



भारतसरकार / GOVERNMENT OF INDIA  
पत्तन, पोत परिवहन और जलमार्ग मंत्रालय  
MINISTRY OF PORTS, SHIPPING AND WATERWAYS

नौवहनमहानिदेशालय, मुंबई  
DIRECTORATE GENERAL OF SHIPPING, MUMBAI

F. No: 23-POL/1/2021-CREW-DGS

Date: 24.02.2021

**DGS Circular No. 06 of 2021**

**Subject:** Advisory - Changes in Biosecurity laws in Australia - Migration Amendment (Biosecurity Contraventions) Regulations 2020 – reg.

The Directorate has received a Note from the Ministry of External Affairs (Oceania Division), GoI regarding the changes in bio-security laws in Australia taking effect from 01.01.2021.

2. The changes are introduced by Australia under two instruments, namely, the Migration Amendment (Biosecurity Contraventions) Regulations 2020 made under the Migration Act 1958, and the Biosecurity (2021 Infringement Notices) Determination 2024 made under subsection 524A(1) of the Biosecurity Act 2015. The operation of these instruments has commenced since 01.01.2021. (copy enclosed)

3. These changes in the above instruments mandate all passengers, crew and persons in charge of an aircraft or vessel to provide information at a first point of entry in Australia for the purposes of assessing the level of biosecurity risk associated with the person and any goods the person has with them when arriving in Australian territory. The first point of entry in Australia may be the landing place for aircrafts and ports for vessels.

4. Accordingly, under the said changes, travellers who fail to declare high-risk goods at the Australian border, will be levied with increased penalties, including cancelling visas of seafarers on ground of bio-security law violation.

5. The above changes introduced by Australian Government may be taken note of by all concerned stakeholders for compliance.

6. This issues with the approval of Director General of Shipping & Additional Secretary to the Government of India.

(Subhash Barguzer)  
Deputy Director General of Shipping (Crew)

Encl.: As above.

To

1. All stakeholders through DG Shipping Website
2. Computer Cell, DG Shipping, Mumbai (*with a request to host this Circular on DG Shipping Website*)
3. Hindi Cell, DG Shipping, Mumbai (*for Hindi version*)

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बीटा बिल्डींग, 9वीं मंजिल, आई थिंक टेक्नो कैम्पस, कांजूर गौव रोड, कांजूर मार्ग (पूर्व), मंबई -400042

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## Schedule 1—Amendments

### *Migration Regulations 1994*

#### 1 Subparagraphs 2.43(1)(s)(i) to (v)

Repeal the subparagraphs, substitute:

- (i) a Subclass 400 (Temporary Work (Short Stay Specialist)) visa; or
- (ii) a Subclass 403 (Temporary Work (International Relations)) visa; or
- (iii) a Subclass 407 (Training) visa; or
- (iv) a Subclass 408 (Temporary Activity) visa; or
- (v) a Subclass 417 (Working Holiday) visa; or
- (vi) a Subclass 457 (Temporary Work (Skilled)) visa; or
- (vii) a Subclass 462 (Work and Holiday) visa; or
- (viii) a Subclass 476 (Skilled—Recognised Graduate) visa; or
- (ix) a Subclass 482 (Temporary Skill Shortage) visa; or
- (x) a Subclass 485 (Temporary Graduate) visa; or
- (xi) a Subclass 500 (Student) visa; or
- (xii) a Subclass 590 (Student Guardian) visa; or
- (xiii) a Subclass 600 (Visitor) visa; or
- (xiv) a Subclass 601 (Electronic Travel Authority) visa; or
- (xv) a Subclass 651 (eVisitor) visa; or
- (xvi) a Subclass 676 (Tourist) visa; or
- (xvii) a Subclass 771 (Transit) visa; or
- (xviii) a Subclass 988 (Maritime Crew) visa;

## 1 Name

This instrument is the *Migration Amendment (Biosecurity Contraventions) Regulations 2020*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 January 2021.	1 January 2021

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

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

## 3 Authority

This instrument is made under the *Migration Act 1958*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## **Migration Amendment (Biosecurity Contraventions) Regulations 2020**

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 26 November 2020

David Hurley  
Governor-General

By His Excellency's Command

Alan Tudge  
Minister for Population, Cities and Urban Infrastructure  
for the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

#### Section 8 – Repeal

Section 8 provides that the Determination is repealed at the start of 1 January 2022.

reptile for hatching include whole eggs for breeding purposes through a commercial industry and hobby breeders. The legal import of these goods requires mandatory pre-export certification, inspection and testing, and post-arrival quarantine, inspection and testing.

Eggs intended for human consumption are not considered to be category 1 goods for the purposes of this determination. This is because eggs of a bird or reptile for hatching are more likely to come into contact with animals and the environment within Australia and risk spreading pests and disease of biosecurity concern, and therefore pose a higher biosecurity risk.

Paragraph (g) in section 6 provides that veterinary vaccines are a class of category 1 goods. Veterinary vaccines are products that when administered to the animal, provide, induce, or change an immune response to a target chemical or biological entity. Veterinary vaccines are prepared in a manner designed to maintain the immunobiological characteristics of the infectious agent used to generate the vaccine. This preserves the infectious agent used in the preparation of the vaccine, as well as any contaminating or extraneous agents which present additional biosecurity risks. As a fundamental component of their use, veterinary vaccines are delivered directly to susceptible animal species in the manner most likely to introduce efficient infection. This means there is a significantly high biosecurity risk associated with veterinary vaccines.

#### Section 7 – Category 2 goods

Section 7 provides for classes of goods that have been assessed to be category 2 goods for the purposes of determining infringement notice amounts under subsection 524(4) of the Biosecurity Act and regulations made for the purposes of that subsection. Category 2 goods pose a high biosecurity risk when travellers fail to declare them upon arrival in Australia.

Section 7 provides that the following classes of goods are category 2 goods:

- (a) fresh fruit;
- (b) fresh vegetables;
- (c) fresh fungi;
- (d) fresh leaves;
- (e) fresh herbs.

Fresh fruit, fresh vegetables, fresh fungi, fresh leaves and fresh herbs can harbour a range of pests and diseases, including but not limited to exotic fruit flies, citrus canker, Plum pox virus, Panama disease, citrus greening, zebra chip and fire blight. Pests such as brown marmorated stink bug may also be present on these horticultural produce goods. Declaring these goods allows biosecurity officers to determine if the goods meet Australia's requirements, which often include a phytosanitary certificate along with sampling and inspection.

These classes of goods cover whole, intact and unprocessed horticultural produce. Horticultural produce that has been partially processed, such as having been sliced or the peel removed, is not covered by these classes of goods for the purpose of this Determination.

Fish, cetaceans, molluscs, crustaceans, cnidarians, echinoderms or tunicates are excluded from the class of goods in paragraph (c) of section 6. This means meat or meat products from aquatic animals such as sharks, dolphins, whales, lobsters and jellyfish are not classified as category 1 goods. Smoked salmon is an example of a meat product that is not a category 1 good.

Declaring meat and meat products allows biosecurity officers to determine if the goods meet Australia's requirements, which often include documentation such as a veterinary certificate from the country of export providing evidence of the sourcing and disease status of the exporting country.

Paragraph (d) in section 6 provides that prawns that are raw or partially raw are a class of category 1 goods. Raw prawns or partially raw prawns can be infected with exotic pathogenic agents including bacteria, parasites, fungi and viruses such as white spot syndrome virus and yellowhead virus genotype 1.

The class of goods in paragraph (d) includes prawns that are uncooked (that is, prawns that have not been cooked until all the protein in the prawn meat has coagulated and no raw prawn meat remains). Breaded, battered and crumbed prawns, and uncooked highly processed prawns such as dumpling, dim sum or spring roll type products, are not intended to be included in this class of goods.

If travellers fail to declare raw prawns, it is unlikely that biosecurity officers can ascertain if the goods meet all regulatory requirements and manage biosecurity risk.

Paragraph (e) in section 6 lists live animals, and the remains of animals that have died in transit before arriving in Australian territory or on arrival in Australian territory as a class of category 1 goods. Live animals and the remains of animals that have died in transit before arriving in Australian territory or on arrival in Australian territory can carry exotic pests and diseases, including arthropods, nematodes, bacteria, fungi, viruses and viroids, as well as pose a risk of becoming an invasive species themselves while alive.

The class of goods covered by paragraph (e) does not include humans, dead or alive. Humans are expressly excluded from the definition of 'animal', as defined in section 9 of the Biosecurity Act, as they do not pose the same biosecurity risk. Animals that were dead before the journey to Australia commenced are also excluded from paragraph (e) and are not considered category 1 goods. This includes animals that have undergone a taxidermy process to be prepared, preserved, stuffed or mounted. Animal parts, animal reproductive material and animal products are also not covered by the class of goods provided for by paragraph (e).

Paragraph (f) in section 6 provides that eggs of a bird or reptile that are intended for hatching are a class of category 1 goods. Eggs of a bird or reptile that are intended for hatching can carry many diseases of biosecurity concern to Australia. Reptile eggs could harbour togaviruses and herpesviruses while avian eggs can harbour Newcastle disease virus, avian influenza and many other potential pathogens, all of which if introduced could have serious negative consequences for Australia's unique fauna and the environment. Eggs of a bird or

## Section 6 – Category 1 goods

Section 6 provides a list of classes of goods and goods that have been assessed to be category 1 goods for the purposes of the Determination. This section allows infringement notice amounts prescribed by subsection 524(4) of the Biosecurity Act and regulations made for the purposes of that subsection to reflect the goods and classes of goods that have been listed as category 1 goods in the Determination. Category 1 goods pose a high biosecurity risk when travellers fail to declare them upon arrival in Australia.

Paragraph (a) in section 6 provides that live plants are a class of category 1 goods. The term 'live plants' includes all live plants (other than seeds) that are imported for the purposes of growth and/or propagation. They often carry exotic pests and diseases such as arthropods, bacteria, fungi and viruses, such as *Xylella* which is Australia's number one national priority plant pest. This class of goods is also sometimes referred to as "nursery stock" and includes, but is not limited to: budwood, bulbils, bulbs, corms, cuttings, grafting wood, plants, rhizomes, roots, seedlings, slips, stems, tissue cultures, tubers. Declaring live plants allows biosecurity officers to determine if the species of live plant is permitted entry into Australia and if any treatment requirements apply.

Paragraph (b) in section 6 provides that whole unprocessed seeds are a class of category 1 goods. The class covers all whole seeds of plants that have not been processed (for example, roasted, ground in to a powder etc). Whole unprocessed seeds often carry exotic diseases and pests such as khapra beetle. When declared, a biosecurity officer can determine if the seed species is permitted entry into Australia and if any other regulatory requirements, such as purity testing, apply.

Paragraph (c) in section 6, provides that meat and meat products, except meat or meat products that have been retorted, are a class of category 1 goods. The terms ***meat***, ***meat products*** and ***retorted*** are defined in section 5. There are several significant biosecurity risks associated with uncontrolled entry of meat and meat products into Australia including, but not limited to, foot-and-mouth disease, African swine fever, bovine spongiform encephalopathy, and infectious bursal disease.

Meat and meat products include blood, bone meal, meat meal, tallow, fat, jerky and biltong from any species of animal, unless that animal has been excluded by this Determination.

The listed class in paragraph (c) expressly excludes retorted meat and meat products as the biosecurity risk is significantly reduced if the meat or meat products have been retorted. Retorted meat and meat products must be heated in an unopened, hermetically sealed container for a time, and to a temperature beyond 100 °C, obtaining an  $F_0$  value of at least 2.8, sufficient to render the contents commercially sterile. To meet Australia's import requirements, retorted products must not require freezing or refrigeration to maintain quality. For example, salami, while preserved, is not retorted and is a category 1 good.

## ATTACHMENT A

### Details of the *Biosecurity (2021 Infringement Notices) Determination 2020*

#### Section 1 – Name

Section 1 provides that the name of this instrument is the *Biosecurity (2021 Infringement Notices) Determination 2020* (the Determination).

(the Determination).

#### Section 2 – Commencement

Section 2 provides that the whole of the Determination commences on 1 January 2021.

#### Section 3 – Authority

Section 3 provides that this instrument is made under subsection 524A(1) of the *Biosecurity Act 2015* (Biosecurity Act).

The note to this section explains that the Determination lists classes of goods for the purposes of infringement notices for alleged contraventions of certain provisions of the Biosecurity Act. An infringement notice may state 12 penalty units if the contravention relates to category 1 goods and 6 penalty units for category 2 goods in accordance with subsection 524(4) of the Biosecurity Act and the regulations made for the purpose of that subsection. Subsection 524(4) of the Biosecurity Act prescribes the amount to be stated in an infringement notice for the purposes of paragraph 104(i)(f) of the Regulatory Powers Act.

#### Section 4 – Period in force

Section 4 provides that the Determination is in force for 12 months beginning on 1 January 2021.

#### Section 5 – Definitions

Section 5 provides for definitions of *meat*, *meat product* and *retorted*.

This section defines *meat* as a part of an animal (other than a fish, cetacean, mollusc, crustacean, cnidarian, echinoderm or a tunicate) that is intended or able to be used as food by a human being or an animal (whether or not it is cooked, dried or otherwise processed). This definition includes blood, bone-meal, meat meal, tallow and fat.

A *meat product* is defined in section 5 as a product that contains meat or of which meat is an ingredient.

The term *retorted* is also defined in section 5 as heated in a hermetically-sealed container to a minimum core temperature of 100°C, obtaining an F<sub>0</sub> value of at least 2.8.

These definitions are required because meat or meat products that have been retorted are excluded from the class of goods known as 'meat and meat products' that is listed as a class of category 1 goods in section 6.

Paragraph 88(2)(b) of the Biosecurity Regulation, which was amended by the Amendment Regulation, provides that, the infringement notice amount is 6 penalty units where the contravention relates to category 2 goods.

The note to subsection 88(2) confirms that where an alleged contravention relates to category 1 goods, the amount is 12 penalty units, in accordance with subsection 524(4) of the Biosecurity Act. This is one fifth of the maximum penalty that a court could impose for a contravention of subsection 532(1) or 533(1) of the Biosecurity Act.

All other goods will continue to attract an infringement notice in the amount of 2 penalty units where they are not declared, in accordance with paragraph 88(2)(a) of the Biosecurity Regulation.

In allowing infringement notices to be issued that carry different penalties that reflect the goods in question and their level of biosecurity risk, the Determination promotes deterrence and the protection of Australia's biosecurity status. It does this by encouraging individuals to provide the required information relating to goods or classes of goods that have a high level of biosecurity risk associated with them, when arriving in Australian territory at a first point of entry. This will ensure biosecurity risk can be adequately identified, assessed and managed.

The Determination will remain in force for 12 months, beginning on 1 January 2021. This is the maximum period permitted under subsection 524A(3) of the Biosecurity Act.

#### **Details/Operation**

Details of the instrument are set out at Attachment A.

#### **Other**

The Determination is a legislative instrument but, under subsection 524A(4) of the *Biosecurity Act 2015*, section 42 (disallowance) of the *Legislation Act 2003* does not apply to the Determination. Consequently, a Statement of Compatibility with Human Rights is not required.

units that may be stated in an infringement notice for different kinds of alleged contraventions of provisions of the Biosecurity Act. Subsection 524(6) also allows amounts to be prescribed by reference to the kinds of goods or class of goods to which an alleged contravention relates. Subsection 524(7) permits regulations made for this purpose to apply, adopt or incorporate matters referred to in a determination made by the Director of Biosecurity under subsection 524A(1), as in force from time to time.

The *Biosecurity Amendment (Infringement Notices) Regulation 2020* (Amendment Regulation) which commenced on 1 January 2021, amended section 88 of the Biosecurity Regulation to prescribe different penalty amounts for infringement notices given for different kinds of alleged contraventions of the Biosecurity Act.

Subsection 88(2) of the Biosecurity Regulation prescribes different infringement notice amounts where an individual who is at a first point of entry allegedly contravenes subsection 532(1) or 533(1) of the Biosecurity Act when giving information or producing a document in compliance or purported compliance with a requirement under subsection 126(1) or 196(2) of the Biosecurity Act.

Subsection 88(2) prescribes these amounts by reference to *category 1 goods* and *category 2 goods*, which are defined in section 5 of the Biosecurity Regulation as those goods or classes of goods listed as such in a determination made under subsection 524A(1) of the Biosecurity Act.

Category 1 goods are listed in section 6 of the Determination as the following:

- Live plants
- Whole unprocessed seeds
- Meat and meat products, except meat or meat products that have been retorted
- Prawns that are raw or partially raw (that is, not sufficiently cooked to coagulate all of the protein in the prawn meat)
- Live animals, and the remains of animals that have died in transit before arriving in Australian territory or on arrival in Australian territory
- Eggs of a bird or reptile that are intended for hatching
- Veterinary vaccines.

Category 2 goods are listed in section 7 of the Determination as the following:

- Fresh fruit
- Fresh vegetables
- Fresh fungi
- Fresh leaves
- Fresh herbs

Subsection 524(4) of the Biosecurity Act provides that the amount to be stated in an infringement notice for the purposes of paragraph 104(1)(f) of the Regulatory Powers Act is the least of: one fifth of the maximum penalty that a court could impose for that contravention; 12 penalty units where the person is an individual; and, if the regulations prescribe a different number of penalty units for the alleged contravention, that number of penalty units.

Previously, 2 penalty units was prescribed as the amount payable under infringement notices issued to an individual for an alleged contravention of specified sections of the Biosecurity Act at a first point of entry, regardless of the relative biosecurity risk of goods involved.

There are exotic pests and pathogens commonly associated with certain goods that have a high likelihood of surviving, establishing and spreading in Australia. Where travellers knowingly fail to declare goods of a sort known to pose biosecurity risks (particularly conditionally non-prohibited goods) on arrival at a first point of entry, they deny biosecurity officers the opportunity to identify, assess and manage biosecurity risks. They also deny biosecurity officers the opportunity to determine if specified import conditions have been met and/or direct the goods to undergo regulatory requirements that must be undertaken upon the goods arriving into Australia, such as post-entry quarantine disease screening and/or testing. In these circumstances, it is only when goods of a sort known to pose biosecurity risks are detected and intercepted through other means (such as automated profiling of travellers, detector dogs or x-rays) that biosecurity risks can be identified, assessed and managed in accordance with Australian biosecurity law.

Under subsections 532(1) and 533(3) of the Biosecurity Act, where the person gives false or misleading information (or produces a false or misleading document) in compliance or purported compliance with a requirement under the Biosecurity Act, the person is likely to contravene the Biosecurity Act. Similarly, if the person fails to comply with a requirement to answer questions or provide information in writing about goods under subsection 126(1) or 196(2) of the Biosecurity Act, the person is also likely to contravene the Biosecurity Act.

If a biosecurity officer (who has the power to issue an infringement notice) believes on reasonable grounds that the person has contravened a provision subject to an infringement notice, the officer may give the person an infringement notice for the alleged contravention. Under subsection 523(1) of the Biosecurity Act, subsections 532(1) and 533(1) are provisions of the Biosecurity Act that are subject to an infringement notice under Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act).

The Determination reflects the policy position that goods that are assessed as posing a high level of biosecurity risk when travellers fail to declare them upon arrival in Australia should attract a higher infringement notice amount. Category 1 goods are the classes of goods that the Director of Biosecurity has determined, based on a risk assessment, pose the highest level of biosecurity risk in this context, while category 2 classes of goods pose a high level of biosecurity risk but not as high a biosecurity risk as category 1 goods.

It is appropriate that this Determination is exempt from disallowance due to the technical and scientific nature of the risk assessments used to determine the high level of biosecurity risk associated with the goods and classes of goods.

### **Consultation**

The Office of Best Practice Regulation (OBPR) was consulted regarding the *Biosecurity Amendment (Infringement Notices) Regulations 2020* (OBPR reference 42589). The OBPR advised that the proposal does not change the scope of the regulation as it increases non-compliance penalties in the existing regulation. A Regulation Impact Statement is not required. The Determination sets out the necessary detail for the proper administration of the matters set out in those Regulations. Further consultation was not required as the category 1 goods and category 2 goods listed in the Determination are based on technical and scientific assessments conducted by experts within the Department of Agriculture, Water and the Environment.

### **Impact and Effect**

The Amendment Act inserted subsections 524(6) and 524(7) into the Biosecurity Act. Subsection 524(6) permits regulations to be made to prescribe different numbers of penalty

## **EXPLANATORY STATEMENT**

Issued by Authority of the Director of Biosecurity

*Biosecurity Act 2015*

*Biosecurity (2021 Infringement Notices) Determination 2020*

### **Legislative Authority**

The *Biosecurity Act 2015* (Biosecurity Act) provides the Commonwealth with powers to assess and manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, or the environment.

Section 524A of the Biosecurity Act was inserted by the *Biosecurity Amendment (Traveller Declarations and Other Measures) Act 2020* (the Amendment Act), which commenced on 1 January 2021.

Subsection 524A(1) provides that the Director of Biosecurity may make a determination listing goods, or classes of goods, for the purposes of section 524 of the Biosecurity Act. Section 524 of the Biosecurity Act makes provision for the issuing of infringement notices under the Act and subsection 523(1) lists provisions of the Biosecurity Act that are subject to an infringement notice.

Under subsection 524A(2), the Director of Biosecurity may only make the determination if the Director is reasonably satisfied that there is a high level of biosecurity risk associated with the goods or the class of goods.

A determination made under subsection 524A(1) must specify the period during which the determination is to be in force, but the period must not be longer than 12 months. A determination made under subsection 524A(1) is a legislative instrument but is not subject to disallowance.

### **Purpose**

The *Biosecurity (2021 Infringement Notices) Determination 2020* (the Determination) lists goods, and classes of goods, that the Director of Biosecurity is satisfied have a high level of biosecurity risk associated with them. The Determination lists goods and classes of goods which are 'category 1 goods' or 'category 2 goods'.

Under subsection 88(2) of the Biosecurity Regulation 2016 (Biosecurity Regulation), when an infringement notice is issued to an individual at a first point of entry (such as an airport or seaport) for an alleged contravention of subsection 532(1) or 533(1) of the Biosecurity Act when giving information or producing a document in compliance or purported compliance with a requirement under subsection 126(1) or 196(2).

The Biosecurity Regulation prescribes different penalty unit amounts for infringement notices by reference to the goods and classes of goods listed in the Determination, and so allows for infringement notice amounts to reflect the relative biosecurity risk of the goods to which the alleged contravention relates.

### **Background**

All passengers, crew and persons in charge of an aircraft or vessel must provide information for the purposes of assessing the level of biosecurity risk associated with the person and any goods the person has with them when arriving in Australian territory at a first point of entry.

*First point of entry* is defined by section 18 of the Biosecurity Act.

## Section 6

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- (a) that contains meat; or
- (b) of which meat is an ingredient.

*retorted* means heated in a hermetically-sealed container to a minimum core temperature of 100°C, obtaining an  $F_0$  value of at least 2.8.

### 6 Category 1 goods

The following goods are listed as category 1 goods:

- (a) live plants; -
- (b) whole unprocessed seeds; -
- (c) meat and meat products, except meat or meat products that have been retorted;
- (d) prawns that are raw or partially raw (that is, not sufficiently cooked to coagulate all of the protein in the prawn meat);
- (e) live animals, and the remains of animals that have died in transit before arriving in Australian territory or on arrival in Australian territory;
- (f) eggs of a bird or reptile that are intended for hatching;
- (g) veterinary vaccines.

### 7 Category 2 goods

The following goods are listed as category 2 goods:

- (a) fresh fruit;
- (b) fresh vegetables;
- (c) fresh fungi;
- (d) fresh leaves;
- (e) fresh herbs.

### 8 Repeal

This instrument is repealed at the start of 1 January 2022.

## 1 Name

This instrument is the *Biosecurity (2021 Infringement Notices) Determination 2020*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 January 2021.	1 January 2021

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

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

## 3 Authority

This instrument is made under subsection 524A(1) of the *Biosecurity Act 2015*.

Note: This instrument lists classes of goods (called category 1 goods and category 2 goods) in relation to which the Director of Biosecurity is reasonably satisfied there is a high level of biosecurity risk. An infringement notice for an alleged contravention of certain provisions of the *Biosecurity Act 2015* may state 12 penalty units if the contravention relates to category 1 goods and 6 penalty units if the contravention relates to category 2 goods (see subsection 524(4) of the *Biosecurity Act 2015* and regulations made for the purpose of that subsection).

## 4 Period in force

This instrument is in force for 12 months beginning on 1 January 2021.

## 5 Definitions

In this instrument:

*meat*:

- (a) means a part of an animal (other than a fish, cetacean, mollusc, crustacean, cnidarian, echinoderm or a tunicate) that is intended or able to be used as food by a human being or an animal (whether or not it is cooked, dried or otherwise processed); and
- (b) includes blood, bone-meal, meat meal, tallow and fat.

*meat product* means a product:

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## **Biosecurity (2021 Infringement Notices) Determination 2020**

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I, Andrew Metcalfe, Director of Biosecurity, make the following determination.

Dated 16 December 2020

Andrew Metcalfe  
Director of Biosecurity

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documents) and proceedings for the contravention of sections 532 and 533 of the Biosecurity Act (in relation to false and misleading information and documents).

### **Summary**

These limitations of the right to be free from self-incrimination under Article 14(3)(g) of the ICCPR are permissible as protections such as those in section 635 of the Biosecurity Act apply to ensure the exercise of these powers is reasonable and proportionate to achieving the legitimate objective and adequate safeguards apply to prevent the risk of abuse or arbitrary exercise of discretion.

### **Conclusion**

The Regulations are compatible with human rights to the extent that where they may limit human rights, those limitations are reasonable, necessary and proportionate.

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

In particular, the Regulations will support the operation of subsection 196(2) of the Biosecurity Act by specifying higher infringement notice amounts than currently set for incoming passengers and crew who provide false or misleading information about goods or classes of goods listed in a determination made for the purposes of section 524 and may therefore be in breach of section 532(1) or 533(1) of the Biosecurity Act. Currently, section 88 of the Regulations provides for an infringement notice in the amount of two penalty units for contraventions of these sections. The Regulations prescribe two different penalty unit amounts: 2 penalty units if the contravention relates to goods that are not category 1 or category 2 goods; and 6 penalty units if the contravention relates to category 2 goods. The note to subsection 88(2) in the Regulations confirms that 12 penalty units will apply if the alleged contravention relates to category 1 goods as determined by subsection 524(4) of the Biosecurity Act.

Removing the privilege against self-incrimination for passengers and crew entering Australia is 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 in Australia.

Upholding the privilege against self-incrimination in relation to passengers and crew who have information regarding a potential biosecurity risk could have significant consequences such as reduced agriculture, fisheries or forestry productivity, serious environmental damage or increased costs associated with controlling pests and diseases. An animal disease outbreak (such as FMD) has the potential to cause significant and long-term damage to Australian industries and the reputation of Australia as a reliable producer of quality food and fibre.

Where incoming passengers and crew provide false and misleading information about goods in their possession, an increased penalty amount will apply if the alleged contravention of the Act relates to goods listed in the new determination. The current infringement notice amount will increase from two penalty units to 12 penalty units, for goods listed in a determination made under section 524A as category 1 goods, and 6 penalty units for goods listed in the same determination as category 2 goods.

Without the limitation of the right to be free from self-incrimination, the Commonwealth's ability to manage biosecurity risks at international passenger terminals will be significantly reduced. Removal of the privilege against self-incrimination ensures that the assessment of biosecurity risk and application of response measures can occur as urgently as is required in international passenger terminals and reflects the magnitude of the potential biosecurity risks. Once a passenger or crew member leaves the international passenger terminal, any biosecurity risk enters Australia's wider environment.

These limitations are reasonable and proportionate to achieving the objective, as section 635 of the Biosecurity Act also provides that self-incriminatory disclosures cannot be used against the person who made the disclosure either directly in court (use immunity) or indirectly to gather other evidence against the person (derivative use immunity). The only exception to the use and derivative use immunity are in relation to proceedings arising out of sections 137.1 and 137.2 of the *Criminal Code* (in relation to false and misleading information and

**Statement of Compatibility with Human Rights**

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

**Biosecurity Amendment (Infringement Notices) Regulations 2020**

This Legislative Instrument 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 Legislative Instrument**

The *Biosecurity Amendment (Infringement Notices) Regulations 2020* (the Regulations) amend the *Biosecurity Regulation 2016* (the 2016 Regulation) to prescribe different penalty amounts for infringement notices given for different kinds of alleged contraventions of provisions of the Biosecurity Act, as provided for by the *Biosecurity Amendment (Traveller Declarations and Other Measures) Act 2020* (the Traveller Declarations Act).

The Regulations also clarify that section 87 of the 2016 Regulation (prescribing the period for paying an amount under certain infringement notices given at a first point of entry) only applies when the infringement notice is for two penalty units and section 88 (prescribing the amount payable under certain infringement notices) applies only when an infringement notice is issued at a first point of entry to an individual for an alleged contravention of subsection 126(2), 128(2), 532(1) or 533(1) of the Biosecurity Act.

**Human rights implications**

The Regulations engages, or has potential to engage, the following rights:

- Right to be free from self-incrimination (Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR)).

*Right to be free from self-incrimination*

Article 14(3)(g) of the ICCPR protects the right of an individual to be free from self-incrimination in the determination of a criminal charge by providing that a person may not be compelled to testify against him or herself or confess guilt. Common law also recognises the privilege against self-incrimination which applies unless expressly or impliedly overridden by statute. The privilege against self-incrimination may be subject to permissible limits. Any limitations must be for a legitimate objective and be reasonable, necessary and proportionate to that objective.

The measures contained in the *Biosecurity Amendment (Traveller Declarations and Other Measures) Act 2020*, to which the Regulations give effect, do not themselves directly interfere with the right to be free from self-incrimination in certain circumstances: it is section 635 of the Biosecurity Act that expressly removes the privilege against self-incrimination in certain circumstances. Specifically, a person is not entitled to refuse to answer questions, provide information or produce documents under the provisions of the Biosecurity Act listed in subsection 635(1) on the ground that the answer, the information or

subsection 126(1) or 196(2) and the contravention relates to goods that are not category 1 goods or category 2 goods.

### **Item 3 – Subsection 87(2)**

Item 3 amends subsection 87(2) to substitute the word “individual” for “person” wherever occurring. This is to clarify that the subsection does not apply to a body corporate.

### **Item 4 – Section 88**

Item 4 repeals section 88 of the 2016 Regulation and substitutes a new section 88. Current section 88 prescribes 2 penalty units as the amount payable under infringement notices given to an individual for an alleged contravention of certain specified sections of the Biosecurity Act at a first point of entry.

New section 88 provides for different penalty unit amounts for the purposes of section 524(4)(c) of the Biosecurity Act that are proportionate to the type of contravention.

Subsection 88(1) provides that 2 penalty units are prescribed for an infringement notice for an alleged contravention of subsection 126(2), 127(3) or 128(2) of the Biosecurity Act. Further, 2 penalty units are prescribed for an alleged contravention of subsection 533(1) of the Biosecurity Act when an individual produces a document in compliance, or purported compliance, with a requirement under subsection 127(1).

Subsection 88(2) provides for different penalty unit amounts to be applied to infringement notices given to an individual who gives information or produces a document in compliance or purported compliance with a requirement under subsection 126(1) or 196(2) of the Biosecurity Act and in doing so allegedly contravenes subsection 532(1) or 533(1) of the Biosecurity Act (concerning the giving of false or misleading information and the giving of a document that the person knows is false or misleading).

Subsection 88(2) prescribes two different penalty unit amounts: 2 penalty units if the contravention relates to goods that are not category 1 or category 2 goods; and 6 penalty units if the contravention relates to category 2 goods.

The note to subsection 88(2) confirms that where an alleged contravention of the provisions mentioned in subsection 88(2) relates to category 1 goods, the amount is 12 penalty units in accordance with subsection 524(4) of the Biosecurity Act. It is therefore unnecessary to prescribe penalty units for contraventions that relate to category 1 goods in the Regulations.

These amendments reflect the policy position that goods that are assessed as posing a high level of biosecurity risk when travellers fail to declare them upon arrival in Australia should attract a higher infringement notice amount. Category 1 goods are the classes of goods that the Director of Biosecurity determines, based on a risk assessment, pose the highest level of biosecurity risk in this context, while category 2 goods pose a high level of biosecurity risk but not as high a biosecurity risk as category 1 goods.

## ATTACHMENT A

### Details of the *Biosecurity Amendment (Infringement Notices) Regulations 2020*

#### Section 1 – Name

Section 1 provides that the name of these regulations is the *Biosecurity Amendment (Infringement Notices) Regulations 2020* (the Regulations).

#### Section 2 – Commencement

Section 2 provides that the Regulations commence on 1 January 2021.

#### Section 3 – Authority

Section 3 provides that this instrument is made under the *Biosecurity Act 2015* (Biosecurity Act).

#### Section 4 – Schedules

Section 4 provides that an instrument specified in a Schedule to this instrument is amended or repealed as set out in the Schedule concerned, and any other item in a Schedule has effect according to its terms.

### **Schedule 1 – Amendments**

#### **Item 1 – Section 5**

Item 1 inserts definitions of “category 1 goods” and “category 2 goods” into section 5 of the *Biosecurity Regulation 2016* (2016 Regulation).

This is a consequential amendment to new section 524A of the Biosecurity Act (inserted by the Traveller Declarations Act) which provides that the Director of Biosecurity may, in writing, determine a list of goods, or classes of goods, for the purposes of section 524. The Director of Biosecurity may do so only if the Director of Biosecurity is reasonably satisfied that there is a high level of biosecurity risk associated with the goods or the class of goods.

#### **Item 2 – Subsection 87(1)**

Item 2 repeals subsection 87(1) of the 2016 Regulation and substitutes a new subsection 87(1).

Subsection 87(2) prescribes the periods within which individuals must pay amounts under infringement notices given at first points of entry (such as an airport or seaport).

New subsection 87(1) provides that subsection 87(2) applies to infringement notices issued for the following alleged contraventions of the Biosecurity Act:

- subsection 126(2), 127(3) or 128(2);
- subsection 533(1) when the individual produces a document in compliance, or purported compliance, with a requirement under subsection 127(1); and
- subsection 532(1) or 533(1) when the individual provides information or produces a document in compliance, or purported compliance, with a requirement under

Australian territory at a first point of entry to ensure biosecurity risk can be adequately assessed and managed.

#### **Details/Operation**

Details of the instrument are set out at Attachment A.

#### **Other**

The Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out at Attachment B.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 January 2021.

#### **Matter incorporated by reference**

These Regulations incorporate by reference a determination made by the Director of Biosecurity under subsection 524A(1) of the Biosecurity Act for the purposes of section 524 of the Biosecurity Act.

Under subsection 524A(1), the Director of Biosecurity may, in writing, determine a list of goods, or class of goods, for the purposes of section 524 of the Act only if reasonably satisfied that there is a high level of biosecurity risk associated with the goods or the class of goods. Subsection 524(7) of the Biosecurity Act permits the Regulations to make provision in relation to a matter by applying, adopting or incorporating any matter contained in that Determination as in force from time to time.

As the Determination will be a legislative instrument under subsection 524A(4) of the Biosecurity Act, it will be registered as a legislative instrument on the Federal Register of Legislation in accordance with section 15H of the *Legislation Act 2003*. The Determination will also be published on the website of the Department of Agriculture, Water and the Environment. The Determination will be able to be freely accessed and used by members of the public through both the Federal Register of Legislation and the Department's website.

a civil penalty of 60 penalty units if the person gives information in compliance or purported compliance with the Biosecurity Act and does so knowing that the information is false or misleading, or omits any matter or thing without which the information is misleading.

Similarly, a person who does not answer questions, or provide information in writing, in a response to a requirement of a biosecurity officer to do so where the biosecurity officer suspects, on reasonable grounds, that the person has information to answer questions or provide information in writing in relation to the goods, is liable to a civil penalty of 120 penalty units. A person who does not comply with a direction of a biosecurity officer not to move, deal with or interfere with goods, a direction to move the goods to a place specified by the biosecurity officer as soon as practicable, or any other direction relating to the movement of the goods is also liable to a civil penalty of 120 penalty units.

Subsection 523(1) of the Biosecurity Act provides that these provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act. If a biosecurity officer (who has the power to issue an infringement notice) is satisfied on reasonable grounds that the person has contravened a provision subject to an infringement notice, the officer may give the person an infringement notice for the alleged contravention.

Currently, section 88 of the 2016 Regulation provides that for paragraph 524(4)(c) of the Act (concerning the amount payable under the infringement notice) 2 penalty units are prescribed for an alleged contravention of subsection 125(2), 128(2), 532(1) or 533(1) of the Act. This is regardless of the relative biosecurity risks posed by undeclared goods.

There are continuing issues with individuals failing to declare goods when arriving in Australia, either when completing their incoming passenger card or crew declaration and/or in response to questioning by a biosecurity officer. Many goods carry the risk of introducing devastating pests and diseases into Australia, putting animal, plant and human health, and the environment, at risk. A current example might be pork products, which carry the risk of African Swine Fever.

### **Consultation**

Throughout the development of the Traveller Declarations Act, the Department of Agriculture, Water and the Environment consulted with Commonwealth agencies including the Department of Health, the Attorney-General's Department, the Department of the Prime Minister and Cabinet, the Department of Foreign Affairs and Trade, AusTrade, the Department of Home Affairs and the Australian Border Force.

The Office of Best Practice Regulation (OBPR) was consulted regarding the Regulations (consultation reference 42589). The OBPR advised that the proposal does not change the scope of the regulation as it increases non-compliance penalties in the existing regulation. A Regulation Impact Statement is not required.

### **Impact and Effect**

The Regulations will allow a differentiated, proportionate approach to setting the amount payable under infringement notices depending on the relative biosecurity risk posed by certain undeclared goods. They will enable infringement notices to state amounts payable that are linked to the kind of goods or class of goods associated with the alleged contravention, applying a risk-based compliance response to biosecurity risk consistent with good regulatory practice.

The Regulations will enhance deterrence and are designed protect Australia's biosecurity status by encouraging individuals to provide the required information when arriving in

## EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture, Drought and Emergency Management

*Biosecurity Act 2015*

*Biosecurity Amendment (Infringement Notices) Regulations 2020*

### Legislative Authority

The *Biosecurity Act 2015* (Biosecurity Act) provides the Commonwealth with powers to assess and manage the risk of pests and diseases causing harm to animal, plant and human health, or the environment.

Section 645 of the Biosecurity Act provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Biosecurity Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Biosecurity Act.

Section 524 of the Biosecurity Act modifies the operation of Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) in relation to matters to be included in an infringement notice. Subsection 524(5) provides that the regulations for the purposes of paragraph 524(4)(c) may prescribe different numbers of penalty units for different kinds of contraventions of provisions mentioned in subsection 523(1) of the Biosecurity Act, including, but not limited to, prescribing different numbers of penalty units depending on the kind or class of goods to which an alleged contravention relates. Subsection 524(3) of the Biosecurity Act provides that the regulations made for the purposes of paragraph 524(2)(b) may prescribe different periods for different contraventions of provisions mentioned in subsection 523(1), including, but not limited to, prescribing different periods depending on the kind of goods or class of goods to which an alleged contravention relates.

### Purpose

The *Biosecurity Amendment (Infringement Notices) Regulations 2020* (the Regulations) amend the *Biosecurity Regulation 2016* (the 2016 Regulation) to:

- insert new definitions of *category 1 goods* and *category 2 goods*;
- prescribe different penalty amounts for infringement notices given for different kinds of alleged contraventions of provisions of the Biosecurity Act;
- clarify the circumstances in which the prescribed period for paying an infringement notice in subsection 87(2) of the 2016 Regulation applies;
- clarify the amounts payable under certain infringement notices given to an individual at a first point of entry (for contraventions relating to category 2 goods and contraventions relating to goods other than category 1 goods or category 2 goods).

### Background

All passengers, crew and persons in charge of an aircraft or vessel must provide information for the purposes of assessing the level of biosecurity risk associated with the person and any goods the person has with them when arriving in Australian territory at a “first point of entry” (as defined by section 18 of the Biosecurity Act).

Where the person produces a document to another person in compliance or purported compliance with the Biosecurity Act and does so knowing that the document is false or misleading, the person is liable to a civil penalty of 60 penalty units. A person is also liable to

- 
- (b) an alleged contravention of subsection 533(1) of the Act when the individual produces a document in compliance, or purported compliance, with a requirement under subsection 127(1) of the Act.
  - (2) For the purposes of paragraph 524(4)(c) of the Act, the following amounts are prescribed for an infringement notice for an alleged contravention of subsection 532(1) or 533(1) of the Act by an individual who is at a first point of entry, when the individual gives information or produces a document in compliance, or purported compliance, with a requirement under subsection 126(1) or 196(2) of the Act:
    - (a) if the contravention relates to goods that are not category 1 goods or category 2 goods—2 penalty units;
    - (b) if the contravention relates to category 2 goods—6 penalty units.

Note: For an alleged contravention referred to in subsection (2) that relates to category 1 goods, the amount is 12 penalty units as determined by subsection 524(4) of the Act.

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## Schedule 1—Amendments

### *Biosecurity Regulation 2016*

#### 1 Section 5

Insert:

*category 1 goods* means goods that are:

- (a) listed as category 1 goods in a determination made by the Director of Biosecurity under subsection 524A(1) of the Act; or
- (b) included in a class of goods that is listed as category 1 goods in such a determination.

*category 2 goods* means goods that are:

- (a) listed as category 2 goods in a determination made by the Director of Biosecurity under subsection 524A(1) of the Act; or
- (b) included in a class of goods that is listed as category 2 goods in such a determination.

#### 2 Subsection 87(1)

Repeal the subsection, substitute:

- (1) Subsection (2) applies to an infringement notice for the following alleged contraventions by an individual who is at a first point of entry:
  - (a) an alleged contravention of subsection 126(2), 127(3) or 128(2) of the Act;
  - (b) an alleged contravention of subsection 533(1) of the Act when the individual produces a document in compliance, or purported compliance, with a requirement under subsection 127(1) of the Act;
  - (c) an alleged contravention of subsection 532(1) or 533(1) of the Act when:
    - (i) the individual gives information or produces a document in compliance, or purported compliance, with a requirement under subsection 126(1) or 196(2) of the Act; and
    - (ii) the contravention relates to goods that are not category 1 goods or category 2 goods.

#### 3 Paragraphs 87(2)(a) and (b)

Omit "person" (wherever occurring), substitute "individual".

#### 4 Section 88

Repeal the section, substitute:

#### **88 Amount payable under certain infringement notices given at a first point of entry**

- (1) For the purposes of paragraph 524(4)(c) of the Act, 2 penalty units are prescribed for an infringement notice for the following alleged contraventions by an individual who is at a first point of entry:
  - (a) an alleged contravention of subsection 126(2), 127(3) or 128(2) of the Act;

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## 1 Name

This instrument is the *Biosecurity Amendment (Infringement Notices) Regulations 2020*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 January 2021.	1 January 2021

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

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

## 3 Authority

This instrument is made under the *Biosecurity Act 2015*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Biosecurity Amendment (Infringement Notices) Regulations 2020

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 10 December 2020

David Hurley  
Governor-General

By His Excellency's Command

David Littleproud  
Minister for Agriculture, Drought and Emergency Management

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The effect of the amendment is to expand the list of visas that may be cancelled, to include the following temporary work visas and student visas:

- Subclass 400 (Temporary Work (Short Stay Specialist)) visa;
- Subclass 403 (Temporary Work (International Relations)) visa;
- Subclass 407 (Training) visa;
- Subclass 408 (Temporary Activity) visa;
- Subclass 417 (Working Holiday) visa;
- Subclass 457 (Temporary Work (Skilled)) visa;
- Subclass 462 (Work and Holiday) visa;
- Subclass 476 (Skilled–Recognised Graduate) visa;
- Subclass 482 (Temporary Skill Shortage) visa;
- Subclass 485 (Temporary Graduate) visa;
- Subclass 500 (Student) visa;
- Subclass 590 (Student Guardian) visa;
- Subclass 988 (Maritime Crew) visa.

Contraventions of the Biosecurity Act continue to pose an unacceptable threat to Australia's agriculture industry. African Swine Fever and Foot and Mouth Disease continue to be detected in meat products intercepted at airports. Studies have estimated \$50 billion of economic losses over ten years if there was a large to medium outbreak of Foot and Mouth Disease in Australia. In light of the ongoing risks, it is appropriate to strengthen the compliance tools available to deter and respond to behaviour that is in contravention of Australia's biosecurity laws. The original cancellation power in subregulation 2.43(1)(s), when created on 17 April 2019, targeted visitor visa holders because of the high volume of visitors to Australia each year and because sanctions other than visa cancellation are unlikely to be effective. It was noted, at that time, that other visa holders and Australian citizens who contravene the Biosecurity Act will continue to be dealt with via infringement notices, civil penalties, and criminal prosecutions.

However, in view of the scale of the threat and the need to strengthen deterrence, it is appropriate to include other temporary visas within the scope of the discretionary cancellation power. Whether the cancellation of a particular temporary work visa or a student visa on arrival at an airport in Australia is appropriate will depend on a number of factors as noted above. The Australian Government's intention and expectation is that, during the initial six months from commencement of the amendments on 1 January 2021, there will be an emphasis on education and counselling, with cancellation occurring only in egregious cases. This cautious and fair approach recognises that temporary workers and international students are important to Australia and have more substantial connections with Australia and Australians than most visitor visa holders. Visa cancellation officers will be provided with policy guidance about this phased implementation of the new regime.

The cancellation ground at paragraph 2.43(1)(s) allows cancellation of visas where:

- the holder is in Australia and has not been immigration cleared; and
- the Minister reasonably believes that the visa holder has contravened subsection 126(2), 128(2), 532(1) or 533(1) of the *Biosecurity Act 2015* (the Biosecurity Act).

The visa cancellation ground is enlivened by any attempt to mislead or deceive biosecurity officers. In summary, the relevant provisions of the Biosecurity Act have the following effect:

- Subsection 126(2) – A person who is required, by a biosecurity officer, to answer questions about goods, must comply with the requirement;
- Subsection 128(2) – A person must comply with a direction by a biosecurity officer in relation to the movement of goods;
- Subsection 532(1) – A person must not knowingly give false or misleading information for the purpose of the Biosecurity Act; and
- Subsection 533(1) – A person must not knowingly produce a false or misleading document for the purpose of the Biosecurity Act.

The visa cancellation ground gives the Minister (or the Minister's delegate) the discretion to cancel a prescribed visa at the point of arrival in cases where, for example, there has been an attempt to deceive a biosecurity officer about the presence of prohibited items in the person's luggage or possessions. The Minister (or the Minister's delegate) must have a reasonable belief that the contravention has occurred. This is a higher standard than reasonable suspicion. The higher standard is appropriate because the decision-maker will be responding to an alleged contravention that has occurred immediately before the referral for possible visa cancellation. The referral will usually be supported by an infringement notice issued by a biosecurity officer under the Biosecurity Act alleging a contravention of one of the four provisions. To issue an infringement notice, the biosecurity officer must have reasonable grounds for believing that the offence has occurred. In the context of an airport luggage inspection, the facts will usually be clear and uncontested.

In making a decision whether to cancel the visa, the decision-maker will provide procedural fairness to the visa holder and will weigh up a number of factors, including the seriousness of the breach, the potential threat posed by the prohibited item(s), the personal circumstances of the visa holder, and the consequences of visa cancellation for that person and others who may be affected.

In accordance with the merits review entitlements under the Migration Act, there is no provision for merits review by the Administrative Appeals Tribunal (AAT) if the visa is cancelled in immigration clearance. This is because the purpose of visa cancellation in immigration clearance is to provide for the immediate removal of the person from Australia.

The cancellation ground previously applied to the following visitor visas:

- Subclass 600 (Visitor) visa;
- Subclass 601 (Electronic Travel Authority) visa;
- Subclass 651 (eVisitor) visa;
- Subclass 676 (Tourist) visa;
- Subclass 771 (Transit) visa.

## ATTACHMENT B

### Details of the *Migration Amendment (Biosecurity Contraventions) Regulations 2020*

#### Section 1 – Name

This section provides that the title of the Regulations is the *Migration Amendment (Biosecurity Contraventions) Regulations 2020* (the Regulations).

#### Section 2 – Commencement

Subsection 2(1) provides that each provision of the Regulations specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

The table states that the Regulations commence on 1 January 2021.

A note clarifies that this table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of the Regulations. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 of the table provides the date/details of the commencement date.

The purpose of this section is to provide for when the amendments made by the Regulations commence.

#### Section 3 – Authority

This section provides that the Regulations are made under the *Migration Act 1958* (the Migration Act).

#### Section 4 – Schedules

The purpose of this section is to provide for how the amendments in these Regulations operate.

#### Schedule 1 – Amendments

##### *Migration Regulations 1994*

#### Item 1 – Subparagraphs 2.43(1)(s)(i) to (v)

This item repeals subparagraphs 2.43(1)(s)(i) to (v) and inserts new subparagraphs 2.43(1)(s)(i) to (xviii). The subparagraphs prescribe the visa subclasses that are subject to discretionary cancellation under the cancellation ground set out in paragraph 2.43(1)(s) of the *Migration Regulations 1994* (the Migration Regulations).

## **Conclusion**

The changes made by this amendment are for the legitimate purpose of protecting the Australian community from the risk of harm posed by biosecurity threats. Therefore, the amendment is compatible with human rights as, to the extent it may limit some human rights, those limitations are reasonable, necessary and proportionate to its objective.

contact with the visa applicant. The amendments however, do not prevent family members from maintaining contact using other means, in particular those they would ordinarily use to maintain contact whilst not visiting each other.

Further, the exclusion from the grant of a subsequent visa following visa cancellation is temporary and subject to a discretion to grant the visa despite the visa applicant not meeting public interest criterion 4013 where:

- there are compelling circumstances that affect the interests of Australia; or
- compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, justifying the granting of the visa within three years after the cancellation.

This exception allows for the consideration of these rights in the context of the individual circumstances of particular visa holders. As such, the amendment is consistent with the rights under Articles 17 and 23 of the ICCPR.

### **Right to privacy**

Article 17(1) of the ICCPR states:

*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

This amendment extends the circumstances in which personal information can be collected and disclosed by customs and biosecurity officers for the purpose of identifying non-citizens who breached the Biosecurity Act. Information sharing and disclosure between Commonwealth officers is subject to the requirements of the *Privacy Act 1988* and will be guided operationally through the development of procedural instructions, including referral guidelines to protect the privacy rights of non-citizens.

Information collection, use and disclosure to allow consideration of the cancellation ground in this amendment is not arbitrary or unreasonable because it is in the public interest that information held by the Department, including information provided to the Department by other agencies, be effectively utilised to arrive at lawful and merit-based decisions. Further, it supports the legitimate objective of upholding the migration and biosecurity frameworks as such information could be used to protect the safety of the community where a person has provided false or misleading information or not disclosed relevant information.

The collection, use and disclosure of personal information, in accordance with the requirements of the *Privacy Act 1988*, for the purpose of identifying non-citizens who contravene the Biosecurity Act, is a reasonable and proportionate measure to achieve the intended operation of cancellation grounds for the purpose of protecting the Australian community. Any interference with the privacy of the person who has contravened the Biosecurity Act, in order to help identify them, would therefore not be unlawful or arbitrary under Article 17 of the ICCPR.

This discretion allows the decision-maker to consider the best interests of an affected child as a primary consideration in determining whether to grant the visa under the exception. This is consistent with the obligation under Article 3 of the CRC.

### **Rights in relation to family**

Article 17(1) of the ICCPR states:

*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.'*

Article 23(1) of the ICCPR states:

*The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

Article 17 of the ICCPR sets out a prohibition on arbitrary and unlawful interference with the family and Article 23 sets out an obligation about the protection of the family. These obligations may be engaged by extending the visa cancellation ground under paragraph 2.43(1)(s) to include student and temporary work visas, to the extent that such visa holders may be detained or removed from Australia because of their visa being cancelled. In some circumstances, the detention or the removal of a person from Australia may result in the separation of family members as a direct consequence of action taken by Australia. In other circumstances, separation of family members will be a consequence of the choices made by family members who continue to have an entitlement to remain in Australia.

To the extent that family members are separated as a direct consequence of action taken by the Commonwealth, it will not be an unlawful or arbitrary interference with the family or otherwise impermissibly limit Articles 17 or 23. These rights can be subject to proportionate and reasonable limitations that are aimed at legitimate objectives. In the case of these measures, these objectives include the protection of the Australian community from biosecurity risks.

As discussed above, extending the ground for cancellation under paragraph 2.43(1)(s) to include student and temporary work visas is necessary as an additional measure to protect the Australian community from biosecurity hazards. Further, the impact of a cancellation decision on the visa holder's family members in Australia will be taken into account as part of the discretionary decision to cancel the visa. While rights relating to family generally weigh against cancellation, these rights do not grant an absolute right to remain in Australia and so they also need to be considered in conjunction with the risk that contraventions of the Biosecurity Act will have on Australia's community, agriculture and biosecurity.

The amendment will also have the practical effect of extending Public Interest Criterion 4013 so that visa applicants who have had a previous Student or Temporary Work visa cancelled under paragraph 2.43(1)(s) in the last three years, cannot satisfy the criterion unless there are compelling reasons to justify the grant of the visa. This will engage the rights under Articles 17 and 23 of the ICCPR to the extent that the visa applicant has family members who reside in Australia to whom Australia's international legal obligations apply. This is because it will affect the ability of the visa applicant's family members residing in Australia to have physical

## Rights relating to children

Article 3(1) of the CRC states:

*In all actions concerning children, whether undertaken by a public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

This amendment engages this obligation in relation to any decision to cancel a visa held by the child themselves or a visa held by a parent or family member of the child. In the former circumstance, the effect would be that the child may be detained or removed pursuant to the Migration Act. In the latter, the effect may be that the parent or family member is detained or removed under the Migration Act. Temporary visa holders who are members of the family unit (including spouses, partners and children) of a person whose temporary visa is cancelled will have their visas consequentially cancelled by operation of law. In most cases, this means that a family travelling together will be removed together if the primary holder has their visa cancelled. Of the primary visa grants to international students in 2019-20 (to 29 February 2020), most were to individuals who were adults.

The best interests of the child are *a*, not *the*, primary consideration to be taken into account in decisions affecting a child and may be outweighed by countervailing primary considerations including the safety of the Australian community. The discretionary decision to cancel a visa under paragraph 2.43(1)(s) will allow the decision-maker to appropriately weigh the best interests of any children in Australia against other primary considerations, including the risks to the Australian community from biosecurity hazards. Further, to ensure targeted application of this ground and effective deterrence, there will be policy guidance to assist decision-makers to appropriately consider the best interests of the child and how to weigh these against other primary considerations. Accordingly, on the basis that the best interests of the child are treated as a primary consideration in the exercise of the discretion to cancel a visa, this amendment is consistent with Article 3(1) of the CRC.

Furthermore, this amendment has the practical effect of extending Public Interest Criterion 4013 so that visa applicants who have had a previous Student or Temporary Work visa cancelled under paragraph 2.43(1)(s) in the last three years, cannot satisfy the criterion unless there are compelling reasons to justify the grant of the visa. This may engage the obligation under Article 3 of the CRC to the extent that the visa applicant has family members who are children who reside in Australia to whom Australia's international obligations apply. The inability to have a visa granted for three years would have an impact on the ability of the visa applicant's family members residing in Australia to have physical contact with the visa applicant.

However, under paragraph 4013(1) of Schedule 4 of the Regulations a decision-maker assessing the subsequent visa application has the discretion to grant the visa if satisfied, in the applicant's particular case, that:

- there are compelling circumstances that affect the interests of Australia; or
- compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, justifying the granting of the visa within three years after the cancellation.

Article 3(1) of the CAT states:

*No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*

As a person whose visa is cancelled is liable for removal from Australia under the Migration Act and the amendment means that a greater number of people may be subject to cancellation and hence removal, the amendment potentially engages Article 3(1) of the CAT and Articles 6 and 7 of the ICCPR.

Australia remains committed to its international obligations concerning non-refoulement. There is scope for these obligations to be considered as part of the decision to cancel a visa or through the protection visa process if the person makes a claim for Australia's protection from these kinds of harm. Individuals would not be subject to removal unless and until any claims for protection they may have had been assessed according to law. As such, this amendment does not affect Australia's commitment to complying with its non-refoulement obligations in relation to Article 3 of the CAT and Articles 6 and 7 of the ICCPR.

### **Expulsion of aliens**

Article 13 of the ICCPR states:

*An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.*

Under international law, Australia has the right to take reasonable steps to control the entry and stay of aliens. Decisions to cancel a visa for contraventions of certain sections of the Biosecurity Act will be made in accordance with the Migration Act and the Regulations including under paragraph 2.43(1)(s).

To the extent individuals will have their visa cancelled which leads to their expulsion, the processes are in accordance with Article 13 in that, prior to a decision to cancel, the visa holder is provided with adequate opportunity to put forward reasons as to why their visa should not be cancelled to a delegated officer. Procedural fairness provisions for visa cancellations are enshrined in Subdivision E of the Migration Act and will apply to these decisions and judicial review in Australian courts is available. As such, this amendment does not infringe on Article 13 of the ICCPR.

## Right to liberty

Article 9(1) of the ICCPR states:

*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

The purpose of the Migration Act is to 'regulate, in the national interest, the coming into and presence in Australia of non-citizens'. A visa holder whose visa is liable for cancellation may be detained under section 192 of the Migration Act for up to four hours for the purposes of questioning. An officer may then question the individual who has been detained about the person's visa and matters relevant to that visa. A person whose visa is cancelled becomes an 'unlawful non-citizen' under the Migration Act and is liable for removal under s198 and/or immigration detention under s189 of the Migration Act.

Individuals whose visas are cancelled on the biosecurity ground would be refused immigration clearance and returned to their country of origin or citizenship on the next available flight. In instances where it is not feasible to return the individual to their country of origin or citizenship straight away, the visa cancellation may result in immigration detention until it is reasonably practicable to remove the individual.

The cancellation of an individual's visa in these circumstances is aimed at achieving a legitimate purpose – the protection of the Australian community from biosecurity risks that threaten the agricultural industry, economy and international trading reputation and the integrity of the migration program.

Decision-makers exercising the discretion to cancel a person's visa will be guided by comprehensive policy guidelines and will take into account the individual's circumstances, relevant international obligations, seriousness of the breach and the consequences for the individual. The individual will be given the opportunity to provide reasons why the visa should not be cancelled. Judicial review of a decision to cancel is available. That is, procedural fairness is afforded in the visa cancellation process. As such, the visa cancellation decision, and any consequent detention are not arbitrary. Rather they constitute a proportionate response to the individual circumstances of each case.

In light of the above considerations, to the extent the amendments may engage the right under Article 9 of the ICCPR, the proposed amendments are consistent with Article 9(1) of the ICCPR as any detention would be lawful and would not be arbitrary.

## Non-refoulement obligations

Article 6 of the ICCPR states:

*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

Article 7 of the ICCPR states:

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

indicates that less restrictive alternatives like infringements and civil penalties have not altered non-compliant behaviour.

Accordingly, any limitation on the right to work of a person whose visa is cancelled based on the ground in this amendment would be reasonable, necessary and proportionate in the context of protecting Australia from the risk that contraventions of the Biosecurity Act will have on Australia's community, agriculture and biosecurity.

### **Right to Education**

Article 13(1) of the ICESCR states:

*The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*

The amendment may engage this right where a student visa holder has their visa cancelled as a result of the biosecurity-related cancellation ground being extended to Student visas. Visa cancellation may result in disrupting the individual commencing or continuing their education in Australia.

Decision-makers considering whether cancellation of a student visa is appropriate may take into account Australia's reputation as an international education destination and the significant financial investment made by the student in education fees and charges and living arrangements. The individual will be given the opportunity to provide the decision maker with reasons as to why the visa should not be cancelled, such as the individual's circumstances and the consequences of cancelling the visa for the individual. The decision maker will consider these factors in relation to the seriousness of the breach and will only exercise their discretion to cancel a visa if they are reasonably satisfied that the reasons to cancel the visa are not outweighed by the reasons to not cancel.

As noted above, visa holders are responsible for complying with Australian laws and visas are granted on the understanding that not complying with relevant laws may lead to cancellation of the visa under the Migration Act. Extensive communications campaigns will ensure that visa holders affected by this amendment are aware of the relevant biosecurity laws and the consequences of the contravention of those laws.

A cancellation of a visa only occurs where the decision-maker is satisfied that the nature and seriousness of the offence outweigh matters raised by the individual. Accordingly, any limitation on the right to education of a person whose visa is cancelled on the basis of the ground in this amendment would be reasonable, necessary and proportionate in the context of protecting Australia from the risk that contraventions of the Biosecurity Act will have on the community, agriculture and biosecurity.

This amendment neither deprives people of work unfairly nor does it seek to preclude foreign nationals from entering and working temporarily in Australia. Visas are granted under the student and temporary work visa programs with the expectation that the visa holder will obey Australia's laws, make a positive contribution to Australian society, and respect community values.

As noted above, States are able to set the conditions for the entry and stay of aliens. Article 4 of ICESCR provides that the State may subject the rights enunciated in the ICESCR:

*...only to such limitations as are determined by law only insofar as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in democratic society.*

This amendment may engage the right in Article 6 due to the practical effect of cancelling a visa holder's temporary work visa under paragraph 2.43(1)(s), which would mean the person would not be able to commence, remain or continue their employment in Australia. This discretionary cancellation ground would be available in situations where, at the port of entry, the Minister reasonably believes that the visa holder has contravened subsection 126(2), 128(2), 532(1) or 533(1) of the Biosecurity Act, which includes where the non-citizen fails to comply with the directions of a biosecurity officer in relation to the provision of information or movement of goods, or knowingly provides false or misleading information or documents such as an incoming passenger card.

This amendment seeks to balance the right to protect the Australian community from biosecurity risks with the right to work for individuals who temporarily enter Australia for work purposes. Visa holders must comply with Australian laws and visas are granted on the understanding that not complying with relevant laws may lead to cancellation of the visa under the Migration Act.

As noted above, extensive communications campaigns will ensure that visa holders affected by this Amendment are aware of the relevant biosecurity laws and the possible consequences of the contravention of those laws.

Visa cancellations on the biosecurity-related ground are discretionary meaning that even if the grounds for cancellation exist, the Minister (or delegate) does not have to cancel the visa. Decision makers who are considering the cancellation of a temporary work visa may do so while taking into account a range of factors, including the impact on the Australian employer of the individual. The individual will also be given the opportunity to provide the decision maker with reasons as to why the visa should not be cancelled, such as the individual's circumstances and the consequences of cancelling the visa. The decision maker will consider these factors in relation to the seriousness of the breach as part of their decision-making process. While, if their visa is cancelled, the individual would be deprived of the ability to undertake the work in Australia for which their visa was granted, this would be the consequence of the individual's disregard for Australia's biosecurity laws.

Given that many temporary work visa holders work in sectors directly impacting on biosecurity (eg agricultural labour and animal farming industry), any risks presented by these cohorts need to be effectively mitigated. The ability to cancel visas for egregious or repeat offending would provide a strong deterrent. Further, the available statistical evidence

*The [ICCPR] does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the [ICCPR] even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.*

*Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the [ICCPR].*

As such, Australia is able to set requirements for the entry of non-citizens into Australia and conditions for their stay, and does so on the basis of reasonable and objective criteria.

The amendment to extend the availability of the biosecurity cancellation ground to student and temporary work visa holders is intended for the legitimate objective of addressing biosecurity concerns from all student and temporary work visa holders who bring in goods that could compromise Australia's biosecurity, irrespective of which country the visa holder originates from. Noting the statistics on infringement notices issued in recent years, these categories of visa holder have presented significant biosecurity risks and extending the availability of the biosecurity-related cancellation ground to these visa holders to address these risks and further deter non-compliance with biosecurity laws is a necessary and proportionate response.

The objective of the Migration Act is to 'regulate, in the national interest, the coming into, and presence in, Australia of non-citizens'. The Government is committed to protecting the Australian community from biosecurity risks to Australian agriculture posed by non-citizens who bring prohibited goods through ports of entry. Data provided by the Department of Agriculture, Water and the Environment indicates that in 2018-19 and 2019-20, biosecurity-related infringement notices issued to temporary entrants arriving for education and employment purposes remained the same at approximately 23 per cent and 5 to 6 per cent, respectively. This amendment will enhance the ability to protect the Australian community and agricultural systems from biosecurity risks, particularly given the emerging threat of African Swine Fever to the Australian pork industry.

The discretionary cancellation ground introduced by this amendment does not differentiate between adults and persons under the age of 18. However, as described below, the best interests of the child are, and will remain, a primary consideration in any decision on whether to cancel a visa held by the child themselves or a visa held by a parent or family member of the child.

### **Right to work**

Article 6(1) of the ICESCR states:

*'The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.'*

## ATTACHMENT A

### STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

#### **Migration Amendment (Biosecurity Contraventions) Regulations 2020**

This amendment 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 Amendment**

The Australian Government is committed to protecting the Australian community from biosecurity risks posed by non-citizens who bring prohibited goods through ports of entry. Contraventions of the *Biosecurity Act 2015* (Biosecurity Act) pose a serious threat to Australia's agriculture industry. The measures in this amendment to the *Migration Regulations 1994* (the Regulations) will enhance Australia's biosecurity regime and protect the Australian community and agricultural systems from biosecurity risks, particularly given the emerging threat of African Swine Fever in the region. It is crucial that African Swine Fever and Foot and Mouth disease outbreaks do not occur in Australia, especially at a time when the economy has already been weakened by COVID-19. A key Government priority is ensuring a bio-secure border and protecting the Australian economy, which in turn, relies on, to a significant extent, a strong agricultural industry.

Commencing on 17 April 2019, the *Migration Amendment (Biosecurity Contraventions and Importation of Objectionable Goods) Regulation 2019* ('the 2019 Amendment') amended the Regulations to:

- insert a discretionary cancellation ground, at paragraph 2.43(1)(s) of the Regulations, allowing cancellation of visitor visas (including tourist and transit visas) where:
  - the holder is in Australia and has not been immigration cleared; and
  - the Minister reasonably believes that the visa holder has contravened subsection 126(2), 128(2) 532(1) and 533(1) of the *Biosecurity Act 2015* (the Biosecurity Act); and
- amend Public Interest Criterion 4013 so that Visitor visa applicants, who have had a previous visa cancelled under one of the new grounds in the last three years, cannot satisfy this criterion for the grant of a visa unless there are compelling circumstances that affect the interests of Australia, or compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident, or an eligible New Zealand citizen to justify the grant of the visa.

This amendment builds upon the 2019 amendment to further deter non-citizens, specifically student visa holders and temporary work visa holders, from bringing in goods that could compromise Australia's biosecurity.

In accordance with the Biosecurity Act and the *Regulatory Powers (Standard Provisions) Act 2014* (the biosecurity regime), travellers may be fined or prosecuted for making a false declaration on their Incoming Passenger Card (IPC) relating to a biosecurity question. A

The current Migration Regulations have been in place since 1994, when they replaced regulations made in 1989 and 1993. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to respond quickly to emerging situations, such as the need to respond to biosecurity threats.

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at Attachment A.

Details of the Regulations are set out in Attachment B.

The Department of Home Affairs (the Department) has consulted with the Department of Agriculture, Water and the Environment, the Department of Education, Skills and Employment, and the Department of Foreign Affairs and Trade. This accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

The Office of Best Practice Regulation (OBPR) advised that a Regulation Impact Statement is not required (OBPR references 25096 and 26348).

The Migration Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations commence on 1 January 2021.

The Department follows standard practices to notify clients about the Regulations, including updating its website and notifying peak bodies. An effective communications campaign with strong pre-departure messaging will ensure that student and temporary work visa holders do not inadvertently contravene biosecurity requirements due to education levels and English language skills.

The Regulations are a legislative instrument for the purpose of the Legislation Act.

## **EXPLANATORY STATEMENT**

Issued by the Minister for Population, Cities and Urban Infrastructure  
for the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

### *Migration Act 1958*

#### *Migration Amendment (Biosecurity Contraventions) Regulations 2020*

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act. Paragraph 116(1)(g) of the Migration Act permits grounds for cancellation of visas under section 116 of the Migration Act to be prescribed.

The *Migration Amendment (Biosecurity Contraventions) Regulations 2020* (the Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to prescribe additional visa subclasses that may be cancelled if the visa holder is in Australia, and has not been immigration cleared, and the Minister reasonably believes that the visa holder has contravened subsection 126(2), 128(2), 532(1) or 533(1) of the *Biosecurity Act 2015* (the Biosecurity Act).

In particular, the Regulations include temporary work visas and student visas within the scope of the cancellation power at paragraph 2.43(1)(s) of the Migration Regulations, whereas the cancellation power previously applied only to visitor visas.

Contraventions of the Biosecurity Act pose a serious threat to Australia's agriculture industry. Following the successful introduction, from 17 April 2019, of a power to cancel visitor visas for biosecurity contraventions, it is appropriate to respond to the serious and ongoing threat by expanding the cancellation power to include temporary work visas and student visas. The Regulations give decision-makers (delegates of the Minister) a discretion to cancel temporary work visas and student visas at the point of arrival in cases where there has been an attempt to deceive a Biosecurity officer about the presence of prohibited items in the person's luggage or possessions. In making a decision, decision-makers will weigh up a number of factors, including the seriousness of the breach and the consequences to the passenger.

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. It has been the consistent practice of the Government of the day to provide for detailed visa cancellation grounds in the Migration Regulations, to supplement the cancellation grounds in the Migration Act. The Migration Act expressly provides, in paragraph 116(1)(g), for these matters to be prescribed in regulations.

person's visa may also be cancelled under the *Migration Act 1958* (Migration Act) if they provide incorrect answers on their IPC.

The 2019 amendment responded to limitations in this legislative coverage. For example, a person may declare on their IPC that they are bringing in goods that fall under the category of: "meat, poultry, fish, seafood, eggs, dairy, fruit and vegetables". However, when the person is questioned by a biosecurity officer, they may state untruthfully that they only have a piece of fruit in their luggage. A luggage search might then reveal, for example, significant quantities of meat products - a serious threat to Australia's biosecurity. In this situation, no false declaration has been made on the IPC as meat is covered under the category of goods that the passenger declared on their card. Accordingly, the visa could not be cancelled. The offender would be issued an infringement notice under the biosecurity regime for attempting to mislead the biosecurity officer, the payment of which would discharge them of civil and/or criminal liability, despite their disregard for Australia's biosecurity laws. The effect of the 2019 amendment was to allow visitor visas to be cancelled in this situation, thus providing an immediate and effective deterrent to actions that pose a serious risk to Australia. The 2019 amendment therefore provided an option to prevent the offenders from entering Australia on the basis of their disregard for Australia's biosecurity laws.

The cancellation ground introduced by the 2019 amendment for visitor visa holders, and extended by this amendment to student and temporary work visa holders, is available in situations where, at the port of entry, the non-citizen fails to comply with the directions of a biosecurity officer in relation to the provision of information or movement of goods, or knowingly provides false or misleading information or documents.

This amendment extends this cancellation regime to the student and temporary work visa subclasses listed below:

- Subclass 400 (Temporary Work (Short Stay Specialist) visa;
- Subclass 403 (Temporary Work (International Relations)) visa;
- Subclass 407 (Training) visa;
- Subclass 408 (Temporary Activity) visa;
- Subclass 417 (Working Holiday) visa;
- Subclass 457 (Temporary Work (Skilled)) visa;
- Subclass 462 (Work and Holiday) visa;
- Subclass 476 (Skilled-Recognised Graduate) visa;
- Subclass 482 (Temporary Skill Shortage) visa;
- Subclass 485 (Temporary Graduate) visa;
- Subclass 500 (Student) visa;
- Subclass 590 (Student Guardian) visa;
- Subclass 988 (Maritime Crew) visa.

Extending the visa cancellation ground to include these student and temporary work visas will strengthen the government's ability to manage serious biosecurity risks, such as African Swine Fever and Foot and Mouth Disease, at ports of entry.

Biosecurity officers have continued to detect African Swine Fever virus fragments in a significant quantity of meat products intercepted at Australian airports. If undetected, these products could have transmitted the virus into Australia's biosecurity system. In October 2019, Australian Border Force (ABF) officers first cancelled an international traveller's visa