



Australian Government
**Department of Agriculture,
Water and the Environment**

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Senator Susan McDonald
Chair
Senate Rural and Regional Affairs and Transport Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator McDonald

Thank you for the opportunity to make a submission to the Senate Rural and Regional Affairs and Transport Legislation Committee on the Biosecurity Amendment (Enhanced Risk Management) Bill 2021.

You will find attached the department's submission on the Bill. This submission has been prepared jointly with the Department of Health. The Australian Bureau of Agricultural and Resource Economics and Sciences has also been consulted in the preparation of the submission.

Australia's biosecurity system is a central pillar of our defence against current and emerging biosecurity threats, including threats to human health. It underpins agricultural production, agricultural exports and our inbound tourism industry—each vital contributors to jobs and growth, particularly in regional and rural Australia.

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

Yours sincerely

Andrew Tongue
Deputy Secretary
Biosecurity and Compliance Group

cc Professor Paul Kelly, Director of Human Biosecurity

Senate Rural and Regional Affairs and Transport Legislation Committee Inquiry

Biosecurity Amendment (Enhanced Risk Management) Bill 2021

Joint Submission of the Department of Agriculture,
Water and the Environment, and the Department of
Health

29 September 2021

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Biosecurity Amendment (Enhanced Risk Management) Bill 2021

Background

The *Biosecurity Act 2015* (Cth) (the Biosecurity Act), commenced on 16 June 2016 and is the central pillar of Australia's defence against current and emerging biosecurity threats. It is co-administered by the Ministers responsible for the Agriculture and Health portfolios. It provides the regulatory framework for managing the risk of pests and diseases entering Australian territory and gives effect to Australia's relevant international rights and obligations, including as a World Health Organization Member State.

The Biosecurity Amendment (Enhanced Risk Management) Bill 2021 (the Bill) would amend the Biosecurity Act to improve the ability to identify and manage these risks and keep pace with new and emerging biosecurity threats, preventing the introduction, emergence and spread of pests and diseases to protect agriculture, industry, trade, the environment and human health.

The COVID-19 pandemic has tested Australia's human biosecurity systems in an unprecedented way, and has highlighted the rate at which a biosecurity threat can spread between countries and around the world. International vessels at Australia's borders are a significant risk pathway for the entry of infectious diseases into Australian territory, including COVID-19 cases. These risks were examined by the Inspector-General of Biosecurity in his review *Confidence testing for at-border delivery of critical human biosecurity functions – Ruby Princess cruise ship incident*.

The Bill would contribute to addressing the ongoing risk of listed human diseases entering Australian territory through aviation and maritime pathways. It would strengthen Australia's pandemic preparedness and response at the border both in the context of the current COVID-19 pandemic, and through providing flexibility to manage infectious disease risks that Australia may face in the future.

The Bill expands pre-arrival reporting requirements, ensuring accurate and up-to-date information is available to assess relevant biosecurity risks, such as the human health risk of vessels and aircraft entering Australian territory. It would also expand and strengthen penalties for operators and persons in charge of aircraft and vessels who do not comply with pratique requirements, deterring non-compliance with provisions of the Act that seek to ensure the risks of pests and diseases are managed before people can embark or disembark or cargo can be loaded or unloaded onto an aircraft or vessel.

It would also insert a new mechanism to manage groups of people, such as onboard a cruise ship where passengers or crew display signs or symptoms of a listed human disease or have been exposed to such a disease. In these circumstances, human biosecurity officers and chief human biosecurity officers would be able to effectively assess and manage the risks of that disease entering into or spreading in Australian territory. This would supplement the existing framework in the Biosecurity Act that provides for management of human health biosecurity risks.

As well as strengthening the management of human health risks across maritime and aviation pathways, this Bill would increase a range of civil and criminal penalties to more appropriately reflect the impact that contraventions of the Biosecurity Act may have on Australia's biosecurity status, market access and economy. In addition, the Bill would ensure transparency and regulatory efficiency of administrative processes in the Biosecurity Act, such as those involved in conducting risk assessments for the purposes of making certain determinations relating to goods, granting of an import permit, or making, varying and administering arrangements or grants for expenditure in relation to biosecurity-related programs and activities.

Principal issue for consideration

Whether the Bill has an appropriate regulatory balance for managing human health risks and reporting requirements for aircraft and maritime vessels to enable Australia's borders to reopen safely

What is the regulatory objective this Bill seeks to achieve

The objective of the pratique, human health and pre-arrival reporting measures in Schedule 1 to this Bill is to strengthen the legislative framework under the Biosecurity Act for managing the risk of listed human diseases entering Australian territory through international vessel and aircraft arrivals. It would support the Australian Government's four phase *National Plan to transition Australia's National COVID-19 Response*, aiming to ensure the safe recovery of tourism and related industries aligned with the reduction in public health risk, while also providing the flexibility to manage biosecurity risks posed by infectious pests and diseases that Australia may face in the future.

The Bill offers a nuanced and carefully balanced approach to managing human health risks and reporting requirements that is tailored to, and commensurate with, the objective of supporting the safe reopening of Australia's borders.

Amendment proposals

1. Pre-arrival reporting requirements

Currently, subsection 193(1) of the Biosecurity Act requires the operator of an aircraft or vessel to give a pre-arrival report in certain circumstances, including if the aircraft or vessel enters, or is intended to enter, Australian territory. Subsection 193(2) provides requirements for information to be included in a report given under subsection 193(1).

Subsection 194(1) requires the operator of an aircraft or vessel to provide additional or corrected information to a biosecurity officer as soon as practicable, if a report was given under section 193 of the Biosecurity Act and the person in charge or the operator becomes aware that the information included in the report was incomplete or incorrect.

The information obtained through pre-arrival reporting enables biosecurity officers to identify biosecurity risks and determine what risk management activities might be necessary in relation to the aircraft or vessel to prevent that biosecurity risk from entering, establishing or spreading in Australian territory.

For vessels other than non-commercial vessels, the *Biosecurity Regulation 2016* currently provides for a pre-arrival report to be submitted within 96 to 12 hours ahead

of the estimated time of arrival. Where there are large numbers of passengers and crew, such as on board a cruise vessel, it is possible for there to be significant changes in the number of individuals with a listed human disease, or in the reported signs or symptoms of a listed human disease, between the time a report was made and arrival of the vessel at a port. If biosecurity officers are not aware of these changes, they are unable to properly assess or manage the biosecurity risk posed by the conveyance.

Further, there is a significant gap in the reporting requirements under the Biosecurity Act in that section 194 in its current form does not create a clear obligation to update information that becomes superseded after the pre-arrival report is submitted.

The proposed amendments would insert a new subsection 193(1A), which would provide that the operator must give one or more other reports in relation to the aircraft or vessel in the circumstances prescribed by the regulations. The regulations may then prescribe different circumstances for giving other reports by different classes of aircraft or vessel.

The amendments would also insert new subsection 194(1A), which would provide that the regulations may prescribe the circumstances in which the operator must give a biosecurity officer further information in relation to a report that has been given under subsection 193(1) or (1A), and the regulations may also prescribe the kind of further information and when that information must be given to a biosecurity officer.

2. Human Biosecurity Group Direction

Currently, there is no ability to give biosecurity directions to groups of individuals to manage risks to human health. While the Biosecurity Act provides for the ability to use human biosecurity control orders, these can only be imposed on an individual and are not a practical mechanism to effectively assess and manage human biosecurity risk posed by a group of individuals, such as in the context of large passenger vessels.

The Bill would establish a new mechanism for managing groups of people where individuals in that group display signs or symptoms of a listed human disease, or have been exposed to such a disease.

This human biosecurity group direction would require individuals within the specified class to comply with certain biosecurity measures that would assist human biosecurity officers and chief human biosecurity officers to manage risks of the entry, establishment or spread of a listed human disease in Australian territory. These measures could include requirements relating to: providing contact and location information; management of the location of individuals; wearing protective clothing and equipment; undergoing an examination; providing body samples for diagnosis; and loading or unloading of items from the aircraft or vessel.

The direction could be applied to individuals in a specified group, including individuals who are on board a vessel or aircraft in either maritime or air pathways, or in close proximity to the landing place or port where it landed or moored.

Striking an appropriate balance: pre-arrival reporting and group directions

It is anticipated that some time and financial burdens would result from the additional pre-arrival reporting requirements and human biosecurity group directions. Individuals subject to a group direction would also experience restrictions, for example a biosecurity measure requiring a person to go or not go to a specified place or to wear certain protective clothing or equipment designed to reduce the risk of contagion, such as a face mask.

However, the proposed amendments in the Bill are proportionate to the potential public health risk posed, and would strengthen the identification, assessment and management of biosecurity risks including risks to human health, from incoming vessels and aircraft. These amendments would also support the resumption of international travel, including the cruise industry in a 'COVID-19 safe' manner, providing significant immediate benefits aligned with the reduction in public health risk.

A Regulation Impact Statement, '*Pratique and human health: amendments to the Biosecurity Act 2015*', (RIS) was prepared for the proposed pratique and human health amendments in the Bill in August 2021 and forms part of the Explanatory Memorandum to the Bill. This RIS was assessed by the Office of Best Practice Regulation as good practice. In balancing the additional regulatory burden that could be imposed by the measures in this Bill against the key benefits to be derived, the benefits of the proposed amendments were considered to "*significantly [outweigh] quantifiable increases in the regulatory burden for businesses*".

It was noted that the likely impacts of the proposed amendments arise primarily from the additional reporting requirements and the new mechanism to issue human biosecurity group directions. The RIS estimated the quantifiable regulatory burden of the proposed amendments at \$0.275 million per year, with the increased regulatory burden "*offset at least partly by savings due to the more nuanced human health risk management regime.*"

In addition, the RIS noted the economic benefits from a safe resumption of the international cruise industry in Australia and the recovery of the industry to pre-pandemic levels:

This includes the refilling of 18,135 jobs that existed at the end of the 2018-19 financial year and building back up to the \$5.2 billion in annual economic output that was generated directly and indirectly by the industry. Any regulation that will support the recovery of the industry will be of significant value to the Australian economy and community as a whole.

The additional pre-arrival reporting would allow for a more accurate and timely identification and assessment of biosecurity risks, meaning biosecurity officers can better determine what risk management activities might be required in relation to the aircraft or vessel to prevent a listed human disease from entering and spreading in Australian territory. For example, the regulations could provide for cruise vessels to submit two pre-arrival reports, with the second report being submitted closer to the time of arrival. This would enable significant changes in the number of passengers and crew showing signs or symptoms of a listed human disease to be taken into account by biosecurity officers for the purposes of assessing biosecurity risk.

Similarly, the regulations may prescribe that further information is required from the operator where information about the numbers of individuals with a listed human disease, or signs or symptoms of a listed human disease, have been superseded by subsequent events. This would ensure that biosecurity officers are making assessments and putting in place risk mitigation measures based on the best available information.

Providing for additional reporting requirements in the regulations would ensure flexibility to tailor pre-arrival reporting requirements to the risk profile of different types of conveyances, such as cruise ships. By linking the reporting requirements to the risk posed by a particular class of conveyance, the proposed amendments are proportionate and strike the appropriate regulatory balance for managing human health risks and reporting requirements, avoiding unnecessary regulatory burden associated with a one-size-fits-all approach.

While the proposed human biosecurity group direction could impose some immediate and significant requirements on an individual in a specified class subject to a group direction, this burden is offset by anticipated savings due to the more nuanced human health risk management framework. For example, currently one option for managing human health risks in certain circumstances is to not grant pratique, which restricts the movement of passengers and goods for the entire vessel. The ability to target the group direction in terms of both the class of individuals and the types of biosecurity measures given would enable unaffected passengers to disembark and the loading and unloading of some goods to occur according to the assessment of risk. This would provide a more flexible option for biosecurity officers and human biosecurity officers and avoid unnecessary regulatory burden.

The potential cost to individuals is also offset by the wider benefit of more effective management of the risk of a listed human disease entering, establishing and spreading in the community, including benefits to human health, state and territory health systems, and the economy.

The proposed amendments also limit the human biosecurity group direction to only applying the least restrictive measures possible that are necessary and proportionate to achieve the legitimate objective of protecting public health. For example:

- a human biosecurity group direction can only be made by a human biosecurity officer or chief human biosecurity officer, who would have public health clinical expertise;
- a human biosecurity officer or chief human biosecurity officer must be satisfied that the general decision-making principles in section 34 and 35 of the Biosecurity Act have been met before making a direction, including that it is likely to be effective in managing the risk posed, it is appropriate and adapted to managing the risk posed, it is no more intrusive or restrictive than is required, and it is imposed for a period which is only as long as necessary;
- the general protections under the Biosecurity Act for children or incapable persons apply, and the direction must not interfere with any urgent or life-threatening medical needs;
- a human biosecurity group direction can be in force for no more than eight hours, but may be extended once for up to four hours;
- consent to certain biosecurity measures under proposed sections 108N and 108P must be given;
- there is an express limitation preventing the use of force against an individual to require compliance with the direction; and
- all medical examinations or taking of body samples for diagnosis must be conducted in accordance with medical and other professional standards.

The measures contained in the Bill are compatible with human rights recognised or declared in the international instruments set out in the *Human Rights (Parliamentary Scrutiny) Act 2011*, and a Statement of Compatibility with Human Rights is included in the Explanatory Memorandum to the Bill. The Bill promotes the right to health and, to the extent it may limit human rights, those limitations are reasonable, necessary and proportionate.

The Bill is also consistent with Australia's international rights and obligations, including the World Health Organization's *International Health Regulations 2005* that are incorporated into domestic law, including in the Biosecurity Act.

This Bill strikes an appropriate regulatory balance for managing human health risks and the pre-arrival reporting obligations for maritime and aviation arrivals. The approach provides flexibility and avoids the unnecessary regulatory burden associated with a one-size-fits-all approach. It would keep pace with changing biosecurity risks for continued protection for agriculture, tourism and other industries, plant and animal health, the environment, and our market access while providing a stronger biosecurity risk management framework and contributing to a safe reopening of Australia's international borders aligned with the reduction in public health risk.

By contributing to Australia's pandemic preparedness and response at the border and helping contain the entry and spread of listed human diseases, the strengthened framework for responding to human health risks would also assist state and territory stakeholders in managing public health risks in their jurisdiction.

Appropriate consultation with relevant stakeholders will be undertaken in the development of the regulations and implementation planning that will further consider regulatory effectiveness and balance.

This is a joint submission prepared by the Department of Agriculture, Water and the Environment, and the Department of Health. This includes input from the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), a division of the Department of Agriculture, Water and the Environment.