

EXPLANATORY STATEMENT

Issued by Authority of the Deputy Prime Minister and Minister for Agriculture and Water Resources

Biosecurity Act 2015

Biosecurity Regulation 2016

Legislative Authority

The *Biosecurity Act 2015* (the 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, the environment and the economy.

Section 645 of the Biosecurity Act provides that the Governor-General may make regulations regarding 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. Under this Section the Governor-General may also make regulations relating to offences and penalties that will apply if a provision under the Biosecurity Act is not complied with.

Purpose

The *Biosecurity Regulation 2016* (the Biosecurity Regulation) prescribes important information relating to the exercise of powers by officials under the Biosecurity Act and sets out the necessary information and reporting requirements that those regulated by the Biosecurity Act are required to provide. The Biosecurity Regulation prescribes time limits for decision-making under the Biosecurity Act along with types of penalties and the maximum amounts that may be incurred under the Biosecurity Act. The Biosecurity Regulation also sets out procedures that officials operating under the Biosecurity Act must follow and introduces additional measures available to biosecurity officers to allow for the assessment and management of biosecurity risk.

The Biosecurity Regulation works in conjunction with the following regulations and legislative instruments:

- *Biosecurity (Acceptable Ballast Water Exchange Area) Declaration 2016;*
- *Biosecurity (Exposed Conveyances—Exceptions from Biosecurity Control) Determination 2016;*
- *Biosecurity Charges Imposition (General) Regulation 2016;*
- *Biosecurity Charges Imposition (Customs) Regulation 2016;*
- *Biosecurity (Reportable Biosecurity Incidents) Determination 2016;*
- *Biosecurity (Consequential Amendments and Transitional Provisions) Regulation 2016;*
- *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016;*
- *Biosecurity (Biosecurity Activity Zone) Determination 2016;*

- *Biosecurity (Movements between Parts of Australian Territory) Declaration 2016;*
- *Biosecurity (First Point of Entry—[Landing Place]) Determination 2016*
- *Biosecurity (First Point of Entry—[Port]) Determination 2016*
- *Biosecurity (Human Health) Regulation 2016;*
- *Quarantine Signals Regulation 2016;*
- *Biosecurity (Negative Pratique) Instrument 2016;*
- *Biosecurity (Managing Human Remains) Instrument 2016;*
- *Biosecurity (Listed Human Diseases) Determination 2016;*
- *Biosecurity (Ship Sanitation Certification Scheme) Declaration 2016;*
- *Biosecurity (Entry Requirements) Determination 2016; and*
- *Training and Qualifications of Biosecurity Officers Determination 2016.*

The following information provides an overview of the purpose of each Chapter of the Biosecurity Regulation.

Chapter 1—Preliminary

Part 1 outlines preliminary matters associated with the Biosecurity Regulation. These matters include the title, commencement and authority for the Biosecurity Regulation. Part 1 also extends the operation of the Biosecurity Act to the Norfolk Island from 1 July 2016.

Part 2 defines a number of expressions used in the Biosecurity Regulation.

Chapter 2—Managing biosecurity risks: goods

Part 1 outlines the information that must be included in a notice of goods to be brought into Australian territory and unloaded at a landing place or port in Australian territory, the manner in which the notice or report must be given, to whom it may be given, and the time or the period of time during which the notice must be given. These notices provide the information required to assess biosecurity risk associated with goods. Part 1 also outlines the exceptions to requirements to give a notice.

Part 2 prescribes an additional measure relating to the management of biosecurity risk associated with goods that are subject to biosecurity control. It provides biosecurity officers with the power to isolate goods in or on premises. Part 2 also prescribes associated offences and civil penalty provisions for non-compliance that are not specified in the Biosecurity Act.

Part 3 provides for designated biosecurity control release areas in international passenger terminals at airports and ships' ports, and at international mail centres. This allows for high-volume, low-risk goods to be automatically released from biosecurity control, allowing biosecurity officers to focus on higher risk goods.

Part 4 outlines the process for conducting a Biosecurity Import Risk Analysis (BIRA). This includes requiring the Director of Biosecurity to prepare draft, provisional and final BIRA reports, ensure that each of those reports are published and that they contain specified information.

Part 4 also outlines the process to be followed by the Inspector-General if requested to review a BIRA, and the content that must be included in reports after a review has been completed. This would mean that the process for conducting a BIRA is subject to review.

Part 5 facilitates the Director of Biosecurity being provided with enough information to make a decision in relation to an application for a permit to bring or import conditionally non-prohibited goods into Australian territory.

To facilitate an application to bring or import conditionally non-prohibited goods into Australian territory being processed within a reasonable timeframe, this Part sets out the timeframes within which the Director of Biosecurity must make a decision regarding a permit application. It also includes circumstances where the time for making a decision in relation to a permit application may be extended.

Chapter 3—Managing biosecurity risks: conveyances

Part 1 outlines the information that must be included in a pre-arrival report for conveyances entering Australian territory, the manner in which the report must be given, to whom it may be given, and the time or the period during which the report must be given. These reports provide the information required to assess biosecurity risk associated with goods, conveyances and people entering or intending to enter Australian territory. Part 1 also outlines the exceptions to requirements to give a report.

Part 2 specifies matters, and prescribes an additional measure, relating to the assessment and management of biosecurity risk associated with conveyances that are subject to biosecurity control. It provides for the power to set traps in or on conveyances, and specifies associated offences and civil penalty provisions for non-compliance.

Part 2 also prescribes the kinds of goods which, when exposed to a conveyance, make the conveyance subject to biosecurity control. It also lists the class of persons who are required to provide information about persons or accompanying goods when arriving in Australian territory on an incoming aircraft or vessel. This enables the level of biosecurity risk to be assessed and, if required, to be managed.

Part 3 prescribes the requirements to be met for a landing place or port to be determined as a first point of entry by the Director of Biosecurity or the Director of Human Biosecurity. Additionally, this Part provides the circumstances in which a Director may vary or revoke a determination of a landing place or port as a first point of entry, or vary conditions specified in a determination. These requirements mean that a landing place or port has appropriate facilities and procedures to effectively manage biosecurity risks.

Chapter 4—Ballast water and sediment

This Chapter outlines processes and requirements for reporting ballast water discharges, managing discharge of ballast water, and ballast water management plans, certificates and records. These requirements would facilitate Australia meeting its obligations under the *International Convention for the Control and Management of Ships' Ballast Water and Sediments* (the Ballast Water Convention). The processes, requirements and methods of ballast water management are based on scientific research and evidenced as being the most effective methods to manage biosecurity risk. The provisions help protect Australia's marine

industries from invasive marine pests found in ballast water and sediment. The Chapter also provides exemptions for vessels that are not required to meet the requirements of Chapter 5 of the Biosecurity Act.

Chapter 5—Managing biosecurity risks: monitoring, control and response

This Chapter prescribes an additional measure relating to the management of biosecurity risk associated with goods or conveyances that have been released from biosecurity control, or goods or conveyances that contain or have been manufactured from goods or conveyances that have been released from biosecurity control. It provides for the power to require these goods and conveyances to be exported from Australia, and specifies associated offences and civil penalty provisions for non-compliance.

Chapter 6—Approved arrangements

This Chapter prescribes the requirements for the Director of Biosecurity to approve a proposed arrangement or transfer or suspend all or part of an approved arrangement. This Chapter also prescribes the periods for notification and making decisions on request to suspend or revoke an approved arrangement. This Chapter specifies the information to be included in applications and the consideration period for applications.

By prescribing this information, the Biosecurity Regulation provides certainty to applicants for an approved arrangement as to how their applications for approved arrangements will be considered, and when decisions in relation to their applications will be made. This Chapter assists in providing the Director of Biosecurity with adequate information and time to make a decision about an application and that approved arrangements can only be transferred, suspended or revoked when it is appropriate to do so and when the management of biosecurity risk will not be compromised.

Chapter 7—Compliance and enforcement

This Chapter prescribes the period to pay an infringement notice, and in some circumstances the amount payable in that notice, where information or documents provided in compliance with the Biosecurity Act are false and misleading. Infringement notices provide an alternative to prosecution for an offence or litigation of a civil matter and is used to deal with less serious and less complex contraventions of the Biosecurity Act.

These provisions are designed to manage incoming passengers and goods in an airport or port (first point of entry) and operate in conjunction with powers provided to Department of Immigration and Border Protection officers under the *Customs Act 1901*, particularly where that legislation deals with incoming passenger cards.

Chapter 8—Governance and officials

Part 1 prescribes the processes the Inspector-General of Biosecurity must follow to conduct a review of the performance of functions, or exercise of powers, by biosecurity officials under the Biosecurity Act.

Part 1 also provides for requirements relating to setting an annual review program, receiving submissions on reviews, confidentiality, legal professional privilege and protecting the public interest, and consulting with the Director of Biosecurity and the Agriculture Minister.

Chapter 9—Miscellaneous

Part 1 specifies the intelligence agencies whose officers or employees may make a record of, disclose, or otherwise use protected information. This is necessary so that intelligence agencies are able to use information collected under the Biosecurity Act.

Part 2 prescribes the fees that may be charged in relation to fee-bearing activities and requirements regarding the payment of cost-recovery charges. These include the time for payment, the person liable to pay certain charges, late payment fees for unpaid charges, the person liable to pay late payment fees, and the agent's liability to pay charges. These provisions form part of the cost-recovery framework that allows the Commonwealth to charge fees in relation to activities carried out under the Biosecurity Act.

Part 3 establishes the types of goods to which compensation can be applied, and processes that are fair, open and reasonable for the public to request compensation for items to retrieve their market value. Part 3 also prescribes the type of animals for which compensation may not be applied if they are destroyed at a post-entry quarantine facility. These provisions also establish the division of compensation between multiple owners for a compensable item and how the amount of compensation paid for that item is to be determined.

Part 4 prescribes areas of the Torres Strait as permanent biosecurity monitoring zones, additional to those already prescribed in the Biosecurity Act. This Part also exempts goods and conveyances that are covered by items 9, 10 and 11 of the *Biosecurity (Movements between parts of Australian Territory) Declaration 2016* from sections 119 and 191 of the Biosecurity Act so they do not become subject to biosecurity control. This Part exempts protected zone vessels (and persons and goods on board protected zone vessels) from certain provisions of the Biosecurity Act while the vessel is in the protected zone established under the *Torres Strait Treaty* (the Torres Strait Treaty) and prescribes the area in the protected zone.

Background

The Biosecurity Act commenced on 16 June 2016 –12 months after royal assent. The Biosecurity Act replaces the *Quarantine Act 1908* (the Quarantine Act) and provides a strong regulatory framework that enables the management of biosecurity risks in a modern and responsive manner. The Biosecurity Act enhances Australia's capacity to manage biosecurity risks into the future by providing a high-level legislative framework that clearly sets out the powers that can be exercised by officials as well as the requirements for those being regulated.

The Act is principles-based and lays the foundation for biosecurity risk management. The detail and specific information requirements for certain activities under the Biosecurity Act are provided for in the Biosecurity Regulation and other delegated legislation. The Biosecurity Regulation operates in conjunction with the Biosecurity Act and its other delegated legislation.

Impact and Effect

The Biosecurity Regulation prescribes a number of measures and obligations that are common between the Biosecurity Act and the Quarantine Act. Pre-arrival reporting, cost recovery and the isolation and export power provisions all support business as usual activities that were available under the Quarantine Act and therefore represent no substantive change.

The Biosecurity Regulation provides the necessary detail to facilitate regulatory certainty for those people affected about how and when their activities may be dealt with under the legislation. For example, the Biosecurity Regulation sets out information to be included in applications under the Act, decision-making time frames, the procedures and limits for the use of powers to treat or destroy goods under certain circumstances, and the type of penalty and maximum amounts that may be incurred if a provision is not complied with under the Regulation.

The Regulation outlines processes that are flexible and reflect contemporary industry practices to meet changing demands. For example, pre-arrival notices and reports may be provided by multiple persons. This reflects the practicalities of importing goods and allows a flexible approach to meeting reporting requirements. The Biosecurity Regulation imposes minimal regulatory burden while contributing towards achieving biosecurity outcomes and supporting compliance with the Biosecurity Act.

The Biosecurity Regulation also provides that the law applies to the appropriate individuals in a way that balances regulatory reduction and biosecurity management. To guarantee effective regulation without increasing red tape unnecessarily, exceptions have been provided. For example, the Biosecurity Regulation prescribes pre-arrival reporting for aircraft/vessels and notice of goods to be unloaded in Australian territory, such as reporting in relation to specified movements in the Torres Strait Islands and ballast water discharge reporting in specified circumstances. It also reduces administrative burden by providing for the automatic release of certain high-volume and low-risk goods from biosecurity control at first points of entry and international mail centres. Modifications are included in the Regulation to exempt the application of certain provisions of the Biosecurity Act and its delegated legislation where it would be overly burdensome or not required for the adequate assessment and management of biosecurity risk. By limiting the unnecessary regulatory and administrative burden, biosecurity resources are able to better focus on biosecurity risks that may cause the most harm.

The Biosecurity Regulation prescribes additional measures available to biosecurity officers to allow for assessment and management of biosecurity risk that are not already covered under the Biosecurity Act. These include isolating goods that are subject to biosecurity control, setting traps in or on conveyances that are subject to biosecurity control, and exporting goods and conveyances that are included in a biosecurity control order or are in a biosecurity response zone. The impact of these new powers on those being regulated by the Biosecurity Act will not change because these goods and conveyances are already subject to assessment and management under the Biosecurity Act. The measures will provide more options for biosecurity officers to assess and manage biosecurity risk most effectively, and will provide greater protection and flexibility for those being regulated.

The Biosecurity Regulation supports the ballast water and sediment management regime established under the Biosecurity Act which will prepare Australia to meet its obligations

under the Ballast Water Convention. It also includes provisions to provide temporary exemptions to vessels undertaking movements between Australian ports from being subject to the ballast water and sediment management regime until the commencement of the Ballast Water Convention. This will provide that there is no change to how ballast water and sediment are managed within Australia before the commencement of the Ballast Water Convention.

Consultation

During the 2015–16 implementation of the Biosecurity Act, the Department of Agriculture and Water Resources (the department) actively raised awareness among clients, stakeholders and the general public that new Biosecurity legislation commences on 16 June 2016.

The department provided extensive opportunities for clients and stakeholders to become informed about the changes to the legislative framework to ensure they understood their obligations and the implications of the changes on their business. Stakeholders and clients were consulted and engaged throughout the development of the draft regulations and the delegated legislation, and were encouraged to provide feedback. Fact sheets supporting the release of draft regulations for public consultation were available on the department's website, and were distributed to stakeholders to provide additional clarity.

Where possible a minimum 60-day consultation period was provided to stakeholders. The 60-day period is in recognition of, and in compliance with, the Sanitary and Phytosanitary Measures (SPS) agreement. The SPS agreement procedures recommends that when a measure that may affect trade is proposed by a country, at least 60 days should be allowed for comments from trading partners before a measure comes into force.

The department used a multi-faceted engagement approach, including:

- targeted and voluntary engagement
- forums
- workshops
- information sessions
- industry notifications
- media releases
- industry eLearning
- fact sheets.

On 23 February 2016, the department hosted a Biosecurity Legislation Forum in Canberra targeting peak industry bodies. The forum facilitated two-way communication and feedback and provided industry groups with the opportunity for roundtable discussions about the new legislation. In addition, participants were also invited to provide feedback on content they believed would be most useful for their members at regional Biosecurity Legislation Industry roadshow forums to be held around Australia prior to commencement. The forum was attended by approximately 30 representatives from a range of peak industry bodies including shipping, ports, petroleum, airlines, airports, freight, cargo, science, food and beverage, and animal health.

The Biosecurity Legislation Industry roadshow travelled to eight major city regions in Australia between 14 March and 6 April 2016. Each session provided participants with an overview of the new legislation and explained how the Biosecurity Act and the delegated

legislation may affect industry in different regions. The sessions were attended by approximately 700 representatives overall from shipping, ports, petroleum, airlines, airports, freight, cargo, research, education, science, plant and animal health and state, territory and federal governments.. Invitations were sent via the department's subscription lists and also to members of consultative committees encouraging them to share with their members.

During 2015–16 the department also held meetings and workshops with state and territory governments, other government agencies (including the Department of Health, Department of Defence and the Department of Immigration and Border Protection), as well as with consultative committees, and environmental groups.

Letters were sent to government agencies that the department had not already directly engaged with to advise that draft regulations had been released for public comment and encouraging they make a submission.

Regular biosecurity legislation update notifications were distributed to subscribers across five of the department's subscription lists. International trading partners were also notified via the World Trade Organization Sanitary and Phytosanitary notification.

The department received 52 individual submissions in relation to the delegated legislation released for public consultation. Submissions were received from state governments, international governments, industry peak bodies, environmental bodies, agricultural producers, importers, freight companies, airlines and universities.

The consultation undertaken for the Biosecurity Regulation built upon extensive consultation on the Biosecurity Act which began in 2009. During the development process, the department consulted with industry representatives from the cargo, shipping, ports, supply chain and logistics, airline, airport, customs, environment, animal, plant, invasive species, primary production and petroleum/exploration sectors through working groups. The Office of Best Practice Regulation (OBPR) was consulted in the preparation of the Regulatory Impact Statement (RIS) for the Biosecurity Bill 2014 (ID: 16609).

In addition, the department has been comprehensively consulting on the regulated import risk analysis (IRA) process since 2014 through the IRA examination. Feedback provided during the IRA examination was used in the development of the Biosecurity Regulation. The department consulted with various industry bodies that had an interest in the Biosecurity Regulation via a series of workshops around Australia and in individual meetings and teleconferences. Industry bodies were invited to consult based on their past interest in the IRA and BIRA process. Over 100 stakeholders were invited to participate in consultation, including the National Farmers Federation and the Centre of Excellence for Biosecurity Risk Analysis.

Extensive consultation with stakeholders during the redesign of the department's cost recovery fees and charges arrangements was undertaken in 2015. This included the release of the draft Cost Recovery Implementation Statement (CRIS) in 2015 for public comment. Stakeholder feedback was considered and the final CRIS was certified by the Secretary of the department and endorsed by the Agriculture Minister in 2015. The Minister for Finance agreed to release the final CRIS which is available on the department's website at

www.agriculture.gov.au/fees/cost-recovery/biosecurity-cris. The Office of Best Practice Regulation (OBPR) was consulted in the preparation of the RIS for the department's redesigned fees and charges cost recovery arrangements (ID: 17726).

The department consulted with the Office of Parliamentary Counsel (OPC) in the drafting of the Biosecurity Regulation, and the OBPR advised on 31 March 2016 that the Biosecurity Regulation impact statement conducted for the Biosecurity Act (ID: 16609) was sufficient for the purposes of the Biosecurity Regulation and a further regulation impact statement would not be required.

Details/ Operation

Details of the Biosecurity Regulation are set out in Attachment.

The Biosecurity Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Biosecurity Regulation is compatible with 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 in Attachment.

Authority: Section 645 of the *Biosecurity Act 2015*.

ATTACHMENT A

Details of the *Biosecurity Regulation 2016*

Chapter 1 – Preliminary

Part 1—Preliminary

Section 1 – Name

This section provides that the title of the Regulation to be the *Biosecurity Regulation 2016* (the Biosecurity Regulation).

Section 2 – Commencement

This section provides that the Biosecurity Regulation commences at the same time as section 3 of the *Biosecurity Act 2015* (the Biosecurity Act. Section 3 of the Biosecurity Act commences on 16 June 2016.

Section 3 – Authority

This section provides that the Biosecurity Regulation is made under the *Biosecurity Act 2015*.

Section 4 - Extension of Biosecurity Act to Norfolk Island

This section provides that for subsection 7(2) of the Biosecurity Act, the Biosecurity Act (other than Chapter 5 which deals with ballast water) extends to Norfolk Island on and after 1 July 2016. Chapter 5 of the Biosecurity Act is not extended to Norfolk Island by way of this section as section 259 of the Biosecurity Act already extends Chapter 5 to all external territories.

This section also provides that the Biosecurity Regulation applies in relation to persons, goods or conveyances moving to or from Norfolk Island on or after 1 July 2016, or in relation to things done in relation to persons, goods or conveyances moving to or from Norfolk Island on or after 1 July 2016.

Part 2—Definitions

Section 5 – Definitions

This section defines a number of expressions used in the Biosecurity Regulation.

Act

This section provides the definition of ‘Act’ means the *Biosecurity Act 2015*, its instruments and the *Regulatory Powers (Standard Provisions) Act 2014* as it applies in relation to the Biosecurity Act.

animal reproductive material

This definition provides that ‘animal reproductive material’ means any part of an animal from which another animal can be produced, and includes an embryo, an egg or ovum, or semen.

Additional information is required in a notice under section 120 of the Biosecurity Act for this class of goods in order to assess the biosecurity risk associated with the goods (see section 12 of the Biosecurity Regulation).

annual review program

This definition provides that ‘annual review program’ has the meaning provided by subsection 90(1) of the Biosecurity Regulation, that is, a review program set annually by the Inspector-General of Biosecurity.

approved form

This definition provides that ‘approved form’ means a form approved under paragraph 120(3)(d) or 193(2)(d) of the Biosecurity Act.

Australia Post

This definition provides that ‘Australia Post’ means the Australian Postal Corporation as established under the *Australian Postal Corporation Act 1989*.

ballast water discharge report

This definition provides that a ‘ballast water discharge report’ means a report that is required to be given under subsection 267(1) of the Biosecurity Act. This requires the operator of a vessel to give a report if it is intended that the vessel discharge, or the vessel discharges, ballast water in Australian seas. If a person fails to give a report, this may amount to an offence or enliven civil penalty provisions under subsections 267(5) and (6) of the Biosecurity Act.

bee

This definition provides that ‘bee’ means an insect of the family Apoidea.

Additional information is required in a notice under section 120 of the Biosecurity Act for this class of goods in order to assess the biosecurity risk associated with the goods (see section 12 of the Biosecurity Regulation).

BIRA report

This definition provides that ‘BIRA report’ means:

- (a) a draft BIRA report prepared under section 25, or
- (b) a provisional BIRA report prepared under section 26, or
- (c) a final BIRA report prepared under section 27 of the Biosecurity Regulation.

BIRA review report

This definition provides that ‘BIRA review report’ means:

- (a) a draft BIRA report prepared under section 37, or
- (b) a final BIRA report prepared under section 38 of the Biosecurity Regulation.

bird

This definition provides that ‘bird’ does not include a chick that hatches while the egg is in a post-entry quarantine facility.

category 1 permit application

Permit applications are classed into different categories to reflect the time estimated for assessing the types of goods that are included in the applications. Applications that are more complex to assess, for example, goods that are likely to pose a high biosecurity risk, will require more time to assess than goods that are less likely to pose a high biosecurity risk.

This definition provides that ‘category 1 permit application’ means an application for the grant or variation of an import permit, or the variation of a condition of an import permit, that the Director of Biosecurity expects will take no longer than 30 minutes to assess.

category 2 permit application

This definition provides that ‘category 2 permit application’ means an application for the grant or variation of an import permit, or the variation of a condition of an import permit, that the Director of Biosecurity expects will take more than 30 minutes but no longer than 1 hour to assess.

category 3 permit application

This definition provides that ‘category 3 permit application’ means an application for the grant or variation of an import permit, or the variation of a condition of an import permit, that the Director of Biosecurity expects will take more than 1 hour but no longer than 2 hours to assess.

category 4 permit application

This definition provides that ‘category 4 permit application’ means an application for the grant or variation of an import permit, or the variation of a condition of an import permit, that the Director of Biosecurity expects will take more than 2 hours but no longer than 3 hours to assess.

category 5 permit application

This definition provides that ‘category 5 permit application’ means an application for the grant or variation of an import permit, or the variation of a condition of an import permit, that the Director of Biosecurity expects will take longer than 3 hours to assess.

combined military activity

This definition provides that ‘combined military activity’ means a military operation or a military training activity (excluding exhibitions, displays and air shows) where the Australian Defence Force and at least one other foreign military force act together to accomplish a military objective.

compensable item

This definition provides that ‘compensable item’ has the same meaning as in section 634 of the Biosecurity Act.

consignee

This definition provides that ‘consignee’ of goods means the person who is the ultimate recipient of the goods, whether or not the person ordered or paid for the goods.

consignment

This definition provides that ‘consignment’ has a meaning affected by section 105 of the Biosecurity Regulation.

container

This definition provides that ‘container’ has the same meaning as in the *Customs Act 1901*. This is for consistency with expressions used in other Commonwealth legislation.

A notice under section 120 of the Biosecurity Act for the class of goods ‘empty containers’ is needed in order to assess the biosecurity risk associated with the goods.

customs broker

This definition provides that ‘customs broker’ has the same meaning as in the *Customs Act 1901*. This is for consistency with expressions used in other Commonwealth legislation.

A customs broker may be one of the persons prescribed in relation to the goods to provide a notice under section 120 of the Biosecurity Act.

customs officer

This definition provides that ‘customs officer’ means an officer of Customs within the meaning of the *Customs Act 1901*.

Customs officers are one of the persons to whom notice of goods being unloaded in Australian territory may be given under section 120 of the Biosecurity Act.

Departmental holiday

This definition provides that ‘Departmental holiday’ in relation to the carrying out of a fee-bearing activity, means a Monday, Tuesday, Wednesday, Thursday or Friday that is observed as a public holiday in the place where the activity is carried out.

disability assistance dog

This definition provides that ‘disability assistance dog’ means a dog:

- a) that has been professionally trained to assist a person with a disability; and
- b) that is accompanying a person with such a disability who has a certificate from a medical specialist practitioner in a speciality relevant to the disability, stating that the person requires the assistance of such a dog.

Additional information is required in a notice under section 120 of the Biosecurity Act for this class of goods in order to assess the biosecurity risk associated with the goods (see section 12 of the Biosecurity Regulation).

draft BIRA report

This definition provides that ‘draft BIRA report’ means a report prepared under section 25 of the Biosecurity Regulation.

draft BIRA review report

This definition provides that ‘draft BIRA report’ means a report prepared under section 37 of the Biosecurity Regulation.

exempt exposed aircraft or vessel

This definition provides that ‘exempt exposed aircraft or vessel’ means an aircraft or vessel in relation to which section 192 of the Biosecurity Act does not apply because of a determination in force under subsection 192(6) of the Biosecurity Act.

See the *Biosecurity (Exposed Conveyances – Exceptions from Biosecurity Control) Determination 2016*.

final BIRA report

This definition provides that ‘final BIRA report’ means a report prepared under section 27 of the Biosecurity Regulation.

final BIRA review report

This definition provides that ‘final BIRA review report’ means a report prepared under section 38 of the Biosecurity Regulation.

freight forwarder

This definition provides that ‘freight forwarder’ means a person, a partnership or an unincorporated association that provides the service of arranging the transport of goods by air or sea.

A freight forwarder may be one of the persons prescribed in relation to the goods to provide a notice under section 120 of the Biosecurity Act.

health certificate

This definition provides that ‘health certificate’ has the same meaning as in the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016*.

human biosecurity official

This definition provides that ‘human biosecurity official’ means a human biosecurity officer, a chief human biosecurity officer or the Director of Human Biosecurity.

husbandry activities

This definition provides that ‘husbandry activities’ in relation to an animal, egg or a plant that is in a post-entry quarantine facility means activities relating to the care and maintenance of the animal, eggs or plant. For example, these may include transport, housing, daily monitoring, feeding, cleaning of facilities and administration of medication.

import declaration

This definition provides that ‘import declaration’ has the same meaning as in the *Customs Act 1901*. This is for consistency with expressions used in other Commonwealth legislation.

It is also a legislative requirement pursuant to the *Customs Act 1901* that an import declaration is to be given for most goods imported into Australia.

In circumstances where goods subject to an import declaration are intended to be unloaded in Australian territory, information in a notice pursuant to section 120 of the Biosecurity Act is required at a different point in time than for goods that are not subject to an import declaration.

import entry

This definition provides that ‘import entry’ has the same meaning as in the *Customs Act 1901*. This is for consistency with expressions used in other Commonwealth legislation.

Details of the import entry reference number for goods is a requirement for notice of goods that are the subject of an import declaration pursuant to the *Customs Act 1901* (see section 16 of the Biosecurity Regulation).

import permit

This definition provides that ‘import permit’ means a permit granted under section 179 of the Biosecurity Act that authorises a person to bring or import particular goods into Australian territory.

initial assessment fee

This definition provides that ‘initial assessment fee’:

- (a) for a category 1 permit application—means the fee mentioned in column 2 of item 4 in the table in subsection 106(1); or
- (b) for a category 2 permit application—means the fee mentioned in column 2 of item 5 in the table in subsection 106(1); or
- (c) for a category 3 permit application—means the fee mentioned in column 2 of item 6 in the table in subsection 106(1); or
- (d) for a category 4 permit application—means the fee mentioned in column 2 of item 7 in the table in subsection 106(1); or
- (e) for a category 5 permit application—means the fee mentioned in column 2 of item 8 in the table in subsection 106(1) of the Biosecurity Regulation.

These relate to fees for conducting the different categories of permit applications (see items 4-8 of the table in section 106 of the Biosecurity Regulation).

initial assessment period

This definition provides that ‘initial assessment period’:

- (a) for a category 1 permit application—means the period of 30 minutes; or
- (b) for a category 2 permit application—means the period of 1 hour; or
- (c) for a category 3 permit application—means the period of 2 hours; or
- (d) for a category 4 permit application—means the period of 3 hours; or
- (e) for a category 5 permit application—means the period of 4 hours.

These relate to the periods for assessing the different categories of permit applications (see items 4-8 of the table in section 106 of the Biosecurity Regulation).

in-office activity

This definition provides that ‘in-office activity’ means a fee-bearing activity that is carried out at a location where a person is available to carry out the activity on an ongoing basis.

isolation notice

This definition provides that ‘isolation notice’ in relation to goods required to be isolated in or on premises means a notice affixed to, or as near as practicable to, the goods under subsection 139(1) of the Biosecurity Act or subsection 17(2) of the Biosecurity Regulation, or a notice affixed at each entry and exit point of the premises under subsection 17(2) of the Biosecurity Regulation.

laboratory animal

This definition provides that ‘laboratory animal’ means an animal that is, or is intended to be, brought into Australian territory to be used in a laboratory or research institution.

Additional information is required in a notice under section 120 of the Biosecurity Act for this class of goods in order to assess the biosecurity risk associated with the goods (see sections 12 and 13 of the Biosecurity Regulation).

non-commercial vessel

This definition provides that ‘non-commercial vessel’ means a vessel that is used or is intended to be used, wholly for recreational purposes (whether or not crew are employed on the vessel).

The information that is required from this class of vessel to manage biosecurity risk is different to the information for all other vessels (see section 48 of the Biosecurity Regulation).

non-scheduled flight

This definition provides that ‘non-scheduled flight’ in relation to an aircraft means a flight by the aircraft into or from Australian territory where the flight is not made under the authority of an international airline licence granted under regulations made under the *Air Navigation Act 1920*.

The information that is required from this class of aircraft to manage biosecurity risk is different to the information for other aircraft (see section 48 of the Biosecurity Regulation).

ordinary hours of duty

This definition provides that ‘ordinary hours of duty’ means the period that begins at 6.30 am and ends at 6.30 pm on a weekday.

out-of-office activity

This definition provides that ‘out-of-office activity’ means a fee-bearing activity that is carried out at a location where no one is available to carry out the activity on an ongoing basis.

place of origin

This definition provides that ‘place of origin’ in relation to goods that are, or are intended to be, brought into Australian territory on an aircraft or vessel means:

- (a) in the case of an animal – the country or place outside Australian territory where the health certificate relating to the export of the animal to Australian territory was issued; or
- (b) in the case of fertile eggs – the country or place outside Australian territory where the health certificate relating to the export of the eggs to Australian territory was issued; or
- (c) in any other case – the country or place outside Australian territory where the goods were manufactured, grown or obtained.

Place of origin information is needed to assist in the assessment of the biosecurity risk associated with goods in circumstances where it would not be possible for the person bringing the goods to provide other evidence to demonstrate that measures have been taken to manage the biosecurity risk associated with the goods, such as a health certificate.

post-entry quarantine facility

This definition provides that ‘post-entry quarantine facility’ means a facility operated by, or on behalf of, the Commonwealth for the purpose of assessing and managing biosecurity risks associated with goods.

For certain animals and eggs being brought into Australian territory on an aircraft or vessel it is an additional notice requirement that the booking number for the post-entry quarantine facility where the goods are intended to be taken after they arrive in Australian territory is provided (see section 13 of the Biosecurity Regulation).

prescribed disinsection measures

This definition provides that ‘prescribed disinsection measures’ for an incoming aircraft means the disinsection measures prescribed for the aircraft Biosecurity by section 6 of the *Biosecurity (Human Health) Regulation 2016*.

provisional BIRA report

This definition provides that ‘provisional BIRA report’ means a report prepared under section 26 of the Biosecurity Regulation.

review

This definition provides that a review conducted by the Inspector-General of Biosecurity means a review conducted under section 567 of the Biosecurity Act.

review report

This definition provides that review report has the meaning of either a draft review report prepared under section 96 or a final review report prepared under section 97 of the Biosecurity Regulation.

scheduled flight

This definition provides that ‘scheduled flight’, in relation to an aircraft, means a flight by the aircraft into or from Australian territory where the flight is made under the authority of an international airline licence granted under regulations made under the *Air Navigation Act 1920*.

ship sanitation certificate

This definition provides that ‘ship sanitation certificate’ has the same meaning as in the *Biosecurity (Human Health) Regulation 2016*.

slot charterer

This definition provides that ‘slot charterer’ means a person, a partnership or an unincorporated association that hires space on an aircraft or vessel for the transport of goods.

A slot charterer may be one of the persons prescribed by the Biosecurity Regulation in relation to the goods to provide a notice under section 120 of the Biosecurity Act.

Torres Strait permanent biosecurity monitoring zone

This definition provides that ‘Torres Strait permanent biosecurity monitoring zone’ has the meaning given by subsection 117(3) of the Biosecurity Regulation.

training

This definition provides that ‘training’ means training of a person in relation to matters associated with the operation of:

- (a) an approved arrangement; or
- (b) another arrangement with the Commonwealth relating to the assessment and management of biosecurity risks.

weekday

This definition provides that ‘weekday’, for the carrying out of a fee-bearing activity, means a Monday, Tuesday, Wednesday, Thursday or Friday that is not a departmental holiday in the place where the activity is carried out.

working day

This definition provides that ‘working day’, for the carrying out of a fee-bearing activity, means a period of 7.5 hours during which a person carries out the activity within the ordinary hours of duty.

zoo animal

This definition provides that ‘zoo animal’ means an animal that is, or is intended to be, brought into Australian territory to be kept at one of the following in Australian territory:

- (a) a zoo;
- (b) a wildlife park;
- (c) a breeding centre for endangered species;
- (d) a facility that is registered or licensed under an Australian law as a place where particular kinds of animals may be kept for conservation or display purposes.

Additional information is required in a notice under section 120 of the Biosecurity Act for this class of goods in order to assess the biosecurity risk associated with the goods.

Section 6 - High-value conveyance—prescribed amount

This section prescribes that the amount for the definition of high-value conveyance in section 9 of the Biosecurity Act is \$999.99. This means that for the purpose of subsections 208(2) and 337(2) of the Biosecurity Act, any decision to require treatment that is likely to damage a conveyance valued at or greater than \$1,000 must be approved in writing by the Director of Biosecurity or his or her delegate. The amount is set to capture most conveyances. Treatment that is likely to damage a conveyance is expected to occur infrequently, however, if damage was to occur it is likely that the impact on stakeholders would be high.

Subsection 542(3) of the Biosecurity Act provides that the powers related to approving treatment that is likely to damage high-value conveyances under subsections 208(2) and 337(2) of the Biosecurity Act can only be made by the Director of Biosecurity or an SES level delegate and must not be sub-delegated.

Section 7 - High-value goods—prescribed amounts

This section prescribes amounts for the definition of high-value goods under the Biosecurity Act.

For goods that are to be treated in a manner that is likely to damage the goods, other than live animals and animal reproductive material, the amount is set at \$999 999.99. The amount prescribed for goods that are to be destroyed, other than live animals and animal reproductive material, is \$9 999.99. The amount prescribed for goods that are live animals or animal

reproductive materials is \$9 999.99, whether the goods will be treated in a manner that is likely to damage or destroyed.

This means that for the purpose of subsections 133(2) and 335(2) of the Biosecurity Act, treatment that is likely to damage live animals or animal reproductive materials valued at or greater than \$10 000 or other goods valued at or greater than \$1 000 000 must be approved in writing by the Director of Biosecurity or delegate.

The value for treatment of live animals and animal reproductive materials is set lower than the value for treatment of other goods in order to capture a large proportion of live animals and reproductive materials that are often irreplaceable, for example, race horses and zoo animals. A treatment that is likely to cause damage to these animals and reproductive materials is likely to have a higher impact on stakeholders. Values are also set so there is limited negative impact on day to day operations, such as significant delays to the treatment and subsequent release of goods.

In accordance with subsections 136(2) and 342(2) of the Biosecurity Act, destruction of any goods valued at or greater than \$10 000 must be approved in writing by the Director of Biosecurity or his or her delegate. Before giving approval under this subsection, the Director of Biosecurity or delegate must be satisfied the decision-making principles referred to in section 32 of the Biosecurity Act have been applied.

A decision to require high-value goods to be destroyed is a reviewable decision under section 574 of the Biosecurity Act. This means that a person whose interests are affected by the decision may apply to the Director of Biosecurity for internal review of that decision. A further review of the reviewable decision may also be available by making an application to the Administrative Appeals Tribunal. The value set for destruction is to provide consistency for destruction of all goods.

Subsection 542(3) of the Biosecurity Act provides that the powers related to approving treatment that is likely to damage or destroy high-value goods under subsections 133(2), 335(2), 136(2) and 342(2) of the Biosecurity Act can only be made by the Director of Biosecurity or SES level delegate and must not be sub-delegated.

Section 8 – References to animals

This section provides that, unless otherwise stated, a reference in the Biosecurity Regulation to an animal is a reference to a live animal.

Chapter 2—Managing biosecurity risks: goods

Part 1—Notice of goods to be unloaded in Australian territory

Division 1—Preliminary

Section 9 - Purpose of this Part

This section provides that this Part makes provision for and in relation to notices that must be given under section 120 of the Biosecurity Act relating to goods that are, or are intended to be, brought into Australian territory and unloaded at a landing place or port in Australian territory. Notices and the information required to be provided will enable an assessment of the level of biosecurity risk associated with goods. This section also provides that this Part

makes provisions for exceptions to the requirement to give a notice under section 120 of the Biosecurity Act.

This section includes a note to indicate that a notice is not required for goods originating in Australian territory that leave temporarily for the purpose of travelling between landing places or ports in Australian territory (see subsection 120(1) of the Biosecurity Act).

Different requirements for notices for different classes of good are prescribed in this Part.

Section 11 of the Biosecurity Regulation sets out the requirements for notice of goods – general, section 12 sets out the requirements for notice of certain animals and eggs, section 13 sets out requirements for additional notice of certain animals and eggs, and section 14 sets out the requirements for notice of goods that are the subject of an import declaration.

This reflects that often the individuals who are aware, or could reasonably be expected to be aware, of information that must be included in a notice for each section are different.

Each of these sections listed above sets out the individuals who may give notice, the information that must be included in the notice, the manner in which the notice must be given and the person to whom a notice must be given, as well as the time at which or the period during which notice must be given.

Division 2—Goods to be unloaded in Australian territory other than in certain external Territories

Section 10 - Application of this Division

This section provides that this Division applies in relation to notices that must be given of goods that are, or are intended to be brought into Australian territory other than Norfolk Island, Christmas Island or Cocos (Keeling) Islands and unloaded at a landing place or port. Notice requirements for goods being brought into Norfolk Island, Christmas Island and the Cocos (Keeling) Islands are covered in Division 3 of this Part.

Section 11 - Notice of goods—general

This section provides for the requirements for a notice that must be given of goods that are, or are intended to be, brought into Australian territory and unloaded at a landing place or port in Australian territory.

This section applies to all goods being brought and unloaded in Australian territory. Depending on the goods, and whether or not the goods are the subject of an import declaration, some goods may also require a notice under one or more other sections in this Part.

Goods (other than empty containers) and empty containers are separated into two classes because while both pose a biosecurity risk, less information is required regarding empty containers to assist with the accurate and timely assessment and management of biosecurity risk. This is intended to reduce regulatory burden.

This section includes a note to indicate that a notice is not required to be given in relation to certain kinds of goods (see section 16 of the Biosecurity Regulation).

Subsection (2) provides that multiple people may give a notice. This reflects that a combination of people may contribute information for a single notice. Persons who can give

notice include the operator of the aircraft or vessel on which the goods are or are intended to be brought into Australian territory; each person who is responsible for arranging to bring the goods into Australian territory; each slot charterer (if any) who arranged for the transport of goods into Australian territory; and each freight forwarder (if any) who arranged for the transport of goods into Australian territory.

For example, in circumstances where a vessel was carrying ten consignments of goods the following may occur:

- A single person provides all the information on one consignment on board the vessel,
- A single person provides some of the prescribed information on multiple consignments on board the vessel (and the rest of the information is provided by other prescribed persons),
- Multiple people provide all the information on one consignment on board the vessel,
- Multiple people provide some of the information on multiple consignments on board the vessel (which when combined satisfies all the prescribed information to be provided).

Subsection (3) sets out the prescribed information that must be included in a notice for goods (other than empty containers) and empty containers. The person giving the notice will only be required to provide the prescribed information that they are aware of, or could reasonably be expected to be aware of.

The prescribed information includes information about the conveyance on which the goods are being brought and information about the goods. Biosecurity officers will use this information to determine if further assessment or biosecurity measures are necessary to deal with goods when a conveyance arrives in Australian territory.

Information about each person giving a notice in relation to the goods and the owner of the goods is also collected in the event that they need to be contacted by a biosecurity officer.

Additional information is prescribed to be collected for goods (other than empty containers). This information includes for example whether the goods are or are intended to be a full container load or less than a full container load, if the goods are defined within both Australian and international standards as being hazardous, and vessel and aircraft particulars if the goods are to be transhipped to a place outside Australian territory. This information is also used for risk assessment purposes, however, as it is not required for empty-containers it has been separately prescribed.

Subsection (4) provides that the notice for the goods must be given in writing and may be given electronically. Subsections (5) and (6) provide that the notice must be given to a biosecurity official or a customs officer, and notice that is given using an electronic system is taken to have been given to a biosecurity official or a customs officer. A note is included to make clear that the notice must be in a form or forms approved by the Director of Biosecurity (see paragraph 120(3)(d) of the Biosecurity Act).

This means a notice that is provided through the Integrated Cargo System (ICS), a computer system maintained by the Department of Immigration and Border Protection, and other approved electronic systems, will meet the requirements of this section. This is intended to

enable clients to meet requirements under the *Customs Act 1901* and the *Biosecurity Act 2015* using one system.

Subsection (7) provides when the notice must be given in relation to goods. The reporting timeframes for vessels are longer than aircraft to reflect the different speed of travel:

- For goods that are intended to be brought on an aircraft the notice must be given no later than 2 hours before the aircraft is estimated to arrive at its first landing place in Australian territory, or
- For goods that are intended to be brought on a vessel the notice must be given no later than 48 hours, or no later than 12 hours in instances where the voyage is shorter than 48 hours, before the vessel is estimated to arrive at its first port in Australian territory.

This facilitates the department receiving enough notice to allocate appropriate resources at the first landing place or port in Australian territory when the vessel or aircraft arrives to conduct an assessment and manage risks associated with the goods upon arrival.

Section 12 - Notice of certain animals and eggs to be brought into Australian territory on an aircraft or vessel

This section provides for the requirements for a notice that must be given of certain animals and eggs to be brought into Australian territory on an aircraft or vessel and unloaded at a landing place or port in Australian territory.

The notice requirements in this section are in addition to the requirements prescribed in section 11 of the Biosecurity Regulation which must be given for all goods. This reflects that certain goods have unique biosecurity risks associated with them and additional information is required to properly assess the risk.

Additional notice under section 13 of the Biosecurity Regulation (additional notice of certain animals and eggs) may also be required for some of the goods that are covered by this section.

Subsection (2) provides for multiple persons to give notice. This reflects that a combination of people may contribute information for a single notice. Persons who can give a notice include the person who applied for the permit authorising the goods to be brought or imported into Australian territory; each person who is responsible for arranging to bring the goods into Australian territory; and each custom broker (if any) who arranged for the goods to be brought into Australian territory.

Subsection (3) sets out the information that must be included in the notice for each class of goods. The person giving the notice will only be required to provide the prescribed information that they are aware of, or could reasonably be expected to be aware of.

The animals and eggs to which requirements apply have been divided into classes as in subsection (3). Some animals are divided into classes based on the purpose for which they are being brought into Australian territory. For example there are separate notice requirements depending on whether a dog is brought into Australian territory for general purposes, as a disability assistance dog, or as a working dog owned by a Commonwealth body or the Australian Defence Force. This reflects that less information will be required for certain classes of dogs in order to assist with the assessment and management of biosecurity risk,

and recognises that these differences means appropriate regulatory requirements are placed on individuals.

Most of the classes of goods have a standard list of prescribed information that must be provided in the notice. This includes information about the conveyance on which the goods are being brought and information about the goods. Biosecurity officers use this information to determine what risk assessment and management activities may be necessary to deal with goods when a conveyance arrives in Australian territory.

Information about each person giving the notice in relation to the goods is also collected in the event that they need to be contacted by a biosecurity officer.

Details of animals required by an approved form is also collected in the event that biosecurity officers require additional information about the goods to respond to changing risks.

Some classes of goods have unique information prescribed that is not required for the other classes of goods. This reflects that for certain goods extra information is required to determine what risk assessment and management activities are necessary. For example, for disability assistance dogs, the unique information prescribed includes:

- if the dogs are being brought on an aircraft, whether the dogs are or are intended to be brought into Australian territory as manifest cargo or in the cabin of the aircraft, and
- if they are being brought from a country other than New Zealand, the address in Australian territory where the dogs are intended to be kept during the first 10 days after being unloaded from the aircraft or vessel.

This information is required for disability assistance dogs because of the purpose of a disability assistance dog. Disability assistance dogs are permitted in the cabins of aircraft and upon arrival in Australian territory they are not required to go to a post-entry quarantine facility. Instead they are able to remain with their handler and the department collects details on where they will be during a period in which they would normally be in a post-entry quarantine facility. This information is used in the event that biosecurity officers need to complete a follow up assessment of the dog.

There may also be circumstances where extra information is prescribed because greater involvement is required from the person who is bringing in the goods. For example, the name and contact details of the person nominated to attend when the biosecurity risks associated with the goods will be assessed when animal reproductive material is brought into Australian territory. This is required as animal reproductive material arrives in sealed tanks and biosecurity officers are unable to open the tank and conduct an assessment until the person nominated to attend brings the required equipment and extra liquid nitrogen to make sure that samples do not deteriorate during assessment.

Subsection (4) provides that the notice for the goods must be given in writing and may be given electronically. Subsections (5) and (6) provide that the notice must be given to a biosecurity official or a customs officer, and a notice that is given using an electronic system is taken to have been given to a biosecurity official or a customs officer. A note is included to indicate that the notice must be in a form or forms approved by the Director of Biosecurity (see paragraph 120(3)(d) of the Biosecurity Act).

Providing that the notice may be given electronically and to biosecurity officials or customs officers promotes flexibility and reduces red tape for individuals where there are other methods of providing the notice in place.

Subsection (7) provides that notice must be given no later than three business days before the day the aircraft or vessel on which the goods are, or are intended to be, brought into Australian territory is estimated to arrive at its first landing place or port in Australian territory. This facilitates the department having enough notice to allocate appropriate resources at the first landing place or port in Australian territory when the vessel or aircraft arrives to conduct an assessment and manage risks associated with the goods upon arrival.

Section 13 - Additional notice of certain animals and eggs to be brought into Australian territory on an aircraft or vessel

This section provides for additional requirements for a notice that must be given for certain animals and eggs brought, or intended to be brought, into Australian territory on an aircraft or vessel and unloaded at a landing place or port in Australian territory. This information is required to confirm the arrival details of the aircraft or vessel on which the goods are being carried.

The notice requirements in this section are in addition to the requirements prescribed for a notice of goods under sections 11 and 12 of the Biosecurity Regulation. This reflects that certain goods have unique biosecurity risks associated with them and additional information is required to properly assess the risk.

Subsection (2) provides for multiple persons to give notice. This reflects that a combination of people may contribute information for a single notice. Persons who can give notice include the person who applied for the permit authorising the goods to be brought or imported into Australian territory; each person who is responsible for arranging to bring the goods into Australian territory; each custom broker (if any) who arranged for the goods to be brought into Australian territory; and the operator of the aircraft or vessel on which the goods are or are intended to be brought into Australian territory.

Subsection (3) provides that the person giving the notice will only be required to provide the prescribed information that they are aware of, or could reasonably be expected to be aware of.

Subsection (4) sets out the information that must be included in a notice for certain animals and eggs. This includes information about the conveyance on which the goods are being brought, the goods and the booking number for the post-entry quarantine facility where the goods are intended to be taken after they arrive in Australian territory. Biosecurity officers use this information to determine what assessment and management activities are necessary to deal with goods when a conveyance arrives in Australian territory.

Information about the owner of the goods is also collected in the event they need to be contacted by a biosecurity officer.

Details of animals required by an approved form is also collected in the event that biosecurity officers require additional information about the goods to respond to changing risks.

Subsection (5) provides that the notice for the goods must be given in writing and may be given electronically. Subsections (6) and (7) provide that the notice must be given to a biosecurity official or a customs officer, and notice that is given using an electronic system is

taken to have been given to a biosecurity official or a customs officer. Providing that the notice may be given electronically and to biosecurity officials or a customs officer promotes flexibility and reduces red tape for individuals where there are other methods of providing the notice. A note is included to indicate that the notice must be in a form or forms approved by the Director of Biosecurity (see paragraph 120(3)(d) of the Biosecurity Act).

Subsection (8) provides that a notice must be given no earlier than 72 hours, but no later than 30 minutes, before the flight or voyage on which the goods are, or are intended to be, brought into Australian territory is estimated to commence. This facilitates information about goods being received prior to arrival of the aircraft or vessel on which the goods are being carried, but not so far in advance that the information may change and no longer be current by the time the aircraft or vessel arrives.

Section 14 - Notice of goods that are the subject of an import declaration

This section provides for requirements for notice that must be given of goods that are the subject of an import declaration and have been, or are intended to be, brought into Australian territory on an aircraft or vessel and unloaded at a landing place or port Australian territory.

The notice requirements in this section are in addition to the requirements prescribed for notice of goods under sections 11, 12 and 13 of the Biosecurity Regulation. This reflects that certain goods that are the subject of an import declaration have unique biosecurity risks associated with them and additional information is required to properly assess the risk.

Subsection (2) provides that notice may be given by each person who is responsible for arranging to bring the goods into Australian territory and/or each customs broker (if any) who arranged for the goods to be brought into Australian territory. The individuals listed reflect those who are prescribed to be able to provide an import declaration under the *Customs Act 1901*. This is intended to allow a single report to be provided to meet requirements under both the Customs Act and the Biosecurity Regulation.

Subsection (3) provides that the person giving the notice will only be required to provide the prescribed information that they are aware of, or could reasonably be expected to be aware of.

Subsection (4) sets out the information that must be included in the notice of goods that are the subject of an import declaration:

- Most of the prescribed information, such as information about each person giving notice, the goods and the conveyance on which the goods are being brought, is used to determine what assessment and management activities are necessary to deal with goods when a conveyance arrives in Australian territory;
- The import entry reference number is used by biosecurity officers to identify the consignment and the associated information for undertaking assessment and management activities;
- Information about each person giving a notice in relation to the goods, the owner of the goods, and the supplier of the goods is collected in the event that they need to be contacted by a biosecurity officer;

- The code for the goods under the *Customs Tariff Act 1995* (also known as the Harmonised Tariff Item Statistical Code) is collected to assist biosecurity officers in identifying and profiling goods of biosecurity concern for appropriate assessment;
- The registration number allocated by the Director of Biosecurity for any overseas treatment provider in relation to the goods is used by biosecurity officers to identify approved offshore treatment providers, and in some cases, to assist in determining the appropriate level and type of intervention required for the treated goods upon arrival in Australian territory.

Subsection (5) would provide that the notice for the goods would be required to be given in writing and may be given electronically. Subsections (6) and (7) would provide that the notice must be given to a biosecurity official or a customs officer, and notice that is given using an electronic system is taken to have been given to a biosecurity official or a customs officer. A note is included to indicate that the notice must be in a form or forms approved by the Director of Biosecurity (see paragraph 120(3)(d) of the Biosecurity Act). Providing that the notice may be given electronically and to biosecurity officials or customs officers promotes flexibility and reduces red tape for individuals where there are other methods of providing the notice.

Subsection (8) provides that notice may be given before the goods arrive in Australian territory, but must be given no later than 35 business days after the person giving the notice becomes aware of the first unloading of the goods in Australian territory.

This reflects that in most cases import declarations are lodged prior to unloading the goods arriving in Australian territory to facilitate early release of the goods by biosecurity officers. However, in certain circumstances it will not be known whether the goods are the subject of an import declaration until after the goods have arrived in Australian territory.

Division 3—Goods to be unloaded in certain external Territories

Section 15 - Notice of goods to be unloaded in Norfolk Island, Christmas Island or Cocos (Keeling) Islands

This section provides for requirements for a notice that must be given of goods that are, or are intended to be, brought into Norfolk Island, Christmas Island or Cocos (Keeling) Islands on an aircraft or vessel from a place outside the relevant external Territory (including a place that is in another part of Australian territory) and unloaded at a landing place or port in the relevant external Territory.

This section applies to all goods being brought and unloaded in Norfolk Island, Christmas Island or Cocos (Keeling) Islands. This includes goods being brought into these external Territories from outside Australian territory, and goods being brought in to these external Territories from an origin part in Australia territory (see the *Biosecurity (Movements between Parts of Australian Territory) Declaration 2016*).

Goods being brought into the external territories are not required to provide the same notices as goods being brought into mainland Australia due to differences in reporting systems available on the external territories. Equivalent levels of information will be collected by asking questions when the goods arrive at the external territory.

A note is included to make clear that notice is not required to be given in relation to certain kinds of goods (see section 16 of the Biosecurity Regulation).

Subsection (2) provides that multiple people may give a notice. This reflects that a combination of people may contribute information for a single notice. Persons who can give notice include the operator of the aircraft or vessel on which the goods are or are intended to be brought into the relevant external Territory; each slot charter (if any) who arranged for the transport of goods into the relevant external Territory; each freight forwarder (if any) who arranged for the transport of goods into the relevant external Territory; each person who is responsible for arranging to bring the goods into the relevant external Territory; and each customs broker (if any) who arranged for the goods to be brought into the relevant external Territory.

Subsection (3) provides that the person giving the notice will only be required to provide the prescribed information that they are aware of, or could reasonably be expected to be aware of.

Subsection (4) sets out the prescribed information that must be included in the notice. The prescribed information includes information about the conveyance on which the goods are being brought, information about the goods, whether the goods are or are intended to be a full container load or less than a full container load, if the goods are defined within both Australian and international standards as being hazardous, and vessel and aircraft particulars if the goods are to be transhipped to a place outside Australian territory. Biosecurity officers will use this information to determine if biosecurity measures are necessary to deal with goods when a conveyance arrives in the relevant external territory.

Information about each person giving the notice in relation to the goods is collected in the event that they need to be contacted by a biosecurity officer.

If the goods being brought in include animals, the number of the permit authorising the goods to be brought or imported into Australian territory and the species of each animal is required. This reflects that animals have unique biosecurity risks associated with them and additional information is required to assess the risk.

The address in Australian territory where the animals are intended to be kept is also required because there are no post-entry quarantine facilities on Norfolk Island, Christmas Island or the Cocos (Keeling) Islands. Animals will be allowed to remain with their handler and this information will be used in the event biosecurity officers need to complete a follow up assessment of the animal.

Subsection (5) provides that the notice for the goods must be given in writing and may be given electronically. Subsections (6) and (7) provide that the notice must be given to a biosecurity official or a customs officer, and notice that is given using an electronic system is taken to have been given to a biosecurity official or a customs officer. A note is included to make clear that the notice must be in a form or forms approved by the Director of Biosecurity (see paragraph 120(3)(d) of the Biosecurity Act).

Subsection (8) provides when the notice must be given in relation to goods. The reporting timeframes for vessels are longer than aircraft to reflect the different speed of travel.

For goods that are intended to be brought into the relevant external Territory on an aircraft the notice must be given no later than 2 hours before the aircraft is estimated to arrive at its first landing place in the relevant external Territory.

For goods that are intended to be brought into the relevant external Territory on a vessel the notice must be given no later than 60 hours before the vessel is estimated to arrive at its first port in the relevant external Territory or, if the voyage is shorter than 60 hours, 24 hours before the vessel is estimated to arrive at its first port in the relevant external Territory.

This facilitates the department receiving enough notice to allocate appropriate resources at the first landing place or port in the relevant external Territory when the vessel or aircraft arrives to conduct an assessment and manage risks associated with the goods upon arrival.

Division 4—Exceptions

Section 16 - Exceptions to requirement to give notice of goods

This section provides for the exceptions to the requirement to give a notice of goods.

Paragraph (a) provides an exception for baggage. This reflects that it would not be feasible for all incoming passengers to provide notice and for those notices to be assessed. Other inspection mechanisms are intended to be relied on to assess biosecurity risk once baggage arrives.

Paragraph (b) provides an exception for goods included in a consignment to which paragraph 68(1)(e) of the *Customs Act 1901* applies, which is mail through the post office with a value under \$1000 or other such amount as prescribed. This reflects that requiring notice for each item of mail would increase regulatory burden. Other inspection mechanisms are intended to be relied on to assess biosecurity risk once mail arrives.

Paragraph (c) provides an exception for waste. This reflects that the type of waste on board aircraft and vessels is highly varied. Other inspection mechanisms are intended to be relied on to assess biosecurity risk once waste arrives.

Paragraph (d) provides an exception for goods that are, or are intended to be, brought into Australian territory on an exempt exposed aircraft or vessel. The biosecurity risk in these circumstances is low, or it is being managed to an acceptable level by the person in charge or the operator of the exempt exposed aircraft or vessel. See the *Biosecurity (Exposed Conveyances—Exceptions from Biosecurity Control) Determination 2016*.

Paragraph (e) provides an exception for goods that are, or are intended to be, brought into Australian territory on an aircraft or vessel that would be an exempt exposed aircraft or vessel except that there are human remains, or persons with signs or symptoms of a listed human disease, on board. The biosecurity risk in these circumstances is low, or it is being managed to an acceptable level by the person in charge or the operator of the exempt exposed aircraft or vessel. See the *Biosecurity (Exposed Conveyances—Exceptions from Biosecurity Control) Determination 2016*.

Paragraph (f) provides an exception for elasmobranch or teleost fish that:

- i. are caught by a vessel that is not an exposed conveyance, and
- ii. are brought, or are intended to be brought, into Australian territory on the vessel in the course of a voyage that commences in Australian territory and ends, or is intended to end, in Australian territory.

This is intended to cover domestic fishing operations that include journeys outside Australian territory. The biosecurity risk in these circumstances is low because the vessel is only taking on board fish that they have caught and is not exposed to another conveyances.

Paragraph (g) provides an exception for goods on board an aircraft or vessel at the commencement of a flight or voyage that commences in Australian territory and is intended to end at a place outside Australian territory if:

- i. the aircraft or vessel returns to Australian territory during the flight or voyage; and
- ii. on return the goods are, or are intended to be, unloaded at a landing place or port in Australian territory; and
- iii. the aircraft or vessel is not an exposed conveyance.

This is intended to cover circumstances where an aircraft or vessel intends to journey to a place outside Australian territory, but an event occurs which requires the aircraft or vessel to make an unplanned return back to Australian territory. For example, mechanical problems with the aircraft or vessel. The biosecurity risk in these circumstances is low because the aircraft or vessel has not been exposed to another conveyance and has not landed or moored at a place outside of Australian territory.

Paragraph (h) and (i) provide exceptions for goods that are, or are intended to be, brought from a part of Australian territory that is in the protected zone into another part of Australian territory, or from the Torres Strait permanent biosecurity monitoring zone into another part of Australian territory. Information to enable assessment of the risks associated with these goods will be provided in the pre-arrival report for the vessel carrying the goods (see section 49 of the Biosecurity Regulation).

Part 2—Goods brought into Australian territory

Section 17 - Other biosecurity measures relating to goods—isolation

Section 137 of the Biosecurity Act provides that regulations may prescribe additional biosecurity measures. This section allows a biosecurity officer to require goods that are subject to biosecurity control to be isolated in or on specified premises for a specified period.

Subsection (1) provides that isolation may be used as a precaution to limit exposure and decrease the risk of contamination or transfer of diseases, pests and other biosecurity risks. Premises referred to in this section also include a conveyance and a part of the premises (for example, a ship, a room or an area within a building).

Subsection (2) provides that a biosecurity officer may personally affix or direct a person in charge of the goods, to affix a notice to, or as near as reasonably practicable to, the goods and/or at each entry and exit point of the premises. The ability for a biosecurity officer to direct a person in charge of the goods to affix the notice provides flexibility where it is not practicable for the biosecurity officer to affix the notice himself or herself, for example, at a remote place or a private residence of the owner of the goods.

Under subsection (3) an isolation notice must state:

- the goods subject to isolation;
- that the level of biosecurity risk associated with the goods is unacceptable;

- that the goods must be isolated to manage the biosecurity risk;
- the premises where the goods must be isolated;
- the period of isolation;
- further requirements under subsection (4) of this provision;
- the effect of the offence provisions under sections 18 to 21 of the Biosecurity Regulation.

Subsection (4) sets out additional requirements that a biosecurity officer may impose in relation to the premises where the goods are isolated. A biosecurity officer may impose requirements in relation to premises including that:

- persons enter or leave the premises at specified places;
- specified classes of persons not enter the premises;
- persons entering or in the premises wear specified clothing and/or use specified equipment designed to prevent a disease or pest from entering, establishing itself or spreading in, on or outside the premises;
- persons not interfere with the premises;
- persons bringing goods on to the premises do so at specified places;
- specified classes of goods not be brought onto the premises;
- conveyances enter or leave the premises at specified places; or
- specified classes of conveyances not enter the premises.

For example, a requirement may be imposed for a person who is in regular contact with birds, such as a breeder or pet owner, to not enter the premises where birds subject to biosecurity control are housed while undergoing biosecurity risk assessment or management.

Subsection (5) provides that the isolation notice advising of this requirement must also specify the circumstances and the timing or period the person is required to wear the clothing or equipment, or both, as well as instructions for wearing the clothing or equipment. For example, a requirement may be imposed for all persons to wear protective clothing while undertaking animal husbandry work at premises housing an animal subject to the isolation measure.

Subsection (6) provides that except as permitted by paragraph (4)(b) or (c), a biosecurity officer cannot issue a notice that requires an individual to be subject to a measure of a kind that is set out in Subdivision B of Division 3 of Part 3 of Chapter 2 of the Biosecurity Act. The measures in that subdivision can only be included in a human biosecurity control order. These limitations mean that the processes and safeguards in relation to requiring biosecurity measures under Chapter 2 remain in place. However, under subsection (7) the Director of Biosecurity or biosecurity officers will be able to require decontamination measures under Subdivision B of Division 2 of Part 4 of Chapter 10 of the Biosecurity Act.

A biosecurity officer may extend the isolation period for goods subject to isolation if the biosecurity officer continues to suspect, on reasonable grounds, that the level of biosecurity risk associated with the goods is unacceptable.

It is expected that in some circumstances, this isolation measure may also be used in conjunction with other biosecurity measures provided under Division 5 of Part 1 of Chapter 3 of the Biosecurity Act. For example, a dog imported from a low risk country may be moved to and kept at the residence of the dog's owner for a specified period of time under section 132 of the Biosecurity Act, rather than requiring the dog be kept at the government operated

post-entry quarantine facility. During this period, a biosecurity officer may also require the dog to be isolated at the residence under this section, by requiring that no other dogs may be brought into that residence to prevent any biosecurity risk from spreading to other dogs and outside the premises.

Section 18 - Person must comply with direction to affix isolation notice

This section is made under section 645 of the Biosecurity Act. It provides that a person who is given a direction by a biosecurity officer to affix an isolation notice under paragraph 17(2)(a) of the Biosecurity Regulation must comply with the direction. The person commits an offence and is liable to a civil penalty if they engage in conduct that contravenes the direction. The maximum penalty for contravention is 50 penalty units. The maximum civil penalty is 50 penalty units.

Section 19 - Contravention of requirement relating to entering or leaving etc. premises where goods have been isolated

This section is made under section 645 of the Biosecurity Act. It creates an offence for contravening a requirement stated in an isolation notice under subsection 17(3) of the Biosecurity Regulation. A person who contravenes a requirement commits an offence and is liable to a civil penalty. The maximum penalty for contravention is 50 penalty units. The maximum civil penalty for a contravention is 50 penalty units.

Section 20 - Unauthorised persons must not move etc. goods that have been isolated in or on premises where isolation notice has been affixed

This section is made under section 645 of the Biosecurity Act. This provision creates an offence for moving, dealing with or interfering with goods that are subject to an isolation notice.

If a person moves, deals with or interferes with goods that are subject to an isolation notice, a person commits an offence and is liable to a civil penalty unless the person is authorised to engage in that conduct by an approved arrangement, or is given a direction by a biosecurity official or a permission by a biosecurity officer.

The offence provision does not apply if the person is authorised to engage in the conduct under this Act or another Australian law. The defendant bears the evidential burden in relation to this exception, which means that the defendant bears the burden of adducing or pointing to evidence that suggests a reasonable possibility that the exception has been met. It is then up to the prosecution to establish that this exception does not apply. This person should have the knowledge of and be able to easily provide the information about the circumstances that authorised them to move, deal with or interfere with the goods, for example, a copy of the written direction issued by a biosecurity official or evidence that their conduct is in accordance with the approved arrangement. It would be more difficult and time-consuming for the prosecution to provide evidence of this. This is consistent with a similar provision under section 141 in the Biosecurity Act.

The maximum penalty for contravention is 50 penalty units. The maximum civil penalty for contravention is 50 penalty units.

Section 21 - Interfering with, removing or defacing isolation notice

This section is made under section 645 of the Biosecurity Act. This provision creates an offence for interfering with, removing or defacing an isolation notice that has been affixed on or near goods subject to isolation or at an entry or exit point of the premises where the goods are isolated under subsection 17(2) of the Biosecurity Regulation.

If a person interferes with, removes or defaces the notice, a person is liable to a civil penalty unless authorised to engage in that conduct by an approved arrangement, or is given a direction by a biosecurity official or a permission by a biosecurity officer. The maximum civil penalty for contravention is 50 penalty units.

The offence provision does not apply if the person is authorised to engage in the conduct under this Act or another Australian law. The defendant bears the evidential burden in relation to this exception, which means that the defendant bears the burden of adducing or pointing to evidence that suggests a reasonable possibility that the exception has been met. It is then up to the prosecution to establish that this exception does not apply. This person should have the knowledge of and be able to easily provide the information about the circumstances that authorised them to interfere with, remove or deface the isolation notice, for example, a copy of the written direction issued by a biosecurity official or evidence that their conduct is in accordance with the approved arrangement. It would be more difficult and time-consuming for the prosecution to provide evidence of this. This is consistent with a similar provision under section 139 in the Biosecurity Act.

Part 3—Release of goods from biosecurity control

Section 22 - Release of goods brought into Australian territory from biosecurity control

This section sets out the circumstances in which goods are automatically released from biosecurity control.

This section provides that baggage that is brought into a first point of entry is automatically released from biosecurity control when it leaves the Customs terminal, or if there is no Customs terminal, the boundary of the first point of entry. Baggage is defined in section 9 of the Biosecurity Act to mean goods that are, or intended to be, carried on a conveyance by or for a person who is on board. First points of entry will be set in the determination made under section 223 or 229 of the Biosecurity Act.

Goods brought into an international mail centre are automatically released from biosecurity control when they leave the boundary of the international mail centre. International mail centre is defined in section 9 of the Biosecurity Act to mean a place approved as a place for examination of international mail under subsection 183UA(1) of the *Customs Act 1901*.

This section recognises that in some circumstances, it is not possible for a biosecurity officer to release all goods in writing or orally owing to the volume of goods being presented at any given time. Biosecurity control release areas provide a mechanism for releasing high volume, low-risk goods without the direct intervention of a biosecurity officer, which will allow biosecurity officers to focus on high-risk goods.

However, these goods will not be automatically released from biosecurity control if:

- there is a direction under the Biosecurity Act in force relation to the goods, or
- the goods are conditionally non-prohibited goods that are authorised to be brought or imported into Australian territory subject to a condition:
 - requiring the goods to be used for a certain purpose; or

- requiring the goods to be kept at a post-entry quarantine facility (PEQ) while in Australian territory.

The first exception means that goods will not be automatically released from biosecurity control if they have been identified for intervention under the Biosecurity Act (that is, further biosecurity risk assessment or a biosecurity measure may be required). This may include assessment or management measures. This means that biosecurity officers can still exercise assessment and management powers under Chapter 3 of the Act on goods that have an unacceptable level of biosecurity. The goods may then be released from biosecurity control under paragraph 162(1)(a), (b), (d), or (e) of the Biosecurity Act.

The second exception prevents automatic release when goods are conditionally non-prohibited and have post-entry requirements restricting end use to laboratory, research or propagation purposes or to a PEQ facility. Conditions on the bringing in or importation of goods may be imposed through a permit under section 180 of the Act or a determination in force under subsection 174(1) of the Biosecurity Act. This exception allows these goods to remain under biosecurity control so that biosecurity risk is managed to an acceptable level until their destruction or removal from Australian territory. For example, some imported plants are kept and propagated in PEQ to assess risk, and once the progeny have been determined suitable for release, the progeny are released to the importer while the parent plant is kept in PEQ until destruction. This allows the department to manage risks associated with such goods indefinitely.

Part 4—Biosecurity import risk analyses

Division 1—Process for conducting a BIRA

Section 23 - Purpose of this Division

This section provides that the purpose of this division is to outline the process for conducting a BIRA pursuant to paragraph 169(1)(a) and section 170 of the Biosecurity Act. This is intended to demonstrate the integrity of Australia’s biosecurity system through a clear articulation of the roles and responsibilities and the method for the BIRA decision-making process.

A BIRA assists the department in considering the level of biosecurity risk that may be associated with the importation of goods into Australia. If the biosecurity risks do not achieve Australia’s appropriate level of protection (ALOP), risk management measures are proposed to reduce the risks to an acceptable level. If the risks cannot be reduced to an acceptable level, the goods will not be allowed into Australia until suitable measures are identified.

Section 24 - Notice of intention to conduct a BIRA and issues paper

This section sets out the publication requirements for notice of intention to conduct a BIRA and an issues paper.

If the Director of Biosecurity proposes to conduct a BIRA, the Director of Biosecurity must publish a notice on the department’s website stating:

- that the Director of Biosecurity is proposing to commence a BIRA in relation to particular goods or a particular class of goods, and

- the opportunities for consultation with stakeholders that will be given in conducting the BIRA.

The Director of Biosecurity must also prepare an issues paper in relation to the BIRA and publish it on the Agriculture Department's website.

This section is intended to promote transparency in relation to the BIRA process. This section is also intended to provide that individuals or organisations who want to import the particular plant, animal or other goods which are the subject of the BIRA into Australia, potentially affected industry groups, other relevant Australian Government and state and territory departments and agencies, and interested individuals, are made aware early on that a BIRA is being conducted in the event they would like to be consulted or prepare a written submission once an invitation to make written submissions is given.

Written submissions received in relation to the draft BIRA report must be taken into consideration by the Director of Biosecurity in preparing the provisional BIRA report (see section 26 of the Biosecurity Regulation).

Section 25 - Draft BIRA report

Subsection (1) provides that the Director of Biosecurity must prepare a draft BIRA report in relation to a BIRA conducted under this Part. The draft BIRA report must be published on the department's website, along with an invitation to the public to make written submissions within a period specified in the invitation about the assessment of the level of biosecurity risk associated with the goods, or the class of goods, to which the report relates.

This section is intended to allow for the public to see the science that is being taken into consideration by the Director of Biosecurity in conducting the BIRA and to seek stakeholder views on technical issues relevant to the risk analysis.

Subsection (2) provides that the specified period must be least 60 calendar days, including the day the invitation is published. This provides an adequate timeframe in most circumstances to make written submissions. However, the Director of Biosecurity public may extend the period for public submissions once, for example, if the Director of Biosecurity considers that the public has not had a reasonable opportunity to consider the draft BIRA report.

Section 26 - Provisional BIRA report

This section provides that after the end of the period for making submissions in relation to a draft BIRA report, the Director of Biosecurity must prepare a provisional BIRA report in accordance with section 30 of the Biosecurity Regulation.

Subsection (2) provides that in preparing the provisional BIRA report, the Director of Biosecurity must consider:

- a) any information received in the course of conducting the BIRA; and
- b) any submissions received in relation to the draft BIRA report; and
- c) if the Director of Biosecurity requested the scientific advisory group to examine and comment on an aspect of the BIRA under section 29 of the Biosecurity Regulation – the comments and any findings given to the Director of Biosecurity by the scientific advisory group.

Subsection (3) provides that the Director of Biosecurity must publish the provisional BIRA report on the department's website. This is intended to result in any significant changes from the draft BIRA report to the provisional BIRA report being made publically available.

This section includes notes to indicate that a person may request the Inspector-General to review the process of conducting a BIRA after the publication of the provisional BIRA report, and that unless a review of the process of conducting a BIRA is undertaken by the Inspector-General, the provisional BIRA report will be published as the final BIRA report in relation to a BIRA (see section 27 of the Biosecurity Regulation).

Section 27 - Final BIRA report

This section provides that the Director of Biosecurity must publish a final BIRA report in relation to a BIRA conducted under this Division. This must be done in accordance with section 30 and within the time permitted by section 31 of the Biosecurity Regulation.

Subsection (2) provides that the provisional BIRA report will become the final BIRA report if the period for requesting the Inspector-General to review the process of conducting the BIRA has ended and there were no requests for a process review by the Inspector-General, or a request for review was made but the Inspector-General decided not to conduct a review. This subsection includes notes to indicate that the period for requesting the Inspector-General to review the process of conducting a BIRA is 30 days after the provisional report is published, and that Division 2 of the Biosecurity Regulation deals with the Inspector-General.

Subsection (3) provides that in preparing the final BIRA report the Director of Biosecurity must consider any recommendation made in the Inspector-General's final BIRA review report (if review of the process was requested). This subsection is intended to provide certainty to stakeholders and the public that a final BIRA report has adhered to the process provided for by the Biosecurity Regulation.

Section 28 - Further information, research or expert advice

This section provides that if the Director of Biosecurity considers that further information, research or expert advice is necessary to complete a BIRA, the Director of Biosecurity must request, in writing, that an appropriate person provide the information, carry out the research or provide the advice.

This section is intended to reflect that BIRAs will generally be conducted by departmental staff with technical and scientific expertise relevant to the biosecurity risks being considered. However, in some instances the Director of Biosecurity will need to use external scientific resources, such as experts from state and territory biosecurity agencies or domestic or international research organisations, universities or industry.

Section 29 - Scientific advisory group

This section provides that the Director of Biosecurity must appoint, in writing, external persons to be members of a scientific advisory group. At any stage in the process of conducting a BIRA the Director of Biosecurity may request, either in writing or verbally, the scientific advisory group to examine and provide comments on any aspect of a BIRA. This section also sets out what the scientific advisory group must do if they receive such a request.

This section is intended to ensure the establishment of a group to provide external scientific advice as requested by the Director of Biosecurity.

This section includes notes to make clear that the comments and any findings given by the scientific advisory group must be considered by the Director of Biosecurity in preparing the provisional BIRA report (see paragraph 26(2)(c) of the Biosecurity Regulation).

Section 30 - Content of a BIRA report

This section sets out the information that the Director of Biosecurity must include in a BIRA report, including the findings of the BIRA, the potential for any economic consequences associated with the entry, establishment or spread of a disease or pest if the goods, or goods included in the class of goods, were to be imported into Australian territory, and the information and other material on which the findings are based. This section also sets out those things that the Director of Biosecurity may include in a BIRA report, including a statement of the human health risks associated with the goods, the conditions that must be complied with to manage the biosecurity risk associated with the goods, and any other material the Director of Biosecurity considers relevant.

This section is intended to promote certainty in the BIRA process through clear articulation of what stakeholders can expect to see in a BIRA report. The prescribed information is also intended to result in each BIRA report containing the requisite information for the Director of Biosecurity and the Director of Human Biosecurity to properly consider the level of biosecurity risk associated with the importation or proposed importation of animals, plants or other goods into Australian territory.

Subsection (2) provides that the findings and any conditions set out in the BIRA report may vary according to the place where the goods, or the class of goods, are to enter Australian territory or be unloaded. Subsection (4) provides that if any findings or conditions apply in relation to a part only of Australia territory, a BIRA report must also specify the part or parts of Australian territory to which the findings and conditions apply, and identify the findings and any conditions that apply in relation to that part of Australian territory.

These subsections are intended to facilitate differences in pest and disease status, geography, climate, host and vector distribution across geographic regions being considered throughout a BIRA and is an intrinsic part of the risk assessment. It is also consistent with the relevant standards set by the World Organization for Animal Health (OIE) and the International Plant Protection Convention (IPPC).

Section 31 - Time within which a BIRA must be completed

This section sets out the time within which a BIRA must be completed. This is intended to facilitate the people or organisations who want to import the particular plant, animal or other goods which are the subject of the BIRA into Australia knowing whether they are able to do so, and according to what conditions (if any), within a reasonable period of time. This is also consistent with requirements of the World Trade Organization (WTO).

A final BIRA report in relation to a BIRA must be published on the department's website within the period of 30 months commencing on the day the notice of the commencement of the BIRA was given under section 24 of the Biosecurity Regulation.

Subsection (2) provides that certain periods that can be disregarded for the purpose of calculating the total period of 30 months.

The first being the period commencing when the Inspector-General notifies the Director of Biosecurity of a request for review of the process of conducting a BIRA under section 34 of the Biosecurity Regulation and ending when the Inspector-General notifies the director that they are not satisfied it is appropriate to conduct the review or the Inspector-General gives the final BIRA review report to the Director under section 38 of the Biosecurity Regulation.

This is intended to allow adequate time for the Inspector-General to conduct a review of the process while also providing that a review by the Inspector-General does not result in the Director of Biosecurity being unable to complete a BIRA within the stipulated 30 month period.

The second being the period beginning on the day the counting of time stops in accordance with a notice published under subsection (3) and ending on the day the counting of time resumes in accordance with a notice published under subsection (7). A notice under subsection (3) must be published on the Department's website in circumstances where the Director of Biosecurity believes it will not be possible, or it is likely not to be possible, for the Director to complete the BIRA within the period provided under subsections (1) and (2) because the Director has made a request under section 28 or 29 of the Biosecurity Regulation in relation to the BIRA or a biosecurity circumstance of national or international significance has occurred.

A request by the Director under section 28 of the Biosecurity Regulation is a request by an appropriate person for further information, research or expert advice and a request under section 29 of the Biosecurity Regulation is a request for examination and comment by the scientific advisory group.

These subsections are intended to recognise that requests by the Director under either of these sections play an integral part in providing all the required information to complete a BIRA. It is important when either of these sections are used that the Director is still able to complete a BIRA within the stipulated 30 month period.

Subsection (4) provides that the notice under subsection (3) published on the Department of Agriculture and Water Resources' website must identify the BIRA, state why a BIRA will not be able to be completed within the period provided under subsections (1) and (2), state the reason for issuing the notice and state that the counting of time for this section is to stop on the day the notice is published or on a later day specified in the notice.

Subsection (5) makes clear that a notice published under subsection (3) in relation to a BIRA stops the counting of time in accordance with that notice.

Subsection (6) provides for the circumstances in which that the Director of Biosecurity may revoke a notice published under subsection (3) in relation to a BIRA.

Subsection (7) provides that if the Director wants to revoke a notice published under subsection (3) they must also publish notice on the department's website identifying the BIRA, stating the reason for revoking the notice, and stating that the counting of time for this section is to resume on the day the notice is published or on a later day specified in the notice.

The publishing of notice on the department's website stating that a BIRA will not be completed within the period specified under subsections (1) and (2) or that such a notice is being withdrawn, is intended to provide certainty around when stakeholders can expect a BIRA to be finalised. The regulated maximum timeframe for a BIRA to be completed is

within 30 months after the announcement of its commencement, however the ability for certain period to be disregarded means it is important stakeholders are kept updated.

Section 32 - Termination of a BIRA

This section provides the circumstances in which the Director of Biosecurity may terminate a BIRA before it is completed.

The Director of Biosecurity may terminate a BIRA before it is completed only if satisfied that there is insufficient information or policy rationale to complete a BIRA or it is not appropriate to complete the BIRA for any other reason.

This is intended to provide for circumstances where a person or organisation withdraws their application to import goods, or a class of goods, into Australia that requires a BIRA or where an alternative process can be undertaken by the department that will achieve similar outcomes, such as a non-regulated analysis.

Subsection (2) provides that if the Director terminates a BIRA, the Director must publish a notice on the department's website stating that the BIRA has been terminated, and the reasons for the termination.

This subsection is intended to promote certainty and transparency. It is also intended to facilitate the people or organisations who want to import the particular plant, animal or other goods which are the subject of the BIRA into Australia being kept informed on the status of a BIRA.

Division 2—Reviews by the Inspector General

Section 33 - Purpose of this Division

This section provides that for the purposes of subsection 567(4) of the Biosecurity Act, this Division makes provision for and in relation to requests made to the Inspector-General to review the process of conducting a BIRA and the reports that must be prepared after a review is completed. This is intended to enhance the integrity of a BIRA through independent evaluation by the Inspector-General of Biosecurity.

A review conducted under subsection 567(4) of the Biosecurity Act allows the Inspector-General to review the performance of functions, or exercise of powers, by biosecurity officials under one or more provisions of this Act. A biosecurity official for the purposes of the Biosecurity Act includes the Director of Biosecurity.

A review of process conducted by the Inspector-General is different from a review of a reviewable decision under Part 1 of Chapter 11 of the Biosecurity Act. Although this section allows the Inspector General to provide recommendations in relation to the process of conducting a BIRA, the Inspector-General cannot affirm, vary or set aside the decision.

This section includes a note to see Division 2 of Part 6 of Chapter 10 of the Biosecurity Act in relation to the Inspector-General's review powers.

Section 34 - Person may request Inspector-General to review BIRA process

This section provides for when a person may request the Inspector-General to review a BIRA process. This is intended to contribute to Australia's biosecurity system by providing for an independent review of the process of conducting a BIRA.

Within 30 days after the provisions BIRA report in relation to a BIRA is published under subsection 26(3) of the Biosecurity Regulation, a person may request the Inspector-General to review the process of conducting a BIRA if the person considers that:

- a) the process did not accord with the process required by Division 1, and
- b) the departure from the process was significant, and
- c) the person's interest were, are, or may be adversely affected by the failure to conduct the BIRA in accordance with the process required by Division 1.

A review of process conducted by the Inspector-General is not a merits review. This means that the science that was relied upon, or the content of the recommendations that were made, will not be considered as part of the review by the Inspector-General. However, there are sufficient opportunities through the BIRA process for stakeholders to contribute to the scientific analysis and content of reports. In addition, the Director of Biosecurity is able to invite the scientific advisory group to be involved at any stage of a BIRA.

Subsection (2) provides that the request must be in writing and specify on what grounds the request is being made.

Section 35 - Inspector-General must consider request for review

This section provides that if a request to review the process of conducting a BIRA is made under section 34 of the Biosecurity Regulation, the Inspector-General must notify the Director of Biosecurity that the request has been received, and consider the request as soon as practicable after receiving it.

This is intended to facilitate the 30 month period for the completion of the BIRA only being delayed for as long as is necessary. A note is also included under subsection (2) to make clear that the time taken by the Inspector-General to conduct the review is to be disregarded for the purpose of calculating the 30 month period for the completion of the BIRA (see subsections 31(1) and (2) of the Biosecurity Regulation).

Subsection (2) provides that if the Inspector-General is satisfied, having regard to the grounds set out in the request, that it is appropriate to review the process of conducting a BIRA, the Inspector-General must notify the Director of Biosecurity that they are satisfied that it is appropriate for the review to be conducted and review the process of conducting the BIRA. This is intended to facilitate the Director being aware that any recommendations made by the Inspector-General in the course of their review will need to be considered in the final BIRA report.

Subsection (3) provides that if the Inspector-General is not satisfied, having regard to the grounds set out in the request, that it is appropriate to review the process of conducting a BIRA, the Inspector-General must notify the person who made the request in writing of that decision. This is intended to help people understand why the evidence they have provided does not warrant consideration by the Inspector-General.

The Inspector-General must also notify the Director of Biosecurity of the decision not to review the process of conducting a BIRA.

Section 36 - Time within which review of BIRA process must be completed

This section sets out the time in which a review of the BIRA process by the Inspector-General must be completed.

If the Inspector-General decides to review the process of conducting a BIRA, the Inspector-General must complete the review and give the final BIRA review report to the Director of Biosecurity within 45 days. However, the period of 45 days does not include the period during which the Director of Biosecurity is considering the draft BIRA review report given to him or her under subsection 37(1) of the Biosecurity Regulation.

This section facilitates a request by a person for the Inspector-General to review the process of conducting a BIRA not being unduly delayed the Director of Biosecurity finalising a BIRA through publishing the final BIRA report.

Section 37 - Draft BIRA review report

This section provides that after completing a review of the process of conducting a BIRA the Inspector-General must prepare a BIRA review report and give it to the Director of Biosecurity.

The draft BIRA review report must set out the subject and findings of the review, the information and other material on which those findings are based, and any recommendations resulting from the review. The Director of Biosecurity may give the Inspector-General comments on the draft BIRA report or further information relating to the BIRA to which the report relates.

This section is intended to facilitate the Inspector-General being informed of, and having access to, all necessary information when preparing the final BIRA review report so that the findings and/or recommendation are accurate and that the BIRA review report will contribute toward continual improvements in how the process for conducting a BIRA is followed.

Section 38 - Final BIRA review report

This section provides that the Inspector-General must prepare a final BIRA review report on a review of the process of conducting a BIRA and give it to the Director of Biosecurity.

Subsection (2) provides that in preparing the final BIRA review report, the Inspector-General must consider any comments or further information given to the Inspector-General under subsection 37(3) of the Biosecurity Regulation. This is intended to facilitate the final BIRA review report being an accurate representation of the process of conducting a BIRA that was followed by the Director of Biosecurity.

Subsection (3) provides that the final BIRA review report must set out the subject and findings of the review, the information and other material on which those findings are based, and any recommendations resulting from the review.

The prescribed information is intended to facilitate each final BIRA review report containing the requisite information for the Director of Biosecurity and the department to properly consider how to improve. It also represents a clear picture to the person who requested the review, and other interested stakeholders, on how evidence was considered and the outcomes.

Subsection (4) would provide that as soon as practicable after the final BIRA review report has been given to the Director of Biosecurity, the Director of Biosecurity would be required to publish the final BIRA review report on the department's website. The Inspector-General

would be required to also notify the person who made the request that the final BIRA review report has been published. This is intended to help promote transparency in the BIRA process and to assist in continual improvement to Australia's biosecurity system.

Section 39 - Failure to comply with this Part does not affect validity of a BIRA review report

This section provides that a failure to comply with a provision in this Division in relation to the conduct of a review of the process of conducting a BIRA does not affect validity of a BIRA review report prepared by the Inspector-General in relation to the review.

This section is intended so that the publication of a BIRA review report prepared by the Inspector-General is not unduly delayed.

In circumstances where the Inspector-General does not comply with one or more sections within this Division there will be other mechanisms to manage this without the Inspector-General having to restart the process. For example, if the Inspector-General were to prepare a final BIRA review report without first providing a draft review report to the Director of Biosecurity to provide comment or further information, the Director of Biosecurity would be able to carefully consider the validity of any recommendations made when preparing the final BIRA report, but would not discard the recommendations out of hand.

This section is also intended to facilitate the publication of the final BIRA report by the Director of Biosecurity not being unduly delayed.

Section 27 of the Biosecurity Regulation provides that the Director of Biosecurity will only publish the final BIRA report once the period available to request the Inspector-General to review the process of conducting a BIRA has ended.

Section 37 of the Biosecurity Regulation provides that if a request for review is made and the Inspector-General is satisfied it is appropriate to review the process of conducting a BIRA, the Inspector-General will have 45 days to complete the review, not including the period during which the Director of Biosecurity is considering the draft BIRA review report.

This would mean that if a BIRA review report was to be found invalid due to a failure by the Inspector-General to comply with this Division, there would be significant delays in the publication of the final BIRA report by the Director of Biosecurity as the 45 day period for the Inspector-General to complete the review would restart.

Part 5—Permits to bring or import goods into Australian territory

Section 40 - Information that must be included in application for permit to bring or import conditionally non-prohibited goods into Australian territory

This section provides the information that must be included in an application for a permit to bring or import conditionally non-prohibited goods into Australian territory. Information that must be included in an application includes information relating to the identity and location of the applicant as well as a description of the goods. If an agent is submitting an application on behalf of another person, the agent must also provide their name, street address, and their company details (if applicable).

The purpose of this section is to facilitate the Director of Biosecurity determining who it is that is making an application to bring or import conditionally non-prohibited goods into Australian territory and what types of goods the permit application relates to.

This information will allow the Director of Biosecurity to assess the level of biosecurity risk associated with an application and whether it would be appropriate to approve or refuse the application.

Section 41 - Period for making decision on application for permit

This section provides that 123 business days is the period for making a decision in relation to an application for a permit under section 177 of the Biosecurity Act.

The biosecurity import conditions database calculates time periods in business days – 123 business days was chosen as it is the average number of business days in a six month period. By prescribing this time period, this section provides the Director of Biosecurity with sufficient time to assess the appropriateness of approving or refusing a permit application once all the risk factors associated with the application have been taken into consideration. The period of time prescribed by this section is a maximum amount of time and the Director of Biosecurity may make a decision in relation to a permit application at any time before 123 business days has passed. By prescribing a period of time in which the Director of Biosecurity must make a decision in relation to a permit application, a person applying for an application is able to be certain about the maximum amount of time it may take before they receive a response in relation to their application.

Section 42 - Extension of period for deciding application for permit—prescribed activities

This section prescribes activities which, if the Director of Biosecurity undertakes one or more of them, extend the period in which he or she must make a decision in relation to a permit application. These prescribed activities are:

- determining whether an applicant is a fit and proper person,
- requesting and waiting for scientific advice, testing or expert review informing a risk assessment relating to the goods which are the subject of the application,
- assessing a facility relating to the goods which are the subject of the application,
- assessing a process relating to the goods which are the subject of the application,
- negotiating or liaising with a government authority of a foreign country to assess the management of biosecurity risks in relation to the goods or class of goods,
- waiting for a fee to be paid in relation to the application.

The purpose of this clause is to allow for a longer decision-making period where the decision-maker must make further enquiries beyond what is required for a standard application and so that, if the application was to be granted, the risks associated with goods can be adequately managed.

Section 43 - Maximum period within which requested information or documents must be given

This section provides that 123 business days is the maximum period in which further information or documents must be provided to the Director of Biosecurity once a request by the Director of Biosecurity for further information has been made under 178(6) of the Biosecurity Act.

The purpose of this section is to ensure that the Director of Biosecurity receives any additional information that he or she requests within a reasonable amount of time in order to be able to make a decision in relation to the application.

Section 44 - Varying or revoking condition of, or imposing further conditions on, permit

This section sets out the matters that the Director of Biosecurity must consider when making a decision to vary or revoke a condition of a permit granted under section 179 of the Biosecurity Act or when he or she is deciding whether to impose further conditions on a permit. When making one of these decisions the Director of Biosecurity must consider:

- the level of biosecurity risk associated with the goods to which the permit relates;
- whether the condition on the permit is necessary to reduce the level of biosecurity risk associated with the goods to an acceptable level; and
- any personal information that was required to be provided with the application under section 531 of the Biosecurity Act.

Under this section the Director of Biosecurity must also apply Australia's Appropriate Level of Protection (ALOP) to any risk assessment undertaken for the purpose of deciding whether to vary or revoke or impose a further condition on a permit.

In addition to the matters that the Director of Biosecurity must consider when deciding whether to vary or revoke or impose a further condition on a permit, the Director of biosecurity may also consider:

- whether the holder of the permit is a fit and proper person;
- whether the holder of the permit is an associate of a person who has applied for a permit under section 177 of the Biosecurity Act and whose application was refused; and
- any other matters relating to the goods or the holder of the permit that the Director of Biosecurity considers relevant.

The purpose of this section is to enable the Director of Biosecurity to have regard to a range of relevant matters when considering whether to vary or revoke conditions of a permit or when considering whether to impose additional conditions on a permit. This allows the Director of Biosecurity to alter conditions on a permit to import goods into Australia when it is necessary to appropriately manage the biosecurity risks associated with the goods or the permit holder which may change over time.

Section 45 - Variation, suspension or revocation of permit

This section sets out the matters that the Director of Biosecurity must take into account in making a decision to vary, suspend or revoke a permit. When making a decision to vary, suspend or revoke a permit the Director of Biosecurity must consider:

- the level of biosecurity risk associated with the goods to which the permit relates;
- whether it is necessary to impose a condition, or further conditions, on the permit to reduce the level of biosecurity risk associated with the goods; and
- personal information that was required to be provided with the application under section 531 of the Biosecurity Act.

The Director is also under an obligation to apply Australia's ALOP to any risk assessment undertaken for the purpose of deciding whether to vary, suspend or revoke a permit.

In addition to the matters that the Director of Biosecurity must consider when deciding whether to vary, suspend or revoke a permit, the Director of Biosecurity may also consider:

- whether the holder of the permit is a fit and proper person;
- whether the holder of the permit is an associate of a person who has applied for a permit under section 177 of the Biosecurity Act and whose application was refused; and
- any other matters relating to the goods or the holder of the permit that the Director of Biosecurity considers relevant.

The purpose of this section is to enable the Director of Biosecurity to have regard to a range of relevant matters when considering whether to vary, suspend or revoke a permit. This allows the Director of Biosecurity to vary, suspend or revoke a permit to import goods into Australia when it is necessary to appropriately manage the biosecurity risks associated with the goods or the permit holder which may change over time.

Chapter 3—Managing biosecurity risks: conveyances

Part 1—Pre-arrival reporting

Section 46 - Purpose of this Part

This section provides that this Part makes provision for and in relation to the requirements for reports that must be given by an operator of an aircraft or vessel in the circumstances referred to in paragraph 193(1)(a) or (b) of the Biosecurity Act. This includes the information that must be included in a report, the manner in which a report must be given and the person to whom a report must be given, the time at which or the period during which a report must be given, and exceptions to the requirement to give a report.

Pre-arrival reports are intended to be used to assess the level of biosecurity risk associated with goods, conveyances and people entering, or intending to enter, Australian territory.

Section 47 - Pre arrival report—aircraft

This section provides for the requirements for reports that must be given in relation to all aircraft and aircraft on non-scheduled flights that enter, or intend to enter, Australian territory. Section 50 of the Biosecurity Regulation sets out any exceptions to the requirement to provide a pre-arrival report.

Subsection (2) provides that the report must include details of any person who has or has had signs or symptoms of a listed human disease during the flight, whether there are any animals or plants in the cabin of the aircraft and if any of those animals died during the flight, and whether any prescribed disinsection measures have not been taken. This information is intended to be used to determine what assessment and management activities might be necessary when the aircraft arrives in Australian territory.

Subsection (3) provides that if an aircraft intends to enter Australian territory on a non-scheduled flight certain information must be included in a report, in addition to the information required by subsection (2). This includes information identifying the aircraft and the operator or owner of the aircraft, the intended first landing place and estimated day and time of arrival, and details of any animals or plants in the cabin of the aircraft. This reflects that non-scheduled flights do not enter Australian territory under the authority of an international airline licence and can be scheduled at short notice. Additional information is needed about these flights to assist biosecurity officers in determining what risk management activities might be necessary when the aircraft arrives in Australian territory.

Subsection (4) provides that a report must be given orally or in writing (including electronically). Subsections (5) and (6) provide that the report must be given to a biosecurity official. The option to provide a report to a customs officer is not available for aircraft because the short timeframe for providing the report (at top of descent or 30 minutes before the aircraft comes to a standstill) may not enable information to be passed on to a biosecurity official in time for risk management measures to be prepared at the landing place. If the report is given using an electronic system, it is taken to have been given to a biosecurity official. This enables flexibility in the manner of reporting, while still allowing for the collection of necessary information about the aircraft to assess the biosecurity risk.

Subsection (7) requires that a report must be given at the earlier of either:

- as close to the top of descent as is operationally practicable before the aircraft is estimated to arrive at its first landing place in Australian territory and 30 minutes before the aircraft is estimated to come to a standstill after arriving at its first landing place in Australian territory; or
- at a time specified by a biosecurity official.

These flexible reporting requirements are intended to facilitate operators being able to meet their legislative obligations, while still enabling the Department of Agriculture and Water Resources and Department of Health to collect the information that is required.

Section 48 - Pre arrival report—vessels other than certain vessels travelling from certain areas in the Torres Strait

This section provides for the requirements for reports that must be given in relation to all vessels other than vessels covered by section 49 of the Biosecurity Regulation. Section 51 of the Biosecurity Regulation sets out any exceptions to the requirement to provide a pre-arrival report.

Subsection (2) provides that information is required about the vessel, where the vessel has travelled, the goods on board, and whether the vessel will be picking up cabotage goods. This information is intended to be used to determine what assessment and management activities might be necessary when the vessel arrives in Australian territory.

For example, if a vessel reports under paragraph (i) that they are intending to load goods at a port in Australian territory and then carry those goods to another port in Australian territory to be unloaded, biosecurity officers may determine that an assessment of the goods will be required at the port they are intended to be unloaded as they may have been exposed to biosecurity risks through contact with goods from outside Australian territory.

Information about the person in charge of the vessel, and each agent of the vessel at each port the vessel intends to visit during the voyage is required to enable the department to contact these people to assess biosecurity risks associated with the vessel. Information about any intended crew changes and disembarkation of passengers is also required so that the department can manage the risks associated with the crew, passengers and their baggage on disembarkation.

Subsection (3) provides the manner in which a report must be given based on the class of vessel. If the report relates to a vessel other than a non-commercial vessel, then it must be

given in writing (including electronically). If the report relates to a non-commercial vessel, then it must be given orally or in writing (including electronically). Allowing reports for a non-commercial vessel to be given orally or in writing is intended so that those vessels that do not have the technology on board to report in writing are still able to meet the reporting obligations, for example through reporting by radio.

Subsections (4) and (5) provide that the report by either class of vessel must be given to a biosecurity official or a customs officer and if the report is given using an electronic system, the report is taken to have been given to a biosecurity official or a customs officer. Providing that the notice may be given electronically and to a biosecurity official or a customs officer promotes flexibility and reduces red tape for individuals where there are other methods of providing the notice in place.

Subsection (6) sets out the time at which a report must be given for both classes of vessel:

- If the report relates to a vessel other than a non-commercial vessel then the report must be given at least 12 hours before the vessel is estimated to arrive at its first port in Australian territory, but no earlier than 96 hours.
- If the report relates to a non-commercial vessel then the report must be given:
 - before the vessel departs from its intended last port before arriving in Australian territory but no earlier than 90 days before the vessel is estimated to arrive at its first port in Australian territory; or
 - at least 12 hours before the vessel is estimated to arrive at its first port in Australian territory.

Different timeframes are prescribed for the two classes of vessels to reflect that non-commercial vessels may not have the technology on board to provide a pre-arrival report once a voyage has already commenced. In those instances, a pre-arrival report could be provided before the vessel leaves its origin port (as long as it is no earlier than 90 days before its estimated arrival at its first port in Australian territory).

The other option for both types of vessels is to provide the report at the time specified by a biosecurity official. This is intended to allow a biosecurity officer to approve a suitable alternate time for the report to be provided that still allows biosecurity risks to be assessed and managed.

By enabling flexibility in when a report is required to be provided, this section will facilitate operators being able to meet their legislative obligations, while providing the necessary information about the vessel to assess the biosecurity risk.

Section 49- Pre arrival report—vessels travelling from certain areas in the Torres Strait

This section provides for the requirements for reports that must be given in relation to a vessel over 7m that is on, or intends to make, a voyage that commences in the protected zone or the Torres Strait permanent biosecurity monitoring zone and ends in a place in Australian territory other than those zones.

Subsection (2) provides that the information in relation to the vessel that must be included in the report includes information identifying the vessel, details of the vessel's intended voyage, and details of goods on board the vessel. This information is intended to be used to determine

what assessment and management activities may be necessary when the vessel arrives at its destination.

For example if a vessel reports that under paragraph (c) that they are intending to travel from a location in the protected zone where fruit fly is present to a place in Australian territory where fruit fly is not present, biosecurity officers may schedule an inspection when the vessel arrives at its destination to assess whether any fresh fruit is on board that could transfer this risk.

Information about any intended crew changes or disembarkation of passengers in a place south of the Torres Strait permanent biosecurity monitoring zone is also required in case inspection of those passengers or their baggage is necessary on arrival.

Subsection (3) provides that the report must be given orally or in writing (including electronically). Subsections (4) and (5) provide that the report must be given to a biosecurity official or a customs officer and if the report is given using an electronic system, the report is taken to have been given to a biosecurity official or a customs officer. Providing that the notice may be given electronically and to a biosecurity official or a customs officers promotes flexibility and reduces red tape for individuals where there are other methods of providing the notice in place.

Subsection (6) provides that the report must be given at least 12 hours, but no earlier than 96 hours, before the vessel is estimated to arrive at its first port in Australian territory.

By enabling flexibility in when a report is required to be provided this section will facilitate operators being able to meet their legislative obligations, while providing the necessary information about the vessel to assess the biosecurity risk.

Section 50 - Exceptions to requirement to give pre arrival report—aircraft

This section provides exceptions to requirements to give a pre-arrival report for aircraft on scheduled and non-scheduled flights.

Paragraph (1)(a) provides that the operator of an aircraft that is intended to enter, or that enters, Australian territory on a scheduled flight is not required to give a report under section 193 of the Biosecurity Act if at the time the report is required to be given there is no information to give. This reflects that most aircraft are operating under the authority of an international airline licence and have scheduled timetables for arrivals and departures that are forecasted well in advance. This provides enough information for biosecurity officers to determine what assessment and management might be necessary when the aircraft arrives in Australian territory. There is also less risk of the aircraft itself being exposed to biosecurity risk due to the altitude and speed of travel.

Paragraph (1)(b) provides that the operator of an aircraft that is intended to enter, or that enters, Australian territory on a scheduled flight is not required to give a report under section 193 of the Biosecurity Act if the aircraft is not intended to land at a landing place in Australian territory. This means that aircraft that are transiting over Australian territory on route to another international destination are not required to provide a pre-arrival report as there is no biosecurity risk that needs to be assessed and managed.

Paragraph (1)(c) provides that the operator of an aircraft that is intended to enter, or that enters, Australian territory on a scheduled flight is not required to give a report under section 193 of the Biosecurity Act if the aircraft is an exposed conveyance in relation to which

section 192 of the Biosecurity Act does not apply because of the *Biosecurity (Exposed Conveyances—Exceptions from Biosecurity Control) Determination 2016*. This exception applies because the biosecurity risk in these circumstances is low, or it is being managed to an acceptable level by the person in charge or the operator of the aircraft.

If none of the circumstances prescribed by subsection 47(2) of the Biosecurity Regulation apply in relation to an aircraft on a scheduled flight, the operator of the aircraft will not be required to give a report.

Paragraph (2)(a) provides that the operator of an aircraft that is intended to enter, or that enters, Australian territory on a non-scheduled flight is not required to give a report under section 193 of the Biosecurity Act if the aircraft is not intended to land at a landing place in Australian territory. This means that aircraft that are transiting over Australian territory en route to another international destination are not required to provide a pre-arrival report as there is no biosecurity risk that needs to be assessed and managed.

Paragraph (2)(b) provides that the operator of an aircraft that is intended to enter, or that enters, Australian territory on a non-scheduled flight is not required to give a report under section 193 of the Biosecurity Act if the aircraft is an exposed conveyance in relation to which section 192 of the Biosecurity Act does not apply because of the *Biosecurity (Exposed Conveyances—Exceptions from Biosecurity Control) Determination 2016*. This exception applies because the biosecurity risk in these circumstances is low, or it is being managed to an acceptable level by the person in charge or the operator of the aircraft.

This section includes a note to clarify that unless this subsection applies in relation to the operator of an aircraft on a non-scheduled flight, the operator must give a report as required by section 47 of the Biosecurity Regulation.

Section 51 - Exceptions to requirement to give pre-arrival report—vessels

This section provides exceptions to requirements to give a pre-arrival report for vessels.

Paragraph (a) provides that the operator of a vessel that is intended to enter, or that enters, Australian territory is not required to give a report under section 193 of the Biosecurity Act if the vessel is not intended to be moored at a port in Australian territory or to be stationary (for example, by being held in position by tug boats) at any place in Australia territory. This means that vessels that are transiting through Australian territory en route to another international destination are not required to provide a pre-arrival report as the biosecurity risk associated with these vessels is low.

Paragraph (b) provides that the operator of a vessel that is intended to enter, or that enters, Australian territory is not required to give a report under section 193 of the Biosecurity Act if the vessel is an exposed conveyance in relation to which section 192 of the Act does not apply because of the *Biosecurity (Exposed Conveyances—Exceptions from Biosecurity Control) Determination 2016*. The biosecurity risk in these circumstances is low, or will be managed to an acceptable level by the person in charge or the operator of the vessel.

Part 2—Conveyances entering Australian territory

Section 52 - Conveyance becomes subject to biosecurity control if exposed to certain goods

Sub-paragraph 192(1)(a)(iii) of the Biosecurity Act provides that a conveyance that is not already subject to biosecurity control will become subject to biosecurity control when it is exposed to certain kinds of goods. The prescribed goods include:

- prohibited goods that are in physical contact with the conveyance;
- suspended goods that are in physical contact with the conveyance;
- live animals that are conditionally non-prohibited goods and are in physical contact with the conveyance;
- goods in or on which a pest is present, if the pest, or any part of the pest, is transferred onto the conveyance;
- goods from which animal or plant material or soil is transferred onto the conveyance.

Where a conveyance is not already subject to biosecurity control and is exposed to the prescribed goods that may pose an unacceptable level of biosecurity risk, the conveyance will become subject to biosecurity control. This includes, for example, where a prohibited or suspended good has spilled out or leaked from the container onto the conveyance, a live dog has escaped from its cage while being transported on the conveyance or a live horse is loaded directly onto a horse trailer. Other examples include when soil or leaves come off from a used tractor being transported on the conveyance, or feathers from live birds have fallen out of the bird cage onto the conveyance transporting those animals, or insects from a container of fresh produce are found on the conveyance transporting the container.

With these conveyances subject to biosecurity control, the department will be able to assess the level of biosecurity risk associated with the exposed conveyance. If the biosecurity risk is unacceptable, the department will be able to take appropriate action to manage the biosecurity risk.

Section 53 - Persons on incoming aircraft or vessel required to provide information to assess level of biosecurity risk

Section 196 of the Biosecurity Act provides that a prescribed class of persons who intend to enter, or enter, Australian territory on an incoming aircraft or vessel may be required to provide information, including answering questions, to enable the assessment of biosecurity risk associated with the person and any accompanying goods.

The classes of prescribed persons include: passengers or future passengers, crew members or future crew members, on the incoming aircraft or vessel, and persons in charge, or who will be in charge of the incoming aircraft or vessel (such as the pilot or captain). The information will usually be provided by these persons on an incoming passenger card and presented on arrival (as required by the *Customs Act 1901*).

Section 54 - Biosecurity officer may require trap to be set in or on certain conveyances for monitoring or assessment purposes

This section is made under section 645 of the Biosecurity Act. It applies to a conveyance that is subject to biosecurity control and to which biosecurity measures under Division 5 of Part 2 of Chapter 4 of the Biosecurity Act have been taken.

This section provides that a biosecurity officer may require a trap to be set in or on the conveyance for the purpose of monitoring or assessing the effect of the biosecurity measures taken and the level of biosecurity risk associated with the conveyance. This is in addition to

other powers that a biosecurity officer may exercise under Division 4 of Part 2 of Chapter 4 of the Biosecurity Act to assess the level of biosecurity risk associated with the conveyance.

If a biosecurity officer requires a trap to be set, the biosecurity officer must give a written notice to the person responsible for the conveyance. The written notice must identify or describe the conveyance, for example, identifying the vessel's International Maritime Organization number or the aircraft's registration number (as applicable), and the period during which the trap must remain in or on the conveyance. The notice may also specify the kind of trap that must be set and/or the places in or on the conveyance where the trap must be set.

A biosecurity officer may set up the trap personally or direct a person responsible for the conveyance to set the trap, direct a person responsible for the conveyance to arrange for the trap to be set, or arrange for another person with appropriate qualifications or expertise to set the trap. This means that the biosecurity measure can be carried out in the most efficient way possible and by the most appropriate person in the circumstances. Where the biosecurity officer gives a direction to a person to set a trap or arrange for the trap to be set, or arranges for another person to set the trap, the officer may supervise the person setting the trap. These powers are consistent with those available under section 213 of the Biosecurity Act for other biosecurity measures to be taken in relation to a conveyance that is subject to biosecurity control.

This section allows a trap to be used to assess the efficacy of a treatment to eradicate a pest infestation. A trap may indicate whether the treatment to eradicate an infestation has failed or whether there are additional infestations.

Section 55 - Person must comply with direction in relation to setting trap in or on conveyance for monitoring or assessment purposes

This section is made under section 645 of the Biosecurity Act. This provision provides that if a person who is given a direction to set a trap under paragraph 54(5)(a) or (b) does not comply with the direction, the person commits an offence and is liable to a civil penalty. A person in charge, the operator or the owner of the conveyance commits an offence and is liable to a civil penalty if the person has been given a direction under paragraph 54(5)(a) or (b) and has not complied with it.

In addition, the person in charge of a conveyance commits an offence and is liable to a civil penalty if the operator of the conveyance is given a direction that is not complied with. The operator of a conveyance commits an offence or is liable to a civil penalty if the person in charge is given a direction that is not complied with.

The operator of a conveyance also commits an offence and is liable to a civil penalty if the owner of the conveyance is given a direction that is not complied with. The owner of a conveyance commits an offence and is liable to a civil penalty if the operator of the conveyance has been given a direction that is not complied with. The maximum penalty for a contravention is 50 penalty units. The maximum civil penalty for a contravention is 50 units. These offences and civil penalty provisions are consistent with those provided under section 215 of the Biosecurity Act in relation to non-compliance with the direction to take a biosecurity measure with respect to a conveyance that is subject to biosecurity control.

Making the person in charge and the operator of a conveyance jointly liable means that both persons who are responsible for the conduct of the aircraft or vessel can be given a direction

in relation to the aircraft or vessel and be held responsible if that direction is not complied with. For example, the person in charge might be an airline carrier staff member who is responsible for scheduling flights and determining where an aircraft lands, while the operator might be a pilot who lands the aircraft. Both are responsible for the movement of the aircraft and for making sure that any directions are complied with. Similarly, making the owner and operator of the conveyance jointly liable means that both persons who are responsible for the conduct of the aircraft or vessel can be given a direction to set a trap and be held responsible if that direction is not complied with.

Part 3—First points of entry

Sections 56 and 58 - Requirements that must be met before determining a landing place or port to be first point of entry

These sections set out the requirements that must be met for a landing place or port to be determined as a first point of entry by the Director of Biosecurity or the Director of Human Biosecurity.

These requirements include:

- that the landing place or port must have appropriate procedures in place to manage the level of biosecurity risk associated with operations carried out at the landing place or port;
- that there must be adequate facilities and amenities at the landing place or port to enable biosecurity officials and human biosecurity officers to perform functions or exercise powers under the Biosecurity Act; and
- that there must be appropriate procedures in place so that each person involved in operations can identify biosecurity risks relating to those operations, inform biosecurity officials or human biosecurity officials of any identified biosecurity risks, and manage any other factors in relation to the level of biosecurity risk associated with operations.

These requirements will mean that a landing place or port has appropriate facilities and procedures to effectively manage biosecurity risks. Appropriate facilities may include facilities to support biosecurity officials and human biosecurity officers in performing their functions such as training rooms, administration and management areas, breakout areas and toilets. Requiring appropriate procedures to manage biosecurity risk means that people working in the landing place or port are adequately trained to identify, report and manage these biosecurity risks.

Requirements are needed so that biosecurity officials assessing overseas aircraft, conveyances and goods which have the potential to bring a range of biosecurity risks into Australia, have appropriate ways to manage these risks.

Sections 57 and 59 - Circumstances for variation and revocation of first point of entry determinations in relation to landing places and ports

These sections set out circumstances, additional to those set out in paragraphs 227(a)-(d) and 233(a)-(d) of the Biosecurity Act, in which the Director of Biosecurity or Director of Human Biosecurity may vary or revoke a determination in relation to a landing place or port, or vary the conditions specified in the determination.

These circumstances include: when there has been a material change in the operations, infrastructure or services at the landing place or port or on the request of the operator of the landing place or port.

These sections allow for variation or revocation if the Director considers that circumstances relating to a first point of entry have substantially changed but would not be covered by the conditions specified in paragraphs 227(a)-(d) and 233(a)-(d) of the Biosecurity Act, for example, if the biosecurity risk has not changed but the approach to management of the risk needs to change. It also allows for the operator of a landing place or port to seek a change to the determination, allowing for new practices or approaches to be considered where relevant.

Chapter 4—Ballast water and sediment

Part 1—Application and interpretation

Section 60 - Exemption from Chapter 5 of the Act—warships, naval auxiliary or other vessels owned or operated by the Australian government or the government of a foreign country

This section provides that vessels referred to in Article 3.2(e) of the Ballast Water Convention (warships and Australian and foreign government owned vessels) are exempt from Chapter 5 of the Biosecurity Act.

The explanatory memorandum for section 616 of the Biosecurity Act states that it is intended to allow compliance with the Ballast Water Convention through exempting warships and government owned ships from the ballast water provisions in Chapter 5 of the Biosecurity Act. This section gives effect to that intention.

Article 3.2(e) of the Convention provides that:

any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service. However, each Party shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this Convention.

It is expected that warships and government owned ships (for example, vessels of the Australian Defence Force and Immigration and Border Protection) will manage ballast according to the values of the Convention, but the law contained in Chapter 5 will not apply so that these vessels can undertake their functions without impediment.

Section 61 - References to IMO guidelines

This section provides that a reference in this Chapter to IMO guidelines or IMO procedures is a reference to guidelines or procedures adopted by the Marine Environment Protection Committee of the International Maritime Organisation, as being in force from time to time. The note clarifies that these guidelines or procedures are available on the International Maritime Organization's website (<http://www.imo.org>).

Part 2—Reporting ballast water discharges

Section 62 - Information that must be included in ballast water discharge report

This section would prescribe the information that would be required to be included in a ballast water discharge report.

Paragraph 267(2)(a) of the Biosecurity Act provides that the regulations will prescribe information required in a ballast water discharge report in relation to an intended discharge, or a discharge, of ballast water from a vessel in Australian seas. Required information includes:

- information identifying the vessel and describing tanks and pumps used to manage the vessel's ballast water;
- contact details of the person responsible for the vessel's ballast water;
- details of the voyage during which a discharge is expected to occur or has occurred;
- details of the ballast water management certificate, management plan and records for the vessel;
- whether the vessel intends to dispose of sediment;
- whether any intended discharge or discharge would be covered by an exception under part 3 of Chapter 5 of the Biosecurity Act and any details of that exception and how conditions relation to the exception will be met;
- the location of intended or occurred discharges;
- timing of intended or occurred discharges; and
- the estimated volume of ballast water that has been or will be discharged.

The purpose of the section is to set out the information that the department requires from vessels in order to monitor compliance with the ballast water provisions of the Biosecurity Act and assess the biosecurity risk associated with each discharge.

Section 63 - Manner and time for giving ballast water discharge report

This section prescribes the manner and time in which a ballast water discharge report must be given.

Subsection (1) provides that for paragraph 267(2)(b) of the Biosecurity Act, a ballast water discharge report must be given in writing, and must be given to the Director of Biosecurity. The report may be given electronically. The report must be in a form or forms approved by the Director of Biosecurity, as per paragraph 267(2)(d) of the Biosecurity Act.

Subsection (2) would provide that for paragraph 267(2)(c) of the Biosecurity Act, a ballast water discharge report would be required to be given between 96 and 12 hours before the discharge to which the report relates is intended to occur, or, if it is not possible to comply with those times, at the time specified by a biosecurity official.

This section will enable biosecurity officials to assess and take steps to manage any biosecurity risk that may exist as a result of that discharge in a timely way. By prescribing that a report would be required to be provided before ballast water is discharged, biosecurity officials can assess the biosecurity risks that may be present before ballast water is discharged. This would provide an opportunity for any biosecurity risks to be managed before they occur. Subsection (2) allows flexibility where the standard timeframe cannot be met and can accommodate unexpected or unplanned discharges while still enabling biosecurity officials to monitor compliance and assess risk.

Section 64 - Exception to requirement to give ballast water discharge report

This section provides that an operator of a vessel may be excepted from the requirement to give a ballast water discharge report, if biosecurity risks associated with discharges of ballast water from the vessel are managed in accordance with an approved arrangement covering the operator of the vessel.

Subsection 267(3) of the Biosecurity Act provides that the regulations may prescribe exceptions to the requirement to give a ballast water discharge report.

Where an operator can demonstrate that biosecurity risks are being appropriately managed through an approved arrangement, it is appropriate that the regulation of that operator can be reduced to streamline their operations.

Part 3—Management of discharge of ballast water

Section 65 - Application for approval of method of ballast water management

This section provides the requirements for an application for approval of method of ballast water management.

Subsection (1) provides that for subsection 273(1) of the Act, an application for approval of a method for ballast water management must follow certain requirements, including that the application is in writing, and in a form approved by the Director of Biosecurity. This provision sets out further requirements if the application is for approval of a ballast water management system, or prototype ballast water treatment technology, or any other method of ballast water management. The purpose of this subsection is to facilitate the methods used to manage ballast water being consistent with international standards.

Subsection (2) provides that for subsection 273(3) of the Biosecurity Act, the Director of Biosecurity may approve a method of ballast water management if the application complies with the above.

The purpose of this section is to prescribe the requirements for an application for approval of methods to manage ballast water. The purpose of this section is to facilitate the Director of Biosecurity approving methods of ballast water management where the application conforms with subsection (1), meaning that the methods used are consistent with international standards. The department supports the international standards based on scientific research and evidence as being the most effective methods to manage biosecurity risk.

Section 66 - Approval of method of ballast water management that has been approved by foreign country

This section provides that the Director of Biosecurity may approve methods of ballast water management where they have been approved by a foreign country.

For subsection 274(2) of the Biosecurity Act, the Director of Biosecurity may make a decision to approve a method of ballast water management that has already been approved by a foreign country. The Director may do so if satisfied that any ballast water discharged using the method meets the standard referred to in the Ballast Water Convention.

The purpose of this section is to provide that equivalent methods of managing the biosecurity risks associated with ballast water can be recognised where appropriate. This promotes a consistent approach to managing the biosecurity risks associated with ballast water internationally.

Section 67 - Management by ballast water exchange

This section sets out the proportion (by volume) of ballast water in a vessel's tank that must have been taken up to be an acceptable ballast water exchange.

Subsection (1) provides that for paragraph 275(1)(a) of the Biosecurity Act, the proportion by volume of ballast water in a vessel's tank that must have been taken up in an acceptable ballast water exchange conducted by the vessel is 95%.

Subsection (2) provides the requirements for a ballast water exchange that is conducted by a vessel in an acceptable location outside Australian seas. This location is specified in section 4 of the *Biosecurity (Acceptable Ballast Water Exchange Area) Declaration 2016*. This requires at least 95% volumetric exchange of ballast water, and that the exchange must occur using an acceptable method. After the exchange occurs, no more ballast water may be taken up into the tank other than from an acceptable location, or transferred to the tank from a tank containing unmanaged ballast water.

The purpose of the section is to prescribe the amount of water that must be made up of water from an acceptable area, as specified by the *Biosecurity (Acceptable Ballast Water Exchange Area) Declaration 2016*. Ninety five per cent of the ballast water taken up in a vessel's tank is the standard determined by the IMO to minimise contamination.

Section 68 - Approval of discharge to ballast water reception facility

This section provides that vessel operators can apply for approval to discharge ballast water at a ballast water reception facility and that the Director of Biosecurity may approve the discharge of ballast water to a ballast water reception facility in Australian territory (as defined in the Biosecurity Act).

This section allows vessel operators to apply for approval to discharge ballast water at a ballast water reception facility in writing and in the form approved by the Director of Biosecurity

The Director of Biosecurity may approve the discharge of ballast water to a ballast water reception facility in Australian territory, if he or she is satisfied that the ballast water reception facility complies with the requirements set out in the IMO guidelines for ballast water reception facilities.

The purpose of this section is to enable the Director of Biosecurity to approve the discharge of ballast water at a facility that can appropriately manage the biosecurity risks associated with the discharge of ballast water.

Section 69 - Grant of exemption for discharge

This section provides that the Director of Biosecurity may grant an exemption for the discharge of ballast water between specified ports or locations where the biosecurity risks for the discharge are appropriately managed, either consistent with the IMO guidelines or by an approved arrangement.

Section 280 of the Biosecurity Act outlines a process in which an operator may apply for an exemption for one or more discharges of ballast water that are part of a vessel's voyage between specified ports or locations, where ballast water is taken up in one or more of those ports or locations. From this application the Director of Biosecurity can decide to grant an exemption in line with the requirements in this provision.

Subsection (1) provides that the Director of Biosecurity may grant an exemption under subsection 280(2) of the Biosecurity Act for one or more discharges of ballast water from a vessel if a risk assessment has been conducted that indicates the biosecurity risk of the discharge or discharges are acceptable and the Director of Biosecurity has taken into account the IMO Guidelines for risk assessment.

Subsection (2) provides would provide that the Director of Biosecurity may also grant an exemption under subsection 280(2) of the Biosecurity Act for one or more discharges of ballast water from a vessel where the biosecurity risks associated with discharges of ballast water from the vessel are managed in accordance with an approved arrangement covering the operator of the vessel.

Part 4—Ballast water management plans

Section 70 - Ballast water management plan for foreign vessel

This section sets out the requirements for a ballast water management plan for a foreign vessel.

For paragraph 286(2)(b) of the Biosecurity Act, a document that is intended to be a ballast water management plan for a foreign vessel must include mandatory provisions in accordance with the IMO guidelines for ballast water management and development of ballast water management plans. The document must also be in a form set out in the Appendix to the IMO guidelines.

The purpose of the section is to prescribe the information required in a ballast water management plan for a foreign vessel. Where ballast water has been discharged in Australian seas, biosecurity officials are required to assess whether a contravention of section 270 has occurred. In doing so, biosecurity officials will also assess whether the exception in section 271 applies, that the discharge of ballast water is permitted where it has been managed in accordance with Division 2 of the Biosecurity Act. Foreign vessels in Australian seas are therefore required to record and retain information about the ballast water management on the vessel which allows biosecurity officers to assess whether the exemption applies where risks are adequately managed.

Section 71 - Scheme for approval of ballast water management plan for Australian vessel

This section provides a scheme for approval of ballast water management plans for Australian vessels, setting out requirements for the Director of Biosecurity to approve, amend or cancel a vessel's ballast water management plan.

Subsection (1) provides that for section 287 of the Biosecurity Act, the Director of Biosecurity may:

- approve a ballast water management plan for the vessel;
- approve an amendment of the vessel's ballast water management plan; or
- cancel the approval of the vessel's ballast water management plan.

Subsection (2) provides that the Director of Biosecurity may approve a ballast water management plan for an Australian vessel if the plan includes mandatory provisions in accordance with the IMO guidelines for ballast water management, and development of ballast water management plans. The plan must also be in the form set out in the Appendix to the IMO guidelines and endorsed by a survey authority.

Subsection (3) provides that the Director of Biosecurity may approve an amendment of a ballast water management plan for an Australian vessel if the Director of Biosecurity is satisfied that the plan, as amended, will meet the requirements in subsection (2).

Subsection (4) provides that the Director of Biosecurity may cancel the approval of a ballast water management plan for an Australian vessel if the plan no longer meets the requirements prescribed in subsection (2).

The purpose of this provision is to set out the scheme for approval of ballast water management plans for Australian vessels. This section provides that a ballast water management plan must be consistent with the IMO Guidelines for ballast water management. The department supports these methods for managing ballast water based on scientific research and evidence as being the most effective methods to manage biosecurity risk.

Part 5—Ballast water management certificates

Section 72 - Ballast water management certificate for foreign vessel

This section prescribes the requirements for a document that is intended to be a ballast water management certificate for a foreign vessel whether or not the vessel's Administration is a party to the Ballast Water Convention.

Subsection (1) provides that for paragraph 288(2)(d) of the Biosecurity Act, this section prescribes the requirements for a document that is intended to be a ballast water management certificate for a foreign vessel.

Subsection (2) provides that if the vessel's Administration is a party to the Ballast Water Convention, the document must be in the form set out in Appendix I to the Ballast Water Convention.

Subsection (3) provides that if the vessel's Administration is not a party to the Ballast Water Convention, the document must be a survey report from a survey authority or the vessel's Administration. This must include the information set out in Appendix I to the Ballast Water

Convention, and records of surveys referred to in regulation E-1 of the Annex to the Ballast Water Convention that have been carried out in relation to the vessel.

By prescribing these requirements, biosecurity officers are able to access sources containing the necessary information to for them to determine compliance with the Biosecurity Act and assess biosecurity risks associated with discharges of ballast water from the vessel. These requirements also mean that Australia can be consistent with its international obligations under the Ballast Water Convention when it comes into effect.

Section 73 - Scheme for survey of Australian vessel and issue etc. of ballast water management certificate

This section provides the process for the survey of Australian vessels and the issuing of ballast water management certificates.

Subsection (1) provides that for subsection 290(1) of the Biosecurity Act, the Director of Biosecurity or a survey authority may, on behalf of the Commonwealth, in relation to an Australian vessel:

- survey the vessel to determine whether a ballast water management certificate should be issued or endorsed for the vessel;
- issue a ballast water management certificate for the vessel;
- endorse a ballast water management certificate for the vessel;
- withdraw a ballast water management certificate for the vessel;
- extend the period during which a ballast water management certificate for the vessel is in force;
- amend the expiry date on a ballast water management certificate for the vessel.

Subsection (2) provides that the Director of Biosecurity or survey authority must carry out the appropriate survey of an Australian vessel, as referred to in regulation E-1 of the Ballast Water Convention, before:

- issuing, endorsing or withdrawing a ballast water management certificate for the vessel; or
- extending the period during which a ballast water management certificate is in force for the vessel; or
- amending the expiry date on a ballast water management certificate for the vessel.

Subsection (3) provides that if, after carrying out a survey of an Australian vessels under subsection (2), the Director of Biosecurity or the survey authority is satisfied that the applicable requirements in regulation E-1 of the Annex to the Ballast Water Convention are met in relation to the vessel, the Director or the survey authority must, as required:

- issue or endorse a ballast water management certificate for the vessel; or
- extend the period during which a ballast water management certificate is in force for the vessel; or
- amend the expiry date on a ballast water management certificate for the vessel.

Subsection (4) provides that if the Director of Biosecurity or survey authority are satisfied that the requirements for the Ballast Water Convention are no longer being met after reviewing a ballast water management certificate, they must withdraw the certificate. A decision to withdraw the certificate is a reviewable decision under section 574 of the Act.

Subsection (5) sets out the prescribed form for a ballast water management certificate, being in a form set out in Appendix I to the Ballast Water Convention.

The purpose of this section is to provide the process for surveying Australian vessels and the processes for issuing, endorsing, withdrawing and amending ballast water management certificates. This allows for the Director of Biosecurity, or his or her delegates, to regulate ballast water management certificates and enables the associated biosecurity risk to be appropriately managed.

Section 74 - Scheme for survey of foreign vessel and issue etc. of ballast water management certificate

This section provides the process for the survey of foreign vessels and the issuing of ballast water management certificates.

Subsection (1) provides that for subsections 290(1) and (2) of the Biosecurity Act, the Director of Biosecurity or a survey authority may in accordance with this section do, on behalf of the Commonwealth, any of the following in relation to a foreign vessel on request by the vessel's Administration:

- survey the vessel to determine whether a ballast water management certificate should be issued or endorsed for the vessel;
- issue a ballast water management certificate for the vessel;
- endorse a ballast water management certificate for the vessel.

Subsection (2) provides that the Director of Biosecurity or a survey authority must carry out the appropriate survey of a foreign vessel, as referred to in regulation E-1 of the Annex to the Ballast Water Convention, before issuing or endorsing a ballast water management certificate for the vessel.

Subsection (3) provides that if, after carrying out a survey of a foreign vessel under subsection (2), the Director of Biosecurity or the survey authority is satisfied that the applicable requirements in regulation E-1 of the Annex to the Ballast Water Convention are met in relation to the vessel, the Director or the survey authority must (as the case requires) issue or endorse a ballast water management certificate for the vessel.

Subsection (4) provides that a ballast water management certificate issued under this section must be in the form set out in Appendix I to the Ballast Water Convention.

The purpose of this section is to provide the process for surveying foreign vessels and the processes for issuing, endorsing, withdrawing and amending ballast water management certificates. This process allows for the Director of Biosecurity to regulate ballast water management certificates which enables the associated biosecurity risk to be appropriately managed.

Foreign vessels are required to record and retain information about the ballast water management on the vessel which allows the Director of Biosecurity, or his or her delegates, to assess whether or not a ballast water management certificate should be issued, endorsed or amended. This allows an assessment to be made whether the biosecurity risks associated with the ballast water on the vessel have been adequately managed.

Part 6—Ballast water records

Section 75 - Requirements for ballast water record system for Australian vessel

This section provides that for subsection 292(1) of the Biosecurity Act, the requirements for a ballast water record system carried on board an Australian vessel are as specified in regulation B-2 of the Annex to the Ballast Water Convention.

The purpose of this section facilitates records relating to the ballast water system on an Australian vessel in being easily verifiable, and being consistent with international standards.

Section 76 - Requirements for records of ballast water operations and disposals of sediment

This section provides the requirements for records of ballast water operations and disposals of sediment. This section applies to all Australian vessels, whether in or outside Australian seas, and foreign vessels.

Subsection (1) provides that this section is made for paragraphs 293(2)(c) and 296(1)(b) of the Biosecurity Act.

Subsection (2) provides that the requirements for records of ballast water operations are specified in regulation B-2 of the Annex to the Ballast Water Convention.

Subsection (3) provides the requirements for records of disposal of sediment include information about the disposal, namely:

- the date and time of the disposal;
- location of the vessel when the disposal occurred;
- estimated volume of sediment; and
- any residual sediment remaining in the tanks at the end of the disposal.

The record must also be translated into English, French or Spanish, signed by the person in charge of the disposal, and each page must be signed by the person in charge of the vessel.

If the records of a foreign vessel comply with subsection 296(1) of the Biosecurity Act and this section, the vessel has appropriate ballast water records.

The purpose of this section is to prescribe the requirements for records of ballast water operations and sediment. Both Australian and foreign vessels are required to record and retain information about the ballast water operations on the vessel and the disposal of sediment which allows the Director of Biosecurity to assess whether the risks been adequately managed.

Part 7—Exemptions from and modifications of the Act

Section 77 - Exemption and modification-vessels that have taken up ballast water in Australian seas and exempt exposed vessels

This section provides two exemptions for vessels under section 616 of the Biosecurity Act, from the operation of Chapter 5: Ballast Water and Sediment, until the Ballast Water Convention comes into force.

Subsection (1) provides that these classes are:

- Vessels that have taken up ballast water from Australian seas only; or
- Vessels that undertake a voyage starting and ending in Australian territory and only take up water from Australian seas or from seas within 12 nautical miles from the nearest land as described in regulation A-1.6 of the Annex to the Ballast Water Convention.

These exemptions for vessels are intended to cover domestic movements, meaning movements of vessels where the voyage commences and concludes within Australian territory and all ballast on board the vessel has been sourced from Australian seas or from the open ocean. For instance, this will cover vessels interacting with an installation which is located outside of Australia's territorial waters.

Subsections (2) and (3) provides that subsection 265(1) of the Biosecurity Act is modified by adding at the end “ except if the law, or the provision of the law, deals with biosecurity risks associated with ballast water or sediment in relation to the class of vessels referred to in subsection (1)”.

Subsections (2) and (3) modify the Biosecurity Act so that the Commonwealth law will not apply in relation to the exempted classes of vessels as prescribed in subsection (1). This modifies subsection 265(1) of the Biosecurity Act, which covers the field for the purposes of ballast water and sediment. This modification provides for continued operation of existing domestic ballast water regulations despite the commencement of the Biosecurity Act.

Subsection (4) provides that this section applies for the period beginning on 16 June 2016 and ending at the start of the day the Ballast Water Convention enters into force for Australia.

This subsection provides a time limit for the operation of this section as when the Ballast Water Convention comes into force these provisions will no longer be required. The Biosecurity Act and these regulations will be amended as necessary to support the operation of the Ballast Water Convention, including repeal of these sections. This will preserve the existing regulatory frameworks relating to ballast water in Australia while steps are made towards ratification of the Convention, and will avoid stakeholders being subject to a regulatory framework on commencement of the Biosecurity Act that then changes once the Convention commences.

Chapter 5—Managing biosecurity risks: monitoring, control and response

Section 78 - Other biosecurity measures relating to goods or conveyances—export from Australian territory

This section is made under section 346 of the Biosecurity Act. This provision provides for the export of goods and conveyances that have been released from biosecurity control, including goods that contain or are constructed or manufactured from goods released from biosecurity control, a conveyance that has been released from biosecurity control, and a conveyance that

has on board or has been built or manufactured using goods released from biosecurity control.

This section provides that a biosecurity officer may require that goods or conveyances be exported from Australian territory subject to limitations in the Biosecurity Act. Subsection 346(5) of the Biosecurity Act provides that this power must not be exercised unless the power is specified in a biosecurity control order or biosecurity response zone determination that relates to the goods or conveyances.

Exporting goods or conveyances offers an additional option to manage the biosecurity risks of the goods or conveyance. The person in charge or owner of the goods or conveyances may prefer to export the goods or conveyances to their country of origin or another country rather than treating or destroying the goods or conveyances. For example, an importer of wooden furniture may choose to return the goods back to the original supplier or manufacturer of the goods in another country if live exotic pests are found in or on the goods because the treatment undertaken was not effective.

Note that Division 4 of Part 3 of Chapter 6 of the Biosecurity Act provides for other powers that may be exercised in relation to goods or conveyances to which this section applies. For example, a biosecurity officer may direct a person in charge of the goods, or arrange for another person with appropriate qualifications or expertise, to carry out the export of the goods or to supervise the export of the goods.

For conveyances, subparagraph 347(1)(b)(ii) of the Biosecurity Act provides that a biosecurity officer may direct the owner of a conveyance to carry out a biosecurity measure only if the measure is destruction. Subsection (3) extends the powers in section 347 of the Biosecurity Act by allowing a biosecurity officer to direct the owner of a conveyance to arrange its export from Australian territory. This means that, where conveyances are required to be exported from Australian territory under this section, the biosecurity officer may either direct the person in charge or the operator to carry out the measure, direct the owner of the conveyance to arrange to carry out the measure, arrange for another person with appropriate qualifications or expertise to carry out the measure or carry out the measure himself or herself.

Division 5 of Part 3 of Chapter 6 of the Biosecurity Act provides for the offences and civil penalty provisions that may apply if export under this section has been required in relation to goods or conveyances.

In addition, this section creates an offence and a civil penalty provision that may apply to an owner of a conveyance who is given a direction under subsection (3) and has contravened the direction. The maximum penalty for contravention is 50 penalty units. The maximum civil penalty for contravention is 50 penalty units.

Chapter 6—Approved arrangements

Division 1—Approval of proposed arrangement

Section 79 - Requirements for approving proposed arrangement

This section sets out the requirements for the relevant Director when deciding whether to approve a proposed arrangement under Section 406 of the Biosecurity Act. Relevant Director means the Director of Biosecurity unless the arrangement provides for biosecurity activities to be carried out in relation to human health risks only, in which case the Director of Human Biosecurity is the relevant director.

The relevant director must be satisfied that the:

- applicant has demonstrated that they have the capability, equipment and facilities necessary to carry out the biosecurity activities proposed under the arrangement, and
- arrangement will be capable of being effectively monitored so that compliance with the Biosecurity Act can be determined.

These requirements ensure that a proposed arrangement can only be approved by the relevant Director if he or she is satisfied that the biosecurity risks associated with the proposed arrangement can be effectively managed and that compliance with the Biosecurity Act can be effectively monitored.

Section 80 - Transfer of approved arrangement

This section would provide the circumstances in which an approved arrangement may be transferred to another person. These circumstances are; if the biosecurity industry participant (BIP) dies then the arrangement may be transferred to the legal personal representative of the BIP, if the BIP is a body corporate in relation to which a receiver has been appointed then the arrangement may be transferred to the receiver, or if the BIP is a body corporate of which an administrator has been appointed under the *Corporations Act 2001* then the arrangement may be transferred to the administrator.

The purpose of this section would be to allow for the transfer of an approved arrangement in circumstances where the BIP no longer has capacity or control over the arrangement and the transfer will allow biosecurity risk under the arrangement to be appropriately managed.

Division 2 – Suspension of approved arrangement

Section 81 - Requirements for request to suspend all or part of an approved arrangement

This section provides that the notice period for a proposed suspension of an approved arrangement or part of approved arrangement is 15 business days after the receipt of the request made by the BIP under section 417(2)(c) of the Biosecurity Act. This section also provides that under section 417(2)(e) of the Biosecurity Act, a request to suspend part of an approved arrangement must include information specifying what biosecurity activities the BIP will not be authorised to carry out during the suspension period and how biosecurity risks associated with the part of the approved arrangement proposed to be suspended will be managed during the suspension period.

The purpose of this section is to provide consistency in the notice period for the proposed suspension of approved arrangements. It would facilitate adequate time for the relevant Director to consider an application for part-suspension before the BIP changes its operations. This time will allow the department to consider and manage the impact of the suspension or part suspension of an approved arrangement. The information required by this section will enable the relevant Director to make an assessment of whether biosecurity risks will be adequately managed if part of an approved arrangement is suspended.

Section 82 - Period for making decision on request to suspend a part of an approved arrangement

This section provides that the relevant Director's period for making and notifying a decision in relation to a request made by a BIP to suspend a part of an approved arrangement under section 417(4) of the Biosecurity Act is 30 days.

The purpose of this section is to provide a consistent decision-making timeframe for suspending part of an approved arrangement which will provide certainty to an applicant about when a decision will be made on their application. Providing this certainty is in line with basic administrative law principles. This also facilitates the relevant Director having adequate time to consider the request before the BIP ceases any operations and means that biosecurity risks can continue to be managed appropriately following the suspension.

Division 3 – Revocation of approved arrangement

Section 83 - Notice period for request to revoke approved arrangement

This section provides that the notice period for a request from a BIP to revoke an approved arrangement under section 422 of the Biosecurity Act is 15 business days.

The purpose of this section is to provide consistency in the notice period for a BIP request to revoke an approved arrangement. This also gives the department time to consider and manage the impacts of a revocation of an approved arrangement.

Division 4 – General provisions about applications

Section 84 - Applications to which this Division applies

This division deals with requirements for information to be included in applications and periods for dealing with applications. This section provides that the Division applies to an application for approval of a proposed arrangement under Part 2 of Chapter 7 of the Biosecurity Act and for a varied arrangement under Division 1 of Part 3 of Chapter 7 of the Biosecurity Act.

Section 85 - Information to be included in applications

Paragraph 434(1)(b) of the Biosecurity Act provides that an application for a proposed arrangement or a varied arrangement must include information prescribed by the regulations. This section requires that applicant's name, contact details, proposed biosecurity activities by the applicant and where the biosecurity activities are to be carried out be included in all applications for an approved arrangement. If the application is for variation of an approved arrangement, details of the proposed variations to the arrangement must also be provided.

The purpose of this section is to facilitate the department receiving adequate and consistent information about applicants so that the relevant Director is satisfied of the identity of the applicant and the details about the place or places where activities are taking place in the proposed arrangement. This section also contributes to making the process of applying for an approved arrangement, or varying an approved arrangement, as streamlined and efficient as

possible.

Section 86 - Dealing with applications

Subsection 435(3) of the Biosecurity Act provides that the consideration period for an application is prescribed in the regulations. This section provides that the initial consideration period of approved arrangement applications is 120 days for applications requiring scientific or technical advice in order to assess the application, and 90 days for other applications. Paragraph 435(6)(b) of the Biosecurity Act provides that a maximum period for giving further information or documents as part of the application process is prescribed in the regulations. The section provides that this period is 60 days.

The purpose of this section is to provide consistency in the process for consideration of approved arrangements applications providing certainty to an applicant about when a decision will be made on their application. Providing this certainty is in line with basic administrative law principles. This section recognises that applications involving scientific or technical advice or additional information or documents may require additional time for adequate consideration of whether biosecurity risks can be managed appropriately. By extending the initial consideration period each time additional information is requested, the applicant is afforded sufficient time to produce the required information or documentation in order to support an informed assessment of their application.

Chapter 7—Compliance and enforcement

Section 87 - Period for paying an amount under certain infringement notices given at a first point of entry

This section provides the circumstances where a person will be liable to pay an infringement notice at a first point of entry (such as an airport or seaport) for providing false and misleading information, and the time period in which that infringement notice must be paid.

Under subsection (1), a person who is at a first point of entry and provides information in compliance, or purported compliance, with a requirement under subsection 126(1) or 196(2) of the Biosecurity Act may be liable to an infringement notice if the information or documents they provide are false and misleading. Subsection 126(1) of the Biosecurity Act provides that, where reasonable, a biosecurity officer may ask a person to answer questions or provide information in writing in relation to goods. Subsection 196(2) of the Biosecurity Act provides that the Director of Biosecurity may require a person to provide information for the purpose of assessing the level of biosecurity risk associated with that person and any goods that they may have. Subsections 532(1) and 533(1) of the Biosecurity Act make it an offence to provide false and misleading information or documents in these circumstances.

This subsection also provides that a person may be liable to pay an infringement notice if he or she fails to answer questions or provide information in writing about their goods when required to do so or fails to move or not move their goods when given a direction by a biosecurity officer to do so (see subsections 126(2) and 128(2) of the Biosecurity Act).

Subsection (2) prescribes the period in which an infringement notice must be paid when issued for an alleged contravention against the Biosecurity Act within a first point of entry or section 234AA place (within the meaning of the *Customs Act 1901*). A section 234AA place

(within the meaning of the *Customs Act 1901*) includes an arrivals hall at an airport or seaport. Where a person receives an infringement notice for an alleged contravention against the Biosecurity Act in these environments, he or she must pay the infringement notice before leaving that environment.

The purpose of this section is to provide biosecurity officials with the power to issue infringement notices to people for providing false and misleading information in relation to their goods or personal baggage that must be paid ‘on-the-spot’. This section takes into account the common situation at an airport or seaport where a person is found to have undeclared goods in their personal baggage on arrival. By making infringement notices issued in these circumstances payable before the person leaves the airport or seaport environment, this section takes into consideration the fact that a person being issued with the notice may not be in Australian territory for a long period of time or may be difficult to locate once they leave the airport or seaport environment.

Section 88 - Amount payable under certain infringement notices

This section prescribes the amount payable for certain infringement notices issued under the Biosecurity Act. This section provides that two penalty units are prescribed for an alleged contravention of subsections 126(2), 128(2), 532(1) or 533(1) of the Biosecurity Act.

The purpose of this section is to prescribe a penalty that is proportionate to the type of offending that has occurred. Two penalty units are considered a proportionate penalty for contravening subsections 126(2), 128(2), 532(1) or 533(1) of the Biosecurity Act in a first point of entry or section 234AA place (within the meaning of the *Customs Act 1901*) environment in circumstances where prosecution for the offence or litigation of a civil matter would be excessive.

Chapter 8—Governance and officials

Part 1—Reviews by the Inspector General of Biosecurity

Section 89 - Purpose of this Part

This section makes provision for reviews that may be conducted by the Inspector-General of Biosecurity, and that this Part does not apply in relation to a review of the process of conducting a Biosecurity Import Risk Analysis (BIRA).

The purpose of this part is to make provision for reviews that may be conducted by the Inspector-General of Biosecurity under section 567 of the Biosecurity Act. The purpose of this Part is to make provision for the process to be followed in conducting a review under section 567 of the Biosecurity Act and the content of reports.

Division 2—Annual review program

Section 90 - Annual review program

This section provides that each year, the Inspector-General of Biosecurity must set an annual review program in writing. The Inspector-General of Biosecurity must consult the Director of Biosecurity and Agriculture Minister in setting the annual review program, and any other person the Inspector-General of Biosecurity considers appropriate.

This section provides the Inspector-General of Biosecurity is not subject to the direction of the Agriculture Minister or the Director of Biosecurity in relation to the content of the annual review program, or the priority to be given to a particular review. The annual review program would be required to be published on the Inspector-General of Biosecurity's website, so it is publicly available to stakeholders.

The purpose of the section is to provide a process in which the Inspector-General of Biosecurity can set the annual review program independently from the Agriculture Minister and the Director of Biosecurity. However, the requirement for the Inspector-General of Biosecurity to consult the Director of Biosecurity and Agriculture Minister on the annual review program provides them with the opportunity to be aware of the matters the Inspector-General intends to review in that year. The Director and Minister may make suggestions on the annual review program, but the Inspector-General of Biosecurity is not bound to follow any such suggestion.

It is considered that independent review of the performance of functions and exercise of powers by the Director of Biosecurity allows for the Inspector-General of Biosecurity to make recommendations for overall system improvements and provide an assurance framework for stakeholders of the system.

Section 91 - Variation of the annual review program

This section provides that the Inspector-General of Biosecurity may vary the annual review program in writing, if satisfied it is appropriate to do so. The Inspector-General of Biosecurity must consult the Agriculture Minister or the Director of Biosecurity, or any other person, in doing so, and is not subject to the direction by them in varying the program. Any varied review program must be published on the Inspector-General of Biosecurity's website, so it is publicly available to stakeholders.

The purpose of the section is to provide for the Inspector-General of Biosecurity to vary the annual review program.

The section means that the review program is not restricted in a way that prevents the Inspector-General of Biosecurity from reviewing activities as they arise. For example, the Inspector-General of Biosecurity may want to vary the annual review program in response to relevant events throughout the year.

Section 92 - When reviews are to be conducted

This section provides that the Inspector-General of Biosecurity must conduct reviews in accordance with the current annual review program. The Inspector-General of Biosecurity is not subject to the direction of the Agriculture Minister or the Director of Biosecurity in relation to the way a particular review is to be conducted, or the priority to be given to a particular review.

The purpose of this section is to provide that the annual review program is set so stakeholders are aware and can be prepared for the activities that the Inspector-General of Biosecurity may review in the relevant year. The purpose is also to maintain the independence of the Inspector-General of Biosecurity in conducting reviews.

Division 3—Process for conducting review

Section 93 - Inspector-General may invite submissions

This section allows the Inspector-General of Biosecurity to invite submissions, and provides for the process to be followed where submissions contain confidential information.

The section provides protection for persons who make submissions that may contain confidential information. The purpose is to provide confidence in the submissions process to those who have information relevant to a review, to allow them to submit the confidential information to the Inspector-General of Biosecurity, and that this information will not be made publicly available.

Subsection (1) provides that the Inspector-General of Biosecurity may invite members of the public generally, or particular persons or organisations, to make submissions relevant to a review.

Subsection (2) provides discretion for the Inspector-General of Biosecurity in deciding whether to include information provided in connection with the submissions process in a review report.

Subsection (3) provides that in making a submission, a person may request the Inspector-General of Biosecurity not make the submission, or part of the submission, publicly available.

Subsection (4) provides that a request not to make public all or part of a submission for confidentiality reasons does not prevent the Inspector-General of Biosecurity from having regard to the information in conducting the review. The purpose of this subsection is to promote the protection of confidential information, while also allowing the information to inform a review which would have the intended effect of the Inspector-General of Biosecurity making recommendations to improve the biosecurity system.

Subsection (5) sets out the process to be followed where a person requests a submission, or part of a submission, not be made publicly available and the Inspector-General of Biosecurity refuses. Where the submission is written, the person may require all or part of the submission to be returned to them. Where the submission is made orally, the person may withdraw all or part of the submission. The purpose of this subsection is that if the Inspector-General of Biosecurity refuses a request to not include all or part of a submission in a review report, the person making the submission has the opportunity to withdraw it so they are able to protect their private information.

Section 94 - Submissions may be made publicly available

This section provides that the Inspector-General of Biosecurity may make part or all of a submission publicly available that is made in response to an invitation under section 93 of the Biosecurity Regulation.

Subsection (1) provides that the Inspector-General of Biosecurity may make available to the public all or part of a submission made in response to an invitation under subsection 93(1) of the Biosecurity Regulation.

Subsection (2) provides exceptions for when all or part of a submission may be made publicly available, namely if the submission mentions particular officers of the Commonwealth, or if it contains information that would be prejudicial to the public interest under paragraph 101(3)(c) of the Biosecurity Regulation.

Subsection (3) provides that the Inspector-General of Biosecurity must not make all or part of a submission available if the person requested the Inspector-General of Biosecurity not make the submission publicly available, and the Inspector-General of Biosecurity agreed to that request. The purpose of this subsection is to protect the confidential information of individuals and organisations. This subsection also allows for the Inspector-General of Biosecurity to exercise discretion in deciding whether or not to make all or part of a submission public where the information contained in a submission may result in recommendations being made to improve the biosecurity system.

Subsection (4) provides that the Inspector-General of Biosecurity must not make a written record of an oral submission publicly available unless the person has verified the content of the record. The purpose of this subsection is so that submissions in this form are accurate and the person has the opportunity to correct any possible errors.

Subsection (5) provides that if a person provides a submission in response to an invitation and made a request for their personal details not to be publicly disclosed in connection with the submission, the Inspector-General of Biosecurity must not make available the person's name, or otherwise specifically identify the person in connection with any information made available under section 93 of the Biosecurity Regulation. The purpose of this subsection is to facilitate the protection of an individual's privacy and personal details, and that the Inspector-General of Biosecurity may still request and receive information that is relevant to a review.

The purpose of the section is to prevent the Inspector-General of Biosecurity from making available all or part of a submission if it names officers of the Commonwealth, state and territory bodies and members of the Australian Defence Force. Public release of all or part of a submission is also prevented if the person making the submission requested all or part of the submission not be made publicly available. The intention is to prevent adverse or confidential information about those persons being publicly released. However, this does not prevent the Inspector-General from using that information to inform a review.

Section 95 - Assistance from the Director of Biosecurity

This section provides the process for the Inspector-General of Biosecurity to request the Director of Biosecurity assist with the conducting of a review.

Subsection (1) provides that the Director of Biosecurity must comply with any reasonable request from the Inspector-General of Biosecurity for assistance for the purposes of conducting a review.

Subsection (2) provides that the Inspector-General of Biosecurity may request the Director of Biosecurity give information or documents to the Inspector-General of Biosecurity or answer questions relevant to the review.

Subsection (3) provides that any information given to the Inspector-General of Biosecurity in response to a request under this section does not cease to be subject to legal professional privilege because the information or document is given to the Inspector-General of Biosecurity in response to that request.

The purpose of this subsection is to provide that legal professional privilege does not cease merely on the basis that the information is provided within the process of the Inspector-General of Biosecurity requesting assistance or documents from the Director of Biosecurity, and his or her delegates.

Division 4—Review reports

Section 96 - Draft review report

This section establishes a process by which the Inspector-General of Biosecurity gives a draft review report to the Director of Biosecurity. This section specifies the content that a draft review report must contain, and that the Director of Biosecurity may provide comments within 28 days of receiving it.

Subsection (1) and (2) provide that the Inspector-General of Biosecurity must prepare a draft report after completing a review which sets out the subject, findings, information and other material on which those findings are based, and any recommendations resulting from the review, and give it to the Director of Biosecurity.

The purpose of this subsection is to provide the Director of Biosecurity with relevant information in order to assess the draft review report to enable him or her to give the Inspector-General of Biosecurity comments on the draft review report under subsection (3).

Subsection (3) provides that within 28 days after receiving the draft review report, the Director of Biosecurity must give the Inspector-General of Biosecurity comments on the draft review report, and may also give the Inspector-General of Biosecurity further information in relation to the review.

The purpose of this subsection is that the Director of Biosecurity has the opportunity to provide comment on or further information to draft review reports before it is made publicly available.

Section 97 - Final review report

This section establishes a process by which the Inspector-General of Biosecurity prepares and provides a final review report to the Director of Biosecurity, the content that a final review report must contain, and that once provided to the Director of Biosecurity, the final review report must be made publicly available.

Subsection (1) provides that the Inspector-General of Biosecurity must prepare a final review report on a review and give it to the Director of Biosecurity and the Agriculture Minister.

Subsection (2) provides that in preparing the final review report, the Inspector-General of Biosecurity must consider comments and any further information given to them under

subsection 96(3) of the Biosecurity Regulation. However, the Inspector-General of Biosecurity is not bound to include it in a review report or act upon it.

The purpose of this subsection is to provide that any comments made by the Director of Biosecurity will be considered by the Inspector-General of Biosecurity. It is open to the Inspector-General of Biosecurity to consider comments or requests made by the Director of Biosecurity but disregard them, for example, if they are not relevant to the review.

Subsection (3) sets out the information that must be included in a final review report, being the subject and findings of the review, the information and other material on which those findings are based, and any recommendations resulting from the review.

Subsection (4) provides that the final review report must be published on the Inspector-General of Biosecurity's website as soon as practicable after the review report has been given to the Director of Biosecurity and the Agriculture Minister.

Section 98 - Certain material to be excluded from review reports

This section sets out the material that the Inspector-General of Biosecurity must exclude from review reports.

The material that must be excluded from review reports includes officers of the Commonwealth as listed in paragraphs (1)(a)-(d), and matters listed in subsection (2), such as confidential information. The material must also be excluded where the person who made the submission withdrew it, or the Agriculture Minister made a direction under paragraph 101(3)(c) of the Biosecurity Regulation in relation to the information.

The purpose of this section is to prevent the Inspector-General of Biosecurity from including information in review reports that identifies particular officers of the Commonwealth. This is because there is a reasonable expectation that there may be Commonwealth officers involved in such reviews and it is therefore necessary to protect their privacy. This also ensures that officers feel confident providing information to inform a review without being concerned they will be publicly identified. This section does not prevent the Inspector-General of Biosecurity being critical of the performance of functions or exercise of powers by biosecurity officials, as this is within the power of the Inspector-General of Biosecurity under section 567 of the Biosecurity Act.

The purpose of subsection (2) is to prevent the Inspector-General of Biosecurity from including information in review reports that is confidential, or where the person providing that information may not want that information to be publicly available.

This section interacts with subsection 93(4) of the Biosecurity Regulation, which provides that where a person requests that the Inspector-General of Biosecurity not make all or part of a submission public, this does not prevent the Inspector-General of Biosecurity from having regard to the information in conducting the review.

Section 99 - Including criticism in review reports

This section provides that where the Inspector-General of Biosecurity is expressly or impliedly critical of persons listed in paragraphs (1)(a)-(d), the information must not be

included in the review report unless the person has had the opportunity to make submissions in relation to the material.

Subsection (2)(b) provides that the Inspector-General of Biosecurity must give the Director of Biosecurity a reasonable opportunity to make submissions in relation to the material.

The purpose of this section is to provide that persons named in a review report are awarded procedural fairness before any information in a review report that may be expressly or impliedly critical of them is made publicly available.

In practice, any persons listed in paragraphs (1)(c) – (i) (human biosecurity officers, biosecurity officers, any other officer or employee of a Commonwealth body, a member of the Australian Defence Force, an officer or employee of a State or Territory body, a consultant to the Department, or a biosecurity industry participant) will make submissions through the Director of Biosecurity.

This is because section 567 of the Biosecurity Act restricts the Inspector-General of Biosecurity to reviewing the performance of functions, or exercise of powers, by biosecurity officials under one or more provisions of the Biosecurity Act. This means that any persons that may be listed in a review report conducted by the Inspector-General of Biosecurity will have been through the activities of the department, and therefore under the Director of Biosecurity. Submissions going through the Director of Biosecurity allow the process to be more streamlined and easier for the Inspector-General of Biosecurity to manage.

While the powers of the Inspector-General of Biosecurity are to review the performance of functions or exercise of powers by biosecurity officials, human biosecurity officials are included as there may be instances where human biosecurity officials are involved in the same or similar activities as biosecurity officials. Section 89 of the Biosecurity Regulation provides a note which indicates that the Inspector-General of Biosecurity is not permitted under section 567 of the Biosecurity Act to review the performance of functions, or exercise of powers, by human biosecurity officers, chief human biosecurity officers or the Director of Human Biosecurity.

Subsections (2) and (3) provide that the material must not be made public unless the person concerned has had the opportunity to make submissions on the material, and that submissions may be made orally or in writing. This is consistent with the principles of procedural fairness.

Subsection (4) sets out the requirements for oral submissions, stating that they may be made by the Director of Human Biosecurity or the Director of Biosecurity personally, or by another person on behalf of the Director of Human Biosecurity or the Director of Biosecurity. The restricted process is to facilitate the submissions process not being administratively burdensome for the Inspector-General of Biosecurity.

Subsection (5) provides that the Director of Human Biosecurity and Director of Biosecurity are protected from liability when making a submission in good faith to the Inspector-General of Biosecurity. This subsection would mean that information that may inform a review is not prevented from being made available to the Inspector-General on the basis that these individuals may be apprehensive regarding liability.

Subsection (6) provides that information or documents included or referred to in a submission do not cease to be the subject of legal professional privilege.

The purpose of this subsection is to provide that the Directors and other persons are able to make submissions to the Inspector-General of Biosecurity that may be relevant to and inform a review without concern of waiving legal professional privilege.

Section 100 - Failure to comply with this Part does not affect validity of a review report

This section provides that a failure to comply with a provision in this Part does not affect the validity of a review report. This means that even if these provisions are not complied with, a review report may still inform recommendations to improve the biosecurity system.

Division 5—Other matters

Section 101 - Information that would be prejudicial to the public interest

This section precludes the Inspector-General of Biosecurity from making information connected with a review publicly available where that information would be prejudicial to the public interest. The section also provides a process for the Director of Biosecurity to request that the Agriculture Minister determine whether the information may be prejudicial to the public interest.

This section provides that the Agriculture Minister may, on request by the Director of Biosecurity, direct that information connected with a review conducted by the Inspector-General of Biosecurity should not be made publicly available on the grounds that doing so would be prejudicial to the public interest, on grounds listed in paragraphs (1)(a)-(l).

The purpose of this section is to provide a process to protect information that may be prejudicial to the public interest from being publicly released. The powers of the Inspector-General of Biosecurity relate to the review of the performance of functions, or exercise of powers, by biosecurity officials under the Biosecurity Act. The Director of Biosecurity and the Agriculture Minister in a better position to determine whether the information may be prejudicial to the public interest under the grounds listed in paragraphs (1)(a)-(l).

Subsections (2)-(4) set out the reporting process for prejudicial information. The purpose of these subsections is to require the reasons whether information is prejudicial be set out in a decision record. This is a necessary check and balance, as a party may be concerned about information being publicly released that may be unfavourable but may in fact not be prejudicial.

Section 102 - Legal professional privilege

The section provides for information subject to legal professional privilege to be protected during the period when the Inspector-General of Biosecurity is conducting a review.

Subsection (1) provides that information or documents given to the Inspector-General of Biosecurity for the purposes of a review must not be made publicly available or included in a review report if the information or documents are the subject of legal professional privilege, or derived from a document that is the subject of legal professional privilege.

Subsections (2) and (3) provide that the Inspector-General of Biosecurity may include information in a review report or otherwise make publicly available, a statement summarising or outlining in general terms, legal advice, and that this does not, in itself, waive legal professional privilege.

The purpose of this section is to provide the Inspector-General of Biosecurity with a level of protection to prepare review reports without the concern of waiving legal professional privilege. This would also allow the review report process to not be administratively burdensome for the Inspector-General of Biosecurity. This section would interact with section 96 (draft review reports) of the Biosecurity Regulation as the Director of Biosecurity, when reviewing the draft review report, has the opportunity to detect any content that has the potential to have implications for legal professional privilege.

Section 103 - Inspector-General to have regard to minimising disruption during review

This section would provide that the Inspector-General of Biosecurity be required to have regard to minimising disruption to the performance of functions of relevant persons while conducting a review.

The purpose of this section is to minimise the impact the Inspector-General of Biosecurity may have on the department, officers of the Commonwealth, state and territory bodies and industry in the course of conducting a review.

Chapter 9—Miscellaneous

Part 1—Confidentiality of information

Section 104 - Use of protected information by intelligence agencies

This section prescribes the intelligence agencies whose officers or employees may make a record of, disclose, or otherwise use protected information. The prescribed agencies are:

- (a) the Australian Secret Intelligence Service;
- (b) the Australian Security Intelligence Organisation; and
- (c) that part of the Defence Department known as the Australian Signals Directorate.

This section would allow information sharing with these intelligence agencies and means that they are able to use information collected under the Biosecurity Act.

Part 2—Cost recovery

Division 1 – Fees

Section 105 - Meaning of consignment

This section would provide that under the Biosecurity Regulation, one or more animals or eggs are not a consignment unless they are all consigned by the same person to the same consignee and they all arrive at a post-entry quarantine facility on the same day. It also would

clarify that a single animal or egg may constitute a consignment of animals or eggs. This clarification would assist in identifying the fees payable for these consignments.

Section 106 - Fees that may be charged in relation to fee-bearing activities

This section sets out the fees a person is liable to pay in respect of the provision of a particular fee-bearing activity. The table sets out a range of fees, outlining the activities provided by the department (column 1) and the respective amount payable (column 2).

The table in subsection (1) includes fees for:

- in-office and out-of-office activities provided during ordinary hours of duty, including: inspection, examination, assessment, analysis, diagnostic activity, clearance, treatment, audit, supervision, training, and any other activity carried out in relation to goods or a conveyance (except where the activity is referred to in another item), approving a proposed arrangement under section 406 of the Biosecurity Act (items 1 and 12);
- additional fees, applicable to in-office and out-of-office activities, when these are provided on a weekday outside of ordinary hours of duty or on a Saturday, Sunday or a Departmental holiday (items 2, 3, 13 and 14);
- the assessment of permit applications, including fees for permits that are not completed within the initial assessment periods for the applications, or when the assessments are done on a weekday outside of ordinary hours of duty or on a Saturday, Sunday or a Departmental holiday (items 4-11);
- provision of consumable materials in relation to a diagnostic activity (item 15);
- husbandry of various animals and plants in a post-entry quarantine facility (items 16-21);
- provision of a house (excluding cleaning the house) for importers of or persons who bring animals into Australian territory, at the post-entry quarantine facility on Torrens Island (item 22);
- temporary storage of luggage brought into Australian territory at premises owned or managed by the Commonwealth where that luggage may pose an unacceptably high level of biosecurity risk (item 23);
- activities provided to a person on behalf of the Commonwealth (item 24); and
- assessment and management of biosecurity risks associated with mail received by Australia Post from places outside Australian territory (item 25).

Subsection (2) provides that a person requesting a service which will incur a fee at a different rate than if the service is requested to be undertaken during ordinary hours of duty, must be informed of the fee before the relevant service is provided.

Fee-bearing activities provided outside ordinary hours of duty on weekdays, or provided on a Saturday, Sunday or departmental holiday, will attract higher rates than if the activities are carried out on a weekday during ordinary hours of duty. This provision will provide the assurance to clients that an officer will inform them if the service they have requested will attract a higher rate than the base fee for that service provided during ordinary hours.

Subsection (3) highlights that unless stated otherwise, each fee that is included in the table at (1) is a standalone fee and that more than one fee may be payable for, or in relation to, the same service.

This section replaces and replicates the same fees prescribed in the *Quarantine Service Fees Determination 2005* and the *Quarantine Service Fees (Australia Post) Determination 2010* and aligns the terminology with those used in the Biosecurity Act, for example, by changing ‘quarantine risk’ to ‘biosecurity risk’. There are no changes made to the amount of fees or types of activities the fees relate to, other than to reflect that approved arrangements under the Biosecurity Act replace both the quarantine approved premises and compliance agreement under the *Quarantine Act 1908*.

Section 107 - When section 106 does not apply

Subsection (1) provides that the fees set out in items 1 to 24 in the table in subsection 106(1) of the Biosecurity Regulation do not apply in relation to certain activities.

Paragraphs (1)(a), (b) and (c) specify that the fees do not apply to fee-bearing activities provided in relation to the goods brought or imported into Australian territory for either:

- the official use of a diplomatic mission in Australian territory;
- the personal use of a diplomatic agent of the mission;
- the personal use of a member of the diplomatic agent’s family, if the person forms part of the diplomatic agent’s household and is not an Australian citizen;
- the personal use of a staff member of a diplomatic mission at the time of the member’s first placement, if the staff member is neither an Australian citizen nor permanently resident in Australia (a staff member of a diplomatic mission is a member of the administrative or technical staff of that mission); or
- the personal use of a member of the staff member’s family at the time of that person’s first placement, if that person forms part of the staff member’s household and is neither an Australian citizen nor permanently resident in Australia.

Paragraphs (1)(a)-(c) are modelled on the exemptions provided in Article 36 and items 1 and 2 of Article 37 of the Vienna Convention on Diplomatic Relations, which are given force of law by section 7 of the *Diplomatic Privileges and Immunities Act 1967*.

Paragraph (1)(d) provides that the fees do not apply to a fee-bearing activity carried out in relation to conveyances or equipment used by the defence force of a foreign country that is engaged in a joint military operation with the Australian Defence Force, provided the Australian Defence Force has informed the Director of Biosecurity of the operation. This confirms that the Australian Defence Force must notify the Director of Biosecurity of the joint military operation for the exemption to apply.

Paragraph (1)(e) specifies that the fees do not apply to a fee-bearing activity carried out in relation to the importation or bringing into Australian territory of disability assistance dogs. The purpose of this paragraph is to exempt the fees ordinarily payable in relation to the importation of or bringing in dogs, so that persons with disabilities who require the assistance of a disability assistance dog are not charged fees for fee-bearing activities in relation to that dog at the time of its entry into Australia. The exemption is provided in recognition of the fact that disability assistance dogs enable persons with disabilities to travel and function independently. The exemption is designed to reduce the expense associated with the importation of or bringing in disability assistance dogs by persons requiring their assistance, but it is not intended to reduce the integrity of biosecurity activities carried out in relation to those dogs.

Subsection (2) provides that fees may not be charged in relation to the examination of baggage that arrives in Australian territory aboard the same aircraft or vessel as the owner or importer of the baggage.

Subsection (3) provides that fees may not be charged in relation to:

- an activity carried out in relation to goods that are brought or imported into or a conveyance that has entered Norfolk Island, Christmas Island or Cocos (Keeling) Islands
- the assessment of an application for an import permit to bring or import goods into Norfolk Island, Christmas Island or Cocos (Keeling) Islands
- the approval of a proposed arrangement under section 406 of the Biosecurity Act to carry out biosecurity activities to manage biosecurity risks associated with goods, conveyances or other things that are brought or imported into Norfolk Island, Christmas Island or Cocos (Keeling) Islands,
- an activity carried out in Norfolk Island, Christmas Island or Cocos (Keeling) Islands.

Subsection (3) reflects the government's policy to exempt fees for providing biosecurity services to these external territories. The note to this subsection clarifies that from 1 July 2016 onwards, activities carried out in relation to goods, conveyances or other things that are brought or imported into Norfolk Island and activities carried out in Norfolk Island are exempted from fees. It also refers to subsection 4(2) of the Biosecurity Regulation which provides that this instrument applies on or after 1 July 2016 in relation to persons, goods or conveyances, or things done to persons, goods or conveyances, moving to or from Norfolk Island.

Subsection (4) provides that a fee may not be charged in relation to the assessment of an application for an import permit to bring in goods covered by items 9 to 11 of the table in section 5 of the *Biosecurity (Movements between Parts of Australian Territory) Declaration 2016*. This includes the movements of goods from the Protected Zone to the Torres Strait permanent biosecurity monitoring zone, and from either the Protected Zone or the Torres Strait permanent biosecurity monitoring zone to another part of Australian territory. Import permits are required for some goods undertaking these movements to enable the management of unique biosecurity risks in the Torres Strait. It is the department's policy that the assessment of these import permits be exempted from fees because fees are not generally imposed in relation to the movement of goods within Australian territory.

This section replaces and replicates the same exemptions in the *Quarantine Service Fees Determination 2005*.

Part 2 – Payment of cost-recovery charges

Section 108 - Time for payment of certain cost-recovery charges

Paragraph 593(a) of the Biosecurity Act provides that the regulations can prescribe the time when certain cost-recovery charges are due and payable. Cost-recovery charges include fees prescribed in subsection 106(1) of the Biosecurity Regulation and charges prescribed in section 9 of the *Biosecurity Charges Imposition (General) Regulation 2016* or in section 9 of the *Biosecurity Charges Imposition (Customs) Regulation 2016*.

If a fee is prescribed in relation to any of items 1 to 25 in the table in subsection 106(1) of the Biosecurity Regulation, this section provides that where the relevant fee can be determined before the activity is carried out, the fee is due and payable on demand for payment. An officer must inform the person liable to pay the fee of that fee amount before providing the service and the activity is not required to be carried out until the fee has been paid. Where a fee cannot be determined prior to the service being provided, payment will be due by the close of business on the last day stated on the invoice issued by the department.

This section also provides that a fee prescribed in relation to item 25 in the table in subsection 106(1) of the Biosecurity Regulation is due and payable by a single payment or in two or more equal instalments within 30 days after the demand of the fee or instalment is made.

This provision allows the department to manage the collection of payments efficiently in line with its service delivery requirements and systems capabilities. This also facilitates the department recovering the costs of services provided prior to an officer performing the service. This reduces the financial risk to the department relating to the provision of a service where the cost may not be easily recoverable after the event.

A charge imposed by the *Biosecurity Charges Imposition (Customs) Act 2015* or the *Biosecurity Charges Imposition (General) Act 2015* is due and payable when a demand for payment of the charge is made. Providing for a charge to become due and payable when a demand for payment of the charge is made allows for the time of payment of charges that is appropriate in all circumstances and adaptable as operational practices evolve.

This section replaces and replicates the same provisions in the *Quarantine Service Fees Determination 2005*, the *Quarantine Service Fees (Australia Post) Determination 2010* and the *Quarantine Charges (Collection) Regulation 2014*.

Section 109 - Person liable to pay certain cost-recovery charges

Paragraph 593(b) of the Biosecurity Act states that the regulations may prescribe one or more persons who are liable to pay a specified cost-recovery charge.

This section prescribes the persons who are liable to pay the fees referred to in section 106 of the Biosecurity Regulation. A fee that is required to be paid for, or in relation to, a fee-bearing activity in items 1 to 24 of the table in subsection 106(1) of the Biosecurity Regulation is payable by the person to whom the activity is, or is to be, carried out for.

Australia Post is liable to pay the fee prescribed in relation to item 25 of the table in subsection 106(1) of the Biosecurity Regulation.

This section also specifies the person(s) who will be liable to pay each of the charges in relation to a biosecurity matter prescribed in the table in section 9 of the *Biosecurity Charges Imposition (General) Regulation 2016* or the table in section 9 of the *Biosecurity Charges Imposition (customs) Regulation 2016*. Depending on the charge and the relevant biosecurity matter to which it relates, the person who is liable to pay a charge may include the owner of goods, the person making an application, the person who is covered by an approved arrangement, or the operator of a vessel.

Subsection (5) also clarifies the meaning of ‘owner’ of goods in relation to who is liable to pay a charge under paragraph (4)(a). The owner of the goods includes a person being, or holding himself or herself out to be, the owner, importer, exporter or consignee of the goods or having a beneficial interest in the goods. It also includes a person in possession or control of the goods, or having a power of disposition over the goods, other than:

- a biosecurity official;
- a biosecurity industry participant who is in possession or control of the goods as authorised by an approved arrangement covering the biosecurity industry participate but is neither (or holding out to be) the owner, importer, exporter or consignee of those goods nor has a beneficial interest in those goods;
- a person who is in possession or control of the goods as authorised under the Biosecurity Act or another Australian law.

This definition provides that a person who is exercising a power under the Biosecurity Act or another Australian law is not taken to be an owner of the goods. Similarly, a biosecurity industry participant who is providing a biosecurity service to another party as authorised under their approved arrangement is also not be taken to be the owner of those goods.

It is necessary to prescribe the person who is liable to pay each of the charges prescribed in table in section 9 of the *Biosecurity Charges Imposition (General) Regulation 2016* and the table in section 9 of the *Biosecurity Charges Imposition (Customs) Regulation 2016* so that the relevant charge is attributed appropriately and costs associated with the relevant activities carried out can be recovered.

This section replaces and replicates the same provisions in the *Quarantine Service Fees Determination 2005*, the *Quarantine Service Fees (Australia Post) Determination 2010*, the *Quarantine Charges (Imposition–General) Regulation 2015* and the *Quarantine Charges (Imposition–Customs) Regulation 2014*.

Note that an agent of a person who is liable to pay a cost-recovery charge under this section is jointly and severally liable with that person to pay the charge as specified in section 112 of the Biosecurity Regulation.

Section 110 - Late payment fee for certain unpaid cost-recovery charges

Subsection 595(1) of the Biosecurity Act provides that the regulations may specify a late payment fee that is due and payable if the cost-recovery charge prescribed in section 106 of the Biosecurity Regulation, section 9 of the *Biosecurity Charges Imposition (General) Regulation 2016* or section 9 of the *Biosecurity Charges Imposition (Customs) Regulation 2016*, is not paid on time. This section prescribes that the late payment fee, if a cost-recovery charge or instalment of a cost-recovery charge is not paid on time, is to be calculated in accordance with the formula in subsection (4). This formula takes into account the amount of the cost-recovery charge and the number of days which the charge is overdue.

Providing for a late payment fee will encourage cost-recovery charges to be paid on time and allow the Commonwealth to recover the costs for services already provided. This section replaces and replicates the same provisions in the *Quarantine Service Fees Determination 2005*, the *Quarantine Service Fees (Australia Post) Determination 2010* and the *Quarantine Charges (Collection) Regulation 2014*.

Section 111 - Person liable to pay late payment fee

Paragraph 593(b) of the Biosecurity Act states that the regulations may prescribe one or more persons who are liable to pay a specified cost-recovery charge. This section provides that, the person who is liable to pay a cost-recovery charge under section 109 of the Biosecurity Regulation is the person liable to pay any late payment fee in relation to the charge.

Note that, in accordance with section 112 of the Biosecurity Regulation, an agent of a person who is liable to pay a late payment fee under this section is jointly and severally liable with that person to pay the late payment fee. This means that the Commonwealth is able to appropriately recover the cost-recovery charge and that the liability to recover the charge will be with the appropriate person or persons.

This section replaces and replicates the same provisions in the *Quarantine Service Fees Determination 2005*, the *Quarantine Service Fees (Australia Post) Determination 2010* and the *Quarantine Charges (Collection) Regulation 2014*.

Section 112 - Agent's liability to pay cost recovery charge

Subparagraph 593(c)(i) of the Biosecurity Act states that the regulations may prescribe rules relating to the liability of a person's agent to pay cost recovery charges on behalf of the person. This section provides that an agent of a person who is liable to pay a cost-recovery charge is jointly and severally liable with that person to pay the charge.

This section also provides that, where an agent of a person liable to pay a cost-recovery charge pays the charge on behalf of that person, the agent may recover such an amount from the person as a debt.

By providing that an agent of a person is jointly and severally liable to pay a cost-recovery charge where that person is liable to pay a cost-recovery charge, the Commonwealth is able to appropriately recover the charges and that the liability to recover charges will be with the appropriate person or persons.

This section replaces and replicates the same provisions in the *Quarantine Service Fees Determination 2005* and the *Quarantine Charges (Collection) Regulation 2014*.

Part 3—Compensation

Section 113 - Compensation for certain animals destroyed at a post-entry quarantine facility

This section provides that the Director of Biosecurity may approve payment of compensation for animals (other than horses, asses, mules, hinnies, pigs, ruminants, zoo or circus animals and animals used for scientific research), if they were destroyed at a post quarantine facility and were continuously subject to biosecurity control.

Paragraph 633(3)(a) of the Biosecurity Act provides that the Director of Biosecurity must not approve payment of compensation in respect of goods that were brought or imported into Australian territory. This applies if the goods were subject to biosecurity control at all times between the time they were brought or imported into Australian territory and the time they were destroyed. Paragraph 633(4)(a) of the Biosecurity Act provides that the regulations may

prescribe classes of goods for which compensation *may* be made, despite paragraph 633(3)(a).

This section provides the application of paragraph 633(4)(a) of the Biosecurity Act in establishing classes of animals destroyed at a PEQ facility while subject to biosecurity control to which compensation can be applied. This section provides that the Director may approve compensation for all such animals, except for classes of animal specifically listed in subsection (2). Excepted animals include horses, asses, mules, hinnies, pigs, ruminants, animals brought or imported into Australian territory for the purposes of a zoo or circus, and animals brought or imported into Australian territory by an organisation engaged in scientific research for the purposes of that research.

The purpose of this section is to allow the Director of Biosecurity to approve payment of compensation for animals, other than those listed in subsection (2) of this section, that are destroyed at a PEQ facility. Such payment of compensation may be appropriate where the animal was exposed to a biosecurity risk which caused the animal to be destroyed. This section is also intended to allow compensation where, for example, a biosecurity officer accidentally damages goods during a routine inspection. Certain types of animals are excluded, such as zoo or circus animals, because it is generally possible to insure these types of animals to cover destruction while subject to biosecurity control.

Section 114 - Division of compensation between owners

Paragraph 634(2)(b) of the Biosecurity Act provides that, where there are two or more compensable owners of a compensable item, the regulations will prescribe how the compensation is to be divided between owners. This section provides that the total compensation payable in respect of a compensable item that is owned by two or more owners must be divided among those owners according to each owner's proportion of interest in the item at the time of destruction or damage. The Director of Biosecurity must be satisfied that this proportion represents the owner's interest in the item at the time the item was damaged or destroyed.

The purpose of this section is that each owner is paid an amount of compensation equal to their share of ownership in that item, in a way that is as equitable as possible and that no owner is unfairly disadvantaged as a result of the destruction of the item.

Section 115 - Amount of compensation

This section prescribes the amount of compensation payable under sections 632 and 633 of the Biosecurity Act. Subsection 634(5) of the Biosecurity Act provides that the amount of compensation payable under section 632 or 633 of the Biosecurity Act in respect of a compensable item is to be determined in accordance with the regulations.

This section provides that the amount of compensation payable for goods damaged by a person in the course of performing functions or duties or exercising powers under the Biosecurity Act is the lesser of either the amount the Director of Biosecurity determines was the market value of the goods immediately before the goods were damaged, or the cost to repair the damage to the item.

The section also provides how to determine the amounts of compensation payable for goods, conveyances and premises destroyed under the Biosecurity Act:

- For goods that are animals that were destroyed because of infection or suspected infection by a pest or disease and were not subject to biosecurity control at the time of destruction, the amount payable is an amount determined by the Director of Biosecurity to be the market value of the animal immediately before the animal was destroyed if the animal had not been infected, or suspected of being infected, with the disease or pest;
- For goods that are animals that were destroyed at a post entry quarantine facility, were subject to biosecurity control at the time they were destroyed and were prescribed in section 113 of the Biosecurity Regulation as being a compensable item, the amount of compensation payable is the sum of the amount the Director of Biosecurity determines as the market value of the animal in the country from which it was exported immediately before export and any charges for freight, maintenance or other reasonable expenses incurred in respect of the animal after it left that country until it was destroyed;
- For all other goods destroyed under the Biosecurity Act, the amount of compensation payable is the amount the Director of Biosecurity determines was the market value of the goods immediately before they were destroyed;
- For conveyances and premises destroyed under the Biosecurity Act, the amount of compensation payable is the amount the Director of Biosecurity determines was the market value of the conveyance, or the buildings or other structures, immediately before the conveyance, or the buildings or other structures, were destroyed.

The purpose of this section is to provide that any compensation must be an amount that is reasonable and equitable given the evidence available to the Director of Biosecurity.

Part 4 – Managing Biosecurity Risk: Torres Strait

Section 116 – References to geographic coordinates

This section provides that references to geographical coordinates in this Part would be determined by reference to the Australian Geodetic Datum as defined in Gazette No. 84 of 6 October 1966 available at <http://www.ga.gov.au/scientific-topics/positioning-navigation/geodesy/geodetic-datums/historical-datums-of-australia/australian-geodetic-datum-agd>. This is consistent with references used in the *Torres Strait Treaty 1985*.

Section 117 - Permanent biosecurity monitoring zones

This section provides for other places that are prescribed as permanent biosecurity monitoring zones under paragraph 378(1)(e) of the Biosecurity Act. These zones are intended to provide powers to enable the department to establish whether a disease or pest which poses an unacceptable level of biosecurity risk is likely to or has entered, emerged, established itself or spread in the zone.

Subsection (2) provides that the parts of Australian territory that are in the protected zone are a permanent biosecurity monitoring zone. Subsection (3) provides that the parts of Australian territory that are in the area bounded by the coordinates listed are a permanent biosecurity monitoring zone (the Torres Strait permanent biosecurity monitoring zone). These zones make available powers listed under section 379 of the Biosecurity Act, for example the power

to set traps, which will assist with assessing the risk of exotic animal and plant pests and diseases that may enter Australia from countries north of Australia.

Section 118- Exemptions from the Act—goods or aircraft or vessels moving from the protected zone or the Torres Strait permanent biosecurity monitoring zone to another part of Australian territory.

These sections would provide exemptions from section 119 and 191 of the Biosecurity Act for goods and conveyances that undertake a movement covered by items 9, 10 and 11 of the *Biosecurity (Movements between Parts of Australian Territory) Declaration 2016* (the declaration). This means that goods and conveyances that have moved from the Torres Strait permanent biosecurity monitoring zone to the protected zone, and goods and conveyances that have moved from the protected zone or the Torres Strait permanent biosecurity monitoring zone to another part of Australian territory will not become subject to biosecurity control because of undertaking that movement.

Exempting goods and conveyances making the movements covered by items 9, 10 and 11 of the declaration from becoming subject to biosecurity control will enable people to travel to other parts of Australian territory without being required to meet international requirements, such as entering a first point of entry or reporting biosecurity incidents in relation to goods that would otherwise be triggered by the declaration. Conditions and reporting obligations that apply to the movement of these goods will still apply so that the biosecurity risks associated with these movements can be assessed and managed.

Section 119 - Exemptions for Torres Strait treaty

This section provides for exemptions from the Biosecurity Act for the *Torres Strait Treaty*. These exemptions are intended to enable the free movement of traditional inhabitants in the protected zone in line with the Torres Strait Treaty.

Protected zone vessels (and persons and goods on board protected zone vessels) will be exempt from the following provisions of the Biosecurity Act while the vessel is in the protected zone area established under the Torres Strait Treaty:

- Division 3 of Part 1 of Chapter 3 (the requirement to provide a notice of goods to be unloaded in Australian territory);
- Section 145 (the requirement to unload goods at a first point of entry);
- Division 8 of Part 1 of Chapter 3 (the requirement to report biosecurity incidents);
- Division 3 of Part 2 of Chapter 4 (the requirement to provide a pre-arrival report);
- Section 220 (the requirement to provide information about biosecurity requirements to person on board the vessel);
- Section 221 (the requirement to display the quarantine signal in certain circumstances);
- Section 245 (the requirement for vessels subject to biosecurity control to moor at a first point of entry); and
- Part 3 of Chapter 11 (cost recovery).

These exemptions will only be in effect while the vessel, persons or goods remain in the protected zone or the protected zone area defined under section 120 of the Biosecurity

Regulation. This means that if the vessel, persons or goods leave the area the normal application of provisions of the Biosecurity Act will apply.

See the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016* for alternative conditions that apply to goods brought into Australian territory on a protected zone vessel.

Section 120 - Protected zone area

This section prescribes the area that is in the vicinity of the protected zone for the purpose of the paragraph (b) of the definition of the protected zone area in subsection 617(4) of the Biosecurity Act. The area in the vicinity of the protected zone is prescribed under the definition of the protected zone area to allow for a buffer area in which protected zone vessels may travel as the navigational equipment of these vessels may not be accurate enough to determine the boundary of the protected zone.

Statement of Compatibility with Human Rights

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

Bioregulation 2016

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 *Bioregulation 2016* (the Bioregulation 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, the environment and the economy.

Section 645 of the Bioregulation Act provides that the Governor-General may make regulations regarding matters required or permitted to be prescribed by the Bioregulation Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Bioregulation Act. Under this Section the Governor-General may also make regulations relating to offences and penalties that will apply if a provision under the Bioregulation Act is not complied with.

The *Bioregulation 2016* (the Bioregulation Regulation) forms part of the modern regulatory framework for the Australian Government to manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, the environment and the economy. The Bioregulation Regulation supports the management of bioregulation risks in a modern and responsive manner, and enhances Australia's capacity to manage bioregulation risks into the future. The Bioregulation Regulation deals with certain matters in more detail than is necessary and practical to be dealt with in the Bioregulation Act itself.

Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- Article 12 of the International Covenant on Civil and Political Rights (ICCPR) – Right to freedom of movement
- Article 14(2) of the ICCPR – Right to the presumption of innocence
- Article 17 of the ICCPR – Right to protection from arbitrary interference with privacy

Right to freedom of movement

The right to freedom of movement under Article 12 of the ICCPR includes the right to move freely within a country for those who are lawfully within the country, the right to leave the country and the right to enter a country of which you are a citizen. The right may be limited in certain circumstances, including where the limitation is justified on any of the following grounds: to protect national security, public order, public health or morals or the rights and freedoms of others. The limitation must be necessary and proportionate to protect the purpose for which it is imposed and should be as least intrusive as possible to achieve the desired result.

Chapter 2

Part 2 of Chapter 2 of the Biosecurity Regulation empowers a biosecurity officer to require goods to be isolated in or on specified premises for a specified period. This clause may operate to limit the right to freedom of movement as a biosecurity officer may impose a requirement that specified classes of persons not enter the premises where a good is isolated or that persons enter or leave the premises at a specified place.

This isolation power is only available to isolate goods that are subject to biosecurity control and where a biosecurity officer suspects, on reasonable grounds, that the level of biosecurity risk associated with the goods is unacceptable. The isolation period imposed must be specified in an isolation notice and this period may only be extended if the biosecurity officer continues to suspect, on reasonable grounds, that the level of biosecurity risk associated with the goods is unacceptable. These limitations ensure that isolation and the potential restriction of entry to premises is only used in circumstances where use would be a necessary, reasonable, proportionate and legitimate limitation to freedom of movement. This section is necessary for the legitimate objective of decreasing the risk of contamination or transfer of a disease, pest or other biosecurity risk to goods, conveyances or people outside the premises.

Right to the presumption of innocence (reverse burden provisions)

Chapter 2

Article 14(2) of the ICCPR states that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The right to presumption of innocence is also a fundamental common law principle.

Laws which shift the burden of proof to a defendant, commonly known as ‘reverse burden provisions’, can be considered a limitation of the presumption of innocence. This is because a defendant’s failure to discharge a burden of proof or prove an absence of fault may permit their conviction despite reasonable doubt as to their guilt. This includes where an evidential or legal burden of proof is placed on a defendant.

When a defendant bears an evidential burden in relation to an exception it means that the defendant bears the burden of adducing or pointing to evidence to suggest a reasonable possibility that the exception has been met. It is then up to the prosecution to establish that this exception does not apply. This can be justified in circumstances where the facts in question are peculiarly within the knowledge of the defendant.

Reverse burden offences will not necessarily be inconsistent with the presumption of innocence provided that the reverse burden pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that objective. Whether a reverse burden provision impermissibly limits the right to the presumption of innocence will depend on the circumstances of the case and the particular justification for the reverse burden.

Evidential burden is imposed on the defendant in relation to the offence and civil penalty provisions in sections 20 and 21 of the Biosecurity Regulation, for which an exception applies if a person is authorised to engage in the conduct under the Act, Biosecurity Regulation or another Australian law. Section 20 of the Biosecurity Regulation relates to the moving, dealing with or interfering with goods that have been isolated in or on premises where isolation notice has been affixed under subsection 17(2). Section 21 of the Biosecurity Regulation relates to interfering with, removing or defacing an isolation notice that has been affixed under subsection 17(2).

The defendant should have the knowledge of and be able to easily provide the information about the circumstances that authorised them to move, deal with or interfere with the goods, or to interfere with, remove or deface the isolation notice, for example, a copy of the written direction issued by a biosecurity official or evidence that their conduct is in accordance with the approved arrangement. It would be more difficult and time-consuming for the prosecution to provide evidence of this. Sections 20 and 21 of the Biosecurity Regulation are consistent with the similar provisions under sections 141 and 139 in the Biosecurity Act, respectively.

Right to protection from arbitrary interference with privacy

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

Chapters 2, 3, 6 and 8 of the Biosecurity Regulation contain provisions which may operate to limit this right. Chapter 11 of the Biosecurity Act includes a range of protections relating to the collection, storage and disclosure of protected information.

Chapters 2, 3 and 6

Part 1 of Chapter 2 and Part 1 of Chapter 3 of the Biosecurity Regulation provide the information that must be included in a notice or report provided to a biosecurity official under sections 120 and 193 of the Biosecurity Act. Information may be required under these provisions that may limit a person's right to protection from arbitrary interference with privacy. These clauses are necessary for the legitimate objective of assessing the level of biosecurity risk associated with goods, conveyances and people that have entered, or intend to enter, Australian territory. To protect an individual's privacy, the regulations only request information that is necessary to assess the level of biosecurity risk associated with the goods, conveyances or people and, if necessary, manage any biosecurity risks appropriately (for example, the contact details of the person providing the notice).

Part 5 of Chapter 2 of the Regulation provides the information that must be included in a permit application and includes information relating to the identity and location of the applicant. If an agent is submitting an application on behalf of another person, the agent must also provide their name, street address, and their company details (if applicable). The permits scheme is voluntary and only requires the provision of such information if a permit is sought. The collection of this information is necessary for the legitimate objective of ensuring that the Director of Biosecurity can determine who it is that is making an application to bring or import conditionally non-prohibited goods into Australian territory.

Chapter 6 of the Regulation provides the information that must be included in an application for a proposed arrangement or varied arrangement and includes information relating to the identity of the applicant. The approved arrangements scheme is voluntary and only requires the provision of such information if an approved arrangement is sought. The collection of this information is necessary for the legitimate objective of ensuring that the department can receive adequate and consistent information about applicants and to ensure that the relevant Director of Biosecurity can determine who is making an application for a proposed arrangement or variation to an arrangement.

Part 2 of Chapter 11 of the Act includes a range of protections relating to the collection, storage and disclosure of protected information. Section 580 of the Act provides that only certain persons may collect, disclose, or use information, and that they may only do so for a permissible purpose (a purpose that promotes the objects of the Act. Section 585 of the Act provides an offence for improper collection or use of protected information. These protections ensure that the exercise of these powers is reasonable and proportionate to achieving the legitimate objectives of the Act.

Chapter 8

Part 1 of Chapter 8 of the Regulation promotes the protection of privacy of the public, commercial businesses and Commonwealth officers by supporting independent reviews of the performance of functions and exercise of powers by biosecurity officials. Reviews that are independent of the regulatory functions of biosecurity officials and the systems that they use will result in overall system improvements and provide an assurance framework for stakeholders of the system. This will ensure that Australia's biosecurity system maintains its integrity and continues to improve into the future.

However, the regulation may operate to limit a person's right to protection from arbitrary interference with privacy. Division 3 of that Part provides that the Inspector-General of Biosecurity may invite submissions to inform a review, and those submissions may be made publicly available. This provision is necessary for the legitimate objective of facilitating transparency of the outcomes of the review.

To protect an individual's privacy, subsections 93(3) and (4) set out the process for how the Inspector-General of Biosecurity must handle submissions containing confidential information, including not to publish or make available the confidential content in the submission, or identifying information of the person who made the submission. Section 98(2) provides that confidential information must not be included in a review report. Section 98(1) also provides that a review report must not name, or otherwise specifically identify, a Commonwealth officer. These protections, along with the general protections in Chapter 11 of the Act related to the collection, storage and disclosure of protected information, ensure that the collection of confidential information through the review process does not arbitrarily interfere with an individual's privacy.

Conclusion

The Regulation is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon. Barnaby Joyce MP

Deputy Prime Minister and Minister for Agriculture and Water Resources