratique and therefore is not permitted to disembark travellers (commercial cruise ship) or to load or unload cargo (commercial cargo vessel). During his fieldwork, the Inspector-General noted biosecurity officers' concerns that a vessel may avoid reporting illness onboard in the vessel's Pre-arrival Report. Information the Inspector-General later received from Agriculture confirmed several instances where vessel masters either did not report any illnesses or reported illness just before berthing the vessel.

If an operator does not give a pre-arrival report as required by the Biosecurity Act, criminal and civil penalties apply under section 193 of the Act. Sections 532 and 533 of the Biosecurity Act also provide civil penalties if a person provides false or misleading information or documents. These are additional to the offence provisions set out in the Criminal Code for false and misleading information or documents.

Human biosecurity control orders (HBCOs)

One way in which the Biosecurity Act seeks to actively manage identified human biosecurity risks is through human biosecurity control orders (HBCOs). A HBCO can only be issued where an officer is satisfied that an individual has signs or symptoms of a listed human disease or has been exposed to a listed human disease. Part 3 of Chapter 2 of the Act sets out a range of biosecurity measures that may be imposed by a HBCO, including restricting the individual's behaviour, requiring an individual to undergo an examination and wearing protective clothing and equipment. Penalties apply for failing to comply with a HBCO. As noted above, HBCOs apply to individuals and not to groups of people. To date, no HBCOs have been imposed under the Biosecurity Act.

The Act only allows for HBCOs to be imposed on individuals. It is feasible to use this mechanism for a small number of arriving passengers and crew but impractical for larger groups of people. The NSW Special Commissioner described the administrative processes for HBCOs as being 'fairly demanding' and impractical to issue to a large number of people. For example, the Ruby Princess cruise ship, which docked at the Port of Sydney on 19 March 2020, carried about 2,700 passengers and 1,000 crew onboard. As noted above, about 40% of the Australian passengers on the ship developed COVID-19. The Inspector-General of Biosecurity similarly stated that it would be impractical, if not impossible, to issue HBCOs to every passenger and crew member onboard the Ruby Princess, leading to a higher risk of disease transmission.

Both the NSW Special Commissioner and the Inspector-General of Biosecurity recommended that consideration be given to amending the Biosecurity Act to enable HBCOs to be issued to a group of people.

Affected businesses, community organisations or individuals

The COVID-19 pandemic has effectively brought the cruise industry to a standstill in Australia with significant economic costs to cruise ship companies and to the Australian economy. Addressing the problems outlined above will be a step towards allowing the resumption of cruise services in a COVID-19 safe manner.

Cruise Industry

Cruise Lines International Association, Australasia (CLIA) is composed of more than 60 of the world's major cruise lines and serves as a non-governmental consultative organisation to the International Maritime Organization (IMO), an agency of the United Nations. According to CLIA, Australia's ongoing cruise suspension had cost the local economy an estimated \$6 billion in losses and put more than 18,000 jobs in doubt. (CLIA News, *Australia's plan needs to include cruising*, 2 July 2021).

Tourism Industry

A staged and safe resumption of the cruise sector will boost local economies, including those industries directly and indirectly involved with the cruise industry, such as suppliers, travel agents, and the hospitality sector.

Ports

Reducing potential exposure of port staff to COVID-19 is a key issue for the Maritime Union of Australia, who represent waterside workers, seafarers, port workers, professional divers and office workers associated with ports. Once cruises resume, consultation will be required with port authorities regarding the treatment of all cruise vessels arriving in Australia. There is potential for reduced berthing capacity for other vessels seeking to arrive in port, and for extended periods of time, when a cruise vessel is identified as having a potential relevant infectious disease risk on board.

All Other Industries

Addressing the identified problems will help protect Australia's industries from being exposed to COVID-19 biosecurity risks, which will assist Australia's economic recovery and support increased confidence in Australia's business sector.

2. Why is Government action needed?

Objectives

The regulatory actions being assessed in this RIS address the risk of listed human diseases entering Australian territory through international vessel and aircraft arrivals and would apply in the context of the current COVID-19 pandemic, while also providing flexibility to manage infectious disease risks that Australia may face in the future. Specifically, the objectives of the reforms being assessed are to:

- better support human health risk assessments and operational responses to the threat of COVID-19 and other listed human diseases on conveyances (vessels and aircraft) entering Australian territory.
- support the national COVID-19 economic recovery, including steps towards the resumption of the cruise ship industry in Australia, and shoring up the human health biosecurity framework into the future.

Human Health Risks

The Biosecurity Act strengthened and modernised Australia's biosecurity system. The Biosecurity Act provides a framework to manage biosecurity threats to plant, animal and human health in Australia and its external territories. The objects of the Biosecurity Act relevant to human health include:

- managing the risk of contagion of a listed human disease or certain other serious infectious human diseases;
- managing the risk of listed human diseases or any other infectious human diseases entering Australian territory or a part of Australian territory, or emerging, establishing or spreading in Australian territory or a part of Australian territory; and
- managing human biosecurity emergencies.

The Act provides a range of powers to manage unacceptable biosecurity risks on vessels and aircraft arriving at and entering into Australian territory for the protection of health of all Australians. These powers include entry and exit screening of international travellers, management of ill travellers, and flexible emergency and preventative powers.

Supporting Economic Recovery

Australia receives a significant economic gain from the cruise industry. In the 2018-19 financial year, the industry generated a net economic output into the Australian economy of about \$5.2 billion from indirect revenue and direct spending. This economic uplift, in turn, created 18,135 jobs (both direct and indirect) for Australians. There are significant benefits to the cruise industry if it can resume business in a 'COVID-safe' manner, aligned with the reduction in public health risk. There would also be benefits to Australia's economy and the health and safety of its inhabitants and travellers to Australia through a strengthened human biosecurity risk framework.

3. What policy options are you considering?

3.1 Option 1 – Status Quo

The Biosecurity Act includes an existing scheme for managing human biosecurity risks. The scheme allows Biosecurity Officers to refuse to grant pratique under Chapter 2 of the Act (relating to the human health biosecurity risk management) where risks of listed human diseases are not suitably managed, and to impose human biosecurity orders (HBCOs) to manage individuals with signs or symptoms of or exposure to listed diseases in certain circumstances. Option 1 is to continue to administer the scheme set out in the Biosecurity Act without legislative changes, including changes to delegated legislation.

The key features of the scheme (set out in detail in the Current Settings section above) include:

- Pratique allows things to be unloaded from or loaded on to, and persons to disembark from or embark, aircraft or vessels. Once granted, pratique cannot be revoked. Pratique can be granted by force of the Biosecurity Act (positive pratique) unless the vessel or aircraft is in a class specified by the Director of Human Biosecurity under the powers in subsection 49(1) of the Act (negative pratique). Where negative pratique applies, the vessel or aircraft must be assessed as complying with specified requirements before a biosecurity officer will grant pratique.
- Current settings for negative pratique are set out in the Biosecurity (Negative Pratique) Instrument 2016 administered by the Department of Health.
- Human Biosecurity Control Orders may be put in force in relation to an individual and may require the individual to comply with certain biosecurity measures.
- Requirements for pre-arrival reports to be given in relation to aircraft or vessels that enter or intend to enter Australian territory from outside Australian territory. The reports include information for the purpose of assessing the level of biosecurity risk associated with the aircraft or vessel, including to human health.
- Human biosecurity control orders may be imposed on a person where an individual assessment indicates that they have signs or symptoms of a listed human disease, and may require the individual to comply with certain biosecurity measures.
- A range of compliance and enforcement power, and criminal and civil penalties for non-compliance with pratique and pre-arrival reporting requirements and human biosecurity control orders.
- The Governor-General may make a human biosecurity emergency declaration if the Health Minister is satisfied that the special powers applying to emergencies in the Biosecurity Act are needed to deal with a human biosecurity emergency.

Under present arrangements, state and territory public health emergency powers, rather than individual human biosecurity control orders, are being utilised to deal with large numbers of crew or passengers seeking to disembark from arriving international vessels.

The status quo includes reforms to processes and procedures that have and are being implemented based on learnings from the COVID-19 pandemic. The reviews arising from the Ruby Princess incident made recommendations relating to the policies, procedures and responsibilities of relevant Federal and State agencies that do not require regulatory change and in some cases have already been implemented. For example, the Inspector-General of Biosecurity's report made 42 recommendations of which the department accepted 38 and noted 4. Many of these recommendations accord with changes and reforms the Government has undertaken during 2020 and 2021 (Agency response to Inspector-General of Biosecurity). Reform actions taken to date include:

- Institution of regular meetings at ports around Australia with port stakeholders, including state and territory health departments, to improve awareness of roles and responsibilities.
- Engagement of experts to redevelop the department's maritime human health instructional materials.
- A regulatory design assessment of pratique.
- Adjustment to human health reporting questions within the Maritime Arrivals Reporting System.
- Establishing formal protocols for communicating with human biosecurity officers and port stakeholders about human health risks and pratique.

3.2 Option 2 – Emergency powers and legislative instruments

Option 2 would seek to use existing legislative authority to manage relevant human biosecurity risk, including legislative instruments and the *Biosecurity Regulation 2016* and the *Biosecurity Human Health Regulation 2016*.

A short-term solution could include the appropriate use of emergency powers while the human biosecurity emergency is still declared.

The Biosecurity Act provides special powers in Part 2 of Chapter 8 for dealing with emergencies involving threats or harm to human health on a nationally significant scale. These are called human biosecurity emergencies. The Governor-General may make a human biosecurity emergency declaration for a specified period of time if the Health Minister is satisfied that the special powers in this Part are needed to deal with a human biosecurity emergency.

If the Governor-General declares a human biosecurity emergency, the Health Minister may exercise special powers under this Part to deal with a human biosecurity emergency, subject to limits and protections, including to give directions or determine requirements under the powers of sections 477 and 478. The exceptional powers are enlivened by the Governor-General declaring an emergency and allow the Health Minister to determine requirements and give directions during the emergency period to manage human biosecurity risks where it is considered necessary under the relevant provisions of the Act.

Under Option 2, emergency determinations could be made, to the extent necessary and appropriate to appropriately manage the risk of contagion of listed human diseases and the risk that such a disease might enter, emerge, establish or spread in Australian territory. However, this option is limited to the context of a declared human biosecurity emergency. It would not provide the framework for the Government's COVID-19 recovery plan that would support long-term management of human health risks that may arise from the cruise vessel industry, in a manner that provides certainty and consistency for industry.

3.3 Option 3 – Amendments to the Biosecurity Act

Option 3 would seek to amend the Biosecurity Act and associated legislative instruments to address the identified risk of listed human diseases entering Australia through international vessel arrivals.

Independent reviews recommend change to the Biosecurity Act

The proposals in Option 3 are informed by recommendations arising from several reviews:

- On 15 April 2020, the Governor of New South Wales referred a Special Commission of Inquiry into the voyage of the Ruby Princess. The report included recommendations to amend the Biosecurity Act- specifically recommendations at para 2.22 – 2.23 (See Appendix A).
- The Inspector General of Biosecurity's report *Confidence testing for at-border delivery of human biosecurity functions- Ruby Princess cruise ship incident* published on 29 April 2021 - specifically recommendations 19 - 22 and 24 (see Appendix B).
- The Department of Agriculture, Water and the Environment commissioned an independent regulatory design assessment into pratique which was finalised in November 2020.

These reviews raise concerns that issues identified through the arrival of the Ruby Princess could apply to other cruise ships, in other ports, or for entirely different biosecurity risk pathways. Of particular concern are circumstances where the probability of occurrence may be low, but the consequences of biosecurity failure are potentially large or extreme.

Option 3 includes a package of changes to the Biosecurity Act developed following analysis of the issues and recommendations raised by these reviews. The specific amendment proposals are as follows:

Multiple pre-arrival reporting requirements

- Amend section 193 of the Act to insert a regulation making power to require other pre-arrival reports to be submitted by an aircraft or vessel as prescribed by the regulations. The regulations may then prescribe different circumstances for giving other reports by different classes of aircraft or vessel. This will provide flexibility to respond to risks based on the class of conveyance and the circumstances relating to human health.
- For example, the regulations could provide for cruise vessels to submit two pre-arrival reports, with the second report being submitted closer to the time of arrival. This will allow for a more accurate and timely assessment of biosecurity risks to be conducted.

Requirements to update pre-arrival reporting

- Amend section 194 of the Act so that, in addition to the requirement to update the pre-arrival report if the report was incorrect or incomplete at the time it was submitted, further information would also be required to be given in circumstances prescribed by the regulations.
- Making provision for this in the regulations will offer appropriate flexibility to configure pre-arrival reporting to respond to the evolving and dynamic context of human biosecurity risks in the future.

Expand negative pratique obligations

- Extend the application of requirements to comply with negative pratique obligations to the person in charge of a vessel or aircraft. This would more appropriately reflect responsibility for the vessel or aircraft and more effectively target obligations for compliance.
- To deter non-compliance with the requirements, increase the existing civil penalty that applies to a vessel operator and insert a new civil penalty provision for the person in charge of the vessel or aircraft.

Create a power to issue directions to apply to a group of persons

- Create a human biosecurity group direction (HBGD) mechanism that permits a Human Biosecurity Officer or Chief Human Biosecurity Officer to issue directions to a class of people arriving in Australian territory where the officer is satisfied one or more persons in that class has signs or symptoms of, or may have been exposed to, a listed human

disease. The direction could be applied to passengers and crew arriving by either maritime or air pathways. The concept of being 'exposed to' a listed human disease is already defined in section 17 of the Act.

- The direction could be applied to individuals in a specified group, including individuals who are or were on a vessel or aircraft in either maritime or air pathways or in close proximity to the place where it landed or moored.
- The HBGD is intended to provide an effective and efficient Commonwealth mechanism for the preliminary assessment and management of human biosecurity risk. It would also address the lack of Commonwealth power to prevent the embarkation or disembarkation of passengers or the loading or unloading of goods after pratique has been granted.
- The measures the Chief Human Biosecurity Officer and Human Biosecurity Officer would be able to require individuals within the class of persons to comply with could include similar measures to those available for human biosecurity control orders in Division 3 of Part 2 of Chapter 2 of the Biosecurity Act and measures relating to disembarking passengers or crew and unloading or loading goods.
- Individuals within the class would be provided with notice of the HBGD in the manner prescribed by the regulations so that it can be best tailored to the circumstances of the aircraft or vessel. It is also proposed to insert a mechanism for a Human Biosecurity Officer, Chief Human Biosecurity Officer or Biosecurity Officer to require the person in charge of the aircraft or vessel to provide notice of the group direction to the class of individuals on board.
- Careful consideration of potential implications to human rights and other relevant legal obligations and issues will be given to ensure the new mechanism is appropriate and proportionate to the risk.

4. What is the likely net benefit of each option?

This section of the RIS discusses the benefits and costs for each of the three policy options being considered. These costs include the estimated regulatory cost burdens, with the estimate based on anticipated actions taken by businesses, individuals, and community organisations to comply with each of the proposed policies. The regulatory cost burden estimates have been developed using the guidance and tools of the Office of Best Practice Regulation.

This section further discusses relevant qualitative benefits and impacts, such as how well each option manages risks to human health and the anticipated benefit to the broader Australian economy, where relevant.

The cost of not complying with regulations, also known as enforcement costs, are not factored into regulatory cost burden estimates. The costs included in this RIS are in Australian dollars unless indicated otherwise and represent present value.

4.1 Option 1 – Status Quo

4.1.1 Benefits

Option 1 would continue to provide a regulatory framework for Australia's management of biosecurity risk, in accordance with the objects of the Biosecurity Act. This includes pre-arrival and at-border powers for managing what is referred to in practice as 'human biosecurity', that is protecting human health from the risks posed by the entry, emergence, establishment or spread of infectious human diseases in Australia.

The Biosecurity Act provides a modern framework to address the increasingly challenging and complex biosecurity risks due to increasing number of passengers and cargo entering Australia (Biosecurity Bill 2014 Explanatory Memorandum). The

benefits of the current framework are stated broadly in the former Department of Agriculture's Regulatory Performance Framework 2018-19:

The legislation is designed to be flexible and responsive to changes in technology and future challenges. It promotes a shared responsibility between government and industry, provides a modern regulatory framework, reduces duplication and regulatory impacts, and allows for current and future trading environments.

As outlined in the Current Settings section, the status quo provides for a pratique mechanism and pre-arrival reporting that provides some level of protection for managing human health risks. The positive pratique mechanism continues to provide an efficient means for managing arrivals of aircraft and vessels where no public health issues are identified.

The status quo includes changes and reforms to operational policies, practices and processes that the Australian Government has implemented during 2020 and 2021. These changes are expected to bring about improvement in the process for managing biosecurity risks at the border, even absent legislative change. For example, these changes will provide increased understanding of the roles and responsibilities of Commonwealth and state and territory agencies, improved training material for Biosecurity Officers and enhanced health reporting through the Maritime Arrivals Reporting System.

As Option 1 does not involve any change to regulation, there is no change to the regulatory burden on businesses, community organisations or individuals is anticipated.

4.1.2 Impacts

Under Option 1, the shortcomings in the existing regulatory framework identified in the problems section would remain. The binary nature of pratique, lack of up-to-date health reporting, and inability to provide directions to large groups of people results in the system lacking the flexibility to manage large numbers of passengers and crew with potential listed human diseases onboard foreign commercial vessels seeking permission to enter Australia. These impacts are discussed further below.

During the COVID-19 pandemic, a number of commercial vessels in Australian waters have had crew with COVID-19 onboard. These have included cargo vessels, livestock carriers and tankers. In many cases state and territory public health emergency powers have been used to restrict crew movement.

According to the Inspector-General of Biosecurity:

Currently, state emergency powers, rather than pratique or Human Biosecurity Control Orders, are being utilised to prevent crew or passengers from disembarking arriving overseas vessels. In assessing the effectiveness of the management of arriving vessels using pratique, we must consider an environment without reliance on state and territory emergency powers. [Inspector-General of Biosecurity, p. 86]

While these emergency powers are being used during the COVID-19 pandemic, the reliance on state or territory emergency powers leaves a gap in managing human biosecurity risk at times when the state emergency powers are not in operation. Under Option 1, this gap in managing human biosecurity risk when the state or territory emergency powers are not in operation would remain. While these emergency powers are being used during the COVID-19 pandemic, the reliance on state or territory emergency powers leaves a gap in managing human biosecurity risk at times when the state or territory emergency powers are not in operation. Emergency powers also vary across jurisdictions, potentially creating some inconsistency.

Negative Pratique

Under the current legislation, a vessel which has negative pratique status is not able to disembark individuals unless given permission to do so. This results in all passengers and crew not being allowed to disembark until the biosecurity risks are appropriately managed, regardless of whether the issue was due to an isolated or containable incident. The costs associated with negative pratique under the current legislation include costs for both individuals aboard the vessel and businesses onshore. These include the following:

- Individuals: personal cost to passengers (and in some instances crew) required to remain on the vessel for longer than anticipated, e.g., loss of wages, reorganising travel, travel cancellation costs and missed connections.

- Business: on-shore businesses who rely on tourism dollars are negatively affected when negative pratique occurs, through loss of income, for as long as the vessel has negative pratique status.
- The cost of delays to cargo being unloaded from the vessel.
- Costs to ship owners and other business due to delays resulting from the period in which a vessel remains in negative pratique, along with delays to other ships waiting to dock in part.

The above costs are not reliably quantifiable as the actual dollar cost would be reliant on a variety of factors, such as how frequently vessels are subject to negative pratique, the number of passengers affected and the length of delay onboard. The range of businesses affected by passengers not being allowed to disembark could include hospitality, retail, accommodation, tourist attractions and this is hence also not reliably quantifiable.

The magnitude of the regulatory burden imposed by negative pratique is driven by the fact that the entire vessel is subject to negative pratique, i.e., no passengers are allowed to be disembarked, even in cases where the disembarkation of the majority of the passengers would pose no significant risk of transmission of a listed human disease.

Pre-Arrival Reporting (PAR)

Under the current legislation, the time at which a PAR must be submitted for a cruise vessel is 96-12 hours prior to the estimated time of arrival at the first point of entry. Given the large numbers of passengers and crew on board a cruise vessel, it is possible for there to be significant increases in the number of persons with a listed human disease risk or significant changes in the types of reported signs or symptoms, from the time at which a PAR must currently be submitted (up to 96 hours before arrival) to when the cruise vessel arrives in Australian territory.

Under the status quo, extra human health reporting and risk assessment criteria cannot be enforced, meaning biosecurity officers do not have the most up-to-date information when deciding to grant pratique. In light of the ongoing pandemic, PARs under the status quo are insufficient to appropriately manage exposure to listed human diseases. The Australian community will therefore continue to be at a heightened risk of exposure to COVID-19 and other listed human diseases through commercial and cruise vessel and aircraft operations.

Additional reporting

Currently section 194 of the Biosecurity Act requires updates to the pre-arrival report if the report was incorrect or incomplete at the time it was submitted. Therefore, in the circumstance where case numbers increase, there is no clear legal obligation to update the information after the report was submitted if the numbers were correct at the time they were submitted. This means biosecurity officers may not have the most up to date information available to manage biosecurity risks posed by the aircraft or vessel.

In summary, the option of maintaining the status quo is not attractive due to the risk of listed human diseases, particularly COVID-19, entering into Australian territory through international vessel arrivals. Without the implementation of the proposed legislative amendments to the Act as contemplated under Option 3, the Commonwealth's human biosecurity legislative powers remain limited, as identified and discussed above.

Compliance with pratique

Under the status quo, only the operator is subject to penalties for non-compliance with pratique requirements in the Biosecurity Act. The current framing has the consequence that a person in charge of a vessel or aircraft is not liable to a civil penalty for contravening pratique requirements. The legislation under the status quo thus lacks an effective incentive to ensure the person in charge of the vessel or aircraft complies with pratique requirements, as that person is not accountable for any breaches such as passengers disembarking before pratique is granted.

Human Biosecurity Control Orders

The status quo allows for human biosecurity control order to be imposed on individuals only. This is feasible for a small number of arriving passengers and crew but impractical for larger groups of people. The Ruby Princess cruise ship, which docked at the Port of Sydney on 19 March 2020, carried about 2,700 passengers and 1,000 crew onboard. Under the status

quo, it would be impractical, if not impossible, to issue HBCOs to every passenger and crew member onboard the Ruby Princess, leading to a higher risk of disease transmission.

4.2 Option 2 – Emergency powers and legislative instruments

4.2.1 Benefits

Option 2 aims to use existing legislative authority to manage the relevant human biosecurity risk, including legislative instruments and the *Biosecurity Regulation 2016* and the *Biosecurity Human Health Regulation 2016*.

This option should allow for relevant human biosecurity risks to be better managed than under the status quo. This would occur with the targeted use of emergency powers, provided that a human biosecurity emergency has been declared.

This option could potentially be quicker to implement than amending the current legislation as it allows the Health Minister flexibility to exercise powers relevant to the specific circumstances, subject to the safeguards set out in the Biosecurity Act. The emergency provisions provide broad powers to manage human health emergencies.

A number of the problems identified by this RIS could be addressed to some extent under Option 2. When a human health emergency has been declared, human biosecurity emergency determinations could be created to address the need for further pre-arrival reporting or requiring the provisions of further information, where relevant. These determinations could be targeted to particular types of vessels or at all conveyances, depending on the identified risks.

It is also worth noting that any improvements to the Commonwealth's ability to manage the outbreak of a listed human disease could result in at least the partial reopening of the Australian cruise industry. Under Option 2, it could be expected that those benefits are partially realised depending on the powers enacted under this option. Limits on emergency powers, such as only applying to declared listed human diseases and ceasing at the end of the human biosecurity emergency, restrict the benefits of this option to periods of declared emergencies.

Factors such as the extent to which the jobs that existed previously will be filled again, and the speed with which the industry will return to pre-pandemic levels, are difficult to estimate. It is likely that the extent to which Option 2 contributed to a reopening of the cruise industry would be limited, especially without the ability to issue group orders such as the Human Biosecurity Group Directions proposed under Option 3.

Refer to Appendix D for more information regarding the size of the Australian cruise industry, prior to the current pandemic.

4.2.2 Impacts

Despite the benefits identified above, this option does not fully address identified issues relating to preparedness for future emergence of novel illnesses and pandemics.

Option 2 will lead to a more complex legislative framework than Option 3. It may generate uncertainty for regulated industries and for the interaction of Commonwealth agencies with state and territory counterparts, leading to delay and other costs. Determinations made by the Health Minister may be made quickly and the flexibility to adapt the determinations to each circumstance also means there is uncertainty for business. This option would also need to be implemented in a manner that is consistent with the use of state and territory health emergency powers for the management of public health risks. An inherent weakness of excessive reliance on state powers is that differences between jurisdictions lead to inconsistency and complexity, and they may only be available during emergencies. While these emergency powers are being used during the COVID-19 pandemic, the reliance on state and territory emergency powers leaves a gap in managing human biosecurity risk at times when the state and territory emergency powers are not in operation. Under option 2, this gap in managing human biosecurity risk consistently across all jurisdictions in Australia when only some of the state and territory emergency powers are in operation would remain.

Parliamentary consideration of the exercise of executive power in this area of national significance and concern may also be a matter for consideration, in particular the use of executive power during a declared human biosecurity emergency.

Any actions proposed under this option will only be available in the case of a declared emergency. The emergency powers therefore do not allow human biosecurity risks for listed human diseases to be effectively managed outside of a declared emergency. Examples may include a minor or early outbreak of a listed human disease, where it would be inappropriate to declare a human biosecurity emergency. In many cases, Biosecurity Officers and Human Biosecurity Officers will be limited to those options available to them under the status quo. This stands in contrast with Option 3 which provides officers with additional flexibility at any time a human health risk arises.

The declaration of a human biosecurity emergency is at the Health Minister's discretion and can vary from one emergency declaration to another. The regulatory burden imposed by these events can vary greatly as it is based on the impact and duration of such a declaration. This leaves a significant level of uncertainty with affected businesses, individuals, and community organisations.

As outlined above, Option 2 is superior to the status quo in that it partially addresses some of the problems identified in this RIS, for example by allowing for the creation of human biosecurity emergency determinations to address the need for additional pre-arrival reporting. This power is only available when a human health emergency has been declared.

This option does not address some of the problems identified above, including: the power to issue a direction to a group of people; and application of pratique obligations to reflect responsibility and risk more appropriately and to deter non-compliance.

Regulatory burden estimate

Table 2 below presents a matrix mapping the elements of option 2 against the segments expected to incur an additional regulatory burden as a result of this option.

Proposed Determination	Businesses	Individuals	Community Organisation
Tailor direction to the type of vessels, such as cruise vessels			
Multiple pre-arrival reporting requirements	X		
Requirements to update pre-arrival reporting	X		

Table 2 - Anticipated Regulatory Burden for Option 2, mapped against Segments

A regulatory burden estimate was quantified where the underlying cost drivers could be determined with a relative level of certainty. To this extent, an estimate was calculated for the proposed amendments relating to "Multiple pre-arrival reporting requirements" and "Requirements to update pre-arrival reporting". This was quantified and is presented in **Table 3** below. This assumes that the legislative requirements for pre-arrival reporting could be supplemented through a determination to require further reporting. These costs would only be incurred during a declared emergency, as the determination would have no effect once the emergency ended.

Table 6 below presents the quantifiable impacts, derived using the Regulatory Burden Measurement Framework.

Proposed amendment	Individuals	Business	Community organisations	Total change in cost
Multiple pre-arrival reporting (sea pathway)		(\$ 0.153)		(\$ 0.153)
Updated information reporting (Sea pathway only)		(\$ 0.003)		(\$ 0.003)
Total, by sector	-	(\$ 0.156)	-	(\$ 0.156)

Table 3 – Option 2 Regulatory Burden Estimate

The data and assumptions underpinning the regulatory burden estimate outlined in [Table 3](#) above, are presented in Appendix C below.

4.3 Option 3 – Amendments to the Biosecurity Act

Overview

As noted at section 3.3 above, Option 3 proposes the following amendments to the Biosecurity Act:

1	Multiple pre-arrival reporting requirements
2	Requirements to update pre-arrival reporting
3	Expand negative pratique obligations
4	Create a power to issue directions to apply to a group of persons

Table 4 – Proposed legislative amendments

Section 4.3.1 below highlights the key benefits that would be derived from the enactment of these legislative amendments. The amendments aim to address the risk of listed human diseases entering Australian territory through international vessel arrivals and would apply in the context of the current COVID-19 pandemic, while also providing flexibility to manage infectious disease risks that Australia may face in the future. Section 4.3.2 focusses on the costs, quantifiable or otherwise, associated with adopting the proposed changes.

4.3.1 Benefits

Protection of public health

Flexibility afforded to Human Biosecurity Officers (HBOs)

The Act currently provides a framework to manage risks to human health through the imposition of a human biosecurity control order (HBCO). This order can be imposed on individuals only and is therefore impractical when assessing and managing the human health risks for a group of people.

The potential amendments under Option 3 give the Commonwealth a mechanism to implement biosecurity measures to assess and manage listed human disease risks involving a group of individuals whether or not pratique has been granted. In particular, the human biosecurity group direction (HBGD) mechanism under Option 3 will grant flexibility by allowing for the assessment and management of human health risks for a group of people such as on a large cruise vessel, or the crew of a commercial vessel. It will therefore allow for some passengers and crew to be disembarked, as well as cargo to be loaded and unloaded, by avoiding negative pratique when such a highly restrictive measure is not necessarily the most appropriate course of action.

The HBGD also fills a current gap in Commonwealth power to manage the human biosecurity risk of a group of people, and to prohibit passengers from embarking or disembarking after pratique has been granted. This significantly reduces the risk of a listed human disease entering the wider community due it not being detected before pratique was granted.

Compared to the powers currently available, the potential HBGD mechanism will lead to a reduced regulatory burden (in a specific case), as only one direction is needed, whether it relates to a group (for example all passengers on a specified deck of the vessel, or everyone on board the vessel). Currently, a direction is issued on an individual basis.

Utilising the HBGD will lead to some costs, as discussed in section 4.3.2. The additional flexibility provided by the HBGD should ensure that these costs are reduced compared to the status quo. Under current legislation the listed human disease risk would have been contained either by restricting the movement of the entire vessel (under negative pratique), or by managing the affected group by ordering individual Human Biosecurity Control Orders (HBCO). As noted above, this is not feasible when large numbers of passengers or crew are involved.

Option 3 provides for a more nuanced human health risk management regime in which some level of disembarkation of passengers and loading and unloading of goods can occur according to the assessment of risk. This would maximise the flexibility afforded to Biosecurity Officers and Human Biosecurity Officers, thereby reducing the regulatory burden on individuals, when compared to the existing application of negative pratique requirements.

Additional Pre-Arrival Reporting, including updated pre-arrival information

Option 3 includes multiple pre-arrival reporting to be provided by aircraft and vessels, which can be tailored to different types of conveyances, such as cruise ships, and at different times.

This would ensure more timely and accurate human health information is available, to better enable Biosecurity Officers to identify, assess and manage biosecurity risks.

In addition to multiple pre-arrival reporting, Option 3 will also require further information to be provided, for example where additional passengers are identified as having signs or symptoms of a disease after the pre-arrival report is submitted. This obligation represents an important mechanism to enable biosecurity officers to receive and assess up-to-date information after the pre-arrival report has been submitted.

Making provision for this in the regulations will offer flexibility to configure pre-arrival reporting settings to appropriately respond to biosecurity risks in the future.

Improvements in application of Pratique (including Negative Pratique)

Option 3 aims to deter non-compliance with pratique by improving enforcement and compliance mechanisms. The requirement to comply with negative pratique obligations will be extended to also include the person in charge of a vessel or aircraft (instead of only the operator). This would more appropriately reflect responsibility for the vessel or aircraft and more effectively target obligations for compliance.

To further deter non-compliance with requirements, the existing civil penalty that applies to an operator would be increased, and a new civil penalty provision would be inserted for the person in charge of the vessel or aircraft.

Benefits to the Broader Australian Economy and the Australian Cruise Industry

A key benefit expected to materialise as a result of the proposed amendments is the support it lends toward the recovery of the cruise industry, to pre-pandemic levels. This includes refilling the more than 18,000 jobs that existed at the end of the 2018-19 financial year and building back up to the \$5.2 billion in annual economic output that was generated directly and indirectly by the industry.

Benefits to the Broader Australian Economy:

 **\$5.2 billion in economic output (direct & indirect)**

 **18,135 total jobs created (direct & indirect)**

This is described in more detail in Appendix D - Benefits to the Broader Australian Economy and the Australian Cruise Industry.

4.3.2 Impacts

The elements of Option 3 are targeted at the problems outlined in Chapter 1 and specifically informed by the recommendations from the independent reviews (see Appendix A and Appendix B).

A consideration with regards to pre-arrival reporting is the potential for delays to business deliverables, if up-to-date information is not provided in relation to an aircraft or vessel. The amendments to require further information to be provided to Biosecurity Officers will allow them sufficient time to assess pre-arrival reports and make decisions, thereby mitigating the risk of delays.

Additional resources will also be required for the department and other bodies to manage new information, and to activate a new management regime in response. These costs are highly variable and difficult to quantify with any reasonable level of certainty. In particular, the resources required to implement the Human Biosecurity Group Direction, will depend on the frequency and duration of these directions.

No additional costs are foreseen for government agencies to implement the amendments regarding negative pratique, including the changes to the penalties for breaches of pratique.

Regulatory burden estimate

Table 5 below presents a matrix mapping the proposed legislative amendments against the segments expected to incur an additional regulatory burden as a result of these amendments.

Proposed amendment	Businesses	Individuals	Community Organisation
Multiple pre-arrival reporting requirements	X		
Requirements to update pre-arrival reporting	X		
Expand negative pratique obligations			
Create a power to issue directions to apply to a group of persons (Human Biosecurity Group Direction, or HBGD)	X	X	

Table 5 – Anticipated Regulatory Burden mapped against Segments

As noted in **Table 5** above, a regulatory burden estimate was calculated for the proposed amendments relating to “Multiple pre-arrival reporting requirements”, “Requirements to update pre-arrival reporting” and “Create a power to issue directions to apply to a group of persons (Human Biosecurity Group Direction, or HBGD)”. The underlying cost drivers could be determined with varying levels of certainty.

In particular, a significant level of uncertainty exists with regards to the estimated burden imposed on businesses and individuals by the proposed Human Biosecurity Group Direction. A sensitivity analysis was performed, the result of which is outlined in Appendix C below.

Table 6 below presents the quantifiable impacts, derived using the Regulatory Burden Measurement Framework.

Proposed amendment	Individuals	Business	Community organisations	Total change in cost
Multiple pre-arrival reporting (sea pathway)		(\$ 0.153)		(\$ 0.153)
Updated information reporting (sea pathway only)		(\$ 0.003)		(\$ 0.003)
Human Biosecurity Group Direction	(\$ 0.119)			(\$ 0.119)
Total, by sector	(\$ 0.119)	(\$ 0.156)	-	(\$ 0.275)

Table 6 – Option 3 Regulatory Burden Estimate

The data and assumptions underpinning the regulatory burden estimate outlined in Table 6 above, are presented in Appendix C below.

The increased regulatory burden is offset, at least partly, by anticipated savings due to the more nuanced human health risk management regime in option 3 in which some level of disembarkation of passengers and loading and unloading of goods can occur according to the assessment of risk. Vessel operators incur additional costs due to delays arising from negative pratique, including the ship operating costs and the costs of holding inventory. One estimate puts the cost of waiting time for cargo vessels to berth at a foreign port at USD2,150 to USD5,300 per day, depending on the size of the vessel (Nguyen).

Allowing pratique to be granted while managing the human health risks reduces these costs as the ship can berth and unload goods and possibly some passengers. The quantum of savings cannot be estimated with any certainty, due to the number of variables including the frequency and length of delays and the size, type and number of vessels affected.

It is also worth noting that the potential cost to affected individuals imposed by the proposed new mechanism to issue HBGDs is greatly offset by the wider economic benefit of better management of the risk of a listed human disease entering the community, for example by ensuring symptomatic passengers are not disembarked, thereby avoiding greater harm to the economy.

5. Who did you consult and how did you incorporate their feedback?

The human biosecurity risk management issues addressed in this RIS have been subject to consideration and public consultation in the inquiries referred to above. The New South Wales Special Commission made a call for public submissions and received 152 written submissions, including submissions from passengers on the Ruby Princess. The Commission also held public hearings into its inquiry between 22 April 2020 and 17 July 2020. The Inspector-General of Biosecurity consulted within and outside the Department of Agriculture, Water and the Environment. The Inspector-General's report including the department's response to the recommendations in the report was published on 29 April 2021.

Subsequent to those reviews, there has been targeted consultation with industry and with state and territory public health officials, noting that some of the policy problems being addressed had a public airing in the independent reviews. The reforms relate to public health question and their development has been guided by experts at Commonwealth and state and territory level. It is urgently required to support safe resumption of international travel in line with government priorities in short timeframes. Such constraints, along with the need to engage with all states and territories on the framework through the Chief Human Biosecurity Officer (CHBO) Forum, do not support a long public consultation lead time or the preparation of a draft exposure Bill for public consultation.

The cruise industry has been consulted on the proposed new pre-arrival reporting process in meetings held in March 2021. The Department of Infrastructure, Transport, Regional Development and Communications has chaired whole-of-government meetings with the cruise industry throughout the pandemic. These meetings include the department, the Department of Health, and the Australian Border Force, as well as representatives from cruise companies and cruise industry peak bodies. Suggestions for potential reforms, including the recommendations made by the NSW Commission, were discussed with the cruise industry at a meeting held by teleconference on 17 March 2021.

The COVID-19 pandemic has been devastating for the cruise industry and the industry has demonstrated its eagerness to work with government to manage health risks for passengers and crew and develop a framework to support the resumption of cruise travel.

The department also consulted Ports Australia in June 2021 at a meeting attended by senior operations personnel from most major public and private ports. Details about the full package of proposed changes was presented at that meeting.

Further consultation will be conducted with broader industry groups as part of the development of regulations and implementation of the proposals to develop awareness of the new mechanisms for Human Biosecurity Group Directions and new and increased penalties for non-compliance with reporting and pratique requirements. The department is developing a detailed implementation plan in consultation with the Department of Health that will also address the further consultation to be conducted with such industries.

The Commonwealth, including the department and the Department of Health, consulted with and received feedback from States and Territories through meetings of the CBHO Forum. This reflects that the HBOs and CHBOs are officers of the state and territories undertaking Commonwealth functions under the Act.

The legislation to implement Option 3 is high-level in relation to changes to pre-arrival reporting with the detail to be provided in the regulations. Development of the regulations will be subject to further consultation. Further implementation and operational work would be undertaken in close liaison with all relevant stakeholders along with communications in line with the implementation plan being developed as discussed in section 7.

6. Preferred Option

Option 3: Amendments to the Biosecurity Act

Option 3 is the preferred way of addressing the problems identified in this RIS. It is also consistent with the recommendations of the reviews into the Ruby Princess cruise ship incident (Appendices A and B). Option 3 does not create a new regulatory scheme but amends the existing scheme in the Biosecurity Act. Therefore, legislative amendments are required to ensure the scheme is fit-for-purpose based on the learnings from the COVID-19 pandemic. The improvements will ensure that the objectives of the Biosecurity Act are met without resulting in an unnecessary regulatory burden.

Option 3 best addresses the risk of listed human diseases entering into Australian territory through international vessel arrivals and would apply in the context of the current COVID-19 pandemic, while also providing flexibility to manage infectious disease risks that Australia may face in the future.

A key benefit expected to materialise as a result of the proposed amendments is the support it lends toward the recovery of the cruise industry, to pre-pandemic levels. This includes refilling the 18,135 jobs that existed at the end of the 2018-19 financial year and building back up to the \$5.2 billion in annual economic output that was generated directly and indirectly by the industry.

Option 3 provides for enhanced pre-arrival reporting requirements to ensure more timely and accurate human health information is available, to better enable Human Biosecurity Officers to identify, assess and manage human biosecurity risk, with the potential to implement measures to prevent the spread of disease.

The proposed HBGD power will allow for the assessment and management of human health risks for a group of people such as on a large cruise vessel, or the crew of a commercial vessel.

Option 3 further aims to deter non-compliance with pratique by extending the requirement to comply with negative pratique obligations to the person in charge of a vessel or aircraft (instead of only the operator). This would more appropriately reflect responsibility for the vessel or aircraft and more effectively target obligations for compliance. To further deter non-compliance with requirements, the existing civil penalty that applies to an operator would be increased, and a new civil penalty would apply to the person in charge of the vessel or aircraft.

Option 3 addresses the desired policy objectives, with the benefits outweighing quantifiable increases in the regulatory burden for businesses. This regulatory burden is estimated at \$0.275 million per year or \$2.750 million in total over ten years (expressed in present value terms), over maintaining the current regulatory framework (Option 1). The regulatory costs that are likely to arise from Option 3 are partly due to additional reporting requirements, and partly due to the burden imposed on individuals by the Human Biosecurity Group Direction.

Relevant industries, including conveyance operators, associated industries and insurers, the ports and airports, and government agencies, both Commonwealth and State and Territory, will need to amend processes and agreements, direct resources to implement the amendments, provide training and education, and enforce the new regulatory requirements.

This targeted reform represents a critical step towards the national COVID-19 economic recovery, including towards the resumption of the cruise ship industry in Australia, and shoring up the human health biosecurity framework into the future.

7. How will you implement and evaluate your chosen option?

Changes to the Biosecurity Act will be implemented through a Bill amending that Act. The Department proposes that the amendments would enter into force on a date to be fixed by proclamation, or on the day after the period of 6 months beginning on the day the proposed Act receives the Royal Assent, if not proclaimed earlier. This will provide an opportunity for further consultation with stakeholders on implementation of the proposals and development of legislative instruments, including amendments to regulations, to support that implementation.

The department is currently developing a detailed implementation plan in consultation with the Department of Health. The implementation plan will identify key stakeholders and the engagement that will occur with those stakeholders. The implementation plan will also address development and delivery of training for relevant officers, updating of instructional material for officers, and ongoing meetings with industry participants.

It is anticipated that the amendments to the Biosecurity Act will be made prior to resumption of cruises, so that transitional arrangements will not be required.

The effectiveness of the preferred option, once implemented, will be monitored and reviewed over time by the departmental officials and officials from the Department of Health. Careful consideration will be given to feedback from stakeholders impacted by the new requirements. It will be open to any interested parties to provide feedback to government on these implemented reforms if they are found not to be working as intended. The department will consider necessary changes to internal processes or the regulatory requirements if necessary.

The regulatory changes will be reviewed to assess the level of compliance with the new requirements and whether the objective of their implementation is being achieved.

Reference

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- CLIA-Qualtrics Survey 2021, [Survey Dec2020 - 4,000 International vacationers each, eight countries, U.S, Canada, Australia, UK, Germany, France, Italy and Spain](#), CLIA-Qualtrics, Washington DC
- CLIA-AEC EIA 2018/19, [Independent Economic Impact Assessment by AEC Group Pty Ltd](#), CLIA 2019
- CLIA-AEC EIA 2019/20, [Independent Economic Impact Assessment by AEC Group Pty Ltd](#), CLIA 2020
- CLIA Industry Outlook 2021, [State of the Cruise Industry Report 2021](#), CLIA 22 December 2020
- Walker SC, Bret, [Special Commission of Inquiry into the Ruby Princess](#), 14 August 2020
- Department of Agriculture, Regulator Performance Framework 2018-19 self-assessment for Agriculture, Biosecurity Overview.
- Department of Agriculture, Water and the Environment, Agency response, Appendix A to the Inspector-General of Biosecurity's report, [Confidence testing for at-border delivery of critical human biosecurity functions – Ruby Princess cruise ship incident](#), 23 April 2021
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- Nguyen, Minh-Duc and Kim, Sung-June, An estimation of the average waiting cost of vessels calling container terminals in Northern Vietnam, Journal of the Korean Society of Marine Environment & Safety, Vol. 25, No. 1, pp. 027-033, February 28, 2019.
- The Parliament of the Commonwealth of Australia, Biosecurity Bill 2014 Explanatory Memorandum
- Walker SC, Bret, [Special Commission of Inquiry into the Ruby Princess](#), 14 August 2020

Appendix A Relevant recommendations from the NSW Special Commission of Inquiry

The New South Wales Report of the Special Commission of Inquiry into the Ruby Princess included two recommendations to amend the *Biosecurity Act 2015*.

2.22 That any future review of the Biosecurity Act consider the utility and possible expansion of human biosecurity control orders so as to be applicable to persons or groups.

2.23 That the Biosecurity Act make explicit a requirement to update superseded human health information.

Appendix B Relevant recommendations from the Inspector-General of Biosecurity's review

The Inspector-General of Biosecurity's report *Confidence testing for at-border delivery of critical human biosecurity functions – Ruby Princess cruise ship incident*, Review Report 2020-21/02 included five recommendations to amend the *Biosecurity Act 2015*.

Recommendation 19 The provisions within the Biosecurity Act 2015 relating to pratique should be reviewed to provide greater flexibility in managing pratique based on human biosecurity risk – in particular, to allow for aircraft and vessels to load and unload cargo and stores where this represents an acceptably low level of risk. The loading of provisions for crew onboard commercial cargo vessels and cruise ships in negative pratique should be incorporated in relevant instructional material.

Recommendation 20 The provisions within the Biosecurity Act 2015 should be reviewed with a view to providing biosecurity officers with broader powers that will assist them in managing large numbers of passengers and crew with potential Listed Human Diseases onboard foreign commercial vessels.

Recommendation 21 The Biosecurity Act 2015 should be amended to provide biosecurity officers with greater powers to enforce negative pratique, to provide for penalties to be applied to individuals who breach negative pratique, and to make the 'person in charge' (and operator) of a conveyance, defined in section 22 of the Act, also responsible for any noncompliance with negative pratique. This includes provision for issuing Infringement Notices for pratique breaches.

Recommendation 22 The Biosecurity Act 2015 should be amended to provide biosecurity officers with clear powers to revoke pratique, including where either incorrect or inaccurate information is supplied by the vessel operator or there are changes to the vessel's human biosecurity risk status over time.

Recommendation 24 The Biosecurity Act 2015 should be amended to require vessel operators to report updated biosecurity information, including human biosecurity information, if there are any changes to the information required under section 193 between the time that the Pre-arrival Report was submitted and the time of the vessel's departure from Australia.

Appendix C Regulatory Burden Estimate – Data and Assumptions

This appendix outlines the data and assumptions driving the regulatory burden estimates of Options 2 and 3, as follows:

- Multiple pre-arrival reporting (sea pathway) (Options 2 and 3)
- Updated information reporting (Options 2 and 3)
- Human Biosecurity Group Directions (Option 3 only – not available under existing legislation)

Multiple pre-arrival reporting and Updated Information Reporting are solutions proposed under Option 3, through amendments to the Biosecurity Act. It is anticipated that emergency health declarations can be created under Option 2 which would achieve outcomes broadly similar to the proposed amendments under Option 3. As a result, the regulatory burden for these two outcomes is calculated below and apply to Option 2 as well as Option 3.

The third solution listed above, the Human Biosecurity Group Direction, is only available under Option 3. The powers available to make determination under Option 2 are not available for the management of individuals (Biosecurity Bill 2014 Explanatory Memorandum pages 294-295). As a result, the regulatory burden associated with the introduction of a Human Biosecurity Group Direction is only included with Option 3 and excluded from Option 2.

Multiple pre-arrival reporting (sea pathway)

- Number of businesses affected: 29
 - In order to facilitate a reliable build-up of costs, information was obtained regarding the size of the Australian Cruise market through consultation with various Government organisations (Department of Health, Department of Infrastructure, Transport, Regional Development and Communications) and Ports Australia and within industry (Cruise Lines International Association). It was established that 29 cruise operators visited Australian shores during the 2019 calendar year, with a total of 2,092 cruise ship visits identified during that period (refer **Error! Reference source not found.** below).

Cruise company	Vessels Visits to Australia in 2019 Calendar Year	Vessels Visits to Australia in 2019 Calendar Year (%)
P & O Cruises	491	23.5%
Princess Cruises	209	10.0%
Ponant	161	7.7%
Carnival Cruises	147	7.0%
Royal Caribbean	141	6.7%
Holland America	121	5.8%
Expedition Cruising APT	96	4.6%
Cruise and Maritime Voyages company	86	4.1%
Viking Cruises	69	3.3%
Regent Seven Seas Trio	64	3.1%
Noble Caledonia Cruises	61	2.9%
Oceania Cruises	57	2.7%
Cunard	50	2.4%
Global Cruise Lines	50	2.4%
Celebrity Cruises	48	2.3%
Other (14 operators)	241	11.5%
Grand Total (29 operators)	2,092	100.0%

Table 7 – Cruise Ship Visits to Australian Shores in 2019 Calendar Year

- Number of times activities are performed per annum:
 - 2,092 cruise ship arrivals occurred in 2019, across 29 cruise operators. I.e. an average of 72 arrivals per business. As the additional pre-arrival reporting is required for each arrival, 72 was used as the value for “number of times activity is performed” per staff member (for simplicity it was assumed that one staff member performs each task, for each operator).
- Hours of effort for a person to perform the task each time:
 - Perform updated cruise vessel pre-arrival reporting = 1.0 hours
- Staff used to perform the task: non managerial employee with wage rate of \$41.74 per hour at 75 per cent overheads and on-costs.
- Calculations:
 - Annual activity cost = \$41.74 * 1.75 * 1.0 * 29 * 72 = \$152,518.

As reflected in **Table 6** above, the component of the regulatory burden estimate which relates to multiple pre-arrival reporting amounts to \$0.153m per annum. This estimate assumes that the further report will be limited to questions on human health matters, and that the MARS input form will either be pre-populated with the information previously reported or will ask for updated information only. In either case, the labour effort required would be minimal. Through consultation with industry and various government departments as outlined above, one activity was identified (update and submit pre-arrival reporting). It is assumed that this activity will require 1.0 hours of effort.

Updated information reporting

Option 3 includes a requirement to update pre-arrival reporting when there is a change in health circumstances aboard a vessel or aircraft. This could be seen as an extension of the current requirement to correct or complete information.

This requirement will impose a regulatory burden on the operators of aircraft or vessels, although quantifying that burden is challenging as it is based on exceptional circumstances arising. For cruise ships, any changes aboard will typically be captured by the proposed new requirement for a further PAR, although the requirement for updating information will continue beyond the PAR.

The requirement to provide updated reporting will also apply to commercial vessels other than cruise ships, which typically carry much smaller numbers of crew and passengers. The Inspector-General of Biosecurity's report identified 11 commercial vessels (plus two cruise ships) with confirmed cases of COVID-19 in the period February-October 2020.

Unlike the commercial vessel environment where there are medical officers on cruise vessels, or first aid officers for a small number of crew on a commercial vessel, the aircraft environment involves passengers in close physical proximity for a comparatively short period of time. Unless very unwell during the flight, it is unlikely that a passenger will notify the crew. These factors may reduce the likelihood of ill passengers self-identifying as sick for on-arrival assessment. While there will be some additional regulatory burden for aircraft, any new requirements for updated information are likely to be less burdensome for aircraft than for vessels as the information is less likely to be available to the aircraft crew.

A regulatory burden estimate was derived for "Requirements to update pre-arrival reporting", as follows:

- Number of times activities are performed per annum:
As noted above, 13 vessels (11 commercial and two cruise ships) with confirmed COVID cases were reported in a nine month period and would therefore have been expected to provide additional reporting. For this estimate a total of 50 reporting instances were assumed, across vessels as well as aircraft. Confidence in this estimate is low, but the overall effect is unlikely to be significant.
- Calculations:
 - Annual activity cost = $\$41.74 * 1.75 * 1.0 * 50 * 1 = \$3,652$.

Human Biosecurity Group Directions

Under the proposed amendments to the Act, a group of individuals may be subject to a human biosecurity group direction (HBGD). Such a direction would result in a regulatory burden on businesses and individuals, as follows:

Individuals: personal cost to passengers (and in some instances crew) held on the aircraft or vessel for longer than anticipated, e.g., loss of wages, reorganising travel, travel cancellation costs, missed connections, and health care costs as a result of contracting illness while the aircraft or vessel has negative pratique status.

Under current legislation, the alternative to a HBGD would be to limit the movement of specific individuals by means of a Human Biosecurity Control Order (HBCO). As a HBGD would only be imposed for a short duration of time, this would reduce the impact on businesses on-shore, compared to the status quo where a more lengthy HBCO may be used.

The regulatory burden imposed on individuals, businesses, and community organisations as a result of the introduction of a HBGD would be dependent on a wide range of variables, such as the frequency and duration of the directions, as well as the specific details of each case. This depends on the risks identified as well as the mitigatory actions required in each case.

Table 8 below outlines three anticipated scenarios, which vary from a highly conservative estimate (higher cost) to a highly optimistic scenario (i.e., lower cost).

As per the Regulatory Burden Measurement Framework, the following activities were identified:

- individual/s may be prevented from disembarking a vessel or aircraft
- individual/s may be required to move to a designated area to be isolated from other travellers
- individual/s may be required to wear PPE or may undergo testing

Scenario	# of individuals affected by activity	# of times activity performed per individual (annually)	Avg. time of each individual to do activity (in hrs)	Labour cost (\$/hr) (wage cost)	Total Activity Cost (over 10yr period)	Total Activity Cost (annual)
Sensitivity scenario 1: 10% of all travellers are subject to an HBGD power at least once in 10 years, with each event lasting the current maximum time proposed, of 12 hrs	124,000	0.1 (i.e. once every 10 years)	12	32.00	4,761,600	476,160
Sensitivity scenario 2: 5% of all travellers are subject to an HBGD power at least once in 10 years, and each event lasting 8 hrs	62,000	0.1 (i.e. once every 10 years)	6	32.00	1,190,400	119,040
Sensitivity scenario 3: 2% of all travellers are subject to an HBGD power at least once in 10 years, with each event lasting 4 hrs	24,800	0.1 (i.e. once every 10 years)	4	32.00	317,440	31,744

Table 8 – Regulatory Burden (Individuals) Sensitivity Analysis – Human Biosecurity Group Direction

As illustrated in table 8Error! Reference source not found. above, the regulatory burden to be imposed on individuals by the HBGD power present some significant difficulties to quantify. Scenario 1 indicates a case where 10% of all cruise ship travellers will be subject to an HBGD power at least once every 10 years, with each event lasting 12 hours (currently anticipated to be the maximum time for which the group direction can be imposed). This equates to an additional regulatory burden of roughly \$0.476m per annum.

Scenario 2 (\$0.119m per annum) is based on 5% of all passengers being subject to a HBGD at least once every ten years, lasting 8 hours.

Scenario 3 presents a case where 2% of all cruise ship travellers will be subject to an HBGD power at least once every 10 years, with each event lasting four hours. This equates to a regulatory burden of roughly \$0.032m per annum.

The figure from Scenario 2 (\$0.119m) is used as a representative regulatory burden for the HBGD proposed under Option 3, in **Table 6** above.

This power is not available under existing legislation and has therefore been excluded from Option 2 in **Table 3** above.

Appendix D Benefits to the Broader Australian Economy and the Australian Cruise Industry

A key benefit expected to materialise as a result of the proposed amendments is the support it lends toward the recovery of the cruise industry, to pre-pandemic levels. This includes refilling the more than 18,000 jobs that existed at the end of the 2018-19 financial year and building back up to the \$5.2 billion in annual economic output that was generated directly and indirectly by the industry.

Benefits to the Broader Australian Economy:

-  **\$5.2 billion in economic output (direct & indirect)**
-  **18,135 total jobs created (direct & indirect)**

The cruise industry has exhibited strong growth over the past decade. In 2018, 200,000 international visitors entered Australia on cruise ships from 145 countries. The 2018-19 financial year saw an increase of 11.2% in the industry's total value to the national economy, contributing \$5.2 billion for the year, with an equivalent of 18,135 full time jobs supported by the cruise industry (AEC Economic Impact Assessment, 2019). This represented a 6.6% increase on the previous year.

The suspension of cruise operations internationally in March 2020 because of the COVID-19 pandemic, has had a devastating impact on the cruise industry. Between March and September 2020 alone, it is estimated that the suspension of cruise operations had resulted in a loss of more than 518,000 jobs worldwide, US\$23 billion in lost wages and US\$77 billion in global economic activity (CLIA Industry Outlook 2021).

A significant reduction in jobs as well as economic output was witnessed in Australia from March 2020 onwards, seeing a decline from the 18,135 full time jobs at the end of FY18-19 to 15,126 jobs at the end of FY19-20 (AEC Economic Impact Assessment, 2020).

This represents a drop of 16.6% in the three months from April to June 2020 alone. The contribution to the economy also reduced from \$5.2 billion in the 2018-19 financial year to output of \$4.8 billion in the following year (refer Table 9 below). This decline in output of \$0.5 billion only reflects the effect the pandemic had on the industry from mid-March 2020 until the end of June 2020.

State/Territory	Total 'Passenger Visit Days'	Economic Gain for Region (A\$m)
Western Australia	152,000	276
Northern Territory	135,000	172
South Australia	115,000	118
Queensland	778,000	1,000
New South Wales	1,400,000	2,800
Victoria	314,000	317
Tasmania	213,000	106
TOTAL	3,107,000	4,789

Source: <https://www.cruiseagency.com.au/news/australian-cruise-industry-statistics>

Table 9 – 2019-20 Cruise passenger visits

Although exact figures are not yet available for the 2020-21 financial year, it is known that the cruise industry was not operational at any time during this period, effectively resulting in a loss of up to \$5.2 billion (the annual economic output by the industry seen in FY19), as well as the majority of the 18,135 jobs in existence at the end of that period.

It is important to be aware of the economic benefits that a thriving Cruise industry will provide to the Australian economy. By putting in place a more robust and flexible framework within which to manage the development of human biosecurity risks, the Cruise industry is more likely to restart, leading to growth in jobs and in the broader Australian economy.

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Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Biosecurity Amendment (Enhanced Risk Management) Bill 2021

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Biosecurity Amendment (Enhanced Risk Management) Bill 2021 (the Bill) will amend the *Biosecurity Act 2015* (the Biosecurity Act) to enhance the ability to manage the risk of pests and diseases entering, emerging, establishing or spreading in Australian territory and causing harm to animal, plant and human health, the environment and the economy. It will strengthen the operation of the biosecurity framework through improving efficiency and effectiveness of the administration of the Biosecurity Act, increase a range of civil and criminal penalties to deter non-compliance and strengthen the identification and management of biosecurity risks posed by maritime and aviation arrivals.

The Biosecurity Act provides the regulatory framework for the management of risks of pests and diseases entering Australian territory and gives effect to Australia's relevant international rights and obligations.

The Bill amends the Biosecurity Act to:

- Strengthen pratique and human health requirements by:
 - expanding pre-arrival reporting requirements for aircraft and vessels;
 - strengthening penalties for non-compliance with negative pratique requirements; and
 - creating a mechanism to make a human biosecurity group direction;
- Increase civil and criminal penalties for contraventions of Chapter 3 of the Biosecurity Act, which deals with managing biosecurity risks in relation to goods;
- Streamline the process for making certain determinations specifying prohibited, conditionally non-prohibited and suspended goods or granting permits based on risk assessments; and
- Increase efficiency and ensure transparency of expenditure on biosecurity-related programs and activities by permitting the Agriculture Minister and Health Minister to authorise the expenditure directly through the Biosecurity Act.

Schedule 1 – Pratique and human health measures

Chapter 2 of the Biosecurity Act provides a dedicated human health biosecurity framework which provides for the management of the risk of contagion of a listed human disease or any other infectious human disease and the risk of such diseases entering, emerging, establishing or spreading in any part of Australian territory. The Director of Human Biosecurity may determine that a disease is a 'listed human disease' under section 42 of the Biosecurity Act, following consultation with the Director of Biosecurity and the chief health officer of each State and Territory, if the Director of Human Biosecurity considers that the disease may be communicable and cause significant harm to human health. The Biosecurity Act gives effect to Australia's international rights and obligations, including the World Health Organization's *International Health Regulations 2005* (International Health Regulations).

The emergence and global spread of COVID-19 has tested Australia's biosecurity systems in an unprecedented way. International vessels present a significant risk pathway for infectious disease entry to Australian territory, including incidents of COVID-19 infections on cruise passenger ships and commercial vessels. There have been a number of reviews into the management of this risk, including the Inspector-General of Biosecurity's review '*Confidence testing for at-border delivery of critical human biosecurity functions - Ruby Princess cruise ship incident*' (Inspector-General's Report).

Schedule 1 to the Bill amends provisions relating to pratique requirements, human health measures and pre-arrival reporting requirements in the Biosecurity Act. These amendments strengthen the legislative framework for responding to biosecurity risks arising from incoming aircraft and vessels in Australian territory.

Part 1 - Contravention of pratique

The amendments in Schedule 1 include measures to strengthen penalties for contravention of pratique and clarifying who is liable. Currently, the operator of an incoming aircraft or vessel is liable to a civil penalty under subsection 48(1) if they contravene the requirement not to unload or load any thing or disembark or embark any persons unless pratique has been granted. Subsection 48(1) will be amended to extend liability to the civil penalty to include the person in charge of an incoming aircraft or vessel. This amendment is consistent with Recommendation 21 of the Inspector-General's Report by addressing the disjuncture between the practical and legal responsibility for compliance with pratique requirements. The civil penalty for contravention of pratique requirements will be increased to a maximum of 1,000 penalty units for the operator and 300 penalty units for a person in charge of the aircraft or vessel. This increase reflects the serious consequences posed by the potential entry, spread and transmission in Australia of a listed human disease, and the commercial context to which pratique applies where a lower penalty may not be an effective deterrent to non-compliance.

Part 2 - Human biosecurity group directions

The amendments in Schedule 1 also provide for a new Part 3A of Chapter 2 of the Biosecurity Act, in relation to the use of a human biosecurity group direction to manage risks of a listed human disease posed by a class of individuals.

Section 108B provides the ability for the chief human biosecurity officer or a human biosecurity officer to make a human biosecurity group direction in relation to a class of

individuals where the officer is satisfied one or more individuals in the class have one or more signs or symptoms of a listed human disease, or have been exposed to a listed human disease or to one or more individuals with such signs or symptoms. Notification of a human biosecurity group direction, or of its variation or revocation, would need to be given before the time the direction comes into force, or before the time the variation or revocation takes effect. An officer may require the person in charge of the aircraft or vessel concerned to instead give notification of the variation, if it is not reasonably practicable for the officer to do so.

The human biosecurity group direction requires each individual in the class of individuals to comply with certain biosecurity measures set out in Division 3 of new Part 3A of Chapter 2. The biosecurity measures may include any of the following:

- Providing contact and location information (section 108K) – this would allow officers to be able to identify and contact any other persons who have been in close contact with, or who have been in the same location as, each individual subject to the direction. For example, this would allow contact tracing to occur for any individuals who have been exposed to a listed human disease;
- Management of the location of individuals (section 108L) – this would comprise of a requirement for each individual to remain at, or go to and remain at, a specified place, or to not visit a specified place. For example, a direction to remain at a place where there is a reduced risk of exposure to a listed human disease;
- Wearing protective clothing and equipment (section 108M) – this would seek to minimise the risk of contagion of a listed human disease, through the wearing of appropriate protective clothing and equipment by each individual, and appropriate instruction in its use. An exemption from this requirement may be given by a chief human biosecurity officer or human biosecurity officer;
- Undergoing an examination (section 108N) – this would be related to determining the presence in each individual of a listed human disease, and would include details of when and how each individual would provide prior consent to the examination is to be given;
- Providing body samples for diagnosis (section 108P) – where an individual has undergone an examination, this would allow for body samples to be provided for the purposes of determining the presence in each individual of a listed human disease. Prior consent must be given by each individual to providing body samples.

A civil penalty applies if an individual fails to comply with a biosecurity measure included in the human biosecurity group direction that applies to the individual (section 108T). A civil penalty also applies if an accompanying person for a child or incapable person fails to comply with a direction to ensure the child or incapable person complies with the human biosecurity group direction (subsection 38(5)). Both of these civil penalties are necessary to deter non-compliance with biosecurity measures, which have been specified in a human biosecurity group direction to manage the risks posed by a listed human disease. If the biosecurity measures in the direction are not complied with, there may be significant risks to the health of the class of individuals or to other persons, including the broader Australian community. The maximum civil penalty for contravention of these provisions is 30 penalty units. This is intended to be proportionate to the likely harm that may result and to adequately deter a worst-case contravention of the provision. The amount to be stated in an infringement notice for an alleged contravention of these provisions would be 6 penalty units, or a lower amount as prescribed by the regulations under subsection 524(4).

A civil penalty also applies to a person in charge of an aircraft or vessel for failing to give notification of a human biosecurity group direction, or of its variation or revocation, when required to do so (section 108U). Regulated entities, especially the person in charge of an aircraft or vessel, have a responsibility to know and understand their obligations under the Biosecurity Act and to take steps to ensure compliance with the law. Failure by the person in charge to notify the class of individuals of a human biosecurity group direction can result in increased contagion of the listed human disease with the potential to cause harmful consequences, including to the health of the class of individuals on board the aircraft or vessel. The maximum civil penalty for contravention of section 108U is 300 penalty units. This is intended to effectively disincentivise the financial benefit that a person in charge is likely to stand to gain from non-compliance with the notification requirement. The amount to be stated in an infringement notice for an alleged contravention of section 108U would be 12 penalty units, or a lower amount as prescribed by the regulations under subsection 524(4).

Part 3 - Pre-arrival reporting requirements

Schedule 1 will also amend the pre-arrival reporting requirements in sections 193 and 194 to expand the circumstances in which an operator of an aircraft or vessel must provide pre-arrival reporting and further information to a biosecurity officer. Currently, the requirement is only for an operator to provide one initial pre-arrival report, and to provide additional or corrected information where the initial report was incomplete or incorrect. These amendments require other reports and further information to be provided by an operator in circumstances to be set out in the regulations. This is consistent with the recommendation made in the Inspector-General's Report which noted that the current provisions do not create a clear obligation to update information that becomes superseded after the initial report is submitted.

These amendments allow biosecurity risks to be identified, assessed and managed in an accurate and timely manner. This is necessary as biosecurity officers can use the other reports and further information to identify risks and determine what risk management activities might be necessary in relation to the aircraft or vessel in response to changing circumstances. For example, if there is a large number of passengers and crew members on board a cruise vessel, it is possible for there to be significant changes in the reported signs or symptoms after the initial report was made and before the vessel moors at a port.

Other reports and further information would allow the Commonwealth to gather important information about a conveyance to assist with the accurate and timely identification, assessment and management of biosecurity risk. This may include information about where a conveyance has travelled, information about the people and goods on board, or information about the conveyance itself. Regulated entities, such as an operator of an aircraft or vessel, should take active steps to understand and comply with the requirements under the Biosecurity Act, including in relation to reporting obligations.

Schedule 1 also increases the maximum civil penalties and pecuniary penalties for fault-based (criminal) offences under sections 193 and 194 for failing to comply with the pre-arrival reporting requirements to better reflect the serious consequences posed by the biosecurity risks. The amendments also expand the civil penalties and fault-based (criminal) offences to cover contraventions of the new requirements to provide other reports and further information. Failure to provide reports in accordance with the requirements in sections 193 and 194 can undermine the ability of biosecurity officers to determine what risk

management activities might be necessary when an aircraft or vessel arrives in Australian territory. Depending on the risks posed by the diseases and pests on an aircraft or vessel, this can result in harmful consequences to the Australian environment, economy and export markets.

Schedule 2 – Strengthening Penalties

Schedule 2 to the Bill seeks to amend the Biosecurity Act to increase the civil and criminal penalty amounts for contraventions of certain key requirements relating to the assessment and management of biosecurity risks of goods that are brought or imported into Australian territory.

The objective of increasing civil penalty provisions is to deter future non-compliance with the Biosecurity Act, and to ensure that increases to criminal penalties allow for appropriate and proportionate punishment for individuals and bodies corporate jeopardising Australia's biosecurity status with their offending conduct.

The increased penalties reflect the seriousness of non-compliance with Australia's biosecurity laws and the impact contraventions may have on Australia's biosecurity status, market access and economy. Large numbers of pests and diseases currently pose a high risk to Australia's biosecurity in an increasingly complex import environment, threatening the livelihoods of farmers with the potentially devastating impact they would have on agriculture, industry and trade.

The current penalty regime no longer serves as an effective deterrent against non-compliance in the face of growing biosecurity threats such as African Swine Fever. It is expected these biosecurity threats will be accentuated through growth in international trade and travel as the Australian economy recovers from COVID-19.

In most instances, the civil penalty amounts would not apply to the general public but rather to regulated entities who should reasonably be aware of and understand their obligations under the Biosecurity Act, for example, operators or persons in charge of an aircraft or vessel that arrives in Australian territory.

The increases in the civil penalties reflect the seriousness of the consequences that may result from a failure to comply with the requirements under the Biosecurity Act. Non-compliance exposes Australia to pests and diseases which can have a devastating impact on the Australian environment, animal health, plant health, economy, and export markets.

For a number of the provisions in this Bill, the civil penalty provisions are provided as disciplinary-like alternatives to the more punitive deterrent of criminal offences. Civil penalties also enable an effective disciplinary-like approach to dealing with non-compliance by corporations. There is no sanction of imprisonment for non-payment of penalties and the maximum amount of each civil penalty is the same as, or lower than, the corresponding criminal offence. The maximum civil penalty quantum is set to effectively disincentivise the financial benefit that persons are likely to stand to gain from non-compliance. The integrity of the regulatory framework would be undermined if the civil penalties for a contravention are being calculated into profit margins and seen as a 'cost of doing business'.

Schedule 2 to the Bill would amend the following provisions:

Sections 120 and 122

Sections 120 to 122 of the Biosecurity Act provide for fault-based offences and civil penalty provisions where a person contravenes certain requirements in relation to goods that are, or are intended to be, brought into Australian territory and unloaded at a landing place or port in Australian territory. This includes requirements to give notice of the goods, provide additional or corrected information about the goods, answer questions about the goods, and to produce documents in relation to the goods. They apply in the context of managing the biosecurity risks in relation to a notice of goods to be unloaded in Australian territory (Division 3 of Part 1 of Chapter 3 of the Biosecurity Act).

The fault-based offences (subsections 120(6), 121(3) and 122(6)) currently carry a maximum penalty of 2 years imprisonment or 120 penalty units or both. They apply where:

- goods are unloaded under subsection 120(1) and a notice in relation to the unloaded goods has not been given by a person who may give a notice or any other person in accordance with subsection 120(3); or
- a person that gave a notice in relation to unloaded goods under section 120 has failed to provide additional or corrected information to a biosecurity officer as required under subsection 121(1); or
- a person has failed to answer questions, give information or produce documents to a biosecurity officer as required by subsections 122(2) and 122(3).

The Bill would increase the maximum pecuniary penalty for each of these fault-based offences from 120 penalty units to 300 penalty units.

The civil penalty provisions (subsections 120(7), 121(4) and 122(7)) currently carry a maximum civil penalty amount of 120 penalty units. Subsections 120(7), 121(4) and 122(7) mirror subsections 120(6), 121(3) and 122(6) but apply a civil penalty provision. The Bill would increase the maximum civil penalty amount in each of these three civil penalty provisions to 300 penalty units.

The notices in relation to goods brought into Australian territory and the requirements in relation to these notices, allow the Commonwealth to gather important information about goods such as the country of origin and a description of the goods, that assists with the accurate and timely assessment and management of biosecurity risks. This information can be used by biosecurity officers to determine what risk management activities are necessary to deal with goods subject to biosecurity control when a conveyance arrives in Australian territory. The proposed increases to the maximum pecuniary penalty for the criminal offence is intended to reflect the seriousness of the offending behaviour and allow for appropriate punishment where a person fails to comply with the requirements to:

- give notice of the goods;
- provide additional or corrected information about the goods;
- answer questions about the goods; or
- produce documents in relation to the goods.

The proposed increases to the civil penalties are intended to achieve the necessary deterrent effect for non-compliance with the Biosecurity Act and to be proportionate to the gains that individuals and businesses might obtain, or seek to obtain, from engaging in conduct that

jeopardises Australia's biosecurity status. Failure to provide the required information puts Australia's agricultural industry at risk of biosecurity threats as the department cannot assess and manage any associated biosecurity risks appropriately. The increase in penalty amounts proposed by items 1 to 6 of Schedule 2 to the Bill are appropriate and proportionate to deter non-compliance. The offences in subsections 120(6), 121(3) and 122(6) are fault-based offences and accordingly do not apply when a person inadvertently contravenes the provisions.

Sections 143 and 144

Section 143 currently provides for a fault-based offence and a civil penalty provision where a person in charge of an aircraft or vessel contravenes a direction given by a biosecurity officer under subsection 143(3) relating to the unloading of goods from the aircraft or vessel at a landing place or port:

- The fault-based offence has a maximum penalty of 5 years imprisonment or 300 penalty units or both (subsection 143(5)). The Bill would increase the pecuniary penalty to 1,000 penalty units; and
- The civil penalty provision currently has a maximum civil penalty amount of 120 penalty units (subsection 143(6)). The Bill would increase this to 300 penalty units.

Section 144 currently provides for a fault-based offence and civil penalty provision that applies where a person contravenes a direction relating to the unloading of the goods from the aircraft or vessel at a landing place or port given by a biosecurity officer under subsection 144(3), or by the person in charge of the aircraft or vessel under subsection 144(4).

- The fault-based offence currently has a maximum penalty of 5 years imprisonment or 300 penalty units or both (subsection 144(6)). The Bill would increase the pecuniary penalty to 1,000 penalty units; and
- The civil penalty provision currently has a maximum civil penalty amount of 120 penalty units (subsection 144(7)). The Bill would increase this to 300 penalty units.

Failure to comply with a direction under subsection 143(3), 144(3) or 144(4) may result in an inability for the Commonwealth to manage the unacceptable level of biosecurity risk posed by the goods in an efficient, timely and suitable manner potentially exacerbating the risk. The proposed increases to the maximum pecuniary penalty for the criminal offences are intended to reflect the seriousness of offending behaviour where a person contravenes a direction relating to the unloading of goods from an aircraft or vessel at a landing place or port, and to allow for appropriate punishment for offending behaviour. The proposed increases to the civil penalty provisions are intended to achieve the necessary deterrent effect for non-compliance with the Biosecurity Act and to reflect the level of harm that may be caused by the person's behaviour. If directions are not complied with, significant biosecurity risks may arise and result in serious damage to plant and animal health, Australia's local industries, the economy and the environment. The increase in penalty amounts proposed by items 7 to 10 of Schedule 2 to the Bill are appropriate and proportionate to reflect the seriousness of contravening a direction given by a biosecurity officer or a direction given by a person in charge of an aircraft or vessel that gives effect to a direction given by a biosecurity officer. The offences in subsections 143(5) and 144(6) are fault-based offences and accordingly do not apply when a person inadvertently contravenes the provisions.

Sections 145 and 146

Sections 145 and 146 provide for fault-based offences and civil penalty provisions where a person contravenes certain requirements or engages in certain conduct relating to the unloading of goods at a landing place or port other than a first point of entry. They apply in the context of managing the biosecurity risks of unloading goods at landing places or ports (Division 6 of Part 1 of Chapter 3 of the Biosecurity Act).

The fault-based offences (subsections 145(2) and 146(4) to (6)) currently carry a maximum penalty of 5 years imprisonment or 300 penalty units or both. They apply where:

- a person in charge of an aircraft or vessel allows goods that are subject to biosecurity control to be unloaded from the aircraft or vessel at a landing place or port in Australian territory (other than a first point of entry for those goods), and permission has not been given under subsection 146(2) for the goods to be unloaded at that landing place or port;
- a person in charge or an operator of an aircraft or vessel contravenes the conditions of a permission given under subsection 146(2), and either the person in charge or the operator are liable for the offence.

The Bill would increase the maximum pecuniary penalty for each of these fault-based offences from 300 penalty units to 1,000 penalty units.

The civil penalty provisions (subsections 145(3) and 146(7)) currently carry a maximum civil penalty amount of 120 penalty units. Subsection 145(3) mirrors subsection 145(2), by providing that a person in charge of an aircraft or vessel who contravenes subsection 145(1) is liable to a civil penalty. Subsection 146(7) applies where the person in charge or the operator of an aircraft or vessel has not complied with conditions of a permission given under subsection 146(2). For subsection 146(7), the person in charge and the operator would each be liable to a civil penalty. The Bill would increase the maximum civil penalty amount in these civil penalty provisions to 300 penalty units.

First points of entry may be determined to receive specific goods, depending on the biosecurity risks associated with the goods and the facilities at the first point of entry to manage the biosecurity risks. Section 145 ensures that in the event a first point of entry is determined to receive specific goods, the first point of entry is not circumvented and that biosecurity risks associated with unloading goods at places that are not first points of entry are appropriately managed. The conditions which may be put in place by the Director of Biosecurity allow for the appropriate management of biosecurity risks associated with the goods. Non-compliance with the requirements of sections 145 and 146 would jeopardise Australia's agricultural industry through the potential of a biosecurity threat entering, spreading and establishing within Australia. The proposed increases in the maximum pecuniary penalty for the criminal offences are intended to reflect the severity of the potential consequences of the offending behaviour. If goods are allowed to circumvent the biosecurity assessment process, or conditions of a permission are not complied with, significant biosecurity risks may ensue and result in serious damage to plant and animal health, Australia's local industries, the economy and the environment. The higher criminal penalty is also intended to allow for appropriate punishment of offending. The proposed increases in civil penalty provisions are intended to be proportionate to the likely harm that may result from a worse-case scenario and to adequately deter those considering jeopardising Australia's biosecurity status. It is appropriate to increase the penalties under these provisions as the

person in charge or the operator of an aircraft or vessel are on notice of the conditions they must comply with and have a responsibility to know and understand their obligations under the Biosecurity Act. They are also in a position to take steps to organise their affairs in a way that allows them to comply with the law. The increases to the penalty amounts proposed by items 11 to 16 of Schedule 2 to the Bill are appropriate and proportionate to reflect the likely harm that may be caused by the unloading of goods at a landing place or port that is not a first point of entry for those goods or contravening conditions of a permission to unload goods at a landing place or port that is not a first point of entry for those goods. The offences in subsections 145(2) and 146(4) to (6) are fault-based offences and accordingly do not apply when a person inadvertently contravenes the provisions.

Sections 147

Section 147 provides for fault-based offences and civil penalty provisions where a person contravenes certain requirements or engages in certain conduct that relates to bringing goods to a biosecurity entry point at a first point of entry for those goods. They apply in the context of managing biosecurity risks of unloading goods at landing places or ports (Division 6 of Part 1 of Chapter 3 of the Biosecurity Act).

The fault-based offences (subsections 147(4) to (6)) currently carry a maximum penalty of 5 years imprisonment or 300 penalty units or both. They apply where a person in charge or the operator of an aircraft or vessel contravenes a direction given by a biosecurity officer under subsection 147(3) to bring the goods to an alternative biosecurity entry point, and either the person in charge or the operator are liable for the offence.

The Bill would increase the maximum pecuniary penalty for each of these fault-based offences from 300 penalty units to 1,000 penalty units.

The civil penalty provisions (subsections 147(2) and (7)) currently carry a maximum civil penalty amount of 120 penalty units. Subsection 147(2) applies where a person in charge of an aircraft or vessel has failed to ensure that unloaded goods have been brought to the biosecurity entry point for those goods, and no direction under subsection 147(3) or permission under 148(2) has been given to bring the goods to an alternative biosecurity entry point. Subsection 147(7) applies where the person in charge or the operator of an aircraft or vessel has not complied with a direction given under subsection 147(3). Under subsection 147(7), the person in charge and the operator would each be liable to a civil penalty. The Bill would increase the maximum civil penalty amount in both of these civil penalty provisions to 300 penalty units.

Biosecurity entry points allow biosecurity risks associated with the aircraft, vessel or goods to be managed within the landing place or port. The proposed increases to the maximum pecuniary penalty for the criminal offences are intended to reflect the seriousness of offending behaviour where a person fails to comply with a direction to bring goods to an alternative biosecurity entry point, and to allow for appropriate punishment of offending. The proposed increases to the civil penalties are intended to achieve the necessary deterrent effect for non-compliance with the Biosecurity Act, which jeopardises Australia's biosecurity status. Failure to bring goods to a biosecurity entry point as required by subsection 147(2) or as directed under subsection 147(3) can result in harmful consequences to the Australian environment, economy and export markets. A person in charge or an operator of an aircraft or vessel should take active steps to understand and comply with the requirements under the

Biosecurity Act, including, knowing where the designated biosecurity entry points are for any particular first point of entry. The increases to the penalty amounts proposed by items 17 to 21 of Schedule 2 to the Bill are appropriate and proportionate to deter non-compliance and proportionate to the serious harm that may be caused by failing to bring goods to a biosecurity entry point for those goods or to an alternative biosecurity entry point as directed. The offences in subsections 147(4) to (6) are fault-based offences and accordingly do not apply when a person inadvertently contravenes the provisions.

Section 148

Section 148 provides for fault-based offences and a civil penalty provision for contravening conditions of a permission given under subsection 148(2) to bring goods to an alternative biosecurity entry point.

The fault-based offences (subsections 148(4) to (6)) currently carry a maximum penalty of 5 years imprisonment or 300 penalty units or both. They apply where a person in charge or the operator of an aircraft or vessel contravenes the conditions of a permission given under subsection 148(2) to bring the goods to an alternative biosecurity entry point, and either the person in charge or the operators are liable for the offence.

The Bill would increase the maximum pecuniary penalty for each of these fault-based offences from 300 penalty units to 1,000 penalty units.

The civil penalty provision (subsection 148(7)) currently carries a maximum civil penalty amount of 120 penalty units. Subsection 148(7) applies where the person in charge or the operator of an aircraft or vessel has not complied with the conditions of a permission given under subsection 148(2). For subsection 148(2), the person in charge and the operator would each be liable to a civil penalty. The Bill would increase the maximum civil penalty amount to 300 penalty units.

It is appropriate for higher penalties to apply to these provisions, as individuals and businesses are on notice as to what the specified conditions are. Section 148 ensures that alternative arrangements can be made to unload goods at biosecurity entry points not determined to receive those goods. Permissions given under subsection 148(2) and conditions of the permission ensure that the biosecurity risks associated with unloading goods at places that are not a biosecurity entry point for those goods, are appropriately managed. Failure to comply with the conditions of a permission given under subsection 148(2) can have harmful consequences on plant and animal health, Australia's local industries, the economy and the environment. The proposed increases to the maximum pecuniary penalty for the criminal offences are intended to reflect the seriousness of offending behaviour where a person fails to comply with the conditions of a permission to bring goods to an alternative biosecurity entry point, and to allow for appropriate punishment of offending. The proposed increases to the civil penalties are intended to achieve the necessary deterrent effect for non-compliance with the Biosecurity Act, which jeopardises Australia's biosecurity status. The increases to the penalty amounts proposed by items 22 to 25 of Schedule 2 to the Bill are appropriate and proportionate to deter non-compliance and proportionate to the serious harm that may be caused by failing to comply with the conditions of a permission to bring goods to an alternative biosecurity entry point. The offences in subsections 148(4) to (6) are fault-based offences and accordingly do not apply when a person inadvertently contravenes the provisions.

Section 149

Section 149 provides for a civil penalty provision that currently carries a maximum civil penalty amount of 120 penalty units. The civil penalty provision applies where a person receives or possesses goods that have been unloaded from an aircraft or vessel in Australian territory and either:

- the goods have been unloaded in contravention of a direction given under subsection 143(3), 144(3) or (4) or 147(3);
- the goods have been unloaded in contravention of subsection 145(1);
- a condition of a permission imposed under subsection 146(3) or 148(3) has been contravened; or
- subsection 147(2) was contravened.

The Bill would increase the maximum civil penalty amount to 300 penalty units.

Receiving or being in possession of goods that have by-passed biosecurity control could have a significant effect on the Australian environment, economy and export markets. The increase to the civil penalty amount proposed by item 26 of Schedule 2 to the Bill is appropriate and proportionate to deter non-compliance and proportionate to the nature of the contravening behaviour and serious harm that may be caused by receiving or being in possession of goods in contravention of section 149.

Sections 155 and 156

Sections 155 and 156 provide for fault-based offences and civil penalty provisions for failing to report a reportable biosecurity incident to a biosecurity officer or the Director of Biosecurity.

The fault-based offences (subsections 155(2) and 156(2)) currently carry a maximum penalty of 2 years imprisonment or 120 penalty units or both. They apply where:

- a person in charge of an aircraft or vessel that is, or was carrying goods that are subject to a biosecurity control, fails to report a reportable biosecurity incident in relation to goods to a biosecurity officer or the Director of Biosecurity as soon as practicable after becoming aware of the incident; or
- a person in charge of goods that are subject to biosecurity control, fails to report a reportable biosecurity incident in relation to the goods to a biosecurity officer or the Director of Biosecurity as soon as practicable after becoming aware of the incident.

The Bill would increase the maximum pecuniary penalty for these fault-based offences from 120 penalty units to 300 penalty units.

The civil penalty provisions (subsections 155(3) and 156(3)) currently carry a maximum civil penalty amount of 120 penalty units. Subsection 155(3) mirrors subsection 155(2), by providing that a person in charge of an aircraft or vessel who contravenes subsection 155(1) is liable to a civil penalty. Subsection 156(3) mirrors subsection 156(2), by providing that a person in charge of goods who contravenes subsection 156(1) is liable to a civil penalty. The Bill would increase the maximum civil penalty amount in both of these civil penalty provisions to 300 penalty units.

It is important that biosecurity incidents are reported as soon as practicable to ensure that any biosecurity risks associated with the incident can be managed to an acceptable level and to limit the risk associated with any pest or disease entering, establishing or spreading into Australian territory. Failure to report biosecurity incidents as soon as practicable after becoming aware of them is likely to result in a delay in responding to the biosecurity risk associated with the incident, which could exacerbate the nature and magnitude of the risk and any required response activity. The person in charge of an aircraft or vessel carrying the goods or the person in charge of the goods, should be aware of and clearly understand the requirements under the Biosecurity Act and take reasonable steps to comply. The proposed increases to the maximum pecuniary penalty for the criminal offences are intended to reflect the seriousness of offending behaviour where a person fails to report a reportable biosecurity incident as soon as practicable after becoming aware of it, and to allow for appropriate punishment of offending. The proposed increases to the civil penalties are intended to achieve the necessary deterrent effect for non-compliance with the Biosecurity Act, which jeopardises Australia's biosecurity status and reflect the level of harm that may be caused by the person's behaviour. The increases proposed by items 27 to 30 are appropriate and proportionate to deter non-compliance and proportionate to the nature and contravening behaviour and serious harm that may result from failing to report a reportable biosecurity incident as soon as practicable. The offences in subsections 155(2) and 156(2) are fault-based offences and accordingly do not apply when a person inadvertently contravenes the provisions.

Schedule 3 – Risk assessment

Schedule 3 to the Bill amends a number of provisions in the Biosecurity Act in relation to the conduct of risk assessments. A risk assessment is conducted to ensure the biosecurity risk associated with certain goods or certain classes of goods is appropriately managed for the purposes of making a determination under subsection 173(1), 174(1) and 182(1), or for deciding to grant a permit under subsection 179(1). The Appropriate Level of Protection (ALOP) for Australia, which aims to reduce biosecurity risks to a very low level, but not to zero, is applied when conducting a risk assessment.

The objective of amending these provisions is to increase transparency about the process by which risk assessments are conducted for the purposes of these determinations or decisions to grant permits made under subsection 179(1). Schedule 3 does not alter the requirement that ALOP be applied in conducting a risk assessment, consistent with Australia's international obligations under the *World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures 1994*. Similarly, the amendments proposed would not change the role of the Director of Biosecurity and Director of Human Biosecurity as decision-makers for these determinations and permits.

Schedule 3 requires a risk assessment to be conducted by a biosecurity worker before a determination is made under subsections 173(1), 174(1) or 182(1), or a permit is granted under subsection 179(1). A biosecurity worker would be an APS employee in the Agriculture Department or Health Department, or certain persons engaged to perform services for the Agriculture Department or Health Department. Biosecurity workers will have specialised knowledge and skills that would enable them to make an accurate scientific assessment of the relevant biosecurity risks posed by particular goods or a class of goods. Before the Director of Biosecurity and the Director of Human Biosecurity may make a joint determination under subsection 173(1) or 174(1), both of them must consider the risk assessment and be satisfied that the ALOP for Australia was applied in the conduct of the risk assessment. Before the

Director of Biosecurity grants a permit under subsection 179(1) or makes a determination under subsection 182(1), the Director of Biosecurity must consider the risk assessment and be satisfied that the ALOP for Australia was applied in the conduct of the risk assessment.

Schedule 4 – Arrangements and grants for dealing with risks posed by diseases or pests

The Australian Government currently delivers numerous programs to manage biosecurity risks which may cause harm to animal, plant and human health, the environment and the economy. The programs are designed to identify, prevent, prepare for, and manage the risk of pests and diseases entering Australian territory.

Legislative authority for expenditure for such programs is generally provided by section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (FFSP Act) by inserting new items for each program into the relevant Schedule to the *Financial Framework (Supplementary Powers) Regulations 1997* (FFSP Regulations). The FFSP Act and the FFSP Regulations provide general expenditure authority for programs across the Commonwealth that are not otherwise specifically authorised in portfolio legislation

Schedule 4 to the Bill provides legislative authority for arrangements and grants of financial assistance for dealing with risks posed by diseases or pests. Having tailored legislative authority provisions in the Biosecurity Act would assist the Australian Government to respond quickly to fast-changing circumstances where there is a pest or disease threatening the health of the Australian population, the environment or the agricultural sector.

Assessment of Compatibility with Human Rights

The Bill may engage the following rights:

- the right to health under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the prohibition on arbitrary detention under Article 9 of the International Covenant on Civil and Political Rights (ICCPR);
- the prohibition on arbitrary interference with privacy under Article 17 of the ICCPR; and
- the right to a fair trial and criminal process rights under Article 14 of the ICCPR.

Right to health (Article 12 of ICESCR)

Article 12 of ICESCR promotes the right of all individuals to enjoy the highest attainable standards of physical and mental health. This includes the application of measures for the prevention, treatment and control of epidemic, endemic, occupational and other diseases (Article 12(2)).

The Bill takes positive steps to bolster the biosecurity legislative framework to promote this right and to promote the protection of public health, particularly against risks posed by people entering Australia on international aircraft or vessels. It does this by ensuring the Commonwealth has suitable mechanisms to identify and control the spread of serious communicable diseases and to ensure any person developing signs or symptoms of these diseases is provided with prompt medical assessment and treatment. Prompt infection control measures may be implemented to mitigate contagion related to incoming conveyances.

Human biosecurity group directions

Schedule 1 will insert a new human biosecurity group direction mechanism in new Part 3A of Chapter 2 of the Biosecurity Act to manage the risk of listed human diseases, posed by a class of individuals. These amendments will provide a suitable framework for managing the risk of contagion of a listed human disease and its entry, emergence, establishment or spread in Australian territory. This will further give effect to Australia's international obligations as a signatory to the International Health Regulations, including by applying the most appropriate and least restrictive measure in the circumstances.

Pre-arrival reporting requirements

Amendments in Schedule 1 to improve pre-arrival reporting requirements through the provision of other reports and further information will ensure that assessments of biosecurity risks, including with respect to human health, may be better tailored to the risk profile of an aircraft or vessel.

The above measures are necessary to protect human health and prevent spread of disease which promotes the right to health under Article 12 of the ICESCR.

Prohibition on arbitrary detention (Article 9 of the ICCPR)

Article 9 of the ICCPR protects the right of all individuals to liberty and freedom from arbitrary detention. The right to personal liberty requires that persons not be subject to arrest and detention except as provided for by law and provided that neither the arrest nor the detention is arbitrary. The right applies to all forms of detention where people are deprived of their liberty.

Human biosecurity group directions

In Schedule 1 to the Bill, a human biosecurity group direction may restrict a person's movement by managing the location of each individual in the class of individuals specified in the direction. It may have the effect of preventing individuals from disembarking from an aircraft or vessel that has entered Australian territory, including after a vessel or aircraft has been granted pratique under section 48 of the Biosecurity Act. This gives effect to Australia's international obligations under the International Health Regulations. This is not criminal detention however it may be considered administrative detention.

A human biosecurity group direction may contain a number of biosecurity measures which aim to protect human health by applying the most appropriate and least restrictive measure in the circumstances. These include requiring an individual to restrict certain behaviour to reduce the risk of contagion, including remaining at a place or being required to go to a place (section 108L). The direction may only be made by a chief human biosecurity officer or human biosecurity officer, who would have suitable clinical experience and qualifications to make public health decisions. The officer must also be satisfied that any biosecurity measure included in a direction would contribute to managing the risk of contagion of a listed human disease, or the risk of a listed human disease entering, emerging, establishing itself or spreading in Australian territory (see subsection 108B(6)).

To ensure the exercise of that power is reasonable and proportionate to achieve a legitimate objective, the general protections set out in section 34 of the Biosecurity Act will apply, except where expressly limited, providing a range of principles that a person making a decision in relation to a human biosecurity group direction must be satisfied of, including:

- that exercising the power, or imposing the biosecurity measure, is likely to be effective in, or to contribute to, managing the risk;
- that exercising the power, or imposing the biosecurity measure, is appropriate and adapted to manage the risk;
- that the circumstances are sufficiently serious to justify exercising the power, or imposing the biosecurity measure;
- that the power, or the biosecurity measure, is no more restrictive or intrusive than is required in the circumstances;
- that the manner in which the power is to be exercised, or the biosecurity measure that is to be imposed, is no more restrictive or intrusive than is required in the circumstances; and
- if the power is to be exercised or the biosecurity measure imposed during a period—that the period is only as long as is necessary.

Further, as provided for in section 35, the exercise of the power to make a human biosecurity group direction, or the imposition of a biosecurity measure in relation to a class of individuals must not interfere with any urgent or life-threatening medical needs.

Section 108S also provides an express limitation that prevents the use of force against an individual to require compliance with any of the biosecurity measures in sections 108K to 108Q.

Other safeguards include that a human biosecurity group direction must be in writing and may only be in force for a period of no more than 8 hours. It can be varied in writing, after consideration of specified matters in subsection 108F(4) (such as whether the variation will contribute to reducing the risk of contagion of a listed human disease) and the general protections set out in section 34. The direction can only be extended once, for a further period of up to 4 hours. If the time expires and the officer is satisfied that the class of individuals still requires management, the officer may consider the making of a new human biosecurity group direction. In considering whether to make a new human biosecurity group direction, the relevant officer must again be satisfied of those principles set out in section 34 of the Biosecurity Act, and that section 35 of the Biosecurity Act is also complied with.

The notification of a human biosecurity group direction to a class of individuals must be given before the direction comes into force (section 108E). There are also similar requirements for a variation or revocation of a direction to be given before the variation or revocation takes effect (sections 108F and 108G).

If a human biosecurity group direction is made that requires a class of individuals to remain at, or to go to and remain at, a place, and the chief human biosecurity officer or human biosecurity officer is aware that an individual in that class is not an Australian citizen, then additional requirements apply under section 108V. The officer must as soon as practicable after making the direction, inform the non-citizen of their right to request that the relevant consular office be notified and that the individual may communicate or attempt to communicate with the consular office. The officer must also provide reasonable opportunity

for the individual to do so. This aims to ensure that all non-citizens are able to understand why they are being asked to remain at a place regardless of nationality and to give effect to Australia's obligations under the *Vienna Convention on Consular Relations of 1963*.

The ability to issue a human biosecurity group direction is consistent with the prohibition on arbitrary detention under Article 9 of the ICCPR because the ability to restrict movement is legislated and a range of protections and safeguards apply to the operation of these functions to limit it to only apply the least restrictive measures possible that are necessary and proportionate to achieve the legitimate objective of protecting public health.

Prohibition on arbitrary interference with privacy (Article 17 of the ICCPR)

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence. This right may be subject to permissible limitations where those limitations are provided by law and are non-arbitrary. In order for limitations not to be arbitrary, they must seek to achieve a legitimate objective and be reasonable, necessary and proportionate to this purpose.

Human biosecurity group directions

In Schedule 1 to the Bill, section 108K provides that a human biosecurity group direction can require the provision of prescribed contact information and past location information. This mechanism is subject to a number of limitations and safeguards. Before a direction can be made, a chief human biosecurity officer or human biosecurity officer must be satisfied that one or more individuals have signs or symptoms of a listed human disease or have been exposed to a listed human disease or one or more other individuals with such signs or symptoms. The general protections under section 34, set out above, must also be met before the direction is made. Further, the officer must be satisfied that the inclusion of a requirement under section 108K in a direction would contribute to managing the risk of contagion of a listed human disease, or the risk of a listed human disease entering, emerging, establishing itself or spreading in Australian territory.

An individual would only be required to provide certain contact information and past location information if a human biosecurity group direction is in force and such a requirement applies to a class of individuals in which that individual is included. Section 108K is necessary for the legitimate objective of ensuring that, if an individual who is subject to a human biosecurity group direction becomes ill due to a listed human disease, then the officer can identify and contact any persons who may have been exposed to the ill individual, or any other persons in past locations that the individual has visited. This would also allow the officer, if necessary, to ascertain if the other people have any signs or symptoms of a listed human disease to allow for effective assessment and management of the risks to human health. Section 108R also specifies that it constitutes an authorisation for the purposes of the *Privacy Act 1998* and other laws.

Section 108P provides that an individual in the class of individuals may be required by a human biosecurity group direction to provide body samples for diagnosis. However, each individual must give prior consent to the providing of the body sample. Similarly, a human biosecurity group direction may provide that a person must consent to the requirement to undergo a specified examination under section 108N. If an individual does not consent to providing body samples or to undertaking an examination that is specified in the direction as

requiring consent, then the requirements in sections 108P and 108N would not apply to the individual. Section 108R applies to ensure that that biosecurity measures to undertake a medical examination or provide body samples for diagnosis of a listed human disease must be conducted in accordance with appropriate medical and relevant professional standards.

To the extent that these amendments interfere with privacy, this interference is not arbitrary and is consistent with Article 17 of the ICCPR as the measures are subject to appropriate safeguards and are limited to only those measures that are necessary, reasonable and proportionate to achieving the legitimate objective of protecting human health.

Pre-arrival reporting requirements

The amendments to sections 193, 194 and 195 in Schedule 1 to the Bill relate to the requirements to provide reports and further information to a biosecurity officer to enable assessment of the risk associated with goods or conveyances in Australian territory or intended to enter Australian territory.

The amendments to sections 193, 194 and 195 in this Bill do not change the existing powers but expand the circumstances under which such information may be required and, on that basis, may increase occasions in which the right to freedom from arbitrary interference with privacy may be limited. For example, amendments to section 193 would permit the regulations to prescribe that other reports are required, increasing the frequency that such information may be required to be given in relation to specified classes of aircraft or vessels.

By exercising powers to ask questions or require persons to provide information or documents under section 194 and 195, a biosecurity officer may incidentally require the provision of personal information. These sections, and the amendments to them by this Bill, are necessary for the legitimate objective of assessing the level of biosecurity risk associated with goods or conveyances in, or intended to enter, Australian territory. Biosecurity officers need access to this information to properly assess the level of biosecurity risk associated with the goods or conveyances and then to be able to manage any biosecurity risks appropriately. To the extent that the collection, use, storage and sharing of information may include personal information, this may engage the right to privacy.

Reporting and notification obligations under sections 193 and 194 apply only in particular circumstances and the persons required to provide the information would be the operator of the aircraft or vessel, who can be reasonably expected to be aware of these obligations.

In relation to all of the amendments made by Schedule 1 to the Bill, Part 2 of Chapter 11 of the Biosecurity Act includes a range of protections relating to the collection, storage and disclosure of protected information. Section 580 provides that only certain persons may collect, disclose, or use information and that they may only do so for a permissible purpose (a purpose which promotes the objects of the Biosecurity Act). Section 585 also provides an offence for the improper collection or use of protected information.

To the extent that these amendments may engage the prohibition on arbitrary interference with privacy under Article 17 of the ICCPR, any limitations on this right are permissible as they are limited to only those measures that are necessary, reasonable and proportionate to achieving the legitimate objective of protecting human health and protecting Australia from

biosecurity risks that could have harmful consequences to the Australian environment, economy and export markets.

Right to a fair trial (Article 14 of the ICCPR)

The right to a fair trial and equality before the courts contained in Article 14 of the ICCPR applies to criminal and civil proceedings. The increase in the civil and criminal penalties may engage Article 14 of the ICCPR. Article 14 provides that, in the determination of any criminal charge against the person, or of their rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.

Schedule 1 to the Bill would increase the maximum civil penalties in subsections 48(1), 193(6) and 194(4), increase the maximum pecuniary penalties for fault-based offences in subsections 193(5) and 194(3), insert new civil penalties in subsections 38(5), 108T and 108U, and expand the scope of the existing penalties in sections 48, 193 and 194. Schedule 2 to the Bill would increase the maximum penalty amount for a number of civil penalty and certain fault-based offences in the Biosecurity Act. These are outlined in detail in the Overview.

The increased penalties under these Schedules do not affect the procedure by which civil and criminal proceedings are heard in relation to contraventions of civil penalty provisions or offences under the Biosecurity Act. The amendments to the civil and criminal penalties proposed by the Bill therefore do not limit the right to a fair hearing contained in Article 14 of the ICCPR.

Criminal process rights (Article 14 of the ICCPR)

Article 14 of the ICCPR contains criminal process rights, including the minimum guarantees in criminal proceedings (Articles 14(3) and (5) to (7)). They include the right to the presumption of innocence (Article 14(2)), the right to be free from self-incrimination (Article 14(3)), and the right not to be tried or punished again for an offence for which a person has already been finally acquitted or convicted (prohibition on double jeopardy) (Article 14(7)).

Criminal process rights – civil penalty provisions

Schedule 1 amends the civil penalty provision in section 48(1) for contravention of pratique by increasing the maximum civil penalty from 120 penalty units to 1,000 penalty units for the operator of an aircraft or vessel and by creating a new civil penalty of 300 penalty units for the person in charge of an aircraft or vessel. This amendment reflects the serious consequences posed by the potential entry, spread and transmission in Australia of a listed human disease and the commercial context to which pratique applies where a lower penalty may not be an effective deterrent to non-compliance.

Schedule 1 also increases the civil penalty in subsections 193(6) and 194(4) from 120 penalty units to 1,000 penalty units in relation to pre-arrival reporting and expands the civil penalty in sections 193 and 194 to include where an operator contravenes the requirement to provide other reports or further information in relation to pre-arrival reporting. Failure to provide reports in accordance with the requirements in sections 193 and 194 can undermine the

ability of biosecurity officers to determine what risk management activities might be necessary when an aircraft or vessel arrives in Australian territory. Depending on the risks posed by the diseases and pests on an aircraft or vessel, this can result in harmful consequences to the Australian environment, economy, agricultural industry and export markets.

Schedule 1 also inserts new civil penalty provision in section 108T for failing to comply with a human biosecurity group direction and subsection 38(5) for a person accompanying a child or incapable person for failing to comply with a direction, which has a maximum penalty of 30 penalty units. Both of these civil penalties are necessary to deter non-compliance with biosecurity measures, which have been specified in a human biosecurity group direction to manage the risks posed by a listed human disease. If the biosecurity measures in the direction are not complied with, significant risks to human health may ensue and result in significant harm to the health of the class of individuals or to other persons.

There is also a new civil penalty provision in section 108U for a person in charge of an aircraft or vessel failing to give notification of a human biosecurity group direction, which has a maximum penalty of 300 penalty units. Regulated entities, especially the person in charge of an aircraft or vessel, have a responsibility to know and understand their obligations under the Biosecurity Act and to take steps to ensure compliance with the law. Failure by the person in charge to notify the class of individuals of a human biosecurity group direction can result in increased contagion of the listed human disease with the potential to cause harmful consequences, including to the health of the class of individuals on board the aircraft or vessel.

Schedule 2 to the Bill would increase a number of civil penalty provisions of the Biosecurity Act, namely:

- Subsection 120(7);
- Subsection 121(4);
- Subsection 122(7);
- Subsection 143(6);
- Subsection 144(7);
- Subsection 145(3);
- Subsection 146(7);
- Subsection 147(2);
- Subsection 147(7);
- Subsection 148(7);
- Subsection 149(1);
- Subsection 155(3); and
- Subsection 156(3).

These civil penalties apply to a failure to meet requirements under the Biosecurity Act and are discussed in detail in the Overview. They are contraventions which have serious consequences for the biosecurity status of Australia and thus the agricultural industry and the economy.

As discussed in the *Guidance Note 2: Offence provisions, civil penalties and human rights* published by the Parliamentary Joint Committee on Human Rights, civil penalty provisions may engage criminal process rights under Articles 14 of the ICCPR, regardless of the

distinction between criminal and civil penalties in domestic law. When a provision imposes a civil penalty, an assessment is required as to whether it amounts to a criminal penalty for the purposes of Article 14 of the ICCPR.

Determining whether penalties could be considered to be criminal under international human rights law requires consideration of the classification of the penalty provisions under Australian domestic law, the nature and purpose of the penalties, and the severity of the penalties.

The civil penalty provisions in the Biosecurity Act expressly classify the penalties as civil penalties. Those provisions create solely pecuniary penalties in the form of a debt payable to the Commonwealth. The civil penalties aim to deter non-compliance with the Biosecurity Act and would not impose criminal liability and a finding by a court that they have been contravened does not lead to the creation of a criminal record. The Bill does not propose to amend the operation of the existing civil penalty provisions and the conduct they apply to. The Bill seeks only to increase the penalties for existing civil penalty provisions in the Biosecurity Act. The penalties apply in a specific regulatory context and most provisions do not apply to the general public but to a sector or class of people involved in bringing or importing goods into Australian territory, including operators and persons in charge of an aircraft or vessel (as defined in sections 21 and 22 of the Biosecurity Act). Such persons will reasonably be expected to be aware of their obligations under the Biosecurity Act because they engage in an activity that is regulated under very clear conditions. These factors all indicate that the increased civil penalties imposed by the Bill are civil rather than criminal in nature.

The maximum penalty amounts that may be imposed by a court as a civil penalty order varies from 30 penalty units (for an individual who has failed to comply with a requirement in subsection 38(5) or section 108T) to 1,000 penalty units (for an operator of an aircraft or vessel who contravenes the requirements in subsections 48(1), 193(6) and 194(4)) in Schedule 1. The increased maximum penalty amounts that may be imposed by a court as a civil penalty order is 300 penalty units for the civil penalties set out in Schedule 2. Paragraph 82(5)(a) of the *Regulatory Powers (Standard Provisions) Act 2014* is applied to the Biosecurity Act by section 519 and provides that the maximum penalties a court may apply to individuals will be those specified in the civil penalty provisions as amended by the Bill. The application of paragraph 82(5)(b) to civil penalties under the Biosecurity Act means that the corporate multiplier will apply to bodies corporate so that a court may set the penalties payable by such entities at no more than five times the penalty specified in the civil penalty provision. The application of the corporate multiplier in Schedule 1 would result in a maximum penalty under subsections 48(1), 193(6) and 194(4) of 5,000 penalty units. For the civil penalties in Schedule 2, the application of the corporate multiplier would result in an increased maximum penalty of 1,500 penalty units.

The increased and new civil penalties in Schedule 1 should not be seen as elevating the penalties to be criminal in nature. The new maximum penalties of 30 penalty units created in subsection 38(5) and section 108T are relatively low compared to other penalties in the Biosecurity Act and strikes a balance between reflecting the seriousness of not complying with a direction with the financial burden on a member of the general public. This is intended to be proportionate to the likely harm that may result and to adequately deter a worst-case contravention of the provision. In addition, 30 penalty units is the maximum penalty that can be imposed at the discretion of the court, after taking into account all the circumstances of the

case. The amount to be stated in an infringement notice for an alleged contravention of these provisions would be 6 penalty units, or a lower amount as prescribed by the regulations under subsection 524(4).

The maximum civil penalty for contravention of section 108U by the operator of an aircraft or vessel is 300 penalty units. This is intended to effectively disincentivise the financial benefit that a person in charge is likely to stand to gain from non-compliance with the notification requirement. The amount to be stated in an infringement notice for an alleged contravention of section 108U would be 12 penalty units, or a lower amount as prescribed by the regulations under subsection 524(4).

The increased maximum penalty of 1,000 penalty units in subsection 48(1) for contravention of pratique for the operator of an aircraft or vessel reflects the serious consequences posed by the potential entry, spread and transmission in Australia of a listed human disease, and the commercial context to which pratique applies where a lower penalty may not be an effective deterrent to non-compliance. The introduction of a new civil penalty for the person in charge of an aircraft or vessel for contravention of pratique addresses the disjuncture between the practical and legal responsibility for compliance with pratique requirements.

The increased and new civil penalties in sections 193 and 194 of 1,000 penalty units relate to a failure by the operator of an aircraft or vessel to provide pre-arrival reports and further information. The level of these civil penalties reflects the seriousness of the risk posed by this conduct to Australia's biosecurity status, market access and economy, in circumstances where these penalties are applied to the operator of an aircraft or vessel who can reasonably be expected to be aware of their obligations.

The proposed increases to existing civil pecuniary penalties and the creation of new civil pecuniary penalties set out in Schedules 1 and 2 to the Bill have been set by reference to the *Australian Government Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide). They seek to reflect the seriousness of the contravening conduct and the risk that the conduct may pose to Australia's trading reputation, the integrity of the biosecurity management system, animal or plant life or health and the environment. Consistent with the original setting of penalty amounts, the upper range of civil penalty amounts in this Bill are proposed for contraventions involving aggravated circumstances.

The new and increased penalties in Schedules 1 and 2 would apply in a regulatory context and should not be considered severe, noting that they are all pecuniary penalties (rather than more severe punishment like imprisonment), there is no sanction of imprisonment for non-payment of penalties and the maximum amount of each civil penalty is no more than the corresponding criminal offence. There is also no mandatory minimum penalty, and the court has the discretion to determine the appropriate penalty having regard to all the circumstances of the matter.

Having regard to the severity of the penalty, and the context in which they are applied, the new and increased civil penalties in Schedules 1 and 2 should not be considered as elevating the civil penalties to being criminal in nature under international human rights law. However, even if they could be perceived to be criminal in nature, they would be compatible with the criminal process rights contained in Articles 14 of the ICCPR as the amendments do not

affect the court process, just the penalty that can be imposed by the courts. Further details of the specific criminal process rights under Articles 14(2), (3) and (7) are discussed below.

Criminal process rights – fault-based offences

Schedule 1 to the Bill would increase the pecuniary penalty for the fault-based offences in subsections 193(5) and 194(3) from 120 penalty units to 1,000 penalty units. It would also expand the scope of the offences to include contravention by the operator of an aircraft or vessel of the requirements to provide other reports or further information in relation to pre-arrival reporting.

Schedule 2 to the Bill would increase the maximum pecuniary penalty for a number of fault-based offences against the Biosecurity Act, namely:

- Subsection 120(6);
- Subsection 121(3);
- Subsection 122(6);
- Subsection 143(5);
- Subsection 144(6);
- Subsection 145(2);
- Subsection 146(4);
- Subsection 146(5);
- Subsection 146(6);
- Subsection 147(4);
- Subsection 147(5);
- Subsection 147(6);
- Subsection 148(4);
- Subsection 148(5);
- Subsection 148(6);
- Subsection 155(2); and
- Subsection 156(2).

These offences apply to a range of contraventions of the Biosecurity Act and are discussed in detail in the Overview. They relate to serious contraventions that threaten the biosecurity status of Australia.

These criminal penalties may engage the criminal process rights contained in Article 14 in relation to the guarantees of general application to proceedings and guarantees which specifically relate to criminal proceedings. The guarantees specific to criminal proceedings under Article 14 include the right to the presumption of innocence (Article 14(2)), freedom from self-incrimination (Article 14(3)), and the right the prohibition on double jeopardy (Article 14(7)).

The proposed increases to the maximum pecuniary penalties set out in Schedules 1 and 2 to the Bill depart from the standard fine to imprisonment ratio in the Guide. This is justified because the increase in pecuniary penalties for specific fault-based offences serves the purpose of deterring offending conduct, and reflects the seriousness of the offending, which could have devastating consequences for Australia's agriculture, the environment and the economy. Schedules 1 and 2 to the Bill will only increase the maximum pecuniary penalty amount which a sentencing court may impose for certain fault-based offences, not the

maximum term of imprisonment. The proposed penalties set out in Schedules 1 and 2 to the Bill will provide scope for sentencing courts to address high-level offending while maintaining the discretion to impose lesser penalties for less serious offending conduct. In sentencing an offender and determining the level of penalty to impose for any of these offences, a court may have regard to a number of factors, including the facts and circumstances of the case; the nature and significance of the offending conduct; and any previous history of non-compliance. For certain offences, sentencing courts will also have the discretion whether to apply a term of imprisonment, or a financial penalty, or both to reflect the seriousness of the offending. The fault-based offences would be compatible with the criminal process rights contained in Article 14 of the ICCPR. Further details on the specific criminal process rights under Articles 14(2), (3) and (7) are discussed below.

Right to the presumption of innocence (Article 14(2) of the ICCPR)

The Guide notes that placing the burden on the defendant should be limited to circumstances where the matter is peculiarly within the knowledge of the defendant and where it is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter. The Guide also notes that a reverse burden provision is more readily justified if the matter in question is not central to the question of culpability for the offence, the penalties are at the lower end of the scale, and the conduct proscribed by the offence poses a grave danger to public health or safety.

Schedules 1 and 2 to the Bill propose to increase the maximum pecuniary penalties for fault-based offences and civil penalties in sections 48, 120, 143, 149 and 193, which carry a reverse burden of proof. However, the reverse burden in these provisions only applies to a defendant seeking to rely on the exception that they are authorised to engage in the conduct which is the subject of the relevant offence or civil penalty.

In this way, to the extent that the reverse burden that attaches to these offences or civil penalty provisions limits the right to the presumption of innocence under Article 14(2), this only applies in relation to the exception that they are authorised to engage in the conduct which would be peculiarly in the knowledge of the defendant and is not central to the question of culpability for the relevant offence or civil penalty. Further, the conduct proscribed by the offences and civil penalty provisions in sections 48, 120, 143, 149 and 193 would pose a very serious risk to Australia's biosecurity status. Although the Bill increases the penalties in these provisions, the proposed penalties are proportionate to achieve the necessary deterrent effect, and the maximum penalty that may be imposed will be determined by a court having regard to all the circumstances of a matter.

Right to freedom from self-incrimination (Article 14(3) of the ICCPR)

Schedules 1 and 2 to the Bill propose to increase the maximum pecuniary penalties for fault-based offences and civil penalties in sections 121, 122, 193, and 194 of the Biosecurity Act, which are not subject to the privilege against self-incrimination under section 635. Schedule 1 also proposes to insert new section 108K in relation to the provision of certain contact and location information, which is also not subject to the privilege against self-incrimination under section 635. This means that a person is not excused from answering a question, providing information or producing a document on the ground that the answer, information or production of the document might tend to incriminate the person or make the person liable to a penalty. However, section 635 of the Biosecurity Act provides that the

answer, information or document that may incriminate a person are inadmissible in evidence against that person in any criminal or civil proceedings.

The increased penalties in sections 121, 122, 193, and 194 remain proportionate to the significant consequences of contravention and removing the privilege in these circumstances continues to be necessary to achieve the legitimate objective of effective assessment and management of biosecurity risks to human, plant and animal health, the environment and the economy. The new requirement in section 108K is required for contact-tracing purposes where there is a risk of contagion of a listed human disease and removing the privilege in these circumstances is necessary to achieve the legitimate objective of protecting human health and preventing spread of disease. In this way, the limitation of the right to the freedom from self-incrimination in Article 14(3) continues to be reasonable, necessary and proportionate.

Right not to be tried or punished again for an offence for which a person has already been finally acquitted or convicted (prohibition on double jeopardy) (Article 14(7) of the ICCPR)

Article 14(7) may be engaged by provisions proposed to be amended by the Bill that allow for the imposition of both a criminal penalty and a civil penalty provision in relation to the same contravening conduct, including sections 120, 121, 122, 143, 144, 145, 146, 147, 148, 155, 156, 193 and 194.

Despite the increase in the pecuniary penalty amounts, these provisions in Schedules 1 and 2 are consistent with the prohibition on double jeopardy in Article 14(7). The civil penalty provisions create a distinct penalty regime from the criminal sanctions which provide a proportionate and effective mechanism to punish actions that may contravene Australia's biosecurity laws. The civil penalty provisions cannot be used to impose criminal liability or subject a person to imprisonment and a finding by a court that they have been contravened does not lead to the creation of a criminal record. A court also has the discretion to impose the penalty that the court considers most appropriately reflects the nature and seriousness of the offending.

Further, under subsection 520(1) of the Biosecurity Act, a court may not make a civil penalty order against a person for a contravention of a civil penalty provision in the Biosecurity Act if that person has been convicted of an offence under an Australian law or the person has been found by a court to have contravened a civil penalty provision under Australian law that is constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

Measures that do not engage human rights

Schedule 3 to the Bill seeks to increase transparency about the process by which risk assessments are conducted for the purposes of determinations made under subsection 173(1), 174(1) and 182(1), as well as decisions to grant permits made under subsection 179(1). The amendments identify the matters that the decision-makers must be satisfied of before making such a determination or decision, as well as setting out the considerations that the decision-makers must or may consider before making such a determination or decision. This would provide greater certainty and clarity to stakeholders about the process by which risk assessments are conducted, thereby enhancing good public administration.

The amendments enhance the transparency of requirements in relation to risk assessments but do not create or change any conditions or classes of goods. Therefore, Schedule 3 to the Bill does not engage any of the applicable rights or freedoms.

Schedule 4 to the Bill provides legislative authority for arrangements and grants for dealing with risks posed by diseases or pests. The department currently delivers numerous programs designed to identify, prevent, prepare for and manage the risk of pests and diseases entering Australian territory which may cause harm to animal, plant and human health, the environment and the economy.

Examples of such programs include funding to improve Australia's capacity to respond to pest and disease incursions; increased economic opportunities for Indigenous persons, entities and communities through activities that target biosecurity risks in northern Australia; and investment in projects that support planning and preparedness for management of environmental biosecurity risks.

Currently, the legislative authority for expenditure for these programs is generally provided by inserting new items for each program into the relevant Schedule to the *Financial Framework (Supplementary Powers) Regulations 1997*. Having tailored legislative authority provisions in the Biosecurity Act would assist the Australian Government to respond quickly to fast-changing circumstances where there is a pest or disease threatening the health of the Australian population, the environment or the agricultural sector.

This is consistent with the approach taken in other Commonwealth legislation to provide legislative authority for arrangements and grants, including the *Aged Care Act 1997*, *Child Care Act 1972*, *Emergency Response Fund Act 2019*, *Fair Entitlements Guarantee Act 2012*, *Future Drought Fund Act 2019* and *National Disability Insurance Scheme Act 2013*.

Schedule 4 to the Bill provides an alternative mechanism for legislating expenditure for biosecurity programs which creates efficiencies and enables timely responses to emerging biosecurity threats. The amendments do not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights because it promotes the right to health under Article 12 of the ICESCR and, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon. David Littleproud MP
Minister for Agriculture and Northern Australia