

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (2025 Infringement Notices) Determination 2024

Legislative Authority

The *Biosecurity Act 2015* (the Act) provides the Commonwealth with powers to assess and manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, or the environment.

Subsection 524A(1) of the Act provides that the Director of Biosecurity may make a determination listing goods, or classes of goods, for the purposes of section 524. Section 524 of the Act makes provision for the issuing of infringement notices under the Act and subsection 523(1) lists provisions of the Act that are subject to an infringement notice.

Under subsection 524A(2) of the Act, the Director of Biosecurity may only make the determination if the Director is reasonably satisfied that there is a high level of biosecurity risk associated with the goods or the class of goods.

Subsection 524A(3) of the Act provides that a determination made under subsection 524A(1) must specify the period during which the determination is to be in force, but the period must not be longer than 12 months.

Subsection 524A(4) of the Act provides that a determination made under subsection 524A(1) is a legislative instrument but is not subject to disallowance.

Purpose

The *Biosecurity (2025 Infringement Notices) Determination 2024* (the Determination) lists goods, and classes of goods, that the Director of Biosecurity is satisfied have a high level of biosecurity risk associated with them. The Determination lists goods and classes of goods which are ‘category 1 goods’ or ‘category 2 goods’.

Subsection 88(2) of the *Biosecurity Regulation 2016* (the Regulation) sets out the amounts prescribed for an infringement notice for an alleged contravention of subsection 532(1) or 533(1) of the Act by an individual who is at a ***first point of entry*** (as defined in section 18 of the Act), when the individual gives information or produces a document in compliance, or purported compliance, with a requirement under subsection 126(1) or 196(2) of the Act.

The penalty unit amounts set out in subsection 88(2) of the Regulation for infringement notices are prescribed by reference to the goods and classes of goods listed in the Determination, and so allow for infringement notice amounts to reflect the relative biosecurity risk of the goods to which the alleged contravention relates.

Background

Section 196 of the Act (read together with section 53 of the Regulation) provides that the Director of Biosecurity may require all passengers, crew and persons in charge of an aircraft or vessel who enter or intend to enter Australian territory on an aircraft or vessel to provide information for the purposes of assessing the level of biosecurity risk associated with the person and any goods the person has with them when arriving in Australian territory. In practice this power is exercised through biosecurity officers acting as the Director's authorised subdelegate at first points of entry. Subsection 126(1) of the Act provides that a biosecurity officer may require a person whom that officer suspects, on reasonable grounds, has information in relation to goods that are subject to biosecurity control to answer questions or provide information in relation to those goods.

There are exotic pests and pathogens associated with certain goods that have a high likelihood of surviving travel into Australia, then establishing and spreading in Australia. Travellers who knowingly fail to declare goods of a sort known to pose biosecurity risks (particularly conditionally non-prohibited goods) on arrival at a first point of entry, or knowingly provide false or misleading information or documents in relation to such goods, deny biosecurity officers the opportunity to identify, assess and manage biosecurity risks. They also deny biosecurity officers the opportunity to determine if specified import conditions have been met and/or direct the goods to undergo regulatory requirements that must be undertaken upon the goods arriving into Australia, such as post-entry quarantine disease screening and/or testing. In these circumstances, it is only when goods of a sort known to pose biosecurity risks are detected and intercepted through other means (such as automated profiling of travellers, detector dogs or x-rays) that biosecurity risks can be identified, assessed and managed in accordance with Australian biosecurity law.

Under subsections 532(1) and 533(1) of the Act, where the person knowingly gives false or misleading information (or knowingly produces a false or misleading document) in compliance or purported compliance with a requirement under the Act, the person is likely to contravene the Act. Similarly, if the person fails to comply with a requirement to answer questions or provide information in writing about goods under subsection 126(1) or 196(2) of the Act, the person is also likely to contravene the Act.

If a biosecurity officer believes on reasonable grounds that the person has contravened a provision of the Act subject to an infringement notice, the officer may give the person an infringement notice for the alleged contravention. Under subsection 523(1) of the Act, subsections 532(1) and 533(1) are provisions of the Act that are subject to an infringement notice under Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014* (the Regulatory Powers Act).

Subsection 524(6) of the Act permits regulations to be made to prescribe different numbers of penalty units for an infringement notice for different kinds of alleged contraventions of the Act. Subsection 524(6) also allows amounts to be prescribed by reference to the kinds of goods or class of goods to which an alleged contravention relates. Subsection 524(7) of the Act permits such regulations to apply, adopt or incorporate matters referred to in a determination made by the Director of Biosecurity under subsection 524A(1).

Subsection 88(2) of the Regulation prescribes different infringement notice amounts where an individual who is at a first point of entry allegedly contravenes subsection 532(1) or

533(1) of the Act when giving information or producing a document in compliance or purported compliance with a requirement under subsection 126(1) or 196(2) of the Act.

Subsection 88(2) of the Regulation prescribes these amounts by reference to category 1 goods, category 2 goods and goods which are neither category 1 nor category 2. Category 1 goods and category 2 goods are defined in section 5 of the Regulation as those goods or classes of goods listed as such in a determination made under subsection 524A(1) of the Act.

Subsection 524(4) of the Act provides that the amount to be stated in an infringement notice for the purposes of paragraph 104(1)(f) of the Regulatory Powers Act is the least of:

- one fifth of the maximum penalty that a court could impose for that contravention; and
- 12 penalty units where the person is an individual or 60 where the person is a body corporate; and
- if the regulations prescribe a different number of penalty units for the alleged contravention, that number of penalty units.

Consultation

The Office of Impact Analysis (OIA) was consulted regarding the Determination (Reference OIA24-08657). The OIA advised that based on the information provided, the OIA considers the proposal is unlikely to have a more than minor regulatory impact, and therefore the preparation of an Impact Analysis is not required for the proposal.

Impact and Effect

Infringement notices may be issued for certain alleged contraventions of the Act with different penalty unit amounts depending on the type of goods and their associated level of biosecurity risk. The Determination supports this framework by listing goods, and classes of goods, which the Director of Biosecurity is satisfied have a high level of biosecurity risk associated with them, as being either ‘category 1 goods’ or ‘category 2 goods.’ This assists the protection of Australia’s biosecurity status by deterring individuals from failing to provide the required information relating to goods or classes of goods that have a high level of biosecurity risk associated with them, when arriving in Australian territory at a first point of entry. The different categories of goods provide a proportionate level of deterrence commensurate with the biosecurity risks known to be associated with the goods listed in each relevant category. This ensures that biosecurity risk can be adequately identified, assessed and managed.

Paragraph 88(2)(b) of the Regulation provides that the infringement notice amount is 6 penalty units where the alleged contravention relates to category 2 goods. The note to subsection 88(2) confirms that where an alleged contravention relates to category 1 goods, the amount is 12 penalty units, in accordance with subsection 524(4) of the Act. This is one fifth of the maximum penalty that a court could impose for a contravention of subsection 532(1) or 533(1) of the Act. Alleged contraventions relating to all other goods attract an infringement notice amount of 2 penalty units, in accordance with paragraph 88(2)(a) of the Regulation.

The differentiation between infringement notice amounts for category 1 and category 2 goods is based on an assessment of the relative biosecurity risks posed by a failure to declare goods of the relevant category on arrival at first points of entry in circumstances where a person is usually required to hold an import permit for the goods or meet certain alternative conditions.

Failing to declare category 1 goods (for example, live plants) may attract a 12 penalty unit infringement notice as goods in this category pose a more serious biosecurity threat than category 2 goods (for example, fresh fruit) which may attract an infringement notice of 6 penalty units.

The Determination will remain in force for 12 months, beginning on 1 January 2025. This is the maximum period permitted under subsection 524A(3) of the Act.

Details/ Operation

Details of the instrument are set out at [Attachment A](#).

Other

The Determination is a legislative instrument but, under subsection 524A(4) of the Act, section 42 (disallowance) of the *Legislation Act 2003* (the Legislation Act) does not apply to the Determination.

The exemption from disallowance for the instrument is set out in primary legislation. The justification for the instrument being exempt includes that the Determination, by providing a list of goods or classes of goods that involve a high level of biosecurity risk, enables the government to take decisive action, and make technically and scientifically based decisions to manage biosecurity risks, and uphold the objectives of the biosecurity framework. To maintain a high level of accountability, the Act prohibits delegation of the power below the level of an SES officer and provides that such an instrument may only be made for a maximum of 12 months. The Determination reflects the policy position that goods that are assessed as posing a high level of biosecurity risk when travellers fail to declare them upon arrival in Australia should attract a higher infringement notice amount. Category 1 goods are the classes of goods that the Director of Biosecurity has determined, based on relevant risk assessments, pose the highest level of biosecurity risk in this context, while category 2 classes of goods pose a high level of biosecurity risk but not as high a biosecurity risk as category 1 goods.

Identification of goods or classes of goods posing a high level of biosecurity risk is a technical and scientific decision based on whether the biosecurity risk is satisfactorily managed within the objective standards established by the Act. It is critical to the management of biosecurity risks that such technical and scientific assessments are implemented.

As the Determination is exempt from disallowance, a Statement of Compatibility with Human Rights is not required in accordance with paragraph 15J(2)(f) of the Legislation Act and subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Determination commences on 1 January 2025.

Details of the *Biosecurity (2025 Infringement Notices) Determination 2024*

Section 1 – Name

Section 1 provides that the name of this instrument is the *Biosecurity (2025 Infringement Notices) Determination 2024* (the Determination).

Section 2 – Commencement

Section 2 provides that the whole of the Determination commences on 1 January 2025.

Section 3 – Authority

Section 3 provides that this instrument is made under subsection 524A(1) of the *Biosecurity Act 2015* (the Act).

The note to this section explains that the Determination lists classes of goods for the purposes of infringement notices for alleged contraventions of certain provisions of the Act. An infringement notice may state 12 penalty units if the contravention relates to category 1 goods and 6 penalty units for category 2 goods in accordance with subsection 524(4) of the Act and the regulations made for the purpose of that subsection. Subsection 524(4) of the Act prescribes the amount to be stated in an infringement notice for the purposes of paragraph 104(1)(f) of the *Regulatory Powers (Standard Provisions) Act 2014* (the Regulatory Powers Act).

Section 4 – Period in force

Section 4 provides that the Determination is in force for 12 months beginning on 1 January 2025.

Section 5 – Definitions

Section 5 provides for definitions of ***animal fluid***, ***animal reproductive material***, ***animal secretion***, ***animal tissue***, ***meat***, ***meat product*** and ***retorted***.

This section defines ***animal fluid*** as any fluid of an animal including blood, sera and animal secretions, but does not include semen or fluids that are part of meat or meat products.

This section defines ***animal reproductive material*** as having the same meaning as in the *Biosecurity Regulation 2016* (the Biosecurity Regulation). Section 5 of the Biosecurity Regulation provides that ***animal reproductive material*** means any part of an animal from which another animal can be produced, and includes an embryo, an egg or ovum, or semen.

This section defines ***animal secretion*** to include animal excretions and animal exudates, but does not include silk or wax.

This section specifies that ***animal tissue*** does not include:

- a living animal;
- animal reproductive material; or
- any of the following, if without adhering tissue:
 - skin;
 - hide;
 - wool;
 - hair;
 - bristles;
 - feathers;
 - tusks;
 - teeth;
 - antlers;
 - horn;
 - glue pieces;
 - bones.

These definitions are required as section 6 of this Determination lists certain types of “animal reproductive material”, “animal fluids” and “animal tissue” (which in turn includes a reference to the defined term “animal secretion”) as classes of goods that are category 1 goods.

“Animal fluid” (a category 1 class of goods) does not include semen or fluids that are part of meat or meat products, as such fluids already form part of the category 1 classes of goods known as “animal reproductive material”, and “meat” and “meat products”.

“Animal tissue” (a category 1 class of goods (with some exceptions)) does not include “animal reproductive material” as any animal tissue that forms part of animal reproductive material already forms part of the category 1 class of goods known as “animal reproductive material”.

This section defines ***meat*** as a part of an animal (other than a fish, cetacean, mollusc, crustacean, cnidarian, echinoderm or a tunicate) that is intended or able to be used as food by a human being or an animal (whether or not it is cooked, dried or otherwise processed). This definition includes blood, bone-meal, meat meal, tallow and fat.

A ***meat product*** is defined in this section as a product that contains meat or of which meat is an ingredient.

The term ***retorted*** is also defined in this section as heated in a hermetically-sealed container to a minimum core temperature of 100°C, obtaining an F₀ value of at least 2.8.

These definitions are required because meat and meat products are classes of goods that are listed as category 1 goods in section 6 of this Determination, but meat and meat products that have been retorted are excluded from that class of goods.

Section 6 – Category 1 goods

Section 6 provides a list of goods and classes of goods that have been assessed to be category 1 goods for the purposes of determining infringement notice amounts under subsection

524(4) of the Act and regulations made for the purposes of that subsection (being subsection 88(2) of the Regulation). This section allows infringement notice amounts to reflect the biosecurity risk posed by goods and classes of goods that have been listed as category 1 goods in the Determination. Category 1 goods pose a high biosecurity risk when travellers fail to declare them upon arrival in Australia.

Section 6 provides that the following classes of goods are category 1 goods:

- (a) live plants;
- (b) whole unprocessed seeds that are intended for sowing;
- (c) meat and meat products, except meat or meat products that have been retorted;
- (d) animal reproductive material, excluding roe and avian eggs that are intended for, or are able to be used for, human consumption (whether or not it is cooked, dried or otherwise processed);
- (e) animal fluids;
- (f) animal tissue that is not intended for human consumption (whether or not it is cooked, dried or otherwise processed);
- (g) prawns that are not fully cooked;
- (h) live animals, and the remains of animals that have died in transit before arriving in Australian territory or on arrival in Australian territory;
- (i) veterinary vaccines.

It is appropriate to issue an infringement notice for failing to declare these classes of goods as the failure to declare has the effect of preventing a biosecurity officer from considering the high biosecurity risks posed by the goods. For example, a person declaring live plants allows biosecurity officers to determine if the species of live plant is permitted entry into Australia and if any treatment requirements apply. Declaring meat and meat products allows biosecurity officers to determine if the goods meet Australia's requirements under biosecurity legislation which often include documentation such as a veterinary certificate from the country of export providing evidence of the sourcing and disease status of the exporting country.

Classes of Category 1 goods

Paragraph (a) in section 6 provides that live plants are a class of category 1 goods. The class includes all live plants (and does not include seeds). Live plants are generally imported for the purposes of growth and/or propagation. They often carry exotic pests and diseases such as arthropods, bacteria, fungi and viruses, such as *Xylella* which is Australia's number one national priority plant pest. As such, it is appropriate that this class of goods is listed as category 1 goods. This class of goods is also sometimes referred to as "nursery stock" and includes, but is not limited to: budwood, bulbils, bulbs, corms, cuttings, grafting wood, plants, rhizomes, roots, seedlings, slips, stems, tissue cultures, tubers.

Paragraph (b) in section 6 provides that whole unprocessed seeds that are intended for sowing, are a class of category 1 goods. The class covers all whole seeds of plants that have not been processed (for example, roasted, ground into a powder etc). Whole unprocessed seeds have the potential to carry and introduce different pests and diseases, such as seed-transmitted viruses, parasitic nematodes and external arthropods. Seeds of an exotic weed or invasive plant species may also be introduced in contaminated seed consignments. Whole unprocessed seeds that are intended for sowing have the potential to transmit pests that are

carried by the seed internally or externally and directly infest the host plant growing from the seed. Pests that are carried by the seed may also be transferred to the surrounding environment and then infest a host plant under natural conditions. As such, it is appropriate that this class of goods is listed as category 1 goods to reflect the high level of biosecurity risk associated with the intended end use of the goods.

Paragraph (c) in section 6 provides that meat and meat products, except meat or meat products that have been retorted, are a class of category 1 goods. There are several significant biosecurity risks associated with uncontrolled entry of meat and meat products into Australia including, but not limited to, foot and mouth disease, African swine fever, bovine spongiform encephalopathy, and infectious bursal disease. As such, it is appropriate that this class of goods is listed as category 1 goods.

Meat and meat products include, for example, blood, bone meal, meat meal, tallow, fat, jerky and biltong from any species of animal.

The listed class in paragraph (c) expressly excludes retorted meat and meat products as the biosecurity risk is significantly reduced if the meat or meat products have been retorted. Retorted meat and meat products must be heated in an unopened, hermetically sealed container for a time, and to a temperature beyond 100 °C, obtaining an F₀ value of at least 2.8, sufficient to render the contents commercially sterile. For example, salami, while preserved, is not retorted and is a category 1 good.

Fish, cetaceans, molluscs, crustaceans, cnidarians, echinoderms or tunicates are excluded from the class of goods in paragraph (c) of section 6. This means meat or meat products from aquatic animals such as sharks, dolphins, whales, lobsters and jellyfish are not classified as category 1 goods. Whiting fillets is an example of a meat product that is not a category 1 good.

Paragraph (d) in section 6 provides that animal reproductive material, excluding avian eggs and roe that are intended for, or are able to be used for, human consumption (whether or not they are cooked, dried or otherwise processed), is a class of category 1 goods. There are significant biosecurity risks associated with the uncontrolled entry of animal reproductive material into Australia. For example, eggs of a bird or reptile for hatching can carry many diseases of biosecurity concern to Australia. Reptile eggs could harbour herpesviruses while avian eggs can harbour Newcastle disease virus, avian influenza and many other potential pathogens, all of which if introduced could have serious negative consequences for Australian agricultural industries and Australia's unique fauna and the environment. Another example is that canine semen has the potential to carry and transmit disease agents, such as canine brucellosis, leishmaniasis and leptospirosis. The import requirements for these goods may include provision of appropriate certification to verify the health status of an animal. As such, it is appropriate that this class of goods is listed as category 1 goods. Eggs of a bird or reptile for hatching include whole eggs for breeding purposes through a commercial industry and hobby breeders. The legal import of these goods requires mandatory pre-export certification, inspection and testing.

Avian eggs and roe that are intended for human consumption are not considered to be a class of category 1 goods for the purposes of the Determination. This is because eggs of a bird or reptile for hatching are more likely to come into contact with animals and the environment within Australia and risk spreading pests and disease of biosecurity concern, and therefore

pose a higher biosecurity risk. Avian eggs and roe that are intended for human consumption are more likely to have undergone some form of processing or thermal treatment, such as cooking, which will contribute to the inactivation of contaminating infectious agents or microorganisms that may be contained in the goods. This reduces the likelihood of the entry and establishment of pests and diseases associated with these types of goods.

Paragraph (e) in section 6 provides that animal fluids are a class of goods that are category 1 goods. Animal fluids may include animal blood, serum and other blood products. Diseases of significant biosecurity concern, such as lumpy skin disease, can also persist in refrigerated tissue culture fluid for up to six months. These goods have the potential to be used in the manufacture of veterinary vaccines and human therapeutics and can pose a significant biosecurity risk if sourced from animal species that are susceptible to transmissible spongiform encephalopathies, which may be transmitted to both humans and animals. As such, it is appropriate that this class of goods is listed as category 1 goods.

Paragraph (f) in section 6 provides that animal tissue that is not intended for human consumption (whether or not it is cooked, dried or otherwise processed) are a class of goods that are category 1 goods. Animal tissue may contain and transmit a number of pests and diseases, which will vary widely depending on the type of goods, but could include foot and mouth disease, capripoxviruses and highly pathogenic avian influenza. Animal tissue may have a direct or indirect pathway into live animals as ingredients used in the manufacture of veterinary vaccines and therapeutics which are then directly administered to animals. As such, it is appropriate that this class of goods is listed as category 1 goods. Animal tissue that is intended for human consumption already falls into the classes of goods known as “meat” and “meat products.”

Paragraph (g) in section 6 provides that prawns that are not fully cooked are a class of category 1 goods. Prawns that are not fully cooked can be infected with exotic pathogenic agents including bacteria, parasites, and viruses such as white spot syndrome virus and yellowhead virus genotype 1. As such, it is appropriate that this class of goods is listed as category 1 goods.

The class of goods in paragraph (g) includes prawns that are not fully cooked. Goods such as breaded, battered and crumbed prawns, and highly processed prawns such as dumpling, dim sum or spring roll type products, which are not fully cooked are also included in this class of goods.

Paragraph (h) in section 6 lists live animals, and the remains of animals that have died in transit before arriving in Australian territory or on arrival in Australian territory as a class of category 1 goods. Live animals and the remains of animals that have died in transit before arriving in Australian territory or on arrival in Australian territory can carry exotic pests and diseases, including arthropods, nematodes, bacteria, fungi, viruses and viroids, as well as pose a risk of becoming an invasive species themselves while alive. As such, it is appropriate that this class of goods is listed as category 1 goods.

The class of goods covered by paragraph (h) does not include humans, dead or alive. Humans are expressly excluded from the definition of ‘animal’, as defined in section 9 of the Act, as they do not pose the same biosecurity risk. Animals that were dead before the journey to Australia commenced are also excluded from paragraph (h) and are not considered category 1 goods. This includes animals that have undergone a taxidermy process to be prepared,

preserved, stuffed or mounted. Animal parts, animal reproductive material and animal products are also not covered by the class of goods provided for by paragraph (h).

Paragraph (i) in section 6 provides that veterinary vaccines are a class of category 1 goods. Veterinary vaccines are products that when administered to the animal, provide, induce, or change an immune response to a target chemical or biological entity. As a fundamental component of their use, veterinary vaccines are delivered directly to susceptible animal species in the manner most likely to introduce efficient infection. This means there is a significantly high biosecurity risk associated with veterinary vaccines. As such, it is appropriate that this class of goods is listed as category 1 goods.

Section 7 – Category 2 goods

Section 7 provides for classes of goods that have been assessed to be category 2 goods for the purposes of determining infringement notice amounts under subsection 524(4) of the Act and regulations made for the purposes of that subsection (being subsection 88(2) of the Regulation). This section allows infringement notice amounts to reflect the biosecurity risk posed by goods and classes of goods that have been listed as category 2 goods in the Determination. Category 2 goods pose a high biosecurity risk when travellers fail to declare them upon arrival in Australia.

It is appropriate to issue an infringement notice for failing to declare these classes of goods as the failure to declare the goods has the effect of preventing a biosecurity officer from considering the high biosecurity risks posed by the goods. Declaring these goods would allow biosecurity officers to determine if the goods meet Australia's requirements under biosecurity legislation, which often include a phytosanitary certificate along with sampling and inspection. As such, it is appropriate that these classes of goods are listed as category 2 goods.

Section 7 provides that the following classes of goods are category 2 goods:

- a) fresh fruit;
- b) fresh vegetables;
- c) fresh fungi;
- d) fresh leaves;
- e) fresh herbs;
- f) fresh cut flowers;
- g) whole unprocessed seeds that are not intended for sowing.

Fresh fruit, fresh vegetables, fresh fungi, fresh leaves, fresh herbs, fresh cut flowers and whole unprocessed seeds that are not intended for sowing can harbour a range of pests and diseases, including but not limited to exotic fruit flies, citrus canker, Plum pox virus, Panama disease, citrus greening, zebra chip and fire blight. Pests such as brown marmorated stink bug may also be present on these horticultural produce goods.

These classes of goods cover whole and partial fresh horticultural produce (for example a whole fresh fruit, a whole fresh fruit that has had a bite taken out of it, or fresh fruit that has been sliced into pieces). Whole unprocessed seeds that are intended for sowing are more appropriately listed as a Category 1 class of goods, due to the increased likelihood of these goods being directly exposed to the environment and increasing the likelihood of pest

entering and establishing in Australian territory. These goods are therefore listed in section 6 of this Determination as a Category 1 class of goods.

Section 8 – Repeal

Section 8 provides that the Determination is repealed at the start of 1 January 2026. Subsection 524A(3) provides that the duration of the Determination must be no longer than 12 months. The *Biosecurity (2024 Infringement Notices) Determination 2023*, which the Determination replaces, is repealed at the start of 1 January 2025