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About this compilation

This compilation

This is a compilation of the *Biosecurity Act 2015* that shows the text of the law as amended and in force on 25 March 2020 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

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If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

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For more information about any editorial changes made in this compilation, see the endnotes.

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If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to diseases and pests that may cause harm to human, animal or plant health or the environment, and for related purposes

Chapter 1—Preliminary

Part 1—Preliminary

1 Short title

This Act may be cited as the *Biosecurity Act 2015*.

2 Commencement

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

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	16 June 2015
2. Sections 3 to 645	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	16 June 2016

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

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

3 Simplified outline of this Act

This Act is about managing diseases and pests that may cause harm to human, animal or plant health or the environment.

This Chapter includes preliminary provisions (such as the extension of this Act to external Territories, and the relationship of this Act with other Australian laws). It also includes the definitions for this Act, provisions that relate to the Constitution and international law, and principles affecting decisions to exercise certain powers under this Act.

Chapter 2 deals with managing risks to human health. That Chapter mainly deals with diseases (listed human diseases) that are listed in a legislative instrument. The main method of managing risks to human health is by imposing a human biosecurity control order on an individual who may have a listed human disease. However, Chapter 2 also includes requirements in relation to persons entering or leaving Australian territory, and rules relating to managing deceased individuals.

Chapter 3 deals with managing biosecurity risks in relation to goods that are brought into Australian territory from outside Australian territory. These goods become subject to biosecurity control when the aircraft or vessel carrying the goods enters Australian territory. Powers may be exercised to assess the level of biosecurity risk associated with the goods, and biosecurity measures may be required to reduce that risk if it is considered to be unacceptable. Chapter 3 also provides a mechanism for prohibiting certain goods from being brought or imported into

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Australian territory, either absolutely or subject to conditions, and includes provisions dealing with biosecurity import risk analyses and import permits.

Chapter 4 deals with managing biosecurity risks in relation to aircraft and vessels that enter Australian territory from outside Australian territory, including by controlling the places where they can land or be moored and their movement while they are in Australian territory. These conveyances become subject to biosecurity control when they enter Australian territory. Powers may be exercised to assess the level of biosecurity risk associated with them, and biosecurity measures may be required to reduce that risk if it is considered to be unacceptable. Chapter 4 also provides for a scheme to deal with ship sanitation for the purposes of the International Health Regulations.

Chapter 5 implements the Ballast Water Convention and regulates the ballast water and sediment of certain vessels in accordance with the United Nations Convention on the Law of the Sea. It requires reporting of intended or actual discharges of ballast water in Australian territorial seas. Discharging ballast water is an offence, subject to a range of exceptions, and there is an offence of disposing of sediment. For an Australian vessel, these offences apply whether the vessel is in or outside Australian seas. For a foreign vessel, the offences apply only if the vessel is in Australian seas. The definition of ***Australian seas*** depends on whether the Administration of the foreign vessel is a party to the Ballast Water Convention. The Chapter also includes provisions for ballast water management plans and certificates, record-keeping obligations and powers to ensure compliance.

Chapter 6 deals with managing biosecurity risks (other than those covered by Chapter 3 or 4) posed by diseases or pests that may be in or on goods or premises in Australian territory. The Chapter provides for powers to be exercised to monitor, respond to and control those risks.

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Section 3

Chapter 7 provides for arrangements to be approved authorising and requiring biosecurity industry participants to carry out biosecurity activities to manage biosecurity risks associated with goods, premises or other things for the purposes of this Act.

Chapter 8 provides for the Governor-General to declare biosecurity emergencies and human biosecurity emergencies. Part 1 gives the Agriculture Minister special powers to deal with biosecurity emergencies and provides for certain powers to be delegated to national response agencies. Part 1 also includes other modifications of the Act that apply during biosecurity emergencies. Part 2 gives the Health Minister special powers to deal with human biosecurity emergencies, including by giving effect to recommendations of the World Health Organization.

Chapter 9 gives officers powers to ensure people are complying with this Act, to investigate non-compliance and to enforce this Act by means such as civil penalties, infringement notices, enforceable undertakings and injunctions. In many cases this is done by applying the Regulatory Powers Act. The Chapter also provides for warrants for officers to enter premises and exercise powers for some other purposes relating to biosecurity, as well as powers for officers to enter premises and exercise powers there without a warrant or consent in some limited cases. Officers have certain obligations relating to their entry to premises (with or without a warrant or consent), and occupiers of premises have certain rights relating to the activities of officers on their premises. The Chapter also includes other provisions relevant to ensuring compliance with this Act, such as how to determine whether a person is a fit and proper person.

Chapter 10 deals with matters relating to governance and officials. It includes provisions relating to the functions and powers of the Director of Biosecurity, the Director of Human Biosecurity, biosecurity officers, biosecurity enforcement officers, chief human biosecurity officers and human biosecurity officers.

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Chapter 11 includes miscellaneous provisions, dealing with matters such as:

(a) review of reviewable decisions under this Act; and
(b) the confidentiality of information obtained under this Act; and
(c) recovering costs under this Act; and
(d) abandoned or forfeited goods and conveyances; and
(e) modification of this Act in relation to certain movements of persons, goods and conveyances.

4 Objects of this Act

The objects of this Act are the following:

(a) to provide for managing the following:
  (i) biosecurity risks;
  (ii) the risk of contagion of a listed human disease or any other infectious human disease;
  (iii) the risk of listed human diseases or any other infectious human diseases entering Australian territory or a part of Australian territory, or emerging, establishing themselves or spreading in Australian territory or a part of Australian territory;
  (iv) risks related to ballast water;
  (v) biosecurity emergencies and human biosecurity emergencies;
(b) to give effect to Australia's international rights and obligations, including under the International Health Regulations, the SPS Agreement, the Ballast Water Convention, the United Nations Convention on the Law of the Sea and the Biodiversity Convention.

Note: The expression biosecurity risk referred to in subparagraph (a)(i) has different meanings depending on whether it is for the purposes of Chapter 6 (managing biosecurity risks: monitoring, control and response) or another part of this Act (see sections 9 and 310).

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5 Appropriate Level of Protection (ALOP) for Australia against biosecurity risks

The ***Appropriate Level of Protection*** (or ***ALOP***) for Australia is a high level of sanitary and phytosanitary protection aimed at reducing biosecurity risks to a very low level, but not to zero.

Note 1: This section is in accordance with Australia's rights and obligations under the SPS Agreement.

Note 2: The ALOP for Australia must be applied in conducting a BIRA (see subsection 167(2)) or a risk assessment for the purpose of deciding whether particular goods, or a particular class of goods, can be brought or imported into Australian territory (see subsections 173(4), 174(3), 179(3) and 182(4)).

6 Act binds the Crown

(1) This Act binds the Crown in each of its capacities.

(2) This Act does not make the Crown liable to be:
  (a) prosecuted for an offence; or
  (b) subject to civil proceedings for a civil penalty order under Part 4 of the Regulatory Powers Act; or
  (c) given an infringement notice under Part 5 of the Regulatory Powers Act.

7 Extension of Act to Christmas Island, Cocos (Keeling) Islands and other prescribed external Territories

(1) This Act extends to Christmas Island and the Cocos (Keeling) Islands.

(2) The regulations may extend this Act or any provisions of this Act, other than Chapter 5 (ballast water), to any other external Territory that is prescribed by the regulations.

Note: Chapter 5 extends to all the external Territories (see section 259).

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8 Concurrent operation of State and Territory laws

(1) This Act does not exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act (except as referred to in subsection (2)).

(2) Subsection (1) is subject to the following provisions:
  (a) section 172 (prohibited goods);
  (b) section 265 (ballast water);
  (c) subsections 445(4), 446(4), 477(5) and 478(4) (biosecurity emergencies and human biosecurity emergencies).

(3) Without limiting subsection (1), this Act does not exclude or limit the concurrent operation of a law of a State or Territory to the extent that:
  (a) the law makes an act or omission:
    (i) an offence; or
    (ii) subject to a civil penalty; and
  (b) that (or any similar) act or omission is also:
    (i) an offence against a provision of this Act; or
    (ii) subject to a civil penalty under this Act.

(4) Subsection (3) applies even if the law of the State or Territory does any one or more of the following, in relation to the offence or civil penalty:
  (a) provides for a penalty that differs from the penalty provided for in this Act;
  (b) provides for fault elements that differ from the fault elements applicable to the offence or civil penalty provision created by this Act;
  (c) provides for defences or exceptions that differ from the defences or exceptions applicable to the offence or civil penalty provision created by this Act.

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Part 2—Definitions

9 Definitions

In this Act:

acceptable ballast water exchange has the meaning given by section 275.

accompanying person for a child or incapable person means:

(a) a parent, guardian or next of kin of the child or incapable person; or

(b) a person authorised by a parent, guardian or next of kin of the child or incapable person under section 39.

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

adjacent premises warrant means a warrant issued as a result of the test in item 5 of the table in section 489 being met.

Administration of a vessel has the same meaning as in the Ballast Water Convention.

affected provisions has the meaning given by subsection 618(1).

Agriculture Department means the Department administered by the Agriculture Minister.

Agriculture Minister means the Minister administering the *Primary Industries Levies and Charges Collection Act 1991*.

Agriculture Secretary means the Secretary of the Agriculture Department.

aircraft means any machine or craft that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth's surface.

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Note: A reference to an aircraft does not include a reference to an aircraft brought or imported into Australian territory from outside Australian territory on board another conveyance until the aircraft is released from biosecurity control (see subsection 16(3)).

ALOP (short for Appropriate Level of Protection) has the meaning given by section 5.

animal includes a dead animal and any part of an animal, but does not include a human or a part of a human, whether the human is dead or alive.

appropriate ballast water records has the meaning given by section 295.

appropriate person means:

(a) for premises to which an entry warrant or a premises possession warrant relates, or premises entered under a provision referred to in section 513—the occupier of the premises, or another person who apparently represents the occupier; or

(b) for a conveyance to which a conveyance possession warrant relates—the person responsible for the conveyance, or another person who apparently represents the person responsible for the conveyance.

Note: If an entry warrant relates to a conveyance, the appropriate person is the person occupying the conveyance, or another person who apparently represents that person (see paragraph (a) of the definition of ***premises*** in this section).

approved arrangement has the meaning given by section 10.

associate of a person has a meaning affected by section 11.

Australian law means a law of the Commonwealth, or of a State or Territory.

Australian seas means:

(a) for Australian vessels and foreign vessels whose Administration is a party to the Ballast Water Convention—the waters (including the internal waters of Australia) that are

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within the outer limits of the exclusive economic zone of Australia; or

(b) for all other foreign vessels—the Australian territorial seas.

Note: This definition is affected by sections 260 (vessels in dry dock) and 261 (foreign vessels and the Australian Antarctic Territory).

Australian territorial seas means the waters (including the internal waters of Australia) within the outer limits of the territorial sea of Australia (including every external Territory).

Note: This definition is affected by sections 260 (vessels in dry dock) and 261 (foreign vessels and the Australian Antarctic Territory).

Australian territory has the meaning given by section 12.

Australian vessel means a vessel that:

(a) has Australian nationality under section 29 of the *Shipping Registration Act 1981*; or

(b) is a vessel whose Administration is the Commonwealth.

baggage means goods:

(a) that are carried on a conveyance by or for a person who is on board the conveyance (including the person in charge and members of the crew of the conveyance); or

(b) that a person intended to be so carried.

ballast water has the same meaning as Ballast Water has in the Ballast Water Convention.

Note: Chapter 5 (ballast water) does not generally apply to permanent ballast water in sealed tanks (see section 263).

Ballast Water Convention means the International Convention for the Control and Management of Ships' Ballast Water and Sediments, done at London on 13 February 2004, as in force from time to time.

Note 1: The Ballast Water Convention includes the Annex to the Ballast Water Convention.

Note 2: The Convention could in 2014 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

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ballast water exchange means a process involving:

(a) the discharge of ballast water from a tank on a vessel; and

(b) the uptake of water into the tank simultaneously with, or immediately after, the discharge.

ballast water management has the same meaning as Ballast Water Management has in the Ballast Water Convention.

ballast water management certificate has the meaning given by section 288.

ballast water management plan has the meaning given by section 286.

ballast water operation means:

(a) taking up ballast water into a vessel (whether deliberately, accidentally or as part of a ballast water exchange); or

(b) discharging ballast water from a vessel (whether deliberately, accidentally or as part of a ballast water exchange); or

(c) treating or circulating ballast water on a vessel for the purposes of ballast water management.

ballast water reception facility means a facility (including a vessel) for receiving ballast water from vessels for treatment or disposal.

ballast water record system for a vessel means a system for making and keeping records about the vessel's ballast water and ballast water operations.

Biodiversity Convention means the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992, as in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 1993 No. 32 ([1993] ATS 32) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

biosecurity activities, in relation to an approved arrangement, has the meaning given by section 405.

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biosecurity activity zone has the meaning given by subsection 395(1).

biosecurity activity zone determination means a determination made under subsection 395(1).

biosecurity control notice, in relation to goods that are subject to biosecurity control or a conveyance that is subject to biosecurity control, means a notice in the form approved by the Director of Biosecurity that states that the goods or conveyance is subject to biosecurity control.

Note: See sections 129 and 203.

biosecurity control order means an order made under section 353.

biosecurity control order warrant means a warrant issued as a result of the test in item 2 of the table in section 489 being met.

biosecurity emergency means a biosecurity emergency that is declared to exist under subsection 443(1).

biosecurity emergency declaration means a declaration made under subsection 443(1).

biosecurity emergency period means the period specified under paragraph 443(3)(c) in a biosecurity emergency declaration as the period during which the declaration is in force.

biosecurity enforcement officer means a person who is authorised under section 546 or 548 to be a biosecurity enforcement officer under this Act.

biosecurity entry point has the meaning given by section 13.

biosecurity industry participant has the meaning given by section 14.

biosecurity measures means measures to manage any of the following:

(a) biosecurity risks;

(b) the risk of contagion of a listed human disease;

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(c) the risk of listed human diseases:
  (i) entering Australian territory or a part of Australian territory; or
  (ii) emerging, establishing themselves or spreading in Australian territory or a part of Australian territory;
(d) biosecurity emergencies and human biosecurity emergencies.

biosecurity monitoring zone means:
(a) a permanent biosecurity monitoring zone; or
(b) a temporary biosecurity monitoring zone.

biosecurity monitoring zone warrant means a warrant issued as a result of the test in item 4 of the table in section 489 being met.

biosecurity officer means a person who is authorised under section 545 to be a biosecurity officer under this Act.

biosecurity official means any of the following:
(a) a biosecurity officer;
(b) a biosecurity enforcement officer;
(c) the Director of Biosecurity.

biosecurity response zone has the meaning given by subsection 365(1).

Note: An area may be determined to be a biosecurity response zone under Part 5 of Chapter 6 during a biosecurity emergency period (see section 465).

biosecurity response zone determination means a determination made under subsection 365(1).

biosecurity response zone warrant means a warrant issued as a result of the test in item 3 of the table in section 489 being met.

biosecurity risk means (except as provided by section 310):
(a) the likelihood of a disease or pest:
  (i) entering Australian territory or a part of Australian territory; or

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(ii) establishing itself or spreading in Australian territory or a part of Australian territory; and

(b) the potential for any of the following:

(i) the disease or pest to cause harm to human, animal or plant health;

(ii) the disease or pest to cause harm to the environment;

(iii) economic consequences associated with the entry, establishment or spread of the disease or pest.

Note: Section 310 provides a modified meaning of ***biosecurity risk*** in relation to Chapter 6 (managing biosecurity risks: monitoring, control and response).

biosecurity risk assessment warrant means a warrant issued as a result of the test in item 1 of the table in section 489 being met.

BIRA (short for Biosecurity Import Risk Analysis) has the meaning given by section 166.

chief human biosecurity officer for a State or Territory means a person who is authorised under section 562 to be a chief human biosecurity officer for the State or Territory.

child or incapable person means:

(a) a person who is less than 18 years old; or

(b) a person who is at least 18 years old and either:

(i) is incapable (whether permanently or temporarily) of understanding the general nature and effect of, and purposes of carrying out, a biosecurity measure; or

(ii) is incapable (whether permanently or temporarily) of indicating whether he or she consents or does not consent to a biosecurity measure.

Christmas Island means the Territory of Christmas Island.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

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coastal sea of Australia or an external Territory has the same meaning as in subsection 15B(4) of the *Acts Interpretation Act 1901*.

Cocos (Keeling) Islands means the Territory of Cocos (Keeling) Islands.

commercial-in-confidence has the meaning given by section 15.

Commonwealth body includes a Department of State, or an authority, of the Commonwealth.

competent authority has the meaning given by the International Health Regulations.

conditionally non-prohibited goods has the meaning given by subsection 174(2).

constitutional trade and commerce means the following:

(a) trade or commerce between Australia and places outside Australia;
(b) trade or commerce among the States;
(c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories.

conveyance has the meaning given by section 16.

conveyance possession warrant means a warrant issued as a result of the test in item 6 of the table in section 489 being met.

cost-recovery charge means:

(a) a fee prescribed by regulations made for the purposes of subsection 592(1) for a fee-bearing activity; or
(b) a charge imposed by:
    (i) the *Biosecurity Charges Imposition (Customs) Act 2015*; or
    (ii) the *Biosecurity Charges Imposition (Excise) Act 2015*; or

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(iii) the *Biosecurity Charges Imposition (General) Act 2015*; or

(c) a late payment fee relating to a fee or charge described in paragraph (a) or (b).

Note: The references in paragraph (b) to the *Biosecurity Charges Imposition (Customs) Act 2015*, the *Biosecurity Charges Imposition (Excise) Act 2015* and the *Biosecurity Charges Imposition (General) Act 2015* include references to those Acts before their short titles were amended from the *Quarantine Charges (Imposition—Customs) Act 2014*, the *Quarantine Charges (Imposition—Excise) Act 2014* and the *Quarantine Charges (Imposition—General) Act 2014* respectively (see section 10 of the *Acts Interpretation Act 1901*).

covered by, in relation to an approved arrangement, has the meaning given by section 14.

damage, in relation to data, includes damage by erasure of data or addition of other data.

declaration disease or pest, in relation to a biosecurity emergency declaration and a biosecurity emergency period, means the disease or pest specified under paragraph 443(3)(a) in the biosecurity emergency declaration that specifies the biosecurity emergency period.

declaration listed human disease, in relation to a human biosecurity emergency declaration and a human biosecurity emergency period, means the listed human disease specified under paragraph 475(3)(a) in the human biosecurity emergency declaration that specifies the human biosecurity emergency period.

de facto partner has the meaning given by the *Acts Interpretation Act 1901*.

destination part of Australian territory has the meaning given by subsection 618(2).

Director of Biosecurity means the Director of Biosecurity referred to in section 540.

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Director of Human Biosecurity means the Director of Human Biosecurity referred to in subsection 544(1).

disease means:

(a) the signs or symptoms of an illness or infection caused by a disease agent; or

(b) a collection of signs or symptoms that is clinically defined, for which the causal agent is unknown; or

(c) a disease agent that has the potential to cause, either directly or indirectly, an illness or infection.

disease agent includes, but is not limited to, a microorganism, an infectious agent and a parasite.

enactment means:

(a) an Act of the Commonwealth, a State or a Territory; or

(b) an instrument (including rules, regulations and by-laws) made under an Act of the Commonwealth, a State or a Territory.

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

entry warrant means any of the following warrants authorising entry to premises:

(a) a biosecurity risk assessment warrant;

(b) a biosecurity control order warrant;

(c) a biosecurity response zone warrant;

(d) a biosecurity monitoring zone warrant;

(e) an adjacent premises warrant.

environment includes:

(a) ecosystems and their constituent parts; and

(b) natural and physical resources.

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evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

exit provisions has the meaning given by subsection 619(2).

exposed conveyance means an exposed conveyance within the meaning of subsection 192(2) or (3).

exposed goods has the meaning given by subsection 158(3).

exposed goods order means an order made under subsection 159(3).

exposed to has the meaning given by section 17.

Federal Circuit Court means the Federal Circuit Court of Australia.

Federal Court means the Federal Court of Australia.

fee-bearing activities has the meaning given by subsection 592(1).

first point of entry has the meaning given by section 18.

Foreign Affairs Department means the Department administered by the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

foreign vessel means a vessel that is not an Australian vessel.

goods has the meaning given by section 19.

harbour means a natural or artificial harbour, and includes:

(a) a navigable estuary, river, creek or channel; and
(b) a haven, roadstead, dock, pier or jetty; and
(c) any other place in or at which vessels can obtain shelter or load and unload goods or embark and disembark passengers.

Health Department means the Department administered by the Health Minister.

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Health Minister means the Minister administering the *National Health Act 1953*.

Health Secretary means the Secretary of the Health Department.

high-value conveyance means a conveyance of a value that is greater than the amount prescribed by the regulations for the purposes of this definition.

high-value goods means goods of a value that is greater than the amount prescribed by the regulations for the purposes of this definition.

human biosecurity control order means an order imposed on an individual under section 60.

human biosecurity emergency means a human biosecurity emergency that is declared to exist under subsection 475(1).

human biosecurity emergency declaration means a declaration made under subsection 475(1).

human biosecurity emergency period means the period specified under paragraph 475(3)(c) in a human biosecurity emergency declaration as the period during which the declaration is in force.

human biosecurity officer means a person who is authorised under section 563 to be a human biosecurity officer under this Act.

human disease means a disease that has the potential:

(a) to enter Australian territory or a part of Australian territory, or to emerge, establish itself or spread in Australian territory or a part of Australian territory; and
(b) to cause harm to human health.

human health response zone has the meaning given by section 113.

human health risk means:

(a) the likelihood of a disease or pest:

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(i) entering Australian territory or a part of Australian territory; or
(ii) emerging, establishing itself or spreading in Australian territory or a part of Australian territory; and

(b) the potential for either of the following:
(i) the disease or pest to cause harm to human health;
(ii) economic consequences associated with the entry, emergence, establishment or spread of the disease or pest, to the extent that the disease or pest has the potential to cause harm to human health.

human remains means the remains of all or any part of a deceased human's body, but does not include:

(a) the cremated remains of a deceased human's body; or
(b) hair, teeth or bones of a deceased human's body that have been separated from the deceased human's body or a part of the deceased human's body.

Immigration Department means the Department administered by the Minister administering the *Migration Act 1958*.

IMO guidelines means guidelines or procedures adopted by the Marine Environment Protection Committee of the International Maritime Organization, as in force from time to time.

Note: The text of guidelines or procedures adopted by the Marine Environment Protection Committee of the International Maritime Organization could in 2017 be accessed through the International Maritime Organization's website (http://www.imo.org).

import, in relation to goods, does not include unloading the goods for temporary purposes only (for example, to unload other goods).

incoming aircraft or vessel means an aircraft or vessel:

(a) that has entered Australian territory during a flight or voyage that commenced outside Australian territory; and
(b) that intends to arrive, or has arrived, at a landing place or port in Australian territory in accordance with Part 4 of Chapter 4 (managing biosecurity risks: conveyances).

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incoming passenger aircraft or vessel means an incoming aircraft or vessel that is a passenger aircraft or a passenger vessel.

Inspector-General means the Inspector-General of Biosecurity appointed under section 566A.

installation has the meaning given by section 20.

internal waters of Australia has the same meaning as in section 10 of the *Seas and Submerged Lands Act 1973* and, to avoid doubt, includes waters within the limits of a State.

International Health Regulations means the International Health Regulations (2005), done at Geneva on 23 May 2005, as in force for Australia from time to time.

Note: The Regulations are in Australian Treaty Series 2007 No. 29 ([2007] ATS 29) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

international mail centre means a place approved by the Comptroller-General of Customs (within the meaning of the *Customs Act 1901*) in an instrument under subsection 183UA(2) of that Act.

invasive pest means a pest that:

(a) is an alien species (within the meaning of the Biodiversity Convention); but

(b) is not capable of:

(i) infesting humans, animals or plants; or

(ii) acting as a vector for a disease; or

(iii) causing disease in any other way.

investigation warrant means:

(a) a warrant issued under section 70 of the Regulatory Powers Act as it applies in relation to evidential material that relates to a provision mentioned in subsection 484(1); or

(b) a warrant signed by an issuing officer under section 71 of the Regulatory Powers Act as it applies in relation to evidential

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material that relates to a provision mentioned in subsection 484(1).

isolation measure means the biosecurity measure included in a human biosecurity control order under section 97.

issuing officer means:

(a) a magistrate; or

(b) a Judge of a court of a State or Territory; or

(c) a Judge of the Federal Court or the Federal Circuit Court.

Note: For conferral of powers on an issuing officer, see section 537.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

landing place, in relation to an aircraft, means any place where the aircraft can land, including:

(a) an area of land or water; and

(b) an area on a building or a vessel.

late payment fee has the meaning given by section 595.

listed human disease has the meaning given by section 42.

managed for discharge, in relation to ballast water, has the meaning given by sections 272 and 275.

medical facility includes a facility (whether permanent or temporary) where medical assessments of individuals are conducted.

monitoring warrant means a warrant issued under section 32 of the Regulatory Powers Act as it applies in relation to this Act.

National Focal Point has the meaning given by section 9 of the *National Health Security Act 2007*.

national response agency means:

(a) the Agriculture Department and all biosecurity officers and biosecurity enforcement officers; or

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(b) a body declared under section 452 to be a national response agency.

officer of Customs has the same meaning as in the *Customs Act 1901*.

offshore terminal has the same meaning as in the Ballast Water Convention.

operator of a conveyance has the meaning given by section 21.

origin part of Australian territory has the meaning given by subsection 618(2).

outgoing aircraft or vessel means an aircraft or vessel that intends to leave Australian territory from a landing place or port in Australian territory.

outgoing passenger aircraft or vessel means an outgoing aircraft or vessel that is a passenger aircraft or a passenger vessel.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

passenger of an aircraft or vessel means a person who is lawfully entitled to be on board the aircraft or vessel, other than a person who is on board the aircraft or vessel for the purpose of performing functions as the person in charge or as a member of the crew of the aircraft or vessel.

passenger aircraft means an aircraft that has the capacity to carry 6 or more passengers.

passenger vessel means a vessel that has the capacity to carry 12 or more passengers.

permanent biosecurity monitoring zone has the meaning given by section 378.

permissible distance means 400 metres or such greater distance as is prescribed by regulations for the purposes of this definition.

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permissible purpose means a purpose of promoting the objects of this Act.

personal information has the same meaning as in the *Privacy Act 1988*.

person assisting has the meaning given by section 536.

person in charge has the meaning given by section 22.

person responsible for a conveyance means:

(a) the owner of the conveyance; or
(b) the person in charge of the conveyance; or
(c) the operator of the conveyance.

pest means a species, strain or biotype of a plant or animal, or a disease agent, that has the potential to cause, either directly or indirectly, harm to:

(a) human, animal or plant health; or
(b) the environment.

Note: For the application of this Act in relation to pests, see sections 25 and 26.

plant includes a dead plant and any part of a plant.

port includes a harbour.

possession warrant means a premises possession warrant or a conveyance possession warrant authorising the taking of possession of premises or a conveyance.

PPSA security interest means a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies, other than a transitional security interest within the meaning of that Act.

Note 1: The *Personal Property Securities Act 2009* applies to certain security interests in personal property. See the following provisions of that Act:

(a) section 8 (interests to which the Act does not apply);
(b) section 12 (meaning of ***security interest***);

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(c) Chapter 9 (transitional provisions).

Note 2: For the meaning of ***transitional security interest***, see section 308 of the *Personal Property Securities Act 2009*.

premises includes the following:

(a) a structure, building or conveyance;

(b) a place (whether or not enclosed or built on), including a place situated underground or under water;

(c) a part of a thing referred to in paragraph (a) or (b).

Note: ***Premises*** does not include a conveyance in certain parts of this Act (see sections 252, 472 and 497).

premises possession warrant means a warrant issued as a result of the test in item 7 of the table in section 489 being met.

prescribed contact information means:

(a) in relation to section 47—the contact information prescribed by the regulations for the purposes of that section; and

(b) in relation to section 69—the contact information prescribed by the regulations for the purposes of that section; and

(c) in relation to section 85—the contact information prescribed by the regulations for the purposes of that section.

prescribed quarantine signal means the signal prescribed for the purposes of subsection 221(2).

prohibited goods has the meaning given by subsection 173(2).

protected information means personal information, or information that is commercial-in-confidence, that:

(a) is obtained under, or in accordance with, this Act; or

(b) is derived from a record of personal information, or information that is commercial-in-confidence, that was made under, or in accordance with, this Act; or

(c) is derived from a disclosure or use of personal information, or information that is commercial-in-confidence, that was made under, or in accordance with, this Act.

Note: For the meaning of ***commercial-in-confidence***, see section 15.

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protected person has the meaning given by subsection 644(6).

protected zone has the meaning given by section 617.

protected zone area has the meaning given by section 617.

protected zone vessel has the meaning given by section 617.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

related provision means the following:

(a) a provision of this Act or the *Quarantine Act 1908* (as it applied of its own force or to the extent that it continues to apply because of the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*) that creates an offence;

(b) a civil penalty provision of this Act;

(c) a provision of the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or the *Quarantine Act 1908* (as it applied of its own force or to the extent that it continues to apply because of the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*) and creates an offence.

release from biosecurity control:

(a) in relation to goods that are subject to biosecurity control—means release from biosecurity control under section 162; and

(b) in relation to a conveyance that is subject to biosecurity control—means release from biosecurity control under section 218.

relevant court means:

(a) the Federal Court; or

(b) the Federal Circuit Court; or

(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

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relevant Director, in relation to an approved arrangement or a proposed approved arrangement, means:

(a) if the arrangement provides for biosecurity activities to be carried out relating only to human health risks—the Director of Human Biosecurity; or

(b) in any other case—the Director of Biosecurity.

relevant person for a reviewable decision means:

(a) for a reviewable decision referred to in column 1 of the table in subsection 574(1)—the person referred to in column 3 of that table in relation to that decision; and

(b) for a reviewable decision prescribed under regulations or a determination made for the purposes of subsection 574(2)—the person specified by the regulations or determination as the relevant person for that decision.

relevant premises has the meaning given by section 510.

reportable biosecurity incident:

(a) in relation to goods that are subject to biosecurity control—means an act, omission or event that is determined to be a reportable biosecurity incident under section 154; and

(b) in relation to an approved arrangement—has the meaning given by subsection 431(1).

reviewable decision has the meaning given by subsections 574(1) and (2).

sanitation health risk has the meaning prescribed for the purposes of paragraph 255(1)(a).

sediment has the same meaning as Sediments has in the Ballast Water Convention.

sediment reception facility means:

(a) for an Australian vessel that is not in Australian seas—a facility for receiving sediment from vessels for treatment or disposal in accordance with IMO guidelines; or

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(b) otherwise—a facility in Australian territory for receiving sediment from vessels for treatment or disposal in a way authorised under:
  (i) a law of the Commonwealth; or
  (ii) if the facility is in a State or Territory—a law of the State or Territory.

ship's pilot, in relation to a vessel, means a person who does not belong to, but has the conduct of, the vessel.

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures set out in Annex 1A to the World Trade Organization Agreement, as in force for Australia from time to time.

State or Territory body includes a Department of State, or an authority, of a State or Territory.

subject to biosecurity control:
(a) in relation to goods—means subject to biosecurity control because of subsection 119(2) or (4); and
(b) in relation to a conveyance—means subject to biosecurity control because of subsection 191(2) or (4) or 192(2), (3) or (5).

survey authority means a person authorised by the Director of Biosecurity under section 290A to be a survey authority.

suspended goods has the meaning given by subsection 182(2).

tank includes space or compartment.

temporary biosecurity monitoring zone has the meaning given by subsection 384(1).

temporary biosecurity monitoring zone determination means a determination made under subsection 384(1).

this Act includes:
(a) instruments made under this Act; and

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(b) the Regulatory Powers Act as it applies in relation to this Act.

Torres Strait Treaty has the meaning given by section 617.

traditional activities has the meaning given by section 617.

traditional inhabitant has the meaning given by section 617.

traveller movement measure means the biosecurity measure included in a human biosecurity control order under section 96.

unduly detained or delayed has the same meaning as in the Ballast Water Convention.

United Nations Convention on the Law of the Sea means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, as in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 1994 No. 31 ([1994] ATS 31) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

vector means an arthropod or other living carrier that transports an infectious agent from an infected plant or animal to an individual.

vessel:

(a) means any kind of vessel used in navigation by water, however propelled or moved, including the following:
  (i) a barge, lighter or other floating craft;
  (ii) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water; and

(b) includes:
  (i) an installation; and
  (ii) any floating structure.

Note: A reference (except in Chapter 5 (ballast water and sediment) and any related provision) to a vessel does not include a reference to a vessel brought or imported into Australian territory from outside Australian territory on board another conveyance until the vessel is released from biosecurity control (see subsection 16(4)).

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warrant means:

(a) a warrant issued under section 488; or

(b) a warrant signed by an issuing officer under section 492; or

(c) an investigation warrant; or

(d) a monitoring warrant.

World Trade Organization Agreement means the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

Note: The Agreement is in Australian Treaty Series 1995 No. 8 ([1995] ATS 8) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

10 Meaning of *approved arrangement*

An ***approved arrangement*** is an arrangement for which an approval is in force under paragraph 406(1)(a) (including a varied arrangement for which an approval is in force under that paragraph as it applies because of subsection 412(3)).

11 Meaning of *associate*

(1) ***Associate*** of a person (the ***first person***) includes each of the following:

(a) a person who is or was a consultant, adviser, partner, representative on retainer, employer or employee of:

(i) the first person; or

(ii) any corporation of which the first person is an officer or employee or in which the first person holds shares;

(b) a spouse, de facto partner, child, parent, grandparent, grandchild, sibling, aunt, uncle, niece, nephew or cousin of the first person;

(c) a child, parent, grandparent, grandchild, sibling, aunt, uncle, niece, nephew or cousin of a spouse or de facto partner of the first person;

(d) any other person not mentioned in paragraph (a), (b) or (c) who is or was:

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(i) directly or indirectly concerned in; or
(ii) in a position to control or influence the conduct of;
a business or undertaking of:
(iii) the first person; or
(iv) a corporation of which the first person is an officer or employee, or in which the first person holds shares;

(e) a corporation:
(i) of which the first person, or any of the other persons mentioned in paragraphs (a), (b), (c) and (d), is an officer or employee; or
(ii) in which the first person, or any of those other persons, holds shares;

(f) if the first person is a body corporate—another body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of the first person.

(2) Without limiting who is a child of a person for the purposes of this section, each of the following is the ***child*** of a person:
(a) a stepchild or adopted child of the person;
(b) someone who would be the stepchild of the person except that the person is not legally married to the person's partner;
(c) someone is a child of the person within the meaning of the *Family Law Act 1975*.

(3) Without limiting who is a parent of a person for the purposes of this Act, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in subsection (2).

(4) For the purposes of this section, if one person is the child of another person because of the definition of ***child*** in subsection (2), relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

12 Meaning of *Australian territory*

A reference in a provision of this Act to ***Australian territory*** is a reference to:

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(a) Australia, Christmas Island, Cocos (Keeling) Islands and any external Territory to which that provision extends; and
(b) the airspace over an area covered by paragraph (a); and
(c) the coastal sea of Australia, of Christmas Island, of Cocos (Keeling) Islands and of any other external Territory to which that provision extends.

Note 1: Under subsection 7(2), the regulations may extend this Act, or any provisions of this Act, to external Territories.

Note 2: The definition of ***coastal sea*** of Australia or an external Territory in subsection 15B(4) of the *Acts Interpretation Act 1901* includes the airspace over Australia or the external Territory.

13 Meaning of *biosecurity entry point*

Biosecurity entry point for an aircraft

(1) A ***biosecurity entry point*** for an aircraft that is subject to biosecurity control is an area of a landing place that is designated, under paragraph 224(a), as a biosecurity entry point for that aircraft or a class of aircraft that includes that aircraft.

Biosecurity entry point for a vessel

(2) A ***biosecurity entry point*** for a vessel that is subject to biosecurity control is an area of a port that is designated, under paragraph 230(a), as a biosecurity entry point for that vessel or a class of vessels that includes that vessel.

Biosecurity entry point for goods

(3) A ***biosecurity entry point*** for goods that are subject to biosecurity control, or exposed goods in relation to which a biosecurity control order is in force, is:
(a) an area of a landing place that is designated, under paragraph 224(b), as a biosecurity entry point for those goods or a class of goods that includes those goods; or

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(b) an area of a port that is designated, under paragraph 230(b), as a biosecurity entry point for those goods or a class of goods that includes those goods.

14 Meaning of *biosecurity industry participant* and *covered by*

A person who is the holder of the approval of an approved arrangement (including a person to whom an approved arrangement has been transferred in the circumstances prescribed by regulations made for the purposes of section 411):

(a) is a ***biosecurity industry participant***; and

(b) is ***covered by*** the approved arrangement.

Note: If an approved arrangement is revoked under Part 5 of Chapter 7 (approved arrangements), then, for the purposes of this Act, the arrangement ceases to be an approved arrangement and the person who held the approval of the arrangement ceases to be a biosecurity industry participant covered by the arrangement.

15 Meaning of *commercial-in-confidence*

Information is ***commercial-in-confidence*** if the Director of Biosecurity is satisfied that:

(a) release of the information would cause competitive detriment to a person; and

(b) the information is not in the public domain; and

(c) the information is not required to be disclosed under another Australian law; and

(d) the information is not readily discoverable.

16 Meaning of *conveyance*

(1) ***Conveyance*** means any of the following:

(a) an aircraft;

(b) a vessel;

(c) a vehicle;

(d) a train (including railway rolling stock);

(e) any other means of transport prescribed by the regulations.

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(2) However, a reference in this Act to a conveyance does not include a conveyance while it is goods because of subsection 19(2). This subsection does not apply to a reference in:
   (a) Part 3 of Chapter 11 (cost recovery); or
   (b) another provision of this Act to the extent that it relates to that Part.

Note: Subsection 19(2) provides that a conveyance (the ***carried conveyance***) that is, or is to be, brought or imported into Australian territory from outside Australian territory on board another conveyance is goods until immediately after the carried conveyance is released from biosecurity control.

(3) A reference in this Act to an aircraft does not include an aircraft while it is goods because of subsection 19(2).

(4) A reference in this Act to a vessel does not include a reference to a vessel while it is goods because of subsection 19(2). This subsection does not apply to a reference in:
   (a) Chapter 5 (ballast water and sediment); or
   (b) another provision of this Act to the extent that it relates to that Chapter.

Note: An example of a vessel that is goods because of subsection 19(2) is a lifeboat on another vessel.

17 Meaning of *exposed to*

(1) A person or thing is taken to have been ***exposed to*** another person or thing if the first-mentioned person or thing has been, or is likely to have been:
   (a) in physical contact with; or
   (b) in close proximity to; or
   (c) exposed to contamination, infestation or infection from;

   the other person or thing.

(2) In this section:

   thing includes goods, a conveyance and premises.

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18 Meaning of *first point of entry*

First point of entry for an aircraft

(1) A ***first point of entry*** for an aircraft that is subject to biosecurity control is a landing place that is determined, under paragraph 223(1)(a), to be a first point of entry for that aircraft or a class of aircraft that includes that aircraft.

First point of entry for a vessel

(2) A ***first point of entry*** for a vessel that is subject to biosecurity control is a port that is determined, under paragraph 229(1)(a), to be a first point of entry for that vessel or a class of vessels that includes that vessel.

First point of entry for goods

(3) A ***first point of entry*** for goods that are subject to biosecurity control, or exposed goods in relation to which an exposed goods order is in force, is:
   (a) a landing place that is determined, under paragraph 223(1)(b), to be a first point of entry for those goods or a class of goods that includes those goods; or
   (b) a port that is determined, under paragraph 229(1)(b), to be a first point of entry for those goods or a class of goods that includes those goods.

19 Meaning of *goods*

(1) ***Goods*** includes the following:
   (a) an animal;
   (b) a plant (whether moveable or not);
   (c) a sample or specimen of a disease agent;
   (d) a pest;
   (e) mail;
   (f) any other article, substance or thing (including, but not limited to, any kind of moveable property).

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(2) For the purposes of this Act, except Part 3 of Chapter 11 (cost recovery), a conveyance (the ***carried conveyance***) that is, or is to be, brought or imported into Australian territory from outside Australian territory on board another conveyance is ***goods*** from the time the carried conveyance is first intended to be so brought or imported until immediately after the carried conveyance is released from biosecurity control.

Note: Conveyances that would be goods under this subsection include, for example, a lifeboat being carried on a vessel and an aircraft or vehicle brought into Australian territory as cargo on a vessel.

(3) For the purposes of Parts 1 and 3 of Chapter 3, and any other provision of this Act to the extent that it relates to either of those Parts, the carried conveyance continues to be ***goods*** after it is released from biosecurity control.

Note: This ensures that:
(a) a notice releasing the carried conveyance from biosecurity control can be revoked under section 164; and
(b) provisions of those Parts relating to goods can still be enforced in relation to the carried conveyance after it is released from biosecurity control.

(4) However, ***goods*** does not include:
(a) ballast water; or
(b) human remains; or
(c) except to the extent provided in subsection (2) or (3), a conveyance.

20 Meaning of *installation*

An ***installation*** is a structure that:
(a) is able:
(i) to float or to be floated; and
(ii) to move, or to be moved, as an entity from one place to another; and
(b) is, or is to be, used wholly or principally in:

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(i) exploring or exploiting natural resources (such as fish or minerals) with equipment on, or forming part of, the structure; or

(ii) operations or activities associated with, or incidental to, activities of the kind referred to in subparagraph (i) of this paragraph; and

(c) either:

(i) is attached to, or resting on, the seabed; or

(ii) is attached semipermanently or permanently to a structure that is attached to, or resting on, the seabed.

Note: An installation is a vessel for the purposes of this Act (see paragraph (b) of the definition of ***vessel*** in section 9).

21 Meaning of *operator* of a conveyance

(1) Subject to subsection (2), the ***operator*** of a conveyance is:

(a) if there is a body corporate or an unincorporated body responsible for the operation of the conveyance—that body; and

(b) in any other case—the person in charge of the conveyance.

(2) In Chapter 5 (ballast water), and any other provision of this Act to the extent that it relates to that Chapter, the ***operator*** of a vessel has the same meaning as Company has in the Annex to the Ballast Water Convention.

22 Meaning of *person in charge*

(1) ***Person in charge*** of goods:

(a) means:

(i) the owner of the goods; or

(ii) a person (other than a biosecurity officer or a biosecurity enforcement officer) who is in possession or control of the goods; and

(b) includes a biosecurity industry participant who is in possession or control of the goods as authorised by an

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approved arrangement covering the biosecurity industry participant.

Note: ***Person in charge*** of goods does not include a biosecurity industry participant in certain provisions of this Act (see subsections 134(7), 336(6), 626(5) and 628(7)).

(2) ***Person in charge*** of a conveyance means the person in charge or command of the conveyance, but does not include a ship's pilot.

Note: A conveyance includes an aircraft and a vessel (see subsection 16(1)).

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Part 3—Constitutional and international law provisions

Division 1—Introduction

23 Simplified outline of this Part

This Part contains provisions that relate to the Constitution, such as:

(a) the constitutional powers relied on for this Act; and
(b) the application of this Act in relation to pests; and
(c) provisions relating to protections in the Constitution (for example, compensation for any acquisition of property).

This Part also ensures that this Act is consistent with the rights that foreign aircraft and vessels have under the United Nations Convention on the Law of the Sea.

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Division 2—Constitutional and international law provisions

24 Severability

(1) Without limiting the effect of this Act apart from this section, this Act also has effect as provided by this section.

(2) To avoid doubt, no subsection of this section limits the operation of any other subsection of this section.

Quarantine power

(3) This Act has the effect it would have if its operation were expressly confined to exercising a power, performing a function, conferring a right, or imposing an obligation, in relation to quarantine (within the meaning of paragraph 51(ix) of the Constitution).

External affairs power

(4) This Act has the effect it would have if its operation were expressly confined to give effect to Australia's rights and obligations under an agreement with one or more countries.

Note: This subsection is subject to section 26 (application of this Act in relation to invasive pests).

(5) This Act has the effect it would have if its operation were expressly confined to acts or omissions that occur beyond the limits of the States and Territories.

(6) This Act has the effect it would have if its operation were expressly confined to matters that are of international concern.

Trade and commerce power

(7) This Act has the effect it would have if its operation were expressly confined to acts or omissions occurring in the course of constitutional trade and commerce.

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(8) This Act has the effect it would have if references to goods and conveyances were expressly confined to references to goods and conveyances involved in constitutional trade and commerce.

Fisheries power

(9) This Act has the effect it would have if its operation were expressly confined to exercising a power, performing a function, conferring a right, or imposing an obligation, that affects fisheries in Australian waters beyond territorial limits (within the meaning of paragraph 51(x) of the Constitution).

Aliens power

(10) This Act has the effect it would have if its operation were expressly confined to:
   (a) exercising a power or performing a function that affects an alien (within the meaning of paragraph 51(xix) of the Constitution); or
   (b) conferring a right or imposing an obligation on such an alien.

Corporations power

(11) This Act has the effect it would have if its operation were expressly confined to:
   (a) exercising a power or performing a function that affects a person that is a corporation to which paragraph 51(xx) of the Constitution applies; or
   (b) conferring a right or imposing an obligation on such a person.

Territories and Commonwealth places power

(12) This Act has the effect it would have if its operation were expressly confined to exercising a power, performing a function, conferring a right, or imposing an obligation, in relation to a person or thing in:
   (a) a Territory; or

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(b) a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*).

Postal power

(13) This Act has the effect it would have if its operation were expressly confined to acts using postal, telegraphic, telephonic, and other like services (within the meaning of paragraph 51(v) of the Constitution).

Sickness benefits power

(14) This Act has the effect it would have if its operation were expressly confined to the provision of sickness and hospital benefits, and medical services (but not so as to authorise any form of civil conscription) (within the meaning of paragraph 51(xxiiiA) of the Constitution).

Census and statistics power

(15) This Act has the effect it would have if its operation were expressly confined to a requirement to answer a question or provide information (whether in a notice, a report or otherwise) for purposes relating to census and statistics (within the meaning of paragraph 51(xi) of the Constitution).

25 Application of this Act in relation to pests that are quarantine risks or invasive pests

(1) This Act (other than Part 1 of Chapter 8 (biosecurity emergencies)) applies in relation to a pest only if:

(a) the pest is capable of:

(i) infesting humans, animals or plants; or

(ii) acting as a vector for a disease; or

(iii) causing disease in any other way; or

(b) the pest is an invasive pest.

Note: For the application of this Act in relation to invasive pests, see section 26.

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(2) Part 1 of Chapter 8 applies only in relation to a pest that is referred to in paragraph (1)(a).

26 Application of this Act in relation to invasive pests

(1) This section applies to the extent that:
  (a) a provision of this Act:
    (i) confers a power, function or right; or
    (ii) imposes an obligation;
  in relation to an invasive pest; and
  (b) the provision would (apart from this section) exceed the legislative power of the Commonwealth if Australia were not a party to the Biodiversity Convention.

(2) The power, function or right is conferred, or the obligation is imposed, only to the extent that the conferral or imposition:
  (a) is for the purpose of preventing the introduction of, or controlling or eradicating, those invasive pests which threaten ecosystems, habitats or species; and
  (b) is reasonably capable of being considered appropriate and adapted to give effect to Australia's rights and obligations under Article 7 or 8 of the Biodiversity Convention.

(3) This section limits the effect that this Act has apart from this section.

27 Compensation for acquisition of property

(1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

Note: For the definitions of ***acquisition of property*** and ***just terms***, see section 9.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a

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relevant court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

28 Freedom of interstate trade, commerce and intercourse

A power or function conferred by this Act must not be exercised or performed in such a way as to contravene:

(a) section 92 of the Constitution (trade and commerce among the States to be free); or

(b) section 69 of the *Australian Capital Territory (Self-Government) Act 1988*; or

(c) section 49 of the *Northern Territory (Self-Government) Act 1978*.

29 Commonwealth not to give preference

A power or function conferred by this Act must not be exercised or performed in such a way as to give preference to one State or any part of a State in contravention of section 99 of the Constitution.

30 Application of this Act to foreign aircraft and vessels

This Act does not apply to the extent that its application would be inconsistent with the exercise of rights of foreign aircraft or vessels, in accordance with the United Nations Convention on the Law of the Sea, above or in any of the following:

(a) the territorial sea of Australia;

(b) the exclusive economic zone;

(c) waters of the continental shelf.

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Part 4—Principles affecting decisions to exercise certain powers

31 Simplified outline of this Part

A biosecurity official who is making a decision to exercise a power under certain provisions of this Act must first consider the principles set out in this Part.

The principles aim to ensure that the power is exercised only if exercising the power is likely to be effective in, or to contribute to, achieving the purpose for which the power is to be exercised, is appropriate and adapted for its purpose, and is no more restrictive or intrusive than is required.

If the power is to be exercised in relation to a conveyance, the biosecurity official must consider the impact of the exercise of the power on the health and safety of any persons on board the conveyance.

32 The principles

(1) This section applies (subject to subsection (4)) to a biosecurity official who is making a decision to exercise a power in accordance with a provision of this Act referred to in the following table or an instrument in force under such a provision.

Provisions to which decision-making principles apply

Item	Power	Provision
1	Power of Director of Biosecurity to give approval for requiring high-value goods to be destroyed	Subsection 136(2)

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Section 32

Provisions to which decision-making principles apply		
Item	**Power**	**Provision**
2	Power of Director of Biosecurity to give approval for a direction requiring an aircraft or vessel to be moved to a place outside Australian territory	Paragraph 206(3)(a)
3	Power of Director of Biosecurity to give approval to cause an aircraft or vessel to be moved to a place outside Australian territory	Paragraph 206(3)(b)
4	Power of Director of Biosecurity to give approval for a conveyance to be removed from Australian territory, destroyed or otherwise disposed of	Paragraph 209(5)(d)
5	Power of Director of Biosecurity to give approval for requiring a conveyance to be destroyed and for destroying it	Subsection 210(2) and paragraph 210(5)(e)
6	Power of Director of Biosecurity to give approval for a direction requiring an aircraft not to land at any landing place in Australian territory	Subsection 241(2)
7	Power of Director of Biosecurity to give approval for a direction requiring a vessel not to be moored at any port in Australian territory	Subsection 249(2)
8	Power of biosecurity officer or biosecurity enforcement officer to enter premises at a landing place or port in Australian territory	Subsection 252(2)
9	Power of Director of Biosecurity to give a direction about movement of a vessel that may have been involved in the commission of an offence against Chapter 5 (ballast water and sediment)	Section 303
10	Any power that may be exercised by a biosecurity official	Chapter 6 (managing biosecurity risks: monitoring, control and response)

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Provisions to which decision-making principles apply		
Item	**Power**	**Provision**
11	Any power that may be exercised by a biosecurity official	Divisions 5 and 6 of Part 1 of Chapter 8 (biosecurity emergencies)
12	Any power that may be exercised by a biosecurity official	Subdivision B of Division 2 of Part 4 of Chapter 10 (decontamination)
13	Power of Director of Biosecurity to deal with an abandoned conveyance	Section 629
14	Power of Director of Biosecurity to deal with a forfeited conveyance	Section 630

Principles affecting decision-making

(2) Before the biosecurity official makes the decision, the biosecurity official must be satisfied of all of the following:

(a) that exercising the power is likely to be effective in, or to contribute to, achieving the purpose for which the power is to be exercised;

(b) that exercising the power is appropriate and adapted to achieve that purpose;

(c) that the manner in which the power is to be exercised is no more restrictive or intrusive than is required in the circumstances;

(d) if the power is to be exercised in relation to an individual—that the power is no more restrictive or intrusive than is required in the circumstances;

(e) if the power is to be exercised during a period—that the period is only as long as is necessary.

Powers that are to be exercised in relation to a conveyance

(3) If the power is to be exercised in relation to a conveyance, the biosecurity official must consider the impact of the exercise of the power on the health and safety of any persons on board the conveyance.

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Section 32

Exceptions to application of the principles

(4) Subsection (2) does not apply in relation to the making of a biosecurity control order or the making of a legislative instrument under Chapter 6 (including a biosecurity control order or a legislative instrument made under that Chapter in accordance with Division 5 or 6 of Part 1 of Chapter 8 (biosecurity emergencies)).

Note: For principles affecting the exercise of a power under Chapter 2 (managing biosecurity risks: human health), see section 34.

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Chapter 2—Managing biosecurity risks: human health

Part 1—General protections and listing human diseases

Division 1—Introduction

33 Simplified outline of this Part

Division 2 contains protections for individuals in relation to whom powers are exercised under this Chapter.

Any person who exercises a power, or imposes a biosecurity measure, under this Chapter must first consider the principles set out in Division 2. The principles aim to ensure that a power is exercised, or biosecurity measure imposed, only when circumstances are sufficiently serious to justify it, and only if it would be effective, it is appropriate and adapted for its purpose, and it is no more restrictive or intrusive than is required. Division 2 also ensures that the requirements of this Chapter do not interfere with an individual's urgent or life-threatening medical needs, and sets out the protections that this Chapter provides for a child or incapable person who is subject to a requirement under this Chapter.

Powers in this Chapter are exercised only in relation to human diseases that cause significant harm to human health. Those diseases must be listed in a legislative instrument that is made by the Director of Human Biosecurity under Division 3.

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Division 2—Protections

Subdivision A—General protections

34 The principles

(1) This section applies (subject to subsections (3) and (4)) to a person who is making a decision to exercise a power in relation to, or impose a biosecurity measure on, an individual under this Chapter, in order to manage the risk of:

(a) contagion of a listed human disease; or

(b) a listed human disease entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory.

Note: A person may exercise a power in relation to, or impose a biosecurity measure on, an individual under this Chapter during a human biosecurity emergency (see Part 2 of Chapter 8).

Principles affecting decision-making

(2) Before the person makes the decision, the person must be satisfied of all of the following:

(a) that exercising the power, or imposing the biosecurity measure, is likely to be effective in, or to contribute to, managing the risk;

(b) that exercising the power, or imposing the biosecurity measure, is appropriate and adapted to manage the risk;

(c) that the circumstances are sufficiently serious to justify exercising the power, or imposing the biosecurity measure;

(d) that the power, or the biosecurity measure, is no more restrictive or intrusive than is required in the circumstances;

(e) that the manner in which the power is to be exercised, or the biosecurity measure is to be imposed, is no more restrictive or intrusive than is required in the circumstances;

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(f) if the power is to be exercised or the biosecurity measure imposed during a period—that the period is only as long as is necessary.

(3) Subsection (2) does not apply in relation to the making of a legislative instrument under this Chapter in relation to a class of individuals.

(4) Subsection (2) does not apply in relation to the making of a decision to require answers to questions or written information under Division 6 of Part 2.

35 No interference with urgent or life-threatening medical needs

The exercise of a power, or the imposition of a biosecurity measure, in relation to an individual under this Chapter must not interfere with any urgent or life-threatening medical needs of the individual.

Subdivision B—Protections for children or incapable persons

36 Child or incapable person may be accompanied

A child or incapable person who is subject to a requirement under this Chapter may be accompanied by an accompanying person for the child or incapable person.

Note: This section is subject to section 41 (exception for requirement to remain at a place).

37 Officer to contact parent, guardian or next of kin of unaccompanied child or incapable person

(1) A child or incapable person who is not accompanied by an accompanying person must not be subject to a requirement under this Chapter unless a biosecurity officer, human biosecurity officer or chief human biosecurity officer has taken reasonable steps to contact a parent, guardian or next of kin of the child or incapable person.

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Note: This subsection is subject to subsection (2) and section 41 (exception for requirement to remain at a place).

(2) If the child or incapable person has urgent or life-threatening medical needs, the officer must meet those needs first. However, the officer must take reasonable steps to contact the parent, guardian or next of kin of the child or incapable person as soon as possible after those needs have been met.

Requirements when contacting parent, guardian or next of kin

(3) On contacting the parent, guardian or next of kin, the officer must:
  (a) explain the effects of sections 36 and 39; and
  (b) allow an accompanying person to accompany the child or incapable person.

(4) If a parent, guardian or next of kin indicates that he or she wishes the child or incapable person to be accompanied, the child or incapable person must not be subject to a requirement under this Chapter until an accompanying person for the child or incapable person accompanies the child or incapable person.

38 Requirement to comply with direction

(1) A biosecurity officer, human biosecurity officer or chief human biosecurity officer may give a direction to an accompanying person for a child or incapable person.

Note: See also section 572 (general provisions relating to directions).

(2) The direction must be for the purpose of ensuring the compliance of the child or incapable person with a requirement under this Chapter.

(3) An accompanying person who is given a direction under subsection (1) must comply with the direction.

Fault-based offence

(4) A person commits an offence if:
  (a) the person is an accompanying person; and

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(b) the person is given a direction under this section; and
(c) the person fails to comply with the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

39 Parent, guardian or next of kin may authorise person to accompany child or incapable person

A parent, guardian or next of kin of a child or incapable person may authorise another person to be an accompanying person for the child or incapable person for the purposes of this Chapter.

40 Giving consent

(1) An accompanying person for a child or incapable person may give consent on behalf of the child or incapable person for the purposes of Part 3 of this Chapter (human biosecurity control orders).

(2) If the accompanying person gives his or her consent, then, for the purposes of that Part, the child or incapable person is taken to have given his or her consent.

(3) If the accompanying person does not give his or her consent, then, for the purposes of that Part, the child or incapable person is taken to have refused to give his or her consent.

41 Exception for requiring an individual to remain at a place

Despite section 36 and subsections 37(1) and (4), a child or incapable person may be required to remain at a place under section 68 without:

(a) being accompanied by an accompanying person; or
(b) an officer taking reasonable steps to contact a parent, guardian or next of kin in accordance with section 37.

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Division 3—Listing human diseases

42 Listing human diseases

(1) The Director of Human Biosecurity may, in writing, determine that a human disease is a ***listed human disease*** if the Director considers that the disease may:
  (a) be communicable; and
  (b) cause significant harm to human health.

(2) Before making a determination under this section, the Director of Human Biosecurity must consult with:
  (a) the chief health officer (however described) for each State and Territory; and
  (b) the Director of Biosecurity.

(3) A determination made under this section is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.

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Part 2—Preventing risks to human health

Division 1—Introduction

43 Simplified outline of this Part

Division 2 allows the Health Minister to prescribe requirements in relation to individuals, and operators of certain aircraft or vessels, that are entering or leaving Australian territory.

Division 3 requires operators of incoming and outgoing passenger aircraft and vessels to provide 24/7 contact information.

Pratique is granted under Division 4 for incoming aircraft and vessels. Pratique allows things to be unloaded from, and persons to disembark from, aircraft or vessels. Pratique can be granted by force of this Act (positive pratique) or by a biosecurity officer (negative pratique).

Under Division 5, the Health Minister may determine certain biosecurity measures for the purposes of preventing a specified behaviour or practice that causes, or contributes to, the entry into, or the emergence, establishment or spread in, Australian territory or a part of Australian territory of a specified listed human disease.

Certain officers and other persons can ask questions and require documents to be provided under Division 6 for various health-related purposes.

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Division 2—Entry and exit requirements

44 Entry requirements

(1) This section applies for the purpose of preventing a listed human disease from entering, or establishing itself or spreading in, Australian territory or a part of Australian territory.

(2) The Health Minister may determine one or more requirements for individuals who are entering Australian territory at a landing place or port in accordance with Division 2 or 3 of Part 4 of Chapter 4.

Note: An individual who fails to comply with a requirement may contravene a civil penalty provision (see section 46).

(3) A determination made under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.

Where requirements apply

(4) The determination must specify where the requirements apply.

Kinds of determinations that may be specified

(5) Without limiting subsection (2), the determination may specify:
  (a) requirements for all individuals, or classes of individuals; and
  (b) specific requirements in relation to specified listed human diseases; and
  (c) general requirements in relation to listed human diseases generally; and
  (d) requirements relating to the manner in which an individual must comply with a requirement.

(6) Without limiting subsection (2), the determination may specify one or more of the following requirements:
  (a) a requirement for an individual to provide either:

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(i) a declaration as to whether the individual has received a specified vaccination or other prophylaxis within a specified previous period; or

(ii) evidence that the individual has received a specified vaccination or other prophylaxis within a specified previous period;

(b) a requirement for an individual to complete a questionnaire on his or her health, which may include confirmation of whether the individual is undergoing or has undergone specified treatment within a specified previous period;

(c) a requirement for an individual to provide a declaration in relation to a specified listed human disease;

(d) a requirement for an individual to provide a declaration or evidence of where the individual has been before entering Australian territory;

(e) a requirement for an individual to be screened (whether by requiring the individual to be screened by equipment, by providing a declaration, or in any other way).

Note 1: An officer has certain powers in relation to an individual who fails to comply with a requirement in subsection (6) (see section 60 (imposing a human biosecurity control order on an individual)).

Note 2: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of this Act).

Note 3: This section is not subject to the privilege against self-incrimination (see section 635).

(7) A determination must not specify as a requirement a biosecurity measure described in Subdivision B of Division 3 of Part 3 (biosecurity measures that may be included in a human biosecurity control order).

45 Exit requirements

(1) This section applies for the following purposes:

(a) preventing a listed human disease from spreading to another country;

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(b) if a recommendation has been made to the Health Minister by the World Health Organization under Part III of the International Health Regulations—purposes relating to that recommendation.

(2) The Health Minister may determine one or more requirements:
(a) for individuals who are leaving Australian territory; or
(b) for operators of outgoing passenger aircraft or vessels.

Note: A person who fails to comply with a requirement may contravene a civil penalty provision (see section 46).

(3) A determination made under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.

Where requirements apply

(4) The determination must specify where the requirements apply.

Kinds of determinations that may be specified

(5) Without limiting subsection (2), the determination may specify:
(a) requirements for all individuals or operators, or classes of individuals or operators; and
(b) specific requirements in relation to specified listed human diseases; and
(c) general requirements in relation to listed human diseases generally; and
(d) requirements relating to the manner in which an individual or operator must comply with a requirement.

(6) Without limiting subsection (2), the determination may specify one or more of the following requirements:
(a) a requirement for an operator of an outgoing passenger aircraft or vessel to provide to passengers, who are intending to leave Australian territory on the operator's aircraft or vessel, specified information about the risks to human health associated with travelling;

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(b) a requirement for an operator of an outgoing passenger aircraft or vessel to report to a human biosecurity officer or a chief human biosecurity officer if the operator observes that any passenger intending to leave Australian territory on the operator's aircraft or vessel has signs or symptoms of a listed human disease;

(c) a requirement for an operator of an outgoing passenger aircraft or vessel to treat the aircraft or vessel in a specified manner;

(d) a requirement for an individual to provide either:

(i) a declaration as to whether the individual has received a specified vaccination or other prophylaxis within a specified previous period; or

(ii) evidence that the individual has received a specified vaccination or other prophylaxis within a specified previous period;

(e) a requirement for an individual to complete a questionnaire on his or her health, which may include confirmation as to whether the individual is undergoing, or has undergone, specified treatment within a specified previous period;

(f) a requirement for an individual to provide a declaration in relation to a specified listed human disease;

(g) a requirement for an individual to provide a declaration or evidence of where the individual has been before leaving Australian territory;

(h) a requirement for an individual to be screened (whether by requiring the individual to be screened by equipment, by providing a declaration, or in any other way).

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of this Act).

Note 2: This section is not subject to the privilege against self-incrimination (see section 635).

(7) A determination must not specify as a requirement a biosecurity measure described in Subdivision B of Division 3 of Part 3

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(biosecurity measures that may be included in a human biosecurity control order).

46 Civil penalties for failing to comply with certain entry and exit requirements

Civil penalty for failing to comply with entry requirement

(1) An individual to whom a requirement determined under section 44 (entry requirements) applies must comply with the requirement.

Civil penalty: 30 penalty units.

Civil penalty for failing to comply with exit requirements

(2) An operator of an outgoing passenger aircraft or vessel to whom a requirement under paragraph 45(6)(c) (manner of treating aircraft or vessel) applies must comply with the requirement.

Civil penalty: 30 penalty units.

(3) An individual to whom a requirement under paragraph 45(6)(d), (e), (f), (g) or (h) (exit requirements) applies must comply with the requirement.

Civil penalty: 30 penalty units.

Contraventions by individuals who are not able to comply

(4) To avoid doubt, an individual may contravene subsection (1) or (3) of this section even if the individual is not able to comply with the requirement.

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Division 3—Contact information for operators

47 Requirements for operators to provide 24/7 contact information

(1) This section applies for the purposes of:
  (a) preventing a listed human disease from entering, or establishing itself or spreading in, Australian territory or a part of Australian territory; or
  (b) preventing a listed human disease from spreading to another country.

(2) The operator of an incoming passenger aircraft or vessel, or an outgoing passenger aircraft or vessel, must provide the Director of Human Biosecurity with the prescribed contact information for an individual nominated by the operator.

Civil penalty: 120 penalty units.

(3) The individual whose contact information is provided under subsection (2) must be reasonably able to be contacted at any time.

(4) The operator must ensure that the contact information provided is kept up-to-date.

Civil penalty: 120 penalty units.

(5) The contact information must be provided in the manner prescribed by the regulations (if any).

Civil penalty: 120 penalty units.

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Division 4—Pratique

48 Positive pratique

(1) An operator of an incoming aircraft or vessel that arrives at a landing place or port in Australian territory in accordance with Division 2 or 3 of Part 4 of Chapter 4 must not allow:

(a) any thing to be unloaded from or loaded onto the aircraft or vessel; or

(b) any person to disembark from or embark onto the aircraft or vessel;

unless pratique has been granted under subsection (2) or 49(4).

Civil penalty: 120 penalty units.

Note: Even if pratique has been granted, a person may still be prevented from unloading goods under Division 6 of Part 1 of Chapter 3.

(2) Pratique is granted in relation to an incoming aircraft or vessel by force of this subsection at the time the aircraft or vessel arrives at a landing place or port in Australian territory, unless the aircraft or vessel is in a class of aircraft or vessels specified for the purposes of paragraph 49(1)(a).

(3) Subsection (1) does not apply to the unloading or loading of a thing, or the disembarkation or embarkation of a person, that is authorised by or under this Act or another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

49 Negative pratique

(1) The Director of Human Biosecurity may specify, in writing:

(a) classes of incoming aircraft or vessels in relation to which pratique is to be granted by a biosecurity officer; and

(b) the requirements with which an incoming aircraft or vessel in that class must comply for pratique to be granted by a biosecurity officer.

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(2) An instrument made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.

(3) Requirements specified for the purposes of paragraph (1)(b) must be consistent with Articles 28.2 and 43 of the International Health Regulations.

(4) A biosecurity officer may grant pratique, orally or in writing, in relation to an incoming aircraft or vessel in a particular class of incoming aircraft or vessel if the aircraft or vessel complies with the requirements specified for the purposes of paragraph (1)(b) for that class of aircraft or vessel.

(5) If a biosecurity officer orally grants pratique in relation to an incoming aircraft or vessel, he or she must make a written record of the grant as soon as practicable after the aircraft or vessel arrives at:

(a) its first point of entry; or

(b) another landing place where the aircraft is permitted under subsection 239(2) to land; or

(c) another port where the vessel is permitted under subsection 247(2) to moor.

(6) An instrument made under subsection (4) or (5) is not a legislative instrument.

50 Pre-departure reporting

(1) The Director of Human Biosecurity may, in writing, specify information that is required to be provided by operators of specified outgoing aircraft or vessels.

Note: For reporting in relation to incoming aircraft or vessels, see section 193.

(2) An instrument made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.

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(3) The Director of Human Biosecurity may specify in the legislative instrument the manner in which, and the period during which, the information is required to be provided.

Incomplete or incorrect information

(4) If the operator or the person in charge of an aircraft or vessel becomes aware that:
   (a) information was required to be provided under this section in relation to the aircraft or vessel; and
   (b) either:
      (i) the information provided in relation to the aircraft or vessel is incomplete or incorrect; or
      (ii) no information was provided;

   the operator must provide the additional or correct information in the manner specified under subsection (3) as soon as reasonably practicable.

Civil penalty

(5) An operator who is required to provide information in accordance with this section must comply with the requirement.

Civil penalty: 120 penalty units.

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Division 5—Preventative biosecurity measures

51 Determining preventative biosecurity measures

(1) This section applies for the purposes of preventing a behaviour or practice that:

(a) may cause a listed human disease to enter, or emerge, establish itself or spread in, Australian territory or a part of Australian territory; or

(b) may contribute to a listed human disease entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory.

(2) The Health Minister may make a determination that specifies any one or more of the following biosecurity measures to be taken by specified classes of persons:

(a) banning or restricting a behaviour or practice;

(b) requiring a behaviour or practice;

(c) requiring a specified person to provide a specified report or keep specified records;

(d) conducting specified tests on specified goods.

Note 1: A person who fails to comply with a biosecurity measure may contravene a civil penalty provision (see section 52).

Note 2: The Director of Human Biosecurity may authorise State or Territory officers or employees to be biosecurity enforcement officers for the purposes of ensuring compliance with biosecurity measures that are specified (see sections 548 and 549).

(3) The determination must specify the behaviour or practice, and the listed human disease, referred to in subsection (1).

(4) A determination made under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.

(5) A biosecurity measure must not be specified in a determination unless the Health Minister is satisfied that the biosecurity measure

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is appropriate and adapted to prevent, or reduce the risk of, the disease entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory.

Period of determination

(6) A determination must specify the period during which it is in force, which must not be more than 1 year.

Consultations before making determination

(7) Before making a determination, the Health Minister must consult with:
  (a) the Minister of each State and Territory with responsibility for human health; and
  (b) the Director of Biosecurity.

52 Civil penalty for failing to comply with a preventative biosecurity measure

A person to whom a biosecurity measure specified in accordance with subsection 51(2) applies must comply with the biosecurity measure.

Civil penalty: 120 penalty units.

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Division 6—Information gathering powers

54 Who may ask questions and require written information

(1) The following persons may require answers to questions, or written information, under this Division:

(a) the Director of Human Biosecurity;

(b) a chief human biosecurity officer;

(c) a human biosecurity officer;

(d) a biosecurity officer;

(e) a person referred to in subsection 103(3) (detention).

Note 1: An individual who fails to comply with a requirement under this Division may commit an offence (see section 58).

Note 2: Before exercising a power under this Division, a person must be satisfied of the matters referred to in section 34 (the principles).

Note 3: This Division is not subject to the privilege against self-incrimination (see section 635).

Note 4: This Division constitutes an authorisation for the purposes of other laws, such as the *Privacy Act 1988*.

(2) A person referred to in subsection (1) is taken to be an officer for the purposes of this Division.

55 Asking questions and requiring answers from particular individuals

(1) An officer may require an individual to answer questions, or provide written information, if:

(a) a human biosecurity control order is in force in relation to the individual; or

(b) the individual is in a human health response zone.

Note 1: If written information is required, see section 57.

Note 2: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of this Act).

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(2) The requirement under subsection (1) must be for the purposes of determining the level of risk to human health associated with the individual.

56 Asking questions and requiring answers from any individual

(1) An officer may require any individual to answer questions, or provide written information, if:

(a) the officer is satisfied that an individual (the ***relevant individual***) has one or more signs or symptoms of a listed human disease; or

(b) the officer is satisfied that an individual (also the ***relevant individual***) has been exposed to:

(i) a listed human disease; or

(ii) another individual who has one or more signs or symptoms of a listed human disease; or

(c) the questions asked or information sought relates to:

(i) human remains; or

(ii) an individual who died in transit before arriving in Australian territory; or

(iii) an individual who died on arrival in Australian territory.

Note 1: If written information is required, see section 57.

Note 2: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of this Act).

(2) The requirement under subsection (1) must be for the purposes of:

(a) preventing a listed human disease from entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory; or

(b) preventing a listed human disease from spreading to another country; or

(c) if paragraph (1)(a) or (b) applies—determining the level of risk to human health associated with the relevant individual.

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57 Requiring an individual to provide written information

(1) An officer may require an individual to provide written information under this Division:
  (a) by giving the individual a notice that requires the individual to provide the written information; or
  (b) by asking the individual orally to provide the written information.

(2) An officer may require written information under this Division to be provided within a specified period or immediately.

58 Offence for failing to comply with a requirement

A person commits an offence of strict liability if:
  (a) the person is required to answer a question, or provide written information, under this Division; and
  (b) the person fails to answer the question or provide the information as required.

Note: For offences of strict liability, see section 6.1 of the *Criminal Code*.

Penalty: 60 penalty units.

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Part 3—Managing risks to human health: human biosecurity control orders

Division 1—Introduction

59 Simplified outline of this Part

Under Division 2, a human biosecurity control order can be imposed on an individual if the individual may have a listed human disease.

A human biosecurity control order that is in force in relation to an individual may require the individual to comply with certain biosecurity measures. Division 3 sets out what those measures are, and they include vaccination, restricting the individual's behaviour and ordering the individual to remain isolated.

An individual may consent to a biosecurity measure included in a human biosecurity control order that is in force in relation to the individual.

An individual who refuses to consent to such a measure (other than an isolation measure or traveller movement measure) is not required to comply unless a direction has been given by the Director of Human Biosecurity requiring the individual to do so. An individual must comply with an isolation measure or a traveller movement measure for the first 72 hours while a direction from the Director of Human Biosecurity is being sought. After that time, the individual is required to comply with the measure only if a direction is given by the Director.

Biosecurity measures that are included in a human biosecurity control order are treated in one of 2 ways. For some biosecurity measures, an individual who is given a direction from the Director of Human Biosecurity to comply with the measure must do so

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immediately. For other biosecurity measures, an individual is given a period to apply for judicial review before being required to comply with the measure.

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Division 2—Imposing human biosecurity control orders on individuals

Subdivision A—Imposing, varying and revoking human biosecurity control orders

60 Imposing a human biosecurity control order on an individual

(1) The following officers may impose a human biosecurity control order on an individual:
  (a) a chief human biosecurity officer;
  (b) a human biosecurity officer;
  (c) a biosecurity officer.

Note 1: An officer who intends to impose a human biosecurity control order on an individual has certain powers under sections 68 and 69.

Note 2: Before imposing a human biosecurity control order, an officer must be satisfied of the matters referred to in section 34 (the principles).

Note 3: The Director of Human Biosecurity must be notified of the imposition of a human biosecurity control order (see section 67).

(2) A human biosecurity control order may be imposed on an individual only if the officer is satisfied that:
  (a) the individual has one or more signs or symptoms of a listed human disease; or
  (b) the individual has been exposed to:
    (i) a listed human disease; or
    (ii) another individual who has one or more signs or symptoms of a listed human disease; or
  (c) the individual has failed to comply with an entry requirement in subsection 44(6) in relation to a listed human disease.

(3) To avoid doubt, an individual may fail to comply with an entry requirement in subsection 44(6) even if the individual is not able to comply with the requirement.

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(4) An officer may include one or more biosecurity measures specified in Subdivision B of Division 3 in a human biosecurity control order.

Note: For the biosecurity measures that each kind of officer can impose, see section 82.

61 Contents of a human biosecurity control order

(1) A human biosecurity control order that is in force in relation to an individual must specify the following:

(a) the ground in subsection 60(2) under which the order is imposed on the individual;

(b) the listed human disease in relation to which the order is imposed on the individual;

(c) any signs or symptoms of the listed human disease;

(d) the prescribed contact information provided by the individual under section 69 or 70 (as the case requires);

(e) a unique identifier for the order;

(f) each biosecurity measure (specified in Subdivision B of Division 3) with which the individual must comply, and an explanation of:

(i) why each biosecurity measure is required; and

(ii) in relation to a biosecurity measure included under section 89 (decontamination), 90 (examination), 91 (body samples) or 92 (vaccination or treatment)—how the biosecurity measure is to be undertaken;

(g) any information required to be included in the order by Subdivision B of Division 3;

(h) the period during which the order is in force, which must not be more than 3 months;

(i) the following:

(i) the effect of section 70 (requirement to notify of changes to contact information);

(ii) the effect of section 74 (when an individual is required to comply with a biosecurity measure);

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(iii) the rights of review in relation to the human biosecurity control order under this Act, the *Administrative Appeals Tribunal Act 1975* and the *Administrative Decisions (Judicial Review) Act 1977*;

(iv) the effect of section 107 (offence for failing to comply with an order);

(j) details of a chief human biosecurity officer who can be contacted for information and support in relation to the order;

(k) any other information that the officer imposing the order considers appropriate;

(l) any other information required by the regulations.

Note: Despite paragraph (1)(h), an individual might be required to comply with a biosecurity measure for a more limited period of time (see for example section 96 (traveller movement measure)).

(2) If a human biosecurity control order ceases to be in force, paragraph (1)(h) does not prevent another human biosecurity control order from being imposed on the same individual.

(3) To avoid doubt, a human biosecurity control order that is varied must comply with subsection (1).

62 Form of a human biosecurity control order

(1) A human biosecurity control order must be in the form approved, in writing, by the Director of Human Biosecurity.

(2) A human biosecurity control order is not a legislative instrument.

63 Giving a human biosecurity control order to an individual

(1) An officer who imposes a human biosecurity control order on an individual must cause the individual to be given a copy of the order as soon as reasonably practicable.

(2) The officer who imposes the order on the individual must ensure that the contents of the order are read out to the individual.

(3) The order ceases to be in force if:

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(a) a copy of the order is not given to the individual within 24 hours of the order beginning to be in force; or
(b) the contents of the order are not read out in accordance with subsection (2).

64 Varying a human biosecurity control order

Who may vary a human biosecurity control order

(1) The following officers may vary a human biosecurity control order in accordance with this section:
(a) a chief human biosecurity officer;
(b) a human biosecurity officer;
(c) a biosecurity officer (subject to subsection 82(2)).

Note 1: Before varying a human biosecurity control order, an officer must be satisfied of the matters referred to in section 34 (the principles).

Note 2: The Director of Human Biosecurity must be notified of a variation of a human biosecurity control order (see section 67).

Test for varying human biosecurity control order

(2) An officer may vary a human biosecurity control order only if the officer is satisfied that:
(a) the variation contributes to reducing the risk of:
(i) contagion of a listed human disease; or
(ii) a listed human disease entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory; or
(b) the variation removes or varies a provision that no longer contributes to reducing such a risk; or
(c) the variation is of a minor technical nature.

When variation takes effect

(3) A variation of a human biosecurity control order takes effect immediately after the variation is made.

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65 Giving notice of a variation of a human biosecurity control order

(1) An officer who varies a human biosecurity control order that is in force in relation to an individual must cause the individual to be given a copy of the varied order as soon as reasonably practicable.

(2) The officer who varies the order must ensure that the variations of the order are read out to the individual.

(3) The order ceases to be in force if:
  (a) a copy of the varied order is not given to the individual within 24 hours of the variation taking effect; or
  (b) the variations of the order are not read out in accordance with subsection (2).

66 Revoking a human biosecurity control order

(1) A chief human biosecurity officer or a human biosecurity officer may, by notice, revoke a human biosecurity control order that is in force in relation to an individual only if the officer is satisfied that:
  (a) the individual is not at risk of contagion; or
  (b) the order no longer contributes to reducing the risk of a listed human disease entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory.

Note: The Director of Human Biosecurity must be notified of a revocation of a human biosecurity control order (see section 67).

(2) A revocation takes effect immediately.

Giving notice of revocation

(3) An officer who revokes a human biosecurity control order that is in force in relation to an individual must cause the individual to be given a copy of the notice revoking the order.

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67 Notifying Director of Human Biosecurity of imposition, variation or revocation of human biosecurity control order

An officer must notify the Director of Human Biosecurity, as soon as reasonably practicable, if the officer:

(a) imposes a human biosecurity control order on an individual; or

(b) varies or revokes a human biosecurity control order.

Subdivision B—Powers if officer intends to impose human biosecurity control order

68 Requiring an individual to remain at a place

(1) An officer who intends to impose a human biosecurity control order on an individual may require the individual to remain, for a period of no more than 6 hours, at the place where the individual was when the officer became satisfied that a human biosecurity control order should be imposed on the individual.

Note 1: A non-Australian citizen who is required to remain at a place is entitled to consular assistance under section 102.

Note 2: A person who does not comply with the requirement to remain at a place may be detained under Subdivision B of Division 4.

(2) Once the period has ended, the individual must not be required under subsection (1) to remain at that place any longer.

Note: However, the individual may be required under subsection 74(4) to remain at that place in order to comply with an isolation measure.

69 Providing contact information

(1) An officer who intends to impose a human biosecurity control order on an individual may require the individual to provide the officer with prescribed contact information for the individual.

(2) The individual must comply with the requirement immediately.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or

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documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of this Act).

Note 2: This section is not subject to the privilege against self-incrimination (see section 635).

Offence

(3) An individual commits an offence if:
  (a) the individual is required to provide an officer with contact information under this section; and
  (b) the individual fails to comply with the requirement.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

70 Requirement for an individual to notify changes to contact information

(1) An individual in relation to whom a human biosecurity control order is in force must, as soon as reasonably practicable, notify the chief human biosecurity officer referred to in paragraph 61(1)(j) if any of the prescribed contact information provided by the individual under section 69 changes.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of this Act).

Note 2: This section is not subject to the privilege against self-incrimination (see section 635).

Offence

(2) An individual commits an offence if:
  (a) the individual is required to notify a chief human biosecurity officer of a change under subsection (1); and
  (b) the individual fails to notify the officer of the change.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

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Subdivision C—When an individual is required to comply with a biosecurity measure

71 Consenting to a biosecurity measure

(1) This section applies in relation to a biosecurity measure that is included in a human biosecurity control order that is in force in relation to an individual.

Consent

(2) The individual may consent to the measure. If it is practicable to do so, the consent must be recorded in writing on the human biosecurity control order.

Note: An accompanying person may give consent for a child or incapable person (see section 40).

Refusal to consent

(3) If the individual refuses to consent to the measure (including by withdrawing his or her consent), a chief human biosecurity officer, human biosecurity officer or biosecurity officer may request the Director of Human Biosecurity to give a direction in accordance with paragraph 72(5)(a) for the individual to comply with the measure.

Note: For when the individual is required to comply with the measure, see section 74.

72 Director of Human Biosecurity may give direction requiring compliance

(1) This section applies if:

(a) an officer requests, under subsection 71(3), the Director of Human Biosecurity to give a direction in accordance with paragraph (5)(a) of this section for an individual to comply with a biosecurity measure included in a human biosecurity control order; or

(b) all of the following apply:

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(i) the Director of Human Biosecurity gives a direction in accordance with paragraph (5)(a) of this section for an individual to comply with a biosecurity measure included in a human biosecurity control order under section 86 (contacting officer with health status), 87 (restricting behaviour), 88 (risk minimisation interventions), 93 (medication) or 97 (isolation measure);

(ii) at the end of 25 days after the day the direction is given, the direction is still in force (see section 73);

(iii) the individual still refuses to consent to the biosecurity measure.

Review of measure

(2) The Director of Human Biosecurity must review the following matters:

(a) the diagnosis (if any) of the listed human disease specified in the human biosecurity control order;

(b) the inclusion (or, in the case of paragraph (1)(b), the continued inclusion) of the biosecurity measure in the human biosecurity control order.

(3) In conducting the review, the Director of Human Biosecurity:

(a) must take into account:

(i) any reason the individual gives for refusing to consent to the measure; and

(ii) any factors that may affect the health of the individual; and

(b) may take into account any other matter that the Director of Human Biosecurity considers relevant.

Test for giving direction

(4) The Director of Human Biosecurity may give a direction for an individual to comply with a biosecurity measure only if the Director is satisfied, on reasonable grounds, that the biosecurity measure contributes to reducing the risk of:

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(a) contagion of the listed human disease; or
(b) the listed human disease entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory.

Note 1: Before giving a direction, the Director must be satisfied of the matters referred to in section 34 (the principles).

Note 2: If an individual refuses to comply with a direction given under this section, the Director of Human Biosecurity may be able to apply for an injunction under Part 7 of the Regulatory Powers Act as it applies in relation to this Act.

Giving notice of outcome of review

(5) Within 72 hours of the time referred to in subsection (6), the Director must cause a notice to be given to the individual that:
(a) directs the individual to comply with the measure; or
(b) informs the individual that he or she is not required to comply with the measure.

Note 1: An individual may be able to apply for merits or judicial review of a decision to give a direction in accordance with paragraph (5)(a) (see section 76 of this Act and the *Administrative Decisions (Judicial Review) Act 1977*).

Note 2: After giving a direction in accordance with paragraph (5)(a), the Director of Human Biosecurity has certain obligations under section 75 in relation to an individual's right to apply to the Administrative Appeals Tribunal for review of the decision to give the direction.

(6) For the purposes of subsection (5), the time is:
(a) if paragraph (1)(a) applies (other than in relation to an isolation measure or a traveller movement measure)—the time when the request is made; or
(b) if paragraph (1)(a) applies in relation to an isolation measure or a traveller movement measure—the time when the individual refuses to consent to the measure; or
(c) if paragraph (1)(b) applies—12 am on the 26th day (whether or not that day is a business day) after the day the direction is given.

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Note: For the definition of ***business day***, see section 2B of the *Acts Interpretation Act 1901*.

(7) The notice must include:
  (a) the time and the day the notice is given; and
  (b) the reasons for the decision to give the notice.

73 When direction to comply with biosecurity measure ceases to be in force

A direction given in accordance with paragraph 72(5)(a) for an individual to comply with a biosecurity measure included in a human biosecurity control order ceases to be in force if:
  (a) the period of 28 days after the day the direction was given ends; or
  (b) a new notice is given to the individual in accordance with either paragraph 72(5)(a) or (b); or
  (c) the measure is removed from the human biosecurity control order; or
  (d) the individual makes an application under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review of a decision to give a direction in accordance with paragraph 72(5)(a), the application is finally determined, and as a result of the order made in relation to the application the individual is not required to comply with the measure; or
  (e) in relation to an isolation measure or a traveller movement measure—the decision to give the direction is set aside by the Administrative Appeals Tribunal; or
  (f) in relation to a traveller movement measure—the measure ceases to be in force; or
  (g) in any case—the human biosecurity control order ceases to be in force.

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74 When individual is required to comply with a biosecurity measure

Biosecurity measures where compliance is not required before review period has ended

(1) Subsection (2) sets out when an individual is required to comply with a biosecurity measure included, under one of the following sections, in a human biosecurity control order that is in force in relation to the individual:
  (a) section 85 (managing contacts);
  (b) section 89 (decontamination);
  (c) section 90 (examination);
  (d) section 91 (body samples);
  (e) section 92 (vaccination or treatment).

(2) The individual is required to comply with the measure only if:
  (a) the individual consents to the measure; or
  (b) the Director of Human Biosecurity has given a direction for the individual to comply with the measure in accordance with paragraph 72(5)(a), and either:
    (i) the period of 7 business days referred to in section 80 has ended, and the individual has not made an application under the *Administrative Decisions (Judicial Review) Act 1977*; or
    (ii) the individual has made an application in accordance with section 80 for an order of review of the decision to give the direction, the application has been finally determined, and as a result of the order made in relation to the application the individual is required to comply with the measure.

Note 1: A person who fails to comply with a biosecurity measure that the person is required to comply with may commit an offence (see section 107).

Note 2: For expenses incurred in complying with a human biosecurity control order, see section 108.

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Note 3: Generally, force must not be used to require compliance with a biosecurity measure (see section 95).

Biosecurity measures where compliance is required without review

(3) Subsection (4) sets out when an individual is required to comply with a biosecurity measure included, under one of the following sections, in a human biosecurity control order that is in force in relation to the individual:
  (a) section 86 (contacting officer with health status);
  (b) section 87 (restricting behaviour);
  (c) section 88 (risk minimisation interventions);
  (d) section 93 (medication);
  (e) section 96 (traveller movement measure);
  (f) section 97 (isolation measure).

(4) The individual is required to comply with the measure only if:
  (a) the individual consents to the measure; or
  (b) both of the following apply:
    (i) the Director of Human Biosecurity has given a direction for the individual to comply with the measure in accordance with paragraph 72(5)(a);
    (ii) the direction is still in force (see section 73); or
  (c) if the measure is an isolation measure or a traveller movement measure—the individual refuses to consent to the measure, and the period of 72 hours from the time when the individual refused to consent to the measure has not yet ended.

Note 1: A person who fails to comply with a biosecurity measure that the person is required to comply with may commit an offence (see section 107).

Note 2: An individual who has applied for merits or judicial review of a decision to give a direction requiring the individual to comply with a biosecurity measure referred to in subsection (3) must comply with the direction while the review is occurring.

Note 3: A person who does not comply with an isolation measure that the person is required to comply with may be detained under Subdivision B of Division 4.

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Subdivision D—AAT review of isolation and traveller movement measures

75 Obligation on Director of Human Biosecurity relating to Administrative Appeals Tribunal application

(1) As soon as possible after the Director of Human Biosecurity gives a direction in accordance with paragraph 72(5)(a) for an individual to comply with an isolation measure, the Director must:

(a) inform the individual of the individual's right to apply under section 76 to the Administrative Appeals Tribunal for review of the decision to give the direction; and

(b) inform the individual that the individual may communicate, or attempt to communicate, with anyone in relation to that right; and

(c) if the individual wishes to apply to the Tribunal for review of the decision, or to communicate in relation to that right—ensure that the individual is provided with reasonable facilities to enable him or her to do so.

(2) If the individual makes an application under section 76 for review of the decision to give the direction, the Director of Human Biosecurity must ensure that the individual is also given reasonable facilities to enable the individual to participate in the proceeding.

76 Applications

(1) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Director of Human Biosecurity to give a direction in accordance with paragraph 72(5)(a) for an individual to comply with an isolation measure or a traveller movement measure (whether or not the direction is still in force).

Note: For when the direction ceases to be in force, see section 73.

(2) Despite paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*, the application must be made within 7 business days after the day the decision is made.

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Applications to cover later decisions

(3) Subsection (4) applies if:

(a) an application is made under subsection (1) in relation to a decision (the ***first decision***) of the Director of Human Biosecurity to give a direction to an individual in accordance with paragraph 72(5)(a); and

(b) while the Administrative Appeals Tribunal is reviewing the first decision, the Director of Human Biosecurity makes a decision (the ***later decision***) to give another direction to the individual in accordance with that paragraph; and

(c) the Tribunal does not give the individual a notice under subsection (5).

(4) The application that relates to the first decision is also taken to have been made in relation to the later decision for the following purposes:

(a) the purposes of this Subdivision, other than subsections 77(2) and 78(1);

(b) the purposes of the *Administrative Appeals Tribunal Act 1975*.

(5) The Administrative Appeals Tribunal may give a notice to the individual requiring the individual to make a separate application in relation to the later decision if the Tribunal is satisfied that it is reasonable in all the circumstances to do so.

77 Reasons and documents

(1) Section 28 (obtaining reasons for decision) and subsections 37(1) to (1D) (lodging documents) of the *Administrative Appeals Tribunal Act 1975* do not apply in relation to a decision to which an application under subsection 76(1) relates.

Note: Under subsection 76(4), an application under subsection 76(1) may be taken to also relate to a later decision.

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Notification of application

(2) The Director of Human Biosecurity must be notified under subsection 29AC(1) of the *Administrative Appeals Tribunal Act 1975* of an application for review of a decision referred to in subsection 76(1) of this Act as soon as possible after the application is received by the Administrative Appeals Tribunal.

Notification of later decision

(3) The Director of Human Biosecurity must notify the Administrative Appeals Tribunal as soon as practicable after making a later decision referred to in paragraph 76(3)(b).

Requirement to lodge documents

(4) The Director of Human Biosecurity must lodge with the Administrative Appeals Tribunal and the individual to whom the direction is given:
  (a) the reasons for a decision to which an application under subsection 76(1) relates; and
  (b) every other document or part of a document that is:
    (i) in the Director's possession or under his or her control; and
    (ii) relevant to the review of the decision by the Tribunal.

(5) Reasons and documents, or parts of documents, must be lodged under subsection (4):
  (a) as soon as possible after the following time (as the case requires):
    (i) the time when the Director of Human Biosecurity is notified of an application for review of a decision referred to in subsection 76(1);
    (ii) the time when the Director of Human Biosecurity makes a later decision referred to in paragraph 76(3)(b); and
  (b) in any case:
    (i) before the end of the second business day after that time; or

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(ii) within any further period as the Tribunal determines (whether orally or in writing).

78 Time period for making a decision

(1) Within 7 days after receiving an application under subsection 76(1) for review of a decision, the Administrative Appeals Tribunal must (subject to this section) make a decision on the review.

Extending the time period

(2) Before the end of that 7-day period, the Administrative Appeals Tribunal may extend the period for making the decision on the review if the Tribunal is satisfied that it is reasonable in all the circumstances to do so. The Tribunal may only extend the period once.

(3) If the Administrative Appeals Tribunal extends the period under subsection (2) in relation to an application, the Tribunal must make a decision on the review to which the application relates by the end of the period as extended.

Note: Under subsection 76(4), the application may be taken to also relate to a later decision. The Tribunal must make a decision on the review in relation to all decisions to which the application relates by the end of the period as extended.

Deemed decision

(4) If the Administrative Appeals Tribunal does not make a decision in accordance with subsection (1) or (3) (as the case requires), the Tribunal is taken, at the end of the period referred to in that subsection, to have made a decision under section 43 of the *Administrative Appeals Tribunal Act 1975* to affirm the decision under review.

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No time period for making decision if direction has ceased to be in force

(5) The Administrative Appeals Tribunal is not required to make a decision within any specified time period, and is not taken to have made a decision under subsection (4) of this section, if:
  (a) an application under subsection 76(1) relates to a decision to give a direction to an individual; and
  (b) the direction has ceased to be in force; and
  (c) there is no other direction referred to in paragraph 76(3)(b) given to the individual that is still in force.

Note: For when a direction ceases to be in force, see section 73.

79 Limitation on Administrative Appeals Tribunal power to stay etc. decisions

Despite subsections 41(2) to (6) of the *Administrative Appeals Tribunal Act 1975*, the Administrative Appeals Tribunal may not make any order staying or otherwise affecting the operation or implementation of a decision to give a direction in accordance with paragraph 72(5)(a).

Subdivision E—Other provisions relating to external review of isolation and traveller movement measures

80 Time period for making applications under the *Administrative Decisions (Judicial Review) Act 1977*

(1) An application may be made under the *Administrative Decisions (Judicial Review) Act 1977*, for an order of review of a decision to give a direction in accordance with paragraph 72(5)(a) of this Act, within:
  (a) 7 business days from the day the decision is made; or
  (b) any further period as the court concerned allows (whether before or after the end of the period referred to in paragraph (a) of this subsection).

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(2) This section applies despite section 11 of the *Administrative Decisions (Judicial Review) Act 1977*.

81 Judicial review of isolation and traveller movement measures

(1) If judicial review is sought in relation to an isolation measure or traveller movement measure, the measure remains in force (subject to this Division) unless a court finally determines the validity of the decision in relation to which review is sought.

(2) This section has effect despite any other law.

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Division 3—Biosecurity measures that may be included in a human biosecurity control order

Subdivision A—General provisions relating to including biosecurity measures in a human biosecurity control order

82 Who can include a biosecurity measure in a human biosecurity control order

Chief human biosecurity officers and human biosecurity officers

(1) A chief human biosecurity officer or human biosecurity officer may include any biosecurity measure set out in Subdivision B of this Division in a human biosecurity control order.

Note: Under Division 6 of Part 2 of this Chapter, an officer may ask questions, or require written information, of an individual in relation to whom a human biosecurity control order is in force.

Biosecurity officers

(2) A biosecurity officer may include in a human biosecurity control order either of the biosecurity measures set out in the following provisions:
   (a) section 85 (managing contacts);
   (b) section 88 (risk minimisation interventions).

83 Informing individual of risks

(1) Before an officer includes one or more biosecurity measures in a human biosecurity control order that is or is to be in force in relation to an individual, the officer must take reasonable steps to inform the individual of the risk posed by the listed human disease specified in the order to:
   (a) the individual's health; and
   (b) the health of the public.

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(2) To avoid doubt, an officer must comply with subsection (1):
  (a) at the time of imposing the order; and
  (b) if the officer later varies the order to include a new biosecurity measure.

84 Test for including a biosecurity measure in a human biosecurity control order

An officer may include a biosecurity measure in a human biosecurity control order only if the officer is satisfied that the biosecurity measure contributes to managing the risk of:
  (a) contagion of a listed human disease; or
  (b) a listed human disease entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory.

Note 1: Before including a biosecurity measure in a human biosecurity control order, an officer must be satisfied of the matters referred to in section 34 (the principles).

Note 2: For when an individual is required to comply with a biosecurity measure included in a human biosecurity control order, see Subdivision C of Division 2.

Subdivision B—Biosecurity measures that may be included in a human biosecurity control order

85 Managing contacts

An individual may be required by a human biosecurity control order to provide to a specified biosecurity officer, human biosecurity officer or chief human biosecurity officer the prescribed contact information for any individual with whom the individual has been, or will be, in close proximity.

Note 1: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

Note 2: This section is not subject to the privilege against self-incrimination (see section 635).

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86 Contacting officer with health status

(1) An individual may be required by a human biosecurity control order to contact a specified human biosecurity officer or chief human biosecurity officer during a specified period to advise the officer of the individual's health.

(2) The order:
  (a) must require the individual to report specified signs or symptoms of the listed human disease; and
  (b) may require the individual to report if specified signs or symptoms disappear.

87 Restricting behaviour

(1) An individual may be required by a human biosecurity control order to go to, and remain at, the individual's intended place of residence for a specified period.

(2) Without limiting subsection (1), if an individual does not reside in Australian territory, the individual's intended place of residence includes a place at which the individual intends to stay while in Australian territory.

(3) An individual may be required by a human biosecurity control order not to do either or both of the following for a specified period:
  (a) visit a specified place, or class of place, where there is an increased risk of contagion of the listed human disease;
  (b) come into close proximity with a specified class of individuals, where there is an increased risk that the individuals in that class might contract the listed human disease.

88 Risk minimisation interventions

(1) An individual may be required by a human biosecurity control order to wear either or both specified clothing and equipment that

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is designed to prevent a disease from emerging, establishing itself or spreading.

(2) The order must specify the following:
  (a) the circumstances in which the individual is required to wear the clothing and equipment;
  (b) the period during which, or the times at which, the individual is required to wear the clothing and equipment;
  (c) instructions for wearing the clothing and equipment.

89 Decontamination

(1) An individual may be required by a human biosecurity control order to be decontaminated.

(2) An individual may be required by a human biosecurity control order to allow the individual's clothing, and any personal effects that the individual has with him or her, to be decontaminated.

(3) Without limiting subsection (2), an individual's personal effects include any baggage that the individual has with him or her that remained under the individual's immediate physical control while the individual was on any aircraft, vessel or other conveyance.

(4) The order must specify the following:
  (a) where and when the decontamination is to take place;
  (b) who is to conduct the decontamination.

90 Undergoing an examination

An individual may be required by a human biosecurity control order to undergo, at a specified medical facility, a specified kind of examination relating to determining the presence in the individual of:
  (a) the listed human disease specified in the order; and
  (b) any other listed human disease.

Note: For the manner in which this biosecurity measure must be carried out, see section 94.

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91 Requiring body samples for diagnosis

(1) This section applies if an individual has undergone an examination under section 90.

(2) The individual may be required by a human biosecurity control order to provide, at a specified medical facility, specified body samples for the purpose of determining the presence in the individual of:

(a) the listed human disease specified in the order; and

(b) any other listed human disease.

Note: For the manner in which this biosecurity measure must be carried out, see section 94.

Requirements for samples

(3) The regulations must prescribe requirements for taking, storing, transporting, labelling and using body samples provided under subsection (2).

Note: The regulations may prescribe offences and civil penalties in relation to a failure to comply with a prescribed requirement (see subsection 645(2)).

Giving samples to the World Health Organization

(4) The Health Minister may, at the request of the World Health Organization, give all or part of a sample provided under subsection (2) to the Organization for the purposes of detecting, assessing or responding to a listed human disease.

92 Receiving a vaccination or treatment

An individual may be required by a human biosecurity control order to receive, at a specified medical facility:

(a) a specified vaccination; or

(b) a specified form of treatment;

in order to manage the listed human disease specified in the order, and any other listed human disease.

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Note: For the manner in which this biosecurity measure must be carried out, see section 94.

93 Receiving medication

(1) An individual may be required by a human biosecurity control order to receive specified medication in order to manage the listed human disease specified in the order, and any other listed human disease.

Note: For the manner in which this biosecurity measure must be carried out, see section 94.

(2) The order must specify:
(a) how much medication is to be taken; and
(b) how long the medication is to be taken for.

94 Appropriate medical or other standards to be applied

A biosecurity measure set out in section 90 (examination), 91 (body samples), 92 (vaccination or treatment) or 93 (medication) must be carried out in a manner consistent with either or both of the following (as the case requires):
(a) appropriate medical standards;
(b) appropriate other relevant professional standards.

95 No use of force to require compliance with certain biosecurity measures

Force must not be used against an individual to require the individual to comply with a biosecurity measure imposed under any of sections 85 to 93.

Note: Force may be used in preventing an individual leaving Australian territory in contravention of a traveller movement measure (see section 101) or in detaining a person who fails to comply with an isolation measure (see section 104).

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96 Traveller movement measure

(1) An individual may, for a specified period of no more than 28 days, be required by a human biosecurity control order not to leave Australian territory on an outgoing passenger aircraft or vessel.

Note: For provisions relating to traveller movement measures, see Subdivision C.

Traveller movement measure ceasing to be in force before human biosecurity control order

(2) If a traveller movement measure ceases to be in force, subsection (1) does not prevent another traveller movement measure from being included in the same human biosecurity control order.

When traveller movement measure ceases to be in force

(3) A traveller movement measure ceases to be in force at the earliest of the following times:

(a) at the end of the period specified under subsection (1);

(b) the time when the human biosecurity control order ceases to be in force;

(c) the time when the order is varied to remove the measure;

(d) the time when the order is revoked.

97 Isolation measure

(1) An individual may be required by a human biosecurity control order to remain isolated at a specified medical facility.

Note 1: A non-Australian citizen who is required to remain isolated is entitled to consular assistance under section 102.

Note 2: A person who does not comply with an isolation measure that the person is required to comply with may be detained under Subdivision B of Division 4.

(2) An isolation measure included in a human biosecurity control order under subsection (1) may be made conditional on a person refusing

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to consent to another biosecurity measure included in the human biosecurity control order.

Subdivision C—Provisions relating to traveller movement measures

98 Traveller movement measure alert

Who Director of Human Biosecurity must notify

(1) The Director of Human Biosecurity must notify the following if a traveller movement measure is included in a human biosecurity control order:
   (a) the Agriculture Department;
   (b) the Immigration Department;
   (c) the Foreign Affairs Department;
   (e) the National Focal Point.

Note: For the content of the notification, see section 99.

(2) A failure to notify a person, body or agency under subsection (1) does not affect the validity of the human biosecurity control order, or the traveller movement measure.

Who Director of Human Biosecurity may notify

(3) The Director of Human Biosecurity may (if he or she considers it appropriate) also notify any one or more of the following if a traveller movement measure is included in a human biosecurity control order:
   (a) any one or more operators of outgoing passenger aircraft or vessels;
   (b) any State or Territory body responsible for the administration of health services in the State or Territory;
   (c) any State Party's National IHR Focal Point (within the meaning of the International Health Regulations).

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Requirement for notification

(4) A notification under subsection (1) or (3):
  (a) must be in writing; and
  (b) must be made within 24 hours of including the traveller movement measure in the human biosecurity control order.

Legislative instruments

(5) A notification under subsection (1) or (3) is not a legislative instrument.

Notification of cessation of measure

(6) If a person, body or agency was notified under subsection (1) or (3) of the inclusion of a traveller movement measure, the Director of Human Biosecurity must further notify the person, body or agency if the measure ceases to be in force.

Note 1: For when a traveller movement measure ceases to be in force, see subsection 96(3).

Note 2: The original notification of the traveller movement measure must be destroyed in accordance with section 100.

99 Content of traveller movement measure alert

A notification under section 98 must include the following:
  (a) the name of the individual in relation to whom the traveller movement measure is in force and the number of his or her:
    (i) Australian travel document (within the meaning of the *Australian Passports Act 2005*); or
    (ii) passport or other travel document, issued to the individual by or on behalf of the government of a foreign country;
  (b) a statement that:
    (i) a traveller movement measure is in force in relation to the individual; and

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(ii) the individual must not board an outgoing passenger aircraft or vessel while the measure is in force;

(c) the period during which the measure is in force;

(d) any known travel details of the individual;

(e) details of a chief human biosecurity officer who can be contacted for information in relation to the measure;

(f) any other information prescribed by the regulations.

Note: Information disclosed under this section must be dealt with in accordance with the *Privacy Act 1988*.

100 Destruction of traveller movement measure alert

A person who is notified of a traveller movement measure under section 98 must destroy the notification within 6 months of being further notified that the measure has ceased to be in force.

Civil penalty: 120 penalty units.

101 Prevention from leaving Australian territory

(1) An officer of Customs may prevent an individual from boarding an outgoing passenger aircraft or vessel if:

(a) a traveller movement measure is in force in relation to the individual; and

(b) the individual would contravene the measure if the individual boarded the aircraft or vessel and left Australian territory.

Note: For the definition of ***officer of Customs***, see section 9.

Use of force in detaining person

(2) An officer of Customs must not use more force, or subject the person to greater indignity, than is necessary and reasonable to prevent the individual from boarding the aircraft or vessel.

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Division 4—Other provisions relating to human biosecurity control orders

Subdivision A—Consular assistance

102 Consular assistance

(1) This section sets out requirements that must be complied with if:
  (a) either of the following events occurs:
    (i) an officer requires an individual to remain at a place under section 68;
    (ii) an officer includes an isolation measure in a human biosecurity control order, requiring an individual to remain isolated; and
  (b) the individual is not an Australian citizen.

(2) As soon as practicable after the event referred to in paragraph (1)(a) occurs, the officer must do the following:
  (a) inform the individual that he or she may request that the consular office of the following country be notified that the event has occurred:
    (i) the country of which he or she is a citizen;
    (ii) the country to which he or she claims a special connection;
  (b) if the individual so requests—notify that consular office;
  (c) inform the individual that he or she may communicate, or attempt to communicate, with that consular office;
  (d) give the individual reasonable facilities to do so;
  (e) forward any written communication from the individual to that consular office;
  (f) allow the individual a reasonable time to communicate, or attempt to communicate, with that consular office.

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Subdivision B—Detention

103 Detention

(1) An individual may be detained by a person referred to in subsection (3) of this section if:

(a) either:

(i) the individual fails to comply with a requirement to remain at a place under section 68; or

(ii) the individual fails to comply with an isolation measure that the individual is required to comply with under subsection 74(4); and

(b) a human biosecurity officer or chief human biosecurity officer is satisfied:

(i) of the matters in paragraphs 34(2)(a) to (f) (the principles); and

(ii) that the detention is necessary because, without detention, the individual may pose a significant risk of contagion.

Note: For when an individual must be released from detention, see section 105.

(2) An individual who is detained for failing to comply with an isolation measure may be detained only for the purpose of taking the individual to the medical facility referred to in section 97.

Who may detain an individual

(3) The individual may be detained by:

(a) a member or special member of the Australian Federal Police; or

(b) a member of the police force of a State or Territory; or

(c) a protective services officer (within the meaning of the *Australian Federal Police Act 1979*).

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Agreement of State or Territory required

(4) A member of the police force of a State or Territory must not exercise a power under this section unless the exercise of the power is in accordance with an agreement between the Commonwealth and the State or Territory concerned.

104 Rules relating to detention

Use of force in detaining person

(1) A person (the ***officer***) referred to in subsection 103(3) must not use more force, or subject an individual (the ***detainee***) to greater indignity, than is necessary and reasonable to detain the detainee or prevent the detainee from escaping.

Place of detention

(2) The officer who detains a detainee must take the detainee, as soon as possible, to a place that:
  (a) in the officer's opinion, affords adequate personal privacy to the detainee; and
  (b) either:
    (i) if the detainee was detained for failing to comply with a requirement to remain at a place under section 68—is at the place where the detainee was when the officer referred to in that section became satisfied that a human biosecurity control order should be imposed on the detainee; or
    (ii) if the detainee was detained for failing to comply with an isolation measure—is at the medical facility specified in the human biosecurity control order that is in force in relation to the detainee.

Note: For when an individual must be released from detention, see section 105.

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Right to communicate

(3) As soon as possible after detaining a detainee, the officer who detains the detainee must inform the detainee that the detainee may communicate, or attempt to communicate, with any person.

(4) If the detainee wishes to communicate with any person, the officer must, as soon as possible, give the detainee reasonable facilities to enable the detainee to do so.

105 Release from detention

Release from detention after failure to comply with requirement to remain at a place

(1) An individual who has been detained under section 103 for failing to comply with a requirement to remain at a place under section 68 must be released at the end of the 6-hour period referred to in section 68.

Release from detention after failure to comply with isolation measure

(2) An individual who has been detained under section 103 for failing to comply with an isolation measure must be released from detention at the earlier of the following times:

(a) the time when the person has been taken to a place, in accordance with subsection 104(2), at the medical facility specified in the human biosecurity control order that is in force in relation to the individual;

(b) the time when the individual is no longer required to comply with an isolation measure under subsection 74(4).

Note: An individual is required to comply with an isolation measure for only 72 hours, unless the Director of Human Biosecurity gives a direction under section 72 (see subsection 74(4)).

(3) To avoid doubt, an individual may be required to remain isolated at the medical facility even after the individual has been released from detention.

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106 Offence for escaping from detention

An individual commits an offence if the individual escapes from detention under section 103.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Subdivision C—Miscellaneous

107 Offence for failing to comply with a human biosecurity control order

An individual commits an offence if:

(a) a human biosecurity control order is in force in relation to the individual; and

(b) the individual engages in conduct; and

(c) the conduct results in the person failing to comply with a biosecurity measure included in the human biosecurity control order; and

(d) the individual is required to comply with the measure under subsection 74(2) or (4).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

108 Expenses incurred in complying with human biosecurity control orders

The Commonwealth is liable to pay for reasonable expenses incurred by an individual in complying with a biosecurity measure included in a human biosecurity control order.

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Part 4—Managing risks to human health: other biosecurity measures

Division 1—Introduction

109 Simplified outline of this Part

Division 2 allows human remains to be brought into Australian territory. Sometimes, requirements may be specified or directions given in relation to human remains.

Division 3 allows the Director of Human Biosecurity to determine human health response zones to which entry and exit requirements apply.

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Division 2—Managing deceased individuals

110 Human remains brought into Australian territory

(1) Human remains may be brought into Australian territory.

Note 1: In some cases, requirements are specified for bringing human remains into Australian territory (see subsection (2)).

Note 2: Human remains are not goods (see the definition of ***goods*** in section 19).

(2) The Director of Human Biosecurity may specify, in writing:
  (a) classes of human remains; and
  (b) requirements for:
    (i) bringing human remains into Australian territory; or
    (ii) managing human remains in those classes after bringing them into Australian territory.

(3) An instrument made under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.

(4) A requirement specified for the purposes of paragraph (2)(b) must relate to preventing, or reducing the risk of, a listed human disease entering, or emerging, establishing itself, or spreading in, Australian territory or a part of Australian territory.

(5) This section does not apply to the human remains of an individual who dies:
  (a) in transit before arriving in Australian territory; or
  (b) on arrival in Australian territory.

Note: For individuals who have died in transit or on arrival, see section 112.

Civil penalty provision

(6) A person to whom a requirement under subsection (2) applies must comply with the requirement.

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Civil penalty: 30 penalty units.

111 Officer may give directions for managing human remains

(1) A biosecurity officer, human biosecurity officer, or chief human biosecurity officer, may give a direction for managing specified human remains if:

(a) the officer is satisfied that those remains are likely to be infected with a listed human disease (whether the remains were brought into Australian territory as mentioned in section 110, or were already in Australian territory); or

(b) a person did not comply with a requirement specified under subsection 110(2) in relation to those remains.

(2) The officer must give a written direction to the person who is responsible for the human remains.

Note: See also section 572 (general provisions relating to directions).

Civil penalty provision

(3) A person to whom a direction is given under this section must comply with the direction.

Civil penalty: 30 penalty units.

112 Individuals who have died in transit or on arrival

(1) The Director of Human Biosecurity may specify, in writing, requirements for classes of persons who bring into Australian territory, or who manage, the bodies of deceased individuals who die:

(a) in transit before arriving in Australian territory; or

(b) on arrival in Australian territory.

(2) A requirement specified for the purposes of subsection (1) must relate to preventing, or reducing the risk of, a listed human disease entering, or emerging, establishing itself, or spreading in, Australian territory or a part of Australian territory.

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(3) An instrument made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.

Civil penalty provision

(4) A person to whom a requirement under subsection (1) applies must comply with the requirement.

Civil penalty: 30 penalty units.

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Division 3—Human health response zones

113 Determining human health response zones

(1) The Director of Human Biosecurity may determine that a specified area within a State or Territory is a ***human health response zone*** if the Director is satisfied that it is necessary to do so for the purposes of preventing, or reducing the risk of, a listed human disease emerging, establishing itself or spreading in Australian territory or a part of Australian territory.

Note 1: For consultation and notification requirements, see sections 114 and 115.

Note 2: Under Division 6 of Part 2 of this Chapter, an officer may ask questions, or require written information, of an individual who is in a human health response zone.

(2) Without limiting subsection (1), a specified area may consist of the whole or a part of a specified building.

Contents of a determination

(3) The determination must also specify:
  (a) the listed human disease to which the determination relates; and
  (b) either or both of the following:
    (i) any requirements for individuals who are entering or leaving the zone;
    (ii) a requirement that specified classes of individuals must not enter the zone; and
  (c) the period during which the determination is in force, which must not be more than 3 months.

Note: A person who does not comply with a requirement of a human health response zone determination might contravene a civil penalty provision (see section 116).

(4) A requirement must not be specified in a determination unless the Director of Human Biosecurity is satisfied that the requirement is

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appropriate and adapted to prevent, or reduce the risk of, the specified listed human disease emerging, establishing itself or spreading in Australian territory or a part of Australian territory.

(5) A determination must not specify as a requirement a biosecurity measure described in Subdivision B of Division 3 of Part 3 of this Chapter (biosecurity measures that may be included in a human biosecurity control order).

Period of determination

(6) If a determination ceases to be in force, the Director of Human Biosecurity may make another determination specifying the same area covered by the previous determination.

Determination not subject to disallowance

(7) A determination made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

114 Consultation requirements

Before making a determination under section 113, the Director of Human Biosecurity must consult with:

(a) the chief health officer (however described) for the State or Territory in which the human health response zone will lie; and

(b) the Director of Biosecurity.

115 Notification requirements

(1) In addition to the requirement under the *Legislation Act 2003* for the determination to be registered, the Director of Human Biosecurity must ensure that the determination is made public, in any other way he or she thinks fit.

(2) A failure to comply with subsection (1) of this section does not affect the validity of the determination.

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116 Civil penalty for failing to comply with a requirement of a human health response zone determination

A person to whom a requirement in a determination made under section 113 (human health response zone) applies must comply with the requirement.

Civil penalty: 30 penalty units.

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Chapter 3—Managing biosecurity risks: goods

Part 1—Goods brought into Australian territory

Division 1—Introduction

117 Simplified outline of this Part

This Part deals with goods that are brought or imported into Australian territory from outside Australian territory.

Division 2 provides that the goods become subject to biosecurity control when they enter Australian territory.

Division 3 provides for notice to be given of goods that are, or are intended to be, brought into Australian territory and unloaded at a landing place or port.

Division 4 sets out powers that may be exercised to assess the level of biosecurity risk associated with goods that are subject to biosecurity control.

Division 5 provides for biosecurity measures to be taken in relation to goods that are subject to biosecurity control if the level of biosecurity risk associated with the goods is considered to be unacceptable.

Division 6 deals with unloading goods that are subject to biosecurity control at landing places or ports in Australian territory.

Division 7 deals with unloading goods that are subject to biosecurity control from a vessel that is displaying the prescribed quarantine signal.

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Division 8 requires biosecurity incidents in relation to goods that are subject to biosecurity control to be reported to a biosecurity officer or the Director of Biosecurity.

Division 9 provides for the assessment and management of the level of biosecurity risk associated with goods that are exposed to goods that are subject to biosecurity control.

Division 10 deals with releasing goods from biosecurity control.

118 Objects of this Part

The main objects of this Part are:

(a) to provide for the assessment of the level of biosecurity risk associated with goods brought into Australian territory; and

(b) to provide for biosecurity measures to be taken in relation to those goods if the level of biosecurity risk associated with them is considered to be unacceptable.

Note: In Parts 1 and 3 of this Chapter, goods includes a conveyance brought or imported into Australian territory from outside Australian territory on board another conveyance (for example a lifeboat being carried on a vessel) (see section 19).

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Division 2—Goods are subject to biosecurity control

119 Goods brought into Australian territory are subject to biosecurity control

(1) This section applies in relation to goods that are brought into Australian territory on an aircraft or vessel that has entered Australian territory during a flight or voyage that commenced outside Australian territory.

Note: Goods that are brought into Australian territory include goods brought into Australian territory with the intention of being imported into Australian territory.

(2) The goods become subject to biosecurity control when the aircraft or vessel carrying the goods enters Australian territory.

(3) The goods remain subject to biosecurity control until they are released from biosecurity control under Division 10.

(4) If the goods are released from biosecurity control under paragraph 162(1)(e) by leaving Australian territory on an aircraft or vessel that is on a flight or voyage between places in Australian territory, the goods become subject to biosecurity control again when the aircraft or vessel re-enters Australian territory during that flight or voyage.

Note: Goods are released from biosecurity control under paragraph 162(1)(e) if they leave Australian territory.

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Division 3—Notice of goods to be unloaded in Australian territory

120 Notice must be given of goods to be unloaded in Australian territory

(1) A notice must be given of goods that are, or are intended to be:
  (a) brought into Australian territory; and
  (b) unloaded at a landing place or port in Australian territory;

other than goods originating in Australian territory that leave temporarily for the purpose of travelling between landing places or ports in Australian territory.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of this Act).

Note 2: The obligation in this subsection applies whether or not the person who is required to give the notice is in Australian territory when the notice is required to be given or when the goods are unloaded (see subsection (8) of this section).

(2) The notice must be given by a person prescribed by the regulations in relation to the goods.

(3) The notice must:
  (a) include the information in relation to the goods that is prescribed by the regulations; and
  (b) be given in the manner, and to the person, prescribed by the regulations; and
  (c) be given at a time, or during the period, prescribed by the regulations (which may be before or after the goods are unloaded as referred to in subsection (1)); and
  (d) be in a form or forms approved by the Director of Biosecurity.

Note: The regulations may prescribe different requirements for notices for different classes of goods (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

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(4) The regulations may prescribe exceptions to the requirement to give a notice under this section.

Note: A defendant bears an evidential burden in relation to any exception prescribed for the purposes of this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

Failure to give notice

(5) A person contravenes this subsection if:
  (a) goods are unloaded as referred to in subsection (1); and
  (b) the person is a person prescribed for the purposes of subsection (2) in relation to the goods; and
  (c) the person does not give a notice in relation to the goods in accordance with subsection (3); and
  (d) no other person gives a notice in relation to the goods in accordance with that subsection.

Note: The physical elements of an offence against subsection (6) are set out in this subsection (see section 534).

Fault-based offence

(6) A person commits an offence if the person contravenes subsection (5).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Civil penalty provision

(7) A person is liable to a civil penalty if the person contravenes subsection (5).

Civil penalty: 120 penalty units.

Application to persons within and outside Australian territory

(8) Subsections (5), (6) and (7) apply whether or not the person is in Australian territory when the notice is required to be given or when the goods are unloaded.

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Note: This section is not subject to the privilege against self-incrimination (see section 635).

121 Notice of goods to be unloaded in Australian territory—requirement to give additional or corrected information

(1) If:

(a) a person gives a notice in relation to goods under section 120; and

(b) after giving the notice, the person becomes aware that the information included in the notice was incomplete or incorrect;

the person must as soon as practicable give a biosecurity officer the additional or corrected information, to the extent that it is relevant to assessing the level of biosecurity risk associated with the goods.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of this Act).

Note 2: The obligation in this subsection applies whether or not the person is in Australian territory when the person becomes aware that the information included in a notice given under section 120 was incomplete or incorrect (see subsection (5) of this section).

Note 3: See also Division 8 which deals with reporting biosecurity incidents.

(2) A person contravenes this subsection if:

(a) the person is required to give information to a biosecurity officer under subsection (1); and

(b) the person does not give the information to a biosecurity officer as required by that subsection.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 534).

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (2).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 120 penalty units.

Application to persons within and outside Australian territory

(5) Subsections (2), (3) and (4) apply whether or not the person is in Australian territory when the person is required to give the information.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

122 Power to obtain extra information relating to goods covered by a notice under section 120

(1) A biosecurity officer may exercise the powers under subsections (2), (3) and (4) for the purpose of assessing the level of biosecurity risk associated with goods that are the subject of a notice under section 120 (notice of goods to be unloaded in Australian territory) but have not become subject to biosecurity control.

Power to require information or answers to questions

(2) A biosecurity officer may require a person who the biosecurity officer suspects, on reasonable grounds, has information in relation to the goods to answer questions, or provide information in writing, in relation to the goods.

Note: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information (see section 137.1 of the *Criminal Code* and section 532 of this Act).

Power to require production of documents

(3) A biosecurity officer may require a person who the biosecurity officer suspects, on reasonable grounds, has the custody or control of documents in relation to the goods to produce to the biosecurity

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officer such of those documents as are specified by the biosecurity officer.

Note: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading documents (see section 137.2 of the *Criminal Code* and section 533 of this Act).

Power to deal with documents

(4) A biosecurity officer:
  (a) may make copies of, or take extracts from, a document produced under subsection (3); and
  (b) for that purpose, may remove the document from the place at which it was produced.

Complying with requirements

(5) A person contravenes this subsection if:
  (a) the person is required:
    (i) to answer questions or give information to a biosecurity officer under subsection (2); or
    (ii) to produce documents to a biosecurity officer under subsection (3); and
  (b) the person does not comply with the requirement.

Note 1: The obligation in this subsection applies whether or not the person is in Australian territory when the requirement is made (see subsection (8)).

Note 2: The physical elements of an offence against subsection (6) are set out in this subsection (see section 534).

Fault-based offence

(6) A person commits an offence if the person contravenes subsection (5).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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Civil penalty provision

(7) A person is liable to a civil penalty if the person contravenes subsection (5).

Civil penalty: 120 penalty units.

Application to persons within and outside Australian territory

(8) Subsections (5), (6) and (7) apply whether or not the person is in Australian territory when the person is required to answer the questions, give the information or produce the documents.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

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Division 4—Assessment of level of biosecurity risk

123 Biosecurity risk assessment powers

This Division sets out powers that may be exercised for the purpose of assessing the level of biosecurity risk associated with goods that are subject to biosecurity control.

Note: The powers in this Division may also be exercised in relation to exposed goods and goods in relation to which an exposed goods order is in force (see Division 9).

124 Direction to secure goods

(1) A biosecurity officer may direct a person in charge of the goods to secure the goods in a manner specified by the biosecurity officer.

Civil penalty provision

(2) A person who is given a direction under subsection (1) must comply with the direction.

Civil penalty: 120 penalty units.

Note 1: If judicial review is sought in relation to a direction given under subsection (1), the direction remains in force unless a court finally determines the validity of the decision to give the direction (see section 538).

Note 2: A person may contravene a civil penalty provision for moving, dealing with or interfering with goods that have been secured in accordance with a direction given under subsection (1) (see section 130).

Note 3: See also section 572 (general provisions relating to directions).

125 Inspecting goods and taking samples

(1) A biosecurity officer may inspect the goods.

(2) A biosecurity officer may:
(a) take samples of the goods; or

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(b) direct a person in charge of the goods to deliver to the biosecurity officer samples of such of those goods as are specified in the direction; or

(c) arrange for another person, with appropriate qualifications or expertise, to take samples of the goods.

(3) A biosecurity officer may:

(a) carry out tests on any samples taken or delivered under subsection (2); or

(b) arrange for another person, with appropriate qualifications or expertise, to carry out tests on any of those samples.

Note: See also section 554 (carrying out tests on samples).

Civil penalty provision

(4) A person who is given a direction under paragraph (2)(b) must comply with the direction.

Civil penalty: 120 penalty units.

126 Asking questions about goods

(1) A biosecurity officer may require a person who the biosecurity officer suspects, on reasonable grounds, has information in relation to the goods to answer questions, or provide information in writing, in relation to the goods.

Note: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information (see section 137.1 of the *Criminal Code* and section 532 of this Act).

Civil penalty provision

(2) A person who is required to answer questions, or provide information in writing, under subsection (1) must comply with the requirement.

Civil penalty: 120 penalty units.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

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127 Requiring documents relating to goods to be produced

(1) A biosecurity officer may require a person who the biosecurity officer suspects, on reasonable grounds, has the custody or control of documents in relation to the goods to produce to the biosecurity officer such of those documents as are specified by the biosecurity officer.

Note: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading documents (see section 137.2 of the *Criminal Code* and section 533 of this Act).

(2) A biosecurity officer:
  (a) may make copies of, or take extracts from, a document produced under subsection (1); and
  (b) for that purpose, may remove the document from the place at which it was produced.

Civil penalty provision

(3) A person who is required to produce documents under subsection (1) must comply with the requirement.

Civil penalty: 120 penalty units.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

128 Movement of goods

(1) A biosecurity officer may:
  (a) give any of the following directions to a person in charge of the goods:
    (i) a direction not to move, deal with or interfere with the goods;
    (ii) a direction to move the goods, as soon as practicable, to a place specified by the biosecurity officer;
    (iii) any other direction relating to the movement of the goods; or
  (b) cause the goods to be moved to another place.

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Civil penalty provision

(2) A person who is given a direction under paragraph (1)(a) must comply with the direction.

Civil penalty: 120 penalty units.

Note: A person may contravene a civil penalty provision for moving, dealing with or interfering with goods in relation to which a direction relating to movement has been given under paragraph (1)(a) or that have been moved under paragraph (1)(b) (see section 130).

129 Biosecurity control notice may be affixed to goods or given to person in charge of goods

(1) A biosecurity officer may:
  (a) affix a biosecurity control notice to, or as near as reasonably practicable to, the goods; or
  (b) give a biosecurity control notice to a person in charge of the goods.

Civil penalty provision

(2) A person is liable to a civil penalty if:
  (a) a biosecurity control notice is affixed to, or as near as reasonably practicable to, goods under paragraph (1)(a); and
  (b) the person interferes with, removes or defaces the notice; and
  (c) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;
    (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
    (iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

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(3) Subsection (2) does not apply if the person is authorised to engage in the conduct referred to in paragraph (2)(b) under this Act or under another Australian law.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Note 2: A person may contravene a civil penalty provision for moving, dealing with or interfering with goods in relation to which a biosecurity control notice has been affixed under paragraph (1)(a) (see section 130).

130 Unauthorised persons must not move etc. goods in relation to which direction has been given or notice has been affixed

(1) This section applies in relation to:
- (a) goods that have been secured in accordance with a direction given under subsection 124(1); or
- (b) goods in relation to which a direction relating to movement has been given under paragraph 128(1)(a); or
- (c) goods that have been moved under paragraph 128(1)(b); or
- (d) goods in relation to which a biosecurity control notice has been affixed under paragraph 129(1)(a).

Civil penalty provision

(2) A person is liable to a civil penalty if:
- (a) the person moves, deals with or interferes with goods in relation to which this section applies; and
- (b) none of the following applies:
  - (i) the person is authorised to engage in the conduct referred to in paragraph (a) in accordance with an approved arrangement;
  - (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
  - (iii) the person has been given permission to engage in that conduct under section 557.

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Civil penalty: 120 penalty units.

(3) Subsection (2) does not apply if the person is authorised to engage in the conduct referred to in paragraph (2)(a) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

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Division 5—Biosecurity measures to manage unacceptable level of biosecurity risk

131 Biosecurity measures may be required in relation to goods

If a biosecurity officer suspects, on reasonable grounds, that the level of biosecurity risk associated with goods that are subject to biosecurity control is unacceptable, a biosecurity officer may require biosecurity measures to be taken in relation to the goods as set out in this Division.

Note 1: This Division also applies in relation to exposed goods in relation to which an exposed goods order is in force. This Division applies to those goods as if they were subject to biosecurity control (see subsection 161(1)).

Note 2: Sections 626 and 627 deal with abandoned and forfeited goods in relation to which biosecurity measures have been required under this Division.

132 Movement of goods

A biosecurity officer may:

(a) require the goods to be moved to a specified place, as soon as practicable; or

(b) require the goods to be left at a specified place in a specified manner and for a specified period; or

(c) require any other action to be taken in relation to the movement of the goods.

133 Treatment of goods

(1) A biosecurity officer may, subject to subsection (2), require the goods to be treated in a manner specified by the biosecurity officer.

Note: If the treatment might damage the goods, a person in charge of the goods must be asked to agree to the treatment (see section 134).

(2) A biosecurity officer must not require high-value goods to be treated in a manner that the biosecurity officer suspects, on

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reasonable grounds, is likely to damage the goods, without the written approval of the Director of Biosecurity.

134 Treatment that is likely to damage goods

(1) This section applies if:
  (a) a biosecurity officer requires goods to be treated in a specified manner under section 133; and
  (b) a biosecurity officer suspects, on reasonable grounds, that treatment of the goods in that manner is likely to damage the goods.

Notice must be given that treatment is likely to damage goods

(2) Before any treatment is carried out on the goods, a biosecurity officer must, by notice in writing or orally:
  (a) inform a person in charge of the goods that:
    (i) the goods are required to be treated in a specified manner; and
    (ii) the treatment is likely to damage the goods; and
  (b) request the person to agree to the treatment of the goods.

Note: The meaning of ***person in charge*** of goods in this subsection is affected by subsection (7).

(3) However, the goods may be treated in the specified manner without notice having been given under subsection (2) if:
  (a) a biosecurity officer suspects, on reasonable grounds, that there is a high level of biosecurity risk associated with the goods; and
  (b) the biosecurity officer is satisfied that the goods need to be treated as soon as practicable to reduce that risk to an acceptable level.

Dealing with goods if person in charge does not agree to treatment

(4) If:
  (a) a notice in writing is given to a person in charge of the goods under subsection (2); and

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(b) a person in charge of the goods does not, within 30 days after receiving the notice, notify a biosecurity officer in writing that the person agrees to the treatment of the goods as specified in the notice;

a biosecurity officer may, in writing, request a person in charge of the goods to arrange for the goods:

(c) to be dealt with, or destroyed, in a manner specified in the request; or

(d) to be exported from Australian territory;

within the period specified in the request.

Note: The meaning of ***person in charge*** of goods in paragraphs (4)(a) and (b) is affected by subsection (7).

(5) If:

(a) notice is given orally to a person in charge of the goods under subsection (2); and

(b) a person in charge of the goods informs a biosecurity officer that the person does not agree to the treatment of the goods in the specified manner;

a biosecurity officer may, in writing or orally, request a person in charge of the goods to arrange for the goods:

(c) to be dealt with, or destroyed, in a manner specified in the request; or

(d) to be exported from Australian territory;

within the period specified in the request.

Note: The meaning of ***person in charge*** of goods in paragraphs (5)(a) and (b) is affected by subsection (7).

(6) If:

(a) a request is made under subsection (4) or (5) in relation to the goods; and

(b) the goods are not, within the period specified in the request:

(i) dealt with, or destroyed, in a manner specified in the request; or

(ii) exported from Australian territory;

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a biosecurity officer may take possession of the goods and cause them to be exported from Australian territory, destroyed or otherwise disposed of.

Modified meaning of person in charge of goods

(7) In subsection (2) and paragraphs (4)(a) and (b) and (5)(a) and (b), ***person in charge*** of goods does not include a biosecurity industry participant who is in possession or control of the goods only because of a direction given to the biosecurity industry participant by a biosecurity officer.

135 Export of goods

(1) A biosecurity officer may require the goods to be exported from Australian territory.

(2) For the purposes of subsection (1), a biosecurity officer may:
  (a) arrange for the goods to be exported from Australian territory; or
  (b) direct a person in charge of the goods to arrange for the goods to be exported from Australian territory.

Note: A person who is given a direction under paragraph (2)(b) may commit an offence or contravene a civil penalty provision for failing to comply with the direction (see section 140).

136 Destruction of goods

(1) If a biosecurity officer considers, on reasonable grounds, that the goods cannot be effectively treated, a biosecurity officer may, subject to subsection (2), require the goods to be destroyed.

Note: If goods are required under this section to be destroyed:
  (a) paragraph 138(1)(a) lets a biosecurity officer direct the person in charge of the goods to destroy them (and failure to comply with the direction may be an offence against section 140); and
  (b) paragraph 138(1)(b) lets a biosecurity officer destroy them; and
  (c) paragraph 138(1)(c) lets a biosecurity officer arrange for someone else to carry out the destruction of the goods.

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(2) A biosecurity officer must not require high-value goods to be destroyed without the written approval of the Director of Biosecurity.

Note 1: Before giving approval under this subsection, the Director of Biosecurity must be satisfied of the matters referred to in section 32 (the principles).

Note 2: A decision to give approval for a requirement for high-value goods to be destroyed is a reviewable decision (see Part 1 of Chapter 11).

(3) A biosecurity officer must not take action under section 138, in relation to a requirement for high-value goods to be destroyed, until:

(a) after the period in which an application may be made for review (including merits or judicial review) of the decision to require the goods to be destroyed; or

(b) if an application referred to in paragraph (a) is made—after the review or any related proceeding (including any appeal) have been completed.

(4) However, subsection (3) does not apply in relation to high-value goods if a biosecurity officer is satisfied that:

(a) there is a high level of biosecurity risk associated with the goods; and

(b) the biosecurity risk cannot be managed for long enough to allow a review of the decision to require the goods to be destroyed, and any related proceeding (including any appeal), to be finally determined.

(5) If:

(a) in accordance with subsection (4), a biosecurity officer takes action under section 138, in relation to the requirement for the goods to be destroyed, before the end of the period referred to in paragraph (3)(a); and

(b) no application for review of the decision to require the goods to be destroyed had been made before the action was taken;

an application for review of the decision to require the goods to be destroyed must not be made.

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(6) If:
  (a) an application referred to in paragraph (3)(a) has been made in relation to the decision to require the goods to be destroyed; and
  (b) in accordance with subsection (4), a biosecurity officer takes action under section 138, in relation to the requirement for the goods to be destroyed, before the review or any related proceeding (including any appeal) has been finally determined;

the review or related proceeding (including any appeal) is taken to be discontinued when the action is taken.

137 Regulations may provide for other biosecurity measures

(1) The regulations may provide that a biosecurity officer may require a specified kind of biosecurity measure (a ***prescribed biosecurity measure***) to be taken in relation to the goods.

(2) Regulations made for the purposes of this section must not provide for a biosecurity officer to require any of the following kinds of biosecurity measures to be taken in relation to the goods:
  (a) a biosecurity measure of a kind set out in Division 4 of this Part (assessment of level of biosecurity risk);
  (b) a biosecurity measure of a kind set out in another provision of this Division (biosecurity measures to manage unacceptable level of biosecurity risk);
  (c) a biosecurity measure of a kind referred to in Subdivision B of Division 2 of Part 4 of Chapter 10 (decontamination).

(3) Regulations made for the purposes of this section may also provide for, or in relation to, other matters relating to a prescribed biosecurity measure.

(4) Without limiting subsection (3), regulations made for the purposes of this section may do any of the following:
  (a) provide for persons to be notified, and the circumstances in which the persons must be notified, that a prescribed

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biosecurity measure is required to be taken in relation to goods;

(b) if regulations made for the purposes of subsection 574(2) provide that the decision to require a prescribed biosecurity measure to be taken in relation to the goods is a reviewable decision—provide that, except in the circumstances (if any) prescribed, the prescribed biosecurity measure must not be taken during the period in which a review of that decision, or any related proceeding (including any appeal), has been finally determined.

138 Powers of biosecurity officer if biosecurity measures are required

(1) If a biosecurity officer requires a biosecurity measure to be taken in relation to goods under section 132 (movement), section 133 (treatment), section 136 (destruction) or a regulation made for the purposes of section 137, a biosecurity officer may:

(a) direct a person in charge of the goods to carry out the biosecurity measure; or

(b) carry out the biosecurity measure; or

(c) arrange for another person with appropriate qualifications or expertise to carry out the biosecurity measure.

Note 1: Section 136 sets out prerequisites to a biosecurity officer taking certain actions under this section in relation to a requirement under section 136 to destroy high-value goods.

Note 2: A person who is given a direction under paragraph (1)(a) of this section may commit an offence or contravene a civil penalty provision for failing to comply with the direction (see section 140).

Note 3: See also section 572 (general provisions relating to directions).

(2) If, under this section, a biosecurity officer:

(a) gives a direction to a person to carry out a biosecurity measure; or

(b) arranges for another person with appropriate qualifications or expertise to carry out a biosecurity measure;

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a biosecurity officer may supervise the taking of the biosecurity measure.

139 Biosecurity officer may affix notice to goods

(1) A biosecurity officer may affix a notice to, or as near as reasonably practicable to, goods in relation to which biosecurity measures have been required under:
  (a) this Division; or
  (b) a regulation made for the purposes of section 137.

(2) The notice must state:
  (a) that the level of biosecurity risk associated with the goods is unacceptable; and
  (b) that biosecurity measures have been required in relation to the goods, in accordance with this Chapter, for the purpose of managing that biosecurity risk; and
  (c) the effect of subsections (3) and (4) of this section and section 141.

Civil penalty provision

(3) A person is liable to a civil penalty if:
  (a) a notice is affixed to, or as near as reasonably practicable to, goods under subsection (1); and
  (b) the person interferes with, removes or defaces the notice; and
  (c) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;
    (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
    (iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

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(4) Subsection (3) does not apply if the person is authorised to engage in the conduct referred to in paragraph (3)(b) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

140 Person must comply with direction to take biosecurity measures

(1) A person who is given a direction under paragraph 135(2)(b) or 138(1)(a) must comply with the direction.

Fault-based offence

(2) A person commits an offence if:
  (a) the person is given a direction under paragraph 135(2)(b) or 138(1)(a); and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

141 Unauthorised persons must not move etc. goods to which notice has been affixed

(1) A person contravenes this subsection if:
  (a) a notice has been affixed to, or as near as reasonably practicable to, goods under subsection 139(1); and
  (b) the person moves, deals with or interferes with the goods; and
  (c) none of the following applies:

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(i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;

(ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;

(iii) the person has been given permission to engage in that conduct under section 557.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 534).

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(b) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

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Division 6—Unloading goods at landing places or ports

142 Application of this Division

This Division applies in relation to goods that:

(a) are, or will become, subject to biosecurity control; and

(b) are intended to be unloaded from an aircraft or vessel at a landing place or port in Australian territory.

Note: This Division also applies in relation to exposed goods in relation to which an exposed goods order is in force. This Division applies to those goods as if they were subject to biosecurity control (see subsection 161(1)).

143 Person in charge may allow goods to be unloaded from aircraft or vessel subject to direction etc.

(1) The person in charge of the aircraft or vessel may allow the goods to be unloaded from the aircraft or vessel at the landing place or port at which the aircraft or vessel has arrived.

Note: Nothing may be unloaded from the aircraft or vessel unless pratique has been granted in relation to the aircraft or vessel or the unloading is authorised by or under this Act or another Australian law (see sections 48 and 49).

(2) Subsection (1) has effect subject to:

(a) sections 145, 146, 147, 148 and 151; and

(b) any direction given under subsection (3) of this section.

(3) A biosecurity officer may give the person in charge of the aircraft or vessel a direction relating to the unloading of the goods from the aircraft or vessel (including a direction not to allow some or all of the goods to be unloaded from the aircraft or vessel).

Note: See also section 572 (general provisions relating to directions).

(4) A person who is given a direction under subsection (3) must comply with the direction.

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Fault-based offence

(5) A person commits an offence if:
  (a) the person is given a direction under subsection (3); and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 120 penalty units.

(7) Subsections (5) and (6) do not apply if:
  (a) the person in charge of the aircraft or vessel gave another person a direction (the ***person in charge's direction***) under subsection 144(4); and
  (b) the person in charge's direction was in the same terms as the direction given under subsection (3) of this section; and
  (c) the other person did not comply with the person in charge's direction.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

144 Person may unload goods from aircraft or vessel subject to direction etc.

(1) A person may unload the goods from the aircraft or vessel at the landing place or port at which the aircraft or vessel has arrived.

Note: Nothing may be unloaded from the aircraft or vessel unless pratique has been granted in relation to the aircraft or vessel or the unloading is authorised by or under this Act or another Australian law (see sections 48 and 49).

(2) Subsection (1) has effect subject to:

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(a) sections 145, 146, 147, 148 and 151; and
(b) any direction given under subsection (3) or (4) of this section.

(3) A biosecurity officer may give a person a direction relating to the unloading of the goods from the aircraft or vessel (including a direction not to unload some or all of the goods from the aircraft or vessel).

Note: See also section 572 (general provisions relating to directions).

(4) If the person in charge of the aircraft or vessel has been given a direction under subsection 143(3), the person in charge may, for the purpose of giving effect to that direction, give another person a direction relating to the unloading of the goods from the aircraft or vessel (including a direction not to unload some or all of the goods from the aircraft or vessel).

(5) A person who is given a direction under subsection (3) or (4) must comply with the direction.

Fault-based offence

(6) A person commits an offence if:
(a) the person is given a direction under subsection (3) or (4); and
(b) the person engages in conduct; and
(c) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(7) A person is liable to a civil penalty if the person contravenes subsection (5).

Civil penalty: 120 penalty units.

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145 Goods must not be unloaded except at first point of entry for those goods or with permission

(1) The person in charge of the 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 for those goods, unless permission has been given under subsection 146(2) for the goods to be unloaded at that landing place or port.

Fault-based offence

(2) The person in charge of an aircraft or vessel commits an offence if:
  (a) the person allows goods to be unloaded from the aircraft or vessel at a landing place or port in Australian territory; and
  (b) the goods are subject to biosecurity control; and
  (c) the landing place or port is not a first point of entry for those goods; and
  (d) permission has not been given under subsection 146(2) for the goods to be unloaded at that landing place or port.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

146 Permission to unload goods at landing place or port other than first point of entry for those goods

(1) The person in charge or the operator of the aircraft or vessel may, in writing, request the Director of Biosecurity to give permission for the goods to be unloaded at a landing place or port that is not a first point of entry for those goods.

Note: A request under this subsection may be made at the same time as a request under section 239 or 247 is made for permission to arrive at a

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landing place or port that is not a first point of entry for the aircraft or vessel.

(2) If the Director of Biosecurity receives a request under subsection (1), the Director may, by notice in writing to the person in charge or the operator of the aircraft or vessel, give permission for the goods to be unloaded from the aircraft or vessel at the landing place or port specified in the request.

(3) The Director of Biosecurity may give permission under subsection (2) subject to any conditions specified in the notice giving the permission.

Fault-based offences

(4) A person commits an offence if:
  (a) the person is the person in charge or the operator of an aircraft or vessel; and
  (b) the person has been given a permission under subsection (2); and
  (c) the permission is subject to conditions; and
  (d) the person engages in conduct; and
  (e) the conduct contravenes the conditions.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(5) The person in charge of an aircraft or vessel commits an offence if:
  (a) the operator of the aircraft or vessel has been given a permission under subsection (2); and
  (b) the permission is subject to conditions; and
  (c) the conditions are not complied with.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(6) The operator of an aircraft or vessel commits an offence if:
  (a) the person in charge of the aircraft or vessel has been given a permission under subsection (2); and
  (b) the permission is subject to conditions; and
  (c) the conditions are not complied with.

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Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(7) The person in charge and the operator of an aircraft or vessel are each liable to a civil penalty if:
  (a) the person in charge or the operator of the aircraft or vessel has been given a permission under subsection (2); and
  (b) the permission is subject to conditions; and
  (c) the conditions are not complied with.

Civil penalty: 120 penalty units.

147 Goods must be brought to biosecurity entry point for those goods at first point of entry

(1) This section applies if:
  (a) the aircraft or vessel has arrived at a first point of entry for the aircraft or vessel; and
  (b) there is a biosecurity entry point at the first point of entry for goods that are to be unloaded from the aircraft or vessel.

Civil penalty provision

(2) The person in charge of the aircraft or vessel must ensure that goods that are to be unloaded from the aircraft or vessel are brought to the biosecurity entry point for those goods as soon as practicable, unless:
  (a) a biosecurity officer has given a direction under subsection (3) to the person in charge or the operator of the aircraft or vessel to bring the goods to an alternative biosecurity entry point at the first point of entry; or
  (b) permission has been given under subsection 148(2) for the goods to be brought to an alternative biosecurity entry point at the first point of entry.

Civil penalty: 120 penalty units.

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Note 1: Nothing may be unloaded from the aircraft or vessel unless pratique has been granted in relation to the aircraft or vessel or the unloading is authorised by or under this Act or another Australian law (see sections 48 and 49).

Note 2: Goods must not be unloaded from the vessel if a direction has been given under subsection 143(3) or 144(3) or (4) not to unload the goods from the vessel.

Note 3: Goods must not be unloaded from the vessel if it is displaying the prescribed quarantine signal (see section 151).

(3) A biosecurity officer may give the person in charge or the operator of the aircraft or vessel a direction requiring goods that are to be unloaded from the aircraft or vessel to be brought to a biosecurity entry point that is not a biosecurity entry point for those goods.

Note: See also section 572 (general provisions relating to directions).

Fault-based offences

(4) A person commits an offence if:
  (a) the person is the person in charge or the operator of an aircraft or vessel; and
  (b) the person has been given a direction under subsection (3); and
  (c) the person engages in conduct; and
  (d) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(5) The person in charge of an aircraft or vessel commits an offence if:
  (a) the operator of the aircraft or vessel has been given a direction under subsection (3); and
  (b) the direction is not complied with.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(6) The operator of an aircraft or vessel commits an offence if:
  (a) the person in charge of the aircraft or vessel has been given a direction under subsection (3); and
  (b) the direction is not complied with.

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Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(7) The person in charge and the operator of an aircraft or vessel are each liable to a civil penalty if:
  (a) the person in charge or the operator of the aircraft or vessel has been given a direction under subsection (3); and
  (b) the direction is not complied with.

Civil penalty: 120 penalty units.

148 Permission to bring goods to alternative biosecurity entry point

(1) The person in charge or the operator of the aircraft or vessel may, in writing, request the Director of Biosecurity to give permission to bring the goods to a biosecurity entry point (the ***alternative biosecurity entry point***) that is not a biosecurity entry point for those goods.

(2) If the Director of Biosecurity receives a request under subsection (1), the Director may, by notice in writing to the person in charge or the operator of the aircraft or vessel, give permission for the goods to be brought to the alternative biosecurity entry point.

(3) The Director of Biosecurity may give permission under subsection (2) subject to any conditions specified in the notice giving the permission.

Fault-based offences

(4) A person commits an offence if:
  (a) the person is the person in charge or the operator of an aircraft or vessel; and
  (b) the person has been given a permission under subsection (2); and
  (c) the permission is subject to conditions; and
  (d) the person engages in conduct; and

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(e) the conduct contravenes the conditions.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(5) The person in charge of an aircraft or vessel commits an offence if:
(a) the operator of the aircraft or vessel has been given a permission under subsection (2); and
(b) the permission is subject to conditions; and
(c) the conditions are not complied with.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(6) The operator of an aircraft or vessel commits an offence if:
(a) the person in charge of the aircraft or vessel has been given a permission under subsection (2); and
(b) the permission is subject to conditions; and
(c) the conditions are not complied with.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(7) The person in charge and the operator of an aircraft or vessel are each liable to a civil penalty if:
(a) the person in charge or the operator of the aircraft or vessel has been given a permission under subsection (2); and
(b) the permission is subject to conditions; and
(c) the conditions are not complied with.

Civil penalty: 120 penalty units.

149 Receiving or possessing goods unloaded from aircraft or vessel in contravention of this Division

Civil penalty provision

(1) A person contravenes this subsection if:

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(a) the person receives, or has in the person's possession, goods that have been unloaded from an aircraft or vessel in Australian territory; and

(b) any of the following applies in relation to the goods:

(i) the goods were unloaded from the aircraft or vessel in contravention of a direction given under subsection 143(3), 144(3) or (4) or 147(3);

(ii) the goods were unloaded from the aircraft or vessel in contravention of subsection 145(1);

(iii) a condition imposed under subsection 146(3) or 148(3) in relation to the goods was contravened;

(iv) subsection 147(2) was contravened.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person did not know, and could not reasonably be expected to have known, that:

(a) the goods were unloaded from the aircraft or vessel in contravention of a direction given under subsection 143(3), 144(3) or (4) or 147(3); or

(b) the goods were unloaded from the aircraft or vessel in contravention of subsection 145(1); or

(c) a condition imposed under subsection 146(3) or 148(3) in relation to the goods was contravened; or

(d) subsection 147(2) was contravened;

as the case may be.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see section 96 of the Regulatory Powers Act).

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Division 7—Unloading goods from vessel displaying prescribed quarantine signal

150 Application of this Division

This Division applies in relation to goods that:

(a) are subject to biosecurity control; and

(b) are unloaded from a vessel that is displaying the prescribed quarantine signal.

Note: This Division also applies in relation to exposed goods in relation to which an exposed goods order is in force. This Division applies to those goods as if they were subject to biosecurity control (see subsection 161(1)).

151 Unloading goods from vessel displaying prescribed quarantine signal

(1) A person contravenes this subsection if:

(a) the person unloads goods from a vessel in Australian territory; and

(b) the goods are subject to biosecurity control; and

(c) the vessel is displaying the prescribed quarantine signal; and

(d) none of the following applies:

(i) the person is authorised to engage in the conduct referred to in paragraph (a) in accordance with an approved arrangement;

(ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;

(iii) the person has been given permission to engage in that conduct under section 557.

Note 1: See section 221 in relation to when a vessel must display the prescribed quarantine signal.

Note 2: The physical elements of an offence against subsection (3) are set out in this subsection (see section 534).

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(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(a) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

152 Receiving or possessing goods unloaded from vessel displaying prescribed quarantine signal

(1) A person contravenes this subsection if:
- (a) the person receives, or has in the person's possession, goods; and
- (b) the goods were unloaded from a vessel in Australian territory; and
- (c) the goods are subject to biosecurity control; and
- (d) the vessel was displaying the prescribed quarantine signal when the goods were unloaded; and
- (e) none of the following applies:
  - (i) the person is authorised to engage in the conduct referred to in paragraph (a) in accordance with an approved arrangement;

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.. (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;

(iii) the person has been given permission to engage in that conduct under section 557.

Note 1: See section 221 in relation to when a vessel must display the prescribed quarantine signal.

Note 2: The physical elements of an offence against subsection (3) are set out in this subsection (see section 534).

(2) Subsection (1) does not apply if:

(a) the person is authorised to engage in the conduct referred to in paragraph (1)(a) under this Act or under another Australian law; or

(b) the person did not know, and could not reasonably be expected to have known, that the vessel was displaying the prescribed quarantine signal when the goods were unloaded.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

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Division 8—Reporting biosecurity incidents

153 Application of this Division

This Division applies in relation to goods that are subject to biosecurity control.

Note: This Division also applies in relation to exposed goods in relation to which an exposed goods order is in force. This Division applies to those goods as if they were subject to biosecurity control (see subsection 161(1)).

154 Director of Biosecurity may determine acts, omissions or events to be reportable biosecurity incidents

The Director of Biosecurity may, by legislative instrument, determine that an act, omission or event is a ***reportable biosecurity incident*** in relation to goods that are subject to biosecurity control.

Note: For variation and revocation of a determination made under this section, see subsection 33(3) of the *Acts Interpretation Act 1901*.

155 Reporting by person in charge of aircraft or vessel carrying goods

(1) If:

(a) the goods are, or were, on board an aircraft or vessel; and

(b) the person in charge of the aircraft or vessel becomes aware of a reportable biosecurity incident in relation to the goods;

the person must, as soon as practicable after becoming aware of the incident, report the incident to a biosecurity officer or the Director of Biosecurity.

Note: The obligation in this subsection applies whether or not the person is in Australian territory when the person becomes aware of the reportable biosecurity incident (see subsection (4)).

Fault-based offence

(2) The person in charge of an aircraft or vessel commits an offence if:

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(a) the aircraft or vessel is, or was, carrying goods that are subject to biosecurity control; and
(b) the person becomes aware of a reportable biosecurity incident in relation to the goods; and
(c) the person fails to report the incident as required by subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

Application to persons within and outside Australian territory

(4) Subsections (2) and (3) apply whether or not the person is in Australian territory when the person becomes aware of the reportable biosecurity incident.

156 Reporting by person in charge of goods

(1) If a person in charge of the goods becomes aware of a reportable biosecurity incident in relation to the goods, the person must, as soon as practicable after becoming aware of the incident, report the incident to a biosecurity officer or the Director of Biosecurity.

Note: The obligation in this subsection applies whether or not the person is in Australian territory when the person becomes aware of the reportable biosecurity incident (see subsection (4)).

Fault-based offence

(2) A person in charge of goods that are subject to biosecurity control commits an offence if:
(a) the person becomes aware of a reportable biosecurity incident in relation to the goods; and

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(b) the person fails to report the incident as required by subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

Application to persons within and outside Australian territory

(4) Subsections (2) and (3) apply whether or not the person is in Australian territory when the person becomes aware of the reportable biosecurity incident.

157 How reports must be made

(1) The Director of Biosecurity may, by legislative instrument, determine either or both of the following:
   (a) information that must be included in a report required by subsection 155(1) or 156(1);
   (b) the way in which the report must be made.

(2) If a report of a reportable biosecurity incident does not comply with any requirements in a determination in force under subsection (1), the report is taken, for the purposes of this Division, not to have been made.

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Division 9—Goods exposed to goods that are subject to biosecurity control

158 Application of this Division

(1) This Division applies in relation to goods (other than goods that are subject to biosecurity control) if a biosecurity officer suspects, on reasonable grounds, that the goods have been exposed to:
  (a) goods that are subject to biosecurity control; or
  (b) a conveyance that is subject to biosecurity control.

(2) This Division also applies in relation to goods (other than goods that are subject to biosecurity control) if a biosecurity officer suspects, on reasonable grounds, that the goods have been exposed to other exposed goods.

(3) Goods to which this Division applies are ***exposed goods***.

Note: See section 17 for the meaning of ***exposed to***.

159 Assessment and management of biosecurity risk associated with exposed goods

(1) A biosecurity officer may, subject to subsection (4), exercise the powers in Division 4 (biosecurity risk assessment powers) for the purpose of identifying and assessing the level of biosecurity risk associated with exposed goods.

(2) For the purposes of subsection (1), the powers in Division 4 may be exercised in relation to exposed goods as if they were subject to biosecurity control.

(3) If a biosecurity officer suspects, on reasonable grounds, that the level of biosecurity risk associated with exposed goods is unacceptable, a biosecurity officer may, subject to subsection (4), make an exposed goods order in relation to the goods.

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(4) A biosecurity officer must not exercise the powers in Division 4 (as applied by subsections (1) and (2)), or make an exposed goods order, in relation to exposed goods unless the goods:
  (a) are within the precincts of a landing place or port; or
  (b) are on board a conveyance that is subject to biosecurity control; or
  (c) are on premises owned or controlled by the Commonwealth where biosecurity measures can be taken for the purpose of managing biosecurity risks; or
  (d) are on premises where biosecurity activities are carried out by a biosecurity industry participant in accordance with an approved arrangement covering the biosecurity industry participant.

160 Exposed goods orders

(1) An exposed goods order must:
  (a) be in writing; and
  (b) specify the exposed goods to which the order relates; and
  (c) specify the period during which the order is to be in force.

(2) An exposed goods order is not a legislative instrument.

(3) A biosecurity officer must give a copy of an exposed goods order to a person in charge of the exposed goods to which the order relates, if it is practicable to do so.

161 Effect of exposed goods order

(1) If an exposed goods order is in force in relation to exposed goods, the following provisions (to the extent that they are applicable) apply in relation to the goods as if they were subject to biosecurity control:
  (a) Division 4 (biosecurity risk assessment powers);
  (b) Division 5 (biosecurity measures to manage unacceptable level of biosecurity risk);
  (c) Divisions 6 and 7 (unloading goods);

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(d) Division 8 (reporting biosecurity incidents);
(e) Division 10 (release of goods from biosecurity control).

(2) An exposed goods order ceases to be in force in relation to exposed goods if any of the following occurs:
(a) the order expires;
(b) the order is revoked;
(c) subject to subsection (3), the goods are released from biosecurity control under Division 10.

(3) If:
(a) goods to which an exposed goods order is in force are released from biosecurity control under paragraph 162(1)(e) by leaving Australian territory on a conveyance that is on a journey between places in Australian territory; and
(b) the exposed goods order has not expired and has not been revoked when the conveyance re-enters Australian territory during that journey;

the exposed goods order takes effect again when the conveyance re-enters Australian territory during that journey.

Note: Goods are released from biosecurity control under paragraph 162(1)(e) if they leave Australian territory.

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Division 10—Release of goods from biosecurity control

162 When goods brought into Australian territory are released from biosecurity control

(1) Goods that are subject to biosecurity control are released from biosecurity control if:

(a) a biosecurity officer notifies or, before the goods became subject to biosecurity control, notified a person in charge of the goods, under section 163, that the goods are released from biosecurity control; or

(b) a biosecurity industry participant, who is authorised to release the goods in accordance with an approved arrangement covering the participant, gives or, before the goods became subject to biosecurity control, gave a person in charge of the goods a written notice releasing them from biosecurity control; or

(c) the goods are prescribed goods and the goods leave a designated biosecurity control release area at a first point of entry or an international mail centre; or

(d) the goods are destroyed; or

(e) the goods leave Australian territory.

Note 1: This Division also applies in relation to exposed goods in relation to which an exposed goods order is in force. This section applies to those goods as if they were subject to biosecurity control (see subsection 161(1)).

Note 2: If goods are released from biosecurity control under paragraph (1)(e) by leaving Australian territory on a conveyance that is on a journey between places in Australian territory, the goods become subject to biosecurity control again when the conveyance re-enters Australian territory during that journey (see subsection 119(4)). See also subsection 161(3), which deals with exposed goods in relation to which an exposed goods order is in force.

Note 3: A biosecurity officer may refuse to release goods from biosecurity control if the goods are withheld under section 600 because a cost-recovery charge has not been paid (see subsection 600(4)).

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(2) To avoid doubt, if goods are released from biosecurity control under paragraph (1)(a) or (b) because of a notification, or written notice given, before the goods became subject to biosecurity control, they are released immediately after they became subject to biosecurity control.

Note: The goods are therefore subject to biosecurity control for an instant. If a cost-recovery charge is due and payable by the owner of the goods at that instant, section 598 creates a charge on the goods.

(3) Neither of the following is a legislative instrument:
(a) a notification that is given in writing under paragraph (1)(a);
(b) a notice referred to in paragraph (1)(b).

(4) The regulations may provide that a specified area at a first point of entry or an international mail centre is a designated biosecurity control release area for the purposes of paragraph (1)(c).

163 Notice releasing goods from biosecurity control

Giving notice

(1) For the purposes of paragraph 162(1)(a), a notice releasing goods from biosecurity control may be given:
(a) in writing (including by an automated electronic system); or
(b) orally.

Automated release notices

(2) An automated electronic system that is used to produce notices (***automated release notices***) releasing goods from biosecurity control for the purposes of paragraph 162(1)(a) must comply with the requirements prescribed by the regulations.

(3) An automated release notice is taken to have been given by a biosecurity officer.

(4) An automated release notice in relation to goods is of no effect to the extent that it is inconsistent with an earlier direction given in relation to the goods by a biosecurity officer under this Act.

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164 Revoking notice releasing goods from biosecurity control

Revoking notice given by biosecurity officer

(1) A biosecurity officer may revoke a notice releasing goods from biosecurity control for the purposes of paragraph 162(1)(a) that was given to a person, by informing the person in writing or orally of the revocation. It does not matter whether the notice was given in writing (including by an automated electronic system) or orally.

Revoking notice given by biosecurity industry participant

(2) If a biosecurity industry participant gave a person in charge of goods a written notice for the purposes of paragraph 162(1)(b) releasing them from biosecurity control, the biosecurity industry participant or a biosecurity officer may revoke the notice by informing the person in writing of the revocation.

Grounds for revocation and timing of revocation

(3) Despite subsections (1) and (2), the biosecurity officer or biosecurity industry participant may revoke the notice only if:
   (a) he or she suspects on reasonable grounds that the level of biosecurity risk associated with the goods is unacceptable; and
   (b) the revocation occurs before any of the conditions in paragraphs 162(1)(c), (d) and (e) exist in relation to the goods.

Effect of revocation

(4) The revoked notice is taken never to have been given. This has effect for the purposes of this Act, except this section.

Written information of revocation is not a legislative instrument

(5) If the information of the revocation is in writing, the writing is not a legislative instrument.

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Part 2—Biosecurity Import Risk Analyses

Division 1—Introduction

165 Simplified outline of this Part

This Part provides for the Director of Biosecurity to conduct Biosecurity Import Risk Analyses (BIRAs) in relation to particular goods, or a particular class of goods, that may be imported, or are proposed to be imported, into Australian territory.

A BIRA is an evaluation of the level of biosecurity risk associated with the goods or the class of goods.

A BIRA may identify conditions that must be met to manage the level of biosecurity risk associated with the goods, or the class of goods, to a level that achieves the ALOP for Australia.

Note: The level of biosecurity risk associated with the goods may vary according to the place in Australian territory at which the goods are to enter Australian territory or be unloaded, so the conditions may vary accordingly.

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Division 2—Biosecurity Import Risk Analyses

166 What is a Biosecurity Import Risk Analysis (BIRA)

A ***Biosecurity Import Risk Analysis*** (or ***BIRA***) is an evaluation of the level of biosecurity risk associated with particular goods, or a particular class of goods, that may be imported, or are proposed to be imported, into Australian territory, including, if necessary, the identification of conditions that must be met to manage the level of biosecurity risk associated with the goods, or the class of goods, to a level that achieves the ALOP for Australia.

Note: The level of biosecurity risk associated with the goods may vary according to the place in Australian territory at which the goods are to enter Australian territory or be unloaded, so the conditions may vary accordingly.

167 Director of Biosecurity may conduct a BIRA

(1) The Director of Biosecurity may conduct a BIRA in relation to particular goods or a particular class of goods.

(2) The Director of Biosecurity must apply the ALOP for Australia in conducting a BIRA.

(3) The Director of Biosecurity may determine the order in which BIRAs are to be conducted.

(4) Subsection (3) has effect subject to any direction given to the Director of Biosecurity under subsection 168(1).

168 Agriculture Minister may direct Director of Biosecurity to commence a BIRA

(1) The Agriculture Minister may direct the Director of Biosecurity to commence a BIRA in relation to particular goods, or a particular class of goods, if the Agriculture Minister is satisfied that the BIRA should be commenced.

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(2) A direction under subsection (1) must:
  (a) be in writing; and
  (b) set out the reasons for the direction.

(3) A direction under subsection (1) must be tabled in each House of the Parliament no later than 15 sitting days of that House after it is given.

(4) A direction under subsection (1) is not a legislative instrument.

(5) Except as provided in subsection (1), the Director of Biosecurity is not subject to direction by or on behalf of the Commonwealth Government in relation to the conduct, findings or outcome of a BIRA.

Note: See also subsection 543(3) (directions the Agriculture Minister must not give).

169 Process for conducting a BIRA

(1) A BIRA must be conducted:
  (a) in accordance with a process prescribed in the regulations; and
  (b) taking into account the matters set out in the guidelines (if any) made by the Director of Biosecurity under subsection (2).

(2) The Director of Biosecurity may, in writing, make guidelines setting out matters to be taken into account in conducting a BIRA.

(3) Guidelines made under subsection (2) must be published on the Agriculture Department's website.

(4) Guidelines made under subsection (2) are not legislative instruments.

(5) For the purpose of conducting a BIRA in relation to goods, or a class of goods, the Director of Biosecurity may request the Director of Human Biosecurity to prepare a statement of the human health risks associated with the goods or the class of goods.

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170 Reports

(1) The regulations must require the Director of Biosecurity to prepare the following reports as part of the process of conducting a BIRA:
  (a) a draft BIRA report;
  (b) a provisional BIRA report;
  (c) a final BIRA report.

(2) A report referred to in subsection (1) must:
  (a) include the information prescribed by the regulations; and
  (b) be published in accordance with the regulations.

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Part 3—Prohibited goods etc.

Division 1—Introduction

171 Simplified outline of this Part

This Part deals with bringing or importing goods into Australian territory.

This Part applies to the exclusion of State and Territory laws to the extent that the laws purport to prohibit or restrict the bringing or importation of particular goods into Australian territory, or into a part of Australian territory, from outside Australian territory for the purpose of managing biosecurity risks associated with the goods.

Certain goods (prohibited goods) must not be brought or imported into Australian territory at all.

Certain goods (conditionally non-prohibited goods) may be brought or imported into Australian territory subject to conditions.

Division 2 provides for the Director of Biosecurity and the Director of Human Biosecurity to jointly determine that certain goods are prohibited goods or conditionally non-prohibited goods.

Division 3 deals with permits to bring or import certain conditionally non-prohibited goods into Australian territory.

Division 4 provides for the Director of Biosecurity to determine that certain goods (suspended goods) must not be brought or imported into Australian territory for a period of up to 6 months.

Division 5 sets out offences and civil penalty provisions.

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172 Exclusion of State and Territory laws

This Part applies to the exclusion of a law, or a provision of a law, of a State or Territory to the extent that the law or provision purports to prohibit or restrict the bringing or importation of particular goods into Australian territory, or into a part of Australian territory, from outside Australian territory for the purpose of managing biosecurity risks associated with the goods.

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Division 2—Prohibited goods and conditionally non-prohibited goods

173 Prohibited goods

(1) The Director of Biosecurity and the Director of Human Biosecurity may jointly determine that specified goods, or a specified class of goods, must not be brought or imported into Australian territory.

(2) Goods specified in a determination in force under subsection (1), or goods included in a class of goods specified in a determination in force under that subsection, are ***prohibited goods***.

(3) The Director of Biosecurity and the Director of Human Biosecurity may make a determination under subsection (1) in relation to specified goods, or a specified class of goods, only if each Director is satisfied that:

(a) the level of biosecurity risk associated with the goods, or the class of goods, is unacceptable; and

(b) biosecurity measures would not be able to be taken to reduce that level of biosecurity risk to an acceptable level.

(4) The Director of Biosecurity and the Director of Human Biosecurity must apply the ALOP for Australia in conducting a risk assessment for the purpose of deciding whether to make a determination under subsection (1) specifying particular goods or a particular class of goods.

(5) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Note 1: For variation and revocation of a determination made under subsection (1), see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: Division 5 sets out offences and civil penalty provisions relating to bringing or importing prohibited goods into Australian territory.

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Note 3: Prohibited goods that are brought or imported into Australian territory may be forfeited to the Commonwealth (see section 628).

174 Conditionally non-prohibited goods

(1) The Director of Biosecurity and the Director of Human Biosecurity may jointly determine that specified classes of goods must not be brought or imported into Australian territory unless specified conditions (including conditions for administrative purposes) are complied with.

(2) Goods included in a class of goods specified in a determination in force under subsection (1) are ***conditionally non-prohibited goods***.

(3) The Director of Biosecurity and the Director of Human Biosecurity must apply the ALOP for Australia in conducting a risk assessment for the purpose of deciding whether to make a determination under subsection (1) specifying a particular class of goods.

(4) Without limiting subsection (1), a determination under that subsection may specify either, or both, of the following in relation to a class of goods specified in the determination:

(a) a condition that goods included in that class must not be brought or imported into Australian territory unless a permit authorising the goods to be brought or imported into Australian territory has been granted under Division 3;

(b) a condition relating to the use of goods included in that class.

Note: A permit may be granted under Division 3 subject to conditions (see section 180).

(5) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

(6) Despite subsection 14(2) of the *Legislation Act 2003*, a determination under subsection (1) may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing, as in force or existing

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from time to time, if the instrument or other writing is publicly available.

Note 1: For variation and revocation of a determination made under subsection (1), see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: The Director of Biosecurity may determine that conditionally non-prohibited goods (suspended goods) must not be brought or imported into Australian territory for a period of up to 6 months (see Division 4).

Note 3: Division 5 sets out offences and civil penalty provisions relating to bringing or importing conditionally non-prohibited goods into Australian territory.

Note 4: Conditionally non-prohibited goods that are brought or imported into Australian territory may be forfeited to the Commonwealth if a condition applying to the goods has not been complied with (see section 628).

175 Security may be required in relation to conditionally non-prohibited goods

(1) The Director of Biosecurity may, if he or she considers it appropriate having regard to the criteria (if any) prescribed by the regulations for the purposes of subsection (2), require a security to be given in relation to conditionally non-prohibited goods that are, or are intended to be, brought or imported into Australian territory.

(2) The regulations may:
  (a) prescribe criteria to which the Director of Biosecurity must have regard in considering whether to require a security to be given in relation to conditionally non-prohibited goods that are, or are intended to be, brought or imported into Australian territory; and
  (b) make provision for, or in relation to, any security that may be required.

(3) Without limiting paragraph (2)(b), regulations made for the purposes of that paragraph may deal with any or all of the following:
  (a) the form of the security;

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(b) the amount of the security;
(c) who must give the security;
(d) when the security must be given;
(e) the circumstances in which the security may be retained;
(f) the circumstances in which the security, or any part of the security, must be repaid.

Note: If a permit to bring or import conditionally non-prohibited goods into Australian territory is required under this Act, the Director of Biosecurity may refuse to consider the application for the permit until the security is given (see subsection 179(6)).

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Division 3—Permits to bring or import goods into Australian territory

176 Application of this Division

This Division applies in relation to conditionally non-prohibited goods that must not be brought or imported into Australian territory unless the Director of Biosecurity has granted a permit authorising the goods to be brought or imported into Australian territory.

Note: A condition specified in a determination under subsection 174(1) in relation to conditionally non-prohibited goods may require a permit to be granted under this Division authorising the goods to be brought or imported into Australian territory.

177 Person may apply for permit

(1) A person may apply to the Director of Biosecurity for a permit authorising, for the purposes of this Act, the person, or a person acting on behalf of the person, to bring or import particular goods to which this Division applies into Australian territory.

(2) An application must:
  (a) be in the form approved by the Director of Biosecurity; and
  (b) include the information prescribed by the regulations.

Note 1: Personal information may also be required to be provided with the application (see subsection 531(1)). If personal information is required to be provided with the application and the information is not provided, the application is taken not to have been made (see subsection 531(2)).

Note 2: An application fee may be required (see paragraph 592(4)(b)).

178 Dealing with application

(1) This section applies in relation to an application made under section 177 for a permit, unless the application is withdrawn.

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Time within which decision must be made

(2) The Director of Biosecurity must make a decision in relation to the application within the period (the ***decision-making period***) that:
  (a) starts when the Director receives the application; and
  (b) is the period prescribed by the regulations, as extended under subsections (4) and (5) if relevant.

(3) If the Director of Biosecurity does not make a decision in relation to the application within the decision-making period, the Director is taken to have refused under subsection 179(1) to grant the permit at the end of that period.

Extension of period for deciding on application

(4) The period prescribed by the regulations for the purposes of paragraph (2)(b) is extended, for each request made under subsection (6), by the number of days falling within the period:
  (a) starting on the day the request was made; and
  (b) ending on:
    (i) the day the information or documents requested were received by the Director of Biosecurity; or
    (ii) if the information or documents were not given within the period specified in the request—the last day of that period.

(5) The period prescribed by the regulations for the purposes of paragraph (2)(b) is also extended, for each activity that relates to an application and is prescribed by the regulations, by the number of days falling within the period:
  (a) starting on the day the activity starts; and
  (b) ending on the day the activity ends.

Director of Biosecurity may request further information etc.

(6) For the purpose of making a decision in relation to an application, the Director of Biosecurity may, within the decision-making period, request:

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(a) the applicant; or
(b) any other person who the Director considers may have information relevant to the application;

to give the Director further specified information or documents relevant to the application.

(7) A request under subsection (6):
(a) must be in writing; and
(b) must specify the period (which must not be longer than the period prescribed by the regulations for the purposes of this paragraph) within which the information or documents must be given.

179 Director of Biosecurity may grant permit

(1) The Director of Biosecurity may, on application by a person under section 177 for a permit in relation to particular goods, grant the permit.

Note 1: The Director of Biosecurity is not subject to direction by the Agriculture Minister in relation to a decision relating to an application for a permit (see subsection 543(3)).

Note 2: If the Director of Biosecurity does not make a decision in relation to the application within the decision-making period for the application, the Director is taken to have refused to grant the permit at the end of that period (see subsection 178(3)).

Note 3: A decision not to grant a permit is a reviewable decision (see Part 1 of Chapter 11).

(2) In deciding whether to grant the permit in relation to the goods, the Director of Biosecurity must consider:
(a) the level of biosecurity risk associated with the goods; and
(b) whether it would be necessary to impose conditions on the permit to reduce the level of biosecurity risk associated with the goods to an acceptable level; and
(c) any personal information that is required to be provided with the application for the permit under section 531.

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(3) The Director of Biosecurity must apply the ALOP for Australia in conducting a risk assessment for the purpose of deciding whether to grant the permit in relation to the goods.

(4) In deciding whether to grant the permit in relation to the goods, the Director of Biosecurity may also consider:
   (a) whether the applicant is a fit and proper person (having regard to the matters referred to in section 530); and
   (b) whether the applicant is an associate of a person whose application under section 177 for a permit has been refused (whether or not the person's application related to goods of the same kind); and
   (c) any other matters relating to the goods or the applicant that the Director considers relevant.

(5) The Director of Biosecurity may refuse to grant the permit under subsection (1) in relation to the goods if the applicant is an associate of a person:
   (a) who has been refused a permit the person applied for under section 177 (whether in relation to the same or different goods); or
   (b) who was granted a permit under this section (whether in relation to the same or different goods) that was later revoked under section 181.

   This does not limit the grounds on which the Director of Biosecurity may refuse to grant the permit under subsection (1).

(6) If a security in relation to the goods is required under section 175, the Director of Biosecurity may refuse to consider the application for the permit until the security is given.

(7) A permit must be in writing.

180 Conditions of permit

(1) A permit may be granted under section 179, subject to such conditions as are specified in the permit.

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Note 1: A decision to impose a condition on a permit is a reviewable decision (see Part 1 of Chapter 11).

Note 2: A person who holds a permit granted under section 179 may commit an offence or contravene a civil penalty provision if the person contravenes a condition of the permit (see section 187).

(2) The Director of Biosecurity may, in accordance with the regulations:
  (a) vary or revoke a condition of a permit granted under section 179; or
  (b) impose further conditions on such a permit.

Note: A decision to vary a condition of, or impose a further condition on, a permit is a reviewable decision (see Part 1 of Chapter 11).

(3) Without limiting subsections (1) and (2), conditions of a permit granted under section 179:
  (a) may require the holder of the permit to do specified things in relation to the goods to which the permit relates; and
  (b) may be required to be met either before or after the goods to which the permit relates are brought or imported into Australian territory.

181 Variation, suspension or revocation of permit

(1) The Director of Biosecurity may, in accordance with the regulations, do any of the following in relation to a permit granted under section 179:
  (a) vary the permit;
  (b) suspend the permit for a specified period;
  (c) revoke the permit.

Note 1: The Director of Biosecurity is not subject to direction by the Agriculture Minister in relation to a decision relating to a permit (see subsection 543(3)).

Note 2: A decision to vary a permit, to refuse to vary a permit, to suspend a permit for a period, or to revoke a permit is a reviewable decision (see Part 1 of Chapter 11).

Note 3: A permit to bring or import goods into Australian territory may be taken to have been suspended for a period because of a determination

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in force under subsection 182(1) in relation to the goods (see section 184).

(2) A permit granted under section 179 is not in force during any period in which it is suspended.

(3) If:

(a) a permit in relation to goods is suspended or revoked; and

(b) a condition of the permit applied in relation to the goods immediately before the suspension or revocation of the permit;

the condition continues to apply in relation to the goods despite the suspension or revocation of the permit.

Note 1: This subsection also applies if a permit is taken to have been suspended under section 184.

Note 2: A person who was the holder of a permit that has been suspended may commit an offence or contravene a civil penalty provision if the person contravenes a condition of the permit that continues to apply because of this subsection (see section 187).

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Division 4—Suspended goods

182 Director of Biosecurity may suspend bringing or importation of goods into Australian territory for a period

(1) The Director of Biosecurity may determine that specified goods, or a specified class of goods, (including conditionally non-prohibited goods) must not be brought or imported into Australian territory for a specified period. The period must not be longer than 6 months.

(2) Goods specified in a determination in force under subsection (1), or goods included in a class of goods specified in a determination in force under that subsection, are ***suspended goods***.

(3) The Director of Biosecurity may make a determination under subsection (1) in relation to goods, or a class of goods, only if the Director is satisfied that the level of biosecurity risk associated with the goods, or the class of goods, is unacceptable.

(4) The Director must apply the ALOP for Australia in conducting a risk assessment for the purpose of deciding whether to make a determination under subsection (1) specifying particular goods or a particular class of goods.

(5) A determination under subsection (1) must set out the reasons for making the determination.

(6) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

(7) If a determination in force under subsection (1) in relation to goods, or a class of goods, is inconsistent with a determination in force under subsection 174(1):

(a) the determination under subsection (1) of this section prevails; and

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(b) the determination under subsection 174(1) has, to the extent of the inconsistency, no effect.

Note 1: Division 5 sets out offences and civil penalty provisions relating to bringing or importing suspended goods into Australian territory.

Note 2: If suspended goods are brought or imported into Australian territory in contravention of a determination in force under subsection (1), the goods may be forfeited to the Commonwealth (see section 628).

183 Variation of determination suspending bringing or importation of goods into Australian territory

(1) The Director of Biosecurity may vary a determination in force under subsection 182(1) to extend the period of suspension specified in the determination for a further period of up to 6 months.

(2) The Director of Biosecurity may vary a determination under subsection (1) only if the Director is satisfied that the level of biosecurity risk associated with the goods, or the class of goods, specified in the determination continues to be unacceptable.

(3) The Director of Biosecurity may extend the period of suspension specified in a determination in force under subsection 182(1) more than once.

(4) This section does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to a determination in force under subsection 182(1).

184 Effect on permit of suspended goods determination

If:

(a) a determination under subsection 182(1) is in force in relation to goods or a class of goods; and

(b) a permit has been granted under section 179 in relation to the goods or goods included in the class of goods;

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the permit is taken to have been suspended under section 181 for the period specified in the determination, to the extent that the permit relates to those goods.

Note 1: If a condition of the permit applied in relation to the goods immediately before the permit was taken to have been suspended, the condition continues to apply despite the suspension (see subsection 181(3)).

Note 2: A person who was the holder of a permit that is taken to have been suspended may commit an offence or contravene a civil penalty provision if the person contravenes a condition of the permit that continues to apply because of subsection 181(3) (see section 187).

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Division 5—Offences and civil penalty provisions

185 Bringing or importing prohibited or suspended goods into Australian territory

(1) A person contravenes this subsection if:
  (a) the person brings or imports goods into Australian territory; and
  (b) the goods are:
    (i) prohibited goods; or
    (ii) suspended goods.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 534).

Basic fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

Fault-based offence involving obtaining commercial advantage

(4) A person commits an offence if:
  (a) the person brings or imports goods into Australian territory; and
  (b) the goods are:
    (i) prohibited goods; or
    (ii) suspended goods; and

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(c) as a result of bringing or importing the goods into Australian territory, the person obtains, or may obtain, a commercial advantage over the person's competitors or potential competitors.

Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.

Fault-based offence involving harm to the environment or economic consequences

(5) A person commits an offence if:
(a) the person brings or imports goods into Australian territory; and
(b) the goods are:
(i) prohibited goods; or
(ii) suspended goods; and
(c) the bringing or importation of the goods into Australian territory:
(i) has caused, or has the potential to cause, harm to the environment; or
(ii) has had, or has the potential to have, economic consequences.

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

Alternative verdict

(6) In a trial for an offence against subsection (4) or (5), the trier of fact may find the defendant not guilty of that offence but guilty of an offence against subsection (2) if:
(a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (4) or (5); and
(b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection (2); and
(c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

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186 Contravening conditions applying to conditionally non-prohibited goods brought or imported into Australian territory

(1) A person contravenes this subsection if:
  (a) the person brings or imports goods into Australian territory; and
  (b) the goods are conditionally non-prohibited goods; and
  (c) a condition in relation to the goods specified in a determination in force under subsection 174(1) has not been complied with.

Note 1: The physical elements of an offence against subsection (2) are set out in this subsection (see section 534).

Note 2: Subsection (7) provides an exception to an offence against this section and liability to a civil penalty under subsection (3).

Basic fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

Fault-based offence involving obtaining commercial advantage

(4) A person commits an offence if:
  (a) the person brings or imports goods into Australian territory; and
  (b) the goods are conditionally non-prohibited goods; and

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(c) a condition in relation to the goods specified in a determination in force under subsection 174(1) has not been complied with; and

(d) as a result, the person obtains, or may obtain, a commercial advantage over the person's competitors or potential competitors.

Note: The following are examples of a commercial advantage as referred to in paragraph (d):

(a) avoiding business costs associated with obtaining an import permit or meeting other requirements under this Act;

(b) avoiding delays necessarily involved in complying with applicable biosecurity measures.

Penalty: Imprisonment for 10 years or 2,000 penalty units, or both.

Fault-based offence involving harm to the environment or economic consequences

(5) A person commits an offence if:

(a) the person brings or imports goods into Australian territory; and

(b) the goods are conditionally non-prohibited goods; and

(c) a condition in relation to the goods specified in a determination in force under subsection 174(1) has not been complied with; and

(d) the bringing or importation of the goods into Australian territory:

(i) has caused, or has the potential to cause, harm to the environment; or

(ii) has had, or has the potential to have, economic consequences.

Penalty: Imprisonment for 10 years or 600 penalty units, or both.

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Alternative verdict

(6) In a trial for an offence against subsection (4) or (5), the trier of fact may find the defendant not guilty of that offence but guilty of an offence against subsection (2) if:
  (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (4) or (5); and
  (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection (2); and
  (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

Exception

(7) Subsection (1), (4) or (5) does not apply if the person:
  (a) did not do the act, or omit to do the act, that constituted the failure to comply with the condition referred to in paragraph (1)(c), (4)(c) or (5)(c); and
  (b) did not aid, abet, counsel or procure that act or omission; and
  (c) was not in any way knowingly concerned in, or party to, that act or omission (whether directly or indirectly and whether by any act or omission of the person).

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

187 Contravening conditions of a permit

Fault-based offence—permits in force

(1) A person commits an offence if:
  (a) the person is the holder of a permit granted under section 179; and
  (b) the person engages in conduct; and
  (c) the conduct contravenes a condition of the permit.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

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Civil penalty provision—permits in force

(2) A person is liable to a civil penalty if:
  (a) the person is the holder of a permit granted under section 179; and
  (b) the person contravenes a condition of the permit.

Civil penalty: 120 penalty units.

Fault-based offence—suspended or revoked permits

(3) A person commits an offence if:
  (a) the person was the holder of a permit granted under section 179; and
  (b) the permit has been suspended or revoked under section 181; and
  (c) a condition of the permit continues to apply because of subsection 181(3); and
  (d) the person engages in conduct; and
  (e) the conduct contravenes the condition.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision—suspended or revoked permits

(4) A person is liable to a civil penalty if:
  (a) the person was the holder of a permit granted under section 179; and
  (b) the permit has been suspended or revoked under section 181; and
  (c) a condition of the permit continues to apply because of subsection 181(3); and
  (d) the person contravenes the condition.

Civil penalty: 120 penalty units.

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188 Receiving or possessing prohibited or suspended goods brought or imported into Australian territory

Strict liability offence

(1) A person commits an offence of strict liability if:
  (a) the person receives, or has in the person's possession, goods; and
  (b) the goods are:
    (i) prohibited goods; or
    (ii) suspended goods.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Penalty: 60 penalty units.

Exception

(2) Subsection (1) does not apply if:
  (a) the goods were not brought or imported into Australian territory; or
  (b) the goods were brought or imported into Australian territory but, at the time they were brought or imported into Australian territory, they were not:
    (i) prohibited goods; or
    (ii) suspended goods; or
  (c) the goods are the progeny of other goods that were legally brought or imported into Australian territory.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

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Chapter 4—Managing biosecurity risks: conveyances

Part 1—Introduction

189 Objects of this Chapter

The main objects of this Chapter are:

(a) to provide for the assessment of the level of biosecurity risk associated with conveyances entering Australian territory from outside Australian territory, including by:

(i) controlling the places where those conveyances can land or be moored in Australian territory; and

(ii) controlling the movement of conveyances that are subject to biosecurity control while they are in Australian territory; and

(b) to provide for biosecurity measures to be taken in relation to conveyances referred to in paragraph (a) if the level of biosecurity risk associated with them is considered to be unacceptable; and

(c) to give effect to Australia's rights and obligations in relation to ship sanitation for the purposes of the International Health Regulations.

Note: In this Chapter, a conveyance does not include a conveyance (the ***carried conveyance***) brought or imported into Australian territory from outside Australian territory on board another conveyance until the carried conveyance is released from biosecurity control as goods (see section 16).

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Part 2—Conveyances entering Australian territory etc.

Division 1—Introduction

190 Simplified outline of this Part

This Part deals with conveyances that enter, or intend to enter, Australian territory from outside Australian territory.

Division 2 provides for those conveyances to be subject to biosecurity control when they enter Australian territory. Division 2 also provides for other conveyances to be subject to biosecurity control if they are exposed to a conveyance that is subject to biosecurity control.

Division 3 provides for pre-arrival reports to be given in relation to aircraft or vessels that enter or intend to enter Australian territory from outside Australian territory and aircraft or vessels that intend to be, or are, exposed to conveyances or goods that are subject to biosecurity control. Division 3 also provides for persons on board incoming aircraft or vessels to provide information for the purpose of assessing the level of biosecurity risk associated with them.

Division 4 sets out powers that may be exercised to assess the level of biosecurity risk associated with conveyances that are subject to biosecurity control.

Division 5 provides for biosecurity measures to be taken if the level of biosecurity risk associated with conveyances that are subject to biosecurity control is considered to be unacceptable.

Division 6 deals with leaving conveyances that are subject to biosecurity control.

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Section 190

Division 7 sets out how conveyances that are subject to biosecurity control are released from biosecurity control.

Division 8 deals with when a vessel must display the prescribed quarantine signal and provides for other miscellaneous matters.

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Division 2—Conveyances that are subject to biosecurity control

191 Aircraft and vessels entering Australian territory

(1) This section applies to an aircraft or vessel that has entered Australian territory during a flight or voyage that commenced outside Australian territory.

Note 1: A reference in this Division to an aircraft does not include an aircraft brought or imported into Australian territory from outside Australian territory on board another conveyance (see subsection 16(3)).

Note 2: A reference in this Division to a vessel does not include a vessel brought or imported into Australian territory from outside Australian territory on board another conveyance (see subsection 16(4)).

Note 3: A vessel includes an installation (see subparagraph (b)(i) of the definition of ***vessel*** in section 9, and the definition of ***installation*** in section 20).

(2) The aircraft or vessel becomes subject to biosecurity control when the aircraft or vessel enters Australian territory.

Note: Part 4 deals with entry points for aircraft and vessels that intend to land or be moored in Australian territory.

(3) The aircraft or vessel remains subject to biosecurity control until it is released from biosecurity control.

Note: Division 7 deals with releasing conveyances from biosecurity control.

(4) If the aircraft or vessel is released from biosecurity control under paragraph 218(1)(d) by leaving Australian territory during a flight or voyage between places in Australian territory, the aircraft or vessel becomes subject to biosecurity control again when it re-enters Australian territory during that flight or voyage.

Note: An aircraft or vessel is released from biosecurity control under paragraph 218(1)(d) if it leaves Australian territory.

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192 Conveyances exposed to other conveyances that are subject to biosecurity control

(1) This section applies in relation to a conveyance that is not already subject to biosecurity control if:

(a) the conveyance is exposed to:

(i) an aircraft or vessel that is subject to biosecurity control because of subsection 191(2) or (4); or

(ii) a conveyance that is subject to biosecurity control because of subsection (2), (3) or (5) of this section; or

(iii) goods that are subject to biosecurity control and are of a kind prescribed by the regulations; or

(b) in the course of a journey by the conveyance:

(i) the conveyance leaves Australian territory; and

(ii) the conveyance is exposed to another conveyance while it is outside Australian territory; and

(iii) after being exposed to the other conveyance, the conveyance re-enters Australian territory.

Note 1: In this Chapter, a conveyance does not include a conveyance (the ***carried conveyance***) brought or imported into Australian territory from outside Australian territory on board another conveyance until the carried conveyance is released from biosecurity control as goods (see section 16).

Note 2: See section 17 for the meaning of ***exposed to***.

(2) A conveyance (an ***exposed conveyance***) that is exposed to an aircraft or vessel, another conveyance or goods as referred to in paragraph (1)(a) becomes subject to biosecurity control when it is exposed to that aircraft, vessel, other conveyance or goods.

(3) A conveyance (also an ***exposed conveyance***) to which paragraph (1)(b) applies becomes subject to biosecurity control when it re-enters Australian territory.

(4) An exposed conveyance remains subject to biosecurity control until it is released from biosecurity control.

Note: Division 7 deals with releasing conveyances from biosecurity control.

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(5) If an exposed conveyance is released from biosecurity control under paragraph 218(1)(d) by leaving Australian territory during a journey between places in Australian territory, the exposed conveyance becomes subject to biosecurity control again when it re-enters Australian territory during that journey.

Note: A conveyance is released from biosecurity control under paragraph 218(1)(d) if it leaves Australian territory.

(6) The Director of Biosecurity may, by legislative instrument, determine that this section does not apply in relation to:

(a) specified conveyances; or

(b) specified conveyances in specified circumstances.

Note 1: A determination under this subsection may make different provision with respect to different classes of conveyances (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

Note 2: For variation and revocation, see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*.

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Division 3—Pre-arrival reporting etc.

193 Pre-arrival reporting

(1) The operator of an aircraft or vessel must give a report if:
  (a) it is intended that the aircraft or vessel enter, or the aircraft or vessel enters, Australian territory:
    (i) on a flight or voyage that commenced outside Australian territory; or
    (ii) after being exposed to another conveyance while outside Australian territory; or
  (b) it is intended that the aircraft or vessel be, or the aircraft or vessel is, exposed to:
    (i) a conveyance that is subject to biosecurity control; or
    (ii) goods referred to in subparagraph 192(1)(a)(iii).

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of this Act).

Note 2: The obligation in this subsection applies whether or not the operator of the aircraft or vessel is in Australian territory when the operator is required to give the report (see subsection (7) of this section).

(2) The report must:
  (a) include the information in relation to the aircraft or vessel that is prescribed by the regulations; and
  (b) be given in the manner, and to the person, prescribed by the regulations; and
  (c) be given at a time, or during the period, prescribed by the regulations (which may be before or after the aircraft or vessel enters Australian territory, or is exposed to another conveyance in Australian territory, as referred to in subsection (1)); and
  (d) be in a form or forms approved by the Director of Biosecurity.

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Note: The regulations may prescribe different requirements for reports for different classes of aircraft or vessels (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

(3) The regulations may prescribe exceptions to the requirement to give a report under this section.

Note: A defendant bears an evidential burden in relation to any exception prescribed for the purposes of this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

Failure to give report

(4) A person contravenes this subsection if:
  (a) the person is required to give a report under subsection (1); and
  (b) the person does not give the report in accordance with subsection (2).

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 534).

Fault-based offence

(5) A person commits an offence if the person contravenes subsection (4).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Civil penalty provision

(6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 120 penalty units.

Application to persons within and outside Australian territory

(7) Subsections (4), (5) and (6) apply whether or not the person is in Australian territory when the person is required to give the report.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

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194 Pre-arrival reporting—requirement to give additional or corrected information

(1) If:

(a) the operator of an aircraft or vessel gives a report in relation to the aircraft or vessel under section 193; and

(b) the person in charge or the operator of the aircraft or vessel becomes aware that the information included in the report was incomplete or incorrect;

the operator must as soon as practicable give a biosecurity officer the additional or corrected information.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of this Act).

Note 2: The obligation in this subsection applies whether or not the operator of the aircraft or vessel is in Australian territory when the person in charge or the operator of the aircraft or vessel becomes aware that the information included in a report given under section 193 was incomplete or incorrect (see subsection (5) of this section).

Failure to give information

(2) A person contravenes this subsection if:

(a) the person is required to give information to a biosecurity officer under subsection (1); and

(b) the person does not give the information to a biosecurity officer as required by that subsection.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 534).

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (2).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 120 penalty units.

Application to persons within and outside Australian territory

(5) Subsections (2), (3) and (4) apply whether or not the person is in Australian territory when the person is required to give the information.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

195 Power to obtain extra information relating to an aircraft or vessel covered by a pre-arrival report

(1) A biosecurity officer may exercise the powers under subsections (2), (3) and (4) for the purpose of assessing the level of biosecurity risk associated with an aircraft or vessel that is the subject of a report under paragraph 193(1)(a) but was not subject to biosecurity control when the report was given and has not become subject to biosecurity control since.

Power to require information or answers to questions

(2) A biosecurity officer may require a person who the biosecurity officer suspects, on reasonable grounds, has information in relation to the aircraft or vessel to answer questions, or provide information in writing, in relation to the aircraft or vessel.

Note 1: The obligation in this subsection applies whether or not the person is in Australian territory when the requirement is made (see subsection (8)).

Note 2: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information (see section 137.1 of the *Criminal Code* and section 532 of this Act).

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Power to require production of documents

(3) A biosecurity officer may require a person who the biosecurity officer suspects, on reasonable grounds, has the custody or control of documents in relation to the aircraft or vessel to produce to the biosecurity officer such of those documents as are specified by the biosecurity officer.

Note 1: The obligation in this subsection applies whether or not the person is in Australian territory when the requirement is made (see subsection (8)).

Note 2: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading documents (see section 137.2 of the *Criminal Code* and section 533 of this Act).

Power to deal with documents

(4) A biosecurity officer:
  (a) may make copies of, or take extracts from, a document produced under subsection (3); and
  (b) for that purpose, may remove the document from the place at which it was produced.

Complying with requirements

(5) A person contravenes this subsection if:
  (a) the person is required:
    (i) to answer questions or give information to a biosecurity officer under subsection (2); or
    (ii) to produce documents to a biosecurity officer under subsection (3); and
  (b) the person does not comply with the requirement.

Note: The physical elements of an offence against subsection (6) are set out in this subsection (see section 534).

Fault-based offence

(6) A person commits an offence if the person contravenes subsection (5).

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Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Civil penalty provision

(7) A person is liable to a civil penalty if the person contravenes subsection (5).

Civil penalty: 120 penalty units.

Application to persons within and outside Australian territory

(8) Subsections (5), (6) and (7) apply whether or not the person is in Australian territory when the person is required to answer the questions, give the information or produce the documents.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

196 Persons on incoming aircraft or vessel may be required to provide information to assess biosecurity risk

(1) This section applies in relation to a person who:
  (a) intends to enter, or enters, Australian territory on an incoming aircraft or vessel; and
  (b) is included in a prescribed class of persons.

(2) The Director of Biosecurity may require the person to provide information (including by answering questions) for the purpose of assessing the level of biosecurity risk associated with the person and any goods that the person has with him or her.

Note 1: This section is not subject to the privilege against self-incrimination (see section 635).

Note 2: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information (see section 137.1 of the *Criminal Code* and section 532 of this Act).

(3) The information required under subsection (2) must be provided in the manner approved by the Director of Biosecurity.

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Civil penalty provision

(4) A person who is required to provide information under subsection (2) must comply with the requirement.

Civil penalty: 120 penalty units.

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Division 4—Assessment of level of biosecurity risk

197 Biosecurity risk assessment powers

This Division sets out powers that may be exercised for the purpose of assessing the level of biosecurity risk associated with a conveyance that is subject to biosecurity control.

198 Securing conveyance

(1) A biosecurity officer may direct the person in charge or the operator of the conveyance to secure the conveyance in a manner, and for a period (which must not exceed 48 hours), specified by the biosecurity officer.

Note: The biosecurity officer may give more than one direction relating to the conveyance (see subsection 33(1) of the *Acts Interpretation Act 1901*).

Civil penalty provision

(2) A person who is given a direction under subsection (1) must comply with the direction.

Civil penalty: 120 penalty units.

Note 1: If judicial review is sought in relation to a direction given under subsection (1), the direction remains in force unless a court finally determines the validity of the decision to give the direction (see section 538).

Note 2: A person may contravene a civil penalty provision for moving, dealing with or interfering with a conveyance that has been secured in accordance with a direction given under subsection (1) (see section 204).

Note 3: See also section 572 (general provisions relating to directions).

199 Inspecting conveyance

A biosecurity officer may conduct a physical inspection of the conveyance.

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200 Asking questions about conveyance

(1) A biosecurity officer may require a person who the biosecurity officer suspects, on reasonable grounds, has information in relation to the conveyance to answer questions, or provide information in writing, in relation to the conveyance.

Note: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information (see section 137.1 of the *Criminal Code* and section 532 of this Act).

Civil penalty provision

(2) A person who is required to answer questions, or provide information in writing, under subsection (1) must comply with the requirement.

Civil penalty: 120 penalty units.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

201 Requiring documents relating to conveyance to be produced

(1) A biosecurity officer may require a person who the biosecurity officer suspects, on reasonable grounds, has the custody or control of documents in relation to the conveyance to produce to the officer such of those documents as are specified by the officer.

Note: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading documents (see section 137.2 of the *Criminal Code* and section 533 of this Act).

(2) A biosecurity officer:
   (a) may make copies of, or take extracts from, a document produced under subsection (1); and
   (b) for that purpose, may remove the document from the place at which it was produced.

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Civil penalty provision

(3) A person who is required to produce documents under subsection (1) must comply with the requirement.

Civil penalty: 120 penalty units.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

202 Movement of conveyance

(1) A biosecurity officer may:
  (a) give any of the following directions to the person in charge or the operator of the conveyance:
    (i) a direction not to move, deal with or interfere with the conveyance;
    (ii) a direction to move the conveyance, as soon as practicable, to a place specified by the biosecurity officer (except a place outside Australian territory);
    (iii) any other direction relating to the movement of the conveyance; or
  (b) cause the conveyance to be moved to another place (except a place outside Australian territory).

Civil penalty provision

(2) A person who is given a direction under paragraph (1)(a) must comply with the direction.

Civil penalty: 120 penalty units.

Note 1: A person may contravene a civil penalty provision for moving, dealing with or interfering with a conveyance in relation to which a direction relating to movement has been given under paragraph (1)(a) or that has been moved under paragraph (1)(b) (see section 204).

Note 2: See also section 572 (general provisions relating to directions).

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203 Biosecurity control notice may be affixed to conveyance or given to person in charge of conveyance

(1) A biosecurity officer may:
  (a) affix a biosecurity control notice to, or as near as reasonably practicable to, the conveyance; or
  (b) give a biosecurity control notice to the person in charge of the conveyance.

Civil penalty provision

(2) A person is liable to a civil penalty if:
  (a) a biosecurity control notice is affixed to, or as near as reasonably practicable to, a conveyance under paragraph (1)(a); and
  (b) the person interferes with, removes or defaces the notice; and
  (c) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;
    (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
    (iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(3) Subsection (2) does not apply if the person is authorised to engage in the conduct referred to in paragraph (2)(b) under this Act or under another Australian law.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Note 2: A person may contravene a civil penalty provision for moving, dealing with or interfering with a conveyance in relation to which a biosecurity control notice has been affixed under paragraph (1)(a) (see section 204).

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204 Unauthorised persons must not move etc. conveyance in relation to which direction has been given

(1) This section applies in relation to:

(a) a conveyance that has been secured in accordance with a direction given under subsection 198(1); or

(b) a conveyance in relation to which a direction relating to movement has been given under paragraph 202(1)(a); or

(c) a conveyance that has been moved under paragraph 202(1)(b); or

(d) a conveyance in relation to which a biosecurity control notice has been affixed under paragraph 203(1)(a).

Civil penalty provision

(2) A person is liable to a civil penalty if:

(a) the person moves, deals with or interferes with a conveyance in relation to which this section applies; and

(b) none of the following applies:

(i) the person is authorised to engage in the conduct referred to in paragraph (a) in accordance with an approved arrangement;

(ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;

(iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(3) Subsection (2) does not apply if the person is authorised to engage in the conduct referred to in paragraph (2)(a) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

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Division 5—Biosecurity measures to manage unacceptable level of biosecurity risk

204A Requirements to destroy vectors on incoming or outgoing aircraft or vessels

The regulations may prescribe measures to be taken by operators of incoming aircraft or vessels or outgoing aircraft or vessels to destroy vectors that:

(a) have the potential to cause, directly or indirectly, a listed human disease or any other human disease; and

(b) may exist on the aircraft or vessels.

205 Biosecurity measures may be required in relation to conveyance

If a biosecurity officer suspects, on reasonable grounds, that the level of biosecurity risk associated with a conveyance that is subject to biosecurity control is unacceptable, a biosecurity officer may require biosecurity measures to be taken in relation to the conveyance as set out in this Division.

Note: Sections 629 and 630 deal with abandoned and forfeited conveyances in relation to which biosecurity measures have been required under this Division.

206 Movement of certain aircraft and vessels

(1) This section applies in relation to an aircraft or vessel that is subject to biosecurity control because of subsection 191(2) or (4) (aircraft and vessels entering Australian territory).

(2) Subject to subsection (3), a biosecurity officer may:

(a) give any of the following directions to the person in charge or the operator of the aircraft or vessel:

(i) a direction not to move, deal with or interfere with the aircraft or vessel;

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(ii) a direction to move the aircraft or vessel, as soon as practicable, to a place specified by the biosecurity officer (including a place outside Australian territory);

(iii) any other direction relating to the movement of the aircraft or vessel; or

(b) cause the aircraft or vessel to be moved to another place (including a place outside Australian territory).

Note: If a direction is given under paragraph (2)(a) in relation to an aircraft or vessel, and the direction is not complied with, the person in charge and the operator of the aircraft or vessel may each commit an offence or contravene a civil penalty provision (see section 215).

(3) A biosecurity officer must not, without the written approval of the Director of Biosecurity:

(a) give a direction under subparagraph (2)(a)(ii) or (iii) requiring the aircraft or vessel to be moved to a place outside Australian territory; or

(b) under paragraph (2)(b), cause the aircraft or vessel to be moved to a place outside Australian territory.

Note 1: Before giving an approval under this subsection, the Director of Biosecurity must be satisfied of the matters referred to in section 32 (the principles).

Note 2: See also section 572 (general provisions relating to directions).

207 Movement of exposed conveyances

(1) This section applies in relation to an exposed conveyance that is subject to biosecurity control because of subsection 192(2), (3) or (5).

(2) A biosecurity officer may:

(a) give any of the following directions to the person in charge or the operator of the conveyance:

(i) a direction not to move, deal with or interfere with the conveyance;

(ii) a direction to move the conveyance, as soon as practicable, to a place specified by the biosecurity officer (except a place outside Australian territory);

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(iii) any other direction relating to the movement of the conveyance; or

(b) cause the conveyance to be moved to another place (except a place outside Australian territory).

Note 1: If a direction is given under paragraph (2)(a) in relation to a conveyance, and the direction is not complied with, the person in charge and the operator of the conveyance may each commit an offence or contravene a civil penalty provision (see section 215).

Note 2: See also section 572 (general provisions relating to directions).

208 Treatment of conveyance

(1) A biosecurity officer may, subject to subsection (2), require the conveyance to be treated in a manner specified by the biosecurity officer.

Note: If the treatment might damage the conveyance, the person in charge or the operator of the conveyance must be asked to agree to the treatment (see section 209).

(2) A biosecurity officer must not require a high-value conveyance to be treated in a manner that the biosecurity officer suspects, on reasonable grounds, is likely to damage the conveyance, without the written approval of the Director of Biosecurity.

209 Treatment that is likely to damage conveyance

(1) This section applies if:

(a) a biosecurity officer requires a conveyance to be treated in a specified manner under subsection 208(1); and

(b) a biosecurity officer suspects, on reasonable grounds, that treatment of the conveyance in that manner is likely to damage the conveyance.

Notice must be given that treatment is likely to damage conveyance

(2) Before any treatment is carried out on the conveyance, a biosecurity officer must, by notice in writing:

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(a) inform the person in charge or the operator of the conveyance that:
  (i) the conveyance is required to be treated in a specified manner; and
  (ii) the treatment is likely to damage the conveyance; and
(b) request the person in charge or the operator to agree to the treatment of the conveyance.

(3) However, the conveyance may be treated in the specified manner without notice having been given under subsection (2) if:
(a) a biosecurity officer suspects, on reasonable grounds, that there is a high level of biosecurity risk associated with the conveyance; and
(b) the biosecurity officer is satisfied that the conveyance needs to be treated as soon as practicable to reduce that risk to an acceptable level.

Dealing with conveyance if person in charge or operator does not agree to treatment

(4) If:
(a) a notice is given to the person in charge or the operator of the conveyance under subsection (2); and
(b) the person in charge or the operator does not, within 30 days after receiving the notice, notify a biosecurity officer in writing that the person or operator agrees to the conveyance being treated as specified in the notice;

a biosecurity officer may, in writing, request the person in charge or the operator to arrange for the conveyance:
(c) to be dealt with, or destroyed, in a manner specified in the request; or
(d) to be removed from Australian territory;

within the period specified in the request.

(5) If:
(a) a request is made under subsection (4) in relation to the conveyance; and

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(b) the conveyance is not, within the period specified in the request:
  (i) dealt with, or destroyed, in a manner specified in the request; or
  (ii) removed from Australian territory;

then:

(c) a biosecurity enforcement officer may, subject to subsection (6), take possession of the conveyance; and

(d) a biosecurity officer may, with the written approval of the Director of Biosecurity, cause the conveyance to be removed from Australian territory, destroyed or otherwise disposed of.

Note: Before giving approval under paragraph (5)(d), the Director of Biosecurity must be satisfied of the matters referred to in section 32 (the principles).

(6) A biosecurity enforcement officer must not take possession of the conveyance under subsection (5) unless:

(a) the owner of the conveyance has consented in writing to the taking of possession; or

(b) the taking of possession is authorised by a conveyance possession warrant.

Note: For the issue of warrants, and the obligations and powers of biosecurity enforcement officers in taking possession of a conveyance under a warrant, see Part 3, and Division 3 of Part 4, of Chapter 9.

(7) If a conveyance is to be destroyed under this section, a biosecurity officer may cause any goods on board the conveyance to be removed from the conveyance before it is destroyed.

210 Destruction of conveyance

(1) If a biosecurity officer considers, on reasonable grounds, that the conveyance cannot be effectively treated, a biosecurity officer may, subject to subsection (2), require the conveyance to be destroyed.

Note 1: If a conveyance is required under this section to be destroyed:

(a) paragraphs 213(1)(b) and (c) let a biosecurity officer direct the operator or owner of the conveyance to arrange for it to be

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destroyed (and failure to comply with the direction may be an offence against section 215 or attract a civil penalty under that section); and

(b) paragraph 213(1)(d) lets a biosecurity officer destroy the conveyance; and

(c) paragraph 213(1)(e) lets a biosecurity officer arrange for someone else to carry out the destruction of the conveyance.

Note 2: The conveyance must not be destroyed until after any review or related proceeding (including any appeal) has been finally determined (see section 211), unless subsection (4) of this section applies or the owner or operator of the conveyance chooses.

Director of Biosecurity must approve destruction

(2) A biosecurity officer must not require the conveyance to be destroyed without the written approval of the Director of Biosecurity.

Note 1: Before giving approval under this subsection, the Director of Biosecurity must be satisfied of the matters referred to in section 32 (the principles).

Note 2: A decision to give approval for a requirement for a conveyance to be destroyed is a reviewable decision (see Part 1 of Chapter 11).

Notice must be given that conveyance is required to be destroyed

(3) Before a biosecurity officer takes action under paragraph 213(1)(b), (c), (d) or (e) in relation to the requirement to destroy the conveyance, a biosecurity officer must, by notice in writing:

(a) inform the owner or the operator of the conveyance of:

(i) the requirement that the conveyance be destroyed; and

(ii) the reasons why the conveyance is required to be destroyed; and

(b) request the owner or the operator of the conveyance to arrange for the conveyance:

(i) to be removed from Australian territory; or

(ii) to be destroyed in a manner specified in the notice;

within the period specified in the notice.

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(4) However, a notice is not required to be given under subsection (3) if either:

(a) a biosecurity officer:

(i) has not been able, despite making reasonable efforts, to locate the owner or the operator of the conveyance; and

(ii) has certified in writing to that effect; or

(b) a biosecurity officer:

(i) suspects, on reasonable grounds, that there is a high level of biosecurity risk associated with the conveyance; and

(ii) is satisfied that the conveyance needs to be destroyed as soon as practicable to reduce that risk to an acceptable level.

Note: If a biosecurity officer cannot, despite making reasonable efforts, locate the owner or the operator of a conveyance, the conveyance may be forfeited to the Commonwealth (see section 630).

Dealing with conveyance if conveyance is not removed from Australian territory or destroyed

(5) If:

(a) a notice is given to the owner or the operator of the conveyance under subsection (3) and the conveyance is not, within the period specified in the notice:

(i) removed from Australian territory; or

(ii) destroyed in a manner specified in the notice; or

(b) a certificate in relation to the conveyance has been issued under subparagraph (4)(a)(ii); or

(c) paragraph (4)(b) applies;

then:

(d) a biosecurity enforcement officer may, subject to subsection (6), take possession of the conveyance; and

(e) a biosecurity officer may, with the written approval of the Director of Biosecurity for the destruction of the conveyance, take action under paragraph 213(1)(d) or (e) to destroy the conveyance or arrange for another person to destroy it.

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Note: Before giving approval under paragraph (5)(e), the Director of Biosecurity must be satisfied of the matters referred to in section 32 (the principles).

(6) A biosecurity enforcement officer must not take possession of a conveyance under subsection (5) unless:
  (a) the owner or the operator of the conveyance has consented in writing to the taking of possession; or
  (b) the taking of possession is authorised by a conveyance possession warrant.

Note 1: This subsection does not apply in relation to a conveyance that has been forfeited to the Commonwealth under section 630.

Note 2: For the issue of warrants, and the obligations and powers of biosecurity enforcement officers in taking possession of a conveyance under a warrant, see Part 3, and Division 3 of Part 4, of Chapter 9.

(7) If a conveyance is to be destroyed under subsection 213(1), a biosecurity officer may cause any goods on board the conveyance to be removed from the conveyance before it is destroyed.

211 Conveyance must not be destroyed during review period

(1) This section applies if a biosecurity officer has given a notice in relation to a conveyance in accordance with subsection 210(3).

(2) A biosecurity officer must not take action under subsection 213(1), in relation to the requirement to destroy the conveyance, until:
  (a) after the period in which an application may be made for review (including merits or judicial review) of:
    (i) the decision to require the conveyance to be destroyed; or
    (ii) the decision of the Director of Biosecurity to approve the making of the requirement; or
  (b) if an application referred to in paragraph (a) is made—after the review or any related proceeding (including any appeal) has been finally determined.

Note: If a conveyance is required under section 210 to be destroyed:
  (a) paragraphs 213(1)(b) and (c) let a biosecurity officer direct the operator or owner of the conveyance to arrange for it to be

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destroyed (and failure to comply with the direction may be an offence against section 215 or attract a civil penalty under that section); and

(b) paragraph 213(1)(d) lets a biosecurity officer destroy the conveyance; and

(c) paragraph 213(1)(e) lets a biosecurity officer arrange for someone else to carry out the destruction of the conveyance.

(3) However, subsection (2) does not apply in relation to the conveyance if a biosecurity officer is satisfied that:

(a) there is a high level of biosecurity risk associated with the conveyance; and

(b) the biosecurity risk cannot be managed for long enough to allow a review of a decision described in paragraph (2)(a), and any related proceeding (including any appeal), to be finally determined.

(4) If:

(a) in accordance with subsection (3), a biosecurity officer takes action under subsection 213(1) in relation to the requirement to destroy the conveyance before the end of the period referred to in paragraph (2)(a); and

(b) no application for review described in paragraph (2)(a) had been made before the action was taken;

an application for review described in paragraph (2)(a) must not be made.

(5) If:

(a) an application referred to in paragraph (2)(a) has been made; and

(b) before the review or any related proceeding (including any appeal) has been finally determined, a biosecurity officer takes action in accordance with subsection (3) under subsection 213(1) in relation to the requirement to destroy the conveyance;

the review or related proceeding (including any appeal) is taken to be discontinued when the action is taken.

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212 Regulations may provide for other biosecurity measures

(1) The regulations may provide that a biosecurity officer may require a specified kind of biosecurity measure (a ***prescribed biosecurity measure***) to be taken in relation to the conveyance.

(2) Regulations made for the purposes of this section must not provide for a biosecurity officer to require any of the following kinds of biosecurity measures to be taken in relation to the conveyance:

(a) a biosecurity measure of a kind set out in Division 4 of this Part (biosecurity risk assessment powers);

(b) a biosecurity measure of a kind set out in another provision of this Division (biosecurity measures to manage unacceptable level of biosecurity risk);

(c) a biosecurity measure of a kind referred to in Subdivision B of Division 2 of Part 4 of Chapter 10 (decontamination).

(3) Regulations made for the purposes of this section may also provide for, or in relation to, other matters relating to a prescribed biosecurity measure.

(4) Without limiting subsection (3), regulations made for the purposes of this section may do any of the following:

(a) provide for persons to be notified, and the circumstances in which the persons must be notified, that a prescribed biosecurity measure is required to be taken in relation to a conveyance;

(b) if regulations made for the purposes of subsection 574(2) provide that the decision to require a prescribed biosecurity measure to be taken in relation to a conveyance is a reviewable decision—provide that, except in the circumstances (if any) prescribed, the prescribed biosecurity measure must not be taken during the period in which a review of that decision, or any related proceeding (including any appeal), has been finally determined.

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213 Powers of biosecurity officer if biosecurity measures are required

(1) If a biosecurity officer requires a biosecurity measure to be taken in relation to a conveyance under section 208 or 209 (treatment), section 210 (destruction) or a regulation made for the purposes of section 212, a biosecurity officer may:

(a) direct the person in charge of the conveyance to carry out the biosecurity measure, unless the measure is destruction of the conveyance; or

(b) direct the operator of the conveyance to arrange for the biosecurity measure to be carried out; or

(c) direct the owner of the conveyance to arrange for the biosecurity measure to be carried out, if the measure is destruction of the conveyance; or

(d) carry out the biosecurity measure; or

(e) arrange for another person with appropriate qualifications or expertise to carry out the biosecurity measure.

Note 1: Sections 210 and 211 set out prerequisites to a biosecurity officer taking certain actions under this section in relation to a requirement under section 210 to destroy a conveyance.

Note 2: A person who is given a direction under paragraph (1)(a), (b) or (c) of this section may commit an offence or contravene a civil penalty provision for failing to comply with the direction (see section 215).

Note 3: See also section 572 (general provisions relating to directions).

(2) If, under this section, a biosecurity officer:

(a) gives a direction to a person to carry out a biosecurity measure; or

(b) arranges for another person with appropriate qualifications or expertise to carry out a biosecurity measure;

a biosecurity officer may supervise the taking of the biosecurity measure.

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214 Biosecurity officer may affix notice to conveyance

(1) A biosecurity officer may affix a notice to, or as near as reasonably practicable to, a conveyance in relation to which biosecurity measures have been required under:
  (a) this Division; or
  (b) a regulation made for the purposes of section 212.

(2) The notice must state:
  (a) that the level of biosecurity risk associated with the conveyance is unacceptable; and
  (b) that biosecurity measures have been required in relation to the conveyance, in accordance with this Chapter, for the purpose of managing that biosecurity risk; and
  (c) the effect of subsections (3) and (4) and section 216.

Civil penalty provision

(3) A person is liable to a civil penalty if:
  (a) a notice is affixed to, or as near as reasonably practicable to, a conveyance under subsection (1); and
  (b) the person interferes with, removes or defaces, the notice; and
  (c) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;
    (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
    (iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(4) Subsection (3) does not apply if the person is authorised to engage in the conduct referred to in paragraph (3)(b) under this Act or under another Australian law.

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Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

215 Person must comply with direction to take biosecurity measures

(1) A person who is given a direction in relation to a conveyance under paragraph 206(2)(a), 207(2)(a) or 213(1)(a), (b) or (c) must comply with the direction.

Fault-based offences

(2) A person commits an offence if:
  (a) the person is the person in charge, the operator or the owner of an aircraft or vessel; and
  (b) the person has been given a direction under paragraph 206(2)(a), 207(2)(a) or 213(1)(a), (b) or (c); and
  (c) the person engages in conduct; and
  (d) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(3) The person in charge of an aircraft or vessel commits an offence if:
  (a) the operator of the aircraft or vessel has been given a direction under paragraph 206(2)(a), 207(2)(a) or 213(1)(b), other than a direction under paragraph 213(1)(b) to arrange for destruction of the aircraft or vessel to be carried out; and
  (b) the direction is not complied with.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(4) The operator of an aircraft or vessel commits an offence if:
  (a) the person in charge of the aircraft or vessel has been given a direction under paragraph 206(2)(a), 207(2)(a) or 213(1)(a); and
  (b) the direction is not complied with.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(5) The operator of an aircraft or vessel commits an offence if:

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(a) the owner of the aircraft or vessel has been given a direction under paragraph 213(1)(c); and
(b) the direction is not complied with.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(6) The owner of an aircraft or vessel commits an offence if:
(a) the operator of the aircraft or vessel has been given a direction under paragraph 213(1)(b) to arrange for the destruction of the aircraft or vessel to be carried out; and
(b) the direction is not complied with.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provisions

(7) The person in charge and the operator of an aircraft or vessel are each liable to a civil penalty if:
(a) the person in charge or the operator of the aircraft or vessel has been given a direction under paragraph 206(2)(a), 207(2)(a) or 213(1)(a) or (b), other than a direction under paragraph 213(1)(b) to arrange for destruction of the aircraft or vessel to be carried out; and
(b) the direction is not complied with.

Civil penalty: 120 penalty units.

(8) The operator and the owner of an aircraft or vessel are each liable to a civil penalty if:
(a) the operator or the owner of the aircraft or vessel has been given a direction under paragraph 213(1)(b) or (c) to arrange for destruction of the aircraft or vessel to be carried out; and
(b) the direction is not complied with.

Civil penalty: 120 penalty units.

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216 Unauthorised persons must not move etc. conveyance in relation to which biosecurity measures have been required

(1) A person contravenes this subsection if:

(a) a notice has been affixed to, or as near as reasonably practicable to, a conveyance under subsection 214(1); and

(b) the person moves, deals with or interferes with the conveyance; and

(c) none of the following applies:

(i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;

(ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;

(iii) the person has been given permission to engage in that conduct under section 557.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 534).

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(b) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

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Civil penalty: 120 penalty units.

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Division 6—Leaving conveyances

217 Person in charge of conveyance may leave conveyance unless directed not to do so

(1) The person in charge of a conveyance that is subject to biosecurity control may leave the conveyance unless a biosecurity officer has directed the person not to leave the conveyance.

Note: If the conveyance is an incoming aircraft or vessel, the person in charge of the aircraft or vessel must not leave the aircraft or vessel unless pratique has been granted in relation to the aircraft or vessel or he or she is authorised to leave by or under this Act or another Australian law (see sections 48 and 49).

(2) A biosecurity officer may direct the person in charge of the conveyance not to leave the conveyance for a specified period. The period must not be longer than 24 hours.

Note: See also section 572 (general provisions relating to directions).

(3) A person who is given a direction under subsection (2) must comply with the direction.

Fault-based offence

(4) A person commits an offence if:
(a) the person is given a direction under subsection (2); and
(b) the person engages in conduct; and
(c) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 120 penalty units.

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Division 7—Release of conveyances from biosecurity control

218 When conveyance is released from biosecurity control

(1) A conveyance that is subject to biosecurity control is released from biosecurity control if:

(a) a biosecurity officer notifies the person in charge of the conveyance, the owner of the conveyance or the operator of the conveyance, under section 219, that the conveyance is released from biosecurity control; or

(b) a written notice releasing the conveyance from biosecurity control is given to the person in charge of the conveyance by a biosecurity industry participant who is authorised to release the conveyance in accordance with an approved arrangement covering the biosecurity industry participant; or

(c) the conveyance is destroyed; or

(d) the conveyance leaves Australian territory.

Note: If a conveyance is released from biosecurity control under paragraph (1)(d) by leaving Australian territory during a journey between places in Australian territory, the conveyance becomes subject to biosecurity control again when it re-enters Australian territory during that journey (see subsections 191(4) and 192(5)).

(2) Neither of the following is a legislative instrument:

(a) a notification that is given in writing under paragraph (1)(a);

(b) a notice referred to in paragraph (1)(b).

219 Notice releasing conveyance from biosecurity control

Giving notice

(1) For the purposes of paragraph 218(1)(a), a notice releasing a conveyance from biosecurity control may be given:

(a) in writing (including by an automated electronic system); or

(b) orally.

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Automated release notices

(2) An automated electronic system that is used to produce notices (***automated release notices***) releasing conveyances from biosecurity control for the purposes of paragraph 218(1)(a) must comply with the requirements prescribed by the regulations.

(3) An automated release notice is taken to have been given by a biosecurity officer.

(4) An automated release notice in relation to a conveyance is of no effect to the extent that it is inconsistent with an earlier direction given in relation to the conveyance by a biosecurity officer under this Act.

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Division 8—Miscellaneous

220 Information about biosecurity requirements must be given to persons on board incoming aircraft or vessels

(1) The person in charge or the operator of an incoming aircraft or vessel that is subject to biosecurity control because of subsection 191(2) or (4) must ensure that each person (including a member of the crew) on board the aircraft or vessel is given information about biosecurity requirements under the laws of the Commonwealth.

Civil penalty: 120 penalty units.

(2) The content and form of information given under subsection (1) must have been approved by the Director of Biosecurity or the Director of Human Biosecurity.

(3) The information may be given in writing or orally, including by means of an audio, or audio-visual, recording.

221 Quarantine signal

(1) The person in charge of a vessel that is within Australian territory must ensure that the prescribed quarantine signal is displayed on the vessel in the circumstances and in the manner prescribed by the regulations.

(2) The regulations must prescribe:
  (a) the quarantine signal; and
  (b) the circumstances in which the quarantine signal must be displayed on a vessel within Australian territory; and
  (c) the manner in which the quarantine signal must be displayed.

Strict liability offence

(3) A person commits an offence of strict liability if the person contravenes subsection (1).

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Note: For strict liability, see section 6.1 of the *Criminal Code*.

Penalty for contravention of this subsection: 50 penalty units.

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Part 3—First points of entry and biosecurity entry points

Division 1—Introduction

222 Simplified outline of this Part

This Part deals with first points of entry and biosecurity entry points for conveyances and goods that are subject to biosecurity control.

Division 2 provides for the Director of Biosecurity or the Director of Human Biosecurity to determine the landing places in Australian territory that are first points of entry for certain aircraft and goods that are subject to biosecurity control.

Division 2 also provides for an area of a landing place that is a first point of entry to be designated as a biosecurity entry point for certain aircraft and goods that are subject to biosecurity control.

Division 3 provides for the Director of Biosecurity or the Director of Human Biosecurity to determine the ports in Australian territory that are first points of entry for certain vessels and goods that are subject to biosecurity control.

Division 3 also provides for an area of a port that is a first point of entry to be designated as a biosecurity entry point for vessels and goods that are subject to biosecurity control.

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Division 2—First points of entry and biosecurity entry points for incoming aircraft and goods

223 Determination of landing places that are first points of entry for aircraft or goods that are subject to biosecurity control

(1) The Director of Biosecurity or the Director of Human Biosecurity may determine that a specified landing place in Australian territory is a first point of entry for any of the following:
  (a) aircraft generally, or a specified class of aircraft, that are subject to biosecurity control;
  (b) specified goods, or a specified class of goods:
    (i) that are subject to biosecurity control; or
    (ii) in relation to which an exposed goods order is in force.

(2) The Director of Biosecurity or the Director of Human Biosecurity may make a determination under subsection (1) in relation to a landing place only if the Director who is proposing to make the determination is satisfied that:
  (a) the requirements (if any) prescribed by the regulations in relation to the landing place are met; and
  (b) the level of biosecurity risk associated with operations carried out at the landing place is acceptable.

(3) For the purpose of being satisfied of the matters referred to in subsection (2), the Director of Biosecurity or the Director of Human Biosecurity (as the case may be) may have regard to any matter that the Director considers relevant.

Note: A determination under subsection (1) may be varied under section 226 or 227 or revoked under section 227. Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to this section.

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224 Biosecurity entry points for aircraft and goods that are subject to biosecurity control

A determination under subsection 223(1) in relation to a landing place may designate a specified area of the landing place as a biosecurity entry point for any of the following:

(a) aircraft generally, or a specified class of aircraft, as referred to in paragraph 223(1)(a);

(b) specified goods, or a specified class of goods, as referred to in paragraph 223(1)(b).

225 Determination may be subject to conditions

(1) A determination under subsection 223(1) in relation to a landing place may be expressed to be subject to conditions specified in the determination.

(2) Without limiting subsection (1), the conditions may relate to any of the following:

(a) an owner or lessee of the landing place;

(b) a person or body that is responsible for carrying out operations at the landing place;

(c) the operations carried out at the landing place.

226 Determination may have effect for specified period

(1) A determination under subsection 223(1) may be expressed to have effect for a specified period.

(2) If a determination under subsection 223(1) is expressed to have effect for a specified period, the Director who made the determination may vary the determination to extend or shorten the period.

227 Variation and revocation of determination etc.

If a determination is made under subsection 223(1) in relation to a landing place, the Director who made the determination may vary

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or revoke the determination, or vary the conditions specified in the determination (including by imposing new conditions), if the Director is satisfied that:

(a) one or more requirements prescribed by regulations made for the purposes of paragraph 223(2)(a) in relation to the landing place are no longer being met; or

(b) the level of biosecurity risk associated with operations carried out at the landing place has become unacceptable; or

(c) a condition specified in the determination under section 225 has not been, or is not being, met; or

(d) the landing place is no longer required to be a first point of entry for aircraft or goods to which the determination relates; or

(e) a circumstance prescribed by the regulations has occurred.

228 Determination is a legislative instrument

Each of the following is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument:

(a) a determination made under subsection 223(1);

(b) an instrument that varies or revokes a determination made under subsection 223(1).

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Division 3—First points of entry and biosecurity entry points for incoming vessels and goods

229 Determination of ports that are first points of entry for vessels or goods that are subject to biosecurity control

(1) The Director of Biosecurity or the Director of Human Biosecurity may determine that a specified port in Australian territory is a first point of entry for any of the following:

(a) vessels generally, or a specified class of vessels, that are subject to biosecurity control;

(b) specified goods, or a specified class of goods:

(i) that are subject to biosecurity control; or

(ii) in relation to which an exposed goods order is in force.

(2) The Director of Biosecurity or the Director of Human Biosecurity may make a determination under subsection (1) in relation to a port only if the Director who is proposing to make the determination is satisfied that:

(a) the requirements (if any) prescribed by the regulations in relation to the port are met; and

(b) the level of biosecurity risk associated with operations carried out at the port is acceptable.

(3) For the purpose of being satisfied of the matters referred to in subsection (2), the Director of Biosecurity or the Director of Human Biosecurity (as the case may be) may have regard to any matter that the Director considers relevant.

Note: A determination under subsection (1) may be varied under section 232 or 233 or revoked under section 233. Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to this section.

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230 Biosecurity entry points for vessels and goods that are subject to biosecurity control

A determination under subsection 229(1) in relation to a port may designate a specified area of the port as a biosecurity entry point for any of the following:

(a) vessels generally, or a specified class of vessels, as referred to in paragraph 229(1)(a);

(b) specified goods, or a specified class of goods, as referred to in paragraph 229(1)(b).

231 Determination may be subject to conditions

(1) A determination under subsection 229(1) in relation to a port may be expressed to be subject to conditions specified in the determination.

(2) Without limiting subsection (1), the conditions may relate to any of the following:

(a) an owner or lessee of the port;

(b) a person or body that is responsible for carrying out operations at the port;

(c) the operations carried out at the port.

232 Determination may have effect for specified period

(1) A determination under subsection 229(1) may be expressed to have effect for a specified period.

(2) If a determination under subsection 229(1) is expressed to have effect for a specified period, the Director who made the determination may vary the determination to extend or shorten the period.

233 Variation and revocation of determination etc.

If a determination is made under subsection 229(1) in relation to a port, the Director who made the determination may vary or revoke

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the determination, or vary the conditions specified in the determination (including by imposing new conditions), if the Director is satisfied that:

(a) one or more requirements prescribed by regulations made for the purposes of paragraph 229(2)(a) in relation to the port are no longer being met; or

(b) the level of biosecurity risk associated with operations carried out at the port has become unacceptable; or

(c) a condition specified in the determination under section 231 has not been, or is not being, met; or

(d) the port is no longer required to be a first point of entry for vessels or goods to which the determination relates; or

(e) a circumstance prescribed by the regulations has occurred.

234 Determination is a legislative instrument

Each of the following is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument:

(a) a determination made under subsection 229(1);

(b) an instrument that varies or revokes a determination made under subsection 229(1).

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Part 4—Entry points for incoming aircraft and vessels

Division 1—Introduction

235 Simplified outline of this Part

This Part makes provision in relation to the places (the ***entry points***) in Australian territory where incoming aircraft and vessels can land or be moored.

Division 2 deals with entry points for aircraft. Unless permitted or directed to do otherwise, an aircraft must land at a first point of entry for the aircraft and, if there is a biosecurity entry point for the aircraft at that first point of entry, the aircraft must be brought to that biosecurity entry point.

Division 3 deals with entry points for vessels. Unless permitted or directed to do otherwise, a vessel must be moored at a first point of entry for the vessel and, if there is a biosecurity entry point for the vessel at that first point of entry, the vessel must be brought to that biosecurity entry point.

Division 4 allows for directions to be given requiring activities to control vectors to be carried out in first points of entry. Division 4 also provides for biosecurity officers and biosecurity enforcement officers to enter landing places or ports where an aircraft or vessel that is subject to biosecurity control has arrived, or intends to arrive, for the purpose of performing functions or exercising powers under this Act.

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Division 2—Entry points for aircraft that intend to land in Australian territory

236 Application of this Division

This Division applies in relation to an aircraft that intends to land at a landing place in Australian territory.

Note: A reference in this Division to an aircraft does not include an aircraft brought or imported into Australian territory from outside Australian territory on board another conveyance (see subsection 16(3)).

237 Aircraft must land at first point of entry

(1) An aircraft that is subject to biosecurity control must not land at a landing place in Australian territory that is not a first point of entry for the aircraft, unless:
  (a) permission has been given under subsection 239(2) for the aircraft to land at that landing place; or
  (b) a direction has been given under paragraph 240(1)(a) or 242(1)(a) requiring the aircraft to land at that landing place.

Fault-based offences

(2) A person commits an offence if:
  (a) the person is the person in charge or the operator of an aircraft; and
  (b) the aircraft is subject to biosecurity control; and
  (c) the person permits the aircraft to land at a landing place in Australian territory that is not a first point of entry for the aircraft; and
  (d) neither of the following applies:
    (i) permission has been given under subsection 239(2) for the aircraft to land at that landing place;
    (ii) a direction has been given under paragraph 240(1)(a) or 242(1)(a) requiring the aircraft to land at that landing place.

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Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(3) The person in charge of an aircraft commits an offence if:
  (a) the aircraft is subject to biosecurity control; and
  (b) the operator of the aircraft permits the aircraft to land at a landing place in Australian territory that is not a first point of entry for the aircraft; and
  (c) neither of the following applies:
    (i) permission has been given under subsection 239(2) for the aircraft to land at that landing place;
    (ii) a direction has been given under paragraph 240(1)(a) or 242(1)(a) requiring the aircraft to land at that landing place.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(4) The operator of an aircraft commits an offence if:
  (a) the aircraft is subject to biosecurity control; and
  (b) the person in charge of the aircraft permits the aircraft to land at a landing place in Australian territory that is not a first point of entry for the aircraft; and
  (c) neither of the following applies:
    (i) permission has been given under subsection 239(2) for the aircraft to land at that landing place;
    (ii) a direction has been given under paragraph 240(1)(a) or 242(1)(a) requiring the aircraft to land at that landing place.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(5) The person in charge and the operator of an aircraft are each liable to a civil penalty if:
  (a) the aircraft is subject to biosecurity control; and
  (b) the aircraft lands at a landing place in Australian territory that is not a first point of entry for the aircraft; and

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(c) neither of the following applies:
  (i) permission has been given under subsection 239(2) for the aircraft to land at that landing place;
  (ii) a direction has been given under paragraph 240(1)(a) or 242(1)(a) requiring the aircraft to land at that landing place.

Civil penalty: 120 penalty units.

238 Aircraft must be brought to relevant biosecurity entry point (if any) at first point of entry

(1) If:
  (a) an aircraft that is subject to biosecurity control has landed at a first point of entry for the aircraft; and
  (b) there is a biosecurity entry point for the aircraft at the first point of entry;

the aircraft must be brought to that biosecurity entry point as soon as practicable.

Note: Goods that are to be unloaded from the aircraft must generally be brought to a biosecurity entry point (if any) for the goods (see sections 147 and 148).

Fault-based offences

(2) A person commits an offence if:
  (a) the person is the person in charge or the operator of an aircraft; and
  (b) the aircraft is subject to biosecurity control; and
  (c) the aircraft has landed at a first point of entry for the aircraft; and
  (d) there is a biosecurity entry point for the aircraft at the first point of entry; and
  (e) the person does not ensure that the aircraft is brought to that biosecurity entry point as soon as practicable.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

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(3) The person in charge of an aircraft commits an offence if:
  (a) the aircraft is subject to biosecurity control; and
  (b) the aircraft has landed at a first point of entry for the aircraft; and
  (c) there is a biosecurity entry point for the aircraft at the first point of entry; and
  (d) the operator of the aircraft does not ensure that the aircraft is brought to that biosecurity entry point as soon as practicable.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(4) The operator of an aircraft commits an offence if:
  (a) the aircraft is subject to biosecurity control; and
  (b) the aircraft has landed at a first point of entry for the aircraft; and
  (c) there is a biosecurity entry point for the aircraft at the first point of entry; and
  (d) the person in charge of the aircraft does not ensure that the aircraft is brought to that biosecurity entry point as soon as practicable.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(5) The person in charge and the operator of an aircraft are each liable to a civil penalty if:
  (a) the aircraft is subject to biosecurity control; and
  (b) the aircraft has landed at a first point of entry for the aircraft; and
  (c) there is a biosecurity entry point for the aircraft at the first point of entry; and
  (d) the aircraft is not brought to that biosecurity entry point as soon as practicable.

Civil penalty: 120 penalty units.

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239 Permission for aircraft to land at landing place that is not first point of entry for aircraft

(1) The person in charge or the operator of an aircraft that intends to land at a landing place in Australian territory may, in writing, request the Director of Biosecurity or the Director of Human Biosecurity to give permission for the aircraft to land at a specified landing place in Australian territory that is not a first point of entry for the aircraft.

Note: The person in charge and the operator of the aircraft may also request permission for goods to be unloaded at the specified landing place (see section 146).

(2) If the Director of Biosecurity or the Director of Human Biosecurity receives a request under subsection (1), the Director may, by written notice to the person in charge or the operator of the aircraft, give permission for the aircraft to land at the landing place specified in the request.

(3) The Director of Biosecurity or the Director of Human Biosecurity may give permission under subsection (2) subject to any conditions specified in the notice giving the permission.

Fault-based offences

(4) A person commits an offence if:
- (a) the person is the person in charge or the operator of an aircraft; and
- (b) the person has been given a permission under subsection (2); and
- (c) the permission is subject to conditions; and
- (d) the person engages in conduct; and
- (e) the conduct contravenes the conditions.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(5) The person in charge of an aircraft commits an offence if:
- (a) the operator of the aircraft has been given a permission under subsection (2); and

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(b) the permission is subject to conditions; and
(c) the conditions are not complied with.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(6) The operator of an aircraft commits an offence if:
(a) the person in charge of the aircraft has been given a permission under subsection (2); and
(b) the permission is subject to conditions; and
(c) the conditions are not complied with.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(7) The person in charge and the operator of an aircraft are each liable to a civil penalty if:
(a) the person in charge or the operator of the aircraft has been given a permission under subsection (2); and
(b) the permission is subject to conditions; and
(c) the conditions are not complied with.

Civil penalty: 120 penalty units.

240 Direction requiring aircraft to land, or not to land, at specified landing place

(1) Subject to subsections (2) and (3), a biosecurity officer may give the person in charge or the operator of an aircraft that intends to land at a landing place in Australian territory:
(a) a direction requiring the aircraft to land at a specified landing place in Australian territory; or
(b) a direction requiring the aircraft not to land at one or more specified landing places in Australian territory.

Note: The person in charge or the operator of the aircraft may commit an offence or contravene a civil penalty provision for failing to comply with a direction given under this subsection (see section 243).

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(2) A direction may be given under paragraph (1)(a) or (b) only if a biosecurity officer is satisfied that the direction is necessary to manage biosecurity risks associated with the aircraft or any person or thing on board the aircraft.

(3) A direction must not be given under paragraph (1)(b) requiring the aircraft not to land at any landing place in Australian territory.

Note: A direction of this kind may be given under section 241.

(4) A biosecurity officer must revoke a direction given under paragraph (1)(b) if a biosecurity officer is satisfied that the direction is no longer necessary to manage biosecurity risks associated with the aircraft or any person or thing on board the aircraft.

(5) Subsection (4) does not, by implication, limit the power of a biosecurity officer to revoke a direction given under paragraph (1)(b).

241 Direction requiring aircraft not to land at any landing place in Australian territory

(1) Subject to subsections (2) and (3), a biosecurity officer may give the person in charge or the operator of an aircraft that intends to land at a landing place in Australian territory a direction requiring the aircraft not to land at any landing place in Australian territory.

Note: The person in charge or the operator of the aircraft may commit an offence or contravene a civil penalty provision for failing to comply with a direction given under this subsection (see section 243).

(2) A biosecurity officer must not give a direction under subsection (1) without the written approval of the Director of Biosecurity.

Note: Before giving approval under this subsection, the Director of Biosecurity must be satisfied of the matters referred to in subsection (3) and the matters referred to in section 32 (the principles).

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(3) The Director of Biosecurity must not give approval for a direction to be given under subsection (1) unless the Director is satisfied, on reasonable grounds, that:
   (a) the level of biosecurity risk associated with the aircraft or any person or thing on board the aircraft is unacceptable; and
   (b) biosecurity measures cannot be taken to reduce that level of biosecurity risk to an acceptable level.

(4) The Director of Biosecurity must not give approval for a direction to be given under subsection (1) for the purpose of managing human health risks associated with the aircraft or any person or thing on board the aircraft.

(5) A biosecurity officer must revoke a direction given under subsection (1) if the Director of Biosecurity is satisfied that:
   (a) the level of biosecurity risk associated with the aircraft or any person or thing on board the aircraft is no longer unacceptable; or
   (b) biosecurity measures can be taken to reduce the level of biosecurity risk associated with the aircraft or any person or thing on board the aircraft to an acceptable level; or
   (c) the direction should be revoked for any other reason.

Note: See also section 572 (general provisions relating to directions).

242 Direction requiring aircraft to land, or not to land, at specified landing place—management of human health risks

(1) Subject to subsections (2) and (3), a chief human biosecurity officer or a human biosecurity officer may give the person in charge or the operator of an aircraft that intends to land at a landing place in Australian territory:
   (a) a direction requiring the aircraft to land at a specified landing place in Australian territory; or
   (b) a direction requiring the aircraft not to land at one or more specified landing places in Australian territory.

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Note: The person in charge or the operator of the aircraft may commit an offence or contravene a civil penalty provision for failing to comply with a direction given under this subsection (see section 243).

(2) A direction may be given under paragraph (1)(a) or (b) only if a chief human biosecurity officer or a human biosecurity officer is satisfied, on reasonable grounds, that the direction is necessary to manage human health risks associated with the aircraft or any person or thing on board the aircraft.

(3) A direction must not be given under paragraph (1)(b) requiring the aircraft not to land at any landing place in Australian territory.

(4) A chief human biosecurity officer or a human biosecurity officer must revoke a direction given under paragraph (1)(b) if the officer is satisfied that the direction is no longer necessary to manage human health risks associated with the aircraft or any person or thing on board the aircraft.

(5) Subsection (4) does not, by implication, limit the power of a chief human biosecurity officer or a human biosecurity officer to revoke a direction given under paragraph (1)(b).

243 Person who is given direction must comply with it

(1) A person who is given a direction under a provision of this Division must comply with the direction.

Fault-based offence

(2) A person commits an offence if:
  (a) the person is given a direction under a provision of this Division; and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

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Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

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Division 3—Entry points for vessels that intend to be moored in Australian territory

244 Application of this Division

This Division applies in relation to a vessel that intends to be moored at a port in Australian territory.

Note 1: A reference in this Division to a vessel does not include a vessel brought or imported into Australian territory from outside Australian territory on board another conveyance (see subsection 16(4)).

Note 2: A vessel includes an installation (see paragraph (b) of the definition of ***vessel*** in section 9, and the definition of ***installation*** in section 20).

245 Vessel must be moored at first point of entry

(1) A vessel that is subject to biosecurity control must not be moored at a port in Australian territory that is not a first point of entry for the vessel, unless:
  (a) permission has been given under subsection 247(2) for the vessel to be moored at that port; or
  (b) a direction has been given under paragraph 248(1)(a) or 250(1)(a) requiring the vessel to be moored at that port.

Fault-based offences

(2) A person commits an offence if:
  (a) the person is the person in charge or the operator of a vessel; and
  (b) the vessel is subject to biosecurity control; and
  (c) the person permits the vessel to be moored at a port in Australian territory that is not a first point of entry for the vessel; and
  (d) neither of the following applies:
    (i) permission has been given under subsection 247(2) for the vessel to be moored at that port;

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(ii) a direction has been given under paragraph 248(1)(a) or 250(1)(a) requiring the vessel to be moored at that port.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(3) The person in charge of a vessel commits an offence if:
(a) the vessel is subject to biosecurity control; and
(b) the operator of the vessel permits the vessel to be moored at a port in Australian territory that is not a first point of entry for the vessel; and
(c) neither of the following applies:
(i) permission has been given under subsection 247(2) for the vessel to be moored at that port;
(ii) a direction has been given under paragraph 248(1)(a) or 250(1)(a) requiring the vessel to be moored at that port.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(4) The operator of a vessel commits an offence if:
(a) the vessel is subject to biosecurity control; and
(b) the person in charge of the vessel permits the vessel to be moored at a port in Australian territory that is not a first point of entry for the vessel; and
(c) neither of the following applies:
(i) permission has been given under subsection 247(2) for the vessel to be moored at that port;
(ii) a direction has been given under paragraph 248(1)(a) or 250(1)(a) requiring the vessel to be moored at that port.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(5) The person in charge and the operator of a vessel are each liable to a civil penalty if:
(a) the vessel is subject to biosecurity control; and
(b) the vessel is moored at a port in Australian territory that is not a first point of entry for the vessel; and

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(c) neither of the following applies:
  (i) permission has been given under subsection 247(2) for the vessel to be moored at that port;
  (ii) a direction has been given under paragraph 248(1)(a) or 250(1)(a) requiring the vessel to be moored at that port.

Civil penalty: 120 penalty units.

246 Vessel must be brought to relevant biosecurity entry point (if any) at first point of entry

(1) If:
  (a) a vessel that is subject to biosecurity control has been moored at a first point of entry for the vessel; and
  (b) there is a biosecurity entry point for the vessel at the first point of entry;

the vessel must be brought to that biosecurity entry point as soon as practicable.

Note: Goods that are to be unloaded from the vessel must generally be brought to a biosecurity entry point (if any) for the goods (see sections 147 and 148).

Fault-based offences

(2) A person commits an offence if:
  (a) the person is the person in charge or the operator of a vessel; and
  (b) the vessel is subject to biosecurity control; and
  (c) the vessel has been moored at a first point of entry for the vessel; and
  (d) there is a biosecurity entry point for the vessel at the first point of entry; and
  (e) the person does not ensure that the vessel is brought to that biosecurity entry point as soon as practicable.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(3) The person in charge of a vessel commits an offence if:

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(a) the vessel is subject to biosecurity control; and
(b) the vessel has been moored at a first point of entry for the vessel; and
(c) there is a biosecurity entry point for the vessel at the first point of entry; and
(d) the operator of the vessel does not ensure that the vessel is brought to that biosecurity entry point as soon as practicable.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(4) The operator of a vessel commits an offence if:
(a) the vessel is subject to biosecurity control; and
(b) the vessel has been moored at a first point of entry for the vessel; and
(c) there is a biosecurity entry point for the vessel at the first point of entry; and
(d) the person in charge of the vessel does not ensure that the vessel is brought to that biosecurity entry point as soon as practicable.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(5) The person in charge and the operator of a vessel are each liable to a civil penalty if:
(a) the vessel is subject to biosecurity control; and
(b) the vessel has been moored at a first point of entry for the vessel; and
(c) there is a biosecurity entry point for the vessel at the first point of entry; and
(d) the vessel is not brought to that biosecurity entry point as soon as practicable.

Civil penalty: 120 penalty units.

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247 Permission for vessel to be moored at port that is not first point of entry for vessel

(1) The person in charge or the operator of a vessel that intends to be moored at a port in Australian territory may, in writing, request the Director of Biosecurity or the Director of Human Biosecurity to give permission for the vessel to be moored at a specified port in Australian territory that is not a first point of entry for the vessel.

Note: The person in charge or the operator of the vessel may also request permission for goods to be unloaded at the specified port (see section 146).

(2) If the Director of Biosecurity or the Director of Human Biosecurity receives a request under subsection (1), the Director may, by written notice to the person in charge or the operator of the vessel, give permission for the vessel to be moored at the port specified in the request.

(3) The Director of Biosecurity or the Director of Human Biosecurity may give permission under subsection (2) subject to any conditions specified in the notice giving the permission.

Fault-based offences

(4) A person commits an offence if:
- (a) the person is the person in charge or the operator of a vessel; and
- (b) the person has been given a permission under subsection (2); and
- (c) the permission is subject to conditions; and
- (d) the person engages in conduct; and
- (e) the conduct contravenes the conditions.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(5) The person in charge of a vessel commits an offence if:
- (a) the operator of the vessel has been given a permission under subsection (2); and
- (b) the permission is subject to conditions; and

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(c) the conditions are not complied with.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(6) The operator of a vessel commits an offence if:
(a) the person in charge of the vessel has been given a permission under subsection (2); and
(b) the permission is subject to conditions; and
(c) the conditions are not complied with.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(7) The person in charge and the operator of a vessel are each liable to a civil penalty if:
(a) the person in charge or the operator of the vessel has been given a permission under subsection (2); and
(b) the permission is subject to conditions; and
(c) the conditions are not complied with.

Civil penalty: 120 penalty units.

248 Direction requiring vessel to be moored, or not to be moored, at specified port

(1) Subject to subsections (2) and (3), a biosecurity officer may give the person in charge or the operator of a vessel that intends to be moored at a port in Australian territory:
(a) a direction requiring the vessel to be moored at a specified port in Australian territory; or
(b) a direction requiring the vessel not to be moored at one or more specified ports in Australian territory.

Note: The person in charge or the operator of the vessel may commit an offence or contravene a civil penalty provision for failing to comply with a direction given under this subsection (see section 251).

(2) A direction may be given under paragraph (1)(a) or (b) only if a biosecurity officer is satisfied that the direction is necessary to

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manage biosecurity risks associated with the vessel or any person or thing on board the vessel.

(3) A direction must not be given under paragraph (1)(b) requiring the vessel not to be moored at any port in Australian territory.

Note: A direction of this kind may be given under section 249.

(4) A biosecurity officer must revoke a direction given under paragraph (1)(b) if a biosecurity officer is satisfied that the direction is no longer necessary to manage biosecurity risks associated with the vessel or any person or thing on board the vessel.

(5) Subsection (4) does not, by implication, limit the power of a biosecurity officer to revoke a direction given under paragraph (1)(b).

249 Direction requiring vessel not to be moored at any port in Australian territory

(1) Subject to subsections (2) and (3), a biosecurity officer may give the person in charge or the operator of a vessel that intends to be moored at a port in Australian territory a direction requiring the vessel not to be moored at any port in Australian territory.

Note: The person in charge or the operator of the vessel may commit an offence or contravene a civil penalty provision for failing to comply with a direction given under this subsection (see section 251).

(2) A biosecurity officer must not give a direction under subsection (1) without the written approval of the Director of Biosecurity.

Note: Before giving approval under this subsection, the Director of Biosecurity must be satisfied of the matters referred to in subsection (3) and the matters referred to in section 32 (the principles).

(3) The Director of Biosecurity must not give approval for a direction to be given under subsection (1) unless the Director is satisfied, on reasonable grounds, that:

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(a) the level of biosecurity risk associated with the vessel or any person or thing on board the vessel is unacceptable; and
(b) biosecurity measures cannot be taken to reduce that level of biosecurity risk to an acceptable level.

(4) A direction must not be given under subsection (1) for the purpose of managing human health risks associated with the vessel or any person or thing on board the vessel.

(5) A biosecurity officer must revoke a direction given under subsection (1) if the Director of Biosecurity is satisfied that:
(a) the level of biosecurity risk associated with the vessel or any person or thing on board the vessel is no longer unacceptable; or
(b) biosecurity measures can be taken to reduce the level of biosecurity risk associated with the vessel or any person or thing on board the vessel to an acceptable level; or
(c) the direction should be revoked for any other reason.

Note: See also section 572 (general provisions relating to directions).

250 Direction requiring vessel to be moored, or not to be moored, at specified port—management of human health risks

(1) Subject to subsections (2) and (3), a chief human biosecurity officer or a human biosecurity officer may give the person in charge or the operator of a vessel that intends to be moored at a port in Australian territory:
(a) a direction requiring the vessel to be moored at a specified port in Australian territory; or
(b) a direction requiring the vessel not to be moored at one or more specified ports in Australian territory.

Note: The person in charge or the operator of the vessel may commit an offence or contravene a civil penalty provision for failing to comply with a direction given under this subsection (see section 251).

(2) A direction may be given under paragraph (1)(a) or (b) only if a chief human biosecurity officer or a human biosecurity officer is satisfied, on reasonable grounds, that the direction is necessary to

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manage human health risks associated with the vessel or any person or thing on board the vessel.

(3) A direction must not be given under paragraph (1)(b) requiring the vessel not to be moored at any port in Australian territory.

(4) A chief human biosecurity officer or a human biosecurity officer must revoke a direction given under paragraph (1)(b) if the officer is satisfied that the direction is no longer necessary to manage human health risks associated with the vessel or any person or thing on board the vessel.

(5) Subsection (4) does not, by implication, limit the power of a chief human biosecurity officer or a human biosecurity officer to revoke a direction given under paragraph (1)(b).

251 Person who is given direction must comply with it

(1) A person who is given a direction under a provision of this Division must comply with the direction.

Fault-based offence

(2) A person commits an offence if:
  (a) the person is given a direction under a provision of this Division; and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

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Division 4—Miscellaneous

252 Biosecurity officer etc. may enter landing places or ports

(1) This section applies in relation to the following premises:
  (a) a landing place in Australian territory where an aircraft that is subject to biosecurity control has landed or intends to land;
  (b) a port in Australian territory where a vessel that is subject to biosecurity control has been moored or intends to be moored.

(2) A biosecurity officer or a biosecurity enforcement officer may enter the premises at any time for the purpose of performing functions, or exercising powers, under this Act.

Note 1: Before entering premises under this subsection, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

Note 2: For the obligations and powers of biosecurity enforcement officers entering premises under this section, see Part 5 of Chapter 9.

(3) However, a biosecurity officer is not authorised to enter premises under subsection (2) unless a biosecurity enforcement officer accompanies the biosecurity officer.

(4) In this section, ***premises*** does not include a conveyance.

Note: A biosecurity enforcement officer may also enter a landing place or port that is a first point of entry for monitoring and searching purposes (see Division 2 of Part 5 of Chapter 9).

252A Direction to operator of first point of entry to carry out activities to control vectors

(1) The Director of Human Biosecurity or a chief human biosecurity officer for a State or Territory may, in writing, direct the operator of a first point of entry to carry out specified activities within the area of a first point of entry to control a vector if the Director or chief has reasonable grounds to believe that carrying out those

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activities in that area is necessary to ensure that the vector has not spread into, or is not likely to become established in, the area.

(2) A chief human biosecurity officer for a State or Territory may give a direction under subsection (1) to an operator of a first point of entry only if the first point of entry is in the State or Territory.

Offence and civil penalty

(3) A person commits an offence if:
  (a) the person is given a direction under this section; and
  (b) the person fails to comply with the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(4) A person who is given a direction must comply with the direction.

Civil penalty: 120 penalty units.

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Part 5—Ship sanitation

Division 1—Introduction

253 Simplified outline of this Part

This Part provides for the regulations to prescribe a scheme to give effect to Australia's rights and obligations in relation to ship sanitation for the purposes of the International Health Regulations.

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Division 2—Ship sanitation

254 Application of this Division

This Division applies in relation to vessels that are in Australian territory and that:

(a) have entered Australian territory during a voyage that commenced outside Australian territory; or

(b) intend to leave Australian territory.

255 Regulations may prescribe scheme in relation to ship sanitation

(1) The regulations may prescribe a scheme providing for the following:

(a) the meaning of ***sanitation health risk***;

(b) determining the level of sanitation health risk associated with a vessel;

(c) the circumstances in which the level of sanitation health risk associated with a vessel is unacceptable;

(d) certificates (to be called ship sanitation certificates) to be issued in relation to the level of sanitation health risk associated with a vessel;

(e) recognising such certificates issued by, or on behalf of, competent authorities;

(f) the circumstances in which a vessel in a port declared under section 256 may, at the request of the operator of the vessel, be inspected for the purposes of the scheme;

(g) measures that the operator of a vessel may take to manage sanitation health risks associated with the vessel for the purposes of certification under the scheme;

(h) the circumstances in which section 257 (assessing and managing sanitation health risks) applies to a vessel in a port in Australian territory;

(i) without limiting section 580, disclosing information obtained under the scheme to any of the following:

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(i) a Commonwealth body;
(ii) a State or Territory body;
(iii) a biosecurity industry participant;
(iv) a competent authority;

(j) classes of vessels to which the scheme does not apply.

Note: The regulations may prescribe decisions made under the scheme that are ***reviewable decisions*** (see subsection 574(2)).

(2) Without limiting subsection (1), the scheme may provide for the following matters in relation to the certificates referred to in paragraphs (1)(d) and (e):

(a) extending the period for which a certificate remains in force;
(b) who may issue or extend a certificate;
(c) the form and content of a certificate;
(d) making notes on a certificate.

Giving effect to International Health Regulations

(3) The scheme must be appropriate and adapted to give effect to Australia's rights and obligations in relation to ship sanitation under the International Health Regulations.

256 Declaring ports at which vessels may be inspected for the purposes of the scheme

(1) The Director of Human Biosecurity may declare that a port in Australian territory is a port at which a vessel may be inspected for the purposes of the scheme referred to in subsection 255(1).

(2) The Director of Human Biosecurity must consult the Director of Biosecurity before making a declaration under subsection (1).

(3) A declaration made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the declaration.

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257 Assessing and managing sanitation health risks

(1) This section applies to a vessel in a port in Australian territory in the circumstances provided for by the scheme under paragraph 255(1)(h).

(2) The following provisions of this Act (the ***applied provisions***) apply in relation to the vessel, subject to the modifications set out in subsections (4) to (6), in the same way as those provisions apply in relation to a vessel that is subject to biosecurity control because of subsection 191(2):

(a) Division 4 of Part 2 of this Chapter (assessment of level of biosecurity risk);

(b) Division 5 of Part 2 of this Chapter (biosecurity measures to manage unacceptable level of biosecurity risk), other than the following provisions:

(i) section 208 (to the extent that that section permits a biosecurity officer to require a conveyance to be treated in a manner that is likely to damage the conveyance);

(ii) section 209 (treatment that may damage conveyance);

(iii) section 210 (destruction of conveyance);

(c) sections 552 to 557 (functions and powers of biosecurity officers and biosecurity enforcement officers);

(d) sections 629 and 630 (abandoned and forfeited conveyances);

(e) any other provision of this Act to the extent that it relates to the provisions applied by paragraphs (a) to (d).

(3) The application of the applied provisions under this section is in addition to, and does not limit, any application that the applied provisions would otherwise have in relation to the vessel.

Modifications of the applied provisions

(4) A reference in the applied provisions to the level of biosecurity risk associated with the vessel is taken to be a reference to the level of sanitation health risk associated with the vessel.

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(5) A reference in the applied provisions to biosecurity measures is taken to be a reference to measures to manage sanitation health risks.

(6) A reference in the applied provisions to a biosecurity officer is taken to include a reference to a human biosecurity officer, and a reference to the Director of Biosecurity is taken to include a reference to the Director of Human Biosecurity.

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Chapter 5—Ballast water and sediment

Part 1—Application and interpretation

Division 1—Introduction

258 Simplified outline of this Part

This Part describes how the scheme in this Chapter, which deals with the ballast water and sediment of vessels, applies.

This Part also gives special meanings to certain expressions used in this Chapter, and sets out the relationship between this Chapter and other laws of the Commonwealth and States and Territories.

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Division 2—Application and interpretation

259 Extension of Chapter to every external Territory

This Chapter extends to every external Territory.

260 Vessels in dry dock in Australia

For the purposes of this Chapter, a vessel that is in dry dock in Australia is taken to be in the territorial sea of Australia.

261 Foreign vessels and the Australian Antarctic Territory

(1) For the purposes of this Chapter, a foreign vessel that is within the outer limits of the territorial sea of the Australian Antarctic Territory is taken not to be in Australian seas.

(2) In addition, a foreign vessel:
  (a) whose Administration is a party to the Ballast Water Convention; and
  (b) that is within the outer limits of the exclusive economic zone adjacent to the coast of the Australian Antarctic Territory;

is also taken not to be in Australian seas.

262 References to the person in charge of a vessel do not include persons exercising certain powers

For the purposes of this Chapter, a reference to the person in charge of a vessel does not include a reference to a person exercising powers under an Australian law.

263 Permanent ballast water in sealed tanks not subject to this Chapter

This Chapter does not apply in relation to permanent ballast water that is in a sealed tank on a vessel and is not discharged from the vessel.

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263A Warships, naval auxiliary or other vessels owned or operated by the Australian government or the government of a foreign country

This Chapter does not apply in relation to vessels referred to in Article 3.2(e) of the Ballast Water Convention.

Note: Article 3.2(e) of the Ballast Water Convention refers to "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".

264 Relationship with other Commonwealth laws

The provisions of this Chapter are in addition to, not in substitution for, any other law of the Commonwealth.

265 Relationship with State and Territory laws

(1) This Chapter applies (subject to subsection (2)) to the exclusion of a law, or a provision of a law, of a State or Territory to the extent that the law or provision deals with biosecurity risks associated with ballast water or sediment.

(2) This Chapter does not exclude or limit the concurrent operation of a law, or a provision of a law, of a State or Territory to the extent that the law or provision deals with the treatment or disposal of ballast water or sediment after it has been removed from a vessel.

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Part 2—Notice of discharge of ballast water in Australian territorial seas

Division 1—Introduction

266 Simplified outline of this Part

The operator of a vessel must give a report if it is intended that the vessel discharge, or the vessel discharges, ballast water in Australian territorial seas. If the operator later finds the report was incomplete or incorrect, the operator must give additional or corrected information.

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Division 2—Reporting ballast water discharges

267 Reporting ballast water discharges in Australian territorial seas

(1) The operator of a vessel must give a report if it is intended that the vessel discharge, or the vessel discharges, ballast water in Australian territorial seas.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of this Act).

Note 2: The obligation in this subsection applies whether or not the operator of the vessel is in Australian territory when the operator is required to give the report (see subsection (7) of this section).

(2) The report must:

(a) include the information in relation to the vessel that is prescribed by the determination under section 308A; and

(b) be given in the manner, and to the person, prescribed by the determination; and

(c) be given at a time, or during the period, prescribed by the determination (which may be before or after the vessel enters Australian territorial seas as referred to in subsection (1)); and

(d) be in a form or forms approved by the Director of Biosecurity.

Note: The determination may prescribe different requirements for reports for different classes of vessels (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

(3) The determination under section 308A may prescribe exceptions to the requirement to give a report under this section.

Note: A defendant bears an evidential burden in relation to any exception prescribed for the purposes of this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

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Failure to give report

(4) A person contravenes this subsection if:
  (a) the person is required to give a report under subsection (1); and
  (b) the person does not give the report in accordance with subsection (2).

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 534).

Fault-based offence

(5) A person commits an offence if the person contravenes subsection (4).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Civil penalty provision

(6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 120 penalty units.

Application to persons within and outside Australian territory

(7) Subsections (4), (5) and (6) apply whether or not the person is in Australian territory when the person is required to give the report.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

268 Reporting ballast water discharges in Australian territorial seas—requirement to give additional or corrected information

(1) If:
  (a) the operator of a vessel gives a report in relation to the vessel under section 267; and

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(b) the person in charge or the operator of the vessel becomes aware that the information included in the report was incomplete or incorrect;

the operator must give the additional or corrected information to a biosecurity officer as soon as practicable.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of this Act).

Note 2: The obligation in this subsection applies whether or not the operator of the vessel is in Australian territory when the person in charge or the operator of the vessel becomes aware that the information included in a report given under section 267 was incomplete or incorrect (see subsection (5) of this section).

Failure to give information

(2) A person contravenes this subsection if:

(a) the person is required to give information to a biosecurity officer under subsection (1); and

(b) the person does not give the information to a biosecurity officer as required by that subsection.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 534).

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (2).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 120 penalty units.

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Section 268

Application to persons within and outside Australian territory

(5) Subsections (2), (3) and (4) apply whether or not the person is in Australian territory when the person is required to give the information.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

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Part 3—Management of discharge of ballast water

Division 1—Introduction

269 Simplified outline of this Part

Division 2 provides an offence of discharging ballast water. For an Australian vessel, the offence applies whether the vessel is in or outside Australian seas. For a foreign vessel, the offence applies only if the vessel is in Australian seas.

The rest of this Part sets out exceptions to the offence that may apply if:

(a) the ballast water was managed for discharge by an approved method of ballast water management, or by ballast water exchange (Division 3); or

(b) the discharge was part of an acceptable ballast water exchange (Division 4); or

(c) the discharge was an approved discharge of ballast water to a ballast water reception facility (Division 5); or

(d) the discharge was covered by an exemption (Division 6, which also provides for the Director of Biosecurity to prescribe and grant exemptions); or

(e) the ballast water was discharged at or near the place where it was taken up into the vessel (Division 7); or

(f) the ballast water was discharged for reasons of safety, by accident or in order to avoid or minimise pollution (Division 8, which also sets out reporting requirements for such discharges).

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Division 2—Offence of discharging ballast water

270 Offence—discharging ballast water

Australian vessels

(1) A person contravenes this subsection if:
  (a) the person is the person in charge or the operator of a vessel; and
  (b) the vessel is an Australian vessel; and
  (c) the vessel discharges ballast water (whether in or outside Australian seas).

Note: The physical elements of offences against subsections (2) and (3) are set out in this subsection (see section 534).

Foreign vessels

(1A) A person contravenes this subsection if:
  (a) the person is the person in charge or the operator of a vessel; and
  (b) the vessel is a foreign vessel; and
  (c) the vessel is in Australian seas; and
  (d) the vessel discharges ballast water.

Note: The physical elements of offences against subsections (2) and (3) are set out in this subsection (see section 534).

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1) or (1A).

Penalty: 2,000 penalty units.

Strict liability offence

(3) A person commits an offence of strict liability if the person contravenes subsection (1) or (1A).

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Note: For offences of strict liability, see section 6.1 of the *Criminal Code*.

Penalty: 500 penalty units.

Exception

(4) Subsections (1) and (1A) do not apply if:

(a) the condition in section 271, 276, 277, 278A, 279, 282, or subsection 283(1), (2) or (3), is met in relation to the discharge of ballast water; and

(b) either of the following applies:

(i) the vessel has a ballast water management plan, and a ballast water management certificate is in force for the vessel;

(ii) the vessel is prescribed for the purposes of subsection 285A(3) or is granted an exemption under the scheme prescribed for the purposes of section 285B; and

(c) if subparagraph (b)(i) of this subsection applies—the management of the ballast water was carried out in accordance with the ballast water management plan; and

(d) if subparagraph (b)(ii) of this subsection applies—any condition of the exemption granted under the scheme prescribed for the purposes of section 285B has been met.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

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Division 3—Exceptions: ballast water management

Subdivision A—Exception

271 Exception—ballast water has been managed for discharge

The condition in this section is met in relation to a discharge of ballast water from a vessel if the ballast water has been managed for discharge in accordance with this Division.

Subdivision B—Methods of ballast water management

272 Approved method of ballast water management

Ballast water discharged from a vessel has been ***managed for discharge*** if:

(a) the ballast water has been managed using a method of ballast water management approved for the purposes of section 273 or 274; and

(b) at the time the ballast water is discharged, the vessel has appropriate ballast water records; and

(d) the requirements (if any) prescribed by the determination under section 308A are met in relation to the management and discharge of the ballast water.

Note 1: For when a vessel has ***appropriate ballast water records***, see section 295.

Note 2: The determination may prescribe matters by reference to other instruments as in force or existing from time to time (see section 308).

273 Method of ballast water management—application for approval

(1) An application may be made, in accordance with the determination under section 308A, for the Director of Biosecurity to approve a method of ballast water management.

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Note 1: A method of ballast water management may be a ballast water treatment system, a prototype ballast water treatment system or some other method.

Note 2: An application fee may be required (see paragraph 592(4)(b)).

(2) The Director of Biosecurity may, by written notice to the applicant:
  (a) grant the approval; or
  (b) refuse to grant the approval.

Note: A decision to refuse to grant an approval is a reviewable decision (see Part 1 of Chapter 11).

(3) The Director of Biosecurity must make a decision under subsection (2) in accordance with the determination under section 308A.

Note: The determination may prescribe matters by reference to other instruments as in force or existing from time to time (see section 308).

(4) The Director of Biosecurity must make a decision and give notice under subsection (2) before the end of 28 days after the application was made.

(5) If the Director of Biosecurity does not give notice under subsection (2) within the 28-day period referred to in subsection (4), the Director is taken to have refused to grant the approval at the end of that period.

(6) A copy of a notice granting an approval under subsection (2) must be published on the Agriculture Department's website.

Director of Biosecurity may require further information

(7) The Director of Biosecurity may, by written notice, require a person who has made an application under subsection (1) to give the Director further information about the application.

(8) If a notice is given under subsection (7):
  (a) the 28-day period referred to in subsection (4) stops on the day the notice is given; and

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(b) that period begins again on the day after the information is given to the Director.

274 Method of ballast water management—approval of method approved by foreign country

The determination under section 308A may specify a method of ballast water management that is approved, for the purposes of this section, if the method has been approved, in accordance with the Ballast Water Convention, by a foreign country.

Subdivision C—Ballast water exchange

275 Management by ballast water exchange

(1) Ballast water discharged from a tank on a vessel has been ***managed for discharge*** if:

(a) at least the proportion (by volume), prescribed by the determination under section 308A, of the ballast water in the tank immediately before the discharge had been taken up in an acceptable ballast water exchange; and

(b) at the time the ballast water is discharged, the vessel has appropriate ballast water records; and

(c) the vessel is not specified by the determination to be excluded from the operation of this section.

Note 1: For when a vessel has ***appropriate ballast water records***, see section 295.

Note 2: For ***tank***, see section 9.

(2) The determination under section 308A may prescribe a method for working out whether, for the purposes of subsection (1), the prescribed proportion of the ballast water in the tank of a vessel has been taken up.

(3) A ballast water exchange is an ***acceptable ballast water exchange*** if it is conducted:

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(a) in an area prescribed, or an area meeting requirements prescribed, by the determination under section 308A to be an acceptable location for ballast water exchange; and

(c) in accordance with the requirements (if any) prescribed by the determination.

Note: A person does not commit an offence under section 270 for discharging ballast water as part of an acceptable ballast water exchange, even if that ballast water has not been managed for discharge (see section 276).

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Division 4—Exception: discharge as part of acceptable ballast water exchange

276 Exception—discharge as part of acceptable ballast water exchange

The condition in this section is met in relation to a discharge of ballast water from a vessel if the discharge is part of an acceptable ballast water exchange.

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Division 5—Exception: approved discharge to ballast water reception facility

277 Exception—approved discharge to ballast water reception facility

The condition in this section is met in relation to a discharge of ballast water from a vessel if:

(a) the ballast water is discharged to a ballast water reception facility:

(i) in accordance with an approval given by the Director of Biosecurity under section 278; or

(ii) that has been provided, or approved, in accordance with IMO guidelines; and

(b) the ballast water is treated or disposed of at the facility in accordance with the approval.

278 Discharge to ballast water reception facility—application for approval

(1) An application may be made, in accordance with the determination under section 308A, for the Director of Biosecurity to approve:

(a) one or more discharges of ballast water to a ballast water reception facility in Australian territory; and

(b) the manner in which the ballast water is to be treated or disposed of at the facility.

Note: An application fee may be required (see paragraph 592(4)(b)).

(2) The Director of Biosecurity may, by written notice to the applicant:

(a) grant the approval; or

(b) refuse to grant the approval.

Note: A decision to refuse to grant an approval is a reviewable decision (see Part 1 of Chapter 11).

(3) The Director of Biosecurity:

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(a) must make a decision under subsection (2) in accordance with the determination under section 308A; and

(b) must not approve a manner of treating or disposing of the ballast water that would contravene a law of a State or Territory.

Note: For the relationship between this Chapter and State and Territory laws, see section 265.

(4) The Director of Biosecurity must make a decision and give notice under subsection (2) before the end of 28 days after the application was made.

(5) If the Director of Biosecurity does not give notice under subsection (2) within the 28-day period referred to in subsection (4), the Director is taken to have refused to grant the approval at the end of that period.

Director of Biosecurity may require further information

(6) The Director of Biosecurity may, by written notice, require a person who has made an application under subsection (1) to give the Director further information about the application.

(7) If a notice is given under subsection (6):

(a) the 28-day period referred to in subsection (4) stops on the day the notice is given; and

(b) that period begins again on the day after the information is given to the Director.

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Division 6—Exception: discharge covered by exemption

278A Exception—discharge covered by prescribed conditions

(1) The condition in this section is met in relation to a discharge of ballast water from a vessel if conditions prescribed by the determination under section 308A for the purposes of this section are met in relation to the discharge.

(2) The Director of Biosecurity may prescribe conditions for the purposes of this section only if he or she is satisfied that those conditions are consistent with the objects of this Act.

279 Exception—discharge covered by exemption

The condition in this section is met in relation to a discharge of ballast water from a vessel if:

(a) the discharge is covered by an exemption granted under section 280; and

(b) the conditions of the exemption (if any) have been complied with.

280 Director of Biosecurity may grant exemptions

(1) An application may be made, in a manner acceptable to the Director of Biosecurity, for an exemption for one or more discharges of ballast water from a vessel that:

(a) are to be connected with one or more of the vessel's voyages between specified ports, offshore terminals or other locations; and

(b) are to be of ballast water taken up in one or more of those ports, offshore terminals or other locations; and

(c) are to occur within a specified period of not more than 5 years.

Note: An application fee may be required (see paragraph 592(4)(b)).

(2) The Director of Biosecurity may, by written notice to the applicant:

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(a) grant the exemption:
(i) in whole or in part; and
(ii) subject to the conditions (if any) specified in the notice; or
(b) refuse to grant the exemption.

Note 1: A decision to refuse to grant an exemption, or a decision to impose a condition on an exemption, is a reviewable decision (see Part 1 of Chapter 11).

Note 2: An exemption may be varied or revoked under section 281. Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to subsection (2) of this section.

(3) The Director of Biosecurity must make a decision under subsection (2) in accordance with the determination under section 308A.

(4) The Director of Biosecurity must make a decision and give notice under subsection (2) before the end of 28 days after the application was made.

(5) If the Director of Biosecurity does not give notice under subsection (2) within the 28-day period referred to in subsection (4), the Director is taken to have refused to grant the exemption at the end of that period.

Decisions made by computer

(6) The Director of Biosecurity may arrange for the use, under the Director's control, of computer programs for making decisions on the granting or refusal of exemptions or the conditions to be imposed on exemptions.

(7) A decision made by the operation of a computer program under an arrangement made under subsection (6) is taken to be a decision made by the Director of Biosecurity.

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281 Variation and revocation of exemption

The Director of Biosecurity may, at any time, vary or revoke an exemption granted under section 280, by writing given to the owner, person in charge or operator of the vessel to which the exemption relates, or to an agent of the vessel, if the Director is satisfied that:

(a) a condition of the exemption has been contravened; or

(b) the exemption would not be granted if an application for the exemption were made at that time.

Note: A decision to vary or revoke an exemption is a reviewable decision (see Part 1 of Chapter 11).

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Division 7—Exception: taking up and discharging ballast water at same place

282 Exception—taking up and discharging ballast water at same place

The condition in this section is met in relation to a discharge of ballast water from a vessel if:

(a) all the ballast water discharged was taken up at a port, offshore terminal or another point; and

(b) that ballast water was not mixed with other ballast water that had not been managed for discharge in accordance with Division 3 of this Part; and

(c) the discharge occurs at the port or offshore terminal, or within 1 nautical mile of the other point, where the ballast water was taken up.

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Division 8—Exceptions and reporting requirements relating to safety, accidents and pollution

283 Exceptions—safety, accidents and pollution

Safety

(1) The condition in this subsection is met in relation to a discharge of ballast water from a vessel if the discharge is necessary for the purpose of:
  (a) ensuring the safety of the vessel in an emergency; or
  (b) saving life at sea.

Accidents

(2) The condition in this subsection is met in relation to a discharge of ballast water from a vessel if:
  (a) the discharge is accidental and results from damage to the vessel or its equipment; and
  (b) all reasonable precautions to prevent or minimise the discharge are taken at the following times:
    (i) before and after the occurrence of the damage;
    (ii) before and after the discovery of the damage;
    (iii) before and after the discovery of the discharge; and
  (c) none of the following intentionally caused the damage, or was reckless as to the occurrence of the damage:
    (i) the person in charge of the vessel;
    (ii) the owner of the vessel;
    (iii) the operator of the vessel.

Avoiding or minimising pollution

(3) The condition in this subsection is met in relation to a discharge of ballast water from a vessel if the discharge is for the purpose of avoiding or minimising pollution from the vessel.

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284 Report of discharge relating to safety, accident or pollution

Report of discharge must be made to Director of Biosecurity

(1) The person in charge or the operator of a vessel must make a report to the Director of Biosecurity if:
  (a) the vessel discharges ballast water in Australian territorial seas; and
  (b) the discharge is:
    (i) for the purpose of ensuring the safety of the vessel in an emergency or saving life at sea; or
    (ii) accidental; or
    (iii) for the purpose of avoiding or minimising pollution from the vessel.

(2) The report must:
  (a) set out the reason for the discharge; and
  (b) be made as soon as practicable, and in any case within 24 hours, after a member of the vessel's crew becomes aware of the discharge.

(3) Subsection (1) does not apply in relation to a discharge of ballast water if the discharge is covered by an exception referred to in section 271, 276, 277, 278A, 279 or 282.

Note 1: Those sections deal with ballast water that has been managed for discharge, ballast water discharged as part of an acceptable ballast water exchange, ballast water discharged to a ballast water reception facility, discharges covered by exemptions and ballast water taken up and discharged at the same place.

Note 2: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Strict liability offence

(4) A person commits an offence of strict liability if:
  (a) the person is the person in charge or the operator of a vessel; and

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(b) a report under subsection (1) is required to be made in relation to the vessel; and

(c) the report is not made in accordance with this section.

Note: For offences of strict liability, see section 6.1 of the *Criminal Code*.

Penalty for contravention of this subsection: 120 penalty units.

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Part 4—Ballast water management plans and ballast water management certificates

Division 1—Introduction

285 Simplified outline of this Part

This Part provides for ballast water management plans and ballast water management certificates for vessels to be issued, endorsed and recognised.

Division 1A requires most vessels to have a ballast water management plan and a ballast water management certificate. Australian vessels require a plan and certificate in and outside Australian seas. Foreign vessels require a plan and certificate only if they are in Australian seas.

Division 2 sets out what a ballast water management plan is, and provides for the determination under section 308A to prescribe a scheme for the Director of Biosecurity and survey authorities to approve ballast water management plans for vessels.

Division 3 sets out what a ballast water management certificate is, and provides for the determination under section 308A to prescribe a scheme for the Director of Biosecurity and survey authorities to survey vessels for the purposes of certification.

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Division 1A—General requirement to have ballast water management plan and certificate

285A Vessels to have a ballast water management plan and certificate

(1) An Australian vessel (whether in or outside Australian seas) must, subject to subsection (3) and section 285B, have:
  (a) a ballast water management plan; and
  (b) a ballast water management certificate that is in force.

Note: A person may commit an offence if the vessel does not have a ballast water management plan and a ballast water management certificate that is in force (see section 285C).

(2) A foreign vessel in Australian seas must, subject to subsection (3) and section 285B, have:
  (a) a ballast water management plan; and
  (b) a ballast water management certificate that is in force.

(3) The determination under section 308A may prescribe vessels that are exempt from the requirements in subsections (1) and (2).

285B Scheme to provide further exemptions from requirement to have a ballast water management plan and certificate

The determination under section 308A may prescribe a scheme for the Director of Biosecurity or a survey authority to grant an exemption to a particular vessel from the requirement in subsection 285A(1) or (2).

285C Offence for failing to have a ballast water management plan or certificate

Australian vessels

(1) A person commits an offence if:

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(a) the person is the person in charge of a vessel; and
(b) the vessel is an Australian vessel; and
(c) neither of the following applies:
(i) the vessel has a ballast water management plan, and a ballast water management certificate that is in force for the vessel;
(ii) the vessel is prescribed for the purposes of subsection 285A(3) or is granted an exemption under the scheme prescribed for the purposes of section 285B.

Penalty: 200 penalty units.

Foreign vessels

(2) A person commits an offence if:
(a) the person is the person in charge of a vessel; and
(b) the vessel is a foreign vessel; and
(c) the vessel is in Australian seas; and
(d) neither of the following applies:
(i) the vessel has a ballast water management plan, and a ballast water management certificate that is in force for the vessel;
(ii) the vessel is prescribed for the purposes of subsection 285A(3) or is granted an exemption under the scheme prescribed for the purposes of section 285B.

Penalty for contravention of this subsection: 200 penalty units.

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Division 2—Ballast water management plans

286 Ballast water management plan

A ***ballast water management plan*** for a vessel is a document:

(a) that deals with ballast water management for the vessel and the disposal of sediments from the vessel; and

(b) that meets the requirements prescribed by the determination under section 308A; and

(c) for which an approval:

(i) by the Director of Biosecurity, or a survey authority, is in force under section 287; or

(ii) by, or on behalf of, the vessel's Administration is in force.

287 Approval of ballast water management plans for vessels

(1) The determination under section 308A may prescribe a scheme for the Director of Biosecurity or a survey authority to take any of the following actions in relation to a vessel:

(a) approve a ballast water management plan for the vessel;

(b) approve an amendment of the vessel's ballast water management plan;

(c) cancel the approval of the vessel's ballast water management plan.

Note: A decision to refuse to approve a ballast water management plan, a decision to refuse to approve an amendment of a plan or a decision to cancel a plan is a reviewable decision (see Part 1 of Chapter 11).

(2) An action referred to in subsection (1) may be taken in relation to a foreign vessel only on request by the vessel's Administration.

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Division 3—Ballast water management certificates

288 Ballast water management certificate

A ***ballast water management certificate*** for a vessel is a document that:

(a) certifies that the vessel has a ballast water management plan for which an approval by, or on behalf of, the vessel's Administration (including an approval under section 287) is in force; and

(b) is issued or endorsed:

(i) by the Director of Biosecurity, or a survey authority, under section 290; or

(ii) by, or on behalf of, the vessel's Administration; and

(c) certifies that the vessel meets any other requirements prescribed by the determination under section 308A.

290 Issue or endorsement etc. of ballast water management certificate on behalf of the Commonwealth

(1) The determination under section 308A may prescribe a scheme for the Director of Biosecurity or a survey authority to take, on behalf of the Commonwealth, any of the following actions in relation to a vessel:

(a) survey the vessel to determine whether a ballast water management certificate should be issued or endorsed for the vessel;

(b) issue a ballast water management certificate for the vessel;

(c) endorse a ballast water management certificate for the vessel;

(d) withdraw a ballast water management certificate for the vessel;

(e) extend the period during which a ballast water management certificate for the vessel is in force;

(f) amend the expiry date on a ballast water management certificate for the vessel.

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Note: A decision to refuse to issue, endorse or amend a ballast water management certificate for a vessel, a decision to refuse to extend the period during which such a certificate is in force or a decision to withdraw such a certificate is a reviewable decision (see Part 1 of Chapter 11).

(2) An action referred to in subsection (1) may be taken in relation to a foreign vessel only on request by the vessel's Administration.

Certificate is not a legislative instrument

(3) A ballast water management certificate issued or endorsed under this section is not a legislative instrument.

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Division 4—Survey authorities

290A Director of Biosecurity may authorise person to be survey authority

(1) The Director of Biosecurity may, in writing, authorise a person to be a survey authority if the Director is satisfied the person has suitable qualifications to perform the functions of a survey authority under:

(a) the scheme prescribed for the purposes of section 285B; and

(b) sections 287 and 290.

(2) An authorisation made under subsection (1) is not a legislative instrument.

(3) A survey authority may charge a fee in relation to anything done under this Part.

(4) A fee must not be such as to amount to taxation.

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Part 5—Ballast water records

Division 1—Introduction

291 Simplified outline of this Part

This Part sets out how vessels are to keep records of their ballast water operations.

Division 2 sets out record-keeping requirements for vessels, and the circumstances in which a vessel has appropriate ballast water records for the purposes of using certain methods of ballast water management.

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Division 2—Ballast water records

292 Vessels must have a ballast water record system

(1) An Australian vessel (whether in or outside Australian seas) that is capable of carrying ballast water must have on board a ballast water record system that complies with the requirements (if any) prescribed by the determination under section 308A.

Note: A ballast water record system is a system for making and keeping records of details about the vessel's ballast water and ballast water operations (see section 9).

(1A) A foreign vessel in Australian seas that is capable of carrying ballast water must have on board a ballast water record system that complies with the requirements (if any) prescribed by the determination under section 308A.

Strict liability offence

(2) A person commits an offence of strict liability if:
(a) the person is the person in charge of a vessel; and
(b) the vessel is capable of carrying ballast water; and
(c) the vessel does not have a ballast water record system as required by subsection (1) or (1A).

Note: For offences of strict liability, see section 6.1 of the *Criminal Code*.

Penalty for contravention of this subsection: 200 penalty units.

293 Recording ballast water operations and disposal of sediment

(1) A record must be made if an Australian vessel (whether in or outside Australian seas):
(a) conducts a ballast water operation; or
(b) disposes of sediment.

Note: A vessel conducts a ballast water operation if ballast water is taken up into the vessel, discharged from the vessel, or treated or circulated on

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the vessel for the purposes of ballast water management (see section 9).

(1A) A record must be made if a foreign vessel:
(a) conducts a ballast water operation in Australian seas; or
(b) disposes of sediment in Australian seas.

(2) A record required under subsection (1) or (1A) must:
(a) be made using the vessel's ballast water record system; and
(b) be made as soon as practicable after the ballast water operation is conducted or the sediment is disposed of; and
(c) comply with the requirements (if any) prescribed by the determination under section 308A.

Strict liability offence—failure to make record in accordance with this section

(3) A person commits an offence of strict liability if:
(a) the person is the person in charge of a vessel; and
(b) subsection (1) or (1A) requires a record to be made; and
(c) the record is not made in accordance with this section.

Note: For offences of strict liability, see section 6.1 of the *Criminal Code*.

Penalty: 200 penalty units.

Fault-based offence—making a false or misleading record

(4) A person commits an offence if:
(a) the person makes a record using a vessel's ballast water record system; and
(b) the record is false or misleading in a material particular.

Penalty for contravention of this subsection: 200 penalty units.

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294 Records must be retained

(1) Each record made, for the purposes of subsection 293(1) or (1A), using a vessel's ballast water record system must be retained on board the vessel for 2 years after the record is made.

(2) Each record made, for the purposes of subsection 293(1) or (1A), using a vessel's ballast water record system must be retained:
   (a) on board the vessel; or
   (b) in the control of the owner of the vessel;

   for a further 3 years starting at the end of the 2-year period referred to in subsection (1).

(3) For the purposes of subsections (1) and (2), if a vessel (the ***first vessel***) is being towed by another vessel and has no crew on board, a record that is on board the other vessel is taken to be on board the first vessel.

Strict liability offence

(4) A person commits an offence of strict liability if:
   (a) the person is the owner of a vessel; and
   (b) subsection (1) or (2) requires a record to be retained; and
   (c) the record is not retained in accordance with this section.

   Note: For offences of strict liability, see section 6.1 of the *Criminal Code*.

   Penalty: 200 penalty units.

(5) Subsections (1) and (2) do not apply in relation to a record if:
   (a) the record was lost or destroyed; and
   (b) the loss or destruction of the record was beyond the control of:
      (i) the present owner of the vessel; and
      (ii) if the present owner was not the owner when the record was lost or destroyed—the person who was the owner of the vessel at that time.

   Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

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295 Appropriate ballast water records for vessels

(1) A vessel has ***appropriate ballast water records*** if:

(a) the vessel has on board records, made in accordance with section 293, that are sufficient to allow any biosecurity risk associated with the vessel's ballast water or sediment to be identified and assessed; and

(b) the vessel does not have on board any records, made using the vessel's ballast water record system, that are false or misleading in a material particular.

(2) For the purposes of subsection (1), if a vessel (the ***first vessel***) is being towed by another vessel and has no crew on board, a record that is on board the other vessel is taken to be on board the first vessel.

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Part 6—Offence of disposing of sediment

Division 1—Introduction

297 Simplified outline of this Part

This Part provides an offence of disposing of sediment, and sets out exceptions in relation to safety, accidents, and avoiding or minimising pollution. For an Australian vessel, the offence applies whether the vessel is in or outside Australian seas. For a foreign vessel, the offence applies only if the vessel is in Australian seas.

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Division 2—Offence of disposing of sediment

298 Offence—disposing of sediment

Australian vessels

(1) A person contravenes this subsection if:
  (a) the person is the person in charge or the operator of a vessel; and
  (b) the vessel is an Australian vessel; and
  (c) the vessel disposes of sediment (whether in or outside Australian seas); and
  (d) the sediment is not disposed of to a sediment reception facility.

Note 1: For exceptions relating to safety, accidents and pollution, see section 299.

Note 2: The physical elements of offences against subsections (2) and (3) are set out in this subsection (see section 534).

Foreign vessels

(1A) A person contravenes this subsection if:
  (a) the person is the person in charge or the operator of a vessel; and
  (b) the vessel is a foreign vessel; and
  (c) the vessel is in Australian seas; and
  (d) the vessel disposes of sediment; and
  (e) the sediment is not disposed of to a sediment reception facility.

Note 1: For exceptions relating to safety, accidents and pollution, see section 299.

Note 2: The physical elements of offences against subsections (2) and (3) are set out in this subsection (see section 534).

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Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1) or (1A).

Penalty: 2,000 penalty units.

Strict liability offence

(3) A person commits an offence of strict liability if the person contravenes subsection (1) or (1A).

Note: For offences of strict liability, see section 6.1 of the *Criminal Code*.

Penalty for contravention of this subsection: 500 penalty units.

299 Exceptions—safety, accidents and pollution

Safety

(1) Section 298 does not apply to the disposal of sediment from a vessel if the disposal is necessary for the purpose of:
  (a) ensuring the safety of the vessel in an emergency; or
  (b) saving life at sea.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Accidents

(2) Section 298 does not apply to the disposal of sediment from a vessel if:
  (a) the disposal is accidental and results from damage to the vessel or its equipment; and
  (b) all reasonable precautions to prevent or minimise the disposal are taken at the following times:
    (i) before and after the occurrence of the damage;
    (ii) before and after the discovery of the damage;
    (iii) before and after the discovery of the disposal; and

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(c) none of the following intentionally caused the damage, or was reckless as to the occurrence of the damage:
  (i) the person in charge of the vessel;
  (ii) the owner of the vessel;
  (iii) the operator of the vessel.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Avoiding or minimising pollution

(3) Section 298 does not apply to the disposal of sediment from a vessel if the disposal is for the purpose of avoiding or minimising pollution from the vessel.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

299A Report of disposal of sediment relating to safety, accident or pollution

Report of disposal of sediment must be made to Director of Biosecurity

(1) The person in charge or the operator of a vessel must make a report to the Director of Biosecurity if:
  (a) the vessel disposes of sediment in Australian territorial seas; and
  (b) the disposal is:
    (i) for the purpose of ensuring the safety of the vessel in an emergency or saving life at sea; or
    (ii) accidental; or
    (iii) for the purpose of avoiding or minimising pollution from the vessel.

(2) The report must:
  (a) set out the reason for the disposal of the sediment; and

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(b) be made as soon as practicable, and in any case within 24 hours, after a member of the vessel's crew becomes aware of the disposal.

Strict liability offence

(3) A person commits an offence of strict liability if:
(a) the person is the person in charge or the operator of a vessel; and
(b) a report under subsection (1) is required to be made in relation to the vessel; and
(c) the report is not made in accordance with this section.

Penalty for contravention of this subsection: 120 penalty units.

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Part 7—Compliance and enforcement

Division 1—Introduction

300 Simplified outline of this Part

This Part gives the Director of Biosecurity and biosecurity officers powers to enforce the provisions of this Chapter at a port or offshore terminal within the outer limits of the exclusive economic zone of Australia.

Under Division 2, a biosecurity officer may exercise powers for the purposes of monitoring compliance with this Chapter (such as taking samples of ballast water and requiring ballast water records to be produced).

Under Division 3, the person in charge of a vessel may be given a direction not to discharge ballast water, or a direction in relation to the movement of the vessel.

300A Purpose and location of exercise of powers

The powers in this Part may be exercised, for the purposes of this Chapter, at a port or offshore terminal within the outer limits of the exclusive economic zone of Australia.

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Division 2—Powers in relation to vessels

300B Securing vessels

(1) A biosecurity officer may direct the person in charge or the operator of a vessel to secure the vessel in a manner, and for a period (which must not exceed 48 hours), specified by the biosecurity officer.

Note: The biosecurity officer may give more than one direction relating to the vessel (see subsection 33(1) of the *Acts Interpretation Act 1901*).

Civil penalty provision

(2) A person who is given a direction under subsection (1) must comply with the direction.

Civil penalty: 120 penalty units.

Note 1: If judicial review is sought in relation to a direction given under subsection (1), the direction remains in force unless a court finally determines the validity of the decision to give the direction (see section 538).

Note 2: A person may commit an offence for failing to comply with a direction given under subsection (1) (see section 305).

Note 3: See also section 572 (general provisions relating to directions).

300C Inspecting and taking samples from vessels

(1) A biosecurity officer may conduct a physical inspection of a vessel.

(2) A biosecurity officer may:
  (a) take samples of ballast water from the vessel; or
  (b) direct a person in charge of the vessel to deliver to the biosecurity officer samples of ballast water from the vessel; or
  (c) arrange for another person, with appropriate qualifications or expertise, to take samples of ballast water from the vessel.

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(3) A biosecurity officer may:
  (a) carry out tests on any samples taken or delivered under subsection (2); or
  (b) arrange for another person, with appropriate qualifications or expertise, to carry out tests on any of those samples.

Civil penalty provision

(4) A person who is given a direction under paragraph (2)(b) must comply with the direction.

Civil penalty: 120 penalty units.

300D Asking questions about vessels

(1) A biosecurity officer may require a person who the biosecurity officer suspects, on reasonable grounds, has information in relation to a vessel to answer questions, or provide information in writing, in relation to the vessel.

Note: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information (see section 137.1 of the *Criminal Code* and section 532 of this Act).

Civil penalty provision

(2) A person who is required to answer questions, or provide information in writing, under subsection (1) must comply with the requirement.

Civil penalty: 120 penalty units.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

301 Power to require owner of vessel to provide ballast water records

(1) A biosecurity officer may require the owner of a vessel to produce to the officer any record required to be retained under section 294, or a copy of such a record certified by or on behalf of the owner.

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Note: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading documents (see section 137.2 of the *Criminal Code* and section 533 of this Act).

(2) A biosecurity officer:
  (a) may make copies of, or take extracts from, a record produced under subsection (1); and
  (b) for that purpose, may remove the record from the place at which it was produced.

(3) A person who is required to produce a record, or a copy of a record, under subsection (1) must comply with the requirement as soon as reasonably practicable.

Strict liability offence

(4) A person commits an offence of strict liability if:
  (a) the person is required to produce a record, or a copy of a record, under subsection (1); and
  (b) the person fails to comply with the requirement as soon as reasonably practicable.

Note: For offences of strict liability, see section 6.1 of the *Criminal Code*.

Penalty for contravention of this subsection: 80 penalty units.

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Division 3—Directions powers

302 Directions not to discharge ballast water

(1) The Director of Biosecurity or a biosecurity officer may give a direction under this section to the person in charge of a vessel if:

(a) the Director or the biosecurity officer is satisfied that:

(i) a sample of the vessel's ballast water indicates that the vessel poses an unacceptable level of biosecurity risk; or

(ii) the person in charge or crew of the vessel are not familiar with, or have not implemented, essential shipboard procedures relating to ballast water management that are set out in the ballast water management plan for the vessel; or

(iii) the vessel does not have appropriate ballast water records; or

(iv) if ballast water were discharged from the vessel, an offence against this Chapter involving the vessel would be committed; or

(b) the Director or the biosecurity officer has reasonable grounds for believing that an offence against this Chapter involving the vessel has been committed.

(2) The Director of Biosecurity or a biosecurity officer may direct the person in charge not to discharge ballast water from the vessel until the conditions specified in the direction are met.

Note: A person who fails to comply with a direction given under this section may commit an offence (see section 305).

(3) A condition specified in the direction must be for the purposes of reducing the biosecurity risk associated with the vessel to an acceptable level.

(4) The person in charge of the vessel must comply with the direction.

(5) A biosecurity officer may vary or revoke the direction.

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Note: See section 306 for the manner in which a direction may be varied or revoked.

303 Directions about movement of vessel

(1) This section applies if the Director of Biosecurity has clear grounds for believing that an offence against this Chapter, except section 267 or 268, has been committed involving:
  (a) an Australian vessel; or
  (b) a foreign vessel in Australian seas.

(2) The Director of Biosecurity may direct the person in charge of the vessel to do one or more of the following:
  (a) remove the vessel from a port or offshore terminal within the outer limits of the exclusive economic zone of Australia as soon as practicable;
  (b) keep the vessel out of a port or offshore terminal within the outer limits of the exclusive economic zone of Australia;
  (c) take the vessel to the nearest suitable repair yard or sediment reception facility as soon as practicable;
  (d) keep the vessel in a specified location.

Note 1: Before giving a direction under this subsection, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

Note 2: A person who fails to comply with a direction given under this subsection may commit an offence (see section 305).

Note 3: A decision to give a direction under this subsection is a reviewable decision (see Part 1 of Chapter 11).

(3) The person in charge of the vessel must comply with the direction.

304 Directions about movement of vessel—variation or revocation

(1) The Director of Biosecurity may vary or revoke a direction given under subsection 303(2).

Note 1: See section 306 for the manner in which a direction may be varied or revoked.

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Note 2: A decision to refuse to vary or revoke a direction under this subsection is a reviewable decision (see Part 1 of Chapter 11).

(2) The Director of Biosecurity may make it a prerequisite for the variation or revocation of a direction given to the person in charge of a vessel under paragraph 303(2)(b) or (d) that the owner of the vessel provide a security that:

(a) is in a form acceptable to the Director; and

(b) is an amount that, in the Director's opinion, is equivalent to the maximum amount of all penalties, other amounts of money, costs and expenses that could be payable by the person in charge and the owner of the vessel in respect of each offence that was a basis for giving the direction.

304A Report on failure to comply with direction

(1) The person in charge or the operator of a vessel must make a report to the Director of Biosecurity if:

(a) the person is given a direction under Division 2 or this Division; and

(b) the person fails to comply with the direction.

(2) The report must:

(a) set out the reason for the failure to comply; and

(b) be made as soon as practicable, and in any case within 24 hours, after a member of the vessel's crew becomes aware of the failure to comply; and

(c) specify (as the case requires) that the failure to comply is:

(i) necessary for the purpose of ensuring the safety of the vessel in an emergency or saving life at sea; or

(ii) accidental and results from damage to the vessel or its equipment; or

(iii) for the purpose of avoiding or minimising pollution from the vessel.

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305 Offence—contravening a direction

Strict liability offence

(1) A person commits an offence of strict liability if:
  (a) the person is the person in charge or operator of a vessel; and
  (b) the person is given a direction under Division 2 or this Division; and
  (c) the person fails to comply with the direction.

Note: For offences of strict liability, see section 6.1 of the *Criminal Code*.

Penalty: 2,000 penalty units.

Exceptions

(2) Subsection (1) does not apply if the failure to comply with the direction is necessary for the purpose of:
  (a) ensuring the safety of the vessel in an emergency; or
  (b) saving life at sea.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

(3) Subsection (1) does not apply if:
  (a) the failure to comply with the direction is accidental and results from damage to the vessel or its equipment; and
  (b) all reasonable efforts are made to comply with the direction; and
  (c) none of the following intentionally caused the damage, or was reckless as to the occurrence of the damage:
    (i) the person in charge of the vessel;
    (ii) the owner of the vessel;
    (iii) the operator of the vessel.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

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(4) Subsection (1) does not apply if the failure to comply with the direction is for the purpose of avoiding or minimising pollution from the vessel.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

306 Manner of giving directions etc.

(1) A direction may be given or varied under this Division by any means of communication (including by electronic means).

(2) Notice of revocation of a direction under this Division may be given by any means of communication (including by electronic means).

(3) If:

(a) a direction is given, or is varied or revoked, under this Division; and

(b) the direction is given, varied or revoked otherwise than in writing;

the person who gave, varied or revoked the direction must give the recipient of the direction a written notice setting out the effect of the direction, variation or revocation.

(4) If a direction under this Division is given in writing, the direction is not a legislative instrument.

(5) A notice under subsection (3) is not a legislative instrument.

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Part 8—Miscellaneous

307 Compensation for undue detention or delay of vessel

(1) If a vessel is unduly detained or delayed under this Chapter, the Commonwealth is liable to pay the owner of the vessel a reasonable amount of compensation for any loss or damage suffered by the owner as a result of the undue detention or delay.

Note: For ***unduly detained or delayed***, see section 9.

(2) If the owner and the Commonwealth do not agree on the amount of compensation, the owner may institute proceedings in a relevant court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

308 Prescribing matters by reference to other instruments

Despite subsection 14(2) of the *Legislation Act 2003*, the determination under section 308A may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

308A Determination

(1) The Director of Biosecurity may, by legislative instrument, make a determination prescribing matters:

(a) required or permitted by this Chapter to be prescribed by the determination; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Chapter.

Note: The power to make the determination must not be delegated (see paragraph 542(1)(b)).

(2) Without limiting subsection (1), the determination may provide for any one or more of the following:

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(a) the Director of Biosecurity to enter into agreements;
(b) the Director of Biosecurity to make decisions;
(c) the Director of Biosecurity to determine matters by notifiable instrument.

Note: The decisions may be reviewable (see subsection 574(2)).

(3) To avoid doubt, the determination may not do the following:
(a) create an offence or civil penalty;
(b) provide powers of:
(i) arrest or detention; or
(ii) entry, search or seizure;
(c) impose a tax;
(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
(e) directly amend the text of this Act.

(4) A determination that is inconsistent with the regulations has no effect to the extent of the inconsistency, but the determination is taken to be consistent with the regulations to the extent that the determination is capable of operating concurrently with the regulations.

(5) This section does not limit section 645 (regulations).

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Chapter 6—Managing biosecurity risks: monitoring, control and response

Part 1—Introduction

309 Simplified outline of this Part

This Part deals with some matters that apply to the whole of this Chapter.

This Part includes a modified definition of ***biosecurity risk*** for this Chapter, sets out the main objects of this Chapter and provides that this Chapter does not apply in relation to certain goods and conveyances.

During a biosecurity emergency period, this Chapter may apply in a modified way (see Divisions 5 and 6 of Part 1 of Chapter 8).

310 Modified meaning of *biosecurity risk*

(1) For the purposes of this Chapter, and any other provision of this Act to the extent that it relates to this Chapter, ***biosecurity risk*** means (subject to subsection (2)):

(a) the likelihood of a disease or pest:

(i) entering Australian territory or a part of Australian territory; or

(ii) emerging, establishing itself or spreading in Australian territory or a part of Australian territory; and

(b) the potential for any of the following:

(i) the disease or pest to cause harm to human, animal or plant health;

(ii) the disease or pest to cause harm to the environment;

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(iii) economic consequences associated with the entry, emergence, establishment or spread of the disease or pest.

(2) However, if a pest is suspected of being, or is known to be, an invasive pest, ***biosecurity risk*** means:

(a) the likelihood of the invasive pest:

(i) entering Australian territory or a part of Australian territory; or

(ii) emerging, establishing itself or spreading in Australian territory or a part of Australian territory; and

(b) the potential for the invasive pest to cause harm to ecosystems, habitats or species.

Note: See sections 25 and 26 in relation to the application of this Act in relation to invasive pests.

311 Objects of this Chapter

The main objects of this Chapter are:

(aa) to enable information to be obtained about prohibited goods, suspended goods or certain conditionally non-prohibited goods that have been brought or imported into Australian territory and have been released from biosecurity control, for the purpose of assessing or managing the level of biosecurity risk associated with the goods; and

(a) to provide for the assessment of the level of biosecurity risk posed by a disease or pest that may be present in or on goods or premises in Australian territory; and

(b) to provide for biosecurity measures to be taken in relation to goods or premises in Australian territory if the level of biosecurity risk posed by a disease or pest that may be present in or on the goods or premises is considered to be unacceptable; and

(c) to provide for powers to be exercised in, or in relation to goods or premises in, certain areas in Australian territory for the purpose of managing biosecurity risks posed by diseases

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or pests that may pose an unacceptable level of biosecurity risk in, or in relation to, the area; and

(d) to provide for powers to be exercised in, or in relation to goods or premises in, certain areas in Australian territory for the purpose of monitoring whether a disease or pest that may pose an unacceptable level of biosecurity risk:

(i) has entered, or has emerged, established itself or spread in, the area; or

(ii) is likely to enter, or to emerge, establish itself or spread in, the area.

Note 1: This Chapter does not apply in relation to certain goods or conveyances (see section 312).

Note 2: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

Note 3: See section 310 in relation to the meaning of ***biosecurity risk*** in this Chapter.

Note 4: Before exercising a power under this Chapter, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

312 Application of this Chapter

This Chapter does not apply in relation to, and powers must not be exercised under this Chapter in relation to, any of the following:

(a) goods that are subject to biosecurity control;

(b) goods in relation to which an exposed goods order is in force;

(c) a conveyance that is subject to biosecurity control.

Note: Part 1 of Chapter 3 deals with goods that are subject to biosecurity control. Division 9 of that Part deals with goods in relation to which an exposed goods order is in force. Chapter 4 deals with conveyances that are subject to biosecurity control.

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Part 1A—Locating prohibited or suspended goods etc.

Division 1—Introduction

312A Simplified outline of this Part

If goods become suspended or prohibited goods, the Director of Biosecurity (or, in the case of prohibited goods, the Director of Human Biosecurity) may require a person in charge of certain goods that are of the same kind as the suspended or prohibited goods, and were brought or imported into Australian territory before the date the goods became suspended or prohibited goods, to notify the Director of:

(a) the location of those goods; and

(b) any other information specified by the Director that the person has relating to those goods.

A biosecurity officer may ask questions or require documents to be produced about prohibited goods, suspended goods or certain conditionally non-prohibited goods that have been brought or imported into Australian territory and have been released from biosecurity control.

The powers in this Part may be exercised in relation to goods for the purpose of assessing or managing the level of biosecurity risk associated with the goods.

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Division 2—Information-gathering powers

312B Requirement to notify of information about goods that have become suspended goods

(1) This section applies if:

(a) the Director of Biosecurity has determined, under subsection 182(1), that specified goods or a specified class of goods (***suspended goods***) must not be brought or imported into Australian territory for a specified period (the ***suspension period***); and

(b) the suspension period has not ended.

Note: The Director of Biosecurity may make a determination under subsection 182(1) in relation to goods, or a class of goods, only if the Director is satisfied that the level of biosecurity risk associated with the goods, or the class of goods, is unacceptable (see subsection 182(3)).

(2) The Director of Biosecurity may require a person in charge of goods that:

(a) are of the same kind as the suspended goods; and

(b) were brought or imported into Australian territory before the start of the suspension period; and

(c) have been released from biosecurity control;

to notify the Director, within a specified period, of the location of the goods and of any other information specified by the Director that the person has in relation to the goods.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information (see section 137.1 of the *Criminal Code* and section 532 of this Act).

Note 2: This section is not subject to the privilege against self-incrimination (see section 635).

(3) A requirement under subsection (2) may be made by publishing a notice or in any other way the Director of Biosecurity considers appropriate.

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(4) The Director of Biosecurity may exercise the power under subsection (2) in relation to goods for the purpose of assessing or managing the level of biosecurity risk associated with the goods.

Civil penalty provision

(5) A person who is aware of the requirement to notify the Director of Biosecurity of information under subsection (2) must comply with the requirement.

Civil penalty: 120 penalty units.

312C Requirement to notify of information about goods that have become prohibited goods

(1) This section applies if the Director of Biosecurity and the Director of Human Biosecurity jointly determine, under subsection 173(1), that specified goods or a specified class of goods (***prohibited goods***) must not be brought or imported into Australian territory.

Note: The Director of Biosecurity and the Director of Human Biosecurity may make a determination under subsection 173(1) in relation to specified goods, or a specified class of goods, only if each Director is satisfied of certain matters (see subsection 173(3)).

(2) The Director of Biosecurity or the Director of Human Biosecurity may require a person in charge of goods that:

(a) are of the same kind as the prohibited goods; and

(b) were brought or imported into Australian territory before the goods became subject to a determination under subsection 173(1); and

(c) have been released from biosecurity control;

to notify the Director of Biosecurity or the Director of Human Biosecurity (as the case may be), within a specified period, of the location of the goods and of any other information specified by the Director that the person has in relation to the goods.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information (see section 137.1 of the *Criminal Code* and section 532 of this Act).

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Note 2: This section is not subject to the privilege against self-incrimination (see section 635).

(3) A requirement under subsection (2) may be made by publishing a notice or in any other way the Director of Biosecurity or the Director of Human Biosecurity (as the case may be) considers appropriate.

(4) The Director of Biosecurity or the Director of Human Biosecurity may exercise the power under subsection (2) in relation to goods for the purpose of assessing or managing the level of biosecurity risk associated with the goods.

Civil penalty provision

(5) A person who is aware of the requirement to notify the Director of Biosecurity or the Director of Human Biosecurity of information under subsection (2) must comply with the requirement.

Civil penalty: 120 penalty units.

312D Information-gathering powers relating to prohibited goods, suspended goods and certain conditionally non-prohibited goods

(1) A biosecurity officer may exercise the power under section 312E or 312F in relation to goods that were brought or imported into Australian territory if:

(a) at the time the goods were brought or imported into Australian territory, the goods were:

(i) prohibited goods; or

(ii) suspended goods; or

(iii) conditionally non-prohibited goods; and

(b) in the case of conditionally non-prohibited goods—a biosecurity officer suspects, on reasonable grounds, that an applicable condition in relation to the goods has not been, or may not have been, complied with; and

(c) the goods have been released from biosecurity control.

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(2) A biosecurity officer may exercise the power under section 312E or 312F in relation to goods referred to in subsection (1) of this section for the purpose of assessing or managing the level of biosecurity risk associated with the goods.

312E Asking questions about goods

(1) A biosecurity officer may require the person who brought or imported goods referred to in subsection 312D(1) into Australian territory, or a person in charge of such goods, to answer questions, or provide information in writing, in relation to the goods.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information (see section 137.1 of the *Criminal Code* and section 532 of this Act).

Note 2: This section is not subject to the privilege against self-incrimination (see section 635).

Civil penalty provision

(2) A person who is required to answer questions, or provide information in writing, under subsection (1) must comply with the requirement.

Civil penalty: 120 penalty units.

312F Requiring documents relating to goods to be produced

(1) A biosecurity officer may require the person who brought or imported goods referred to in subsection 312D(1) into Australian territory, or a person in charge of such goods, to produce to the biosecurity officer specified documents in relation to the goods that a biosecurity officer reasonably suspects are in the custody or control of the person.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading documents (see section 137.2 of the *Criminal Code* and section 533 of this Act).

Note 2: This section is not subject to the privilege against self-incrimination (see section 635).

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Section 312F

(2) A biosecurity officer:
  (a) may make copies of, or take extracts from, a document produced under subsection (1); and
  (b) for that purpose, may remove the document from the place at which it was produced.

Civil penalty provision

(3) A person who is required to produce documents under subsection (1) must comply with the requirement.

Civil penalty: 120 penalty units.

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Part 2—Assessment of level of biosecurity risk

Division 1—Introduction

313 Simplified outline of this Part

This Part deals with assessing the level of biosecurity risk posed by a disease or pest that may be present in or on goods or premises in Australian territory.

Division 2 provides for the circumstances in which powers may be exercised under this Act (including in premises) to assess the level of biosecurity risk posed by a disease or pest that may be present in or on the goods or premises.

Division 3 sets out the powers (the biosecurity risk assessment powers) that may be exercised in relation to the goods or premises if a biosecurity officer suspects, on reasonable grounds, that a disease or pest may be present in or on the goods or premises, and the disease or pest may pose an unacceptable level of biosecurity risk.

The biosecurity risk assessment powers may be exercised for any of the following purposes:

(a) to establish whether the disease or pest is present in or on the goods or premises;
(b) if possible, to identify the disease or pest;
(c) to assess the level of biosecurity risk posed by the disease or pest.

Before exercising a power set out in Division 3, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

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Section 313

Division 4 sets out offences that apply in relation to contraventions relating to biosecurity risk assessment powers that are exercised in accordance with a biosecurity control order (see Part 4) or a biosecurity response zone determination (see Part 5).

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Division 2—Circumstances in which biosecurity risk assessment powers may be exercised

314 Reasonable suspicion that disease or pest may pose unacceptable level of biosecurity risk

If a biosecurity officer suspects, on reasonable grounds, that:

(a) a disease or pest may be present in or on goods or premises in Australian territory; and

(b) the disease or pest may pose an unacceptable level of biosecurity risk;

the powers set out in Division 3 may be exercised for any of the following purposes:

(c) to establish whether the disease or pest is present in or on the goods or premises;

(d) if possible, to identify the disease or pest;

(e) to assess the level of biosecurity risk posed by the disease or pest.

Note 1: This Chapter does not apply in relation to certain goods or conveyances (see section 312).

Note 2: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

Note 3: See section 310 in relation to the meaning of ***biosecurity risk*** in this Chapter.

Note 4: A biosecurity officer or biosecurity enforcement officer may be assisted by other persons in exercising powers in accordance with this section (see section 536).

Note 5: Before exercising a power under Division 3, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

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315 Exercise of biosecurity risk assessment powers in premises

(1) A biosecurity officer or a biosecurity enforcement officer may enter any premises in Australian territory for the purpose of exercising powers in accordance with section 314.

Note: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

(2) However, an officer is not authorised to enter premises under subsection (1) unless:

(a) the occupier of the premises has consented to the entry and the officer has shown his or her identity card if required by the occupier; or

(b) the entry is made under a biosecurity risk assessment warrant.

Note 1: For the issue of warrants, and the obligations and powers of biosecurity enforcement officers and biosecurity officers in entering premises under a warrant or with consent, see Part 3, and Division 3 of Part 4, of Chapter 9.

Note 2: If the premises can be accessed only by entering other premises, an adjacent premises warrant may be needed (see Division 2 of Part 4 of Chapter 9).

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Division 3—Biosecurity risk assessment powers

316 Application of this Division

This Division sets out powers that may be exercised in relation to goods or premises for any of the purposes referred to in section 314.

Note: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

317 Direction to secure goods or conveyance

Goods

(1) A biosecurity officer may direct a person in charge of goods to secure the goods in a manner specified by the biosecurity officer.

Note: The biosecurity officer may give more than one direction relating to the goods (see subsection 33(1) of the *Acts Interpretation Act 1901*).

Conveyance

(2) A biosecurity officer may direct a person in charge of a conveyance to secure the conveyance in a manner, and for a period (which must not exceed 48 hours), specified by the biosecurity officer.

Note: The biosecurity officer may give more than one direction relating to the conveyance (see subsection 33(1) of the *Acts Interpretation Act 1901*).

Civil penalty provision

(3) A person who is given a direction under subsection (1) or (2) must comply with the direction.

Civil penalty: 120 penalty units.

Note 1: If a person is given a direction under subsection (1) or (2) in accordance with a biosecurity control order or a biosecurity response

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zone determination and the person fails to comply with the direction, the person may also commit an offence (see section 327).

Note 2: If judicial review is sought in relation to a direction given under subsection (1) or (2), the direction remains in force unless a court finally determines the validity of the decision to give the direction (see section 538).

Note 3: See also section 572 (general provisions relating to directions).

318 Inspections and taking samples of goods or premises

(1) A biosecurity officer may inspect goods or premises.

Note: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

(2) A biosecurity officer may:
  (a) take samples of the goods or premises; or
  (b) direct a person in charge of the goods or premises to deliver to the biosecurity officer such samples of the goods or premises as are specified in the direction; or
  (c) arrange for another person, with appropriate qualifications or expertise, to take samples of the goods or premises.

(3) A biosecurity officer may:
  (a) carry out tests on any samples taken or delivered under subsection (2); or
  (b) arrange for another person, with appropriate qualifications or expertise, to carry out tests on any of those samples.

Note: See also section 554 (carrying out tests on samples).

Civil penalty provision

(4) A person who is given a direction under paragraph (2)(b) must comply with the direction.

Civil penalty: 120 penalty units.

Note: If a person is given a direction under paragraph (2)(b) in accordance with a biosecurity control order or a biosecurity response zone determination and the person fails to comply with the direction, the person may also commit an offence (see section 327).

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*Meaning of **person in charge** of premises (other than a conveyance)*

(5) For the purposes of paragraph (2)(b), the ***person in charge*** of premises (other than a conveyance) is the owner or the occupier of the premises.

319 Asking questions about goods or premises

(1) A biosecurity officer may require a person who the biosecurity officer suspects, on reasonable grounds, has information in relation to goods or premises to answer questions, or provide information in writing, in relation to the goods or premises.

Note 1: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

Note 2: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information (see section 137.1 of the *Criminal Code* and section 532 of this Act).

Civil penalty provision

(2) A person who is required to answer questions, or provide information in writing, under subsection (1) must comply with the requirement.

Civil penalty: 120 penalty units.

Note 1: This section is not subject to the privilege against self-incrimination (see section 635).

Note 2: If a person is required to answer questions, or provide information in writing, under subsection (1) in accordance with a biosecurity control order or a biosecurity response zone determination and the person fails to comply with the requirement, the person may also commit an offence (see section 328).

320 Requiring documents relating to goods or premises to be produced

(1) A biosecurity officer may require a person who the biosecurity officer suspects, on reasonable grounds, has the custody or control

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of documents in relation to goods or premises to produce to the biosecurity officer such of those documents as are specified by the biosecurity officer.

Note 1: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

Note 2: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading documents (see section 137.2 of the *Criminal Code* and section 533 of this Act).

(2) A biosecurity officer:
  (a) may make copies of, or take extracts from, a document produced under subsection (1); and
  (b) for that purpose, may remove the document from the place at which it was produced.

Civil penalty provision

(3) A person who is required to produce documents under subsection (1) must comply with the requirement.

Civil penalty: 120 penalty units.

Note 1: This section is not subject to the privilege against self-incrimination (see section 635).

Note 2: If a person is required to produce documents under subsection (1) in accordance with a biosecurity control order or a biosecurity response zone determination and the person fails to comply with the requirement, the person may also commit an offence (see section 329).

321 Movement of goods or conveyance

(1) A biosecurity officer may:
  (a) give any of the following directions to a person in charge of goods or a conveyance:
    (i) a direction not to move, deal with or interfere with the goods or conveyance;
    (ii) a direction to move the goods or conveyance, as soon as practicable, to a place specified by the biosecurity officer;

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(iii) any other direction relating to the movement of the goods or conveyance; or

(b) cause the goods or conveyance to be moved to another place.

Civil penalty provision

(2) A person who is given a direction under paragraph (1)(a) must comply with the direction.

Civil penalty: 120 penalty units.

Note: If a person is given a direction under paragraph (1)(a) in accordance with a biosecurity control order or a biosecurity response zone determination and the person fails to comply with the direction, the person may also commit an offence (see section 327).

322 Biosecurity officer may affix notice to goods or conveyance

(1) A biosecurity officer may affix a notice to, or as near as reasonably practicable to:

(a) goods or a conveyance that have been secured in accordance with a direction given under subsection 317(1) or (2); or

(b) goods or a conveyance in relation to which a direction relating to movement has been given under paragraph 321(1)(a); or

(c) goods or a conveyance that have been moved under paragraph 321(1)(b).

(2) The notice must state:

(a) that a disease or pest may be present in or on the goods or conveyance; and

(b) that the disease or pest may pose an unacceptable level of biosecurity risk; and

(c) that the goods or conveyance have been secured or moved (as the case may be), in accordance with this Chapter, to enable a biosecurity officer to exercise powers under this Chapter; and

(d) the effect of subsections (3) and (4) and sections 323 and 330.

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Civil penalty provision

(3) A person is liable to a civil penalty if:
  (a) a notice is affixed to, or as near as reasonably practicable to, goods or a conveyance under subsection (1); and
  (b) the person interferes with, removes or defaces the notice; and
  (c) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;
    (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
    (iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(4) Subsection (3) does not apply if the person is authorised to engage in the conduct referred to in paragraph (3)(b) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

323 Unauthorised persons must not move etc. goods or conveyance to which notice has been affixed

Civil penalty provision

(1) A person is liable to a civil penalty if:
  (a) a notice has been affixed to, or as near as reasonably practicable to, goods or a conveyance under subsection 322(1); and
  (b) the person moves, deals with or interferes with the goods or conveyance; and
  (c) none of the following applies:

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(i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;

(ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;

(iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(b) under this Act or under another Australian law.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Note 2: If a notice is affixed to, or as near as reasonably practicable to, goods or a conveyance under subsection 322(1) in accordance with a biosecurity control order or a biosecurity response zone determination and the person contravenes subsection (1), the person may also commit an offence (see section 330).

324 Operating electronic equipment on premises

(1) The powers in this section may be exercised in relation to electronic equipment on premises.

(2) A biosecurity enforcement officer may:

(a) operate electronic equipment on the premises for a purpose for which the premises were entered; and

(b) use a disk, tape or other storage device that:

(i) is on the premises; and

(ii) can be used with the equipment or is associated with it.

(3) A biosecurity enforcement officer may exercise the powers referred to in subsection (4) if information (***relevant data***) is found in the exercise of the power under subsection (2) that is relevant to a purpose for which the premises were entered.

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(4) The powers are as follows:

(a) the power to operate electronic equipment on the premises to put the relevant data in documentary form and remove the documents so produced from the premises;

(b) the power to operate electronic equipment on the premises to transfer the relevant data to a disk, tape or other storage device that:

(i) is brought to the premises for the exercise of the power; or

(ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;

and remove the disk, tape or other storage device from the premises.

(5) A biosecurity enforcement officer may operate electronic equipment as mentioned in subsection (2) or (4) only if the biosecurity enforcement officer believes on reasonable grounds that the operation of the equipment can be carried out without causing damage to the equipment.

Note: For compensation for damage to electronic equipment, see section 326.

325 Expert assistance to operate electronic equipment

(1) The powers in this section may be exercised in relation to electronic equipment on premises if:

(a) a biosecurity enforcement officer enters the premises under a biosecurity risk assessment warrant, a biosecurity control order warrant or a biosecurity response zone warrant (the ***relevant warrant***); and

(b) the relevant warrant authorises the biosecurity enforcement officer to exercise the powers in this section.

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Securing equipment

(2) The biosecurity enforcement officer may secure any electronic equipment that is on the premises if the biosecurity enforcement officer suspects on reasonable grounds that:
   (a) there is relevant data on the premises; and
   (b) the relevant data may be accessible by operating the equipment; and
   (c) expert assistance is required to operate the equipment; and
   (d) the relevant data may be destroyed, altered, or otherwise interfered with, if the biosecurity enforcement officer does not take action under this subsection.

   The equipment may be secured by locking it up, placing a guard or any other means.

(3) ***Relevant data*** means information relevant to a purpose for which the premises were entered.

(4) The biosecurity enforcement officer must give notice to the occupier of the premises, or another person who apparently represents the occupier, of:
   (a) the biosecurity enforcement officer's intention to secure the equipment; and
   (b) the fact that the equipment may be secured for up to 24 hours.

Period equipment may be secured

(5) The equipment may be secured until the earlier of the following happens:
   (a) the 24-hour period ends;
   (b) the equipment has been operated by an expert.

Note: For compensation for damage to electronic equipment, see section 326.

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Extensions

(6) The biosecurity enforcement officer may apply to an issuing officer for an extension of the 24-hour period if the biosecurity enforcement officer believes on reasonable grounds that the equipment needs to be secured for longer than that period.

(7) Before making the application, the biosecurity enforcement officer must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.

(8) The provisions of Part 3 of Chapter 9 relating to the issue of the relevant warrant apply, with such modifications as are necessary, to the issue of an extension.

(9) The 24-hour period may be extended more than once.

326 Compensation for damage to electronic equipment

(1) This section applies if:
  (a) as a result of electronic equipment being operated as mentioned in this Division:
    (i) damage is caused to the equipment; or
    (ii) the data recorded on the equipment is damaged; or
    (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  (b) the damage or corruption occurs because:
    (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    (ii) insufficient care was exercised by the person operating the equipment.

Note: Electronic equipment may be operated as mentioned in this Division as it applies because of section 314 or paragraph 470(1)(a).

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the

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damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a relevant court for such reasonable amount of compensation as the court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

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Division 4—Offences

Note: The offences in this Division apply only in relation to contraventions relating to powers that are exercised in accordance with a biosecurity control order or a biosecurity response zone determination.

327 Contravention of direction

A person commits an offence if:

(a) the power to give a direction under any of the following provisions is specified in a biosecurity control order or a biosecurity response zone determination:

(i) subsection 317(1) or (2) (direction to secure goods or a conveyance);

(ii) paragraph 318(2)(b) (direction to deliver samples of goods or premises);

(iii) paragraph 321(1)(a) (direction relating to movement of goods or conveyance); and

(b) the person is given a direction under any of those provisions; and

(c) the direction is given in accordance with the biosecurity control order or the biosecurity response zone determination (as the case may be); and

(d) the person engages in conduct; and

(e) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Note: The person may also contravene a civil penalty provision for contravening the direction (see subsections 317(3), 318(4) and 321(2)).

328 Contravention of requirement to answer questions etc.

A person commits an offence if:

(a) the power given by subsection 319(1) to require a person to answer questions, or provide information in writing, is

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specified in a biosecurity control order or a biosecurity response zone determination; and

(b) the person is required to answer questions, or provide information in writing, under that subsection; and

(c) the requirement is made in accordance with the biosecurity control order or the biosecurity response zone determination (as the case may be); and

(d) the person fails to comply with the requirement.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Note: The person may also contravene a civil penalty provision for contravening the direction (see subsection 319(2)).

329 Contravention of requirement to produce documents

A person commits an offence if:

(a) the power given by subsection 320(1) to require a person to produce documents is specified in a biosecurity control order or a biosecurity response zone determination; and

(b) the person is required to produce documents under that subsection; and

(c) the requirement is made in accordance with the biosecurity control order or the biosecurity response zone determination (as the case may be); and

(d) the person fails to comply with the requirement.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Note: The person may also contravene a civil penalty provision for contravening the direction (see subsection 320(3)).

330 Unauthorised persons must not move etc. goods or conveyance to which notice has been affixed

(1) A person commits an offence if:

(a) the power to affix a notice to, or as near as reasonably practicable to, goods or a conveyance under

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subsection 322(1) is specified in a biosecurity control order or a biosecurity response zone determination; and

(b) a notice has been affixed to, or as near as reasonably practicable to, goods or a conveyance under that subsection; and

(c) the notice was affixed in accordance with the biosecurity control order or the biosecurity response zone determination (as the case may be); and

(d) the person moves, deals with or interferes with the goods or conveyance; and

(e) none of the following applies:

(i) the person is authorised to engage in the conduct referred to in paragraph (d) in accordance with an approved arrangement;

(ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;

(iii) the person has been given permission to engage in that conduct under section 557.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Note: The person may also contravene a civil penalty provision for moving, dealing with or interfering with the goods or conveyance (see subsection 323(1)).

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(d) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

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Part 3—Biosecurity measures to manage unacceptable level of biosecurity risk

Division 1—Introduction

331 Simplified outline of this Part

This Part sets out the powers that may be exercised (including biosecurity measures that may be required to be taken) in relation to goods or premises in Australian territory for the purpose of managing biosecurity risks posed by a disease or pest that may be present in or on the goods or premises.

Divisions 2, 3 and 4 set out the powers that may be exercised. They include:

(a) powers relating to persons entering or leaving premises; and
(b) powers relating to treatment of goods or premises; and
(c) powers relating to destruction of goods or premises; and
(d) powers provided by regulations; and
(e) other powers.

A power set out in this Part must not be exercised in relation to goods or premises unless:

(a) the power is specified in a biosecurity control order that relates to the goods or premises; or
(b) the power is specified in a biosecurity response zone determination that relates to the goods or premises and the goods or premises are in the biosecurity response zone.

Before exercising a power set out in this Part, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

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Section 331

Division 5 sets out offences and civil penalty provisions.

Division 2 of Part 5 of Chapter 11 provides that certain goods and conveyances, in relation to which biosecurity measures have been required under this Chapter, are considered to have been abandoned or forfeited, and provides for how they may be dealt with.

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Division 2—Powers that may be exercised: general

Subdivision A—Circumstances in which powers may be exercised

332 Circumstances in which powers set out in this Division may be exercised

(1) A power set out in a provision of this Division must not be exercised in relation to goods or premises in Australian territory unless:

(a) the power is specified in a biosecurity control order that relates to the goods or premises; or

(b) the power is specified in a biosecurity response zone determination that relates to the goods or premises and the goods or premises are in the biosecurity response zone.

Note 1: A power set out in a provision of this Division that is specified in a biosecurity control order or a biosecurity response zone determination may be exercised for the purpose of managing the biosecurity risk posed by a disease or pest to which the order or determination relates (see sections 360 and 370).

Note 2: Before exercising a power specified in a biosecurity control order or a biosecurity response zone determination, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

Note 3: Part 5 deals with biosecurity response zones.

(2) This section has effect subject to subsection 399(2).

Note: Subsection 399(2) provides that the powers set out in sections 333 and 334 (entry and exit requirements) may be exercised in relation to premises in a biosecurity activity zone.

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Subdivision B—Powers relating to entry to and exit from premises

333 Entry and exit etc. requirements—persons

Requirements may be imposed by notice in writing

(1) A biosecurity officer may, by notice in writing, impose any of the following requirements in relation to premises:
  (a) a requirement that persons entering or leaving the premises do so at specified places;
  (b) a requirement that specified classes of persons not enter the premises;
  (c) a requirement that persons entering, or in, the premises wear specified clothing or equipment (or both) that is designed to prevent a disease or pest from emerging, establishing itself or spreading in the premises;
  (d) a requirement that persons not interfere with the premises.

Note 1: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

Note 2: The powers in this section may also be exercised in relation to premises in a biosecurity activity zone (see subsection 399(2)).

Note 3: A person may commit an offence or contravene a civil penalty provision if the person fails to comply with a requirement imposed under this subsection that applies to the person (see section 349).

(2) If a notice under subsection (1) imposes the requirement referred to in paragraph (1)(c), the notice must also specify the following:
  (a) the circumstances in which a person is required to wear the clothing or equipment;
  (b) the period during which, or the times at which, the person is required to wear the clothing or equipment;
  (c) instructions for wearing the clothing or equipment.

(3) Except as permitted by paragraph (1)(b) or (c), a notice under subsection (1) must not require an individual to be subject to a

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biosecurity measure of a kind set out in Subdivision B of Division 3 of Part 3 of Chapter 2.

Note: That Subdivision sets out the biosecurity measures that may be included in a human biosecurity control order.

(4) However, subsection (3) does not prevent the Director of Biosecurity or a biosecurity officer exercising a power under Subdivision B of Division 2 of Part 4 of Chapter 10.

Note: Under that Subdivision, a biosecurity officer may request an individual to be decontaminated, and may require an individual's clothing and any personal effects to be decontaminated.

Notice must be affixed to premises

(5) A notice under subsection (1) in relation to premises must be affixed at each entry and exit point of the premises.

Notice is not a legislative instrument

(6) A notice under subsection (1) is not a legislative instrument.

334 Entry and exit etc. requirements—goods and conveyances

Requirements may be imposed by notice in writing

(1) A biosecurity officer may, by notice in writing, impose any of the following requirements in relation to premises:
   (a) a requirement that persons bringing goods on to the premises do so at specified places;
   (b) a requirement that specified classes of goods not be brought on to the premises;
   (c) a requirement that conveyances entering or leaving the premises do so at specified places;
   (d) a requirement that specified classes of conveyances not enter the premises.

Note 1: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

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Note 2: The powers in this section may also be exercised in relation to premises in a biosecurity activity zone (see subsection 399(2)).

Note 3: A person may commit an offence or contravene a civil penalty provision if the person fails to comply with a requirement imposed under this subsection that applies to the person (see section 349).

Notice must be affixed to premises

(2) A notice under subsection (1) in relation to premises must be affixed at each entry and exit point of the premises.

Notice is not a legislative instrument

(3) A notice under subsection (1) is not a legislative instrument.

Subdivision C—Powers relating to treatment of goods, conveyances and other premises

335 Treatment of goods

(1) A biosecurity officer may, subject to subsection (2), require goods to be treated in a specified manner.

Note: If the treatment might damage the goods, a person in charge of the goods must be asked to agree to the treatment (see section 336).

(2) A biosecurity officer must not require high-value goods to be treated in a manner that the biosecurity officer suspects, on reasonable grounds, is likely to damage the goods, without the written approval of the Director of Biosecurity.

336 Treatment that may damage goods

(1) This section applies if:
  (a) a biosecurity officer requires goods to be treated in a specified manner under subsection 335(1); and
  (b) a biosecurity officer suspects, on reasonable grounds, that treatment of the goods in that manner is likely to damage the goods.

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Notice must be given that treatment is likely to damage goods

(2) Before any treatment is carried out on the goods, a biosecurity officer must, by notice in writing:
  (a) inform a person in charge of the goods that:
    (i) the goods are required to be treated in a specified manner; and
    (ii) the treatment is likely to damage the goods; and
  (b) request the person to agree to the treatment of the goods.

Note: The meaning of ***person in charge*** of goods in this subsection is affected by subsection (6).

(3) However, the goods may be treated in the specified manner without notice having been given under subsection (2) if:
  (a) a biosecurity officer suspects, on reasonable grounds, that a disease or pest that may be present in or on the goods poses a high level of biosecurity risk; and
  (b) a biosecurity officer is satisfied that the goods need to be treated as soon as practicable to reduce that risk to an acceptable level.

Dealing with goods if person in charge does not agree to treatment

(4) If:
  (a) a notice is given to a person in charge of the goods under subsection (2); and
  (b) a person in charge of the goods does not, within 30 days after receiving the notice, notify a biosecurity officer in writing that the person agrees to the treatment of the goods as specified in the notice;

a biosecurity officer may, in writing, request a person in charge of the goods to arrange for the goods to be dealt with, or destroyed, in a manner and within the period specified in the request.

Note: The meaning of ***person in charge*** of goods in paragraphs (4)(a) and (b) is affected by subsection (6).

(5) If:

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(a) a request is made under subsection (4) in relation to the goods; and
(b) the goods are not dealt with, or destroyed, in a manner and within the period specified in the request;

a biosecurity officer may take possession of the goods and cause them to be destroyed or otherwise disposed of.

*Modified meaning of **person in charge** of goods*

(6) In subsection (2) and paragraphs (4)(a) and (b), ***person in charge*** of goods does not include a biosecurity industry participant who is in possession or control of the goods only because of a direction given to the biosecurity industry participant by a biosecurity officer.

337 Treatment of conveyance

(1) A biosecurity officer may, subject to subsection (2), require a conveyance to be treated in a specified manner.

Note: If the treatment might damage the conveyance, the person in charge or the operator of the conveyance must be asked to agree to the treatment (see section 338).

(2) A biosecurity officer must not require a high-value conveyance to be treated in a manner that the biosecurity officer suspects, on reasonable grounds, is likely to damage the conveyance, without the written approval of the Director of Biosecurity.

338 Treatment that may damage conveyance

(1) This section applies if:
(a) a biosecurity officer requires a conveyance to be treated in a specified manner under subsection 337(1); and
(b) a biosecurity officer suspects, on reasonable grounds, that treatment of the conveyance in that manner is likely to damage the conveyance.

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Notice must be given that treatment is likely to damage conveyance

(2) Before any treatment is carried out on the conveyance, a biosecurity officer must, by notice in writing:
  (a) inform the person in charge or the operator of the conveyance that:
    (i) the conveyance is required to be treated in a specified manner; and
    (ii) the treatment is likely to damage the conveyance; and
  (b) request the person in charge or the operator to agree to the treatment of the conveyance.

(3) However, the conveyance may be treated in the specified manner without notice having been given under subsection (2) if:
  (a) a biosecurity officer suspects, on reasonable grounds, that a disease or pest that may be present in or on the conveyance poses a high level of biosecurity risk; and
  (b) a biosecurity officer is satisfied that the conveyance needs to be treated as soon as practicable to reduce that risk to an acceptable level.

Dealing with conveyance if person in charge or operator does not agree to treatment

(4) If:
  (a) a notice is given to the person in charge or the operator of the conveyance under subsection (2); and
  (b) the person in charge or the operator does not, within 30 days after receiving the notice, notify a biosecurity officer in writing that the person agrees to the treatment of the conveyance as specified in the notice;

a biosecurity officer may, in writing, request the person in charge or the operator to arrange for the conveyance to be dealt with, or destroyed, in a manner and within the period specified in the request.

(5) If:

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(a) a request is made under subsection (4) in relation to the conveyance; and
(b) the conveyance is not dealt with, or destroyed, in a manner and within the period specified in the request;

then:

(c) a biosecurity enforcement officer may, subject to subsection (6), take possession of the conveyance; and
(d) a biosecurity officer may:
(i) with the written approval of the Director of Biosecurity, cause the conveyance to be destroyed; or
(ii) cause the conveyance to be otherwise disposed of.

(6) A biosecurity enforcement officer must not take possession of a conveyance under subsection (5) unless:
(a) the owner of the conveyance has consented in writing to the taking of possession; or
(b) the taking of possession is authorised by a conveyance possession warrant.

Note: For the issue of warrants, and the obligations and powers of biosecurity enforcement officers in taking possession of a conveyance under a warrant, see Part 3, and Division 3 of Part 4, of Chapter 9.

(7) If a conveyance is to be destroyed under this section, a biosecurity officer may cause any goods on board the conveyance to be removed from the conveyance before it is destroyed.

339 Treatment of premises (other than a conveyance)

(1) This section applies in relation to premises (other than a conveyance).

(2) A biosecurity officer may, subject to subsection (3), require the premises to be treated in a specified manner.

Note: If the treatment might damage the premises, the owner of the premises must be asked to agree to the treatment (see section 340).

(3) A biosecurity officer must not require the premises to be treated in a manner that the biosecurity officer suspects, on reasonable

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grounds, is likely to damage the premises, without the written approval of the Director of Biosecurity.

340 Treatment that may damage premises (other than a conveyance)

(1) This section applies if:
  (a) a biosecurity officer requires premises (other than a conveyance) to be treated in a specified manner under subsection 339(2); and
  (b) a biosecurity officer suspects, on reasonable grounds, that the treatment of the premises in that manner is likely to damage the premises.

Note: Section 339 applies in relation to premises that are a structure or building or a part of a structure or building.

Notice must be given that treatment is likely to damage premises

(2) Before any treatment is carried out on the premises, a biosecurity officer must, by notice in writing:
  (a) inform the owner of the premises that:
    (i) the premises are required to be treated in a specified manner; and
    (ii) the treatment is likely to damage the premises; and
  (b) request the owner to agree to the treatment of the premises.

(3) If:
  (a) despite making reasonable efforts, a biosecurity officer has not been able to locate the owner of the premises; and
  (b) the owner of the premises is not the occupier of the premises;

a biosecurity officer must, by notice in writing:
  (c) inform the occupier of the premises that:
    (i) the premises are required to be treated in a specified manner; and
    (ii) the treatment is likely to damage the premises; and
  (d) request the occupier to agree to the treatment of the premises.

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(4) However, subsections (2) and (3) do not apply in relation to the premises if:
  (a) a biosecurity officer suspects, on reasonable grounds, that a disease or pest that may be present in or on the premises poses a high level of biosecurity risk; and
  (b) a biosecurity officer is satisfied that the premises need to be treated as soon as practicable to reduce that risk to an acceptable level.

Notice in relation to biosecurity risk may be affixed to or near premises

(5) If:
  (a) despite making reasonable efforts, a biosecurity officer has not been able to give a notice to the owner or the occupier of the premises under subsection (2) or (3); or
  (b) subsections (2) and (3) do not apply because of subsection (4);

a biosecurity officer must affix a notice in accordance with subsection (6) to, or as near as reasonably practicable to, the premises.

(6) A notice under subsection (5) must state that:
  (a) a disease or pest may be present in or on the premises; and
  (b) the disease or pest may pose an unacceptable level of biosecurity risk; and
  (c) the premises are required, in accordance with this Chapter, to be treated in a specified manner for the purpose of managing the biosecurity risk; and
  (d) the treatment is likely to damage the premises.

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341 Dealing with premises (other than a conveyance) if owner does not agree to treatment etc.

Owner does not agree to treatment

(1) If:
  (a) a notice is given to the owner of premises (other than a conveyance) under subsection 340(2); and
  (b) the owner does not, within 30 days after receiving the notice, notify a biosecurity officer in writing that the owner agrees to the treatment of the premises as specified in the notice;

a biosecurity officer may, in writing, request the owner to arrange for the premises to be dealt with, or destroyed, in a manner and within the period specified in the request.

(2) A request under subsection (1) to arrange for premises to be destroyed may relate only to a structure or building or a part of a structure or building.

(3) If:
  (a) a request is made under subsection (1) in relation to premises; and
  (b) the premises are not dealt with, or destroyed, in a manner and within the period specified in the request;

then:
  (c) a biosecurity enforcement officer may, subject to subsection (5), take possession of the premises; and
  (d) a biosecurity officer may cause the premises:
    (i) to be treated in a manner specified in the request; and
    (ii) if necessary and with the written approval of the Director of Biosecurity, to be destroyed.

Owner cannot be located or there is high level of biosecurity risk

(4) If a notice in accordance with subsection 340(6) has been affixed to, or as near as reasonably practicable to, premises:

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(a) a biosecurity enforcement officer may, at any time after the end of 30 days after the notice was affixed and subject to subsection (5), take possession of the premises; and

(b) a biosecurity officer may cause the premises:

(i) to be treated in a manner specified in the request; and

(ii) if necessary and with the written approval of the Director of Biosecurity, to be destroyed.

Consent or warrant required to take possession of premises

(5) A biosecurity enforcement officer must not take possession of premises under subsection (3) or (4) unless:

(a) the owner of the premises has consented in writing to the taking of possession; or

(b) the taking of possession is authorised by a premises possession warrant.

Note: For the issue of warrants, and the obligations and powers of biosecurity enforcement officers in taking possession of premises under a warrant, see Part 3, and Division 3 of Part 4, of Chapter 9.

(6) If premises are to be destroyed under this section, a biosecurity officer may cause any goods in or on the premises to be removed from the premises before they are destroyed.

Subdivision D—Powers relating to destruction of goods, conveyances and other premises

342 Destruction of goods

(1) If a biosecurity officer considers, on reasonable grounds, that goods cannot be effectively treated, a biosecurity officer may, subject to subsection (2), require the goods to be destroyed.

Note 1: If goods are required under this section to be destroyed:

(a) paragraph 347(1)(a) lets a biosecurity officer direct the person in charge of the goods to destroy them (and failure to comply with the direction may be an offence against section 350); and

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(b) paragraph 347(1)(d) lets a biosecurity officer destroy them or arrange for someone else to carry out the destruction of the goods.

Note 2: Compensation may be payable to the owner of the goods (see sections 633 and 634).

High-value goods

(2) A biosecurity officer must not require high-value goods to be destroyed without the written approval of the Director of Biosecurity.

Note 1: Before giving approval under this subsection, the Director of Biosecurity must be satisfied of the matters referred to in section 32 (the principles).

Note 2: A decision to give approval for high-value goods to be destroyed is a reviewable decision (see Part 1 of Chapter 11).

Note 3: Unless subsection (4) applies, action must not be taken under section 347 to destroy high-value goods until after any review or related proceeding (including any appeal) has been finally determined (see section 345).

(3) Before a biosecurity officer takes action under section 347, in relation to a requirement for high-value goods to be destroyed, a biosecurity officer must give the owner of the goods a notice in writing stating:

(a) that the goods are to be destroyed; and

(b) the reasons why the goods are to be destroyed.

(4) However, action may be taken under section 347, in relation to a requirement for high-value goods to be destroyed, without notice having been given to the owner of the goods under subsection (3) if a biosecurity officer:

(a) has not been able, despite making reasonable efforts, to locate the owner of the goods; and

(b) has certified in writing to that effect.

Note: If a biosecurity officer cannot, despite making reasonable efforts, locate the owner of high-value goods, the goods may be forfeited to the Commonwealth (see section 627).

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343 Destruction of conveyance

(1) If a biosecurity officer considers, on reasonable grounds, that a conveyance cannot be effectively treated, a biosecurity officer may, subject to subsection (2), require the conveyance to be destroyed.

Note 1: If a conveyance is required under this section to be destroyed:
(a) subparagraph 347(1)(b)(ii) lets a biosecurity officer direct the operator or owner of the conveyance to destroy it (and failure to comply with the direction may be an offence against section 350); and
(b) paragraph 347(1)(d) lets a biosecurity officer destroy it or arrange for someone else to carry out the destruction of the conveyance.

Note 2: Compensation may be payable to the owner of the conveyance (see sections 633 and 634).

Director of Biosecurity must approve destruction

(2) A biosecurity officer must not require a conveyance to be destroyed without the written approval of the Director of Biosecurity.

Note 1: Before giving approval under this subsection, the Director of Biosecurity must be satisfied of the matters referred to in section 32 (the principles).

Note 2: A decision to give approval for a conveyance to be destroyed is a reviewable decision (see Part 1 of Chapter 11).

Note 3: Unless subsection (4) applies, action must not be taken under section 347 to destroy a conveyance until after any review or related proceeding (including any appeal) has been finally determined (see section 345).

Notice must be given that conveyance is required to be destroyed

(3) Before a biosecurity officer takes action under subparagraph 347(1)(b)(ii) or paragraph 347(1)(d) in relation to the requirement to destroy the conveyance, a biosecurity officer must, by notice in writing:
(a) inform the owner or the operator of the conveyance:
(i) that the conveyance is required to be destroyed; and

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(ii) the reasons why the conveyance is required to be destroyed; and

(b) request the owner or the operator of the conveyance to arrange for the conveyance to be destroyed in a manner specified in the notice within the period specified in the notice.

(4) However, a notice is not required to be given under subsection (3) if a biosecurity officer:

(a) has not been able, despite making reasonable efforts, to locate the owner or the operator of the conveyance; and

(b) has certified in writing to that effect.

Note: If a biosecurity officer cannot, despite making reasonable efforts, locate the owner or the operator of a conveyance, the conveyance may be forfeited to the Commonwealth (see section 630).

Dealing with conveyance if conveyance is not destroyed by owner or operator

(5) If:

(a) a notice is given to the owner or the operator of the conveyance under subsection (3) and the conveyance is not destroyed in a manner specified in the notice within the period specified in the notice; or

(b) a certificate in relation to the conveyance has been issued under paragraph (4)(b);

then:

(c) a biosecurity enforcement officer may, subject to subsection (6), take possession of the conveyance; and

(d) a biosecurity officer may, with the written approval of the Director of Biosecurity, take action under paragraph 347(1)(d) to destroy the conveyance or arrange for another person to destroy it.

Note: Before giving approval under paragraph (5)(d), the Director of Biosecurity must be satisfied of the matters referred to in section 32 (the principles).

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(6) A biosecurity enforcement officer must not take possession of a conveyance under subsection (5) unless:
  (a) the owner or the operator of the conveyance has consented in writing to the taking of possession; or
  (b) the taking of possession is authorised by a conveyance possession warrant.

Note 1: This subsection does not apply in relation to a conveyance that has been forfeited to the Commonwealth under section 630.

Note 2: For the issue of warrants, and the obligations and powers of biosecurity enforcement officers in taking possession of a conveyance under a warrant, see Part 3, and Division 3 of Part 4, of Chapter 9.

(7) If a conveyance is to be destroyed under this section, a biosecurity officer may cause any goods on board the conveyance to be removed from the conveyance before it is destroyed.

344 Destruction of premises

(1) This section applies in relation to premises that are a structure or building or a part of a structure or building.

(2) If a biosecurity officer considers, on reasonable grounds, that premises cannot be effectively treated, a biosecurity officer may, subject to subsection (3), require the premises to be destroyed.

Note 1: If premises are required under this section to be destroyed:
  (a) paragraph 347(1)(c) lets a biosecurity officer direct the owner of the premises to destroy them (and failure to comply with the direction may be an offence against section 350); and
  (b) paragraph 347(1)(d) lets a biosecurity officer destroy them or arrange for someone else to carry out the destruction of the premises.

Note 2: Unless subsection (5) applies, premises must not be destroyed until after any review or related proceeding (including any appeal) has been finally determined (see section 345).

Note 3: Compensation may be payable to the owner of the premises (see sections 633 and 634).

(3) A biosecurity officer must not require premises to be destroyed without the written approval of the Director of Biosecurity.

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Note 1: Before giving approval under this subsection, the Director of Biosecurity must be satisfied of the matters referred to in section 32 (the principles).

Note 2: A decision to give approval for premises to be destroyed is a reviewable decision (see Part 1 of Chapter 11).

(4) Before a biosecurity officer takes action under paragraph 347(1)(c) or (d) in relation to the requirement to destroy the premises, a biosecurity officer must give the owner of the premises a notice in writing stating:
  (a) that the premises are to be destroyed; and
  (b) the reasons why the premises are to be destroyed.

(5) However, a notice is not required to be given under subsection (4) if a biosecurity officer:
  (a) has not been able, despite making reasonable efforts, to locate the owner of the premises; and
  (b) has certified in writing to that effect.

(6) A biosecurity enforcement officer must not take possession of premises that are required to be destroyed under this section unless:
  (a) the owner of the premises has consented in writing to the taking of possession; or
  (b) the taking of possession is authorised by a premises possession warrant.

Note: For the issue of warrants, and the obligations and powers of biosecurity enforcement officers in taking possession of premises under a warrant, see Part 3, and Division 3 of Part 4, of Chapter 9.

(7) If premises are to be destroyed under this section, a biosecurity officer may cause any goods in or on the premises to be removed from the premises before they are destroyed.

345 High-value goods, conveyances or premises must not be destroyed during review period

(1) This section applies if a biosecurity officer has given a notice in relation to high-value goods, a conveyance or other premises in

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accordance with subsection 342(3), 343(3) or 344(4) (as the case may be).

Note: Section 344 applies in relation to premises that are a structure or building or a part of a structure or building.

(2) A biosecurity officer must not take action under subsection 347(1), in relation to the requirement for the goods, conveyance or premises to be destroyed, until:

(a) after the period in which an application may be made for review (including merits or judicial review) of:

(i) the decision to require the goods, conveyance or premises to be destroyed; or

(ii) the decision of the Director of Biosecurity to approve the making of the requirement; or

(b) if an application referred to in paragraph (a) is made—after the review or any related proceeding (including any appeal) has been finally determined.

Note: If goods, a conveyance or premises are required under section 342, 343 or 344 to be destroyed, subsection 347(1) lets a biosecurity officer:

(a) direct the person in charge of the goods, the operator or owner of the conveyance or the owner of the premises to carry out the destruction; or

(b) carry out the destruction himself or herself; or

(c) arrange for another person to carry out the destruction.

(3) However, subsection (2) does not apply in relation to the goods, conveyance or premises if a biosecurity officer is satisfied that:

(a) a disease or pest that may be present in or on the goods, conveyance or premises poses a high level of biosecurity risk; and

(b) the biosecurity risk cannot be managed for long enough to allow a review of a decision described in paragraph (2)(a), and any related proceeding (including any appeal), to be finally determined.

(4) If:

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(a) in accordance with subsection (3), a biosecurity officer takes action under subsection 347(1), in relation to the requirement for the goods, conveyance or premises to be destroyed, before the end of the period referred to in paragraph (2)(a); and

(b) no application for review described in paragraph (2)(a) had been made before the action was taken;

an application for review of the decision to require the goods, conveyance or premises to be destroyed must not be made.

(5) If:

(a) an application referred to in paragraph (2)(a) has been made; and

(b) before the review or any related proceeding (including any appeal) has been finally determined, a biosecurity officer takes action in accordance with subsection (3) under subsection 347(1) in relation to the requirement for the goods, conveyance or premises to be destroyed;

the review or related proceeding (including any appeal) is taken to be discontinued when the action is taken.

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Division 3—Powers provided by regulations

346 Regulations may provide for other biosecurity measures

(1) The regulations may provide that a biosecurity officer may require a specified kind of biosecurity measure (a ***prescribed biosecurity measure***) to be taken in relation to goods or premises in Australian territory.

Note 1: This Chapter does not apply in relation to certain goods or conveyances (see section 312).

Note 2: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

Note 3: See section 310 in relation to the meaning of ***biosecurity risk*** in this Chapter.

Note 4: Limitations apply to the exercise of a power provided by regulations made for the purposes of this section (see subsection (5)).

(2) Regulations made for the purposes of this section must not provide for a biosecurity officer to require any of the following kinds of biosecurity measures to be taken:

(a) a biosecurity measure of a kind set out in Subdivision B of Division 3 of Part 3 of Chapter 2 (biosecurity measures that may be included in a human biosecurity control order);

(b) a biosecurity measure of a kind set out in Division 3 of Part 2 of this Chapter (biosecurity risk assessment powers);

(c) a biosecurity measure of a kind set out in Division 2 of this Part (biosecurity measures to manage unacceptable level of biosecurity risk);

(d) a biosecurity measure or a kind referred to in Subdivision B of Division 2 of Part 4 of Chapter 10 (decontamination).

(3) Regulations made for the purposes of this section may also provide for, or in relation to, other matters relating to a prescribed biosecurity measure.

(4) Without limiting subsection (3), regulations made for the purposes of this section may do any of the following:

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(a) provide for persons to be notified, and the circumstances in which the persons must be notified, that a prescribed biosecurity measure is required to be taken;

(b) if regulations made for the purposes of subsection 574(2) provide that the decision to require a prescribed biosecurity measure to be taken is a reviewable decision—provide that, except in the circumstances (if any) prescribed, the prescribed biosecurity measure must not be taken during the period in which a review of that decision, or any related proceeding (including any appeal), has been finally determined.

Limitation on exercise of powers provided by regulations

(5) A power provided by regulations made for the purposes of this section must not be exercised in relation to goods or premises in Australian territory unless:

(a) the power is specified in a biosecurity control order that relates to the goods or premises; or

(b) the power is specified in a biosecurity response zone determination that relates to the goods or premises and the goods or premises are in the biosecurity response zone.

Note 1: A power that is provided by regulations made for the purposes of this section and that is specified in a biosecurity control order or a biosecurity response zone determination may be exercised for the purpose of managing the biosecurity risk posed by a disease or pest to which the order or determination relates (see sections 360 and 370).

Note 2: Before exercising a power specified in a biosecurity control order or a biosecurity response zone determination, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

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Division 4—Other powers

347 Powers of biosecurity officer if biosecurity measures are required

(1) If a biosecurity officer requires a biosecurity measure to be taken in relation to goods, a conveyance or premises under Subdivision C (treatment powers) or Subdivision D (destruction powers) of Division 2 of this Part, or under a regulation made for the purposes of section 346, a biosecurity officer may:

(a) if the biosecurity measure is required in relation to goods—direct a person in charge of the goods to carry out the biosecurity measure; or

(b) if the biosecurity measure is required in relation to a conveyance:

(i) direct the person in charge or the operator of the conveyance to carry out the biosecurity measure, unless it is destruction of the conveyance; or

(ii) if the measure is destruction of the conveyance—direct the operator or the owner of the conveyance to carry out the measure; or

(c) if the biosecurity measure is required in relation to premises—direct the owner of the premises to carry out the biosecurity measure; or

(d) in any case:

(i) carry out the biosecurity measure; or

(ii) arrange for another person with appropriate qualifications or expertise to carry out the biosecurity measure.

Note: A person who is given a direction under paragraph (1)(a), (b) or (c) may commit an offence or contravene a civil penalty provision for failing to comply with the direction (see section 350).

(2) If, under this section, a biosecurity officer:

(a) gives a direction to a person to carry out a biosecurity measure; or

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(b) arranges for another person with appropriate qualifications or expertise to carry out a biosecurity measure;

a biosecurity officer may supervise the taking of the biosecurity measure.

348 Biosecurity officer may affix notice to goods or premises

(1) A biosecurity officer may affix a notice to, or as near as reasonably practicable to, goods or premises in relation to which biosecurity measures have been required under:

(a) Division 2; or

(b) a regulation made for the purposes of section 346.

Note: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

(2) The notice must state:

(a) that a disease or pest may be present in or on the goods or premises; and

(b) that the disease or pest may pose an unacceptable level of biosecurity risk; and

(c) that biosecurity measures have been required in relation to the goods or premises, in accordance with this Chapter, for the purpose of managing the biosecurity risk posed by the disease or pest; and

(d) the effect of subsections (3) and (4) and section 351.

Civil penalty provision

(3) A person is liable to a civil penalty if:

(a) a notice is affixed to, or as near as reasonably practicable to, goods or premises under subsection (1); and

(b) the person interferes with, removes or defaces the notice; and

(c) none of the following applies:

(i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;

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(ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;

(iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(4) Subsection (3) does not apply if the person is authorised to engage in the conduct referred to in paragraph (3)(b) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

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Division 5—Offences and civil penalty provisions

349 Contravention of requirement relating to entering or leaving etc. premises

(1) A person must comply with a requirement in a notice affixed at an entry or exit point of premises in accordance with subsection 333(5) or 334(2) if the requirement applies to the person.

Fault-based offence

(2) A person commits an offence if:
  (a) a notice imposing a requirement is affixed at an entry or exit point of premises under subsection 333(5) or 334(2); and
  (b) the requirement applies to the person; and
  (c) the person engages in conduct; and
  (d) the conduct contravenes the requirement.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

350 Person must comply with direction

(1) A person who is given a direction under paragraph 347(1)(a), (b) or (c) must comply with the direction.

Fault-based offence

(2) A person commits an offence if:
  (a) the person is given a direction under paragraph 347(1)(a), (b) or (c); and

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(b) the person engages in conduct; and
(c) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

351 Unauthorised persons must not move etc. goods or conveyance to which notice has been affixed

(1) A person contravenes this subsection if:
(a) a notice has been affixed to, or as near as reasonably practicable to, goods or a conveyance under subsection 348(1); and
(b) the person moves, deals with or interferes with the goods or conveyance; and
(c) none of the following applies:
(i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;
(ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
(iii) the person has been given permission to engage in that conduct under section 557.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 534).

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(b) under this Act or under another Australian law.

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Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

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Part 4—Biosecurity control orders

Division 1—Introduction

352 Simplified outline of this Part

This Part provides for the Director of Biosecurity to make a biosecurity control order in relation to goods or premises in Australian territory and a disease or pest if:

(a) a biosecurity officer suspects, on reasonable grounds, that the disease or pest may be present in or on the goods or premises and may pose an unacceptable level of biosecurity risk; and

(b) the Director of Biosecurity is satisfied that biosecurity measures need to be taken in relation to the goods or premises for the purpose of managing the biosecurity risk posed by the disease or pest.

Division 2 sets out requirements relating to making a biosecurity control order, including requirements relating to the content and form of a biosecurity control order. Division 2 also deals with varying and revoking a biosecurity control order.

Division 3 deals with the powers that may be exercised (including in premises) in accordance with a biosecurity control order.

Before exercising a power in accordance with a biosecurity control order, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

Division 4 sets out a civil penalty provision.

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Division 2—Making, varying and revoking biosecurity control orders

353 Director of Biosecurity may make biosecurity control order to manage unacceptable level of biosecurity risk

(1) If:

(a) a biosecurity officer suspects, on reasonable grounds, that:

(i) a disease or pest may be present in or on goods or premises in Australian territory; and

(ii) the disease or pest poses an unacceptable level of biosecurity risk; and

(b) the Director of Biosecurity is satisfied that biosecurity measures need to be taken in relation to the goods or premises for the purpose of managing the biosecurity risk posed by the disease or pest;

the Director of Biosecurity may make a biosecurity control order in relation to the goods or premises and the disease or pest.

Note 1: This Chapter does not apply in relation to certain goods or conveyances (see section 312).

Note 2: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

Note 3: See section 310 in relation to the meaning of ***biosecurity risk*** in this Chapter.

Note 4: A biosecurity control order may be varied under section 358 or revoked under section 359. Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to this section.

(2) A biosecurity control order may relate to more than one disease or pest.

354 Content of a biosecurity control order

(1) A biosecurity control order made under section 353 in relation to goods or premises and a disease or pest must state that:

(a) a biosecurity officer suspects, on reasonable grounds, that:

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(i) a disease or pest may be present in or on the goods or premises; and

(ii) the disease or pest poses an unacceptable level of biosecurity risk; and

(b) the Director of Biosecurity is satisfied that biosecurity measures need to be taken in relation to the goods or premises for the purpose of managing the biosecurity risk posed by the disease or pest.

(2) The biosecurity control order must also specify the following:

(a) the goods or premises to which the order relates;

(b) each disease or pest that:

(i) poses an unacceptable level of biosecurity risk; and

(ii) has been identified;

(c) the nature of the biosecurity risk that needs to be managed;

(d) each power set out in Division 2 of Part 3 (powers to require biosecurity measures to be taken) that may be exercised in relation to the goods or premises in accordance with that Division;

(e) each power provided by regulations made for the purposes of section 346 (other biosecurity measures) that may be exercised in relation to the goods or premises in accordance with those regulations;

(f) each power set out in Division 3 of Part 2 (biosecurity risk assessment powers) that may be exercised in relation to the goods or premises in accordance with that Division;

(g) the period during which the order is to be in force.

(3) The period during which a biosecurity control order may be in force:

(a) must not be longer than the Director of Biosecurity considers necessary to manage the biosecurity risk posed by each disease or pest to which the order relates; and

(b) in any case, must not be longer than 12 months.

The period cannot be extended.

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(4) A power must not be specified in a biosecurity control order under paragraph (2)(d), (e) or (f) unless the Director of Biosecurity is satisfied that the exercise of the power in relation to the goods or premises and a disease or pest to which the order relates is appropriate and adapted for the purpose of managing the biosecurity risk posed by the disease or pest.

(5) If a conveyance is specified in a biosecurity control order under paragraph (2)(a), the order is taken to also relate to any goods in or on the conveyance.

(6) If premises (other than a conveyance) are specified in a biosecurity control order under paragraph (2)(a), the order is taken to also relate to any goods or conveyances on the premises.

355 Form of biosecurity control order

(1) A biosecurity control order made under section 353:
   (a) must be in writing; and
   (b) must be in the form approved, in writing, by the Director of Biosecurity.

(2) A biosecurity control order made under section 353 is not a legislative instrument.

356 Biosecurity control order to be given to person in charge etc. of goods or premises or affixed to goods or premises

Biosecurity control order relating to goods or a conveyance

(1) If goods or a conveyance are specified in a biosecurity control order under paragraph 354(2)(a), a biosecurity officer must:
   (a) give a copy of the order to a person in charge of the goods or conveyance, if it is practicable to do so; and
   (b) if it is not practicable to comply with paragraph (a)—affix a copy of the order to, or as near as reasonably practicable to, the goods or conveyance.

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Biosecurity control order applying to premises (other than a conveyance)

(2) If premises (other than a conveyance) are specified in a biosecurity control order under paragraph 354(2)(a), a biosecurity officer must:
  (a) give a copy of the order to the occupier of the premises, or another person who apparently represents the occupier, if it is practicable to do so; and
  (b) if it is not practicable to comply with paragraph (a)—affix a copy of the order to, or as near as reasonably practicable to, the premises.

Note: A person may contravene a civil penalty provision for interfering with, removing or defacing a copy of a biosecurity control order that is affixed to, or as near as reasonably practicable to, goods or a conveyance or other premises under this section (see section 363).

357 Circumstances in which biosecurity control order ceases to be in force

(1) A biosecurity control order made under section 353 ceases to be in force if any of the following occurs:
  (a) the order expires;
  (b) the order is revoked under section 359.

(2) A biosecurity control order made under section 353 ceases to be in force in relation to particular goods or premises if the goods or premises are destroyed.

358 Variation of biosecurity control order

Grounds for variation

(1) The Director of Biosecurity may vary a biosecurity control order that is in force under section 353 in relation to goods or premises and a disease or pest only if the Director is satisfied that:
  (a) the level of biosecurity risk posed by the disease or pest is no longer unacceptable; or

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(b) the powers specified in the order under paragraph 354(2)(d), (e) or (f) need to be varied (including by specifying additional powers referred to in those paragraphs) to manage the biosecurity risk posed by the disease or pest; or

(c) the following circumstances apply:

(i) another disease or pest (other than a disease or pest to which the order relates) may be present in or on the goods or premises;

(ii) the other disease or pest is posing an unacceptable level of biosecurity risk;

(iii) biosecurity measures need to be taken in relation to the goods or premises to manage the biosecurity risk posed by the other disease or pest; or

(d) the variation is of a minor technical nature.

Limitation on specifying additional powers

(2) A biosecurity control order must not be varied to specify an additional power referred to in paragraph 354(2)(d), (e) or (f) unless the Director of Biosecurity is satisfied that the exercise of the power in relation to the goods or premises and a disease or pest to which the variation relates is appropriate and adapted for the purpose of managing the biosecurity risk posed by the disease or pest.

Variation is not a legislative instrument

(3) A variation of a biosecurity control order must be in writing, but is not a legislative instrument.

When variation takes effect

(4) A variation of a biosecurity control order takes effect immediately after it is made.

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Notice of varied order

(5) If a biosecurity control order (the ***original order***) in relation to goods or a conveyance is varied under this section, a biosecurity officer must:
   (a) give a copy of the varied order to a person in charge of the goods or conveyance, if it is practicable to do so; and
   (b) if it is not practicable to comply with paragraph (a)—affix a copy of the varied order to, or as near as reasonably practicable to, the goods or conveyance; and
   (c) remove any copies of the original order that were affixed to, or as near as reasonably practicable to, the goods or conveyance.

(6) If a biosecurity control order (the ***original order***) in relation to premises (other than a conveyance) is varied under this section, a biosecurity officer must:
   (a) give a copy of the varied order to the occupier of the premises, or another person who apparently represents the occupier, if it is practicable to do so; and
   (b) if it is not practicable to comply with paragraph (a)—affix a copy of the varied order to, or as near as reasonably practicable to, the premises; and
   (c) remove any copies of the original order that were affixed to, or as near as reasonably practicable to, the premises.

Note: A person may contravene a civil penalty provision for interfering with, removing or defacing a copy of a biosecurity control order that is affixed to, or as near as reasonably practicable to, goods or a conveyance or other premises under subsection (5) or (6) (see section 363).

359 Revocation of biosecurity control order

Grounds for revocation

(1) The Director of Biosecurity must revoke a biosecurity control order that is in force under section 353 if the Director is satisfied

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that the level of biosecurity risk posed by each disease or pest to which the order relates is no longer unacceptable.

Revocation is not a legislative instrument

(2) A revocation of a biosecurity control order must be in writing, but is not a legislative instrument.

When revocation takes effect

(3) A revocation of a biosecurity control order takes effect immediately after it is made.

Notice of revocation

(4) If a biosecurity control order (the ***original order***) in relation to goods or a conveyance is revoked under this section, a biosecurity officer must:
   (a) give a copy of the revocation to a person in charge of the goods or conveyance, if it is practicable to do so; and
   (b) remove any copies of the original order that were affixed to, or as near as reasonably practicable to, the goods or conveyance.

(5) If a biosecurity control order (the ***original order***) in relation to premises (other than a conveyance) is revoked under this section, a biosecurity officer must:
   (a) give a copy of the revocation to the occupier of the premises, or another person who apparently represents the occupier, if it is practicable to do so; and
   (b) remove any copies of the original order that were affixed to, or as near as reasonably practicable to, the premises.

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Division 3—Powers that may be exercised under biosecurity control order

360 Powers that may be exercised—general

If a biosecurity control order is in force under section 353 in relation to goods or premises and a disease or pest, any of the following powers may be exercised in relation to the goods or premises for the purpose of managing the biosecurity risk posed by the disease or pest:

(a) a power specified in the order under paragraph 354(2)(d), (e) or (f);

(b) a power set out in Division 4 of Part 3.

Note 1: This Chapter does not apply in relation to certain goods or conveyances (see section 312).

Note 2: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

Note 3: See section 310 in relation to the meaning of ***biosecurity risk*** in this Chapter.

Note 4: Before exercising a power specified in a biosecurity control order, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

Note 5: A biosecurity officer or biosecurity enforcement officer may be assisted by other persons in exercising powers in accordance with this section (see section 536).

361 Exercise of powers in premises

(1) A biosecurity officer or a biosecurity enforcement officer may enter any premises in Australian territory for the purpose of exercising powers in accordance with section 360.

Note: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

(2) However, an officer is not authorised to enter premises under subsection (1) unless:

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(a) the occupier of the premises has consented to the entry and the officer has shown his or her identity card if required by the occupier; or

(b) the entry is made under a biosecurity control order warrant.

Note 1: For the issue of warrants, and the obligations and powers of biosecurity enforcement officers and biosecurity officers in entering premises under a warrant or with consent, see Part 3, and Division 3 of Part 4, of Chapter 9.

Note 2: If the premises can be accessed only by entering other premises, an adjacent premises warrant may be needed (see Division 2 of Part 4 of Chapter 9).

362 Power to secure goods or premises to deal with another disease or pest

(1) This section applies if:

(a) a biosecurity control order is in force under section 353 in relation to goods or premises (the ***relevant goods or premises***) and a disease or pest; and

(b) a biosecurity officer enters premises, as authorised by section 361, for the purpose of exercising powers in accordance with section 360 in relation to the relevant goods or premises.

(2) The biosecurity officer may secure the relevant goods or premises for up to 24 hours if:

(a) in the course of exercising powers in accordance with section 360, the biosecurity officer suspects, on reasonable grounds, that:

(i) another disease or pest (other than a disease or pest to which the biosecurity control order relates) may be present in or on the relevant goods or premises; and

(ii) the other disease or pest may pose an unacceptable level of biosecurity risk; and

(b) the biosecurity officer believes, on reasonable grounds, that it is necessary to secure the relevant goods or premises, without the authority of a biosecurity risk assessment warrant or a

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biosecurity control order warrant, in order to manage the biosecurity risk posed by the other disease or pest.

Note: The Director of Biosecurity may vary the biosecurity control order under section 358 for the purpose of allowing powers to be exercised to manage any biosecurity risk posed by the other disease or pest. If the order is varied, a new biosecurity control order warrant may be needed to authorise a biosecurity officer to re-enter the premises to exercise powers specified in the varied biosecurity control order to manage the biosecurity risk posed by the other disease or pest.

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Division 4—Civil penalty provision

363 Unauthorised persons must not interfere with etc. biosecurity control order affixed to goods or premises

Civil penalty provision

(1) A person is liable to a civil penalty if:
  (a) a biosecurity control order is affixed to, or as near as reasonably practicable to, goods or a conveyance under paragraph 356(1)(b) or 358(5)(b) or other premises under paragraph 356(2)(b) or 358(6)(b); and
  (b) the person interferes with, removes or defaces the biosecurity control order; and
  (c) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;
    (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
    (iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(b) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

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Part 5—Biosecurity response zones

Division 1—Introduction

364 Simplified outline of this Part

This Part provides for the Director of Biosecurity to determine that a specified area in Australian territory is a biosecurity response zone if:

(a) a biosecurity officer suspects, on reasonable grounds, that a disease or pest may be present in or on goods or premises in the area and may pose an unacceptable level of biosecurity risk in, or in relation to, the area; and

(b) the Director of Biosecurity is satisfied it is necessary to make the determination for the purpose of managing the biosecurity risk posed by the disease or pest.

Division 2 sets out requirements relating to making a biosecurity response zone determination, including requirements relating to the content of the determination and requirements relating to consultation and notification.

Division 3 deals with the powers that may be exercised (including in premises) in accordance with a biosecurity response zone determination.

Before exercising a power in accordance with a biosecurity response zone determination, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

Division 4 sets out offences and civil penalty provisions.

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Division 2—Biosecurity response zone determinations

365 Director of Biosecurity may determine biosecurity response zone

(1) The Director of Biosecurity may determine that a specified area in Australian territory is a ***biosecurity response zone*** if:

(a) a biosecurity officer suspects, on reasonable grounds, that:

(i) a disease or pest may be present in or on goods or premises in the area; and

(ii) the disease or pest poses an unacceptable level of biosecurity risk; and

(b) the Director of Biosecurity is satisfied it is necessary to make the determination for the purpose of managing the biosecurity risk posed by the disease or pest.

Note 1: This Chapter does not apply in relation to certain goods or conveyances (see section 312).

Note 2: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

Note 3: See section 310 in relation to the meaning of ***biosecurity risk*** in this Chapter.

Note 4: For variation and revocation of the determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) The Director of Biosecurity may determine that a specified area in Australian territory is a biosecurity response zone even if the area, or a part of the area, is part of:

(a) another biosecurity response zone; or

(b) a biosecurity monitoring zone; or

(c) a biosecurity activity zone.

(3) A biosecurity response zone determination may relate to more than one disease or pest.

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(4) A determination made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

366 Content of a biosecurity response zone determination

(1) A biosecurity response zone determination must state that:
  (a) a biosecurity officer suspects, on reasonable grounds, that:
    (i) a disease or pest may be present in or on goods or premises in the zone; and
    (ii) the disease or pest poses an unacceptable level of biosecurity risk; and
  (b) the Director of Biosecurity is satisfied it is necessary to make the determination for the purpose of managing the biosecurity risk posed by the disease or pest.

(2) A biosecurity response zone determination must also specify:
  (a) each disease or pest that:
    (i) poses an unacceptable level of biosecurity risk; and
    (ii) has been identified; and
  (b) the nature of the biosecurity risk that needs to be managed; and
  (c) each power set out in Division 2 of Part 3 (powers to require biosecurity measures to be taken) that may be exercised in relation to goods or premises in the biosecurity response zone in accordance with that Division; and
  (d) each power provided by regulations made for the purposes of section 346 (other biosecurity measures) that may be exercised in relation to goods or premises in the biosecurity response zone in accordance with those regulations;
  (e) each power set out in Division 3 of Part 2 (biosecurity risk assessment powers) that may be exercised in relation to goods or premises in the biosecurity response zone in accordance with that Division; and
  (f) each power set out in section 367 (additional biosecurity response zone powers) that may be exercised in, or in

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relation to goods or premises in, the biosecurity response zone in accordance with that section; and

(g) the period during which the determination is to be in force.

(3) The period during which a biosecurity response zone determination may be in force:

(a) must not be longer than the Director of Biosecurity considers necessary to manage the biosecurity risk posed by each disease or pest to which the determination relates; and

(b) in any case, must not be longer than 12 months.

(4) A power must not be specified in a biosecurity response zone determination under paragraph (2)(c), (d), (e) or (f) unless the Director of Biosecurity is satisfied that the exercise of the power is appropriate and adapted for the purpose of managing the biosecurity risk posed by a disease or pest to which the determination relates.

(5) If a biosecurity response zone determination ceases to be in force, the Director of Biosecurity may make another biosecurity response zone determination specifying the same area covered by the previous biosecurity response zone determination.

367 Additional powers that may be specified in a biosecurity response zone determination

The following powers that a biosecurity officer may exercise may be specified in a biosecurity response zone determination under paragraph 366(2)(f):

(a) the power to cause the biosecurity response zone to be identified (whether by affixing notices or by markings or otherwise);

(b) the power to cause goods or premises in the biosecurity response zone to be identified (whether by affixing notices or by markings or otherwise);

(c) the power to direct a person in the biosecurity response zone to leave the biosecurity response zone for a specified period (which must not be longer than 24 hours);

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(d) the power to set traps or set up equipment or other structures in the biosecurity response zone.

Note 1: Other powers may also be specified in a biosecurity response zone determination (see paragraphs 366(2)(c), (d) and (e)).

Note 2: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

368 Consultation requirements

(1) Before making a biosecurity response zone determination, the Director of Biosecurity must consult the head (however described) of the State or Territory body that is responsible for the administration of matters relating to biosecurity in each State or Territory in which the biosecurity response zone will lie.

(2) A failure by the Director of Biosecurity to comply with subsection (1) does not affect the validity of the determination.

369 Notification requirements

(1) In addition to the requirement under the *Legislation Act 2003* for a biosecurity response zone determination to be registered, the Director of Biosecurity must ensure that the determination is made public, in any other way he or she thinks fit.

(2) A failure by the Director of Biosecurity to comply with subsection (1) does not affect the validity of the determination.

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Division 3—Powers that may be exercised in biosecurity response zones

370 Powers that may be exercised—general

If a biosecurity response zone determination is in force, any of the following powers may be exercised in, or in relation to goods or premises in, the biosecurity response zone for the purpose of managing the biosecurity risk posed by a disease or pest to which the determination relates:

(a) a power specified in the determination under paragraph 366(2)(c), (d), (e) or (f);

(b) a power set out in Division 4 of Part 3.

Note 1: This Chapter does not apply in relation to certain goods or conveyances (see section 312).

Note 2: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

Note 3: See section 310 in relation to the meaning of ***biosecurity risk*** in this Chapter.

Note 4: Before exercising a power specified in a biosecurity response zone determination, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

Note 5: A biosecurity officer or biosecurity enforcement officer may be assisted by other persons in exercising powers in accordance with this section (see section 536).

Note 6: If an area (the ***overlapping area***) of a biosecurity response zone is also part of a biosecurity monitoring zone or a biosecurity activity zone (the ***other zone***), the powers that may be exercised in the other zone may also be exercised in the overlapping area. See sections 379, 389 and 399 for the powers that may be exercised in a biosecurity monitoring zone and a biosecurity activity zone.

Note 7: See Division 4 for offences and civil penalty provisions.

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371 Exercise of powers in premises

(1) A biosecurity officer or a biosecurity enforcement officer may enter premises in a biosecurity response zone for the purpose of exercising powers in accordance with section 370.

Note: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

(2) However, an officer is not authorised to enter premises under subsection (1) unless:

(a) the occupier of the premises has consented to the entry and the officer has shown his or her identity card if required by the occupier; or

(b) the entry is made under a biosecurity response zone warrant.

Note: For the issue of warrants, and the obligations and powers of biosecurity enforcement officers and biosecurity officers in entering premises under a warrant or with consent, see Part 3, and Division 3 of Part 4, of Chapter 9.

372 Power to secure goods or premises to deal with another disease or pest

(1) This section applies if a biosecurity officer enters premises in a biosecurity response zone, as authorised by section 371, for the purpose of exercising powers in accordance with section 370 in relation to goods or premises (the ***relevant goods or premises***) in the zone.

(2) The biosecurity officer may secure the relevant goods or premises for up to 24 hours if:

(a) in the course of exercising powers in accordance with section 370, the biosecurity officer suspects, on reasonable grounds, that:

(i) another disease or pest (other than a disease or pest to which the biosecurity response zone determination relates) may be present in or on the relevant goods or premises; and

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(ii) the other disease or pest may pose an unacceptable level of biosecurity risk; and

(b) the biosecurity officer believes, on reasonable grounds, that it is necessary to secure the relevant goods or premises, without the authority of a biosecurity risk assessment warrant or a biosecurity response zone warrant, in order to manage the biosecurity risk posed by the other disease or pest.

Note: The Director of Biosecurity may vary the biosecurity response zone determination for the purpose of allowing powers to be exercised to manage any biosecurity risk posed by the other disease or pest. If the determination is varied, a new biosecurity response zone warrant may be needed to authorise a biosecurity officer to re-enter the premises to exercise powers specified in the varied biosecurity response zone determination to manage the biosecurity risk posed by the other disease or pest.

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Division 4—Offences and civil penalty provisions

Note: See also Division 4 of Part 2 and Division 5 of Part 3 for other offences and civil penalty provisions.

373 Unauthorised persons must not interfere with etc. notices or markings identifying biosecurity response zone

Civil penalty provision

(1) A person is liable to a civil penalty if:
  (a) the power referred to in paragraph 367(a) (identification of a biosecurity response zone) is specified in the biosecurity response zone determination; and
  (b) a biosecurity officer has, in accordance with the biosecurity response zone determination, caused the zone to be identified by:
    (i) affixing a notice to an appropriate place in the zone; or
    (ii) marking the zone; and
  (c) the person interferes with, removes or defaces the notice or marking; and
  (d) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (c) in accordance with an approved arrangement;
    (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
    (iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(c) under this Act or under another Australian law.

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Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

374 Unauthorised persons must not interfere with etc. notices or markings identifying goods or premises in a biosecurity response zone

Civil penalty provision

(1) A person is liable to a civil penalty if:
  (a) the power referred to in paragraph 367(b) (identification of goods or premises in a biosecurity response zone) is specified in the biosecurity response zone determination; and
  (b) a biosecurity officer has, in accordance with the biosecurity response zone determination, caused goods or premises in the zone to be identified by:
    (i) affixing a notice to, or as near as reasonably practicable to, the goods or premises; or
    (ii) marking the goods or premises; and
  (c) the person interferes with, removes or defaces the notice or marking; and
  (d) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (c) in accordance with an approved arrangement;
    (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
    (iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(c) under this Act or under another Australian law.

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Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

375 Person must comply with direction

(1) A person contravenes this subsection if:
  (a) the power referred to in paragraph 367(c) (direction to person to leave a biosecurity response zone) is specified in the biosecurity response zone determination; and
  (b) a person is given a direction under that paragraph; and
  (c) the direction is given in accordance with the biosecurity response zone determination; and
  (d) the person engages in conduct; and
  (e) the conduct contravenes the direction.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 534).

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

Note: A person may commit an offence or contravene a civil penalty provision for failing to comply with a direction given in relation to another power specified in a biosecurity response zone determination (see sections 317, 318, 321, 327 and 350).

376 Unauthorised persons must not interfere with etc. equipment etc. set up in biosecurity response zone

(1) A person contravenes this subsection if:

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(a) the power referred to in paragraph 367(d) (setting traps or setting up equipment or other structures in a biosecurity response zone) is specified in the biosecurity response zone determination; and

(b) a biosecurity officer has, in accordance with the biosecurity response zone determination, set a trap or set up equipment or another structure in the zone; and

(c) the person interferes with, removes or defaces the trap, equipment or other structure (as the case may be); and

(d) none of the following applies:

(i) the person is authorised to engage in the conduct referred to in paragraph (c) in accordance with an approved arrangement;

(ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;

(iii) the person has been given permission to engage in that conduct under section 557.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 534).

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(c) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

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Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

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Part 6—Biosecurity monitoring zones

Division 1—Introduction

377 Simplified outline of this Part

This Part provides for certain areas in Australian territory to be biosecurity monitoring zones. Powers may be exercised in these zones for the purpose of monitoring whether a disease or pest that may pose an unacceptable level of biosecurity risk:

(a) has entered, or has emerged, established itself or spread in, the zone; or

(b) is likely to enter, or to emerge, establish itself or spread in, the zone.

There are 2 kinds of biosecurity monitoring zones—permanent biosecurity monitoring zones (see Division 2) and temporary biosecurity monitoring zones (see Division 3).

Permanent biosecurity monitoring zones are areas in Australian territory that are within the permissible distance of other areas that are considered to have a high level of biosecurity risk associated with them, for example first points of entry for goods being brought into Australian territory or for aircraft or vessels entering Australian territory.

Division 2 deals with the powers that may be exercised (including in premises) in a permanent biosecurity monitoring zone, and sets out the civil penalty provisions.

Under Division 3, the Director of Biosecurity may determine that a specified area in Australian territory is a temporary biosecurity monitoring zone if the Director is satisfied it is necessary to do so for the purpose of monitoring whether a disease or pest that may pose an unacceptable level of biosecurity risk:

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(a) has entered, or has emerged, established itself or spread in, the area; or

(b) is likely to enter, or to emerge, establish itself or spread in, the area.

Division 3 sets out requirements relating to making a temporary biosecurity monitoring zone determination, including requirements relating to the content of the determination and requirements relating to consultation and notification.

Division 3 also deals with the powers that may be exercised (including in premises) in accordance with a temporary biosecurity monitoring zone determination and sets out civil penalty provisions.

Before exercising a power in a permanent biosecurity monitoring zone or in accordance with a temporary biosecurity monitoring zone determination, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

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Division 2—Permanent biosecurity monitoring zones

Subdivision A—Areas that are permanent biosecurity monitoring zones

378 Permanent biosecurity monitoring zones

(1) Each of the following places in Australian territory, and the area in Australian territory that is within the permissible distance of the boundary of the place, are a ***permanent biosecurity monitoring zone***:

(a) a landing place that is a first point of entry for aircraft or goods;

(b) a port that is a first point of entry for vessels or goods;

(c) an international mail centre;

(d) a biosecurity activity zone;

(e) any other place prescribed by the regulations.

Note: ***Permissible distance*** means 400 metres or such greater distance as is prescribed by the regulations (see the definition in section 9).

(2) The regulations must not prescribe a place for the purposes of paragraph (1)(e) unless the Director of Biosecurity is satisfied that there is a high level of biosecurity risk associated with the place.

Subdivision B—Powers that may be exercised in permanent biosecurity monitoring zones

379 Powers that may be exercised—general

(1) The powers set out in Division 3 of Part 2 (biosecurity risk assessment powers) (other than the powers set out in section 321 (movement of goods or conveyances) and sections 324 and 325 (operating electronic equipment)) may be exercised in relation to goods or premises in a permanent biosecurity monitoring zone in accordance with that Division.

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(2) The following powers may also be exercised by a biosecurity officer in, or in relation to goods or premises in, a permanent biosecurity monitoring zone:
   (a) the power to cause the biosecurity monitoring zone to be identified (whether by affixing notices or by markings or otherwise);
   (b) the power to cause goods or premises in the biosecurity monitoring zone to be identified (whether by affixing notices or by markings or otherwise);
   (c) the power to set traps or set up equipment or other structures in the biosecurity monitoring zone;
   (d) any other power prescribed by the regulations for the purposes of this paragraph.

(3) Regulations made for the purposes of paragraph (2)(d) must not provide for a biosecurity officer to require any of the following kinds of biosecurity measures to be taken:
   (a) a biosecurity measure of a kind set out in Subdivision B of Division 3 of Part 3 of Chapter 2 (biosecurity measures that may be included in a human biosecurity control order);
   (b) a biosecurity measure of a kind set out in Division 3 of Part 2 of this Chapter (biosecurity risk assessment powers);
   (c) a biosecurity measure of a kind set out in Division 2 of Part 3 of this Chapter (powers to require biosecurity measures to be taken);
   (d) a biosecurity measure of a kind provided by regulations made for the purposes of section 346 (other biosecurity measures);
   (e) a biosecurity measure of a kind referred to in Subdivision B of Division 2 of Part 4 of Chapter 10 (decontamination).

(4) The powers referred to in subsections (1) and (2) may be exercised in, or in relation to goods or premises in, a permanent biosecurity monitoring zone for the purpose of monitoring whether a disease or pest that a biosecurity officer suspects, on reasonable grounds, may pose an unacceptable level of biosecurity risk:
   (a) has entered, or has emerged, established itself or spread in, the zone; or

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(b) is likely to enter, or to emerge, establish itself or spread in, the zone.

Note 1: This Chapter does not apply in relation to certain goods or conveyances (see section 312).

Note 2: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

Note 3: See section 310 in relation to the meaning of ***biosecurity risk*** in this Chapter.

Note 4: Before exercising a power in a permanent biosecurity monitoring zone, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

Note 5: A biosecurity officer may be assisted by other persons in exercising powers in a permanent biosecurity monitoring zone (see section 536).

Note 6: See Subdivision C for civil penalty provisions.

380 Exercise of powers in premises

(1) A biosecurity officer or a biosecurity enforcement officer may enter premises in a permanent biosecurity monitoring zone for the purpose of exercising powers in accordance with section 379.

Note: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

(2) However, an officer is not authorised to enter premises under subsection (1) unless:

(a) the occupier of the premises has consented to the entry and the officer has shown his or her identity card if required by the occupier; or

(b) the entry is made under a biosecurity monitoring zone warrant.

Note: For the issue of warrants, and the obligations and powers of biosecurity enforcement officers and biosecurity officers in entering premises under a warrant or with consent, see Part 3, and Division 3 of Part 4, of Chapter 9.

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Subdivision C—Civil penalty provisions

Note: See also Division 3 of Part 2 for other civil penalty provisions.

381 Unauthorised persons must not interfere with etc. notices or markings identifying permanent biosecurity monitoring zone

Civil penalty provision

(1) A person is liable to a civil penalty if:
  (a) a biosecurity officer has caused a permanent biosecurity monitoring zone to be identified by:
    (i) affixing a notice to an appropriate place in the zone; or
    (ii) marking the zone; and
  (b) the person interferes with, removes or defaces the notice or marking; and
  (c) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;
    (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
    (iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(b) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

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382 Unauthorised persons must not interfere with etc. notices or markings identifying goods or premises in a permanent biosecurity monitoring zone

Civil penalty provision

(1) A person is liable to a civil penalty if:
  (a) a biosecurity officer has caused goods or premises in a permanent biosecurity monitoring zone to be identified by:
    (i) affixing a notice to, or as near as practicable to, the goods or premises; or
    (ii) marking the goods or premises; and
  (b) the person interferes with, removes or defaces the notice or marking; and
  (c) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;
    (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
    (iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(b) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

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383 Unauthorised persons must not interfere with etc. equipment etc. set up in permanent biosecurity monitoring zone

Civil penalty provision

(1) A person is liable to a civil penalty if:
  (a) a biosecurity officer has set a trap or has set up equipment or another structure in a permanent biosecurity monitoring zone; and
  (b) the person interferes with, removes or defaces the trap, equipment or other structure; and
  (c) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;
    (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
    (iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in that subsection under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

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Division 3—Temporary biosecurity monitoring zones

Subdivision A—Temporary biosecurity monitoring zone determinations

384 Director of Biosecurity may determine temporary biosecurity monitoring zone

(1) The Director of Biosecurity may determine that a specified area in Australian territory is a ***temporary biosecurity monitoring zone*** if the Director is satisfied it is necessary to do so for the purpose of monitoring whether a disease or pest that may pose an unacceptable level of biosecurity risk:

(a) has entered, or has emerged, established itself or spread in, the area; or

(b) is likely to enter, or to emerge, establish itself or spread in, the area.

Note 1: See section 310 in relation to the meaning of ***biosecurity risk*** in this Chapter.

Note 2: For variation and revocation of the determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) Without limiting subsection (1), a specified area may consist of the whole or part of specified premises (other than a conveyance).

(3) The Director of Biosecurity may determine that a specified area in Australian territory is a temporary biosecurity monitoring zone even if the area, or a part of the area, is part of another temporary biosecurity monitoring zone.

(4) A determination made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

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385 Content of a temporary biosecurity monitoring zone determination

(1) A temporary biosecurity monitoring zone determination must specify:

(a) each power set out in Division 3 of Part 2 (biosecurity risk assessment powers) that may be exercised in relation to goods or premises in the temporary biosecurity monitoring zone in accordance with that Division; and

(b) each power set out in section 386 (additional temporary biosecurity monitoring zone powers) that may be exercised in, or in relation to goods or premises in, the temporary biosecurity monitoring zone in accordance with that section; and

(c) the period during which the determination is to be in force.

(2) The following powers must not be specified in a temporary biosecurity monitoring zone determination under paragraph (1)(a):

(a) the power set out in section 321 (movement of goods or conveyance);

(b) the powers set out in sections 324 and 325 (operation of electronic equipment).

(3) The period during which a temporary biosecurity monitoring zone determination may be in force:

(a) must not be longer than the Director of Biosecurity considers necessary to monitor whether a disease or pest that may pose an unacceptable level of biosecurity risk:

(i) has entered, or has emerged, established itself or spread in, the zone; or

(ii) is likely to enter, or to emerge, establish itself or spread in, the zone; and

(b) in any case, must not be longer than 12 months.

(4) A power must not be specified in a temporary biosecurity monitoring zone determination under paragraph (1)(a) or (b) unless the Director of Biosecurity is satisfied that the exercise of the power is appropriate and adapted for the purpose of monitoring

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whether a disease or pest that a biosecurity officer suspects, on reasonable grounds, may pose an unacceptable level of biosecurity risk:

(a) has entered, or has emerged, established itself or spread in, the zone; or

(b) is likely to enter, or to emerge, establish itself or spread in, the zone.

(5) If a temporary biosecurity monitoring zone determination ceases to be in force, the Director of Biosecurity may make another temporary biosecurity monitoring zone determination specifying the same area covered by the previous temporary biosecurity monitoring zone determination.

386 Additional powers that may be specified in a temporary biosecurity monitoring zone determination

(1) The following powers that a biosecurity officer may exercise may be specified in a temporary biosecurity monitoring zone determination under paragraph 385(1)(b):

(a) the power to cause the biosecurity monitoring zone to be identified (whether by affixing notices or by markings or otherwise);

(b) the power to cause goods or premises in the biosecurity monitoring zone to be identified (whether by affixing notices or by markings or otherwise);

(c) the power to set traps or set up equipment or other structures in the biosecurity monitoring zone;

(d) any other power prescribed by the regulations for the purposes of this paragraph.

Note: Certain powers set out in Division 3 of Part 2 (biosecurity risk assessment powers) may also be specified in a temporary biosecurity monitoring zone determination (see paragraph 385(1)(a) and subsection 385(2)).

(2) Regulations made for the purposes of paragraph (1)(d) must not provide for a biosecurity officer to require any of the following kinds of biosecurity measures to be taken:

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(a) a biosecurity measure of a kind set out in Subdivision B of Division 3 of Part 3 of Chapter 2 (biosecurity measures that may be included in a human biosecurity control order);
(b) a biosecurity measure of a kind set out in Division 3 of Part 2 of this Chapter (biosecurity risk assessment powers);
(c) a biosecurity measure of a kind set out in Division 2 of Part 3 of this Chapter (powers to require biosecurity measures to be taken);
(d) a biosecurity measure of a kind provided by regulations made for the purposes of section 346 (other biosecurity measures);
(e) a biosecurity measure of a kind referred to in Subdivision B of Division 2 of Part 4 of Chapter 10 (decontamination).

387 Consultation requirements

(1) Before making a temporary biosecurity monitoring zone determination, the Director of Biosecurity must consult the head (however described) of the State or Territory body that is responsible for the administration of matters relating to biosecurity in each State or Territory in which the temporary biosecurity monitoring zone will lie.

(2) A failure by the Director of Biosecurity to comply with subsection (1) does not affect the validity of the determination.

388 Notification requirements

(1) In addition to the requirement under the *Legislation Act 2003* for a temporary biosecurity monitoring zone determination to be registered, the Director of Biosecurity must ensure that the determination is made public, in any other way he or she thinks fit.

(2) A failure by the Director of Biosecurity to comply with subsection (1) does not affect the validity of the determination.

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Subdivision B—Powers that may be exercised in temporary biosecurity monitoring zones

389 Powers that may be exercised—general

If a temporary biosecurity monitoring zone determination is in force, any power specified in the determination under paragraph 385(1)(a) or (b) may be exercised in, or in relation to goods or premises in, the zone for the purpose of monitoring whether a disease or pest that a biosecurity officer suspects, on reasonable grounds, may pose an unacceptable level of biosecurity risk:

(a) has entered, or has emerged, established itself or spread in, the temporary biosecurity monitoring zone; or

(b) is likely to enter, or to emerge, establish itself or spread in, the temporary biosecurity monitoring zone.

Note 1: This Chapter does not apply in relation to certain goods or conveyances (see section 312).

Note 2: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

Note 3: See section 310 in relation to the meaning of ***biosecurity risk*** in this Chapter.

Note 4: Before exercising a power in a temporary biosecurity monitoring zone, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

Note 5: A biosecurity officer may be assisted by other persons in exercising powers in a temporary biosecurity monitoring zone (see section 536).

Note 6: See Subdivision C for civil penalty provisions.

390 Exercise of powers in premises

(1) A biosecurity officer or a biosecurity enforcement officer may enter premises in a temporary biosecurity monitoring zone for the purpose of exercising powers in accordance with section 389.

Note: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

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(2) However, an officer is not authorised to enter premises under subsection (1) unless:
  (a) the occupier of the premises has consented to the entry and the officer has shown his or her identity card if required by the occupier; or
  (b) the entry is made under a biosecurity monitoring zone warrant.

Note: For the issue of warrants, and the obligations and powers of biosecurity enforcement officers and biosecurity officers in entering premises under a warrant or with consent, see Part 3, and Division 3 of Part 4, of Chapter 9.

Subdivision C—Civil penalty provisions

Note: See also Division 3 of Part 2 for other civil penalty provisions.

391 Unauthorised persons must not interfere with etc. notices or markings identifying temporary biosecurity monitoring zone

Civil penalty provision

(1) A person is liable to a civil penalty if:
  (a) the power referred to in paragraph 386(1)(a) (identification of a temporary biosecurity monitoring zone) is specified in the temporary biosecurity monitoring zone determination; and
  (b) a biosecurity officer has, in accordance with the temporary biosecurity monitoring zone determination, caused the zone to be identified by:
    (i) affixing a notice to an appropriate place in the zone; or
    (ii) marking the zone; and
  (c) the person interferes with, removes or defaces the notice or marking; and
  (d) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (c) in accordance with an approved arrangement;

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(ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;

(iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(c) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

392 Unauthorised persons must not interfere with etc. notices or markings identifying goods or premises in temporary biosecurity monitoring zone

Civil penalty provision

(1) A person is liable to a civil penalty if:

(a) the power referred to in paragraph 386(1)(b) (identification of goods or premises in a temporary biosecurity monitoring zone) is specified in the temporary biosecurity monitoring zone determination; and

(b) a biosecurity officer has, in accordance with the temporary biosecurity monitoring zone determination, caused goods or premises in the zone to be identified by:

(i) affixing a notice to, or as near as reasonably practicable to, the goods or premises; or

(ii) marking the goods or premises; and

(c) the person interferes with, removes or defaces the notice or marking; and

(d) none of the following applies:

(i) the person is authorised to engage in the conduct referred to in paragraph (c) in accordance with an approved arrangement;

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(ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;

(iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(c) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

393 Unauthorised persons must not interfere with etc. equipment etc. set up in temporary biosecurity monitoring zone

Civil penalty provision

(1) A person is liable to a civil penalty if:

(a) the power referred to in paragraph 386(1)(c) (setting traps or setting up equipment or other structures in a temporary biosecurity monitoring zone) is specified in the temporary biosecurity monitoring zone determination; and

(b) a biosecurity officer has, in accordance with the temporary biosecurity monitoring zone determination, set a trap or set up equipment or another structure in the zone; and

(c) the person interferes with, removes or defaces the trap, equipment or other structure (as the case may be); and

(d) none of the following applies:

(i) the person is authorised to engage in the conduct referred to in paragraph (c) in accordance with an approved arrangement;

(ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;

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(iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(c) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

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Part 7—Biosecurity activity zones

Division 1—Introduction

394 Simplified outline of this Part

This Part provides for the Director of Biosecurity to determine that an area in Australian territory where powers are exercised or functions or duties are performed by, or on behalf of, the Commonwealth under this Act is a biosecurity activity zone.

The Director may make the determination if the Director is satisfied it is necessary for the purpose of managing biosecurity risks associated with the exercise of those powers or the performance of those functions or duties.

Division 2 sets out requirements relating to making a biosecurity activity zone determination, including requirements relating to the content of the determination and requirements relating to consultation and notification.

Division 3 deals with the powers that may be exercised (including in premises) in a biosecurity activity zone.

Before exercising a power in a biosecurity activity zone, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

Division 4 sets out offences and civil penalty provisions.

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Division 2—Biosecurity activity zone determinations

395 Director of Biosecurity may determine biosecurity activity zone

(1) The Director of Biosecurity may determine that a specified area in Australian territory is a ***biosecurity activity zone*** if:

(a) the area is a place where powers are exercised or functions or duties are performed by, or on behalf of, the Commonwealth under this Act; and

(b) the Director of Biosecurity is satisfied it is necessary to make the determination for the purpose of managing biosecurity risks associated with the exercise of those powers or the performance of those functions or duties.

Note 1: See section 310 in relation to the meaning of ***biosecurity risk*** in this Chapter.

Note 2: For variation of a biosecurity activity zone determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 3: For revocation of a biosecurity activity zone determination, see section 398.

(2) Without limiting subsection (1), a specified area may consist of the whole or part of specified premises (other than a conveyance), including premises on which a biosecurity industry participant carries out biosecurity activities as authorised by an approved arrangement covering the biosecurity industry participant.

(3) The Director of Biosecurity may determine that a specified area in Australian territory is a biosecurity activity zone even if the area, or a part of the area, is part of:

(a) a biosecurity response zone; or

(b) a biosecurity monitoring zone.

(4) A determination made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

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(5) A biosecurity activity zone determination remains in force until it is revoked under section 398.

396 Consultation requirements

(1) Before making a biosecurity activity zone determination, the Director of Biosecurity must consult the head (however described) of the State or Territory body that is responsible for the administration of matters relating to biosecurity in each State or Territory in which the biosecurity activity zone will lie.

(2) A failure by the Director of Biosecurity to comply with subsection (1) does not affect the validity of the determination.

397 Notification requirements

(1) In addition to the requirement under the *Legislation Act 2003* for a biosecurity activity zone determination to be registered, the Director of Biosecurity must ensure that the determination is made public, in any other way he or she thinks fit.

(2) A failure by the Director of Biosecurity to comply with subsection (1) does not affect the validity of the determination.

398 Revocation of biosecurity activity zone determination

(1) The Director of Biosecurity must revoke a biosecurity activity zone determination if the Director is satisfied that it is no longer necessary for powers to be exercised in, or in relation to, the zone in accordance with section 399.

(2) A revocation of a biosecurity activity zone determination made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the revocation.

(3) A revocation of a biosecurity activity zone determination takes effect immediately after it is made.

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Division 3—Powers that may be exercised in biosecurity activity zones

399 Powers that may be exercised

(1) The following powers may be exercised by a biosecurity officer in, or in relation to goods or premises in, a biosecurity activity zone:

(a) the power to cause the biosecurity activity zone to be identified (whether by affixing notices or by markings or otherwise);

(b) the power to cause goods or premises in the biosecurity activity zone to be identified (whether by affixing notices or by markings or otherwise);

(c) the power to direct a person in the biosecurity activity zone to leave the biosecurity activity zone for a specified period (which must not be longer than 24 hours);

(d) any other power prescribed by the regulations for the purposes of this paragraph.

(2) The powers set out in sections 333 and 334 (entry and exit requirements) may also be exercised in relation to premises in a biosecurity activity zone in accordance with that section.

Note: A person may commit an offence or contravene a civil penalty provision if the person fails to comply with a requirement imposed under section 333 or 334 that applies to the person (see section 349).

(3) Regulations made for the purposes of paragraph (1)(d) must not provide for a biosecurity officer to require any of the following kinds of biosecurity measures to be taken:

(a) a biosecurity measure of a kind set out in Subdivision B of Division 3 of Part 3 of Chapter 2 (biosecurity measures that may be included in a human biosecurity control order);

(b) a biosecurity measure of a kind set out in Division 3 of Part 2 of this Chapter (biosecurity risk assessment powers);

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(c) a biosecurity measure of a kind set out in Division 2 of Part 3 of this Chapter (powers to require biosecurity measures to be taken);

(d) a biosecurity measure of a kind provided by regulations made for the purposes of section 346 (other biosecurity measures);

(e) a biosecurity measure of a kind referred to in Subdivision B of Division 2 of Part 4 of Chapter 10 (decontamination).

(4) The powers referred to in subsections (1) and (2) may be exercised in, or in relation to goods or premises in, a biosecurity activity zone for the purpose of managing biosecurity risks associated with the exercise of powers or the performance of functions or duties by, or on behalf of, the Commonwealth under this Act in the zone.

Note 1: This Chapter does not apply in relation to certain goods or conveyances (see section 312).

Note 2: Premises include a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

Note 3: See section 310 in relation to the meaning of ***biosecurity risk*** in this Chapter.

Note 4: Before exercising a power in a biosecurity activity zone, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

Note 5: A biosecurity officer may be assisted by other persons in exercising powers in a biosecurity activity zone (see section 536).

Note 6: See Division 4 for offences and civil penalty provisions.

400 Use of force

A biosecurity enforcement officer may use such force against things in a biosecurity activity zone as is necessary and reasonable in the circumstances.

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Division 4—Offences and civil penalty provisions

401 Unauthorised persons must not interfere with etc. notices or markings identifying biosecurity activity zone

Civil penalty provision

(1) A person is liable to a civil penalty if:
  (a) a biosecurity officer has caused a biosecurity activity zone to be identified by:
    (i) affixing a notice to an appropriate place in the zone; or
    (ii) marking the zone; and
  (b) the person interferes with, removes or defaces the notice or marking; and
  (c) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;
    (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
    (iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(b) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

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402 Unauthorised persons must not interfere with etc. notices or markings identifying goods or premises in a biosecurity activity zone

Civil penalty provision

(1) A person is liable to a civil penalty if:
  (a) a biosecurity officer has caused goods or premises in a biosecurity activity zone to be identified by:
    (i) affixing a notice to, or as near as practicable to, the goods or premises; or
    (ii) marking the goods or premises; and
  (b) the person interferes with, removes or defaces the notice or marking; and
  (c) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (b) in accordance with an approved arrangement;
    (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
    (iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(b) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

403 Person must comply with direction

(1) A person contravenes this subsection if:
  (a) the person is given a direction under paragraph 399(1)(c); and

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(b) the person engages in conduct; and
(c) the conduct contravenes the direction.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 534).

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

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Chapter 7—Approved arrangements

Part 1—Introduction

404 Simplified outline of this Chapter

This Chapter provides for the Director of Biosecurity or the Director of Human Biosecurity to approve proposed arrangements that provide for the person covered by the arrangement (the biosecurity industry participant) to carry out activities (biosecurity activities) to manage biosecurity risks associated with specified goods, premises or other things.

A biosecurity industry participant covered by an approved arrangement is authorised and required to carry out biosecurity activities in accordance with the arrangement (except in certain circumstances).

Part 2 deals with matters relating to obtaining approval of a proposed arrangement.

Part 3 deals with varying an approved arrangement.

Part 4 deals with suspending an approved arrangement, or a part of an approved arrangement, for a period.

Part 5 deals with revoking an approved arrangement.

Part 6 sets out the powers and obligations of biosecurity industry participants in carrying out biosecurity activities in accordance with an approved arrangement.

Part 7 includes other provisions relating to approved arrangements. Division 1 deals with matters relating to applications for approval of proposed arrangements; Division 2 provides for the Director of Biosecurity or the Director of Human Biosecurity to require audits

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to be carried out in relation to approved arrangements; and Division 3 sets out offence and civil penalty provisions and provides for protection from civil proceedings.

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Part 2—Approval of proposed arrangement

405 Person may apply to relevant Director for approval of proposed arrangement to carry out biosecurity activities

A person may apply to the relevant Director for approval of a proposed arrangement that provides for the person to carry out specified activities (***biosecurity activities***) to manage biosecurity risks associated with specified goods, premises or other things.

Note 1: A proposed arrangement may provide for a person to carry out biosecurity activities at a particular place.

Note 2: Section 434 sets out requirements for applications.

406 Relevant Director must decide whether or not to approve proposed arrangement

(1) On receiving an application for approval of a proposed arrangement under section 405, the relevant Director must decide either:

(a) to approve the arrangement; or

(b) to refuse to approve the arrangement.

Note 1: See section 435 for matters relating to dealing with applications.

Note 2: If the relevant Director does not make a decision in relation to the application within the consideration period for the application, the Director is taken to have refused to approve the proposed arrangement at the end of that period (see subsection 435(2)).

Note 3: A decision to refuse to approve a proposed arrangement is a reviewable decision (see Part 1 of Chapter 11).

Note 4: If a proposed arrangement is approved, the biosecurity industry participant covered by the arrangement is authorised, for the purposes of this Act, to carry out biosecurity activities in accordance with the arrangement (see section 427).

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(2) The relevant Director may approve the arrangement if the Director is satisfied, having regard to any matter that the Director considers relevant, that:
   (a) the arrangement meets the requirements prescribed by the regulations; and
   (b) the applicant for the approval is a fit and proper person (having regard to the matters referred to in section 530); and
   (c) the level of biosecurity risk associated with the operation of the arrangement is acceptable.

(3) The relevant Director may approve the arrangement subject to any conditions the Director considers appropriate.

Note 1: A decision to approve a proposed arrangement subject to conditions is a reviewable decision (see Part 1 of Chapter 11).

Note 2: A condition may require a security to be given as referred to in section 407.

407 Proposed arrangement may be approved subject to condition requiring security to be given

(1) The relevant Director may, if he or she considers it appropriate having regard to the criteria (if any) prescribed by the regulations, require, as a condition of approving a proposed arrangement, a security to be given in relation to the operation of the arrangement.

(2) The regulations may:
   (a) prescribe criteria to which the relevant Director must have regard in considering whether to require a security to be given as mentioned in subsection (1); and
   (b) make provision for or in relation to the security that may be required.

(3) Without limiting paragraph (2)(b), regulations made for the purposes of that paragraph may deal with any or all of the following:
   (a) the form of the security;
   (b) the amount of the security;

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(c) who must give the security;
(d) when the security must be given;
(e) the circumstances in which the security may be retained;
(f) the circumstances in which the security, or any part of the security, must be repaid.

408 Notice of decision

(1) The relevant Director must notify, in writing, the applicant for approval of a proposed arrangement whether the arrangement is approved or not.

(2) If the arrangement is approved, the notice must specify:
(a) any conditions to which the approved arrangement is subject; and
(b) the period for which the approved arrangement is to be in force.

(3) If the arrangement is not approved, the notice must include the reasons for refusing to approve the arrangement.

409 Period of effect of approved arrangement

(1) An approved arrangement takes effect:
(a) on the day the notice is given under subsection 408(1); or
(b) if a later day is specified in that notice—on that later day.

(2) An approved arrangement remains in force for the period specified in the notice given under subsection 408(1), unless it is revoked earlier.

410 Restrictions on applications for approval of proposed arrangements etc.

(1) This section applies if:
(a) an application by a person (the ***first person***) for approval of a proposed arrangement is refused under this Chapter; or

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(b) an approved arrangement covering a biosecurity industry participant (also the ***first person***) is revoked under Part 5.

(2) The relevant Director may do either or both of the following, on one or more occasions:

(a) refuse an application under section 405 by an associate of the first person for approval of a proposed arrangement;

(b) if an associate of the first person is or becomes a biosecurity industry participant—give the associate a written notice in accordance with subsection (3).

(3) A notice given under paragraph (2)(b) must:

(a) state the grounds on which the notice is given; and

(b) request the associate to give the relevant Director, within 14 days after the day the notice is given, a written statement showing cause:

(i) why an approved arrangement, or a part of an approved arrangement, covering the associate should not be suspended, or further suspended, under Division 2 of Part 4; or

(ii) why an approved arrangement covering the associate should not be revoked under Division 2 of Part 5; and

(c) include a statement setting out the associate's right to seek review of a decision:

(i) to suspend, or further suspend, an approved arrangement, or a part of an approved arrangement, covering the associate; or

(ii) to revoke an approved arrangement covering the associate.

411 Transfer of approved arrangement

An approved arrangement may be transferred to another person only in the circumstances prescribed by the regulations.

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Part 3—Variation of approved arrangement

Division 1—Application by biosecurity industry participant

412 Application for approval of varied arrangement

(1) If a biosecurity industry participant wishes to vary an approved arrangement covering the biosecurity industry participant, the biosecurity industry participant may apply to the relevant Director for approval of the varied arrangement.

Note: Section 434 sets out requirements for applications.

(2) The biosecurity industry participant must not implement the varied arrangement unless:

(a) the relevant Director has approved it; and

(b) the relevant Director has given the biosecurity industry participant written notice of the approval.

(3) Sections 406 to 409 apply in relation to an application under subsection (1) as if the application were for approval of a new proposed arrangement.

Note 1: If the relevant Director does not make a decision in relation to the application within the consideration period for the application, the Director is taken to have refused to approve the varied arrangement at the end of that period (see subsection 435(2)).

Note 2: A decision to refuse to approve a varied arrangement is a reviewable decision (see Part 1 of Chapter 11).

(4) If the relevant Director approves a varied arrangement, the notice of approval in relation to the varied arrangement replaces any previous notice given under subsection 408(1) in relation to the arrangement.

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Division 2—Variation required by relevant Director

413 Relevant Director may vary or require variation of approved arrangement

(1) The relevant Director may, by written notice given to the biosecurity industry participant covered by an approved arrangement:

(a) vary the conditions of the arrangement (including by imposing new conditions); or

(b) require the biosecurity industry participant to vary the arrangement as specified in the notice.

Note: A decision to vary the conditions of an approved arrangement, or to require an approved arrangement to be varied, is a reviewable decision (see Part 1 of Chapter 11).

(2) The relevant Director may give a notice to a biosecurity industry participant under subsection (1) in relation to an approved arrangement if the Director is satisfied that:

(a) the arrangement no longer meets the requirements on the basis of which approval was given; or

(b) the biosecurity industry participant is no longer a fit and proper person (having regard to the matters referred to in section 530); or

(c) a condition of the arrangement has been contravened; or

(d) the level of biosecurity risk associated with the operation of the arrangement has changed; or

(e) a change needs to be made to the arrangement to correct a minor or technical error in the arrangement; or

(f) the arrangement needs to be varied for any other reason.

414 Notice varying conditions of approved arrangement

A notice under paragraph 413(1)(a) varying the conditions of an approved arrangement must specify:

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(a) the conditions that are to be varied and details of the variations; and
(b) if new conditions are to be imposed on the approved arrangement—the new conditions.

415 Date of effect of variation of conditions of approved arrangement

A variation of the conditions of an approved arrangement by notice given under paragraph 413(1)(a) takes effect:
(a) on the day the notice is given; or
(b) if a later day is specified in that notice—on that later day.

416 Notice requiring approved arrangement to be varied

(1) A notice under paragraph 413(1)(b) requiring a biosecurity industry participant to vary an approved arrangement covering the biosecurity industry participant must:
(a) specify the variations required; and
(b) require the biosecurity industry participant to give the varied arrangement to the relevant Director by the date specified in the notice.

(2) If the biosecurity industry participant gives the varied arrangement to the relevant Director as required by the notice, subsections 412(2) to (4) apply in relation to the varied arrangement as if the biosecurity industry participant had applied to the relevant Director for approval of the varied arrangement.

Note: If the biosecurity industry participant does not give the varied arrangement to the relevant Director as required by the notice, the Director may suspend the arrangement under Division 2 of Part 4 or revoke the arrangement under Division 2 of Part 5.

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Part 4—Suspension of approved arrangement

Division 1—Suspension requested by biosecurity industry participant

417 Biosecurity industry participant may request relevant Director to suspend all or part of approved arrangement

(1) A biosecurity industry participant may request the relevant Director to suspend an approved arrangement, or a part of an approved arrangement, covering the biosecurity industry participant.

Note: A request might be made under this subsection if, for example, a biosecurity industry participant does not have personnel with appropriate qualifications or expertise to carry out biosecurity activities in accordance with an approved arrangement covering the biosecurity industry participant.

Requirements for request

(2) A request under subsection (1):
- (a) must be in writing; and
- (b) must specify whether the whole or a specified part of the approved arrangement is to be suspended; and
- (c) must specify a proposed date for the suspension to take effect (which must not be before the end of the notice period prescribed by the regulations); and
- (d) must specify the period of the suspension; and
- (e) must include any other information prescribed by the regulations.

Request to suspend whole of approved arrangement

(3) If the relevant Director receives a request from a biosecurity industry participant under subsection (1) to suspend an approved arrangement covering the biosecurity industry participant, the

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Director must, by written notice to the biosecurity industry participant, suspend the approved arrangement for the period specified in the notice.

Request to suspend part of approved arrangement

(4) If the relevant Director receives a request from a biosecurity industry participant under subsection (1) to suspend a part of an approved arrangement covering the biosecurity industry participant, the Director must, within the period prescribed by the regulations:

(a) decide whether to suspend the part of the approved arrangement as requested; and

(b) notify, in writing, the biosecurity industry participant of the decision.

Note 1: If the relevant Director is not satisfied that it is appropriate to suspend a part of an approved arrangement as requested, the relevant Director may decide to:

(a) vary the conditions of the arrangement or require the biosecurity industry participant to vary the arrangement under section 413; or

(b) suspend the whole of the arrangement under Division 2 of this Part; or

(c) revoke the arrangement under Division 2 of Part 5.

Note 2: A decision to refuse to suspend a part of an approved arrangement is a reviewable decision (see Part 1 of Chapter 11).

Note 3: If an approved arrangement, or a part of an approved arrangement is suspended under this section, the biosecurity industry participant covered by the arrangement is not authorised, for the purposes of this Act, to carry out biosecurity activities to the extent to which the arrangement, or the part of the arrangement, is suspended (see subsection 427(1)).

(5) If:

(a) the relevant Director receives a request from a biosecurity industry participant under subsection (1) to suspend a part of an approved arrangement covering the biosecurity industry participant; and

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(b) the Director does not make a decision in relation to the request within the period prescribed by the regulations for the purposes of subsection (4);

the Director is taken to have refused the request at the end of that period.

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Division 2—Suspension by relevant Director

418 Relevant Director may suspend approved arrangement

(1) The relevant Director may suspend an approved arrangement, or a part of an approved arrangement, for a period if the Director is satisfied that:

(a) the arrangement, or the part of the arrangement, no longer meets the requirements on the basis of which approval was given; or

(b) the biosecurity industry participant is no longer a fit and proper person (having regard to the matters referred to in section 530); or

(c) a condition of the arrangement has been contravened; or

(d) the level of biosecurity risk associated with the operation of the arrangement has changed; or

(e) the biosecurity industry participant is liable to pay a cost-recovery charge that is due and payable; or

(f) the biosecurity industry participant is an associate of:

(i) a person who has been refused approval of a proposed arrangement under this Chapter; or

(ii) a person who was a biosecurity industry participant covered by an approved arrangement that has been revoked.

Note 1: A decision to suspend an approved arrangement, or a part of an approved arrangement, is a reviewable decision (see Part 1 of Chapter 11).

Note 2: If an approved arrangement, or a part of an approved arrangement is suspended under this subsection, the biosecurity industry participant covered by the arrangement is not authorised, for the purposes of this Act, to carry out biosecurity activities to the extent to which the arrangement, or the part of the arrangement, is suspended (see subsection 427(1)).

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Notice of proposed suspension on ground referred to in paragraphs (1)(a) to (e)

(2) The relevant Director must not suspend an approved arrangement, or a part of an approved arrangement, on a ground referred to in paragraphs (1)(a) to (e) unless the Director has given a notice to the biosecurity industry participant covered by the arrangement in accordance with subsection (3).

(3) A notice under subsection (2) must:
  (a) be in writing; and
  (b) specify the grounds on which the arrangement, or the part of the arrangement, is to be suspended; and
  (c) subject to subsection (4), request the biosecurity industry participant to give the relevant Director, within 14 days after the day the notice is given to the biosecurity industry participant, a written statement showing cause why the arrangement, or the part of the arrangement, should not be suspended; and
  (d) include a statement setting out the biosecurity industry participant's right to seek review of a decision to suspend the arrangement or the part of the arrangement.

(4) A notice under subsection (2) is not required to include the request referred to in paragraph (3)(c) if the relevant Director is satisfied that the grounds for the suspension are serious and urgent.

Notice of proposed suspension on ground referred to in paragraph (1)(f)

(5) The relevant Director must not suspend an approved arrangement, or a part of an approved arrangement, on the ground referred to in paragraph (1)(f) unless the Director has given a notice to the biosecurity industry participant covered by the arrangement under paragraph 410(2)(b).

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419 Notice of suspension

If the relevant Director decides to suspend an approved arrangement, or a part of an approved arrangement, under subsection 418(1), the Director must give the biosecurity industry participant covered by the arrangement written notice stating that the arrangement, or the part of the arrangement, is suspended for the period specified in the notice.

420 Period of suspension

(1) Subject to subsection (2), a suspension of an approved arrangement, or a part of an approved arrangement, under this Division takes effect:
   (a) on the day the notice under section 419 is given; or
   (b) if a later day is specified in that notice—on that later day.

(2) If the biosecurity industry participant covered by the approved arrangement was given:
   (a) a notice under subsection 418(2) that included the request referred to in paragraph 418(3)(c); or
   (b) a notice under paragraph 410(2)(b);

   the suspension must not take effect before the end of 14 days after the notice is given.

(3) The relevant Director may vary the period during which an approved arrangement, or a part of an approved arrangement, is suspended by written notice to the biosecurity industry participant covered by the arrangement.

   Note: A decision to extend the period during which an approved arrangement, or a part of an approved arrangement, is suspended is a reviewable decision (see Part 1 of Chapter 11).

(4) The relevant Director may revoke a suspension of an approved arrangement, or a part of an approved arrangement, by written notice to the biosecurity industry participant covered by the arrangement.

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Division 3—Management of biosecurity risks during suspension

421 Management of biosecurity risks during suspension

(1) This section applies if an approved arrangement covering a biosecurity industry participant, or a part of such an arrangement, is suspended for a period under Division 1 or 2.

(2) The relevant Director may, in writing, direct the biosecurity industry participant to take specified action, within a specified period, to manage any biosecurity risks associated with goods, premises or other things that the biosecurity industry participant would have been authorised to deal with if the approved arrangement, or the part of the arrangement, had not been suspended.

(3) If:

(a) the biosecurity industry participant is given a direction to take specified action to manage biosecurity risks associated with goods, premises or other things as mentioned in subsection (2); and

(b) the biosecurity industry participant does not take the action within the period specified in the direction; and

(c) the biosecurity industry participant is not the owner of the goods, premises or other things;

the relevant Director may, in writing, direct the owner of the goods, premises or other things to take the specified action within a specified period.

(4) A person who is given a direction under subsection (2) or (3) must comply with the direction.

Fault-based offence

(5) A person commits an offence if:

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(a) the person is given a direction under subsection (2) or (3); and
(b) the person engages in conduct; and
(c) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 120 penalty units.

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Part 5—Revocation of approved arrangement

Division 1—Revocation requested by biosecurity industry participant

422 Biosecurity industry participant may request relevant Director to revoke approved arrangement

(1) A biosecurity industry participant may request the relevant Director to revoke an approved arrangement covering the biosecurity industry participant.

(2) A request under subsection (1):
  (a) must be in writing; and
  (b) must specify a proposed date for the revocation to take effect (which must not be before the end of the notice period prescribed by the regulations); and
  (c) must include any other information prescribed by the regulations.

(3) If the relevant Director receives a request from a biosecurity industry participant under subsection (1), the Director must, by written notice to the biosecurity industry participant, revoke the approved arrangement with effect on the date specified in the notice.

Note: If an approved arrangement has been revoked under this section, the person who was the biosecurity industry participant covered by the arrangement is not authorised, for the purposes of this Act, to carry out biosecurity activities in accordance with the arrangement at any time after the revocation takes effect (see subsection 427(2)).

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Division 2—Revocation by relevant Director

423 Relevant Director may revoke approved arrangement

(1) The relevant Director may revoke an approved arrangement if the Director is satisfied that:

(a) the arrangement no longer meets the requirements on the basis of which approval was given; or

(b) the biosecurity industry participant is no longer a fit and proper person (having regard to the matters referred to in section 530); or

(c) a condition of the arrangement has been contravened; or

(d) the level of biosecurity risk associated with the operation of the arrangement has changed; or

(e) the biosecurity industry participant is liable to pay a cost-recovery charge that is due and payable; or

(f) the biosecurity industry participant is an associate of:

(i) a person who has been refused approval of a proposed arrangement under this Chapter; or

(ii) a person who was a biosecurity industry participant covered by an approved arrangement that has been revoked.

Note 1: A decision to revoke an approved arrangement is a reviewable decision (see Part 1 of Chapter 14).

Note 2: If an approved arrangement has been revoked under this subsection, the person who was the biosecurity industry participant covered by the arrangement is not authorised, for the purposes of this Act, to carry out biosecurity activities in accordance with the arrangement at any time after the revocation takes effect (see subsection 427(2)).

Notice of proposed revocation on ground referred to in paragraphs (1)(a) to (e)

(2) The relevant Director must not revoke an approved arrangement on a ground referred to in paragraphs (1)(a) to (e) unless the Director

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has given a notice to the biosecurity industry participant covered by the arrangement in accordance with subsection (3).

(3) A notice under subsection (2) must:
  (a) be in writing; and
  (b) specify the grounds on which the arrangement is to be revoked; and
  (c) subject to subsection (4), request the biosecurity industry participant to give the relevant Director, within 14 days after the day the notice is given to the biosecurity industry participant, a written statement showing cause why the arrangement should not be revoked; and
  (d) include a statement setting out the biosecurity industry participant's right to seek review of a decision to revoke the arrangement.

(4) A notice under subsection (2) is not required to include the request referred to in paragraph (3)(c) if the relevant Director is satisfied that the grounds for the revocation are serious and urgent.

Notice of proposed revocation on ground referred to in paragraph (1)(f)

(5) The relevant Director must not revoke an approved arrangement on the ground referred to in paragraph (1)(f) unless the Director has given a notice to the biosecurity industry participant covered by the arrangement under paragraph 410(2)(b).

424 Notice of revocation

If the relevant Director decides to revoke an approved arrangement under subsection 423(1), the Director must give the biosecurity industry participant covered by the arrangement written notice stating that the arrangement is revoked.

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425 Date of effect of revocation

(1) Subject to subsection (2), the revocation of an approved arrangement under this Division takes effect:
   (a) on the day the notice under section 424 is given; or
   (b) if a later day is specified in that notice—on that later day.

(2) If the biosecurity industry participant covered by the approved arrangement was given:
   (a) a notice under subsection 423(2) that included the request referred to in paragraph 423(3)(c); or
   (b) a notice under paragraph 410(2)(b);

   the revocation must not take effect before the end of 14 days after the notice is given.

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Division 3—Management of biosecurity risks after revocation

426 Management of biosecurity risks after revocation

(1) This section applies if an approved arrangement covering a biosecurity industry participant (the ***former biosecurity industry participant***) has been revoked under Division 1 or 2.

(2) The relevant Director may, in writing, direct the former biosecurity industry participant to take specified action, within a specified period, to manage any biosecurity risks associated with goods, premises or other things that the former biosecurity industry participant would have been authorised to deal with if the approved arrangement had not been revoked.

(3) If:
   (a) the former biosecurity industry participant is given a direction to take specified action to manage biosecurity risks associated with goods, premises or other things as mentioned in subsection (2); and
   (b) the former biosecurity industry participant does not take the action within the period specified in the direction; and
   (c) the former biosecurity industry participant is not the owner of the goods, premises or other things;

   the relevant Director may, in writing, direct the owner of the goods, premises or other things to take the specified action within a specified period.

(4) A person who is given a direction under subsection (2) or (3) must comply with the direction.

Fault-based offence

(5) A person commits an offence if:
   (a) the person is given a direction under subsection (2) or (3); and

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(b) the person engages in conduct; and
(c) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 120 penalty units.

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Part 6—Powers and obligations of biosecurity industry participants

Division 1—General

427 Authorisation to carry out biosecurity activities in accordance with approved arrangement

(1) A biosecurity industry participant is authorised, for the purposes of this Act, to carry out biosecurity activities in accordance with an approved arrangement covering the biosecurity industry participant, except to the extent:

(a) to which the arrangement, or a part of the arrangement, is suspended under Part 4; or

(b) that carrying out the biosecurity activities would be inconsistent with a direction given under subsection 429(1).

(2) If an approved arrangement has been revoked under Part 5, the person who was the biosecurity industry participant covered by the arrangement is not authorised, for the purposes of this Act, to carry out biosecurity activities in accordance with the arrangement at any time after the revocation takes effect.

(3) This section does not prevent a biosecurity industry participant, or a former biosecurity industry participant, who is directed to take action under subsection 421(2) or 426(2), from taking that action.

428 Biosecurity industry participant must carry out biosecurity activities in accordance with approved arrangement etc.

(1) A biosecurity industry participant contravenes this subsection if:

(a) the biosecurity industry participant is authorised to carry out biosecurity activities in accordance with an approved arrangement covering the biosecurity industry participant; and

(b) the biosecurity industry participant:

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(i) fails to carry out the biosecurity activities in accordance with the arrangement; or

(ii) fails to comply with any requirements specified in the arrangement; or

(iii) fails to comply with any conditions to which the arrangement is subject.

Note 1: See section 427 in relation to when a biosecurity industry participant is authorised to carry out biosecurity activities in accordance with an approved arrangement covering the biosecurity industry participant.

Note 2: The physical elements of an offence against subsection (2) are set out in this subsection (see section 534).

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

429 Biosecurity officer may give direction to biosecurity industry participant to manage biosecurity risks

(1) If a biosecurity officer is satisfied that it is necessary to do so to manage biosecurity risks associated with the operation of an approved arrangement, a biosecurity officer may give the biosecurity industry participant covered by the arrangement a direction in relation to the operation of the arrangement.

(2) A direction under subsection (1) may require the biosecurity industry participant:

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(a) to carry out an activity other than in accordance with an approved arrangement covering the biosecurity industry participant; or
(b) not to carry out an activity in accordance with an approved arrangement covering the biosecurity industry participant.

(3) However, a direction under subsection (1) must not require the biosecurity industry participant to carry out an activity that the biosecurity industry participant is not qualified, or does not have the expertise or resources, to carry out.

Note: See also section 572 (general provisions relating to directions).

(4) A person who is given a direction under subsection (1) must comply with the direction.

Fault-based offence

(5) A person commits an offence if:
(a) the person is given a direction under subsection (1); and
(b) the person engages in conduct; and
(c) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 120 penalty units.

430 Biosecurity industry participant may charge fee in relation to biosecurity activities carried out

(1) A biosecurity industry participant who is authorised to carry out biosecurity activities in accordance with an approved arrangement covering the biosecurity industry participant may charge a fee in relation to biosecurity activities that are carried out in accordance with the arrangement.

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(2) A biosecurity industry participant may charge a fee in relation to activities that are carried out in compliance with a direction given to the biosecurity industry participant under subsection 429(1).

(3) A fee must not be such as to amount to taxation.

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Division 2—Biosecurity incidents

431 Reporting biosecurity incidents

(1) This section applies if:

(a) an approved arrangement requires a report to be made to the relevant Director if an act, omission or event (a ***reportable biosecurity incident***) specified in the arrangement occurs; or

(b) a condition of an approved arrangement requires a report to be made to the relevant Director if an act, omission or event (also a ***reportable biosecurity incident***) specified in the condition occurs.

(2) The report must include the information, and be made in the way, determined under subsection (3).

(3) The relevant Director may, by legislative instrument, determine either or both of the following:

(a) information that must be included in a report of a reportable biosecurity incident required by an approved arrangement or a condition of an approved arrangement;

(b) the way the report must be made.

(4) If:

(a) a person reports a reportable biosecurity incident to the relevant Director as required by an approved arrangement or a condition of an approved arrangement; and

(b) the report does not comply with any requirements that are in force under subsection (3) when the report is made;

the report is taken, for the purposes of the approved arrangement, or the condition of the approved arrangement, not to have been made.

Note: A biosecurity industry participant may commit an offence or contravene a civil penalty provision if the biosecurity industry participant fails to comply with any requirements specified in an approved arrangement covering the biosecurity industry participant or a condition of such an arrangement (see section 428).

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(5) This section does not limit the operation of Division 8 of Part 1 of Chapter 3 in relation to a biosecurity industry participant.

Note: Division 8 of Part 1 of Chapter 3 deals with reporting biosecurity incidents in relation to goods that are subject to biosecurity control.

432 Costs of dealing with biosecurity incidents

(1) If a relevant court is satisfied that:

(a) a person, who is or was a biosecurity industry participant covered by an approved arrangement, failed to carry out biosecurity activities in accordance with the arrangement or failed to comply with a condition or other requirement of the arrangement (other than to the extent necessary to comply with a direction given under subsection 429(1)); and

(b) an incident (a ***biosecurity incident***) occurred in relation to the operation of the approved arrangement; and

(c) the biosecurity incident was caused by the failure referred to in paragraph (a); and

(d) the Commonwealth incurred costs in dealing with the biosecurity incident;

the court may, on application by the relevant Director, make an order (a ***costs order***) requiring the person to pay to the Commonwealth the whole, or a part, of the costs incurred by the Commonwealth.

(2) An application by the relevant Director for a costs order in relation to a biosecurity incident must be made within 6 years after the biosecurity incident occurred.

(3) In deciding whether to make a costs order in relation to a biosecurity incident, the relevant court may have regard to the following matters:

(a) the nature and extent of the failure referred to in paragraph (1)(a);

(b) the circumstances in which the biosecurity incident occurred;

(c) the nature and extent of any damage caused by the failure referred to in paragraph (1)(a);

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(d) the level of biosecurity risk associated with the biosecurity incident;

(e) the amount of the costs incurred by the Commonwealth in dealing with the biosecurity incident;

(f) whether a costs order under this section has previously been made against the person in relation to any other biosecurity incident;

(g) any other matter the court considers relevant.

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Part 7—Other provisions

Division 1—Applications for approval

433 Applications to which this Division applies

This Division applies in relation to:

(a) an application for approval of a proposed arrangement under Part 2; and

(b) an application for approval of a varied arrangement under Division 1 of Part 3.

434 Requirements for applications

(1) An application must:

(a) if a form of application has been approved by the relevant Director—be in that form; and

(b) include the information prescribed by the regulations; and

(c) be accompanied by:

(i) the proposed arrangement or the varied arrangement that is to be approved; and

(ii) any other documents prescribed by the regulations.

Note 1: Personal information may also be required to be provided with the application (see subsection 531(1)). If personal information is required to be provided with the application and the information is not provided, the application is taken not to have been made (see subsection 531(2)).

Note 2: An application fee may be required (see paragraph 592(4)(b)).

(2) To avoid doubt, the relevant Director may approve different forms for different classes of application.

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435 Dealing with applications

Time within which decision must be made

(1) The relevant Director must make a decision in relation to an application within the consideration period for the application, unless the application is withdrawn.

(2) If the relevant Director does not make a decision in relation to an application within the consideration period for the application, the Director is taken to have refused to approve the arrangement to which the application relates at the end of that period, unless the application is withdrawn.

Consideration period

(3) The ***consideration period*** for an application is the period (the ***initial consideration period***) prescribed by the regulations for an application of that kind, as extended under subsection (4). The consideration period starts on the day the relevant Director receives the application.

(4) The initial consideration period is extended, for each request made under subsection (5), by the number of days falling within the period:
   (a) starting on the day the request was made; and
   (b) ending on:
      (i) the day the information or documents requested were received by the relevant Director; or
      (ii) if the information or documents were not given within the period specified in the request—the last day of that period.

Relevant Director may request further information etc.

(5) For the purpose of making a decision in relation to an application, the relevant Director may, within the consideration period, request:
   (a) the applicant; or

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(b) any other person who the relevant Director considers may have information relevant to the application;

to give the Director further specified information or documents relevant to the application.

(6) A request under subsection (5):

(a) must be in writing; and

(b) must specify the period (which must not be longer than the period prescribed by the regulations for the purposes of this paragraph) within which the information or documents must be given.

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Division 2—Audit powers

436 Relevant Director may require audit to be carried out

Carrying out audits

(1) The relevant Director may require an audit to be carried out:
  (a) in relation to whether a biosecurity industry participant is acting in accordance with, or complying with any requirements or conditions in, an approved arrangement that covers the biosecurity industry participant; or
  (b) for the purpose of considering:
    (i) an application under section 405 for approval of a proposed arrangement to carry out biosecurity activities to manage biosecurity risks associated with specified goods, premises or other things; or
    (ii) an application under subsection 412(1) for approval of a varied arrangement.

Note: For the powers of auditors, see section 437.

Who carries out an audit

(2) An audit must be carried out by:
  (a) a biosecurity officer; or
  (b) an auditor approved in writing by the relevant Director.

(3) The relevant Director must not approve a person for the purposes of paragraph (2)(b) unless the person is appropriately qualified and experienced.

Regulations may specify requirements

(4) The regulations may specify requirements in relation to carrying out audits.

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(5) Without limiting subsection (4), the regulations may specify requirements relating to any report to be provided on an audit, to the relevant Director, by the person who carries out the audit.

437 Powers of auditors

Requirement to produce documents, records or things

(1) A person (the ***auditor***) who is carrying out an audit under section 436 may require any person to produce any documents, records or things that the auditor is satisfied are relevant to the audit.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading documents (see section 137.2 of the *Criminal Code* and section 533 of this Act).

Note 2: This subsection is not subject to the privilege against self-incrimination (see section 635).

(2) A person contravenes this subsection if:
  (a) the person is required to produce a document, record or thing under subsection (1); and
  (b) the person fails to produce the document, record or thing as required.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 534).

Fault-based offence

(3) A person commits an offence if the person contravenes subsection (2).

Penalty: 6 months imprisonment or 30 penalty units, or both.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 30 penalty units.

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Requirement to provide all reasonable facilities and assistance

(5) A person (the ***auditor***) who is carrying out an audit may require any person to provide the auditor with all reasonable facilities and assistance for the effective exercise of powers under this Division.

(6) A person contravenes this subsection if:
  (a) the person is required to provide facilities and assistance under subsection (5); and
  (b) the person fails to provide the facilities or assistance as required.

Note: The physical elements of an offence against subsection (7) are set out in this subsection (see section 534).

Fault-based offence

(7) A person commits an offence if the person contravenes subsection (6).

Penalty: 6 months imprisonment or 30 penalty units, or both.

Civil penalty provision

(8) A person is liable to a civil penalty if the person contravenes subsection (6).

Civil penalty: 30 penalty units.

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Division 3—Miscellaneous

438 Giving false or misleading information to a biosecurity industry participant

(1) A person is liable to a civil penalty if:
  (a) the person gives information to a biosecurity industry participant; and
  (b) the person does so knowing that the information:
    (i) is false or misleading; or
    (ii) omits any matter or thing without which the information is misleading; and
  (c) the information is given in connection with biosecurity activities that are being, or are to be, carried out by the biosecurity industry participant in accordance with an approved arrangement covering the biosecurity industry participant.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

(4) Subsection (1) does not apply if, before the information was given by a person to the biosecurity industry participant as described in paragraph (1)(c), the biosecurity industry participant did not take reasonable steps to inform the person that the person may be liable to a civil penalty for contravening subsection (1).

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Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

(5) For the purposes of subsection (4), it is sufficient if the following form of words is used:

"You may be liable to a civil penalty for giving false or misleading information".

439 Giving false or misleading documents to a biosecurity industry participant

(1) A person is liable to a civil penalty if:
  (a) the person produces a document to a biosecurity industry participant; and
  (b) the person does so knowing that the document is false or misleading; and
  (c) the information is given in connection with biosecurity activities that are being, or are to be, carried out by the biosecurity industry participant in accordance with an approved arrangement covering the biosecurity industry participant.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

(3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
  (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and

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(b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

440 Obstruction or hindrance of person acting in accordance with approved arrangement

(1) A person must not obstruct or hinder another person who is:
(a) carrying out biosecurity activities in accordance with an approved arrangement; or
(b) taking action in accordance with a direction given under subsection 421(2) or (3), 426(2) or (3) or 429(1).

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 534).

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

441 Protection from civil proceedings

Protection for Commonwealth and biosecurity industry participants

(1) No civil proceeding lies against the Commonwealth, or a person who is or was a biosecurity industry participant (the ***first person***), in relation to anything done, or omitted to be done, in good faith:

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(a) by the first person:
  (i) in carrying out biosecurity activities as a biosecurity industry participant in accordance with an approved arrangement covering the first person; or
  (ii) in complying with a direction given by a biosecurity officer under subsection 429(1); or
(b) by another person in providing, or purporting to provide, assistance to the first person in carrying out biosecurity activities, or in complying with a direction, as referred to in paragraph (a).

(2) No civil proceeding lies against the Commonwealth, or a person who is or was a biosecurity industry participant, in relation to anything done by an animal used by the person:
  (a) in carrying out biosecurity activities as a biosecurity industry participant in accordance with an approved arrangement covering the person; or
  (b) in complying with a direction given by a biosecurity officer under subsection 429(1).

Protection for persons assisting biosecurity industry participants

(3) No civil proceeding lies against a person in relation to anything done, or omitted to be done, in good faith by the person in providing, or purporting to provide, assistance to a biosecurity industry participant:
  (a) in carrying out biosecurity activities in accordance with an approved arrangement covering the biosecurity industry participant; or
  (b) in complying with a direction given by a biosecurity officer under subsection 429(1).

(4) This section is subject to the following provisions:
  (a) section 27 (acquisition of property);
  (b) section 307 (undue detention or delay of vessel);
  (c) section 326 (damage to electronic equipment).

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Chapter 8—Biosecurity emergencies and human biosecurity emergencies

Part 1—Biosecurity emergencies

Division 1—Introduction

442 Simplified outline of this Part

This Part provides special powers for dealing with biosecurity emergencies of national significance.

Division 2 provides for the Governor-General to make a biosecurity emergency declaration if the Agriculture Minister is satisfied that the special powers in this Part are needed to deal with a biosecurity emergency.

Division 3 sets out powers that the Agriculture Minister may exercise to deal with a biosecurity emergency, and limits and protections that apply to the use of those powers. These powers may be exercised anywhere in Australian territory.

Division 4 provides for the Agriculture Minister to declare Commonwealth bodies, or parts of Commonwealth bodies, to be national response agencies for the purposes of dealing with biosecurity emergencies. Certain powers of the Agriculture Minister under Division 3 may be delegated and subdelegated to people performing duties in national response agencies.

Division 5 sets out modifications of other provisions of the Act (particularly in Chapter 6 (managing biosecurity risks: monitoring, control and response)) that apply during a biosecurity emergency period.

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Division 6 allows biosecurity enforcement officers and biosecurity officers to enter premises without a warrant or consent during a biosecurity emergency period.

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Division 2—Declaration of biosecurity emergency

443 Governor-General may declare that a biosecurity emergency exists

(1) The Governor-General may declare that a biosecurity emergency exists if the Agriculture Minister is satisfied that:

(a) a disease or pest is posing a severe and immediate threat, or is causing harm, to any of the following on a nationally significant scale:

(i) animal or plant health;

(ii) the environment;

(iii) economic activities related to animals, plants or the environment; and

(b) the declaration is necessary to prevent or control the establishment or spread of the disease or pest in Australian territory or a part of Australian territory.

Note 1: The declaration is a ***biosecurity emergency declaration*** (see section 9).

Note 2: This Part does not apply in relation to invasive pests (see subsection 25(2)).

Note 3: For revocation, see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*.

Note 4: A biosecurity emergency declaration may be varied under section 444. Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to variation of a biosecurity emergency declaration.

(2) A biosecurity emergency declaration is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the declaration.

Requirements for biosecurity emergency declaration

(3) A biosecurity emergency declaration must specify:

(a) the disease or pest to which the declaration relates; and

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(b) the nature of the biosecurity emergency and the conditions that gave rise to it; and

(c) the period during which the declaration is in force.

Note 1: The disease or pest specified under paragraph (3)(a) is the ***declaration disease or pest*** (see section 9).

Note 2: The period specified under paragraph (3)(c) is the ***biosecurity emergency period*** (see section 9).

(4) A biosecurity emergency period:

(a) must not be longer than the period that the Agriculture Minister considers necessary to prevent or control the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory; and

(b) in any case, must not be longer than 3 months.

Note: A biosecurity emergency period may be extended under section 444.

Requirement to revoke biosecurity emergency declaration

(5) The Governor-General must revoke a biosecurity emergency declaration if the Agriculture Minister is no longer satisfied of a matter in paragraph (1)(a) or (b).

444 Governor-General may extend biosecurity emergency period

(1) The Governor-General may vary a biosecurity emergency declaration to extend the biosecurity emergency period for up to 3 months if the Agriculture Minister is satisfied that:

(a) the declaration disease or pest is continuing to pose a severe and immediate threat, or is continuing to cause harm, to any of the following on a nationally significant scale:

(i) animal or plant health;

(ii) the environment;

(iii) economic activities related to animals, plants or the environment; and

(b) the extension is necessary to prevent or control the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory.

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(2) A variation made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the variation.

(3) The Governor-General may extend a biosecurity emergency period under subsection (1) more than once.

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Division 3—Emergency requirements, directions and actions

445 Agriculture Minister may determine emergency requirements during biosecurity emergencies

(1) During a biosecurity emergency period, the Agriculture Minister may determine any requirement that he or she is satisfied is appropriate and adapted to prevent or control the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory.

Note 1: For a limit on requiring individuals to be subject to certain biosecurity measures, see section 448.

Note 2: A person who fails to comply with a requirement determined under this subsection may commit an offence or contravene a civil penalty provision (see section 449).

Note 3: This power may be delegated (see section 453).

(2) A determination made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

(3) Without limiting subsection (1), the requirements that the Agriculture Minister may determine include the following:

(a) requirements that apply to persons, goods or conveyances when entering or leaving specified places;

(b) requirements that restrict or prevent the movement of persons, goods or conveyances in or between specified places;

(c) requirements for specified places to be evacuated;

(d) requirements for goods or conveyances to be removed from specified places;

(e) requirements that goods be treated in a specified way or destroyed.

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(4) A requirement determined under subsection (1) has effect despite any provision of any other Australian law.

When determination ceases to have effect

(5) A determination made under subsection (1) ceases to have effect at the end of the biosecurity emergency period, unless it is revoked earlier.

446 Agriculture Minister may give directions and take actions during biosecurity emergencies

(1) During a biosecurity emergency period, the Agriculture Minister may:
   (a) give any direction to any person; or
   (b) take any action;

   that the Agriculture Minister is satisfied is appropriate and adapted to prevent or control the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory.

Note 1: For limits on this power, see sections 447 and 448.

Note 2: A person who fails to comply with a direction given under this subsection may commit an offence or be liable to a civil penalty (see section 449).

Note 3: This power may be delegated and subdelegated (see sections 453 and 454).

Note 4: See also section 572 (general provisions relating to directions) and subsection 644(4) (protection from civil proceedings).

(2) Without limiting subsection (1), the directions that the Agriculture Minister may give under paragraph (1)(a) include the following:
   (a) a direction requiring a person to treat goods in a specified way or to destroy goods;
   (b) a direction requiring a person to secure goods or a conveyance;
   (c) a direction not to move, deal with or interfere with goods or a conveyance;

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(d) any direction relating to the movement of goods or a conveyance (including a direction to move the goods or conveyance, or not to do so);
(e) a direction requiring a person not to enter or interfere with specified premises;
(f) a direction requiring a person leaving specified premises to leave the premises only at a specified place or specified places;
(g) a direction to a person who is in a position to close specified premises, or prevent access to specified premises, to do so;
(h) despite anything in section 543—a direction of a general or specific nature to the Director of Biosecurity about the performance of his or her functions or the exercise of his or her powers;
(i) a direction of a general or specific nature to an officer or employee of the Commonwealth (including a biosecurity officer or a biosecurity enforcement officer) about the performance of his or her functions or the exercise of his or her powers;
(j) any other direction for the purposes of giving effect to or enforcing a requirement determined under section 445.

(3) Without limiting subsection (1), the actions that the Agriculture Minister may take under paragraph (1)(b) include the following:
(a) moving goods or a conveyance, or causing goods or a conveyance to be moved;
(b) treating or destroying goods, or causing goods to be treated or destroyed;
(c) any other action for the purposes of giving effect to or enforcing a requirement determined under section 445, or a direction given under subsection (1) of this section.

(4) A direction may be given, or an action taken, under subsection (1) despite any provision of any other Australian law.

(5) A direction of a kind referred to in paragraph (2)(i) may be given to a biosecurity officer or a biosecurity enforcement officer despite

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any restriction specified in the officer's instrument of authorisation under subsection 550(2) or 551(2).

When direction ceases to have effect

(6) A direction given under subsection (1) ceases to have effect at the end of the biosecurity emergency period, unless it is revoked earlier.

447 Limits on power to give directions and take actions

(1) Before the Agriculture Minister makes a decision to exercise a power under subsection 446(1), the Minister must be satisfied of all of the following:

(a) that exercising the power is likely to be effective in, or to contribute to, achieving the purpose for which the power is to be exercised;

(b) that the manner in which the power is to be exercised is no more restrictive or intrusive than is required in the circumstances;

(c) if the power is to be exercised in relation to an individual—that the power is no more restrictive or intrusive than is required in the circumstances;

(d) if the power is to be exercised during a period—that the period during which the power is to be exercised is only for as long as is necessary.

Note: This section also applies to a person who is exercising a power under subsection 446(1) in accordance with a delegation or subdelegation under section 453 or 454 (see section 34A of the *Acts Interpretation Act 1901*).

(2) If the power is to be exercised in relation to a conveyance, the Agriculture Minister must consider the impact of the exercise of the power on the health and safety of any persons on board the conveyance.

(3) Subsection (1) does not apply in relation to the giving of a direction of a kind referred to in paragraph 446(2)(h) or (i) (directions to Commonwealth officials).

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448 Limit on requiring individuals to be subject to certain biosecurity measures

(1) A determination made under subsection 445(1) or a direction given under subsection 446(1) must not require an individual to be subject to a biosecurity measure of a kind set out in Subdivision B of Division 3 of Part 3 of Chapter 2 (biosecurity measures that may be included in a human biosecurity control order).

(2) However, subsection (1) does not prevent an individual being required, during a biosecurity emergency period, to wear specified clothing or equipment (or both) that is designed to prevent a disease or pest from establishing itself or spreading.

Note: For example, a requirement to wear such clothing or equipment when entering or leaving specified places could be determined under subsection 445(1), as referred to in paragraph 445(3)(a).

(3) To avoid doubt, subsection (1) does not affect the powers of the Director of Biosecurity or a biosecurity officer under Subdivision B of Division 2 of Part 4 of Chapter 10 (decontamination) during a biosecurity emergency period.

449 Person must comply with emergency requirements and directions

(1) A person must comply with a requirement determined under section 445 that applies to the person.

(2) A person must comply with a direction given under section 446 that applies to the person.

Fault-based offences

(3) A person commits an offence if:
  (a) a requirement determined under subsection 445(1) applies to the person; and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the requirement.

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Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(4) A person commits an offence if:
  (a) a direction given under subsection 446(1) applies to the person; and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 120 penalty units.

450 Asking questions relating to biosecurity emergencies

(1) During a biosecurity emergency period, the Agriculture Minister may require a person who the Minister suspects, on reasonable grounds, has information relevant to the biosecurity emergency to answer questions, or provide information in writing, in relation to the biosecurity emergency.

Note 1: This power may be delegated and subdelegated (see sections 453 and 454).

Note 2: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information (see section 137.1 of the *Criminal Code* and section 532 of this Act).

(2) A requirement imposed on a person under subsection (1) during a biosecurity emergency period continues to have effect, whether or not the period has ended, until:
  (a) the person complies with the requirement; or
  (b) the Agriculture Minister or a biosecurity officer informs the person that the answer or information is no longer required.

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Fault-based offence

(3) A person commits an offence if:
  (a) the person is required to answer questions, or provide information in writing, under subsection (1); and
  (b) the person fails to comply with the requirement.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(4) A person who is required to answer questions, or provide information in writing, under subsection (1) must comply with the requirement.

Civil penalty: 120 penalty units.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

451 Requiring documents relating to biosecurity emergencies

(1) During a biosecurity emergency, the Agriculture Minister may require a person who the Minister suspects, on reasonable grounds, has the custody or control of documents relating to the biosecurity emergency to produce to the Minister such of those documents as are specified by the Minister.

Note 1: This power may be delegated and subdelegated (see sections 453 and 454).

Note 2: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading documents (see section 137.2 of the *Criminal Code* and section 533 of this Act).

(2) The Agriculture Minister or a biosecurity officer:
  (a) may make copies of, or take extracts from, a document produced under subsection (1); and
  (b) for that purpose, may remove the document from the place at which it was produced.

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(3) A requirement imposed on a person under subsection (1) during a biosecurity emergency period continues to have effect, whether or not the period has ended, until:
  (a) the person complies with the requirement; or
  (b) the Agriculture Minister or a biosecurity officer informs the person that the specified documents are no longer required.

Fault-based offence

(4) A person commits an offence if:
  (a) the person is required to produce documents under subsection (1); and
  (b) the person fails to comply with the requirement.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(5) A person who is required to produce documents under subsection (1) must comply with the requirement.

Civil penalty: 120 penalty units.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

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Division 4—National response agencies

452 Agriculture Minister may declare national response agency

(1) The Agriculture Minister may, in writing, declare any of the following to be a national response agency for the purposes of this Act:
  (a) the Australian Defence Force;
  (b) a Commonwealth body;
  (c) a part of a Commonwealth body.

Note 1: The Agriculture Department, including all biosecurity officers and biosecurity enforcement officers, is also a national response agency (see the definition of ***national response agency*** in section 9).

Note 2: For variation and revocation, see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*.

(2) Before declaring the Australian Defence Force to be a national response Agency, the Agriculture Minister must consult the Minister having responsibility for the Australian Defence Force.

(3) A failure by the Agriculture Minister to comply with subsection (2) does not affect the validity of the declaration.

(4) A declaration made under subsection (1) is not a legislative instrument.

453 Agriculture Minister may delegate certain emergency powers

(1) During a biosecurity emergency period, the Agriculture Minister may, in writing, delegate to the executive head of a national response agency any or all of the functions or powers of the Minister under:
  (a) section 445 (determining emergency requirements); or
  (b) section 446 (emergency directions and actions), other than the power to give a direction of a kind referred to in paragraph 446(2)(h) or (i) (directions to Commonwealth officials); or

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(c) section 450 (asking questions); or
(d) section 451 (requiring documents).

Note 1: The functions and powers referred to in paragraphs (1)(b) to (d) may be subdelegated (see section 454).

Note 2: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

(2) In performing functions or exercising powers under a delegation made under subsection (1), the delegate must comply with any directions of the Agriculture Minister.

454 Executive head of national response agency may subdelegate certain emergency powers

(1) During a biosecurity emergency period, the executive head of a national response agency may subdelegate, to a person who is performing duties in the agency and who the executive head considers has appropriate qualifications or expertise, a function or power under any of the following provisions that has been delegated to the executive head under section 453:
(a) section 446 (emergency directions and actions);
(b) section 450 (asking questions);
(c) section 451 (requiring documents).

(2) However, the executive head must not subdelegate a function or power under subsection (1) if the instrument of delegation made under section 453 states that the function or power is not to be subdelegated.

(3) In performing functions or exercising powers under a subdelegation under subsection (1), the subdelegate must comply with any directions of:
(a) the Agriculture Minister; or
(b) the executive head.

(4) A subdelegation of a function or power to a biosecurity officer or a biosecurity enforcement officer under subsection (1) may provide that any restriction specified in the officer's instrument of

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authorisation under subsection 550(2) or 551(2) does not apply for the purposes of performing the function or exercising the power.

(5) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to a subdelegation under subsection (1) in a corresponding way to the way in which they apply in relation to a delegation.

Reference to person performing duties in an agency

(6) The reference in subsection (1) to a person performing duties in an agency includes a reference to:
  (a) a person performing duties in the agency under a contract; and
  (b) a person performing duties in the agency under an arrangement for the temporary provision to that agency of the services of persons ordinarily performing other duties for the Commonwealth; and
  (c) a person performing duties in the agency on a voluntary basis.

455 Delegation does not limit other powers

A delegation or subdelegation of a function or power to a person under section 453 or 454 does not affect any function or power that the person is authorised to perform or exercise under this Act otherwise than under the delegation or subdelegation.

Note: For example, a biosecurity officer who is exercising a power in accordance with a subdelegation under section 454 may also exercise powers conferred on a biosecurity officer by this Act (including other provisions of this Act as modified by Division 5).

456 Notice may be affixed to goods or a conveyance

(1) During a biosecurity emergency period, a person who is exercising powers or performing functions under a delegation made under section 453 or a subdelegation made under section 454 may affix a notice to, or as near as reasonably practicable to, goods or a conveyance:

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(a) that is secured in accordance with a direction given under section 446; or
(b) that a person has been directed under section 446 not to move, deal with or interfere with; or
(c) in relation to which any other direction relating to movement has been given under section 446; or
(d) that has been moved under section 446.

(2) The notice must state:
(a) that a biosecurity emergency has been declared; and
(b) the nature of the power under section 446 that has been exercised in relation to the goods or conveyance; and
(c) the effect of subsections (3) to (5) of this section, and section 457.

Civil penalty provision

(3) A person is liable to a civil penalty if:
(a) during a biosecurity emergency period, a notice is affixed to, or as near as reasonably practicable to, goods or a conveyance under subsection (1); and
(b) during the biosecurity emergency period, the person interferes with, removes or defaces, the notice; and
(c) none of the following applies:
(i) the person is authorised to engage in the conduct referred to in paragraph (b) of this subsection in accordance with an approved arrangement;
(ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by the Agriculture Minister or a biosecurity official;
(iii) the person has been given permission to engage in that conduct under subsection (4), or by a biosecurity officer under section 557.

Civil penalty: 120 penalty units.

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(4) A person who is exercising powers or performing functions under a delegation made under section 453 or a subdelegation made under section 454 may, for the purposes of subparagraph (3)(c)(iii) of this section, give a person permission to engage in the conduct referred to in paragraph (3)(b).

(5) Subsection (3) does not apply if the person is authorised to engage in the conduct referred to in paragraph (3)(b) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

457 Moving or interfering with goods or conveyance

(1) A person contravenes this subsection if:
- (a) during a biosecurity emergency period, a notice has been affixed to or near goods or a conveyance under subsection 456(1); and
- (b) during the biosecurity emergency period, the person moves, deals with or interferes with the goods or conveyance; and
- (c) none of the following applies:
  - (i) the person is authorised to engage in the conduct referred to in paragraph (b) of this subsection in accordance with an approved arrangement;
  - (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by the Agriculture Minister or a biosecurity official;
  - (iii) the person has been given permission to engage in that conduct under subsection (2), or by a biosecurity officer under section 557.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 534).

(2) A person who is exercising powers or performing functions under a delegation made under section 453 or a subdelegation made under section 454 may, for the purposes of subparagraph (1)(c)(iii) of this section, give a person permission to engage in the conduct referred to in paragraph (1)(b).

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Fault-based offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

Exception

(5) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(b) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

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Division 5—Exercise of powers during biosecurity emergencies

458 Modification of this Act during biosecurity emergencies

(1) This Division sets out the modifications of this Act that apply during a biosecurity emergency period.

Effect of modifications on this Act

(2) A power, conferred by a provision of this Act, that is modified by this Division may also be exercised during a biosecurity emergency period without that modification (whether the power is exercised in relation to the declaration disease or pest, or any other disease or pest).

(3) This Division does not limit section 616 (exemptions from and modifications of this Act).

Application of section 312

(4) Section 312 (application of Chapter 6) applies in relation to the exercise of a power in accordance with this Division or Division 6 as if the power were being exercised under Chapter 6 (managing biosecurity risks: monitoring, control and response).

Note 1: Before exercising a power in accordance with this Division or Division 6, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

Note 2: A biosecurity officer may be assisted by other persons in exercising powers under this Division (see section 536).

459 Biosecurity risk assessment powers

During a biosecurity emergency period, a biosecurity officer may exercise powers set out in Division 3 of Part 2 of Chapter 6 (biosecurity risk assessment powers) in relation to the declaration disease or pest without having the suspicion referred to in paragraphs 314(a) and (b).

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460 Application of offences during emergencies

(1) This section applies during a biosecurity emergency period if:

(a) a power is exercised under Division 3 of Part 2 of Chapter 6 (biosecurity risk assessment powers) in relation to the declaration disease or pest; and

(b) the power is not exercised in accordance with a biosecurity control order or a biosecurity response zone determination.

Note: Normally, a person commits an offence for contravening a requirement of Division 3 of Part 2 of Chapter 6 only if the requirement is included in a biosecurity control order or a biosecurity response zone determination. As a result of this section, a person commits an offence for contravening such a requirement during a biosecurity emergency period even if there is no order or determination in force.

(2) Section 327 (contravention of direction) applies as if paragraphs 327(a), (b) and (c) were replaced with the following paragraph:

"(a) during a biosecurity emergency period, the person is given a direction under any of the following provisions in relation to the declaration disease or pest:

(i) subsection 317(1) or (2) (direction to secure goods or a conveyance);

(ii) paragraph 318(2)(b) (direction to deliver samples of goods or premises);

(iii) paragraph 321(1)(a) (direction relating to movement of goods or conveyance); and".

(3) Section 328 (contravention of requirement to answer questions etc.) applies as if paragraphs 328(a), (b) and (c) were replaced with the following paragraph:

"(a) during a biosecurity emergency period, the person is required under subsection 319(1) to answer a question, or provide information in writing, in relation to the declaration disease or pest; and".

(4) Section 329 (contravention of requirement to produce documents) applies as if paragraphs 329(a), (b) and (c) were replaced with the following paragraph:

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"(a) during a biosecurity emergency period, the person is required under subsection 320(1) to produce documents in relation to the declaration disease or pest; and".

(5) Section 330 (unauthorised persons must not move etc. goods or conveyance to which notice has been affixed) applies as if paragraphs 330(1)(a), (b) and (c) were replaced with the following paragraph:

"(a) during a biosecurity emergency period, a notice has been affixed to, or as near as reasonably practicable to, goods or a conveyance under subsection 322(1) in relation to the declaration disease or pest; and".

461 Biosecurity control orders—making orders

(1) During a biosecurity emergency period, the Director of Biosecurity may make a biosecurity control order under section 353 in relation to goods or premises if the Director is satisfied that biosecurity measures need to be taken in relation to the goods or premises to prevent or control the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory.

Note 1: During a biosecurity emergency period, the powers specified in a biosecurity control order can be exercised on premises entered without a warrant or consent (see Division 6).

Note 2: For modifications of Part 4 of Chapter 6 (biosecurity control orders) in relation to biosecurity control orders made in accordance with this section, see section 464.

(2) To avoid doubt, a biosecurity control order may be made in accordance with subsection (1) despite subsection 353(1).

Note: Biosecurity control orders can also be made under subsection 353(1) without the modifications provided by this section (see subsection 458(2)).

(3) For the purposes of this Act, a biosecurity control order that is made in accordance with subsection (1) of this section is taken to have been made under subsection 353(1).

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(4) A biosecurity control order made in accordance with subsection (1) must:
  (a) despite subsection 354(1), state that the Director is satisfied that biosecurity measures need to be taken in relation to the goods or premises to prevent or control the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory; and
  (b) specify under paragraph 354(2)(b) only the declaration disease or pest.

462 Biosecurity control orders—varying orders

(1) This section applies during a biosecurity emergency period in relation to a biosecurity control order:
  (a) that is made during that period under section 353 (whether or not with the modifications provided by section 461); and
  (b) that relates to the declaration disease or pest.

(2) The Director of Biosecurity may vary the biosecurity control order if the Director is satisfied that:
  (a) the powers specified in the order under paragraph 354(2)(d), (e) or (f) need to be varied (including by specifying additional powers referred to in those paragraphs) to prevent or control the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory; or
  (b) a power specified in the order under paragraph 354(2)(d), (e) or (f) no longer contributes to:
    (i) preventing or controlling the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory; or
    (ii) managing the biosecurity risk posed by the declaration disease or pest.

Note: For modifications of Part 4 of Chapter 6 (biosecurity control orders) in relation to biosecurity control orders varied in accordance with this section, see section 464.

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(3) To avoid doubt, a biosecurity control order may be varied in accordance with subsection (2) despite subsection 358(1).

Note: Biosecurity control orders can also be varied under subsection 358(1) without the modifications provided by this section (see subsection 458(2)).

(4) For the purposes of this Act, a biosecurity control order that is varied in accordance with subsection (2) is taken to have been varied under subsection 358(1).

463 Biosecurity control orders—revoking orders

(1) This section applies during a biosecurity emergency period in relation to a biosecurity control order:
  (a) that is made during that period under section 353 (whether or not with the modifications provided by section 461); and
  (b) that relates to the declaration disease or pest.

(2) The Director of Biosecurity:
  (a) is not required to revoke the biosecurity control order under section 359 (although the Director may do so); and
  (b) may revoke the biosecurity control order if the Director is satisfied that the order no longer contributes to:
    (i) preventing or controlling the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory; or
    (ii) managing the biosecurity risk posed by the declaration disease or pest.

Note: For modifications of Part 4 of Chapter 6 (biosecurity control orders) in relation to biosecurity control orders revoked in accordance with this section, see section 464.

(3) If the biosecurity control order does not cease to be in force earlier, the biosecurity control order ceases to be in force at the end of the biosecurity emergency period (unless that period is extended under section 444).

Note: The biosecurity control order may also cease to be in force under section 357.

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(4) To avoid doubt, the biosecurity control order may be revoked in accordance with subsection (2) despite subsection 359(1).

Note: Biosecurity control orders can also be revoked under subsection 359(1) without the modifications provided by this section (see subsection 458(2)).

(5) For the purposes of this Act, a biosecurity control order that is revoked in accordance with subsection (2) of this section is taken to have been revoked under subsection 359(1).

464 Modification of Part 4 of Chapter 6 in relation to biosecurity control orders

Part 4 of Chapter 6 (biosecurity control orders) applies, in relation to a biosecurity control order that is, or is to be, made, varied or revoked in accordance with sections 461, 462 and 463, as if a reference to managing the biosecurity risk posed by a disease or pest to which the order (or a variation) relates included a reference to preventing or controlling the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory.

465 Biosecurity response zones

(1) During a biosecurity emergency period, the Director of Biosecurity may determine that a specified area in Australian territory is a biosecurity response zone if the Director of Biosecurity is satisfied that it is necessary to make the determination to prevent or control the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory.

Note: During a biosecurity emergency period, premises in a biosecurity response zone can be entered without a warrant or consent (see Division 6).

(2) To avoid doubt, a biosecurity response zone may be determined in accordance with subsection (1) despite subsection 365(1).

Note: Biosecurity response zones can also be determined in accordance with subsection 365(1) without the modifications provided by this section (see subsection 458(2)).

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(3) For the purposes of this Act, a determination made in accordance with subsection (1) of this section is taken to have been determined under subsection 365(1).

(4) A determination made in accordance with subsection (1) must:
   (a) despite subsection 366(1), state that the Director of Biosecurity is satisfied that it is necessary to make the determination to prevent or control the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory; and
   (b) specify under paragraph 366(2)(a) only the declaration disease or pest.

Modification of Part 5 of Chapter 6

(5) Part 5 of Chapter 6 (biosecurity response zones) applies, in relation to a biosecurity response zone that is, or is to be, determined in accordance with this section, as if a reference to managing the biosecurity risk to which the biosecurity response zone determination relates included a reference to preventing or controlling the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory.

Cessation of biosecurity response zone determination

(6) A biosecurity response zone determination ceases to be in force at the end of a biosecurity emergency period if:
   (a) the determination is made during that period under section 365 (whether or not with the modifications provided by this section); and
   (b) the zone relates to the declaration disease or pest; and
   (c) the period is not extended under section 444.

(7) However, subsection (6) does not prevent a biosecurity response zone determination being made in relation to the declaration disease or pest after the biosecurity emergency period has ended.

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466 Setting traps and setting up equipment and other structures

(1) During a biosecurity emergency period, a biosecurity officer may set traps or set up equipment or other structures in relation to the declaration disease or pest, without a biosecurity response zone having been determined, for the purpose of preventing or controlling the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory.

(2) Section 376 (unauthorised persons must not interfere with etc. equipment etc.) applies, in relation to the exercise of a power under subsection (1), as if the exercise of the power were in accordance with a biosecurity response zone determination.

467 Notice requirements during biosecurity emergencies

Giving notice orally

(1) During a biosecurity emergency period, notice or an approval may be given, or a request may be made, under any of the following provisions orally (instead of in writing) to the extent that the notice, approval or request relates to the declaration disease or pest:
   (a) subsection 136(2), 210(2), (3) or (5), 342(2) or (3), 343(2), (3) or (5), or 344(3) or (4) (destruction of high-value goods, conveyances or premises);
   (b) subsection 133(2), 208(2), 209(2), (4) or (5), 335(2), 336(2) or (4), 337(2), 338(2), (4) or (5), 339(3), 340(2) or (3), or 341(1), (3) or (4) (treatment that may damage goods, conveyances or premises);
   (c) subsection 206(3), 241(2), 249(2) (directions relating to aircraft and vessels);
   (d) subsection 558(2) or 559(4) (decontamination);
   (e) subsection 626(2), subsection 629(1)(c) or 629(2) (dealing with abandoned goods or conveyances).

(2) Subsection (3) of this section applies if:
   (a) a matter is required to be specified in a notice or request; and

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(b) notice is given to a person, or a request is made of a person, orally in accordance with subsection (1).

(3) If this subsection applies, then:

(a) instead of the matter being specified in the notice or request, the person must be informed of the matter orally; and

(b) a reference to a matter specified in a notice or request is taken to be a reference to a matter of which the person has been so informed.

(4) A written notice, request or approval must be given to a person within 48 hours of an oral notice or approval being given to the person, or an oral request being made of the person, in accordance with subsection (1).

Period during which to agree to treatment

(5) A person who is given notice under subsection 134(2), 209(2), 336(2), 338(2) or 340(2) has (despite paragraph 134(4)(b), 209(4)(b), 336(4)(b), 338(4)(b) or 341(1)(b)) 7 days from the day notice was first given (whether orally or in writing) in which to notify the Director of Biosecurity in writing that he or she agrees to the treatment of the goods, conveyance or premises.

468 Other biosecurity measures during biosecurity emergencies

The regulations may provide for modifications, that apply during biosecurity emergency periods, of regulations made for the purposes of section 346 (other biosecurity measures).

469 Merits review during biosecurity emergencies

During a biosecurity emergency period, a person is not entitled to seek review under Part 1 of Chapter 11 of this Act, or under the *Administrative Appeals Tribunal Act 1975*, of any of the following decisions made during the biosecurity emergency period in relation to the declaration disease or pest:

(a) a decision under subsection 136(2) or subsection 342(2) to give approval for requiring high-value goods to be destroyed;

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(b) a decision under section 210 to require a conveyance to be destroyed or under subsection 343(2) to give approval for requiring a conveyance to be destroyed;

(c) a decision under subsection 344(3) to give approval for requiring premises to be destroyed;

(d) a decision referred to in column 1 of items 23 to 31 of the table in subsection 574(1) in relation to a proposed arrangement or an approved arrangement.

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Division 6—Entry to premises without warrant or consent during biosecurity emergencies

Note 1: Before exercising a power in accordance with this Division, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

Note 2: A biosecurity officer may be assisted by other persons in exercising powers under this Division (see section 536).

470 Entry to premises without warrant or consent during biosecurity emergencies

(1) During a biosecurity emergency period, a biosecurity officer or biosecurity enforcement officer may (subject to subsection (2)) enter any premises for any or all of the following purposes:

(a) if no relevant biosecurity control order (see subsection (3)) is in force in relation to the premises or goods on the premises—to exercise powers in accordance with Division 3 of Part 2 of Chapter 6 (biosecurity risk assessment powers) in relation to the declaration disease or pest;

(b) if a relevant biosecurity control order is in force in relation to the premises or goods on the premises—to exercise powers in accordance with section 360 in relation to the premises or goods (as the case requires) for the following purpose:

(i) for orders made under section 353 without the modifications provided by section 461—managing the biosecurity risk posed by the declaration disease or pest;

(ii) for orders made under section 353 with the modifications provided by section 461—preventing or controlling the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory;

(c) if the premises are in a relevant biosecurity response zone (see subsection (4))—to exercise powers in accordance with section 370 in relation to the premises or goods (as the case requires) for the following purpose:

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(i) for biosecurity response zone determinations made under section 365 without the modifications provided by section 465—managing the biosecurity risk posed by the declaration disease or pest;

(ii) for biosecurity response zone determinations made under section 365 with the modifications provided by section 465—preventing or controlling the establishment or spread of the declaration disease or pest in Australian territory or a part of Australian territory;

(d) in any case—to set traps or set up equipment or other structures in relation to the declaration disease or pest in accordance with section 466.

Note 1: For the obligations and powers of biosecurity enforcement officers in entering premises under this section, see Division 3 of Part 5 of Chapter 9.

Note 2: For modifications of Chapter 6 (managing biosecurity risks: monitoring, control and response) in relation to premises entered in accordance with this section, see section 471.

Note 3: Premises includes a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

(2) A biosecurity officer or biosecurity enforcement officer is not authorised to enter premises under subsection (1) unless:

(a) the biosecurity officer suspects, on reasonable grounds, that the declaration disease or pest may be present in or on the premises or goods on the premises; and

(b) a biosecurity enforcement officer accompanies the biosecurity officer for the purposes of assisting in entering the premises and exercising the powers in accordance with subsection (1).

(3) A ***relevant biosecurity control order*** is a biosecurity control order:

(a) that is made under section 353 during a biosecurity emergency period (whether or not with the modifications provided by section 461); and

(b) that relates to the declaration disease or pest.

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(4) A ***relevant biosecurity response zone*** is a biosecurity response zone specified in a biosecurity response zone determination:
   (a) that is determined under section 365 during a biosecurity emergency period (whether or not with the modifications provided by section 465); and
   (b) that relates to the declaration disease or pest.

Entry without a warrant or consent

(5) To avoid doubt, a biosecurity officer or biosecurity enforcement officer may enter premises in accordance with subsection (1) despite subsections 315(2), 361(2), 371(2), 380(2) and 390(2).

Conveyances

(6) If the premises are a conveyance, a biosecurity enforcement officer may stop and detain the conveyance for a purpose referred to in subsection (1).

471 Modification of Chapter 6

(1) Section 325 (expert assistance to operate electronic equipment) applies, in relation to a biosecurity enforcement officer who enters premises under subsection 470(1), as if:
   (a) the entry were under a relevant warrant referred to in section 325; and
   (b) the warrant authorised the biosecurity enforcement officer to exercise the powers in section 325.

(2) Section 362 (power to secure goods or premises) applies, in relation to a biosecurity officer who enters premises under subsection 470(1), as if the entry were authorised by section 361.

472 Entry to adjacent premises without warrant or consent during biosecurity emergencies

(1) During a biosecurity emergency period, a biosecurity officer or biosecurity enforcement officer may enter premises (***adjacent***

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premises) for the purpose of gaining access to other premises to exercise powers in accordance with subsection 470(1).

Note: For the obligations and powers of biosecurity enforcement officers in entering premises under this section, see Division 3 of Part 5 of Chapter 9.

(2) A biosecurity officer is not authorised to enter adjacent premises under subsection (1) unless a biosecurity enforcement officer accompanies the biosecurity officer for the purposes of assisting in entering those premises.

(3) In this section, ***premises*** does not include a conveyance.

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Part 2—Human biosecurity emergencies

Division 1—Introduction

473 Simplified outline of this Part

This Part provides special powers for dealing with emergencies involving threats or harm to human health on a nationally significant scale (these are called human biosecurity emergencies).

The Governor-General may make a human biosecurity emergency declaration if the Health Minister is satisfied that the special powers in this Part are needed to deal with a human biosecurity emergency.

The Health Minister may exercise special powers under this Part to deal with a human biosecurity emergency, subject to limits and protections. These powers may be exercised anywhere in Australian territory.

The special emergency powers are in addition to the powers generally available under Chapter 2 (managing biosecurity risks: human health), which may also be used to deal with a human biosecurity emergency.

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Division 2—Human biosecurity emergency powers

474 Health Minister to exercise human biosecurity emergency powers personally

A power of the Health Minister under this Part may only be exercised by the Minister personally.

475 Governor-General may declare that a human biosecurity emergency exists

(1) The Governor-General may declare that a human biosecurity emergency exists if the Health Minister is satisfied that:

(a) a listed human disease is posing a severe and immediate threat, or is causing harm, to human health on a nationally significant scale; and

(b) the declaration is necessary to prevent or control:

(i) the entry of the listed human disease into Australian territory or a part of Australian territory; or

(ii) the emergence, establishment or spread of the listed human disease in Australian territory or a part of Australian territory.

Note 1: The declaration is a ***human biosecurity emergency declaration*** (see section 9).

Note 2: For revocation, see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*.

Note 3: A human biosecurity emergency declaration may be varied under section 476. Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to variation of a human biosecurity emergency declaration.

(2) A human biosecurity emergency declaration is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the declaration.

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Requirements for human biosecurity emergency declaration

(3) A human biosecurity emergency declaration must specify:
  (a) the listed human disease to which the declaration relates; and
  (b) the nature of the human biosecurity emergency and the conditions that gave rise to it; and
  (c) the period during which the declaration is in force.

Note 1: The listed human disease specified under paragraph (3)(a) is the ***declaration listed human disease*** (see section 9).

Note 2: The period specified under paragraph (3)(c) is the ***human biosecurity emergency period*** (see section 9).

(4) A human biosecurity emergency period:
  (a) must not be longer than the period that the Health Minister considers necessary to prevent or control:
    (i) the entry of the declaration listed human disease into Australian territory or a part of Australian territory; or
    (ii) the emergence, establishment or spread of the declaration listed human disease in Australian territory or a part of Australian territory; and
  (b) in any case, must not be longer than 3 months.

Note: A human biosecurity emergency period may be extended under section 476.

476 Governor-General may extend a human biosecurity emergency period

(1) The Governor-General may vary a human biosecurity emergency declaration to extend the human biosecurity emergency period for a period of up to 3 months if the Health Minister is satisfied that:
  (a) the declaration listed human disease is continuing to pose a severe and immediate threat, or is continuing to cause harm, to human health on a nationally significant scale; and
  (b) the extension is necessary to prevent or control:
    (i) the entry of the declaration listed human disease into Australian territory or a part of Australian territory; or

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(ii) the emergence, establishment or spread of the declaration listed human disease in Australian territory or a part of Australian territory.

(2) A variation made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the variation.

(3) The Governor-General may extend a human biosecurity emergency period under subsection (1) more than once.

477 Health Minister may determine emergency requirements during human biosecurity emergency period

(1) During a human biosecurity emergency period, the Health Minister may determine any requirement that he or she is satisfied is necessary:

(a) to prevent or control:

(i) the entry of the declaration listed human disease into Australian territory or a part of Australian territory; or

(ii) the emergence, establishment or spread of the declaration listed human disease in Australian territory or a part of Australian territory; or

(b) to prevent or control the spread of the declaration listed human disease to another country; or

(c) if a recommendation has been made to the Health Minister by the World Health Organization under Part III of the International Health Regulations in relation to the declaration listed human disease—to give effect to the recommendation.

Note 1: A person who fails to comply with a requirement determined under this subsection may commit an offence (see section 479).

Note 2: For variation and revocation, see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*.

(2) A determination made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

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(3) Without limiting subsection (1), the requirements that the Health Minister may determine include the following:
   (a) requirements that apply to persons, goods or conveyances when entering or leaving specified places;
   (b) requirements that restrict or prevent the movement of persons, goods or conveyances in or between specified places;
   (c) requirements for specified places to be evacuated;
   (d) if a recommendation has been made as referred to in paragraph (1)(c)—requirements for the purposes of giving effect to the recommendation.

(4) Before determining a requirement under subsection (1), the Health Minister must be satisfied of all of the following:
   (a) that the requirement is likely to be effective in, or to contribute to, achieving the purpose for which it is to be determined;
   (b) that the requirement is appropriate and adapted to achieve the purpose for which it is to be determined;
   (c) that the requirement is no more restrictive or intrusive than is required in the circumstances;
   (d) that the manner in which the requirement is to be applied is no more restrictive or intrusive than is required in the circumstances;
   (e) that the period during which the requirement is to apply is only as long as is necessary.

(5) A requirement determined under subsection (1) applies despite any provision of any other Australian law.

(6) A determination made under subsection (1) must not require an individual to be subject to a biosecurity measure of a kind set out in Subdivision B of Division 3 of Part 3 of Chapter 2.

Note: Subdivision B of Division 3 of Part 3 of Chapter 2 sets out the biosecurity measures that may be included in a human biosecurity control order.

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When determination ceases to have effect

(7) A determination made under subsection (1) ceases to have effect at the end of the human biosecurity emergency period, unless it is revoked earlier.

478 Health Minister may give directions during human biosecurity emergency period

(1) During a human biosecurity emergency period, the Health Minister may give any direction, to any person, that the Health Minister is satisfied is necessary:
   (a) to prevent or control:
      (i) the entry of the declaration listed human disease into Australian territory or a part of Australian territory; or
      (ii) the emergence, establishment or spread of the declaration listed human disease in Australian territory or a part of Australian territory; or
   (b) to prevent or control the spread of the declaration listed human disease to another country; or
   (c) if a recommendation has been made to the Health Minister by the World Health Organization under Part III of the International Health Regulations in relation to the declaration listed human disease—to give effect to the recommendation.

Note 1: A person who fails to comply with a direction given under this subsection may commit an offence (see section 479).

Note 2: See also section 572 (general provisions relating to directions).

(2) Without limiting subsection (1), the directions that the Health Minister may give under that subsection include the following:
   (a) a direction to a person who is in a position to close premises, or prevent access to premises, to do so;
   (b) a direction for the purposes of giving effect to or enforcing a requirement determined under section 477;
   (c) if a recommendation has been made as referred to in paragraph (1)(c)—a direction for the purposes of giving effect to the recommendation.

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(3) Before giving a direction under subsection (1), the Health Minister must be satisfied of all of the following:
   (a) that the direction is likely to be effective in, or to contribute to, achieving the purpose for which it is to be given;
   (b) that the direction is appropriate and adapted to achieve the purpose for which it is to be given;
   (c) that the direction is no more restrictive or intrusive than is required in the circumstances;
   (d) if the direction is to apply during a period—that the period is only as long as is necessary.

(4) A direction may be given under subsection (1) despite any provision of any other Australian law.

(5) A direction must not be given under subsection (1) to an officer or employee of a State, Territory or State or Territory body unless the direction is in accordance with an agreement between the Commonwealth and the State, Territory or body.

(6) A direction given under subsection (1) must not require an individual to be subject to a biosecurity measure of a kind set out in Subdivision B of Division 3 of Part 3 of Chapter 2.

Note: Subdivision B of Division 3 of Part 3 of Chapter 2 sets out the biosecurity measures that may be included in a human biosecurity control order.

When direction ceases to have effect

(7) A direction given under subsection (1) ceases to have effect at the end of the human biosecurity emergency period, unless it is revoked earlier.

479 Person must comply with emergency requirements and directions

(1) A person must comply with a requirement determined under subsection 477(1) that applies to the person.

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(2) A person must comply with a direction given under subsection 478(1) that applies to the person.

Fault-based offences

(3) A person commits an offence if:
  (a) a requirement determined under subsection 477(1) applies to the person; and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the requirement.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(4) A person commits an offence if:
  (a) a direction given under subsection 478(1) applies to the person; and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the direction.

Penalty for contravention of this subsection: Imprisonment for 5 years or 300 penalty units, or both.

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Chapter 9—Compliance and enforcement

Part 1—Monitoring

Division 1—Introduction

480 Simplified outline of this Part

Biosecurity enforcement officers may enter premises under a warrant or with consent of the occupier and exercise monitoring powers there under Part 2 of the Regulatory Powers Act, for the purposes of determining:

(a) whether this Act has been, or is being, complied with; or

(b) whether information given in compliance or purported compliance with this Act is correct.

A biosecurity enforcement officer may be assisted by other persons in exercising powers under that Part.

That Part contains the rules for obtaining a monitoring warrant, and the powers and obligations of biosecurity enforcement officers in entering premises under a monitoring warrant or with consent.

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Division 2—Monitoring under Part 2 of the Regulatory Powers Act

481 Basic monitoring powers under Part 2 of the Regulatory Powers Act

Provisions subject to monitoring

(1) This Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

Information subject to monitoring

(2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(3) For the purposes of Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions of this Act:
   (a) each related provision (as defined in section 9 of this Act) is related to the provisions of this Act; and
   (b) a biosecurity enforcement officer is an authorised applicant; and
   (c) a biosecurity enforcement officer is an authorised person; and
   (d) an issuing officer (as defined in section 9 of this Act) is an issuing officer; and
   (e) a relevant court (as defined in section 9 of this Act) is the relevant court.

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Person assisting

(4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions of this Act.

Extension to external Territories

(5) Part 2 of the Regulatory Powers Act, as it applies in relation to a provision of this Act, extends to every external Territory to which the provision extends.

482 Modifications of Part 2 of the Regulatory Powers Act

Additional monitoring powers

(1) For the purposes of Part 2 of the Regulatory Powers Act, the additional powers mentioned in subsection (2) are also taken to be monitoring powers for the purposes of determining:
   (a) whether a provision mentioned in subsection 481(1) has been, or is being, complied with; or
   (b) the correctness of information mentioned in subsection 481(2).

(2) The additional monitoring powers are:
   (a) the power to sample any thing on premises entered under Part 2 of the Regulatory Powers Act; and
   (b) the powers set out in section 553.

Note: Section 553 provides for biosecurity officers and biosecurity enforcement officers to be accompanied by, and to use, an animal to assist them in entering, and exercising powers on, premises that may be entered:
   (a) with the consent of the occupier; or
   (b) under a monitoring warrant, if the warrant authorises use of the animal.

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Monitoring warrant must deal with use of animals

(3) Subsection 32(4) of the Regulatory Powers Act applies in relation to the provisions of this Act as if that subsection also required the warrant:
   (a) to state whether biosecurity officers or biosecurity enforcement officers are authorised to use an animal; and
   (b) if they are authorised, to specify the kind of animal they may use while they are exercising powers under the warrant.

Premises

(4) Part 2 of the Regulatory Powers Act applies in relation to the provisions of this Act as if a reference in that Part to premises were a reference to premises as defined in section 9 of this Act.

(5) However, a monitoring warrant may be executed in relation to premises that are an aircraft or vessel only if the aircraft or vessel is at a landing place or port, or on land, in Australian territory, or the vessel is waiting to arrive at such a port.

Identity cards

(6) Part 2 of the Regulatory Powers Act applies in relation to the provisions of this Act as if a reference in that Part to an identity card were a reference to an identity card issued under section 569 of this Act.

(7) The following provisions of the Regulatory Powers Act do not apply in relation to the provisions of this Act:
   (a) the definition of ***identity card*** in section 4;
   (b) sections 13 and 15;
   (c) Division 8 of Part 2.

Use of force in executing a warrant

(8) In executing a monitoring warrant:
   (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and

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(b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

Note: Section 511 widens the application of Part 2 of the Regulatory Powers Act, as it applies in accordance with this Part, to premises entered under that section.

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Part 2—Investigation

Division 1—Introduction

483 Simplified outline of this Part

A biosecurity enforcement officer may, under Part 3 of the Regulatory Powers Act, gather material that relates to the contravention of offence and civil penalty provisions in this Act.

Under that Part:

(a) a biosecurity enforcement officer may enter premises if there are reasonable grounds for suspecting that there may be such material on the premises; and

(b) entry must be with the consent of the occupier of the premises or under an investigation warrant; and

(c) a biosecurity enforcement officer who enters premises may exercise investigation powers.

A biosecurity enforcement officer may be assisted by other persons in exercising powers under Part 3 of the Regulatory Powers Act.

That Part contains the rules for obtaining an investigation warrant, and the obligations and powers of biosecurity enforcement officers in entering premises under an investigation warrant or with consent.

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Division 2—Investigating under Part 3 of the Regulatory Powers Act

484 Basic investigation powers under Part 3 of the Regulatory Powers Act

Provisions subject to investigation

(1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
  (a) an offence against this Act; or
  (b) a civil penalty provision of this Act; or
  (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(2) For the purposes of Part 3 of the Regulatory Powers Act, as it applies in relation to evidential material that relates to a provision mentioned in subsection (1):
  (a) each related provision (as defined in section 9 of this Act) is related to that evidential material; and
  (b) a biosecurity enforcement officer is an authorised applicant; and
  (c) a biosecurity enforcement officer is an authorised person; and
  (d) an issuing officer (as defined in section 9 of this Act) is an issuing officer; and
  (e) the Director of Biosecurity is the relevant chief executive; and
  (f) a relevant court (as defined in section 9 of this Act) is the relevant court.

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Person assisting

(3) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Extension to external Territories

(4) Part 3 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection (1), extends to every external Territory to which the provision extends.

485 Modifications of Part 3 of the Regulatory Powers Act

Additional investigation powers

(1) For the purposes of Part 3 of the Regulatory Powers Act, the additional powers mentioned in subsection (2) are also taken to be investigation powers in relation to evidential material that relates to a provision mentioned in subsection 484(1).

(2) The additional investigation powers are:
   (a) the power to sample any thing on premises entered under Part 3 of the Regulatory Powers Act; and
   (b) the powers set out in section 553.

Note: Section 553 provides for biosecurity officers and biosecurity enforcement officers to be accompanied by, and to use, an animal to assist them in entering, and exercising powers on, premises that may be entered:
(a) with the consent of the occupier; or
(b) under an investigation warrant, if the warrant authorises use of the animal.

Investigation warrant must deal with use of animals

(3) Subsection 70(4) of the Regulatory Powers Act applies in relation to evidential material that relates to a provision mentioned in subsection 484(1) of this Act as if subsection 70(4) of the Regulatory Powers Act also required the warrant:

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(a) to state whether biosecurity officers or biosecurity enforcement officers are authorised to use an animal; and
(b) if they are authorised, to specify the kind of animal they may use while they are exercising powers under the warrant.

Premises

(4) Part 3 of the Regulatory Powers Act applies in relation to evidential material that relates to a provision mentioned in subsection 484(1) of this Act as if a reference in that Part to premises were a reference to premises as defined in section 9 of this Act.

(5) However, an investigation warrant may be executed in relation to premises that are an aircraft or vessel only if the aircraft or vessel is at a landing place or port, or on land, in Australian territory, or the vessel is waiting to arrive at such a port.

Identity cards

(6) Part 3 of the Regulatory Powers Act applies in relation to a provision mentioned in subsection 484(1) of this Act as if a reference in that Part to an identity card were a reference to an identity card issued under section 569 of this Act.

(7) The following provisions of the Regulatory Powers Act do not apply in relation to a provision mentioned in subsection 484(1) of this Act:
(a) the definition of ***identity card*** in section 4;
(b) section 43;
(c) Division 9 of Part 3.

Use of force in executing a warrant

(8) In executing an investigation warrant:
(a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and

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(b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

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Part 3—Warrants for purposes other than monitoring and investigation

Division 1—Introduction

486 Simplified outline of this Part

A magistrate or Judge of the Federal Court, the Federal Circuit Court or a State or Territory court may issue a warrant to authorise entry to premises or taking of possession of premises or a conveyance, if satisfied of certain matters.

Some warrants can be issued by telephone or fax etc. in urgent and other cases.

A warrant relating to an aircraft or vessel may be executed only if the aircraft or vessel is at a landing place or port, or on land, in Australian territory, or the vessel is waiting to arrive at such a port.

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Division 2—Issue of warrants

Subdivision A—Ordinary issue of warrants

487 Warrants this Subdivision applies to

This Subdivision applies to the following warrants:

(a) a biosecurity risk assessment warrant;
(b) a biosecurity control order warrant;
(c) a biosecurity response zone warrant;
(d) a biosecurity monitoring zone warrant;
(e) an adjacent premises warrant;
(f) a conveyance possession warrant;
(g) a premises possession warrant.

Note 1: Sections 489 and 490 explain the circumstances in which each of those warrants may be issued, and what it may authorise.

Note 2: Parts 1 and 2 deal with monitoring warrants and investigation warrants by applying Parts 2 and 3 of the Regulatory Powers Act.

488 Application and issue of warrant

(1) A biosecurity enforcement officer may apply to an issuing officer for a warrant.

Note: Certain warrants may be issued by telephone or fax in urgent cases (see Subdivision B).

Issue of warrant

(2) The issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that the test in section 489 is met in relation to that kind of warrant.

(3) The information must be sworn or affirmed by a biosecurity officer for the following kinds of warrants:

(a) a biosecurity risk assessment warrant;
(b) a biosecurity control order warrant;

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(c) a biosecurity response zone warrant;
(d) a biosecurity monitoring zone warrant.

(4) An issuing officer must not issue a warrant unless a biosecurity enforcement officer, a biosecurity officer or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

489 Test to be met for issue of warrant

The table in this section sets out in column 2 the test that must be met for a warrant of the kind referred to in column 1 to be issued.

Test to be met for issue of warrant

	Column 1 Kind of warrant	Column 2 Test for issue
1	A biosecurity risk assessment warrant	(a) there are reasonable grounds for suspecting that: (i) a disease or pest may be present in or on goods on the premises, or the premises themselves; and (ii) the disease or pest may pose an unacceptable level of biosecurity risk; and (b) it is reasonably necessary that one or more biosecurity enforcement officers and one or more biosecurity officers should have access to the premises to exercise powers in accordance with Division 3 of Part 2 of Chapter 6 for any of the following purposes: (i) to establish whether the disease or pest is present in or on the goods or premises (as the case may be); (ii) if possible, to identify the disease or pest; (iii) to assess the level of biosecurity risk posed by the disease or pest.
2	A biosecurity control order warrant	(a) there are reasonable grounds for suspecting that: (i) a disease or pest may be present in or on goods on the premises, or the premises themselves; and (ii) the disease or pest poses an unacceptable level of

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Test to be met for issue of warrant		
	Column 1 **Kind of warrant**	**Column 2** **Test for issue**
		biosecurity risk; and (b) a biosecurity control order is in force under section 353 in relation to the goods or premises and the disease or pest; and (c) it is reasonably necessary that one or more biosecurity enforcement officers and one or more biosecurity officers should have access to the premises to exercise powers in accordance with section 360 in relation to the goods or premises (as the case may be) for the purpose of managing the biosecurity risk posed by the disease or pest.
3	A biosecurity response zone warrant	(a) there are reasonable grounds for suspecting that: (i) a disease or pest may be present in or on goods on the premises, or the premises themselves; and (ii) the disease or pest poses an unacceptable level of biosecurity risk; and (b) the premises are in a biosecurity response zone; and (c) the biosecurity response zone determination relates to the disease or pest; and (d) it is reasonably necessary that one or more biosecurity enforcement officers and one or more biosecurity officers should have access to the premises to exercise powers in accordance with section 370 in relation to the goods or premises (as the case may be) for the purpose of managing the biosecurity risk posed by the disease or pest.
4	A biosecurity monitoring zone warrant	(a) the premises are in a permanent biosecurity monitoring zone or a temporary biosecurity monitoring zone; and (b) it is reasonably necessary that one or more biosecurity enforcement officers and one or more biosecurity officers should have access to the premises to exercise powers for the purpose of monitoring whether a disease or pest that a biosecurity officer suspects, on reasonable grounds, may pose an unacceptable level of biosecurity risk: (i) has entered, or has emerged, established itself or spread in, the zone; or (ii) is likely to enter, or to emerge, establish itself or

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Test to be met for issue of warrant		
	Column 1	**Column 2**
	Kind of warrant	**Test for issue**
		spread in, the zone.
5	An adjacent premises warrant	it is reasonably necessary that one or more biosecurity enforcement officers should have access to the premises for the purpose of: (a) gaining access to other premises to perform functions, or exercise powers, as a biosecurity enforcement officer; or (b) accompanying a biosecurity officer who needs to gain access to other premises to perform functions, or exercise powers, under or for the purposes of this Act.
6	A conveyance possession warrant	(a) a biosecurity officer has, under subsection 209(4), requested the person in charge or the operator of the conveyance to arrange for the conveyance to be dealt with or destroyed, or removed from Australian territory, within the period specified in the request, and the request has not been complied with; or (b) a biosecurity officer has, under subsection 338(4), requested the person in charge or the operator of the conveyance to arrange for the conveyance to be dealt with or destroyed within the period specified in the request, and the request has not been complied with; or (c) a notice has been given to the owner or the operator of the conveyance in accordance with subsection 210(3) or 343(3); or (d) such a notice would have been required to have been given had subsection 210(4) or 343(4) not applied.
7	A premises possession warrant	(a) a biosecurity officer has, under subsection 341(1), requested the owner of the premises to arrange for the premises to be dealt with or destroyed within the period specified in the request, and the request has not been complied with; or (b) a notice has been given to the owner of the premises in accordance with subsection 344(4); or (c) a certificate in relation to the premises has been issued under paragraph 344(5)(b).

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Note: For the definition of ***biosecurity risk*** in Chapter 6 (managing biosecurity risks: monitoring, control and response), see section 310.

490 Content of warrant

(1) A warrant must do the following:

(a) describe the premises or conveyance to which the warrant relates (as the case requires);

(b) state the kind of warrant that it is;

(c) state the purpose for which the warrant is issued;

(d) either:

(i) if the warrant is an entry warrant—state whether entry is authorised to be made; or

(ii) if the warrant is a possession warrant—state whether possession is authorised to be taken;

at any time of the day or during specified hours of the day;

(e) specify the day on which the warrant ceases to be in force (subject to subsections (2) and (3));

(f) comply with subsection (4) for that kind of warrant;

(g) if the warrant is an entry warrant (other than an adjacent premises warrant), and biosecurity enforcement officers or biosecurity officers may be assisted by an animal—authorise the officers to use a specified kind of animal while exercising powers under the warrant;

(h) if the warrant is an adjacent premises warrant, and a biosecurity enforcement officer or a biosecurity officer is to be assisted by an animal on the other premises to which access is needed—authorise a specified kind of animal to accompany the officer.

Maximum length of warrant

(2) An adjacent premises warrant or a possession warrant must cease to be in force no later than 14 days after the day the warrant is issued.

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(3) A warrant other than a warrant mentioned in subsection (2) must cease to be in force no later than 1 month after the day the warrant is issued.

Specific information required for specific kinds of warrants

(4) A warrant of a kind specified in column 1 of the following table must do the things specified in column 2 for a warrant of that kind.

Content of warrant

	Column 1 **This kind of warrant …**	**Column 2** **must do this …**
1	A biosecurity risk assessment warrant	authorise, on any one or more occasions while the warrant remains in force, one or more biosecurity enforcement officers and one or more biosecurity officers (whether or not named in the warrant): (a) to enter the premises; and (b) to exercise powers in accordance with Division 3 of Part 2 of Chapter 6.
2	A biosecurity control order warrant	authorise, on any one or more occasions while the warrant remains in force, one or more biosecurity enforcement officers and one or more biosecurity officers (whether or not named in the warrant): (a) to enter the premises; and (b) to exercise powers in accordance with section 360.
3	A biosecurity response zone warrant	authorise, on any one or more occasions while the warrant remains in force, one or more biosecurity enforcement officers and one or more biosecurity officers (whether or not named in the warrant): (a) to enter the premises; and (b) to exercise powers in accordance with section 370.

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Content of warrant

	Column 1 This kind of warrant …	Column 2 must do this …
4	A biosecurity monitoring zone warrant	authorise, on any one or more occasions while the warrant remains in force, one or more biosecurity enforcement officers and one or more biosecurity officers (whether or not named in the warrant): (a) to enter the premises; and (b) if the premises are in a permanent biosecurity monitoring zone—to exercise the powers referred to in subsections 379(1) and (2); and (c) if the premises are in a temporary biosecurity monitoring zone—to exercise powers in accordance with section 389.
5	An adjacent premises warrant	authorise, on any one or more occasions while the warrant remains in force, one or more biosecurity enforcement officers (whether or not named in the warrant) to enter the premises, and to remain on the premises for such period as is reasonably necessary, for the purpose of: (a) gaining access to other premises to perform functions, or exercise powers, as a biosecurity enforcement officer; or (b) accompanying a biosecurity officer who needs to gain access to other premises to perform functions, or exercise powers, under or for the purposes of this Act.
6	A conveyance possession warrant	authorise, while the warrant remains in force, one or more biosecurity enforcement officers (whether or not named in the warrant) to take possession of the conveyance for the purpose of allowing it: (a) to be dealt with or destroyed under subsection 209(5) or 338(5); or (b) to be subject to action under paragraph 213(1)(d) or (e) or 347(1)(d) as described in section 210 or 343 (as the case requires).

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Content of warrant		
	Column 1 **This kind of warrant …**	**Column 2** **must do this …**
7	A premises possession warrant	authorise, while the warrant remains in force, one or more biosecurity enforcement officers (whether or not named in the warrant) to take possession of the premises for the purpose of allowing the premises to be dealt with or destroyed under subsection 341(3) or section 344 (as the case requires).

Subdivision B—Issue of certain warrants by telephone, fax etc.

491 Application of this Subdivision to certain warrants

This Subdivision allows the following warrants to be issued by telephone, fax or other electronic means in urgent and other circumstances:

(a) a biosecurity risk assessment warrant;

(b) a biosecurity control order warrant;

(c) a biosecurity response zone warrant.

492 Issue of certain warrants by telephone, fax etc.

Application for warrant

(1) A biosecurity enforcement officer may apply to an issuing officer by telephone, fax or other electronic means for a warrant of a kind referred to in section 491 in relation to premises:

(a) in an urgent case; or

(b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

(2) The issuing officer may require communication by voice to the extent that it is practicable in the circumstances.

(3) Before applying for the warrant, the biosecurity enforcement officer or a biosecurity officer must prepare an information of the

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kind required by subsections 488(2) and (3) in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the biosecurity enforcement officer may apply for the warrant before the information is sworn or affirmed.

Issuing officer may complete and sign warrant

(4) The issuing officer may complete and sign the same warrant that would have been issued under section 488 if the issuing officer is satisfied that there are reasonable grounds for doing so:
  (a) after considering the terms of the information; and
  (b) after receiving such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

(5) After completing and signing the warrant, the issuing officer must inform the biosecurity enforcement officer, by telephone, fax or other electronic means, of:
  (a) the terms of the warrant; and
  (b) the day, and the time, the warrant was signed.

Obligations on biosecurity enforcement officer

(6) The biosecurity enforcement officer must then do the following:
  (a) complete a form of warrant in the same terms as the warrant completed and signed by the issuing officer;
  (b) state on the form the following:
    (i) the name of the issuing officer;
    (ii) the day, and the time, the warrant was signed;
  (c) send the following to the issuing officer:
    (i) the form of warrant completed by the biosecurity enforcement officer;
    (ii) the information referred to in subsection (3), which must have been duly sworn or affirmed.

(7) The biosecurity enforcement officer must comply with paragraph (6)(c) by the end of the day after the earlier of the following:

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(a) the day the warrant ceases to be in force;
(b) the day the warrant is executed (or first executed).

Issuing officer to attach documents together

(8) The issuing officer must attach the documents provided under paragraph (6)(c) to the warrant signed by the issuing officer.

493 Authority of warrant

(1) A form of warrant duly completed under subsection 492(6) is authority for the same powers as are authorised by the warrant signed by the issuing officer under subsection 492(4).

(2) In any proceedings, a court is to assume (unless the contrary is proved) that an exercise of power was not authorised by a warrant under section 492 if:
(a) it is material, in those proceedings, for the court to be satisfied that the exercise of power was authorised by that section; and
(b) the warrant signed by the issuing officer authorising the exercise of the power is not produced in evidence.

494 Fault-based offence relating to warrants by telephone, fax etc.

A biosecurity enforcement officer commits an offence if the biosecurity enforcement officer:
(a) states in a document that purports to be a form of warrant under section 492 the name of an issuing officer, unless that issuing officer signed the warrant; or
(b) states on a form of warrant under that section a matter that, to the biosecurity enforcement officer's knowledge, departs in a material particular from the terms of the warrant signed by the issuing officer under that section; or
(c) purports to execute, or present to another person, a document that purports to be a form of warrant under that section that the biosecurity enforcement officer knows departs in a

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material particular from the terms of a warrant signed by an issuing officer under that section; or

(d) purports to execute, or present to another person, a document that purports to be a form of warrant under that section where the biosecurity enforcement officer knows that no warrant in the terms of the form of warrant has been completed and signed by an issuing officer; or

(e) gives to an issuing officer a form of warrant under that section that is not the form of warrant that the biosecurity enforcement officer purported to execute.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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Division 3—Executing warrants relating to aircraft or vessels

495 Executing warrants relating to aircraft or vessels

A warrant issued under this Part may be executed in relation to premises that are, or a conveyance that is, an aircraft or vessel only if the aircraft or vessel is at a landing place or port, or on land, in Australian territory, or the vessel is waiting to arrive at such a port.

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Part 4—General rules about entry to premises under a warrant or consent

Division 1—Introduction

496 Simplified outline of this Part

A biosecurity enforcement officer who needs access to premises may gain that access through adjacent premises if authorised by warrant. A biosecurity officer may also gain access that way if accompanied by a biosecurity enforcement officer who is authorised by warrant to gain access that way.

Special rules apply to consent for biosecurity enforcement officers to enter premises, to ensure the consent is voluntary.

Biosecurity enforcement officers acting under a warrant are also subject to special rules, and have certain powers.

Occupiers of premises entered under a warrant, and their representatives, have rights to observe execution of the warrant and obligations to assist those executing it.

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Division 2—Entering adjacent premises to gain access to other premises

497 Meaning of *premises*

In this Division, ***premises*** does not include a conveyance.

498 Entering adjacent premises to gain access to other premises

(1) A biosecurity enforcement officer may enter any premises (***adjacent premises***) if it is necessary to do so for the purpose of:

(a) gaining access to other premises to perform functions, or exercise powers, as a biosecurity enforcement officer (including as an authorised person for the purposes of Part 2 or 3 of the Regulatory Powers Act as those Parts apply in relation to this Act); or

(b) accompanying a biosecurity officer who needs to gain access to other premises to perform functions, or exercise powers, under or for the purposes of this Act.

(2) However, a biosecurity enforcement officer is not authorised to enter adjacent premises under subsection (1) unless:

(a) the occupier of the premises has consented to the entry and the biosecurity enforcement officer has shown his or her identity card if required by the occupier; or

(b) the entry is made under an adjacent premises warrant.

Note: For the issue of warrants, and the obligations and powers of biosecurity enforcement officers in entering premises under a warrant or with consent, see Part 3 of this Chapter, Division 3 of this Part and Parts 2 and 3 of the Regulatory Powers Act (as they apply because of Parts 1 and 2 of this Chapter).

(3) A biosecurity officer who needs to enter adjacent premises to gain access to other premises for the purpose of performing functions, or exercising powers, under or for the purposes of this Act may enter the adjacent premises only if the biosecurity officer is

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accompanied by a biosecurity enforcement officer who is authorised to enter the adjacent premises under subsection (1).

499 Entry under adjacent premises warrants

A biosecurity enforcement officer or biosecurity officer who enters premises under an adjacent premises warrant, and any person assisting, must take all reasonable steps to ensure that they cause as little inconvenience to the occupier of the premises as is practicable.

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Division 3—Obligations and powers of biosecurity enforcement officers

Subdivision A—Obligations relating to consent

500 Consent

(1) This section sets out the rules relating to consent for the purposes of the following provisions:
  (a) paragraph 315(2)(a) (biosecurity risk assessment);
  (b) paragraph 361(2)(a) (biosecurity control orders);
  (c) paragraph 371(2)(a) (biosecurity response zones);
  (d) paragraph 380(2)(a) (permanent biosecurity monitoring zones);
  (e) paragraph 390(2)(a) (temporary biosecurity monitoring zones);
  (f) paragraph 498(2)(a) (adjacent premises).

(2) Before obtaining the consent of an occupier to enter premises for the purposes of the provision, a biosecurity enforcement officer or a biosecurity officer must inform the occupier of the following:
  (a) the reasons for entering the premises;
  (b) that the occupier may refuse consent.

(3) A consent has no effect unless the consent is voluntary.

(4) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.

(5) A consent that is not limited as mentioned in subsection (4) has effect until the consent is withdrawn.

(6) If a biosecurity enforcement officer or biosecurity officer entered premises because of the consent of the occupier of the premises, the following persons must leave the premises if the consent ceases to have effect:

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(a) each biosecurity enforcement officer and biosecurity officer on the premises;
(b) any person assisting a biosecurity enforcement officer or biosecurity officer.

Subdivision B—Obligations and powers relating to warrants

501 Warrants this Subdivision applies to

This Subdivision applies to a warrant other than:
(a) a monitoring warrant; and
(b) an investigation warrant.

Note: Division 3 of each of Parts 2 and 3 of the Regulatory Powers Act contains rules for monitoring warrants and investigation warrants that are like the rules in this Subdivision for warrants.

502 Announcement before execution of warrant

Entry warrants

(1) Before a biosecurity enforcement officer or biosecurity officer enters premises under an entry warrant, the biosecurity enforcement officer must:
(a) announce that he or she is authorised to enter the premises; and
(b) if an appropriate person for the premises is present at the premises:
(i) ensure that the identity card of the biosecurity enforcement officer is shown to the appropriate person; and
(ii) give any person present at the premises an opportunity to allow entry to the premises; and
(c) if the warrant is a biosecurity risk assessment warrant, biosecurity control order warrant, biosecurity response zone warrant or biosecurity monitoring zone warrant—ensure that the identity card of the biosecurity officer is also shown to the appropriate person.

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Exception for some adjacent premises warrants

(2) However, a biosecurity enforcement officer is not required to comply with subsection (1) if:
  (a) entry is to be made under an adjacent premises warrant, to the extent that the warrant authorises entry to premises for the purposes of executing an investigation warrant or monitoring warrant on other premises; and
  (b) the biosecurity enforcement officer believes on reasonable grounds that immediate entry to the premises is required:
    (i) to ensure the safety of a person; or
    (ii) to ensure that the effective execution of the investigation warrant or monitoring warrant is not frustrated.

(3) If:
  (a) a biosecurity enforcement officer does not comply with subsection (1) because of subsection (2); and
  (b) an appropriate person for the premises is present at the premises;

  the biosecurity enforcement officer must, as soon as practicable after entering the premises, show his or her identity card to the appropriate person.

Possession warrants

(4) Before taking possession of premises or a conveyance under a possession warrant, a biosecurity enforcement officer executing the warrant must:
  (a) announce that he or she is authorised to take possession of the premises or conveyance (as the case requires); and
  (b) if an appropriate person for the premises or conveyance is present at the premises or on board the conveyance—show his or her identity card to the appropriate person.

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503 Biosecurity enforcement officer to be in possession of warrant

A biosecurity enforcement officer executing a warrant must be in possession of:

(a) the warrant issued by the issuing officer under section 488, or a copy of the warrant as so issued; or

(b) the form of warrant completed under subsection 492(6), or a copy of the form as so completed.

504 Details of warrant etc. to be provided

(1) A biosecurity enforcement officer must comply with subsection (2) if:

(a) a warrant is being executed in relation to premises or a conveyance; and

(b) an appropriate person for the premises or conveyance is present at the premises or on board the conveyance while the warrant is being executed.

(2) The biosecurity enforcement officer executing the warrant must, as soon as practicable:

(a) either:

(i) make a copy of the warrant available to the appropriate person (which need not include the signature of the issuing officer who issued it); or

(ii) make a copy of the form of warrant completed under subsection 492(6) available to the appropriate person; and

(b) inform the appropriate person of the rights and responsibilities of the person under Division 4.

505 Use of force in executing a warrant

(1) In executing a warrant, a biosecurity enforcement officer, or a person assisting a biosecurity enforcement officer, may use such force against things as is necessary and reasonable in the circumstances.

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(2) However, only a biosecurity enforcement officer may use force in executing an adjacent premises warrant.

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Division 4—Appropriate person's rights and responsibilities relating to warrants

506 Warrants this Division applies to

This Division applies to a warrant other than:

(a) a monitoring warrant; and

(b) an investigation warrant.

Note: Division 4 of each of Parts 2 and 3 of the Regulatory Powers Act contains rules for monitoring warrants and investigation warrants that are like the rules in this Division for warrants.

507 Appropriate person's right to observe execution of warrant

(1) An appropriate person for premises is entitled to observe the execution of an entry warrant or a premises possession warrant that relates to the premises if the person is present at the premises while the warrant is being executed.

(2) An appropriate person for a conveyance is entitled to observe the execution of a conveyance possession warrant that relates to the conveyance if the person is on board the conveyance while the warrant is being executed.

(3) The right to observe the execution of a warrant ceases if the appropriate person impedes that execution.

(4) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

508 Appropriate person to provide facilities and assistance

(1) An appropriate person for premises or a conveyance to which a warrant relates must provide the following persons with all reasonable facilities and assistance for the effective exercise of their powers:

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(a) any biosecurity enforcement officer or biosecurity officer executing the warrant;
(b) any person assisting the biosecurity enforcement officer or biosecurity officer.

Fault-based offence

(2) A person commits an offence if:
(a) the person is subject to subsection (1); and
(b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

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Part 5—Entering and exercising powers on premises without a warrant or consent

Division 1—Introduction

509 Simplified outline of this Part

A biosecurity enforcement officer may, without a warrant:

(a) enter premises where a biosecurity industry participant carries on biosecurity activities under an approved arrangement, or a first point of entry; and

(b) exercise there monitoring and investigation powers like those under Parts 2 and 3 of the Regulatory Powers Act (as they apply because of Parts 1 and 2 of this Chapter).

Biosecurity officers and biosecurity enforcement officers entering premises without a warrant (under this Part or certain other provisions) must announce their entry and identify themselves, and may use reasonable and necessary force against things to enter the premises and while on the premises.

Occupiers of premises entered without warrant, and their representatives, may observe the exercise of powers there, and must assist.

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Division 2—Monitoring and searching relevant premises

510 Meaning of *relevant premises*

The following premises are ***relevant premises***:

(a) any premises at which biosecurity activities are carried out by a biosecurity industry participant that is covered by an approved arrangement;

(b) any landing place or port that is determined to be a first point of entry.

511 Monitoring relevant premises

(1) A biosecurity enforcement officer may enter relevant premises for the following purposes:

(a) determining whether this Act has been, or is being, complied with;

(b) determining whether information provided for the purposes of this Act is correct;

(c) deciding whether to exercise a power under this Act.

Note: The expression ***this Act*** includes the Regulatory Powers Act as it applies in relation to this Act: see the definition of ***this Act*** in section 9.

(2) The biosecurity enforcement officer may enter the premises during the business hours of the premises.

Note: For the obligations and powers of biosecurity enforcement officers entering premises under this section, see Division 3.

(3) Subdivision A of Division 2 of Part 2, and section 29, of the Regulatory Powers Act apply in accordance with Part 1 of this Chapter as if:

(a) entry to the premises was made under section 18 of that Act under a monitoring warrant; and

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(b) the purposes for which section 18 of that Act permits the monitoring powers to be exercised included the purpose of deciding whether to exercise a power under this Act; and

(c) for the purposes of that Subdivision, relevant data included information relevant to deciding whether to exercise a power under this Act.

Note 1: Subdivision A of Division 2 of Part 2, and section 29, of the Regulatory Powers Act are about monitoring powers and compensation for damage to electronic equipment operated under those powers.

Note 2: Part 1 of this Chapter expands the monitoring powers under Subdivision A of Division 2 of Part 2 of the Regulatory Powers Act.

(4) The application of Subdivision A of Division 2 of Part 2, and section 29, of the Regulatory Powers Act under subsection (3) of this section is in addition to their application under Part 1 of this Chapter.

(5) If the relevant premises are a conveyance, a biosecurity enforcement officer may stop and detain the conveyance for the purpose of exercising any of the monitoring powers under Subdivision A of Division 2 of Part 2 of the Regulatory Powers Act as it applies in accordance with Part 1 of this Chapter and subsection (3) of this section.

512 Offence-related searches and seizures

(1) A biosecurity enforcement officer may enter relevant premises if the officer has reasonable grounds for suspecting that there may be, on the premises:

(a) a particular thing with respect to which an offence provision or a civil penalty provision, that is a provision mentioned in subsection 484(1), has been contravened or is suspected, on reasonable grounds, to have been contravened; or

(b) a particular thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of such an offence provision or a civil penalty provision; or

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(c) a particular thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening such an offence provision or a civil penalty provision.

Note: Subsection 484(1) mentions provisions for offences against this Act, provisions for offences against the *Crimes Act 1914* or the *Criminal Code* relating to this Act and civil penalty provisions of this Act.

(2) The biosecurity enforcement officer may enter the premises at any time.

Note: For the obligations and powers of biosecurity enforcement officers entering premises under this section, see Division 3.

(3) Divisions 2 and 5 of Part 3, and section 61, of the Regulatory Powers Act apply in accordance with Part 2 of this Chapter as if:

(a) entry to the premises was made under section 48 of that Act under an investigation warrant; and

(b) the thing referred to in subsection (1) of this section were evidential material of a kind specified in an investigation warrant.

Note 1: Divisions 2 and 5 of Part 3, and section 61, of the Regulatory Powers Act are about investigation powers, seizure and compensation for damage to electronic equipment operated under investigation powers.

Note 2: Part 2 of this Chapter expands the investigation powers under Subdivision A of Division 2 of Part 3 of the Regulatory Powers Act.

(4) The application of Divisions 2 and 5 of Part 3, and section 61, of the Regulatory Powers Act under subsection (3) of this section is in addition to their application under Part 2 of this Chapter.

(5) If the relevant premises are a conveyance, a biosecurity enforcement officer may stop and detain the conveyance for the purpose of exercising an investigation power under Division 2 of Part 3 of the Regulatory Powers Act as it applies because of Part 2 of this Chapter and subsection (3) of this section.

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Division 3—Powers, rights and responsibilities relating to entry

Subdivision A—Application of this Division

513 Application of this Division

This Division (other than section 515) sets out the rules that apply if a biosecurity enforcement officer or a biosecurity officer is to enter, or enters, premises without a warrant or consent under any of the following provisions:

(a) subsection 252(2) (entering landing places or ports);
(b) subsection 470(1) (biosecurity emergencies);
(c) subsection 472(1) (entering adjacent premises during biosecurity emergencies);
(d) section 511 (monitoring relevant premises);
(e) section 512 (searching relevant premises).

Note: Section 515 does not apply in relation to premises entered under section 511.

Subdivision B—Obligations and powers of biosecurity enforcement officers in entering premises

514 Announcement before entry

Before a biosecurity enforcement officer or biosecurity officer enters premises under a provision referred to in section 513, the biosecurity enforcement officer must:

(a) announce that he or she is authorised to enter the premises; and
(b) if the appropriate person for the premises is present at the premises:
    (i) ensure that the identity card of the biosecurity enforcement officer is shown to the appropriate person; and

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(ii) explain the reasons for entering the premises; and

(c) for entry under subsection 252(2), 470(1) or 472(1)—ensure that the identity card of the biosecurity officer is also shown to the appropriate person.

515 Use of force in entering premises

In entering premises under subsection 252(2), 470(1) or 472(1) or section 512, and while on those premises, a biosecurity enforcement officer, or a person assisting a biosecurity enforcement officer, may use such force against things as is necessary and reasonable in the circumstances.

Subdivision C—Appropriate person's rights and responsibilities on entry

516 Appropriate person is entitled to observe exercise of powers

(1) An appropriate person for premises entered under a provision referred to in section 513 is (subject to subsections (2) and (3) of this section) entitled to observe the exercise of powers while on the premises if the appropriate person is present at the premises while those powers are being exercised.

(2) The right to observe the exercise of powers ceases if the appropriate person impedes the exercise of those powers.

(3) This section does not prevent:

(a) powers being exercised in 2 or more areas of the premises at the same time; or

(b) a direction requiring the appropriate person to leave the premises being given under section 446 (directions during biosecurity emergencies).

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517 Appropriate person to provide officers etc. with facilities and assistance

(1) An appropriate person for premises entered under a provision referred to in section 513 must provide the following persons with all reasonable facilities and assistance for the effective exercise of their powers while on the premises:

(a) any biosecurity enforcement officer or biosecurity officer who enters the premises;

(b) any person assisting the biosecurity enforcement officer or biosecurity officer.

Fault-based offence

(2) A person commits an offence if:

(a) the person is subject to subsection (1); and

(b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

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Part 6—Civil penalties

Division 1—Introduction

518 Simplified outline of this Part

Civil penalty orders may be sought under Part 4 of the Regulatory Powers Act from a relevant court in relation to contraventions of civil penalty provisions.

An executive officer of a body corporate is liable to a civil penalty if he or she knew, or was reckless or negligent, about contravention of a civil penalty provision by the body and failed to take all reasonable steps to prevent the contravention.

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Division 2—Civil penalties under Part 4 of the Regulatory Powers Act

519 Basic operation of civil penalties under Part 4 of the Regulatory Powers Act

Enforceable civil penalty provisions

(1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the civil penalty provisions mentioned in subsection (1):
  (a) the Director of Biosecurity;
  (b) the Director of Human Biosecurity.

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each relevant court (as defined in section 9 of this Act) is a relevant court in relation to the civil penalty provisions mentioned in subsection (1).

Extension to external Territories

(4) Part 4 of the Regulatory Powers Act, as it applies in relation to a civil penalty provision mentioned in subsection (1), extends to every external Territory to which the provision extends.

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520 Modifications of Part 4 of the Regulatory Powers Act

No civil penalty order after court finds person to have contravened similar Australian law

(1) A relevant court may not make a civil penalty order under Part 4 of the Regulatory Powers Act against a person for a contravention (the ***biosecurity contravention***) of a civil penalty provision of this Act if:

(a) the person has been convicted of an offence under an Australian law; or

(b) the person has been found by a court to have contravened a civil penalty provision under an Australian law;

that is constituted by conduct that is the same, or substantially the same, as the conduct constituting the biosecurity contravention.

Stay of proceedings for civil penalty order during corresponding criminal or civil proceedings

(2) Proceedings (***biosecurity proceedings***) for a civil penalty order under Part 4 of the Regulatory Powers Act against a person for a contravention (the ***biosecurity contravention***) of a civil penalty provision of this Act are stayed if:

(a) either:

(i) criminal proceedings are commenced or have already been commenced under an Australian law against the person for an offence; or

(ii) civil proceedings are commenced or have already been commenced against the person for a contravention of a civil penalty provision under a law of a State or a Territory; and

(b) the offence or contravention referred to in paragraph (a) is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the biosecurity contravention.

(3) The biosecurity proceedings may be resumed if the person is not convicted of the offence, or a court does not find that the person

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has contravened the civil penalty provision, referred to in paragraph (2)(a). Otherwise, the biosecurity proceedings are dismissed.

Corresponding criminal or civil proceedings not prevented

(4) The following proceedings may be commenced against a person:
  (a) criminal proceedings under an Australian law (subject to the terms of that law);
  (b) proceedings for a contravention of a civil penalty provision under a law of a State or a Territory (subject to the terms of that law);

for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision of this Act regardless of whether a civil penalty order has been made under Part 4 of the Regulatory Powers Act against the person in relation to the contravention.

Sudden or extraordinary emergency

(5) A person is not liable under Part 4 of the Regulatory Powers Act to have a civil penalty order made against the person for a contravention of a civil penalty provision of this Act if he or she carries out the conduct constituting the contravention in response to circumstances of sudden or extraordinary emergency.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

(6) Subsection (5) applies if and only if the person carrying out the conduct reasonably believes that:
  (a) circumstances of sudden or extraordinary emergency exist; and
  (b) contravening the provision is the only reasonable way to deal with the emergency; and
  (c) the conduct is a reasonable response to the emergency.

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Relationship with Regulatory Powers Act

(7) Subsections (1), (2), (3), (4), (5) and (6) have effect despite Part 4 of the Regulatory Powers Act.

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Division 3—Civil penalties for executive officers of bodies corporate

521 Civil penalties for executive officers of bodies corporate

(1) An executive officer of a body corporate contravenes this subsection if:
  (a) the body corporate contravenes a civil penalty provision; and
  (b) the executive officer knew that, or was reckless or negligent as to whether, the contravention would occur; and
  (c) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
  (d) the officer failed to take all reasonable steps to prevent the contravention.

Civil penalty provision

(2) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

Recklessness

(3) For the purposes of subsection (1), the officer is ***reckless*** as to whether the contravention would occur if:
  (a) the officer is aware of a substantial risk that the contravention would occur; and
  (b) having regard to the circumstances known to the officer, it is unjustifiable to take the risk.

Negligence

(4) For the purposes of subsection (1), the officer is ***negligent*** as to whether the contravention would occur if the officer's conduct involves:

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(a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
(b) such a high risk that the contravention would occur;

that the conduct merits the imposition of a pecuniary penalty.

Reasonable steps to prevent contravention

(5) For the purposes of subsection (1), in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention, a court may have regard to all relevant matters, including:
(a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):
(i) that the body corporate arranges regular professional assessments of the body corporate's compliance with civil penalty provisions;
(ii) that the body corporate implements any appropriate recommendations arising from such an assessment;
(iii) that the body corporate's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with civil penalty provisions in so far as those requirements affect the employees, agents or contractors concerned; and
(b) what action (if any) the officer took when he or she became aware of the contravention.

(6) Subsection (5) does not limit subsection (1).

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Part 7—Infringement notices

Division 1—Introduction

522 Simplified outline of this Part

A person can be given an infringement notice under Part 5 of the Regulatory Powers Act for contravening certain strict liability offence provisions and civil penalty provisions of this Act.

A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person for the contravention. If the person does not choose to pay the amount, proceedings can be brought against the person for the contravention.

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Division 2—Infringement notices under Part 5 of the Regulatory Powers Act

523 Basic provisions for infringement notices under Part 5 of the Regulatory Powers Act

Provisions subject to an infringement notice

(1) The provisions listed in the following table are subject to an infringement notice under Part 5 of the Regulatory Powers Act:

Provisions that are subject to an infringement notice	
Item	**Provision**
1	Subsection 124(2)
2	Subsection 125(4)
3	Subsection 126(2)
4	Subsection 127(3)
5	Subsection 128(2)
6	Subsection 129(2)
7	Subsection 130(2)
8	Subsection 139(3)
9	Subsection 188(1)
10	Subsection 196(4)
11	Subsection 198(2)
12	Subsection 200(2)
13	Subsection 201(3)
14	Subsection 202(2)
15	Subsection 203(2)
16	Subsection 204(2)
17	Subsection 214(3)
18	Subsection 220(1)

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Provisions that are subject to an infringement notice	
Item	**Provision**
19	Subsection 221(3)
19A	Subsection 300B(2)
19B	Subsection 300C(4)
19C	Subsection 300D(2)
20	Subsection 301(4)
21	Subsection 317(3)
22	Subsection 318(4)
23	Subsection 319(2)
24	Subsection 320(3)
25	Subsection 321(2)
26	Subsection 322(3)
27	Subsection 323(1)
28	Subsection 348(3)
29	Subsection 363(1)
30	Subsection 373(1)
31	Subsection 374(1)
32	Subsection 381(1)
33	Subsection 382(1)
34	Subsection 383(1)
35	Subsection 391(1)
36	Subsection 392(1)
37	Subsection 393(1)
38	Subsection 401(1)
39	Subsection 402(1)
40	Subsection 438(1)
41	Subsection 439(1)
42	Subsection 456(3)
43	Subsection 532(1)
44	Subsection 533(1)

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Provisions that are subject to an infringement notice	
Item	**Provision**
45	Subsection 556(4)
46	Subsection 600(6)
47	Subsection 601(1)
48	Subsection 607(1)
49	Subsection 631(3)

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

(2) For the purposes of Part 5 of the Regulatory Powers Act:
  (a) the Director of Biosecurity is an infringement officer in relation to the provisions mentioned in subsection (1); and
  (b) the Director of Biosecurity is the relevant chief executive in relation to the provisions mentioned in subsection (1).

Extension to external Territories

(3) Part 5 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection (1), extends to every external Territory to which the provision extends.

524 Modifications of Part 5 of the Regulatory Powers Act

(1) Instead of stating the matters mentioned in paragraphs 104(1)(d) and (h) of the Regulatory Powers Act, an infringement notice must:
  (a) state the name and contact details of the person who gave the notice, and how the person has power to issue the infringement notice; and
  (b) state that, if the person to whom the notice is given pays the amount within the specified period after the notice is given, then (unless the notice is withdrawn):
    (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or

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(ii) if the provision is an offence provision that can also constitute a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a civil penalty order under Part 4 of the Regulatory Powers Act will not be brought, in relation to the alleged contravention; or

(iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order under Part 4 of the Regulatory Powers Act will not be brought in relation to the alleged contravention.

Period for payment

(2) The period to be specified in the notice for the purposes of paragraph (1)(b) must be:

(a) 28 days after the day the notice is given; or

(b) if the regulations prescribe a period that ends earlier—the prescribed period.

Note: The regulations may prescribe a period that ends a short time after the notice is given (maybe even on the day that the notice is given).

(3) Regulations made for the purposes of paragraph (2)(b) may prescribe different periods for different kinds of contraventions of provisions mentioned in subsection 523(1).

Amount payable under the infringement notice

(4) The amount to be stated in an infringement notice for the purposes of paragraph 104(1)(f) of the Regulatory Powers Act for the alleged contravention of the provision by the person must be the least of:

(a) one-fifth of the maximum penalty that a court could impose on the person for that contravention; and

(b) 12 penalty units where the person is an individual, or 60 penalty units where the person is a body corporate; and

(c) if the regulations prescribe a different number of penalty units for the alleged contravention of the provision by the person—that number of penalty units.

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(5) Regulations made for the purposes of paragraph (4)(c) may specify different numbers of penalty units for an alleged contravention of a particular provision mentioned in subsection 523(1) by a person depending on whether the person is an individual or a body corporate.

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Part 8—Enforceable undertakings

Division 1—Introduction

525 Simplified outline of this Part

Undertakings to comply with this Act may be accepted and enforced under Part 6 of the Regulatory Powers Act.

Under that Part (as it applies because of this Part):

(a) the Director of Biosecurity may accept an undertaking relating to compliance with a provision of this Act; and

(b) the undertaking may be enforced in a relevant court; and

(c) the relevant court may make orders, including an order directing compliance, an order requiring any financial benefit from the failure to comply to be surrendered and an order for damages.

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Division 2—Accepting and enforcing undertakings under Part 6 of the Regulatory Powers Act

526 Enforceable undertakings

Enforceable provisions

(1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

(2) For the purposes of Part 6 of the Regulatory Powers Act, the Director of Biosecurity is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

(3) For the purposes of Part 6 of the Regulatory Powers Act, each relevant court (as defined in section 9 of this Act) is a relevant court in relation to the provisions mentioned in subsection (1).

Extension to external Territories

(4) Part 6 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection (1), extends to every external Territory to which the provision extends.

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Part 9—Injunctions

Division 1—Introduction

527 Simplified outline of this Part

Injunctions (including interim injunctions) under Part 7 of the Regulatory Powers Act may be used to restrain a person from contravening a provision of this Act, or to compel compliance with a provision of this Act.

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Division 2—Injunctions under Part 7 of the Regulatory Powers Act

528 Injunctions

Enforceable provisions

(1) The provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

(2) For the purposes of Part 7 of the Regulatory Powers Act, each of the following persons is an authorised person in relation to the provisions mentioned in subsection (1):

(a) the Director of Biosecurity;

(b) the Director of Human Biosecurity.

Relevant court

(3) For the purposes of Part 7 of the Regulatory Powers Act, each relevant court (as defined in section 9 of this Act) is a relevant court in relation to the provisions mentioned in subsection (1).

Extension to external Territories

(4) Part 7 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection (1), extends to every external Territory to which the provision extends.

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Part 10—Miscellaneous

Division 1—Introduction

529 Simplified outline of this Part

For the purposes of certain decisions under this Act, the Director of Biosecurity or the Director of Human Biosecurity must take into account whether a person is a fit and proper person. Division 2 sets out how a Director decides this.

Personal information specified by the Director of Biosecurity must be provided with some applications made under this Act.

A person who provides false or misleading information or documents is liable to a civil penalty.

If a provision provides that a person commits an offence, or is liable to a civil penalty, for contravening another provision, special rules apply for identifying elements of the offence and for interpreting references to contravention of the offence provision or civil penalty provision.

There are also provisions for:

(a) persons to assist biosecurity officers and biosecurity enforcement officers in the exercise of their powers; and

(b) the role of magistrates and certain Judges performing certain functions under this Act; and

(c) the ongoing effect of a direction to secure goods or a conveyance while the decision to give the direction is under judicial review.

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Division 2—Fit and proper person test

530 Fit and proper person test

(1) This section applies for the purposes of determining whether a person is a fit and proper person for the purposes of the following sections:

(a) section 179 (Director of Biosecurity may grant permit to bring in or import goods);

(b) section 406 (deciding whether to approve proposed arrangement);

(c) section 413 (varying approved arrangement);

(d) section 418 (suspending approved arrangement);

(e) section 423 (revoking approved arrangement);

(f) any other provisions of this Act prescribed by the regulations.

Note: If the Director of Biosecurity or the Director of Human Biosecurity determines that a person is not a fit and proper person under this section, the Director may:

(a) refuse to grant a permit or approve a proposed arrangement (see subsections 179(1) and 406(2)); or

(b) vary, suspend or revoke an approved arrangement (see subsections 413(1), 418(1) and 423(1)).

(2) In determining whether the person is a fit and proper person, the Director of Biosecurity or the Director of Human Biosecurity must have regard to the following matters:

(a) whether the person, or an associate of the person, has been convicted of an offence against, or ordered to pay a pecuniary penalty under, any of the following Acts:

(i) this Act;

(ii) the *Quarantine Act 1908*;

(iii) the *Customs Act 1901*;

(iv) another Act prescribed by the regulations;

(v) the *Criminal Code* or the *Crimes Act 1914*, to the extent that it relates to any Act referred to in this paragraph;

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(b) whether a debt is due and payable by the person, or an associate of the person, to the Commonwealth under any Act referred to in paragraph (a);

(c) whether an application made by the person, or an associate of the person, under or for the purposes of any of the following provisions has been refused:

(i) section 177 of this Act (application for permit to bring or import certain conditionally non-prohibited goods into Australian territory);

(ii) section 406 of this Act (approval of proposed arrangement);

(iii) subsection 13(2AA) of the *Quarantine Act 1908* (permits to introduce, import or bring thing into Australia, Christmas Island or the Cocos (Keeling) Islands);

(iv) section 46A of the *Quarantine Act 1908* (approvals for the purpose of goods subject to quarantine);

(d) whether a permit granted to the person, or an associate of the person, under section 179 of this Act (to bring or import certain conditionally non-prohibited goods into Australian territory) has been suspended or revoked;

(e) whether an approval of the person, or an associate of the person, for an approved arrangement, or for part of an approved arrangement, has been suspended or revoked under Part 4 or 5 of Chapter 7 of this Act;

(f) whether a permit granted under subsection 13(2AA) of the *Quarantine Act 1908* to the person, or an associate of the person, has been revoked under subsection 13(2C) of that Act;

(g) whether an approval of the person, or an associate of the person, has been suspended or revoked under subsection 46A(9) of the *Quarantine Act 1908*;

(h) whether an agreement with the person, or an associate of the person, has been cancelled under subsection 66B(3) of the *Quarantine Act 1908*.

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(3) In determining whether the person is a fit and proper person, the Director of Biosecurity or the Director of Human Biosecurity may also have regard to:

(a) whether the person has been convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law (other than an Act referred to in paragraph (2)(a)); and

(b) any other relevant matter.

(4) Paragraphs (2)(c), (d), (e), (f), (g) and (h) do not apply in relation to a refusal, suspension, revocation or cancellation if the decision in relation to the refusal, suspension, revocation or cancellation was set aside on review.

(5) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

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Division 3—Personal information for applications

531 Personal information for applications

(1) The Director of Biosecurity may, by legislative instrument, specify kinds of personal information that are required to be provided with an application made under any the following provisions:
   (a) section 177 (application for permit to bring in or import goods);
   (b) section 405 (approval of a proposed arrangement);
   (c) any other provision prescribed by the regulations.

(2) An application is taken not to have been made if the personal information specified is not provided with the application.

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Division 4—Civil penalty provisions for false or misleading information or documents

532 Civil penalty provision for false or misleading information

(1) A person is liable to a civil penalty if:
  (a) the person gives information in compliance or purported compliance with this Act; and
  (b) the person does so knowing that the information:
    (i) is false or misleading; or
    (ii) omits any matter or thing without which the information is misleading.

Civil penalty: 60 penalty units.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

(4) Subsection (1) does not apply if, before the information was given by a person to another person (the ***official***) in compliance or purported compliance with this Act, the official did not take reasonable steps to inform the person that the person may be liable to a civil penalty for contravening subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

(5) For the purposes of subsection (4), it is sufficient if the following form of words is used:

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"You may be liable to a civil penalty for giving false or misleading information".

533 Civil penalty provision for false or misleading documents

(1) A person is liable to a civil penalty if:
  (a) the person produces a document to another person; and
  (b) the person does so knowing that the document is false or misleading; and
  (c) the document is produced in compliance or purported compliance with this Act.

Civil penalty: 60 penalty units.

(2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

(3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
  (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
  (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

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Division 5—General rules about offences and civil penalty provisions

534 Physical elements of offences

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct rule provision***) commits an offence.

(2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct rule provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

535 Contravening offence and civil penalty provisions

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct provision***) commits an offence or is liable to a civil penalty.

(2) For the purposes of this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

Note: This also affects references in the Regulatory Powers Act to a contravention of an offence provision or a civil penalty provision: see the definition of ***this Act*** in section 9.

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Division 6—Miscellaneous

536 Persons assisting biosecurity officers or biosecurity enforcement officers

(1) This section applies if a biosecurity officer or biosecurity enforcement officer is exercising powers or performing functions under any of the following:

(a) Division 3 of Part 2 of Chapter 6 (biosecurity risk assessment powers);

(b) section 360 (biosecurity control order powers);

(c) section 370 (biosecurity response zone powers);

(d) subsection 379(1) or (2) (permanent biosecurity monitoring zone powers);

(e) section 389 (temporary biosecurity monitoring zone powers);

(f) subsection 399(1) or (2) (biosecurity activity zone powers);

(g) Division 5 or 6 of Part 1 of Chapter 8 (exercise of powers during biosecurity emergencies);

(h) Parts 3, 4 and 5.

Biosecurity officers may be assisted by other persons

(2) A biosecurity officer may be assisted by other persons in exercising powers and performing functions referred to in subsection (1) if that assistance is necessary and reasonable. A person giving such assistance is a ***person assisting*** the biosecurity officer.

Powers of a person assisting the biosecurity officer

(3) A person assisting the biosecurity officer:

(a) may enter premises, if it is necessary for the biosecurity officer to enter those premises to exercise powers as referred to in subsection (1); and

(b) may exercise powers as referred to in that subsection for the purposes of assisting the biosecurity officer; and

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(c) must enter premises and exercise powers in accordance with any direction given to the person assisting by the biosecurity officer.

Note 1: Premises includes a conveyance (see paragraph (a) of the definition of ***premises*** in section 9).

Note 2: If a direction is given under paragraph (3)(c) in writing, the direction is not a legislative instrument (see subsection 572(2)).

Biosecurity enforcement officers may be assisted by other persons

(4) A biosecurity enforcement officer may be assisted by other persons in entering premises, and exercising powers and performing functions referred to in subsection (1), if that assistance is necessary and reasonable. A person giving such assistance is a ***person assisting*** the biosecurity enforcement officer.

Powers of a person assisting the biosecurity enforcement officer

(5) A person assisting the biosecurity enforcement officer:
(a) may enter the premises; and
(b) may exercise any powers that may be exercised by the biosecurity enforcement officer on the premises, for the purposes of assisting the biosecurity enforcement officer; and
(c) must enter premises and exercise powers in accordance with any direction given to the person assisting by the biosecurity enforcement officer.

Note 1: A person assisting a biosecurity enforcement officer may use such force against things as is necessary and reasonable in the circumstances (see sections 505 and 515).

Note 2: If a direction is given under paragraph (5)(c) of this section in writing, the direction is not a legislative instrument (see subsection 572(2)).

Powers exercised in assisting a biosecurity officer or biosecurity enforcement officer

(6) Any power exercised by a person in assisting a biosecurity officer or biosecurity enforcement officer as mentioned in this section is

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taken for all purposes to have been exercised by the biosecurity officer or biosecurity enforcement officer (as the case requires).

537 Powers of issuing officers

(1) This section applies in relation to a power conferred on an issuing officer by any of the following:
  (a) Part 2 of Chapter 6 (biosecurity risk assessment powers);
  (b) Part 3.

Powers conferred personally

(2) The power is conferred on the issuing officer:
  (a) in a personal capacity; and
  (b) not as a court or a member of a court.

Powers need not be accepted

(3) The issuing officer need not accept the power conferred.

Protection and immunity

(4) An issuing officer exercising the power has the same protection and immunity as if the issuing officer were exercising the power:
  (a) as the court of which the issuing officer is a member; or
  (b) as a member of the court of which the issuing officer is a member.

538 Judicial review of directions to secure goods or conveyances

(1) If judicial review is sought in relation to a direction to secure goods under section 124 or 317, or a direction to secure a conveyance under section 198, 300B or 317, the direction remains in force unless a court finally determines the validity of the decision to give the direction.

(2) Subsection (1) does not prevent a biosecurity officer revoking such a direction.

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(3) This section has effect despite any other law.

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Chapter 10—Governance and officials

Part 1—Introduction

539 Simplified outline of this Chapter

This Chapter deals with matters relating to governance and officials.

Part 2 deals with the Director of Biosecurity.

Part 3 deals with the Director of Human Biosecurity.

Part 4 deals with biosecurity officers and biosecurity enforcement officers and sets out some general powers of these officers.

Part 5 deals with chief human biosecurity officers and human biosecurity officers.

Part 6 deals with the Inspector-General of Biosecurity and reviews by him or her of biosecurity officials' performance of functions and exercise of powers under this Act.

Part 7 deals with miscellaneous matters.

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Part 2—Director of Biosecurity

540 Director of Biosecurity

The Director of Biosecurity is the person who is, or is acting as, the Agriculture Secretary.

541 Functions and powers of Director of Biosecurity

(1) Subject to this Act, the Director of Biosecurity has the general administration of this Act.

(2) The Director of Biosecurity also has the functions and powers conferred on the Director of Biosecurity by this Act or another law of the Commonwealth.

(3) The Director of Biosecurity may do anything incidental or conducive to the performance of his or her functions or the exercise of his or her powers.

(4) In performing functions or exercising powers under this Act, the Director of Biosecurity:
  (a) must have regard to the objects of this Act; and
  (b) must comply with:
    (i) any general directions given by the Agriculture Minister under section 543; and
    (ii) any direction given by the Agriculture Minister under section 168 to commence a BIRA in relation to particular goods.

Note: The Director of Biosecurity must apply the ALOP for Australia in conducting a BIRA in relation to particular goods (see subsection 167(2)) or a risk assessment for the purpose of deciding whether particular goods, or a particular class of goods, can be brought or imported into Australian territory and, if so, whether this should be subject to conditions (see subsections 173(4), 174(3), 179(3) and 182(4)).

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542 Delegation and subdelegation

Delegation by Director of Biosecurity

(1) The Director of Biosecurity may, in writing, delegate any or all of the Director's functions or powers under this Act to an SES employee, or an acting SES employee, in the Agriculture Department. The functions or powers that may be delegated under this subsection:
   (a) include functions or powers the Director has as a relevant chief executive, authorised applicant, infringement officer or authorised person for the purposes of a provision of the Regulatory Powers Act because of this Act; and
   (b) exclude:
      (i) the power to make the determination under section 308A; and
      (ii) functions and powers under subsections 541(1) and 618(2) of this Act.

Note 1: The expressions ***SES employee*** and ***acting SES employee*** are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 2: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

Subdelegation

(2) If, under subsection (1), the Director of Biosecurity delegates a function or power to an SES employee or an acting SES employee in the Agriculture Department, the employee may, in writing, subdelegate the function or power to a person who:
   (a) is a biosecurity officer; or
   (b) is a biosecurity enforcement officer; or
   (c) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position in the Agriculture Department.

Powers that must not be subdelegated

(3) However, a power under a provision of this Act referred to in the following table must not be subdelegated under subsection (2):

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Powers that must not be subdelegated		
Item	**Power**	**Provision**
2	To give approval for high-value goods to be treated in a manner that is likely to damage the goods	Subsection 133(2)
3	To give approval for requiring high-value goods to be destroyed	Subsection 136(2)
4	To determine that specified goods or a specified class of goods must not be brought or imported into Australian territory	Subsection 173(1)
5	To determine that specified classes of goods must not be brought or imported into Australian territory unless specified conditions are complied with	Subsection 174(1)
6	To determine that specified goods or a specified class of goods must not be brought or imported into Australian territory for a specified period	Subsection 182(1)
7	To vary a determination in force under subsection 182(1)	Subsection 183(1)
8	To approve the manner in which information must be provided under subsection 196(2) by persons intending to enter, or entering, Australian territory	Subsection 196(3)
9	To approve the giving of a direction requiring an aircraft or vessel to be moved to a place outside Australian territory	Paragraph 206(3)(a)
10	To approve a biosecurity officer causing an aircraft or vessel to be moved to a place outside Australian territory	Paragraph 206(3)(b)
11	To give approval for a high-value	Subsection 208(2)

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Section 542

Powers that must not be subdelegated		
Item	**Power**	**Provision**
	conveyance to be treated in a manner that is likely to damage the conveyance	
12	To give approval for a conveyance to be removed from Australian territory, destroyed or otherwise disposed of	Paragraph 209(5)(d)
13	To give approval for requiring a conveyance to be destroyed or for destruction of a conveyance	Subsection 210(2) and paragraph 210(5)(e)
14	To give approval for a direction requiring an aircraft not to land at any landing place in Australian territory	Subsection 241(2)
15	To give approval for a direction requiring a vessel not to be moored at any port in Australian territory	Subsection 249(2)
16	To give approval for high-value goods to be treated in a manner that is likely to damage the goods	Subsection 335(2)
17	To give approval for a high-value conveyance to be treated in a manner that is likely to damage the conveyance	Subsection 337(2)
18	To give approval for a conveyance to be destroyed	Subparagraph 338(5)(d)(i)
19	To give approval for premises to be treated in a manner that is likely to damage the premises	Subsection 339(3)
20	To give approval for premises to be destroyed	Subparagraphs 341(3)(d)(ii) and (4)(b)(ii)
21	To give approval for high-value goods to be destroyed	Subsection 342(2)
22	To give approval for requiring a conveyance to be destroyed or taking action to destroy a conveyance	Subsection 343(2) and paragraph 343(5)(d)
23	To give approval for requiring premises to be destroyed	Subsection 344(3)

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Powers that must not be subdelegated		
Item	**Power**	**Provision**
24	To determine a biosecurity response zone	Subsection 365(1)
25	To determine a temporary biosecurity monitoring zone	Subsection 384(1)
26	To determine a biosecurity activity zone	Subsection 395(1)
27	To cause an abandoned conveyance to be destroyed	Subsection 629(3)
28	To cause a forfeited conveyance to be destroyed	Subsection 630(3)

Delegate or subdelegate must comply with directions

(4) In performing any functions or exercising any powers under a delegation or subdelegation, the delegate or subdelegate must comply with any directions of the Director of Biosecurity or the person who delegated the function or power.

Application of the Acts Interpretation Act 1901 to subdelegation

(5) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to a subdelegation in a corresponding way to the way in which they apply in relation to a delegation.

543 Agriculture Minister may give general directions to Director of Biosecurity

(1) The Agriculture Minister may, by legislative instrument, give directions to the Director of Biosecurity about the performance of his or her functions or the exercise of his or her powers.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

(2) A direction under subsection (1) must be of a general nature only.

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Section 543

(3) Subject to section 168, the Agriculture Minister must not give directions to the Director of Biosecurity in relation to:
  (a) the conduct of a BIRA in relation to particular goods; or
  (b) a decision relating to a permit to bring or import goods, or a class of goods, into Australian territory.

Note 1: Section 168 provides for the Agriculture Minister to direct the Director of Biosecurity to commence a BIRA in relation to particular goods if the Agriculture Minister is satisfied that the BIRA should be commenced.

Note 2: Part 2 of Chapter 3 (managing biosecurity risks: goods) deals with BIRAs in relation to particular goods and Division 3 of Part 3 of that Chapter deals with permits to bring or import goods into Australian territory.

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Part 3—Director of Human Biosecurity

544 Director of Human Biosecurity

(1) The Director of Human Biosecurity is the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer.

(2) The Director of Human Biosecurity has the functions and powers conferred on the Director of Human Biosecurity by this Act.

544A Delegation of Director's functions or powers relating to human biosecurity control orders

(1) The Director of Human Biosecurity may, in writing, delegate any or all of the Director's functions or powers under Part 3 of Chapter 2 (human biosecurity control orders) to an SES employee, or an acting SES employee, in the Health Department who is a human biosecurity officer.

Note 1: The expressions ***SES employee*** and ***acting SES employee*** are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 2: See also sections 34AA to 34A of the *Acts Interpretation Act 1901*, which contain extra rules about delegations.

(2) In performing any functions or exercising any powers under a delegation made under subsection (1), the delegate must comply with any directions of the Director of Human Biosecurity.

(3) A human biosecurity officer cannot, under a delegation made under subsection (1), perform a function or exercise a power under section 72 in relation to a human biosecurity control order if the human biosecurity officer:

(a) imposed the order under paragraph 60(1)(b); or

(b) made the request under subsection 71(3) in relation to the order.

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Part 4—Biosecurity officers and biosecurity enforcement officers

Division 1—Authorisation

Subdivision A—Authorisation by Director of Biosecurity

545 Authorisation by Director of Biosecurity of persons as biosecurity officers

(1) The Director of Biosecurity may, in writing, authorise a person to be a biosecurity officer under this Act if:
  (a) the person is:
    (i) an officer or employee of a Commonwealth body; or
    (ii) an officer or employee of a State or Territory body; or
    (iii) a member of the Australian Defence Force; or
    (iv) another person who the Director of Biosecurity considers it necessary to authorise to be a biosecurity officer under this Act; and
  (b) the person satisfies the training and qualification requirements for biosecurity officers determined under subsection (5).

(2) The Director of Biosecurity must not authorise an officer or employee of a State or Territory body to be a biosecurity officer unless an arrangement is in force under section 547 in relation to the officer or employee.

(3) An authorisation may specify the period during which it has effect.

Note: An authorisation may cease to have effect under subsection 546(7).

(4) The Director of Biosecurity may, in writing, vary or revoke an authorisation at any time.

(5) The Director of Biosecurity must determine, in writing, training and qualification requirements for biosecurity officers.

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(6) A determination made under subsection (5) is not a legislative instrument.

546 Authorisation by Director of Biosecurity of persons as biosecurity enforcement officers

(1) The Director of Biosecurity may, in writing, authorise a person to be a biosecurity enforcement officer under this Act if:
  (a) the person:
    (i) is a biosecurity officer; or
    (ii) is eligible to be authorised under section 545 to be a biosecurity officer under this Act; and
  (b) the person satisfies the training and qualification requirements for biosecurity enforcement officers determined under subsection (5).

(2) The Director of Biosecurity must not authorise an officer or employee of a State or Territory body to be a biosecurity enforcement officer unless an arrangement is in force under section 547 in relation to the officer or employee.

(3) An authorisation may specify the period during which it has effect.

(4) The Director of Biosecurity may, in writing, vary or revoke an authorisation at any time.

(5) The Director of Biosecurity must determine, in writing, training and qualification requirements for biosecurity enforcement officers.

(6) A determination made under subsection (5) is not a legislative instrument.

(7) If a person who is a biosecurity officer is authorised under this section to be a biosecurity enforcement officer, the person's authorisation under section 545 ceases to have effect immediately after the person's authorisation under this section takes effect.

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547 Arrangements for State or Territory officers or employees to be biosecurity officers or biosecurity enforcement officers

(1) The Director of Biosecurity may enter into an arrangement with a State or Territory body for officers or employees of the body:
  (a) to be authorised to be biosecurity officers; or
  (b) to be authorised, in accordance with section 546, to be biosecurity enforcement officers.

(2) An arrangement under subsection (1) is not a legislative instrument.

Subdivision B—Authorisation by Director of Human Biosecurity

548 Authorisation by Director of Human Biosecurity of persons as biosecurity enforcement officers

(1) The Director of Human Biosecurity may, in writing, authorise a person to be a biosecurity enforcement officer for the purposes set out in subsection (2) if:
  (a) the person is an officer or employee of a State or Territory body; and
  (b) the person is not a biosecurity officer; and
  (c) the person satisfies the training and qualification requirements for biosecurity enforcement officers determined under subsection 546(5).

(2) A person is authorised to be a biosecurity enforcement officer under subsection (1) of this section for the purposes of exercising powers or performing functions under this Act to ensure that biosecurity measures specified in a determination made under section 51 (preventative measures determination) are complied with.

(3) The Director of Human Biosecurity must not authorise an officer or employee of a State or Territory body to be a biosecurity

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enforcement officer unless an arrangement is in force under section 549 in relation to the officer or employee.

(4) Subject to subsection (5), an authorisation has effect for the period specified in the relevant determination made under section 51.

(5) The Director of Human Biosecurity may, in writing, vary or revoke an authorisation at any time.

549 Arrangements for State or Territory officers or employees to be biosecurity enforcement officers

(1) The Director of Human Biosecurity may enter into an arrangement with a State or Territory body for officers or employees of the body to be authorised, in accordance with section 548, to be biosecurity enforcement officers.

(2) An arrangement under subsection (1) is not a legislative instrument.

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Division 2—Functions and powers

Subdivision A—General

550 Functions and powers of biosecurity officers

(1) A biosecurity officer has the functions and powers conferred on a biosecurity officer by this Act or another law of the Commonwealth.

(2) Subsection (1) has effect subject to any restrictions specified in the biosecurity officer's instrument of authorisation.

(3) In performing functions or exercising powers under this Act, a biosecurity officer must comply with any directions of the Director of Biosecurity.

551 Functions and powers of biosecurity enforcement officers

(1) A biosecurity enforcement officer:
  (a) has the functions and powers conferred on a biosecurity enforcement officer by this Act or another law of the Commonwealth; and
  (b) may perform the functions and exercise the powers conferred on a biosecurity officer by this Act.

(2) Subsection (1) has effect subject to any restrictions specified in the biosecurity enforcement officer's instrument of authorisation.

(3) In performing functions or exercising powers under this Act, a biosecurity enforcement officer must comply with any directions of the Director of Biosecurity.

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552 Directions to assist persons performing functions etc. under this Act

Functions etc. relating to goods

(1) If:

(a) a biosecurity official or a human biosecurity official is performing functions or duties or exercising powers under this Act in relation to goods that are subject to biosecurity control; and

(b) the official is satisfied, on reasonable grounds, that a person in charge of the goods (the ***responsible person***), or an agent of that person, is able to provide reasonable assistance to the official, or to any other person who is performing functions or duties or exercising powers under this Act, in relation to the goods;

the official may direct the responsible person or the agent to provide that assistance.

Note: See also section 572 (general provisions relating to directions).

Functions etc. relating to conveyances

(2) If:

(a) a biosecurity official or a human biosecurity official is performing functions or duties or exercising powers under this Act in relation to:

(i) a conveyance that is subject to biosecurity control; or

(ii) a person (the ***relevant person***) who, or thing that, is on such a conveyance; and

(b) the official is satisfied, on reasonable grounds, that the person in charge of the conveyance is able to provide reasonable assistance to the official, or to any other person who is performing functions or duties or exercising powers under this Act, in relation to the conveyance, the relevant person or the thing;

the official may direct the person in charge of the conveyance to provide that assistance.

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(3) A person who is given a direction under subsection (1) or (2) must comply with the direction.

Fault-based offence

(4) A person commits an offence if:
  (a) the person is given a direction under subsection (1) or (2); and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the direction.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 30 penalty units.

Meaning of ***human biosecurity official***

(6) In this section:

human biosecurity official means any of the following:
  (a) a human biosecurity officer;
  (b) a chief human biosecurity officer;
  (c) the Director of Human Biosecurity.

553 Biosecurity officers and biosecurity enforcement officers may be assisted by animals

(1) A biosecurity officer or biosecurity enforcement officer may be accompanied by, and make use of, an animal to assist the officer in:
  (a) entering and exercising powers:
    (i) at a landing place in Australian territory where an aircraft that is subject to biosecurity control has landed or intends to land; or

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(ii) at a port in Australian territory where a vessel that is subject to biosecurity control has been moored or intends to be moored; or

(iii) on premises that may be entered with the consent of the occupier or under an entry warrant, investigation warrant or monitoring warrant; or

(iv) on premises in a biosecurity response zone, biosecurity monitoring zone or biosecurity activity zone; or

(v) on premises where biosecurity activities are carried out by a biosecurity industry participant in accordance with an approved arrangement covering the biosecurity industry participant; or

(vi) on premises entered in accordance with Division 6 of Part 1 of Chapter 8 during a biosecurity emergency period; or

(vii) at any other place where goods may be held under this Act; or

(b) inspecting any goods, conveyances or other premises for the purposes of this Act.

(2) However, subsection (1) applies only if:

(a) the biosecurity officer or biosecurity enforcement officer is authorised by the Director of Biosecurity to handle animals in the performance of his or her functions or duties or the exercise of his or her powers under this Act; and

(b) the animal is under the effective control of the biosecurity officer or biosecurity enforcement officer.

(3) Subsection (1) does not apply to the exercise of a power by a biosecurity officer or a biosecurity enforcement officer under an entry warrant, investigation warrant or monitoring warrant unless the use of the animal by the officer is authorised by the warrant.

554 Carrying out tests on samples

(1) If a biosecurity officer has power under this Act to carry out tests on any samples, the officer may:

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(a) carry out tests that result in the destruction, or reduce the value, of the samples or of a package or goods associated with the samples; or
(b) arrange for another person with appropriate qualifications or expertise to carry out such tests.

(2) The regulations may make provision in relation to the storage of samples on which tests may be carried out under this Act.

555 Biosecurity officer may direct person in charge of conveyance to permit biosecurity officer to board

(1) This section applies in relation to:
(a) a conveyance that is subject to biosecurity control; or
(b) a conveyance that is carrying goods that are subject to biosecurity control.

(2) A biosecurity officer may direct the person in charge or the operator of the conveyance to:
(a) permit the biosecurity officer to board the conveyance; and
(b) by all reasonable means, facilitate the boarding of the conveyance by the biosecurity officer.

Note 1: For powers and obligations after a biosecurity officer has boarded a conveyance, see section 556.

Note 2: See also section 572 (general provisions relating to directions).

(3) A biosecurity officer may give a direction under subsection (2) for the purpose of exercising powers:
(a) under Part 1 of Chapter 3 (managing biosecurity risks: goods); or
(b) under Part 2 of Chapter 4 (managing biosecurity risks: conveyances).

(4) A person who is given a direction under subsection (2) must comply with the direction.

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Fault-based offence

(5) A person commits an offence if:
  (a) the person is given a direction under subsection (2); and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the direction.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Civil penalty provision

(6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 120 penalty units.

556 Powers that may be exercised by biosecurity officer after boarding a conveyance

(1) A biosecurity officer who boards a conveyance under section 555 may remain on board the conveyance for any period that he or she thinks necessary for the purpose of performing functions or duties, or exercising powers, under this Act.

(2) If a biosecurity officer boards a conveyance under section 555, the biosecurity officer may direct the person in charge of the conveyance to provide suitable and sufficient food and sleeping accommodation for the biosecurity officer.

Note: See also section 572 (general provisions relating to directions).

(3) A person who is given a direction under subsection (2) must comply with the direction.

Strict liability offence

(4) A person commits an offence of strict liability if the person contravenes subsection (3).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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Penalty: 10 penalty units.

557 Biosecurity officer may give permission to engage in certain conduct

A biosecurity officer may give a person permission to engage in the conduct referred to in an item of the following table for the purposes of a provision of this Act referred to in that item.

Conduct for which biosecurity officer may give permission

Item	Conduct	Provision
1	Interfere with, remove or deface notices etc.	Paragraph 129(2)(b), 139(3)(b), 203(2)(b), 214(3)(b), 322(3)(b), 348(3)(b), 363(1)(b), 373(1)(c), 374(1)(c), 381(1)(b), 382(1)(b), 391(1)(c), 392(1)(c), 401(1)(b), 402(1)(b) or 456(3)(b)
2	Move, deal with or interfere with goods or conveyances	Paragraph 130(2)(a), 141(1)(b), 204(2)(a), 216(1)(b), 323(1)(b), 330(1)(d), 351(1)(b), 457(1)(b), 601(1)(b) or 607(1)(b)
3	Unload goods that are subject to biosecurity control from a vessel	Paragraph 151(1)(a)
4	Receive or possess goods that have been unloaded from a vessel displaying the prescribed quarantine signal	Paragraph 152(1)(a)
5	Interfere with, remove or deface traps, equipment or other structures	Paragraph 376(1)(c), 383(1)(b) or 393(1)(c)

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Subdivision B—Decontamination

558 Decontaminating an individual

(1) A biosecurity officer may request an individual to be decontaminated if:
  (a) the officer suspects, on reasonable grounds, that the individual may have been exposed to a disease or pest; and
  (b) the officer is satisfied, on reasonable grounds, that decontaminating the individual is likely to be effective in, or to contribute to, managing the level of biosecurity risk of the disease or pest.

Note 1: Before making a request, a biosecurity officer must be satisfied of the matters referred to in section 32 (the principles).

Note 2: For other protections in relation to this section, see sections 559 and 561.

(2) The biosecurity officer must inform the individual of the following:
  (a) how the decontamination would be carried out;
  (b) where and when the decontamination would take place;
  (c) who would conduct the decontamination;
  (d) the effect of subsection (4) and section 559.

The officer must give the individual a written notice of that information as soon as reasonably practicable.

(3) A failure of a biosecurity officer to comply with subsection (2) does not affect the validity of a request made under this section.

Consent

(4) The individual may consent to being decontaminated.

(5) If the individual refuses to consent (including by the individual withdrawing his or her consent), the biosecurity officer may request the Director of Biosecurity to give a direction in accordance with paragraph 559(4)(a).

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(6) Sections 36 to 40 (children and incapable persons) apply in relation to this section as if this section were in Chapter 2 (managing biosecurity risks: human health).

559 Direction to individual to be decontaminated

(1) This section applies if a biosecurity officer requests, under subsection 558(5), the Director of Biosecurity to give a direction in accordance with paragraph (4)(a) of this section for an individual to be decontaminated.

Considering whether to give direction

(2) In considering whether to give a direction, the Director of Biosecurity:
   (a) must take into account:
      (i) any reason the individual gives for refusing to consent; and
      (ii) any factors that may affect the health of the individual; and
   (b) may take into account any other matter that the Director of Biosecurity considers relevant.

Test for giving direction

(3) The Director of Biosecurity may give a direction in relation to an individual only if:
   (a) the Director suspects, on reasonable grounds, that the individual may have been exposed to a disease or pest; and
   (b) the Director is satisfied, on reasonable grounds, that decontaminating the individual is likely to be effective in, or to contribute to, managing the level of biosecurity risk of the disease or pest.

Note 1: Before giving a direction, the Director must be satisfied of the matters referred to in section 32 (the principles).

Note 2: An individual may be able to apply under the *Administrative Decisions (Judicial Review) Act 1977* for review of a decision to give a direction.

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Note 3: If an individual refuses to comply with a direction given under this section, the Director of Biosecurity may be able to apply for an injunction under Part 7 of the Regulatory Powers Act as it applies in relation to this Act.

Giving notice of outcome of consideration

(4) Within 72 hours after receiving the request under subsection 558(5), the Director of Biosecurity must cause a notice to be given to the individual that:
  (a) directs the individual to be decontaminated; or
  (b) informs the individual that he or she is not required to be decontaminated.

(5) The notice must also include reasons for the decision.

Fault-based offence

(6) An individual commits an offence if:
  (a) the individual is given a direction in accordance with paragraph (4)(a); and
  (b) the individual engages in conduct; and
  (c) the conduct contravenes the direction.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

560 Decontaminating clothing and personal effects

(1) A biosecurity officer may require an individual to allow the individual's clothing, and any personal effects that the individual has with him or her, to be decontaminated if:
  (a) the officer suspects, on reasonable grounds, that the individual's clothing or personal effects may have been exposed to a disease or pest; and
  (b) the officer is satisfied, on reasonable grounds, that decontaminating the individual's clothing or personal effects is likely to be effective in, or to contribute to, managing the level of biosecurity risk of the disease or pest.

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Note: For other protections in relation to this subsection, see subsection (3) of this section and section 561. See also section 32 (the principles).

(2) Without limiting subsection (1), an individual's personal effects include any baggage that the individual has with him or her that remained under the individual's immediate physical control while the individual was on any aircraft or vessel or other conveyance.

Requirements if clothing is to be decontaminated

(3) A biosecurity officer who requires an individual to allow his or her clothing to be decontaminated must:
  (a) take the individual, as soon as possible, to a place that, in the officer's opinion, affords adequate personal privacy to the individual; and
  (b) if the individual does not have suitable alternative clothing—provide the individual with such clothing.

Fault-based offence

(4) An individual commits an offence if:
  (a) the individual is required to allow the individual's clothing, or any personal effects, to be decontaminated under subsection (1); and
  (b) the individual refuses to allow his or her clothing, or personal effects, to be decontaminated.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

561 Other protections in relation to decontamination

Commonwealth liability for reasonable expenses

(1) The Commonwealth is liable to pay for reasonable expenses incurred in relation to the decontamination of an individual or an individual's clothing or personal effects in accordance with this Subdivision.

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Use of force

(2) Force must not be used against an individual to require the individual to comply with:
  (a) a direction given in accordance with paragraph 559(4)(a); or
  (b) section 560.

(3) However, in decontaminating an individual's clothing or personal effects, a biosecurity officer may use such force against things as is necessary and reasonable in the circumstances.

Decontamination and human health risks

(4) An individual, or an individual's clothing or personal effects, must not be required to be decontaminated in accordance with this Subdivision for the purpose of managing a human health risk.

Note: If the human health risk relates to a listed human disease, the individual, or the individual's clothing or effects, may be required by a human biosecurity control order to be decontaminated under section 89.

(5) A biosecurity officer must not request an individual to be decontaminated in accordance with this Subdivision for the purpose of managing a human health risk.

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Part 5—Chief human biosecurity officers and human biosecurity officers

Division 1—Authorisation

562 Authorisation of chief human biosecurity officers

(1) The Director of Human Biosecurity may, in writing, authorise a person to be a chief human biosecurity officer for a State or Territory if the person is a medical practitioner employed by the State or Territory body responsible for the administration of health services in the State or Territory.

(2) The Director of Human Biosecurity must not authorise such a medical practitioner unless an arrangement is in force under section 564 in relation to the practitioner.

(3) An authorisation may specify the period during which it has effect.

(4) The Director of Human Biosecurity may, in writing, vary or revoke an authorisation at any time.

(5) The Director of Human Biosecurity must determine, in writing, training and qualification requirements for chief human biosecurity officers.

(6) A determination made under subsection (5) is not a legislative instrument.

563 Authorisation of human biosecurity officers

(1) The Director of Human Biosecurity may, in writing, authorise a person to be a human biosecurity officer under this Act if:
  (a) the person is:
    (i) an officer or employee of the Health Department; or

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(ii) an officer or employee of the State or Territory body responsible for the administration of health services in a State or Territory; or

(iii) a member of the Australian Defence Force; and

(b) the Director of Human Biosecurity is satisfied that the person has appropriate clinical expertise.

(2) The Director of Human Biosecurity must not authorise an officer or employee referred to in subparagraph (1)(a)(ii) unless an arrangement is in force under section 564 in relation to the officer or employee.

(3) An authorisation may specify the period during which it has effect.

(4) The Director of Human Biosecurity may, in writing, vary or revoke an authorisation at any time.

(5) The Director of Human Biosecurity must determine, in writing, training and qualification requirements for human biosecurity officers.

(6) A determination made under subsection (5) is not a legislative instrument.

564 Arrangements for State or Territory officers or employees to be chief human biosecurity officers or human biosecurity officers

(1) The Health Minister may enter into an arrangement with a State or Territory body for officers or employees of the body to be authorised as:

(a) chief human biosecurity officers for that State or Territory; or

(b) human biosecurity officers.

(2) An arrangement under subsection (1) is not a legislative instrument.

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Division 2—Functions and powers

565 Functions and powers of chief human biosecurity officers

(1) A chief human biosecurity officer has the functions and powers conferred on a chief human biosecurity officer by this Act.

(2) In performing functions or exercising powers under this Act, a chief human biosecurity officer must comply with any directions of the Director of Human Biosecurity.

566 Functions and powers of human biosecurity officers

(1) A human biosecurity officer has the functions and powers conferred on a human biosecurity officer by this Act.

(2) Subsection (1) has effect subject to any restrictions specified in the human biosecurity officer's instrument of authorisation.

(3) In performing functions or exercising powers under this Act, a human biosecurity officer must comply with any directions of the Director of Human Biosecurity.

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Part 6—Inspector-General of Biosecurity

Division 1—Inspector-General of Biosecurity

566A Inspector-General of Biosecurity

(1) There is to be an Inspector-General of Biosecurity.

Appointment

(2) The Inspector-General is to be appointed by the Agriculture Minister by written instrument.

Note: The Inspector-General may be reappointed, subject to subsection 566B(2): see section 33AA of the *Acts Interpretation Act 1901*.

(3) The Inspector-General may be appointed on a full-time or part-time basis.

566B Term of office

(1) The Inspector-General holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(2) The Inspector-General must not hold office for a total of more than 10 years.

566C Remuneration

(1) The Inspector-General is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed under subsection (4).

(2) The Inspector-General is to be paid the allowances that are prescribed under subsection (4).

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(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

(4) The Agriculture Minister may, by legislative instrument, prescribe:
  (a) remuneration for the purposes of subsection (1); and
  (b) allowances for the purposes of subsection (2).

566D Leave of absence for full-time Inspector-General

(1) If the Inspector-General is appointed on a full-time basis, he or she has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) If the Inspector-General is appointed on a full-time basis, the Agriculture Minister may grant the Inspector-General leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Agriculture Minister determines.

566E Engaging in other paid employment

Full-time Inspector-General

(1) If the Inspector-General is appointed on a full-time basis, he or she must not engage in paid work outside the duties of his or her office without the Minister's approval.

Part-time Inspector-General

(2) If the Inspector-General is appointed on a part-time basis, he or she must not engage in any paid work that conflicts or may conflict with the proper performance of his or her duties.

566F Other terms and conditions

The Inspector-General holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Agriculture Minister.

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566G Resignation

(1) The Inspector-General may resign his or her appointment by giving the Agriculture Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Agriculture Minister or, if a later day is specified in the resignation, on that later day.

566H Termination of appointment

(1) The Agriculture Minister may terminate the appointment of the Inspector-General:
  (a) for misbehaviour; or
  (b) if the Inspector-General is unable to perform the duties of his or her office because of physical or mental incapacity.

(2) The Agriculture Minister may terminate the appointment of the Inspector-General if:
  (a) the Inspector-General:
    (i) becomes bankrupt; or
    (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    (iii) compounds with one or more of his or her creditors; or
    (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
  (b) if the Inspector-General is appointed on a full-time basis—he or she is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  (c) if the Inspector-General is appointed on a full-time basis—he or she engages, except with the Agriculture Minister's approval, in paid work outside the duties of his or her office (see subsection 566E(1)); or
  (d) if the Inspector-General is appointed on a part-time basis—he or she engages in paid work that conflicts or may conflict with the proper performance of his or her duties (see subsection 566E(2)); or

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(e) the Inspector-General fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

566J Acting appointments

The Agriculture Minister may, by written instrument, appoint a person to act as the Inspector-General:

(a) during a vacancy in the office of Inspector-General (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Inspector-General:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

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Division 2—Reviews by the Inspector-General

567 Inspector-General may review administration of provisions

(1) The Inspector-General may review the performance of functions, or exercise of powers, by biosecurity officials under one or more provisions of this Act.

Note: A review under this section is different from a review of a reviewable decision under Part 1 of Chapter 11. Although this section lets the Inspector-General review an exercise of power under a provision of this Act that may involve a reviewable decision, the Inspector-General cannot affirm, vary or set aside the decision.

(2) Subsection (1) does not permit the Inspector-General to review only a single performance of a function, or a single exercise of a power, by a single biosecurity official.

Note: A review under this section must be more general.

Report on review

(3) The Inspector-General must publish a report on each review he or she conducts under this section.

Regulations may deal with reviews and reports

(4) The regulations may make provision for or in relation to:
  (a) the process to be followed in conducting a review under this section; and
  (b) the content of reports of reviews conducted under this section.

568 Inspector-General may require information etc. for review

(1) The Inspector-General may, by written notice given to a person who the Inspector-General believes on reasonable grounds has information or documents relevant to a review under section 567, require the person to:

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(a) answer questions, or give information in writing, about the relevant information or documents by the time specified in the notice; or

(b) produce the documents to the Inspector-General by the time specified in the notice.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person gives false or misleading information (see section 137.1 of the *Criminal Code* and section 532 of this Act).

Note 2: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading documents (see section 137.2 of the *Criminal Code* and section 533 of this Act).

(2) The time specified in the notice must be at least 14 days after the notice is given.

Civil penalty provision

(3) A person who is required to answer questions, give information in writing or produce documents under subsection (1) must comply with the requirement.

Civil penalty: 30 penalty units.

Copying documents produced

(4) The Inspector-General:

(a) may make copies of, or take extracts from, a document produced under subsection (1); and

(b) for that purpose, may remove the document from the place at which it was produced.

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Part 7—Miscellaneous

569 Identity cards—biosecurity officers etc.

(1) The Director of Biosecurity must issue an identity card to the following officers:
  (a) each biosecurity officer;
  (b) each biosecurity enforcement officer.

(2) An identity card issued to an officer under subsection (1) must:
  (a) be in the form approved by the Director of Biosecurity for that kind of officer; and
  (b) contain a photograph that is no more than 5 years old of the officer.

(3) An officer referred to in subsection (1) must carry his or her identity card at all times when performing functions or duties or exercising powers as an officer.

570 Identity cards—human biosecurity officers etc.

(1) The Health Secretary must issue an identity card to the following officers:
  (a) the Director of Human Biosecurity;
  (b) each chief human biosecurity officer;
  (c) each human biosecurity officer.

(2) An identity card issued to an officer under subsection (1) must:
  (a) be in the form approved by the Health Secretary for that kind of officer; and
  (b) contain a photograph that is no more than 5 years old of the officer.

(3) An officer referred to in subsection (1) must carry his or her identity card at all times when performing functions or duties or exercising powers as an officer.

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571 Offence—failure to return identity card

(1) A person contravenes this subsection if:
  (a) the person has been issued with an identity card under subsection 569(1) or 570(1); and
  (b) the person ceases to be an officer referred to in the relevant subsection; and
  (c) the person does not, within 14 days after so ceasing, return the person's identity card to the person who issued it.

(2) Subsection (1) of this section does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Strict liability offence

(3) A person commits an offence of strict liability if the person contravenes subsection (1).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Penalty: 1 penalty unit.

572 General provisions relating to directions

(1) Unless otherwise provided by this Act, a person who is permitted to give a direction under this Act may give the direction orally or in writing (including by electronic means).

(2) Unless otherwise provided by this Act, a direction that is given under this Act in writing is not a legislative instrument.

(3) A later direction overrides an earlier direction to the extent of any inconsistency.

When Defence Force members need not comply

(4) A member of the Australian Defence Force is not required to comply with a direction given to the member under this Act to the

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extent that the direction is inconsistent with an order or other exercise of command under sections 8 and 9 of the *Defence Act 1903*.

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Chapter 11—Miscellaneous

Part 1—Review of decisions

Division 1—Introduction

573 Simplified outline of this Part

This Part allows certain decisions under this Act to be reviewed internally and by the Administrative Appeals Tribunal.

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Division 2—Review of decisions

574 Reviewable decisions

(1) Each of the decisions referred to in column 1 of the following table is a ***reviewable decision***:

Reviewable decisions			
Item	**Column 1** **Reviewable decision**	**Column 2** **Provision under which the reviewable decision is made**	**Column 3** **Relevant person for the reviewable decision**
1	To give approval for requiring high-value goods to be destroyed	Subsection 136(2)	A person whose interests are affected by the decision
2	To refuse to grant a permit authorising goods to be brought or imported into Australian territory	Subsection 179(1)	The person who applied for the permit
3	To impose a condition on a permit authorising goods to be brought or imported into Australian territory	Subsections 180(1) and (2)	The holder of the permit
4	To vary a condition imposed on a permit authorising goods to be brought or imported into Australian territory	Subsection 180(2)	The holder of the permit
5	To vary, or refuse to vary, a permit authorising goods to be brought or	Paragraph 181(1)(a)	The holder of the permit

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Reviewable decisions			
Item	**Column 1** **Reviewable decision**	**Column 2** **Provision under which the reviewable decision is made**	**Column 3** **Relevant person for the reviewable decision**
	imported into Australian territory		
6	To suspend a permit authorising goods to be brought or imported into Australian territory	Paragraph 181(1)(b)	The holder of the permit
7	To revoke a permit authorising goods to be brought or imported into Australian territory	Paragraph 181(1)(c)	The holder of the permit that was revoked
8	To give approval for requiring a conveyance to be destroyed	Subsection 210(2)	A person whose interests are affected by the decision
9	To refuse to approve a method of ballast water management	Subsection 273(2)	The person who applied for the approval
10	To refuse to approve a discharge of ballast water to a ballast water reception facility	Subsection 278(2)	The person who applied for the approval
11	To refuse to grant an exemption for a discharge of ballast water	Subsection 280(2)	The person who applied for the exemption
12	To grant an exemption for a discharge of ballast water subject to	Subsection 280(2)	The person who applied for the exemption

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Reviewable decisions			
Item	**Column 1** **Reviewable decision**	**Column 2** **Provision under which the reviewable decision is made**	**Column 3** **Relevant person for the reviewable decision**
	conditions		
13	To vary or revoke an exemption for a discharge of ballast water	Section 281	The owner, person in charge or operator of the vessel to which the exemption relates
13A	To refuse to grant an exemption from the requirement in subsection 285A(1) or (2)	The provision of the scheme prescribed for the purposes of section 285B under which the decision is made	A person who applied for the exemption
14	To refuse to approve a ballast water management plan or an amendment of a ballast water management plan	The provision of the scheme prescribed for the purposes of section 287 under which the decision is made	A person whose interests are affected by the decision
15	To cancel the approval of a ballast water management plan	The provision of the scheme prescribed for the purposes of section 287 under which the decision is made (whether the decision is made by the Director of Biosecurity or a survey authority)	A person whose interests are affected by the decision
16	To refuse to issue, endorse or amend a ballast water management certificate, or to refuse to extend the period during which	The provision of the scheme prescribed for the purposes of section 290 under which the decision is made (whether the decision is made by the Director of	A person whose interests are affected by the decision

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Reviewable decisions			
Item	**Column 1** **Reviewable decision**	**Column 2** **Provision under which the reviewable decision is made**	**Column 3** **Relevant person for the reviewable decision**
	such a certificate is in force	Biosecurity or a survey authority)	
17	To withdraw a ballast water management certificate	The provision of the scheme prescribed for the purposes of section 290 under which the decision is made (whether the decision is made by the Director of Biosecurity or a survey authority)	A person whose interests are affected by the decision
18	To give a direction relating to a vessel	Subsection 303(2)	The owner, person in charge or operator of the vessel
19	To refuse to vary or revoke a direction relating to a vessel	Subsection 304(1)	The owner, person in charge or operator of the vessel
20	To give approval for requiring high-value goods to be destroyed	Subsection 342(2)	A person whose interests are affected by the decision
21	To give approval for requiring a conveyance to be destroyed	Subsection 343(2)	A person whose interests are affected by the decision
22	To give approval for requiring premises to be destroyed	Subsection 344(3)	A person whose interests are affected by the decision
23	To refuse to approve a proposed arrangement	Subsection 406(1)	The person who applied for the approval
24	To refuse to approve a varied arrangement	Subsection 406(1) (as it applies because of	The person who applied for the

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Reviewable decisions

Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Relevant person for the reviewable decision
		subsection 412(3))	approval
25	To approve a proposed arrangement subject to conditions	Subsection 406(3)	The person who applied for the approval
26	To vary the conditions of an approved arrangement	Paragraph 413(1)(a)	The biosecurity industry participant that is covered by the approved arrangement
27	To require a biosecurity industry participant to vary an approved arrangement	Paragraph 413(1)(b)	The biosecurity industry participant that is covered by the approved arrangement
28	To refuse to suspend a part of an approved arrangement	Subsection 417(4)	The biosecurity industry participant that is covered by the approved arrangement
29	To suspend an approved arrangement or a part of an approved arrangement	Subsection 418(1)	The biosecurity industry participant that is covered by the approved arrangement
30	To extend the period during which an approved arrangement or a part of an approved arrangement is suspended	Subsection 420(3)	The biosecurity industry participant that is covered by the approved arrangement
31	To revoke an approved	Subsection 423(1)	The biosecurity industry participant

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Reviewable decisions			
Item	**Column 1** **Reviewable decision**	**Column 2** **Provision under which the reviewable decision is made**	**Column 3** **Relevant person for the reviewable decision**
	arrangement		that is covered by the approved arrangement
32	To suspend or revoke a permit, authorisation or permission because of an unpaid cost-recovery charge	Section 597	The holder of the permit, authorisation or permission

(2) The regulations and the determination under section 308A may also:

(a) provide that a decision made under a specified provision of this Act is a ***reviewable decision***; and

(b) specify the relevant person for the reviewable decision.

Note: The reference to this Act includes a reference to instruments made under this Act (see the definition of ***this Act*** in section 9).

575 Notice of decision

(1) After a reviewable decision is made, the person who made the decision must give a written notice to the relevant person for the decision containing:

(a) the terms of the decision; and

(b) the reasons for the decision; and

(c) notice of the person's right to have the decision reviewed.

However, a failure to give the notice required by this section does not affect the validity of the decision.

(2) This section does not affect any requirement to give notice of a reviewable decision under another provision of this Act.

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576 Internal review of reviewable decisions

Application for review

(1) A relevant person for a reviewable decision may apply to the Director of Biosecurity for review of the decision, unless the decision was made by the Director of Biosecurity or the Director of Human Biosecurity personally.

Note: For review of a decision made personally, see section 578.

(2) An application for review must:
  (a) be in writing; and
  (b) set out the reasons for the application; and
  (c) be made within:
    (i) 30 days after the day the reviewable decision first came to the notice of the applicant; or
    (ii) if the Director of Biosecurity allows a longer period (whether before or after the end of the 30-day period referred to in subparagraph (i))—that longer period.

Note: Under section 577, the Director of Biosecurity may require further information in relation to an application.

Review of decision

(3) On receiving an application, the Director of Biosecurity must either:
  (a) review the reviewable decision personally; or
  (b) cause the reviewable decision to be reviewed by a person (the ***internal reviewer***) who:
    (i) is a person to whom the Director's power to review the decision has been delegated; and
    (ii) was not involved in making the decision; and
    (iii) occupies a position senior to the person who actually made the decision.

(4) The Director of Biosecurity or the internal reviewer may:
  (a) affirm, vary or set aside the reviewable decision; and

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(b) if he or she sets aside the reviewable decision—make such other decision as he or she thinks appropriate.

(5) The decision (the ***decision on review***) of the Director of Biosecurity or the internal reviewer takes effect:

(a) on the day specified in the decision on review; or

(b) if a day is not specified—on the day the decision on review was made.

Notice of decision

(6) After a decision is made under this section, the person who made the decision must give the applicant a written notice containing:

(a) the terms of the decision; and

(b) the reasons for the decision; and

(c) notice of the person's right to have the decision reviewed by the Administrative Appeals Tribunal.

However, a failure to comply with this subsection does not affect the validity of the decision.

Failure to give notice

(7) For the purposes of section 578 (review by the AAT), the Director of Biosecurity is taken to have affirmed a reviewable decision if the applicant does not receive notice of the decision on review (if any) within 90 days after the application for review was made.

577 Director of Biosecurity may require further information from applicants

(1) The Director of Biosecurity may, by written notice, require a person who has made an application under section 576 to give the Director further information about the application.

(2) The Director of Biosecurity may refuse to consider the application until the person gives the Director the information.

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578 Review by the Administrative Appeals Tribunal

(1) An application may be made to the Administrative Appeals Tribunal for review of:

(a) a reviewable decision made by the Director of Biosecurity or the Director of Human Biosecurity personally; or

(b) a decision of the Director of Biosecurity, or internal reviewer, under section 576 that relates to a reviewable decision.

Note: For AAT review of a direction of the Director of Human Biosecurity to comply with an isolation or traveller movement measure, see section 76.

(2) An application under subsection (1) may be made only by, or on behalf of, the relevant person for the reviewable decision referred to in paragraph (1)(a) or (b).

(3) Subsection (2) has effect despite subsection 27(1) of the *Administrative Appeals Tribunal Act 1975*.

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Part 2—Confidentiality of information

Division 1—Introduction

579 Simplified outline of this Part

Personal and commercial-in-confidence information may be collected under this Act. This Part sets out the circumstances in which records may be made of that information, and in which that information may be disclosed or used. It also provides an offence for persons who disclose that information, other than in certain circumstances.

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Division 2—Confidentiality of information

580 Disclosure of protected information

Authorisation to use information for permissible purposes

(1) A person may make a record of, disclose or otherwise use protected information if:
  (a) the person makes the record, or discloses or uses the information, for a permissible purpose, in performing the person's functions or duties, or exercising the person's powers, under this Act; and
  (b) in relation to a disclosure—the disclosure is to a person referred to in paragraph (2)(a).

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

(2) A person may make a record of, or disclose or otherwise use, protected information if:
  (a) the person is:
    (i) an officer or employee of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or
    (ii) an officer or employee of a Commonwealth body, or a State or Territory body; or
    (iii) a person engaged by the Commonwealth, a State, the Australian Capital Territory, or the Northern Territory, to perform public health work or to manage biosecurity risks in relation to plant or animal health; or
    (iv) a person engaged by a Commonwealth body, or a State or Territory body, to perform public health work or to manage biosecurity risks in relation to plant or animal health; or
    (iva) the National Focal Point; or

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(v) a biosecurity industry participant or a survey authority, or an officer or employee of a biosecurity industry participant or a survey authority; and

(b) the person makes the record of, or discloses or otherwise uses, the information:

(i) in performing the person's functions or duties, or exercising the person's powers; and

(ii) for a permissible purpose.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

Disclosure in other cases

(3) The Director of Human Biosecurity, or the Director of Biosecurity, may, in writing, authorise a person:

(a) to make a record of or use protected information for a permissible purpose that is specified in the authorisation; or

(b) to disclose protected information to a specified person, or to a specified class of persons, for a permissible purpose that is specified in the authorisation.

(4) A person who is authorised to make a record of, or disclose or otherwise use, protected information under subsection (3) may make a record of, or disclose or otherwise use, the information in accordance with the authorisation.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

581 Use in accordance with section 580 does not contravene laws etc.

Authorised use not an offence under other laws

(1) Subject to subsection (2), a person does not commit an offence, and is not liable to any penalty, under any other enactment of the Commonwealth, or any enactment of a State or Territory, as a result of the person making a record of, or disclosing or using, information in accordance with section 580.

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(2) Subsection (1) does not apply in relation to provisions of the *Australian Security Intelligence Organisation Act 1979* and the *Intelligence Services Act 2001*.

Authorised use does not result in liability for civil proceedings

(3) A person is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of the person making a record of, or disclosing or using, information in accordance with section 580.

Authorised use does not contravene medical or other professional standards

(4) A person does not contravene medical standards, or any other relevant professional standards, as a result of the person making a record of, or disclosing or using, information in accordance with section 580.

582 Authorisation to use information for purposes of proceedings

(1) A person who obtains protected information for a permissible purpose may disclose the information:

(a) to a court or tribunal, or in accordance with an order of a court or tribunal, for the purposes of proceedings; or

(b) to a coronial inquiry, or in accordance with an order of a coroner, for the purposes of a coronial inquiry.

Note 1: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

Note 2: The *National Security Information (Criminal and Civil Proceedings) Act 2004* may apply to proceedings under this Division.

(2) A person who obtains protected information under, or in accordance with, subsection (1) may make a record of, or disclose or otherwise use, the information for the purposes for which the information was disclosed under that subsection.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

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583 Authorisation to use information that is also received from another source, and use of information by prescribed agencies

Use if information is also received from another source

(1) A person (the ***first person***) may make a record of, disclose or otherwise use protected information if:

(a) the first person obtains the information for a permissible purpose; and

(b) the first person is:

(i) an officer or employee of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or

(ii) an officer or employee of a Commonwealth body, or a State or Territory body; or

(iii) a person engaged by the Commonwealth, a State, the Australian Capital Territory, or the Northern Territory, to perform public health work or to manage biosecurity risks in relation to plant or animal health; or

(iv) a person engaged by a Commonwealth body, or a State or Territory body, to perform public health work or to manage biosecurity risks in relation to plant or animal health; or

(v) a biosecurity industry participant or a survey authority, or an officer or employee of a biosecurity industry participant or a survey authority; and

(c) the first person also obtains the information, or substantially similar information, from another person; and

(d) after obtaining the information as referred to in paragraph (c), the first person makes a record of, or discloses or otherwise uses, the information; and

(e) the record, disclosure or use is authorised under, or is not prohibited by an enactment.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

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Use by intelligence agencies

(2) A person may make a record of, disclose or otherwise use protected information if the person discloses the information to an officer or employee of an intelligence agency prescribed by the regulations for the purposes of this section.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

(3) A person may make a record of, disclose or otherwise use protected information if:

(a) the person obtains the information under a disclosure made in accordance with subsection (2); and

(b) the person makes a record of, or discloses or otherwise uses, the information in the performance of the person's functions or duties, or the exercise of the person's powers, as an officer or employee referred to in subsection (2).

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

(4) A person may make a record of, disclose or otherwise use protected information if:

(a) the person obtains the information under a disclosure made in accordance with subsection (3); and

(b) the person makes a record of, or discloses or otherwise uses, the information:

(i) for the purposes for which the information was disclosed under that subsection; or

(ii) for a purpose prescribed by the regulations.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

584 Authorisation to use information required by another law

A person may make a record of, disclose or otherwise use protected information if:

(a) the person obtains the information for a permissible purpose; and

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(b) the person makes a record of, or discloses or otherwise uses, the information; and
(c) the record, disclosure or use is required under an enactment of the Commonwealth, a State or a Territory.

Note: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

585 Offence relating to protected information

A person commits an offence if:
(a) the person obtains information; and
(b) the information is protected information; and
(c) the person makes a record of, or discloses or otherwise uses, the information; and
(d) the record, disclosure or use is not authorised by section 580, 582, 583 or 584.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: For exceptions to this offence, see sections 586 to 589.

586 Exception for use of information in good faith

Section 585 does not apply if:
(a) a person obtains protected information for a permissible purpose; and
(b) the person makes a record of, or discloses or otherwise uses, the information in good faith:
(i) in performing, or purportedly performing, his or her functions or duties under this Act; or
(ii) in exercising, or purportedly exercising, his or her powers under this Act.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3) of the *Criminal Code*).

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587 Exception for person who does not know that information is commercial-in-confidence

Section 585 does not apply if:

(a) the person makes a record of, or discloses or otherwise uses, protected information; and

(b) the information is commercial-in-confidence; and

(c) the person does not know that the information is commercial-in-confidence.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3) of the *Criminal Code*).

588 Exception for disclosing to the person to whom information relates, or if the person to whom information relates consents

Disclosure to person to whom information relates

(1) Section 585 does not apply if:

(a) a person (the ***first person***) obtains protected information for a permissible purpose; and

(b) the information relates to another person; and

(c) the first person discloses the information to the other person.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

(2) If subsection (1) applies in respect of information, then section 585 does not apply to any of the following:

(a) any record of that information that is made by the person to whom the information relates;

(b) any disclosure or use of that information by the person to whom the information relates;

(c) any record of that information that is made by any other person, or any disclosure or use of that information by any other person, which is derived from a record, disclosure or use referred to in paragraph (a) or (b) of this subsection.

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Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Consent to disclosure etc. of information

(3) Section 585 does not apply if:
  (a) a person (the ***first person***) obtains protected information; and
  (b) the person to whom the information relates has expressly consented to the first person making a record of, or disclosing or using, the information for a certain purpose; and
  (c) the first person makes the record, or discloses or uses the information, for that purpose.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

589 Exception for disclosure to person who provided the information

Section 585 does not apply if:
  (a) a person obtains protected information from another person; and
  (b) the person discloses that information to the other person.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3) of the *Criminal Code*).

590 Annual report

(1) As soon as practicable after 30 June in each year, the Director of Biosecurity and the Director of Human Biosecurity must each prepare a report on the use, by the Commonwealth, of protected information during the previous 12 months.

(2) The report must be included in the annual report of:
  (a) for a report prepared by the Director of Biosecurity—the Agriculture Department; and
  (b) for a report prepared by the Director of Human Biosecurity—the Health Department.

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Part 3—Cost recovery

Division 1—Introduction

591 Simplified outline of this Part

This Part allows the Commonwealth to charge fees in relation to activities carried out under this Act, and provides for the recovery of those fees and other charges imposed to recover costs.

Division 2 provides for the regulations to prescribe fees that may be charged and other rules about fee-bearing activities.

Division 3 sets out rules about payment of cost-recovery charges.

Division 4 sets out how unpaid cost-recovery charges may be dealt with.

Division 5 provides for the Director of Biosecurity to sell certain goods and conveyances, including in order to recover unpaid cost-recovery charges.

Division 6 contains miscellaneous provisions, including the power to remit or refund a cost-recovery charge.

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Division 2—Fees

592 Fees and other rules for fee-bearing activities

(1) The regulations may prescribe fees that may be charged in relation to activities (***fee-bearing activities***) carried out by, or on behalf of, the Commonwealth in performing functions and exercising powers under this Act.

Note: Survey authorities and biosecurity industry participants may also charge fees (see subsection 290A(3) and section 430).

(2) Without limiting subsection (1) of this section, the regulations may specify that the amount of a fee is the cost incurred by the Commonwealth in arranging and paying for another person to carry out the relevant fee-bearing activity.

(3) A fee prescribed under subsection (1) must not be such as to amount to taxation.

(4) The regulations may also do either or both of the following:

(a) prescribe rules relating to deposits to be paid in relation to fee-bearing activities;

(b) prescribe rules relating to fees to be paid in relation to specified applications.

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Division 3—Payment of cost-recovery charges

593 Paying cost-recovery charges

The regulations may:

(a) prescribe the time when a specified cost-recovery charge is due and payable; and

(b) prescribe one or more persons who are liable to pay a specified cost-recovery charge; and

(c) prescribe rules relating to:

(i) the liability of a person's agent to pay cost-recovery charges on behalf of the person; and

(ii) the recovery of such cost-recovery charges from the person by the agent.

594 Notional payments by the Commonwealth

(1) The Minister administering the *Public Governance, Performance and Accountability Act 2013* may give written directions for the purpose of ensuring that cost-recovery charges are notionally payable by the Commonwealth (or parts of the Commonwealth).

Note: For notional payments and receipts, see section 76 of that Act.

(2) A direction given under subsection (1) is not a legislative instrument.

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Division 4—Unpaid cost-recovery charges

Subdivision A—General

595 Late payment fee

(1) If the regulations specify the time when a cost-recovery charge (the ***basic charge***) is due and payable, the regulations may also specify a fee (a ***late payment fee***) that is due and payable if the basic charge is not paid at or before that time.

(2) Without limiting subsection (1), a late payment fee may relate to each day or part of a day that the basic charge remains unpaid after becoming due and payable.

596 Recovery of cost-recovery charges

A cost-recovery charge that is due and payable to the Commonwealth under this Act may be recovered as a debt due to the Commonwealth by action in a relevant court.

597 Suspending or revoking permits etc. because of unpaid cost-recovery charges

(1) This section applies in relation to a person who is liable to pay a cost-recovery charge that is due and payable.

Permit etc. may be suspended or revoked

(2) The Director of Biosecurity may, by written notice to the person, suspend any of the following until the cost-recovery charge has been paid:
  (a) a permit granted under section 179 (permit to bring in or import goods) and held by the person;
  (b) any other permit, authorisation or other permission, held by the person under this Act, that is prescribed by the regulations.

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Note: A decision under this subsection to suspend a permit, authorisation or permission is a reviewable decision (see Part 1).

(3) The Director of Biosecurity may, by written notice to the person, revoke a permit, authorisation or permission referred to in subsection (2) that is held by the person under this Act.

Note 1: A decision under this subsection to revoke a permit, authorisation or permission is a reviewable decision (see Part 1).

Note 2: If the person is a biosecurity industry participant covered by an approved arrangement, the relevant Director may suspend the arrangement, or a part of the arrangement, under Division 2 of Part 4 of Chapter 7, or revoke the arrangement under Division 2 of Part 5 of Chapter 7.

Director of Biosecurity may direct that activities not be carried out

(4) The Director of Biosecurity may direct biosecurity officers not to carry out specified activities or kinds of activities in relation to the person under this Act until the cost-recovery charge has been paid.

Subdivision B—Dealing with goods to recover unpaid cost-recovery charges

598 Creation of charge on goods

(1) This section applies in relation to goods if:
  (a) the owner of the goods is liable to pay a cost-recovery charge, whether or not the charge relates to the goods; and
  (b) the charge is due and payable; and
  (c) any of the following applies in relation to the goods:
    (i) the goods are subject to biosecurity control;
    (ii) an exposed goods order or a biosecurity control order is in force in relation to the goods;
    (iii) the goods are in a biosecurity response zone and biosecurity measures have been required in relation to the goods under a power that is specified in the biosecurity response zone determination under paragraph 366(2)(c) (powers to require biosecurity

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measures to be taken) or (d) (other biosecurity measures).

(2) A charge is created on the goods by force of this section to secure the payment of the cost-recovery charge.

599 Effect of charge on goods

(1) A charge created on goods under section 598 has priority over any other interest in the goods (including a security interest within the meaning of the *Personal Property Securities Act 2009*).

(2) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the charge.

Note: The effect of this subsection is that the priority between the Commonwealth's charge and a security interest in the goods to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

(3) The charge remains in force until:
- (a) the cost-recovery charge referred to in subsection 598(2) is paid; or
- (b) the goods are sold under section 610.

(4) To avoid doubt, the charge on the goods is not affected:
- (a) by any change in ownership of the goods; or
- (b) if the goods are released from biosecurity control; or
- (c) if an exposed goods order or a biosecurity control order ceases to be in force in relation to the goods; or
- (d) if the goods cease to be in a biosecurity response zone; or
- (e) if biosecurity measures that have been required in relation to the goods are not taken.

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600 Biosecurity officer may withhold goods that are subject to charge

(1) A biosecurity officer may withhold goods that are subject to a charge created under section 598 because a cost-recovery charge has not been paid.

(2) The biosecurity officer must give a written notice to the owner of the goods stating that:
  (a) the goods are withheld under this section; and
  (b) the goods may be sold under section 610 if the cost-recovery charge has not been paid by the end of the day specified in the notice, which must be at least 30 days after the day the notice is given.

(3) A failure to comply with subsection (2) does not affect the withholding of the goods or the exercise of powers under subsection (4) or (5).

Powers for the purpose of withholding goods

(4) For the purpose of withholding the goods, a biosecurity officer may:
  (a) refuse to release the goods from biosecurity control; or
  (b) take possession of the goods.

(5) For the purpose of withholding the goods, a biosecurity officer may give any of the following directions to a person in charge of the goods:
  (a) a direction to secure the goods in a manner specified by the biosecurity officer;
  (b) a direction not to move, deal with or interfere with the goods;
  (c) a direction to move the goods to a place specified by the biosecurity officer;
  (d) any other direction relating to the movement of the goods.

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Civil penalty provisions

(6) A person who is given a direction under subsection (5) must comply with the direction.

Civil penalty: 120 penalty units.

601 Moving or interfering with withheld goods

(1) A person is liable to a civil penalty if:
  (a) a direction has been given in relation to goods under subsection 600(5); and
  (b) the person moves, deals with or interferes with the goods; and
  (c) none of the following applies:
    (i) the person is authorised to engage in the conduct referred to in paragraph (b) of this subsection in accordance with an approved arrangement;
    (ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;
    (iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(b) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

602 When goods stop being withheld

(1) A biosecurity officer who is withholding goods under section 600 must stop withholding the goods if the goods cease to be subject to any charge created under section 598.

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Note: For when goods cease to be subject to a charge created under section 598, see subsection 599(3).

(2) A biosecurity officer who is withholding goods under section 600 may also stop withholding the goods if he or she thinks it is appropriate to do so.

(3) If goods that have been withheld under section 600 stop being withheld, any direction given under subsection 600(5) in relation to the goods ceases to have effect.

(4) This section:
   (a) does not affect any other power that has been or may be exercised in relation to goods under a provision of this Act other than this Subdivision; and
   (b) does not require goods to be released from biosecurity control; and
   (c) does not require an exposed goods order or a biosecurity control order in force in relation to goods to be revoked; and
   (d) does not prevent goods being withheld again under section 600.

Note: Goods that stop being withheld under section 600 may be dealt with under other provisions of this Act, for example under Chapter 3 (managing biosecurity risks: goods).

603 Sale of withheld goods

(1) This section applies in relation to goods that:
   (a) are subject to a charge created under section 598 because a cost-recovery charge has not been paid; and
   (b) are withheld under section 600.

Notice to owner

(2) The goods may be sold under section 610 if:
   (a) a biosecurity officer has given a notice to the owner of the goods under subsection 600(2); and

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(b) at the end of the day specified in the notice under paragraph 600(2)(b), the cost-recovery charge has not been paid.

Notice cannot be given

(3) The goods may be sold under section 610 without giving a notice to the owner of the goods under subsection 600(2) if:

(a) a biosecurity officer:

(i) has not been able to give the notice to the owner of the goods, despite making reasonable efforts; and

(ii) has certified in writing to that effect; and

(b) at the end of 30 days after the biosecurity officer first attempted to give the notice, the cost-recovery charge has not been paid.

Subdivision C—Dealing with a conveyance to recover unpaid cost-recovery charge

604 Creation of charge on conveyance

(1) A charge is created by force of this section on a conveyance covered by subsection (2) or (3) to secure the payment of a cost-recovery charge described in that subsection.

(2) This subsection covers a conveyance if:

(a) a fee-bearing activity has been carried out by, or on behalf of, the Commonwealth in relation to the conveyance; and

(b) the regulations prescribe a fee for the fee-bearing activity; and

(c) the fee, or any late payment fee in relation to the fee, is due and payable by the owner or operator of the conveyance.

Note: If the owner or operator of the conveyance is liable to pay a fee or late payment fee, an agent of the owner or operator may also be liable to pay the fee or late payment fee on behalf of the owner or operator (see paragraph 593(c)).

(3) This subsection covers a conveyance if:

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(a) the owner or operator of the conveyance is liable to pay:
  (i) a charge imposed by the *Biosecurity Charges Imposition (Customs) Act 2014*; or
  (ii) a charge imposed by the *Biosecurity Charges Imposition (Excise) Act 2014*; or
  (iii) a charge imposed by the *Biosecurity Charges Imposition (General) Act 2014*; or
  (iv) a late payment fee relating to a charge described in subparagraph (i), (ii) or (iii);

  whether or not the charge or fee relates to the conveyance; and

(b) the charge or fee is due and payable; and

(c) one or more of the following applies:
  (i) the conveyance is subject to biosecurity control;
  (ii) a biosecurity control order is in force in relation to the conveyance;
  (iii) the conveyance is in a biosecurity response zone and a power described in section 370 (about powers in such a zone for managing biosecurity risk) has been exercised in relation to the conveyance.

Note: If the owner or operator of the conveyance is liable to pay such a charge or fee, an agent of the owner or operator may also be liable to pay the charge or fee on behalf of the owner or operator (see paragraph 593(c)).

605 Effect of charge on conveyance

(1) A charge on a conveyance created by section 604 has priority over any other interest in the conveyance (including a security interest within the meaning of the *Personal Property Securities Act 2009*).

(2) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the charge.

Note: The effect of this subsection is that the priority between the Commonwealth's charge and a security interest in the conveyance to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

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(3) The charge remains in force until:
  (a) the cost-recovery charge mentioned in subsection 604(1) is paid; or
  (b) the conveyance is sold under section 610.

(4) To avoid doubt, the charge is not affected by any change in ownership of the conveyance.

606 Director of Biosecurity may detain conveyance that is subject to charge

(1) The Director of Biosecurity may detain a conveyance in Australian territory if the conveyance is subject to a charge created under section 604 because a cost-recovery charge has not been paid by the owner or the operator of the conveyance.

(2) The Director of Biosecurity must give a written notice to the owner and the operator of the conveyance stating:
  (a) that the conveyance is detained under this section; and
  (b) if the owner of the conveyance is liable to pay the cost-recovery charge—that the conveyance may be sold under section 610 in accordance with section 609 if the cost-recovery charge has not been paid by the end of the day specified in the notice, which must be at least 30 days after the day the notice is given.

(3) A failure to comply with subsection (2) does not affect the detention of the conveyance or the power to give a direction under subsection (4).

Director of Biosecurity may give directions

(4) For the purposes of detaining the conveyance, the Director of Biosecurity may give the person in charge of the conveyance a direction:
  (a) relating to the movement of the conveyance (including a direction to cause the conveyance to stop); or

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(b) requiring the conveyance to be left at a specified place in a specified manner; or
(c) requiring goods on board the conveyance to be unloaded at a specified place in a specified manner.

Note: See also section 572 (general provisions relating to directions).

(5) A person who is given a direction under subsection (4) must comply with the direction.

Fault-based offence

(6) A person commits an offence if:
(a) the person is given a direction under subsection (4); and
(b) the person engages in conduct; and
(c) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

(7) A person is liable to a civil penalty if the person contravenes subsection (5).

Civil penalty: 120 penalty units.

607 Moving or interfering with detained conveyance

(1) A person is liable to a civil penalty if:
(a) a direction has been given in relation to a conveyance under subsection 606(4); and
(b) the person moves, deals with or interferes with the conveyance; and
(c) none of the following applies:
(i) the person is authorised to engage in the conduct referred to in paragraph (b) of this subsection in accordance with an approved arrangement;

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(ii) the person needs to engage in that conduct to comply with a direction given under another provision of this Act by a biosecurity official;

(iii) the person has been given permission to engage in that conduct under section 557.

Civil penalty: 120 penalty units.

(2) Subsection (1) does not apply if the person is authorised to engage in the conduct referred to in paragraph (1)(b) under this Act or under another Australian law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

608 Release of detained conveyance

(1) The Director of Biosecurity must release a conveyance from detention under section 606 if the conveyance ceases to be subject to any charge created under section 604.

Note: For when a conveyance ceases to be subject to a charge created under section 604, see subsection 605(3).

(2) The Director of Biosecurity may also release a conveyance that is detained under section 606 if he or she thinks it appropriate to do so.

(3) If a conveyance is released from detention, any direction given under subsection 606(4) in relation to the conveyance ceases to have effect.

(4) This section:

(a) does not affect any power that has been or may be exercised in relation to a conveyance under a provision of this Act other than this Subdivision; and

(b) does not require a conveyance that is subject to biosecurity control to be released from biosecurity control; and

(c) does not prevent a conveyance being detained again under section 606.

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Note: A conveyance that is released from detention may be dealt with under other provisions of this Act, for example under Chapter 4 (managing biosecurity risks: conveyances).

609 Sale of detained conveyance

(1) This section applies in relation to a conveyance that is detained under section 606 because a cost-recovery charge that is due and payable by the owner of the conveyance has not been paid.

Note: For owner-operators, see subsection (5).

Notice to owner

(2) The conveyance may be sold under section 610 if:
  (a) the Director of Biosecurity has given a notice to the owner of the conveyance under subsection 606(2); and
  (b) at the end of the day specified in the notice under paragraph 606(2)(b), the cost-recovery charge has not been paid.

Notice cannot be given

(3) The conveyance may be sold under section 610 without giving a notice to the owner of the conveyance under subsection 606(2) if:
  (a) the Director of Biosecurity:
    (i) has not been able to give the notice to the owner of the conveyance, despite making reasonable efforts; and
    (ii) has certified in writing to that effect; and
  (b) at the end of 30 days after the Director of Biosecurity first attempted to give the notice, the cost-recovery charge has not been paid.

Goods on board conveyance

(4) The Director of Biosecurity may cause any goods on board the conveyance to be unloaded from the conveyance before it is sold.

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Owner-operators

(5) To avoid doubt, the reference in subsection (1) to a cost-recovery charge that is due and payable by the owner of a conveyance includes a reference to a cost-recovery charge that the owner of a conveyance is liable to pay because the owner is also the operator of the conveyance.

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Division 5—Power to sell goods and conveyances

610 Sale of goods and conveyances

(1) This section applies in relation to a thing that may be sold under any of the following provisions:
  (a) section 603 (sale of withheld goods);
  (b) section 609 (sale of detained conveyance);
  (c) subsection 626(3) (abandoned goods);
  (d) subsection 629(3) (abandoned conveyances).

(2) The Director of Biosecurity may:
  (a) sell the thing; and
  (b) give full and effective title to the thing free of all other interests, which are extinguished by force of this section at the time title is given.

Note: See section 611 (dealing with the proceeds of sale).

(3) The Director of Biosecurity may make and execute any instruments or documents necessary for the purposes of selling the thing.

611 Dealing with the proceeds of sale

(1) The Director of Biosecurity may apply the proceeds of the sale of a thing under section 610 against:
  (a) if the thing was subject to one or more charges under section 598 or 604 because one or more cost-recovery charges had not been paid—each of those charges; and
  (b) any other cost-recovery charge that is due and payable to the Commonwealth under this Act by the owner of the thing.

(2) The Director of Biosecurity must pay the remainder of the proceeds, if any, to the owner of the thing.

(3) However, any remainder is forfeited to the Commonwealth at the end of 30 days after the sale if the Director of Biosecurity:

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(a) has not been able to locate the owner of the thing, despite making reasonable efforts; and
(b) has certified to that effect in writing.

(4) Nothing in this section affects the right of the Commonwealth to recover fees or expenses by other means.

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Division 6—Miscellaneous

612 Providing sustenance for animals and plants

(1) This section provides for the Commonwealth to arrange for or require sustenance to be provided for an animal or plant if:

(a) any of the following applies to the animal or plant:

(i) the animal or plant is subject to biosecurity control;

(ii) an exposed goods order or a biosecurity control order is in force in relation to the animal or plant;

(iii) the animal or plant is in a biosecurity response zone, and biosecurity measures have been required in relation to the animal or plant under a power that is specified in the biosecurity response zone determination under paragraph 366(2)(c) (powers to require biosecurity measures to be taken) or (d) (other biosecurity measures); and

(b) the animal or plant is in the possession or control of the Commonwealth or a biosecurity industry participant as referred to in subsection (2) or (4) of this section.

Providing sustenance by agreement

(2) The Commonwealth may enter into an agreement with another person for the person to provide sustenance, on the terms and conditions set out in the agreement, for the animal or plant for all or part of a period during which the animal or plant is in the possession or control of the Commonwealth.

(3) An agreement may be entered into under subsection (2) in relation to an animal or plant that is to be subject to biosecurity control before subparagraph (1)(a)(i) or paragraph (1)(b) begins to apply to the animal or plant.

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Direction to provide sustenance

(4) The Director of Biosecurity may, by written notice, direct the owner of the animal or plant to provide sustenance for the animal or plant for all or a part of a period during which the animal or plant is in the possession or control of:
  (a) the Commonwealth; or
  (b) a biosecurity industry participant as authorised by an approved arrangement covering the biosecurity industry participant.

(5) A person who is given a direction under subsection (4) must comply with the direction.

Fault-based offence

(6) A person commits an offence if:
  (a) the person is given a direction under subsection (4); and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the direction.

Penalty: 50 penalty units.

Civil penalty provision

(7) A person is liable to a civil penalty if the person contravenes subsection (5).

Civil penalty: 50 penalty units.

613 Agriculture Minister may remit or refund cost-recovery charges

(1) The Agriculture Minister may remit or refund the whole or part of a cost-recovery charge that is payable or paid to the Commonwealth if the Agriculture Minister is satisfied that there are exceptional circumstances that justify doing so.

(2) The Agriculture Minister may do so on his or her own initiative or on written application by a person.

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614 Extraterritorial operation of this Part

This Part extends to acts, omissions, matters and things outside Australian territory.

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Part 4—Exemptions from and modifications of this Act

Division 1—Introduction

615 Simplified outline of this Part

This Part allows regulations to be made that modify the operation of this Act in relation to specified conveyances, persons or goods. Regulations may also be made in accordance with this Part to modify the operation of this Act in order to implement the Torres Strait Treaty.

If persons, goods or conveyances move between certain parts of Australian territory, as declared by the Director of Biosecurity and the Director of Human Biosecurity, some provisions of this Act about persons, goods and conveyances coming into Australian territory or leaving Australian territory also apply in relation to the movement as if it were an international movement.

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Division 2—Exemptions from and modifications of this Act

Subdivision A—Exemption and modification by regulation

616 Exemptions from and modifications of this Act

(1) The regulations may exempt any one or more of the following from the provisions of this Act, or modify any provision of this Act in relation to any of the following:
  (a) any particular conveyance or class of conveyance;
  (b) any persons or goods or any classes of persons or goods.

Note: For the definition of ***modification***, see section 2B of the *Acts Interpretation Act 1901*.

(2) An exemption or modification may apply only for a specified period.

(3) An exemption or modification may apply only in relation to a particular specified area.

(4) An exemption or modification may be expressed to apply to a person only if the person complies with one or more specified conditions.

(5) This section does not allow the regulations to modify a provision that:
  (a) creates an offence or civil penalty provision; or
  (b) imposes an obligation which, if contravened, constitutes an offence or civil penalty provision.

617 Exemptions for Torres Strait Treaty

(1) Without limiting section 616, the regulations may exempt any one or more of the following from all or any provisions of this Act:
  (a) any protected zone vessel;
  (b) persons on board a protected zone vessel;
  (c) goods on board a protected zone vessel if the goods:

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(i) are owned by, or are under the control of, a traditional inhabitant who is on board that vessel and have been used, are being used or are intended to be used by him or her in connection with the performance of traditional activities in a protected zone area; or

(ii) are the personal belongings of a person referred to in subparagraph (e)(i) or (ii) of the definition of ***protected zone vessel*** in subsection (4) of this section.

(2) An exemption may be expressed to apply to a person only if the person complies with one or more specified conditions.

(3) An exemption has effect only while the vessel, persons or goods in respect of which the exemption applies remain in a protected zone area.

Definitions

(4) In this Act:

protected zone means the zone established under Article 10 of the Torres Strait Treaty, being the area bounded by the line described in Annex 9 to that treaty.

protected zone area means:

(a) the protected zone; or

(b) an area in the vicinity of the protected zone that is prescribed by regulations.

protected zone vessel means a vessel that meets all of the following conditions:

(a) the vessel is of a kind used in navigation by sea;

(b) the vessel is owned or operated by a traditional inhabitant;

(c) the vessel enters a part of Australian territory that is in a protected zone area;

(d) there is at least one traditional inhabitant on board the vessel who is entering that part of Australian territory in connection with the performance of traditional activities in the protected zone area;

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(e) the only persons on board the vessel are:
  (i) one or more persons referred to in paragraph (d); or
  (ii) one or more employees of the Commonwealth, Queensland or Papua New Guinea, or of a body of the Commonwealth, Queensland or Papua New Guinea, who are entering that part of Australian territory in connection with the performance of their functions or duties, or the exercise of their powers.

Torres Strait Treaty means the Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters, done at Sydney on 18 December 1978, as in force for Australia from time to time.

Note: The Treaty is in Australian Treaty Series 1985 No. 4 ([1985] ATS 4) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

traditional activities has the same meaning as in the Torres Strait Treaty.

traditional inhabitant has the same meaning as ***traditional inhabitants*** has in the Torres Strait Treaty.

Subdivision B—Modifications relating to declared movements between parts of Australian territory

618 Modified operation of this Act in relation to declared movements between parts of Australian territory

(1) The provisions (the ***affected provisions***) of this Act listed in section 619 apply as described in sections 620 and 623 in relation to an actual or intended movement (however described) of a person, goods or a conveyance that has been declared under subsection (2) as a movement that this Subdivision applies to.

Note 1: Section 620 describes how the affected provisions except the exit provisions apply in relation to such a movement, while section 623

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describes how the exit provisions apply in relation to such a movement.

Note 2: A variety of terms are used in this Act to refer to movement of persons, goods and conveyances. Some of those terms are as follows:

(a) entering Australian territory;
(b) arriving in Australian territory;
(c) leaving Australian territory;
(d) import;
(e) bringing goods into Australian territory;
(f) flight;
(g) voyage;
(h) journey.

Declaration of movements this Subdivision applies to

(2) The Director of Biosecurity and the Director of Human Biosecurity may jointly declare that this Subdivision applies to movements that:

(a) are of one or more of the following:
(i) any person, or a person in a specified class;
(ii) any goods, or goods in a specified class;
(iii) any conveyance, or a conveyance in a specified class; and

(b) are from a part (the ***origin part***) of Australian territory specified in accordance with paragraph (4)(a); and

(c) are to another part (the ***destination part***) of Australian territory specified in accordance with paragraph (4)(b).

(3) Before making a declaration under subsection (2) relating to movements, the Director of Biosecurity and the Director of Human Biosecurity must be satisfied that:

(a) there is an unacceptable level of biosecurity risk associated with the movements if they are not regulated; and

(b) the application of the affected provisions under this Subdivision because of the proposed declaration is appropriate and adapted to managing biosecurity risks associated with the movements.

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Specifying origin part and destination part in declaration

(4) A declaration may specify:

(a) a part of Australian territory described in column 1 of an item of the following table as the origin part for a movement; and

(b) another part of Australian territory described in column 2 of the item as the destination part for the movement.

Parts of Australian territory

	Column 1 **Origin part**	**Column 2** **Destination part**
1	Australian territory except Christmas Island and the airspace above it	Christmas Island and the airspace above it
2	Christmas Island and the airspace above it	Australian territory except Christmas Island and the airspace above it
3	Christmas Island and the airspace above it	Cocos (Keeling) Islands and the airspace above them
4	Australian territory except Cocos (Keeling) Islands and the airspace above them	Cocos (Keeling) Islands and the airspace above them
5	Cocos (Keeling) Islands and the airspace above them	Australian territory except Cocos (Keeling) Islands and the airspace above them
6	Cocos (Keeling) Islands and the airspace above them	Christmas Island and the airspace above it
7	A part of Australian territory, subject to subsection (5)	Another part of Australian territory, subject to subsection (5)

Note: The references in the table to Christmas Island and Cocos (Keeling) Islands include the coastal sea of the relevant islands and the airspace above that coastal sea (see section 15B of the *Acts Interpretation Act 1901*).

(5) Before specifying parts of Australian territory described in item 7 of the table in subsection (4) as the origin part and the destination part, the Director of Biosecurity and the Director of Human Biosecurity must be satisfied that:

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(a) the origin part and the destination part do not overlap; and
(b) persons, goods or conveyances cannot be moved from the origin part to the destination part by land.

(6) To avoid doubt, the same part of Australian territory may be specified in declarations of different movements as:
(a) the origin part for a movement from that part to another part of Australian territory; and
(b) the destination part for a movement to that part from another part of Australian territory.

Declaration is a legislative instrument but not subject to disallowance

(7) A declaration made under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the declaration.

619 Affected provisions and exit provisions

(1) This Subdivision affects the application of:
(a) Part 2 of Chapter 2 (which is about preventing biosecurity risks to human health); and
(b) Parts 1 and 3 of Chapter 3 (which are about managing biosecurity risks associated with goods brought into Australian territory, including by prohibiting or conditionally permitting the bringing of goods into Australian territory); and
(c) Parts 1, 2 and 5 of Chapter 4 (which are about managing biosecurity risks associated with conveyances, especially those entering Australian territory, and ship sanitation); and
(d) the other provisions of this Act (except this Subdivision) to the extent that they relate to a provision described in paragraph (a), (b) or (c).

Note: Some examples of provisions covered by paragraph (d) are:
(a) definitions of expressions used in a provision described in paragraph (a), (b) or (c); and

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(b) provisions for the enforcement of a provision described in paragraph (a), (b) or (c); and

(c) provisions relating to the exercise of power under a provision described in paragraph (a), (b) or (c) (such as a provision for delegation of the power, review of the exercise of the power or compensation for the exercise of the power).

(2) The following provisions are the ***exit provisions***:

(a) section 45;

(b) section 46 to the extent that it relates to section 45;

(c) section 50;

(d) the definition of ***outgoing aircraft or vessel*** in section 9, to the extent that the definition is relevant to the provisions mentioned in the other paragraphs of this subsection;

(e) the definition of ***outgoing passenger aircraft or vessel*** in section 9.

Note: This Subdivision affects the application of all of the exit provisions, as they are covered by paragraph (1)(a) or (d). However, the application of the exit provisions under this Subdivision is different from the application of the rest of the affected provisions under this Subdivision.

620 How the affected provisions (except the exit provisions) apply because of this Subdivision

Application as if Australian territory were limited to destination part

(1) The affected provisions, except the exit provisions, apply in relation to the actual or intended movement (however described) of persons, goods and conveyances from the origin part to the destination part as if:

(a) only the destination part were Australian territory; and

(b) the origin part, and any other part of Australian territory outside the destination part, were not Australian territory.

Note: Section 623 sets out how the exit provisions apply in relation to the movement.

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Powers to request or require export of goods

(2) If goods become subject to biosecurity control because of this Subdivision and their movement from the origin part to the destination part, a reference in section 134 or 135 to export of the goods from Australian territory includes a reference to return of the goods to the origin part.

Removal of conveyance or goods from Australian territory

(3) If a conveyance or goods become subject to biosecurity control because of this Subdivision and the movement of the conveyance or goods from the origin part to the destination part, a reference in the following provisions to removal of the conveyance or goods from Australian territory includes a reference to return of the conveyance or goods to the origin part:
   (a) section 209;
   (b) section 210;
   (c) item 6 of the table in section 489;
   (d) item 12 of the table in subsection 542(3);
   (e) section 628.

Certain references to Australian territory not affected

(4) Subsection (1) does not affect the scope of references in the following provisions to Australian territory:
   (a) subsection 119(4);
   (b) subsection 161(3);
   (c) paragraph 162(1)(e);
   (d) subsection 191(4);
   (e) paragraph 192(1)(b) and subsections 192(3) and (5);
   (f) paragraphs 202(1)(a) and (b);
   (g) paragraphs 207(2)(a) and (b);
   (h) paragraph 218(1)(d);
   (i) paragraph 254(b).

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Relationship between subsection (1) and other subsections

(5) Subsections (2), (3) and (4) have effect despite subsection (1).

621 Release from biosecurity control if goods leave destination part

(1) This section applies if goods:
  (a) become subject to biosecurity control because of the application (the ***basic application***) of the affected provisions as described in section 620 in relation to a movement (the ***basic movement***) of the goods from the origin part to the destination part; and
  (b) the goods leave the destination part.

(2) When the goods leave the destination part, they are taken to be released under section 162 from the biosecurity control to which they were subject because of the basic application.

(3) If, when the goods leave the destination part, they also leave Australian territory as described in subsection 119(4), the goods do not become subject to biosecurity control again because of that subsection and the fact that they were subject to biosecurity control because of the basic application.

(4) To avoid doubt, subsection (2) does not affect the status of goods being or becoming subject to biosecurity control for reasons other than the basic application.

Example: If the goods were subject to biosecurity control while in the destination part for reasons other than the basic application (such as having entered Australian territory from a foreign country when they entered the origin part), subsection (2) does not treat them as being released from that control when they leave the destination part.

622 Release from biosecurity control if aircraft or vessel leaves destination part

(1) This section applies if an aircraft or vessel:
  (a) becomes subject to biosecurity control because of the application (the ***basic application***) of the affected provisions

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as described in section 620 in relation to a movement (the ***basic movement***) of the aircraft or vessel from the origin part to the destination part; and

(b) the aircraft or vessel leaves the destination part.

(2) When the aircraft or vessel leaves the destination part, the aircraft or vessel is taken to be released under section 218 from the biosecurity control to which it was subject because of the basic application.

(3) If, when the aircraft or vessel leaves the destination part, it also leaves Australian territory as described in subsection 191(4), the aircraft or vessel does not become subject to biosecurity control again because of that subsection and the fact that the aircraft or vessel was subject to biosecurity control because of the basic application.

(4) To avoid doubt, subsection (2) does not affect the status of the aircraft or vessel being or becoming subject to biosecurity control for reasons other than the basic application.

Example 1: If the aircraft was subject to biosecurity control while in the destination part for reasons other than the basic application (such as having entered Australian territory from a foreign country when the aircraft entered the origin part), subsection (2) does not treat the aircraft as being released from that control when the aircraft leaves the destination part.

Example 2: Subsection (2) does not prevent the vessel from becoming subject to biosecurity control because of an application, other than the basic application, of the affected provisions as described in section 620 in relation to the movement (the ***leaving movement***) involving leaving the destination part for the basic movement if:

(a) the destination part for the basic movement is the origin part for the leaving movement; and

(b) the leaving movement involves moving directly from the origin part for the leaving movement into the destination part for the leaving movement (whether or not the destination part for the leaving movement is the origin part for the basic movement).

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623 How the exit provisions apply because of this Subdivision

The exit provisions apply in relation to the actual or intended movement (however described) of persons, aircraft and vessels from the origin part to the destination part as if:

(a) only the origin part were Australian territory; and

(b) the destination part, and any other part of Australian territory outside the origin part, were another country and not Australian territory.

624 Relationship between this Subdivision and other provisions of this Act

(1) The application of the affected provisions under this Subdivision is in addition to, and does not limit, the application that the affected provisions otherwise have.

(2) To avoid doubt, a reference in this Act outside this Subdivision to any of the affected provisions (however the provision is referred to) includes a reference to the provision as it applies because of this Subdivision.

Example: One of the affected provisions may be referred to by its Part or section number.

(3) This Subdivision and section 616, to the extent that it relates to modification of a provision of this Act, do not limit each other.

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Part 5—Miscellaneous

Division 1—Introduction

625 Simplified outline of this Part

This Part includes miscellaneous provisions, including the following:

(a) provisions dealing with abandoned or forfeited goods and conveyances;

(b) the power for compensation to be paid if certain goods are damaged under this Act, or certain goods, conveyances or other premises are destroyed under this Act;

(c) additional offences that apply in relation to the Act;

(d) the power for the Agriculture Minister or the Health Minister to enter into arrangements with a relevant Minister of a State or Territory for the purposes of the Act;

(e) the protection from civil proceedings of certain persons who are performing functions or exercising powers under this Act.

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Division 2—Abandoned or forfeited goods and conveyances

626 Abandoned goods

(1) This section applies in relation to goods if:

(a) biosecurity measures in relation to the goods have been required under:

(i) Part 1 of Chapter 3 (goods brought into Australian territory); or

(ii) Chapter 6 (managing biosecurity risks: monitoring, control and response); and

(b) the goods are in the possession or control of:

(i) the Commonwealth; or

(ii) a biosecurity industry participant as authorised by an approved arrangement covering the biosecurity industry participant; and

(c) a person in charge of the goods gives notice (either in writing or orally) to the Director of Biosecurity stating that the person does not wish to take possession of the goods.

Note: For the purposes of this section, ***person in charge*** of goods has the meaning given by subsection (5).

(2) A biosecurity officer may, in writing, request the owner of the goods to arrange for the goods to be dealt with, or destroyed, in a manner and within the period specified in the request.

(3) If:

(a) a request is made under subsection (2) in relation to goods; and

(b) the goods are not dealt with, or destroyed, in a manner and within the period specified in the request;

the Director of Biosecurity may, if necessary, take possession of the goods and cause them to be sold under section 610, destroyed or otherwise disposed of.

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(4) Before goods are sold, destroyed or otherwise disposed of under this section, the Director of Biosecurity may cause the goods to be treated in an appropriate manner to manage any biosecurity risk associated with them.

*Modified meaning of **person in charge** of goods*

(5) In this section, ***person in charge*** of goods does not include a biosecurity industry participant who is in possession or control of the goods only because of a direction given to the biosecurity industry participant by a biosecurity officer.

627 Forfeited goods

(1) This section applies in relation to goods if:
  (a) biosecurity measures in relation to the goods have been required under:
    (i) Part 1 of Chapter 3 (goods brought into Australian territory); or
    (ii) Chapter 6 (managing biosecurity risks: monitoring, control and response); and
  (b) the goods are in the possession or control of:
    (i) the Commonwealth; or
    (ii) a biosecurity industry participant as authorised by an approved arrangement covering the biosecurity industry participant.

(2) The goods are forfeited to the Commonwealth:
  (a) if:
    (i) the Director of Biosecurity notifies, in writing, the owner of the goods that the goods may be collected; and
    (ii) the goods are not collected within 90 days after the notice is given; or
  (b) if the Director of Biosecurity:
    (i) has not been able, despite making reasonable efforts, to locate the owner of the goods; and
    (ii) has certified in writing to that effect.

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(3) If goods are forfeited to the Commonwealth under subsection (2), the Director of Biosecurity may cause the goods to be sold, destroyed or otherwise disposed of.

(4) Before goods are sold, destroyed or otherwise disposed of under this section, the Director of Biosecurity may cause the goods to be treated in an appropriate manner to manage any biosecurity risk associated with them.

628 Prohibited goods etc. may be forfeited to the Commonwealth

(1) This section applies if:
  (a) goods were brought or imported into Australian territory; and
  (b) at the time the goods were brought or imported into Australian territory, the goods were:
    (i) prohibited goods; or
    (ii) conditionally non-prohibited goods; or
    (iii) suspended goods; and
  (c) if the goods were conditionally non-prohibited goods—an applicable condition in relation to the goods has not been complied with.

(2) A biosecurity officer may take possession of the goods.

(3) The Director of Biosecurity may determine that the goods are forfeited to the Commonwealth. If the determination is made in writing, it is not a legislative instrument.

(4) Before making a determination under subsection (3), the Director of Biosecurity must notify, in writing or orally, a person in charge of the goods that:
  (a) a biosecurity officer may take possession of the goods; and
  (b) the goods will be forfeited to the Commonwealth;

unless a person in charge of the goods arranges, within a specified period:
  (c) for the goods to be destroyed, removed from Australian territory or otherwise dealt with in a way specified by the Director; and

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(d) for any other requirements specified by the Director relating to the goods to be complied with.

Note: For the purposes of this section, ***person in charge*** of goods has the meaning given by subsection (7).

(5) If a determination is made under subsection (3) in relation to the goods, a biosecurity officer may:

(a) take possession of the goods (if they are not already in the possession or control of the Commonwealth); and

(b) cause the goods to be sold, destroyed, removed from Australian territory or otherwise disposed of.

(6) A failure to notify a person in charge of the goods of the matters referred to in subsection (4) does not affect the validity of:

(a) a determination under subsection (3) in relation to the goods; or

(b) the forfeiture of the goods.

Note: If the operation of this section would result in an acquisition of property otherwise than on just terms, the Commonwealth may be liable to pay compensation under section 27.

Definitions

(7) In this section:

applicable condition, in relation to conditionally non-prohibited goods, means:

(a) a condition in relation to the goods specified in a determination in force under subsection 174(1); or

(b) if the goods were brought or imported into Australian territory as authorised by a permit granted under section 179—a condition specified in the permit.

person in charge of goods does not include a biosecurity industry participant who is in possession or control of the goods only because of a direction given to the biosecurity industry participant by a biosecurity officer.

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629 Abandoned conveyances

(1) This section applies in relation to a conveyance if:

(a) biosecurity measures in relation to the conveyance have been required under:

(i) Part 2 of Chapter 4 (conveyances entering Australian territory); or

(ii) Chapter 6 (managing biosecurity risks: monitoring, control and response); and

(b) the conveyance is in the possession or control of:

(i) the Commonwealth; or

(ii) a biosecurity industry participant as authorised by an approved arrangement covering the biosecurity industry participant; and

(c) either:

(i) the Director of Biosecurity receives a written notice from the owner of the conveyance stating that the owner does not wish to take possession of the conveyance; or

(ii) the Director of Biosecurity has, in writing, requested the owner of the conveyance to take possession of the conveyance within a specified period and the owner has not taken possession of the conveyance within that period.

(2) The Director of Biosecurity may, in writing, request the owner of the conveyance to arrange for the conveyance to be dealt with, or destroyed, in a manner and within the period specified in the request.

Note: If a charge has been created on the conveyance to secure the payment of an unpaid cost-recovery charge, the conveyance may be dealt with under Subdivision C of Division 4 of Part 3 (cost recovery).

(3) If:

(a) a request is made under subsection (2) in relation to a conveyance; and

(b) the conveyance is not dealt with, or destroyed, in a manner and within the period specified in the request;

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the Director of Biosecurity may, if necessary, take possession of the conveyance and cause it to be sold under section 610, destroyed or otherwise disposed of.

Note: Before exercising a power under this subsection, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

(4) If a conveyance is to be destroyed under this section, the Director of Biosecurity may cause any goods on board the conveyance to be removed from the conveyance before it is destroyed.

(5) Before a conveyance is sold, destroyed or otherwise disposed of under this section, the Director of Biosecurity may cause the conveyance to be treated in an appropriate manner to manage any biosecurity risk associated with it.

630 Forfeited conveyances

(1) This section applies in relation to a conveyance if:
  (a) biosecurity measures in relation to the conveyance have been required under:
    (i) Part 2 of Chapter 4 (conveyances entering Australian territory); or
    (ii) Chapter 6 (managing biosecurity risks: monitoring, control and response); and
  (b) the conveyance is in the possession or control of:
    (i) the Commonwealth; or
    (ii) a biosecurity industry participant as authorised by an approved arrangement covering the biosecurity industry participant.

(2) The conveyance is forfeited to the Commonwealth if the Director of Biosecurity:
  (a) has not been able, despite making reasonable efforts, to locate the owner of the conveyance; and
  (b) has certified in writing to that effect.

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(3) If a conveyance is forfeited to the Commonwealth under subsection (2), the Director of Biosecurity may cause the conveyance to be sold, destroyed or otherwise disposed of.

Note: Before exercising a power under this subsection, a biosecurity official must be satisfied of the matters referred to in section 32 (the principles).

(4) If a conveyance is to be destroyed under this section, the Director of Biosecurity may cause any goods on board the conveyance to be removed from the conveyance before it is destroyed.

(5) Before a conveyance is sold, destroyed or otherwise disposed of under this section, the Director of Biosecurity may cause the conveyance to be treated in an appropriate manner to manage any biosecurity risk associated with it.

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Division 3—Damaged and destroyed goods etc.

631 Person complying with direction or request must not damage or destroy goods

(1) This section applies in relation to a person if:
  (a) the Agriculture Minister, the Director of Biosecurity, a biosecurity officer or a biosecurity enforcement officer directs or requests the person to do a thing (including taking a biosecurity measure) in relation to goods for the purposes of this Act; and
  (b) the person is not:
    (i) a biosecurity officer; or
    (ii) a biosecurity enforcement officer; or
    (iii) a chief human biosecurity officer; or
    (iv) a human biosecurity officer; or
    (v) a person in charge of the goods.

(2) The person contravenes this subsection if:
  (a) the person, in complying with the direction or request, does a thing, or omits to do a thing, that causes the destruction of or damage to the goods; and
  (b) either:
    (i) the person did not act in good faith in doing the thing, or omitting to do the thing, that caused the destruction of or damage to the goods; or
    (ii) the destruction or damage was not a reasonable or necessary result of complying with the direction or request in relation to the goods.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 120 penalty units.

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632 Compensation for damaged goods

Director of Biosecurity may approve compensation

(1) The Director of Biosecurity may, if the Director considers it appropriate to do so, approve the payment of a reasonable amount of compensation under this section in respect of goods that are damaged by a person in the course of performing functions or duties, or exercising powers, under this Act.

Note 1: Compensation is not payable unless a claim is made by or on behalf of the owner of the goods (see subsection 634(3)).

Note 2: The amount of compensation is the amount prescribed by, or determined in accordance with, the regulations (see subsection 634(5)).

Note 3: Even if the Director of Biosecurity does not approve the payment of a reasonable amount of compensation under this section, the owner of the goods may be entitled to compensation under section 27 (compensation for acquisition of property).

Exceptions

(2) The Director of Biosecurity must not approve the payment of compensation under this section in respect of goods that are damaged as a result of treatment carried out on the goods under section 133, 134, 335 or 336.

633 Compensation for destroyed goods, conveyances or other premises

Director of Biosecurity may approve compensation

(1) The Director of Biosecurity may, if the Director considers it appropriate to do so, approve the payment of a reasonable amount of compensation under this section in respect of goods, conveyances or premises comprising buildings or other structures that are destroyed under this Act.

Note 1: Compensation is not payable unless a claim is made by or on behalf of the owner of the goods, conveyance or other premises (see subsection 634(3)).

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Note 2: The amount of compensation is the amount prescribed by, or determined in accordance with, the regulations (see subsection 634(5)).

Note 3: Even if the Director of Biosecurity does not approve the payment of a reasonable amount of compensation under this section, the owner of the goods, conveyance or other premises may be entitled to compensation under section 27 (compensation for acquisition of property).

Exceptions

(2) The Director of Biosecurity must not approve the payment of compensation under this section in respect of goods that were brought or imported into Australian territory in contravention of subsection 185(1) or 186(1).

Note 1: Subsection 185(1) is contravened if a person brings or imports into Australian territory prohibited goods or suspended goods.

Note 2: Subsection 186(1) is contravened if a person brings or imports conditionally non-prohibited goods into Australian territory and a condition applying to the goods has not been complied with.

(3) The Director of Biosecurity must not approve the payment of compensation under this section in respect of:

(a) goods that were brought or imported into Australian territory 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; or

(b) an aircraft or vessel that entered Australian territory from outside Australian territory if the aircraft or vessel was subject to biosecurity control because of subsection 191(2) or (4) at all times between the time it entered Australian territory and the time it was destroyed.

(4) The regulations may provide either or both of the following:

(a) that paragraph (3)(a) does not apply in relation to:

(i) prescribed goods; or

(ii) prescribed goods in prescribed circumstances;

(b) that paragraph (3)(b) does not apply in relation to:

(i) prescribed aircraft or vessels; or

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(ii) prescribed aircraft or vessels in prescribed circumstances.

634 Claims for, and amount of, compensation

Application

(1) This section applies in relation to goods, conveyances or other premises (***compensable items***) in respect of which the Director of Biosecurity may approve a payment of compensation under section 632 or 633.

Compensation must be paid to owner

(2) Compensation approved under section 632 or 633 in respect of a compensable item must:
   (a) if there is only one owner of the compensable item—be paid to the owner; or
   (b) if there are 2 or more owners of the compensable item—be divided among those owners as prescribed by the regulations.

Note: ***Owner*** is defined in subsection (6).

Requirements relating to claim for compensation

(3) An owner of a compensable item is not entitled to compensation under section 632 or 633 in respect of the item unless a claim for compensation is made by or on behalf of the owner within 12 months after the item was damaged or destroyed (as the case may be).

(4) A claim for compensation under subsection (3) must:
   (a) if a form is prescribed by the regulations—be in that form; and
   (b) be accompanied by the documents (if any) prescribed by the regulations.

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Amount of compensation

(5) The amount of compensation payable under section 632 or 633 is a reasonable amount prescribed by, or determined in accordance with, the regulations.

*Definition of **owner***

(6) In this section:

owner, in relation to a compensable item, means a person who had an interest in the item at the time it was damaged or destroyed (as the case may be), but does not include:

(a) a person who had such an interest by reason only that the person was entitled to the benefit of a mortgage or other charge, or a lien, in respect of the item (other than a PPSA security interest); or

(b) a person who held a PPSA security interest in the item;

unless the person was in possession or control of the item at that time.

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Division 4—Miscellaneous

635 Privilege against self-incrimination

Person not entitled to refuse to answer questions, provide information or produce documents under certain provisions of this Act

(1) A person is not excused from answering a question, providing information or producing a document, under any of the following provisions, on the ground that the answer, the information or the production of the document might tend to incriminate the person or make the person liable to a penalty:

(a) sections 44, 45, 69, 70 and 85 and Division 6 of Part 2 of Chapter 2 (human biosecurity);

(b) sections 120, 121, 122, 126 and 127 (managing biosecurity risks: goods);

(c) sections 193, 194, 195, 196, 200 and 201 (managing biosecurity risks: conveyances);

(d) sections 267, 268 and 300D (ballast water);

(e) sections 312B, 312C, 312E, 312F, 319 and 320 (managing biosecurity risks: monitoring, control and response);

(f) subsection 437(1) (audit powers in relation to approved arrangements);

(g) sections 450 and 451 (biosecurity emergencies);

(h) subsection 24(3) of the Regulatory Powers Act as it applies in relation to this Act;

(i) subsection 54(3) of the Regulatory Powers Act as it applies in relation to this Act.

Use/derivative use indemnity applies to answer, information or document

(2) However, in the case of an individual:

(a) the answer given, the information provided or the document produced; and

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(b) answering the question, providing the information or producing the document; and

(c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question, the provision of the information or the production of the document;

are not admissible in evidence against the individual in any criminal or civil proceedings, except proceedings under, or arising out of, section 137.1 or 137.2 of the *Criminal Code* or section 532 or 533 of this Act, (false or misleading information and documents) in relation to answering the question, providing the information or producing the document.

Privilege not otherwise affected

(3) Except as provided by subsection (1), nothing in this Act affects the right of an individual to refuse to answer a question, provide information or produce a document on the ground that the answer, the information or the production of the document might tend to incriminate the individual or make the individual liable to a penalty.

636 Offence—hindering compliance with the Act etc.

(1) A person must not engage in conduct that hinders or prevents another person from:

(a) performing functions or duties, or exercising powers, under this Act; or

(b) complying with this Act or a direction given under this Act.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 534).

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

637 Certificates given by analyst

Appointment of analyst

(1) The Director of Biosecurity may appoint a person to be an analyst for the purposes of this Act.

Analyst may give certificate

(2) If a person is alleged to have contravened this Act in relation to any substance or thing, an analyst appointed under subsection (1) may give a written certificate stating any one or more of the following matters:
   (a) when and from whom the substance or thing was received;
   (b) what (if any) labels or other means of identifying the substance or thing accompanied it when it was received;
   (c) what container or containers the substance or thing was contained in when it was received;
   (d) a description, and the weight, of the substance or thing received;
   (e) when the substance or thing, or a portion of it, was analysed;
   (f) a description of the method of analysis;
   (g) the results of the analysis;
   (h) how the substance or thing was dealt with after handling by the analyst, including details of:
      (i) the quantity retained; and
      (ii) the name of any person to whom any retained quantity was given; and
      (iii) measures taken to secure any retained quantity.

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Note: In certain circumstances, the certificate may be admitted as evidence in proceedings in relation to the contravention (see section 638).

(3) A certificate must be given in a form approved by the Director of Biosecurity.

638 Admission of analyst's certificate in proceedings

(1) A certificate given under section 637 is (if the procedure in subsection (2) of this section is complied with) admissible, in any proceedings in relation to a contravention of this Act, as prima facie evidence of:
  (a) the matters in the certificate; and
  (b) the correctness of the result of the analysis.

Procedure to be followed before admitting certificate

(2) At least 14 days before the certificate is admitted as evidence in the proceedings, the following must be given to the person (the ***defendant***) who is alleged to have contravened this Act, or a legal practitioner who is appearing for the defendant in those proceedings:
  (a) a copy of the certificate;
  (b) notice of the intention to produce the certificate as evidence in the proceedings.

Analyst may be required to attend for cross-examination

(3) The defendant may (subject to subsection (4)) require the analyst who gave the certificate to be:
  (a) called as a witness for the prosecution; and
  (b) cross-examined (as if the analyst had given evidence of the matters stated in the certificate).

Requirements for cross-examining analyst

(4) The analyst may be required to be called as a witness for the prosecution only if:

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(a) the prosecutor has been given at least 4 days' notice of the defendant's intention to require the analyst to be called; or
(b) the court, by order, allows the defendant to require the analyst to be called.

Proof of certificate

(5) For the purposes of this Act, a document purporting to be a certificate given under section 637 is taken to be a certificate that has been given in accordance with that section, unless the contrary is established.

639 Power or requirement to do or cause a thing to be done

(1) For the purposes of this Act, if a person (the ***first person***) has the power, or is required, under this Act to do a thing, the first person is taken to have done the thing if the first person causes another person to do the thing on behalf of the first person.

(2) For the purposes of this Act, if a person has the power, or is required, under this Act to cause or direct a thing to be done, the person is taken to have caused or directed the thing to be done if the person does the thing himself or herself.

640 Treatment of partnerships

(1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.

(3) An offence against this Act that would otherwise have been committed by the partnership is taken to have been committed by each partner in the partnership, at the time the offence was committed, who:
(a) did the relevant act or made the relevant omission; or

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(b) aided, abetted, counselled or procured the relevant act or omission; or

(c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

(4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

(5) For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

641 Treatment of unincorporated associations

(1) This Act applies to an unincorporated association as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the association by this Act is imposed on each member of the association's committee of management instead, but may be discharged by any of the members.

(3) An offence against this Act that would otherwise have been committed by the unincorporated association is taken to have been committed by each member of the association's committee of management, at the time the offence was committed, who:

(a) did the relevant act or made the relevant omission; or

(b) aided, abetted, counselled or procured the relevant act or omission; or

(c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the member).

(4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

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642 Arrangements with States and Territories to assist in carrying out this Act

The Agriculture Minister or the Health Minister may enter into an arrangement with a relevant Minister of a State or Territory in relation to all or any of the following:

(a) the use of any place in the State or Territory for the purposes of this Act, and the control and management of the place;

(b) any matters necessary or convenient to be arranged in order to enable the Commonwealth, the State or the Territory to assist each other for the purposes of the objects of this Act;

(c) if the Commonwealth is a party to any international agreement requiring products for export to be certified—any matters necessary or convenient to be arranged to assist authorities of that State or Territory:

(i) to implement and monitor, in that State or Territory, arrangements to enable that certification; and

(ii) to provide reports to the Commonwealth concerning those arrangements.

Note: The Director of Biosecurity and the Director of Human Biosecurity can also enter arrangements with State or Territory bodies for officers or employees of those bodies to be officers under this Act (see sections 547, 549 and 564).

643 Delegation of powers by Agriculture Minister

Delegation to Director of Biosecurity and SES staff in Agriculture Department

(1) The Agriculture Minister may, by writing, delegate any or all of his or her functions or powers under this Act (other than those mentioned in subsection (2) or (3)) to:

(a) the Director of Biosecurity; or

(b) an SES employee, or acting SES employee, in the Agriculture Department.

Note 1: The reference to this Act includes a reference to regulations made under this Act (see the definition of ***this Act*** in section 9).

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Note 2: The expressions ***SES employee*** and ***acting SES employee*** are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 3: For delegation of powers by the Director of Biosecurity, see section 542.

(2) The Agriculture Minister must not delegate any of his or her functions or powers under any of the following provisions:
  (a) section 543 (giving directions to Director of Biosecurity);
  (b) section 642 (arrangements with States and Territories).

(3) This section does not apply in relation to a function or power of the Agriculture Minister under Part 1 of Chapter 8 (biosecurity emergencies).

Note: For delegation and subdelegation of certain powers of the Agriculture Minister under Part 1 of Chapter 8, see sections 453 and 454.

Delegate or subdelegate must comply with directions

(6) In performing any functions or exercising any powers under a delegation or subdelegation, the delegate or subdelegate must comply with any directions of the Agriculture Minister or the person who delegated the function or power.

Application of the Acts Interpretation Act 1901 to subdelegation

(7) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to a subdelegation in a corresponding way to the way in which they apply in relation to a delegation.

644 Protection from civil proceedings

Protection for the Commonwealth and protected persons

(1) No civil proceeding lies against the Commonwealth or a protected person in relation to anything done, or omitted to be done, in good faith:
  (a) by a protected person in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred by this Act; or

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(b) by a person in providing, or purporting to provide, assistance, information or a document to a protected person, as a result of a request, direction or other requirement made by the protected person in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred by this Act.

(2) No civil proceeding lies against the Commonwealth or a protected person in relation to anything done by an animal used by a protected person in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred by this Act.

Protection for persons assisting protected persons

(3) No civil proceeding lies against a person in relation to anything done, or omitted to be done, in good faith by the person in providing, or purporting to provide, assistance, information or a document to a protected person, as a result of a request, direction or other requirement made by the protected person in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred by this Act.

Protection for persons complying with emergency directions

(4) No civil proceeding lies against a person in relation to anything done, or omitted to be done, in good faith by the person in complying with a direction given under section 446 that applies to the person.

Relationship to certain other provisions

(5) This section is subject to the following provisions:
(a) section 27 (acquisition of property);
(b) section 307 (undue detention or delay of vessel);
(c) section 326 (damage to electronic equipment).

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*Meaning of **protected person***

(6) ***Protected person*** means a person who is, or was, any of the following:
- (a) the Agriculture Minister;
- (b) the Health Minister;
- (c) the Director of Biosecurity;
- (d) the Director of Human Biosecurity;
- (da) the Inspector-General;
- (e) a biosecurity officer;
- (f) a biosecurity enforcement officer;
- (g) a chief human biosecurity officer;
- (h) a human biosecurity officer;
- (i) an officer or employee of the Agriculture Department or the Health Department;
- (j) a person who is performing functions or exercising powers under Chapter 8 (biosecurity emergencies);
- (k) a person who is appointed as an analyst under section 637.

645 Regulations

(1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Offences and civil penalties

(2) Without limiting subsection (1), the regulations may:
- (a) prescribe penalties for offences against the regulations that do not exceed 50 penalty units; and
- (b) declare that specified provisions of the regulations are civil penalty provisions for the purposes of this Act, and prescribe penalties for contraventions of such provisions that do not exceed:
  - (i) for a body corporate—250 penalty units; or

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(ii) in any other case—50 penalty units.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s)/sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

<u>underlining</u> = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Biosecurity Act 2015	61, 2015	16 June 2015	s 3–645: 16 June 2016 (s 2(1) item 2) Remainder: 16 June 2015 (s 2(1) item 1)	
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 8 (items 2, 3): 16 June 2016 (s 2(1) item 3) Sch 9: 1 July 2015 (s 2(1) item 7)	Sch 9
as amended by				
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—
Tribunals Amalgamation Act 2015	60, 2015	26 May 2015	Sch 8 (item 54): 16 June 2016 (s 2(1) item 20) Sch 9: 1 July 2015 (s 2(1) item 22)	Sch 9
Passports Legislation Amendment (Integrity) Act 2015	122, 2015	10 Sept 2015	Sch 1 (item 121): 16 June 2016 (s 2(1) item 3)	—
Statute Law Revision (Spring 2016) Act 2016	67, 2016	20 Oct 2016	Sch 1 (items 3–9): 17 Nov 2016 (s 2(1) item 2)	—
Biosecurity Amendment (Ballast Water and Other Measures) Act 2017	34, 2017	17 May 2017	Sch 1: 8 Sept 2017 (s 2(1) item 2) Remainder: 18 May 2017 (s 2(1) items 1, 3)	Sch 1 (items 31, 76, 79, 81, 85, 87, 93, 103, 110, 115, 136, 140) and Sch 2 (item 8)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Update (Winter 2017) Act 2017	93, 2017	23 Aug 2017	Sch 2 (items 3–8): 20 Sept 2017 (s 2(1) item 4)	—
Biosecurity Legislation Amendment (Miscellaneous Measures) Act 2018	88, 2018	31 Aug 2018	Sch 1 (items 1–12): 1 Sept 2018 (s 2(1) item 2) Sch 1 (item 13): 1 Mar 2019 (s 2(1) item 3)	—
Coronavirus Economic Response Package Omnibus Act 2020	22, 2020	24 Mar 2020	Sch 5: 25 Mar 2020 (s 2(1) item 4)	—

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Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1	
s 3	am No 34, 2017
s 4	am No 34, 2017
Part 2	
s 9	am No 41, 2015; No 34, 2017; No 88, 2018
s 15	am No 88, 2018
Chapter 2	
Part 1	
Division 3	
s 42	am No 93, 2017
Part 2	
Division 1	
s 43	am No 34, 2017
Division 2	
s 44	am No 93, 2017
s 45	am No 93, 2017
Division 4	
s 49	am No 93, 2017
s 50	am No 93, 2017
Division 5	
s 51	am No 93, 2017
s 53	rep No 34, 2017
Part 3	
Division 2	
Subdivision D	
s 77	am No 60, 2015

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Endnote 4—Amendment history

Provision affected	How affected
Division 3	
Subdivision C	
s 98	am No 41, 2015
s 99	am No 122, 2015
	ed C1
Part 4	
Division 2	
s 110	am No 93, 2017
s 112	am No 93, 2017
Division 3	
s 113	am No 93, 2017
s 115	am No 93, 2017
Chapter 3	
Part 1	
Division 5	
s 134	am No 88, 2018
Part 3	
Division 2	
s 173	am No 93, 2017
s 174	am No 93, 2017; No 88, 2018
Division 3	
s 177	am No 67, 2016
Division 4	
s 182	am No 93, 2017
Chapter 4	
Part 2	
Division 5	
s 204A	ad No 34, 2017
s 209	am No 88, 2018

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Provision affected	How affected
Part 3	
Division 2	
s 228	am No 93, 2017
Division 3	
s 234	am No 93, 2017
Part 4	
Division 1	
s 235	am No 34, 2017
Division 4	
s 252A	ad No 34, 2017
Part 5	
Division 2	
s 256	am No 93, 2017
Chapter 5	
Part 1	
Division 2	
s 260	am No 34, 2017
s 261	rs No 34, 2017
s 263A	ad No 34, 2017
Part 2	
Part 2 heading	rs No 34, 2017
Division 1	
s 266	am No 34, 2017
Division 2	
s 267	am No 34, 2017
s 268	am No 34, 2017
Part 3	
Division 1	
s 269	rs No 34, 2017
Division 2	
s 270	am No 34, 2017

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Endnote 4—Amendment history

Provision affected	How affected
Division 3	
Subdivision A	
s 271	am No 34, 2017
Subdivision B	
s 272	am No 34, 2017
s 273	am No 67, 2016; No 34, 2017
s 274	rs No 34, 2017
Subdivision C	
s 275	am No 34, 2017
Division 4	
s 276	am No 34, 2017
Division 5	
s 277	am No 34, 2017
s 278	am No 67, 2016; No 34, 2017
Division 6	
s 278A	ad No 34, 2017
s 279	am No 34, 2017
s 280	am No 67, 2016; No 34, 2017
Division 7	
s 282	am No 34, 2017
Division 8	
s 283	am No 34, 2017
s 284	am No 34, 2017
Part 4	
Division 1	
s 285	am No 34, 2017
Division 1A	
Division 1A	ad No 34, 2017
s 285A	ad No 34, 2017
s 285B	ad No 34, 2017
s 285C	ad No 34, 2017

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Provision affected	How affected
Division 2	
s 286	rs No 34, 2017
s 287	am No 34, 2017
Division 3	
s 288	rs No 34, 2017
s 289	rep No 34, 2017
s 290	am No 34, 2017
Division 4	
Division 4	ad No 34, 2017
s 290A	ad No 34, 2017
Part 5	
Division 1	
s 291	am No 34, 2017
Division 2	
Division 2 heading	rs No 34, 2017
s 292	am No 34, 2017
s 293	am No 34, 2017
s 294	am No 34, 2017
s 295	am No 34, 2017
Division 3	rep No 34, 2017
s 296	rep No 34, 2017
Part 6	
Division 1	
s 297	rs No 34, 2017
Division 2	
s 298	am No 34, 2017
s 299A	ad No 34, 2017
Part 7	
Division 1	
s 300	am No 34, 2017
s 300A	ad No 34, 2017

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Provision affected	How affected
Division 2	
Division 2 heading	rs No 34, 2017
s 300B	ad No 34, 2017
s 300C	ad No 34, 2017
s 300D	ad No 34, 2017
s 301	am No 34, 2017
Division 3	
s 302	am No 34, 2017
s 303	am No 34, 2017
s 304A	ad No 34, 2017
s 305	am No 34, 2017
Part 8	
s 308	am No 34, 2017
s 308A	ad No 34, 2017
Chapter 6	
Part 1	
s 311	am No 88, 2018
Part 1A	
Part 1A	ad No 88, 2018
Division 1	
s 312A	ad No 88, 2018
Division 2	
s 312B	ad No 88, 2018
s 312C	ad No 88, 2018
s 312D	ad No 88, 2018
s 312E	ad No 88, 2018
s 312F	ad No 88, 2018
Part 5	
Division 2	
s 365	am No 93, 2017
s 369	am No 93, 2017

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Provision affected	How affected
Part 6	
Division 3	
Subdivision A	
s 384	am No 93, 2017
s 388	am No 93, 2017
Part 7	
Division 2	
s 395	am No 93, 2017
s 397	am No 93, 2017
s 398	am No 93, 2017
Chapter 7	
Part 7	
Division 1	
s 434	am No 67, 2016
Chapter 8	
Part 1	
Division 2	
s 443	am No 93, 2017
s 444	am No 93, 2017
Division 3	
s 445	am No 93, 2017
Division 5	
s 465	am No 88, 2018
Part 2	
Division 2	
s 475	am No 93, 2017
s 476	am No 93, 2017
s 477	am No 93, 2017

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Endnote 4—Amendment history

Provision affected	How affected
Chapter 9	
Part 7	
Division 2	
s 523	am No 67, 2016; No 34, 2017
Part 10	
Division 6	
s 538	am No 34, 2017
Chapter 10	
Part 2	
s 542	am No 34, 2017; No 88, 2018
s 543	am No 93, 2017
Part 3	
s 544A	ad No 22, 2020
Chapter 11	
Part 1	
Division 2	
s 574	am No 34, 2017
Part 2	
Division 2	
s 580	am No 88, 2018
Part 3	
Division 2	
s 592	am No 34, 2017
Part 4	
Division 2	
Subdivision B	
s 618	am No 93, 2017
Part 5	
Division 4	
s 635	am No 34, 2017; No 88, 2018

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Provision affected	How affected
s 641	am No 67, 2016

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