

# **Senate Rural and Regional Affairs and Transport Legislation Committee Inquiry**

## **Biosecurity Amendment (Traveller Declarations and Other Measures) Bill 2020**

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# Biosecurity Amendment (Traveller Declarations and Other Measures) Bill 2020

## Background

Australia's biosecurity system is a significant national asset. It helps to protect Australia's unique environment, underpins \$60 billion in agricultural production, \$49 billion in agricultural exports and our \$42 billion inbound tourism industry— each vital contributors to jobs and growth, particularly in regional and rural Australia.

Despite information campaigns advising of the importance of declaring goods that pose a biosecurity risk, incoming travellers, be they Australian citizens, residents or visitors, continue to complete Incoming Passenger Cards and Crew Declarations without declaring goods of a kind known to carry the risk of potentially devastating pests and diseases such as African Swine Fever, Foot-and-Mouth Disease (FMD), and the plant pathogen *Xylella*.

The Biosecurity Amendment (Traveller Declarations and Other Measures) Bill 2020 (the Bill) will amend the *Biosecurity Act 2015* (Biosecurity Act) to provide for a flexible and proportionate compliance response through the targeted setting of amounts payable under an infringement notice.

The Bill will:

- allow the Biosecurity Regulation 2016 (Biosecurity Regulation) to specify different penalty amounts and different periods of time to pay for infringement notices issued for different kinds of alleged contraventions of the Biosecurity Act, including by reference to the kind of goods or class of goods to which an alleged contravention relates
- permit the Director of Biosecurity to make a non-disallowable legislative instrument to specify goods or classes of goods that can attract different infringement notice amounts.

The proposed changes would permit an infringement notice stating a set amount of penalty units (as prescribed by the Biosecurity Regulation) to be issued to incoming passengers or crew who fail to declare high level biosecurity risk goods listed in the legislative instrument. The amounts will be able to differ by reference to the kind of goods or class of goods to which the alleged contravention of the Biosecurity Act relates, as specified in the new legislative instrument. Currently, under the Biosecurity Regulation, the infringement notice amount of two penalty units applies to all alleged contraventions of the Biosecurity Act that occur in the airport, regardless of the relative biosecurity risk of the goods to which the alleged contravention relates.

## Principal issues for consideration

### *How effective will the Bill be in deterring non-compliance with the Biosecurity Act to mitigate against biosecurity risk?*

Incoming passengers and crew (including persons in charge of an aircraft or vessel) are required to declare certain goods on their Incoming Passenger Cards and Crew Declarations for the purpose of assessing the level of biosecurity risk associated with those goods.

However, biosecurity officers continue to detect biosecurity risk goods that arriving passengers and crew did not declare.

For example, despite the prevalence of freely available information and signage in the airport advising people to declare meat, some incoming passengers and crew have persisted in failing to declare pork products. Pork products carry with them the risk of African Swine Fever (ASF). ASF is a contagious viral disease of domestic and wild pigs which has established in Asia and parts of Europe and continues to spread. There is no vaccine, and ASF kills about 80 per cent of the pigs it infects. While Australia is currently free of ASF, its changing distribution means it is a significant biosecurity threat to our country. An outbreak would be devastating for Australia's \$1.2 billion pork industry, and would damage our trading reputation and the economy.

To counter the possible incursion of ASF into Australia, the department has implemented a number of initiatives, including the introduction in 2018 of a sampling and testing program for ASF in goods surrendered or seized from passengers at international airports. The department has run this program three times to date to highlight the risk associated with raw and processed pork products. Each program has detected goods infected with ASF. These alarming results highlight the importance of declaring pork products. There have been extensive education and awareness campaigns, which have included brochures in airline seat pockets and tray mats on inbound flights; banners in airports; and brochures handed out at airports explaining the risks posed by failing to declare pork and pork products. This information has been made available in a number of languages.

Despite these initiatives, passengers and crew continue to fail to declare pork and pork products, as well as other biosecurity risk goods. For example, in January 2020 a passenger failed to declare over three kilograms of pork (including two whole pig's ears, pork sausages and pork knuckle), as well as large amounts of millet, ginger, garlic, pepper and cherry tomatoes. The products were detected by Biosecurity Detector Dog Yula at Sydney Airport. All pork products except for the pig's ears tested positive for ASF virus fragments.

Other examples of large quantities of undeclared pork and other goods detected in passengers' luggage between October 2019 and January 2020 include:

- On 12 October 2019 a passenger arriving from Vietnam knowingly failed to declare 4.6kg of pork plus other biosecurity risk material.
- On 2 November 2019, another passenger arriving from Vietnam knowingly failed to declare 3.8kg of pork mooncakes.
- On 14 November 2019, a passenger arriving from Hong Kong knowingly failed to declare 2.2kg of pork, 1.4kg of chicken, 500g of beef, 800g of tomatoes, 1.3kg of chestnuts and other biosecurity risk material.
- On 14 November 2019, a passenger arriving from Singapore knowingly failed to declare 3.35kg of pork products and 600g of apples. The undeclared goods were detected by Biosecurity Detector Dog Yuri.

- On 27 December 2019, a passenger arriving from Europe via Kuala Lumpur knowingly failed to declare about 2.6 kg of pork products plus other biosecurity risk material (e.g. cheese, raw duck breast, bananas and onions).
- On 2 January 2020, a passenger arriving from China via Kuala Lumpur knowingly failed to declare 800g of pork (including 700g of pig's foot and 100g of sausage) and other biosecurity risk material (eg beef, eggs and fruit).
- On 15 January 2020, a passenger arriving from China knowingly failed to declare 900g of pork ham, 400g of canned pork, 200g of grapes, 80g of mango, 500g of pear, 200g of dried mixed fruits, 140g of apple, 500g of peanuts, 200g of roasted pumpkin seeds, 300g of dried pumpkin seeds, 300g of canned anchovies, 1.5kg of mandarin, 1.25kg of apple, 800g of beef noodles, 1.25kg of other roots/rhizomes/tubers (unknown name) and 100g of boiled egg. The goods were detected by Biosecurity Detector Dog Lido.

In 2018-19 biosecurity officers issued an average of approximately 410 infringement notices per month at Australian international airports. The number of infringement notices issued was projected to double in 2019-20 before COVID-19 related travel restrictions closed Australian borders to all travellers except Australian citizens, residents and their immediate families on 20 March 2020. For the period July 2019 to March 2020, an average of 887 infringement notices per month were issued, with 1139 infringement notices issued in January 2020 alone.

Incoming passengers and crew who provide false or misleading information about goods they are bringing into Australia, including by failing to declare goods on their Incoming Passenger Card or Crew Declaration, may be in breach of section 532(1) or 533(1) of the Biosecurity Act. Currently the regulations provide for an infringement notice in the amount of two penalty units. From 1 July 2017 to 30 June 2020, the amount was \$420. However, since 1 July 2020, it is now \$444 (as the result of the automatic indexation of the value of a penalty unit under the *Crimes Act 1914*) for alleged contraventions of these sections.

The effect of this Bill will be to enable an infringement notice to be issued stating a set amount of penalty units when incoming passengers and crew allegedly fail to declare high biosecurity risk goods that are listed in the new legislative instrument. The amounts will be able to differ by reference to the kind of goods or class of goods to which the alleged contravention of the Biosecurity Act relates. Failing to declare goods or classes of goods that are required to be declared but not listed in the legislative instrument will, under the Biosecurity Regulation, continue to attract an infringement notice in the amount of two penalty units.

The department considers the introduction of higher infringement notice amounts for failing to declare high level biosecurity risk goods will emphasise the biosecurity risks posed by the goods listed in the legislative instrument, and will encourage travellers to take greater care in completing their incoming traveller declarations. This approach will serve as a useful compliance tool in the department's efforts to address priority biosecurity risks.

Information about higher infringement notice amounts related to high level biosecurity risk goods will be freely available through the Federal Register of Legislation and the department's website. Community education information resources will also publicise the changes and will be made available to incoming passengers and crew.

All biosecurity risk goods that are required to be declared by incoming passengers and crew threaten our agricultural sector, tourism sector, environment and economy. However, some goods pose a higher level of relative biosecurity risk from time to time and are a priority for the department to deal with immediately at the border. The Bill would deter non-compliance by enabling a proportionate approach to infringement notice amounts through regulations made by reference to a determination made by the Director of Biosecurity listing particular goods or classes of goods.

***Is it appropriate that the legislative instrument made by the Director of Biosecurity should not be subject to parliamentary disallowance***

This Bill proposes the creation of a new power to permit the Director of Biosecurity to make a legislative instrument specifying the goods or classes of goods that can attract a higher infringement notice amount. The legislative instrument would be exempt from the parliamentary disallowance requirements under section 42 of the *Legislation Act 2003*.

While disallowance should only be excluded in exceptional circumstances where compelling policy justification exists, it is recognised that there are some types of instrument where an exemption from disallowance may be justified. The 2008 *Review of the Legislative Instruments Act 2003* noted the range of established grounds for exemptions to parliamentary disallowance requirements, including where:

- the rule-making process should or needs to be separated from the political process
- the instrument is critical to ensuring that urgent and decisive action can be taken in situations of emergency or where circumstances are rapidly evolving.

In accordance with the guidance provided in the *Legislation Handbook*, the department consulted with both the Office of Parliamentary Counsel and the Administrative Law Section of the Attorney-General's Department regarding the use of a non-disallowable legislative instrument. The Explanatory Memorandum to the Bill sets out the justifications for establishing a non-disallowable instrument in this instance:

- the legislative instrument is prepared on the basis of a scientific and technical assessment of risk undertaken within the objects of the Biosecurity Act
- disallowance of this legislative instrument could potentially have a negative impact on decision-making, risk management processes and broader management of biosecurity threats.

Emerging pests and diseases can pose a serious and immediate threat to Australia's biosecurity system. It is critical that the department, informed by scientific risk assessments, has the ability to take immediate action in response to these emerging risks.

The exemption from parliamentary disallowance for this legislative instrument is similar in character to other instruments already existing in the Biosecurity Act that reference the technical and scientific nature of the decision in question. For example those made under section 182 of the Biosecurity Act suspending the bringing or importing of specified goods into Australian territory for a specified period of time.

The Bill establishes a number of safeguards to ensure the power to make the legislative instrument is exercised appropriately, including:

- clear parameters for the exercise of this power requiring that the Director of Biosecurity must be reasonably satisfied there is a high level of biosecurity risk associated with the goods or the class of goods before listing them in the legislative instrument
- the legislative instrument can only be in force for up to 12 months, ensuring regular review of the goods and classes of goods listed to confirm the assessment of the biosecurity risk these pose

- the proposed amendment to subsection 542(3) to prevent the subdelegation of the Director of Biosecurity's power to determine a list of goods or class of goods for the purposes of creating this differential infringement notice regime below the level of SES or acting SES employees in the department.

The legislative instrument will be registered on the Federal Register of Legislation and published on the department's website, so it will be freely and easily available, open to public scrutiny, and provide transparency and certainty to incoming travellers.

### ***What are the costs of implementing enforcement and payment systems?***

The enforcement and payment systems used to issue infringement notices are already in use. Some minor changes to the department's ICT systems will be required to support the implementation of the amendment of the regulation making powers made by this Bill. These changes will be absorbed by 'business as usual' system upgrades and the cost is expected to be in the order of \$50,000.

These changes will include minor revisions to ICT systems used by the department to issue infringement notices at the airport, including coding or configuration changes to enhance automated functionality.

Changes to communication tools will occur within existing departmental practices as well as media releases and promotion of the changes via existing mechanisms including media channels.

### ***How will coordinated training to biosecurity officers and Australian Border Force officers be undertaken?***

The department and the Australian Border Force (ABF) have existing mechanisms for delivering training to border staff.

The department will deliver coordinated training to biosecurity officers and ABF officers before commencement of the infringement notice amendments proposed in this Bill. As infringement notices will only be issued by biosecurity officers, training delivered to ABF officers will be for awareness only rather than how to issue these infringement notices.

The training will be delivered by a small team of subject matter experts from the department who are experienced in delivering targeted compliance-related training to relevant officers.

The training will draw upon the recent successful delivery of training by the department to biosecurity officers and ABF officers following implementation of the biosecurity-related visa cancellation ground under the Migration Regulations 1994.

Following the initial training period to support implementation of these amendments, ongoing training will be embedded into business as usual training activities delivered by state-based technical trainers. To this end, these trainers will attend the initial training sessions delivered by the subject matter experts to observe and familiarise themselves with the content – using a train the trainer model.

### ***What changes does the Bill make to penalties under the Biosecurity Act?***

In the airport, biosecurity officers issue infringement notices for alleged contraventions of four provisions in the Biosecurity Act: subsections 126(2), 128(2), 532(1) and 533(1). Alleged contraventions of these provisions involve a failure to comply with a requirement to answer questions, or provide information in writing, a failure to comply with directions, and the

provision of false or misleading information or a document. The first two provisions attract a maximum penalty of 120 penalty units (\$26,640); the latter two provisions attract a maximum penalty of 60 penalty units (\$13,320). Only a court can order a person to pay the maximum penalty.

As an alternative to court proceedings, biosecurity officers can issue infringement notices for alleged contraventions of the Biosecurity Act under Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act). The Regulatory Powers Act allows infringement notices to be issued for up to (and including) 12 penalty units (\$2664), as does subsection 524(4) of the Biosecurity Act.

Currently, under the Biosecurity Regulation, all infringement notices issued at the airport attract 2 penalty units (\$444 since 1 July 2020). The Bill allows the Governor-General to make new regulations specifying different penalty amounts for infringement notices issued at the airport for different kinds of alleged contraventions of the Biosecurity Act. The regulations will be able to specify different penalty amounts depending on the kind of goods or class of goods to which the alleged contravention relates, including if it relates to a kind of goods or class of goods that Director of Biosecurity has listed in the new legislative instrument.

The Bill does not otherwise change the penalties under the Biosecurity Act.