

Rural and Regional Affairs and Transport Legislation Committee

Answers to questions on notice

Agriculture, Water and the Environment Portfolio

Inquiry: Biosecurity Amendment (Enhanced Risk Management) Bill 2021
[provisions]

Question No: IQ21-000086

Hearing Date: 07 October 2021

Division/Agency: Biosecurity Strategy and Reform Division (BSRD) G6

Topic: Increase in penalties and compliance

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Question Date: 07 October 2021

Question Type: Spoken

Senator Sterle asked:

Senator STERLE: You talk about increasing penalties, but what would the enforcement regime look like?

Ms Lane: We're doing a range of things. What this bill does is ensure we've got the appropriate level of penalties applied for a range of offences. As you'd know, we've done that in a couple of previous bills as well, so it's an iterative process. The Inspector-General of Biosecurity has raised some of these issues in some of his independent reports as well, but we're also looking at how we support compliance entities in the biosecurity system, as well as appropriately penalising those who are doing the wrong thing. We do that in a range of ways, not just with penalties. There's a number of trials that we're running, particularly around supporting those entities that are doing the right thing—through streamlined clearance processes, for example. We're incentivising people to do the right thing but also ensuring that we have appropriate deterrents for those that continue to do the wrong thing or, in some cases, inadvertently do the wrong thing. There's a range of improvements—and we can provide a bit more information on this on notice, I think—across the suite of activities that we're doing in the compliance space.

Senator STERLE: Yes, I'd like you to do that if you could.

Ms Lane: I'm happy to do that.

Senator STERLE: How far up the chain does this enforcement regime go? Do we pull out a stick and whack the owners of the ships on the head, who don't even know who they are?

Ms Lane: We certainly have made some changes within this bill to extend the liability for noncompliance, beyond just the operator, to the person in charge. We have looked at the potential difficulties with the current drafting of the legislation, and we will continue to look for improvements in the legislation to enable us to apply the appropriate penalties to the right people. But there are some changes that we're making in this legislation that will help us, certainly in the human health space but also through other pathways.

Senator STERLE: Will you be able to tell us on notice just how far up the chain this goes?

Ms Lane: We can provide further detail on notice, but there are certainly some provisions in this bill that broaden the liability for noncompliance across a range of offences. I'm happy to provide some further detail on that.

Senator STERLE: If you could provide further detail for us to look at, that would be good. Thank you, Ms Lane.

Answer:

1. In relation to this Bill, Schedule 1 of the Bill targets the contravention of specified provisions in the *Biosecurity Act 2015* relating to non-compliance with pratique and pre-arrival reporting requirements for aircraft and vessels. Please see attached summary of penalty amendments in Schedule 1 (**Attachment 1**). These provisions apply to the operators or persons in charge of an aircraft or vessel, who should know and understand their particular obligations under the Biosecurity Act.

The Bill extends the scope of the civil penalty provision relating to pratique so that a person in charge of an incoming aircraft or vessel would, in addition to the operator of the aircraft or vessel, also be liable to a civil penalty if the pratique requirements are not complied with. This amendment is intended to address the disjuncture between the practical and legal responsibility for compliance with pratique requirements under the Biosecurity Act. This amendment is consistent with a recommendation of the Inspector-General for Biosecurity in his review of the Ruby Princess incident. This amendment would strengthen the regulatory framework by providing that both the operator and the person in charge of the incoming aircraft or vessel should be liable to a civil penalty for non-compliance with subsection 48(1).

The Bill also increases the civil and criminal penalties that apply to operators of aircraft or vessels who fail to comply with pre-arrival reporting requirements under sections 193 and 194 of the Biosecurity Act.

Schedule 2 to the Bill will also increase the pecuniary penalties that apply to specified criminal offences and civil penalty provisions in Chapter 3 of the Biosecurity Act which deals with managing biosecurity risks relating to goods. In particular, they will target contraventions of biosecurity requirements by operators and persons in charge of aircraft or vessels, with a focus on the unloading of goods on entry into Australian territory. Please see attached summary of penalty amendments in Schedule 2 (**Attachment 2**).

These increases will increase deterrence for non-compliance and ensure that the penalties are proportionate to the potentially serious consequences of the contravention. It will also align maximum penalties across key provisions of the Biosecurity Act.

More generally, the Department of Agriculture, Water and the Environment has been working to strengthen compliance and enforcement arrangements in a range of ways:

- we continue to review penalties in the legislation to ensure there are sufficient deterrents to non-compliance; we have introduced penalty increases through two previous amendment bills;
- we have introduced new penalty provisions to enable the department to take enforcement action across a broader range of offences;
- we have worked with the Department of Home Affairs to implement cancellations of visas for international travellers who commit serious breaches of the Biosecurity Act;
- we continue to work on arrangements to reward those entities operating in the system with good compliance records through streamlined clearances;
- we have significantly bolstered our capacity to target effort into serious non-compliance through dedicated operations, including joint operations with Australian Border Force and the Australian Federal Police.

Biosecurity Amendment (Enhanced Risk Management) Bill 2021 – Summary of penalties amendments – Schedule 1

Provision	Summary		Current civil penalty (penalty units / \$)	Proposed civil penalty (penalty units / \$)	Current criminal penalty (fault-based offence) (penalty units / \$)*	Proposed criminal penalty (fault-based offence) (penalty units / \$)*
Chapter 2 – Managing biosecurity risks: human health Part 1 – General Protections and listing human diseases Division 2 – Protections						
38	A person who is an accompanying person of a child or incapable person is given a direction under this section in relation to a requirement that is included in a human biosecurity group direction must comply with the direction under this section (new provision)	38	-	30 pu \$6,660	-	-
Chapter 2 – Managing biosecurity risks: human health Part 2 – Preventing risks to human health Division 4 – Pratique						
48	The operator, or person in charge, of an incoming aircraft or vessel must not allow anything to be unloaded from or loaded onto, or any person to disembark from or embark onto, the aircraft or vessel unless pratique has been granted.	48(1)(a) (operator)	120 pu \$26,640	1000 pu \$222,000	-	-
		48(1)(b) (person in charge) (new)	-	300 pu \$66,600	-	-

* does not include terms of imprisonment

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Provision	Summary		Current civil penalty (penalty units / \$)	Proposed civil penalty (penalty units / \$)	Current criminal penalty (fault-based offence) (penalty units / \$)*	Proposed criminal penalty (fault-based offence) (penalty units / \$)*
Chapter 2 – Managing biosecurity risks: human health Part 3A – Managing risks to human health: human biosecurity group directions (NEW) Division 4 – Civil penalties						
108T	A person must comply with a biosecurity measure included in a human biosecurity group direction that applies to that person if the human biosecurity group direction is in force, the individual is included in the class of individuals specified in the direction and there has been notification of the direction (new provision).	108T	-	30 pu \$6,660	-	-
108U	The person who is in charge of an aircraft or vessel and is required under subsection 108E(2), 108F(7) or 108G(5) to give a notification of a human biosecurity group direction must give the notification in accordance with that subsection (new provision).	108U	-	300 pu \$66,600		

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Chapter 4 – Managing biosecurity risks: conveyances Part 2 – Conveyances entering Australian territory etc Division 3 – Pre-arrival reporting etc						
193	The operator of an aircraft or vessel who is required to give a pre-arrival report under subsection 193(1) must give the report in accordance with subsection 193(2).	193(5)	-	-	120 pu \$26,640	1000 pu \$222,000
		193(6)	120 pu \$26,640	1000 pu \$222,000	-	-
194	The operator of an aircraft or vessel who is required to give further information in respect of a pre-arrival report to a biosecurity officer under subsection 194(1) must give the information as required.	194(3)	-	-	120 pu \$26,640	1000 pu \$222,000
		194(4)	120 pu \$26,640	1000 pu \$222,000	-	-

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Provision	Summary		Current civil penalty (penalty units / \$)	Proposed civil penalty (penalty units / \$)	Current criminal penalty (fault-based offence) (penalty units / \$)*	Proposed criminal penalty (fault-based offence) (penalty units / \$)*
Chapter 3 – Managing biosecurity risks: goods						
Part 1 – Goods brought into Australian territory						
Division 3 – Notice of goods to be unloaded in Australian territory						
120	Person must give notice of goods that are or are intended to be brought into and unloaded in Australian territory	120(6)	-	-	120 pu \$26,640	300 pu \$66,600
		120(7)	120 pu \$26,640	300 pu \$66,600	-	-
121	Person (<i>who provided notice under section 120</i>) must provide additional or corrected information where the	121(3)	-	-	120 pu \$26,640	300 pu \$66,600

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Biosecurity Amendment (Enhanced Risk Management) Bill 2021 – Summary of penalties amendments – Schedule 2

Provision	Summary		Current civil penalty (penalty units / \$)	Proposed civil penalty (penalty units / \$)	Current criminal penalty (fault-based offence) (penalty units / \$)*	Proposed criminal penalty (fault-based offence) (penalty units / \$)*
	information provided in the original notice is incomplete or incorrect	121(4)	120 pu \$26,640	300 pu \$66,600	-	-
122	Person (<i>when required to by a biosecurity officer</i>) must provide additional information (answer questions and produce documents) in relation to goods that are subject to a notice under section 120, prior to the goods becoming subject to biosecurity control	122(6)	-	-	120 pu \$26,640	300 pu \$66,600
		122(7)	120 pu \$26,640	300 pu \$66,600	-	-

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Chapter 3 – Managing biosecurity risks: goods						
Part 1 – Goods brought into Australian territory						
Division 6 – Unloading goods at landing places or ports						
143	Person in charge of an aircraft or vessel must comply with a direction given by a biosecurity officer relating to the unloading of the goods from the aircraft or vessel	143(5)	-	-	300 pu \$66,600	1000 pu \$222,000
		143(6)	120 pu \$26,640	300 pu \$66,600	-	-
144	Person must comply with a direction given by a biosecurity officer or person in charge of an aircraft or vessel relating to the unloading of goods from the aircraft or vessel	144(6)	-	-	300 pu \$66,600	1000 pu \$222,000
		144(7)	120 pu \$26,640	300 pu \$66,600	-	-
145	Person in charge of an aircraft or vessel must not allow the goods to be unloaded from the aircraft or vessel at a landing place or port that is not a first point of entry	145(2)	-	-	300 pu \$66,600	1000 pu \$222,000

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Biosecurity Amendment (Enhanced Risk Management) Bill 2021 – Summary of penalties amendments – Schedule 2

		145(3)	120 pu \$26,640	300 pu \$66,600	-	-
146	Person in charge of an aircraft or vessel must comply with the conditions specified in a notice giving permission for the goods to be unloaded from the aircraft or vessel at a requested landing place or port	146(4)	-	-	300 pu \$66,600	1000 pu \$222,000
		146(5)	-	-	300 pu \$66,600	1000 pu \$222,000
		146(6)	-	-	300 pu \$66,600	1000 pu \$222,000
		146(7)	120 pu \$26,640	300 pu \$66,600	-	-
147	Person in charge of an aircraft or vessel must ensure that goods that are to be unloaded from the aircraft or	147(2)	120 pu \$26,640	300 pu \$66,600	-	-

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	vessel are brought to the biosecurity entry point for those goods	147(4)	-	-	300 pu \$66,600	1000 pu \$222,000
		147(5)	-	-	300 pu \$66,600	1000 pu \$222,000
		147(6)	-	-	300 pu \$66,600	1000 pu \$222,000
		147(7)	120 pu \$26,640	300 pu \$66,600	-	-
148	Person in charge of an aircraft or vessel must comply with the conditions specified in a notice giving permission for the goods to be brought to a requested alternative biosecurity entry point	148(4)	-	-	300 pu \$66,600	1000 pu \$222,000
		148(5)	-	-	300 pu \$66,600	1000 pu \$222,000

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		148(6)	-	-	300 pu \$66,600	1000 pu \$222,000
		148(7)	120 pu \$26,640	300 pu \$66,600	-	-
149(1)	Person must not receive or possess goods unloaded from an aircraft or vessel in contravention of Division 6 of Part 1 of Chapter 3		120 pu \$26,640	300 pu \$66,600	-	-
<p>Chapter 3 – Managing biosecurity risks: goods</p> <p>Part 1 – Goods brought into Australian territory</p> <p>Division 8 – Reporting biosecurity incidents</p>						
155	Person in charge of an aircraft or vessel carrying goods must report to a biosecurity officer or the Director of Biosecurity a reportable biosecurity incident as soon as practicable after becoming aware of the incident	155(2)	-	-	120 pu \$26,640	1000 pu \$222,000
		155(3)	120 pu \$26,640	300 pu \$66,600	-	-
156	Person in charge of the goods must report to a biosecurity officer or the Director of Biosecurity a	156(2)	-	-	120 pu \$26,640	1000 pu \$222,000

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Biosecurity Amendment (Enhanced Risk Management) Bill 2021 – Summary of penalties amendments – Schedule 2

	reportable biosecurity incident as soon as practicable after becoming aware of the incident	156(3)	120 pu \$26,640	300 pu \$66,600	-	-
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