



Migration Amendment (Biosecurity Contravention) Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated

26 October 2023

David Hurley
Governor-General

By His Excellency's Command

Andrew Giles
Minister for Immigration, Citizenship and Multicultural Affairs

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1 Name

This instrument is the *Migration Amendment (Biosecurity Contravention) Regulations 2023*.

2 Commencement

- (1) Each provision of this instrument 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. The whole of this instrument	The day after this instrument is registered.	1 November 2023

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Migration Act 1958*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Migration Regulations 1994

1 Paragraph 2.43(1)(s)

After “128(2),”, insert “186A(1),”.

2 In the appropriate position in Schedule 13

Insert:

Part 120—Amendment made by the Migration Amendment (Biosecurity Contravention) Regulations 2023

12001 Operation of amendment

The amendment made by Schedule 1 to the *Migration Amendment (Biosecurity Contravention) Regulations 2023* applies in relation to the cancellation of a visa if:

- (a) the visa was granted before, on or after the commencement of that Schedule; and
- (b) the contravention occurs on or after that commencement.

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration Amendment (Biosecurity Contravention) Regulations 2023

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

Subparagraph 116(1)(g) of the Migration Act provides that the Minister may cancel a visa if he or she is satisfied that a prescribed ground for cancelling a visa applies to the holder, except if there exists a prescribed circumstance in which a visa cannot be cancelled.

The *Migration Amendment (Biosecurity Contravention) Regulations 2023* (the Amendment Regulations) amends the *Migration Regulations 1994* (the Migration Regulations) to expand the grounds for the cancellation of visas where the Minister or a delegate reasonably believes that a visa holder has contravened provisions under the *Biosecurity Act 2015* (the Biosecurity Act), to include contravention of new subsection 186A(1) of the Biosecurity Act.

The Biosecurity Act provides the regulatory framework for the management of diseases and pests entering Australia that may cause harm to human, animal or plant health or the environment. Contraventions of the Biosecurity Act pose a serious threat to Australia's economy, agricultural sector, animal, plant, human health and the environment.

Under the *Migration Amendment (Biosecurity Contraventions and Importation of Objectionable Goods) Regulations 2019*, the cancellation ground under subparagraph 2.43(1)(s) was introduced. This ground gives the decision-maker the power to cancel a specified visa (visitor, student and temporary work visas) where it is reasonably believed that the holder has contravened subsections 126(2), 128(2), 532(1) or 533(1) of the Biosecurity Act. The purpose of this amendment was to strengthen compliance tools available to deter and respond to behaviour that is in contravention of Australia's biosecurity laws.

On 6 December 2022, the Biosecurity Act was amended to include new section 186A. New subsection 186A(1) provides that a person is liable to a civil penalty if:

- they bring or import conditionally non-prohibited goods into Australian territory; and
- a condition in relation to such goods has not been complied with; and
- the goods are concealed for the purpose of preventing the goods from being found, or preventing the true nature of the goods from being determined, by a biosecurity official.

The Amendment Regulations provide the Minister with a discretion to cancel the same specified visas in Australia in circumstances where it is reasonably believed that there has been an attempt to conceal goods for the purpose of preventing those goods from being found, or preventing the true nature of those goods from being determined by a biosecurity official **under new subsection 186A(1)**. In making a decision, the Minister or delegate will weigh up a number of factors including the seriousness of the breach and the consequences to the passenger. This aligns with the purpose of the *Migration Amendment (Biosecurity Contraventions and Importation of Objectionable Goods) Regulations 2019* to deter and respond to behaviour that contravenes Australia's biosecurity laws.

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by parliamentary enactment. It has been consistent practice for the Government of the day to provide for detailed visa settings in the Migration Regulations rather than in the Migration Act itself. The Migration Act expressly provides for these matters to be prescribed in regulations, as can be seen in the authorising provisions. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to effectively manage the operation of Australia's visa program and respond quickly to emerging needs.

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the statement is at [Attachment A](#).

The Office of Impact Analysis (OIA) has been consulted in relation to the regulatory impact of the amendments. The OIA has advised that an Impact Analysis is not required (OIA consultation reference OIA23-04954).

Consultation has been undertaken with the Department of Agriculture, Fisheries and Forestry. The consultation undertaken accords with section 17 of the *Legislation Act 2003* (the Legislation Act).

The amendments commence on the day after the Regulations are registered on the Federal Register of Legislation.

Further details of the Regulations are set out in [Attachment B](#).

The Regulations amend the Migration Regulations, which are exempt from sunseting under table item 38A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The Migration Regulations are exempt from sunseting on the basis that the repeal and remaking of the Migration Regulations:

- is unnecessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;
- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and

- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of the Legislation Act.

The Department follows standard practices to notify clients about amendments of the Regulations, including updating its website and notifying peak bodies.

The Migration Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Migration Amendment (Biosecurity Contravention) Regulations 2023

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Australian Government is committed to protecting the Australian community from biosecurity risks posed by travellers, including non-citizens, who bring goods that pose a biosecurity risk into Australian territory through airports and ports. The *Biosecurity Act 2015* (the Biosecurity Act) provides the regulatory framework for the management of diseases and pests entering Australia that may cause harm to human, animal or plant health or the environment. Contraventions of the Biosecurity Act pose a serious threat to Australia's economy, agricultural sector, animal, plant, human health and the environment.

The *Migration Act 1958* (the Migration Act) and the *Migration Regulations 1994* (the Migration Regulations) provide grounds for the discretionary cancellation of a non-citizen's visa in certain circumstances. Paragraph 2.43(1)(s) of the Migration Regulations prescribes grounds for cancellation of a visa under paragraph 116(1)(g) of the Migration Act for contraventions of certain provisions of the Biosecurity Act.

This provision allows the Minister (or delegate) to cancel certain listed types of temporary visa – visitor, student, working holiday, maritime crew and temporary work visas – if the visa holder is in Australia and has not been immigration cleared, and the Minister (or delegate) reasonably believes that the visa holder has contravened the following subsections of the Biosecurity Act:

- 126(2): not answering questions or providing information in relation to goods when requested by a biosecurity official
- 128(2): not following directions given by a biosecurity officer in relation to goods or baggage
- 532(1): knowingly providing false or misleading information to a biosecurity official or omitting information when asked
- 533(1): knowingly producing a false or misleading document, including an Incoming Passenger Card or Crew Declaration, to a biosecurity official.

On 6 December 2022, the Biosecurity Act was amended to include subsection 186A(1), which provides that a person is liable to a civil penalty if:

- they bring or import conditionally non-prohibited goods into Australian territory; and
- a condition in relation to such goods has not been complied with; and

- the goods are concealed for the purpose of preventing the goods from being found, or preventing the true nature of the goods from being determined by a biosecurity official.

Conditionally non-prohibited goods are those that must not be brought or imported into Australian territory unless certain specified conditions are complied with, including holding a valid import permit if required, so that the biosecurity risk associated with the goods is managed to an acceptable level. This may include goods such as meat or meat products, live animals and animal reproductive material, live plants, seeds, animal material and goods made of or containing animal material, plant products and goods containing or made of plants, infectious agents and microorganisms, and fungi and goods containing or made of fungi.

Concealing such goods prevents biosecurity officers from being able to assess the risk associated with the goods and, where necessary, take measures to manage any such biosecurity risks.

This Disallowable Legislative Instrument, the *Migration Amendment (Biosecurity Contravention) Regulations 2023* (the Amendment Regulations) amends paragraph 2.43(1)(s) of the Migration Regulations to expand the grounds for visa cancellation to include circumstances where the Minister reasonably believes that the holder of a specified visa has contravened subsection 186A(1) of the Biosecurity Act. The policy intention is to ensure that persons who are reasonably believed to have contravened that subsection are subject to at least the same potential consequences in relation to their visa status as a person who demonstrates less serious conduct by contravening any of the other already specified subsections of the Biosecurity Act. Although a contravention of these already specified provisions is regarded as serious, it is nevertheless considered less serious than a contravention of subsection 186A(1).

Given the very serious nature of attempting to conceal conditionally non-prohibited goods and the concomitant threat that action represents to Australia's unique biosecurity status, it is appropriate for migration officials to have the discretion to cancel the visa of persons who contravene this provision.

The biosecurity-related visa cancellation powers under the Migration Regulations are only engaged in circumstances where the Minister (or delegate) reasonably believes that a listed provision of the Biosecurity Act has been contravened by a holder of a specified visa. In most cases this will be where a biosecurity officer has issued that visa holder with an infringement notice under the Biosecurity Act. The existing biosecurity framework already contains provisions to issue an infringement notice to a person for contravention of Australian biosecurity requirements while the migration legislation sets out procedural fairness requirements relating to the consideration of visa cancellation under section 116 of the Migration Act.

The Government will undertake public messaging (including pre-departure education for students and temporary workers) about the possibility of visa cancellation for the contravention of biosecurity laws, the development of communication material for incoming passengers, and the development of robust procedural instructions and training for staff at ports of entry.

The Government's intention and expectation is that there will be an emphasis on education and counselling, with cancellation occurring only in repeat or egregious cases. This cautious and fair approach recognises that some of the affected visa holders, such as temporary workers and international students, may have existing substantial connections with Australia and Australians. Visa cancellation officers will be provided with policy guidance about the addition of subsection 186A(1) of the Biosecurity Act as a basis for considering cancellation of a person's visa.

A person whose visa has been cancelled on a range of grounds, including the biosecurity-related grounds, is prevented by Public Interest Criterion 4013 from being granted most types of further visa to travel to Australia for three years from the date of the cancellation decision, unless the Minister is satisfied there are compelling circumstances that affect the interests of Australia or compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

The amendment to the Migration Regulations made by the Amendment Regulations will enhance Australia's biosecurity regime to protect the Australian community and agricultural systems from biosecurity risks. Further, it will also ensure that holders of the specified visas who attempt to bring or import goods that threaten Australia's biosecurity by concealing those goods so that the risk level cannot be appropriately assessed by biosecurity officers, face at least the same consequences as visa holders who commit less serious breaches of the Biosecurity Act. The consequence of potential visa cancellation under the migration legislation, in addition to the penalties under the Biosecurity Act, is aimed at further deterring conduct that could result in significant and lasting impacts to Australia's biosecurity status, market access and economy.

Human rights implications

In most cases, a person who contravenes subsection 186A(1) of the Biosecurity Act will also have contravened one of the already-specified provisions of the Biosecurity Act and enlivened the discretionary visa cancellation power in paragraph 2.43(1)(s) of the Migration Regulations. However, in a case where the other provisions have not been contravened, and/or the visa may be more likely to be cancelled because of the more serious nature of the offence under subsection 186A(1), the addition of subsection 186A(1) as a basis for visa cancellation by the Amendment Regulations may engage the following rights:

- Expulsion of aliens – Article 13 of the *International Covenant on Civil and Political Rights* (ICCPR);
- Right to liberty – Article 9 of the ICCPR;
- *Non-refoulement* obligations – Articles 6 and 7 of the ICCPR and Article 3(1) of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT);
- Rights relating to respect for the family and consideration of the best interests of the child – Articles 17(1) and 23(1) of the ICCPR and Article 3(1) of the *Convention on the Rights of the Child* (CRC);
- Right to privacy – Article 17(1) of the ICCPR.

Expulsion of Aliens

Article 13 of the ICCPR states:

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be

represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Under international law, Australia has the right to take reasonable steps to control the entry and stay of aliens. Decisions to cancel a visa for contraventions of certain sections of the Biosecurity Act, including subsection 186A(1), will be made in accordance with the Migration Act and the Migration Regulations including paragraph 2.43(1)(s).

To the extent individuals may have their visa cancelled which would lead to their expulsion, the processes are in accordance with Article 13 in that, prior to a decision to cancel, the visa holder will be provided with adequate opportunity to put forward reasons as to why their visa should not be cancelled to a delegated officer. Procedural fairness provisions for visa cancellations under section 116 of the Migration Act are set out in Subdivision E of Division 3 of Part 2 of the Migration Act and will apply to these decisions, and judicial review in Australian courts is available. As such, this amendment does not infringe on Article 13 of the ICCPR.

Right to liberty

Article 9(1) of the ICCPR states:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

The purpose of the Migration Act, set out in section 4, is to ‘regulate, in the national interest, the coming into and presence in Australia of non-citizens’. A visa holder whose visa is liable for cancellation, including because they are reasonably believed to have contravened subsection 186A(1) of the Biosecurity Act, may be detained under section 192 of the Migration Act for up to four hours for the purposes of questioning that person about their visa and matters relevant to that visa. A person whose visa is cancelled becomes an ‘unlawful non-citizen’ under the Migration Act and is liable for removal under section 198 and/or immigration detention under section 189 of the Migration Act.

Individuals whose visas are cancelled on the biosecurity-related grounds, including where they have concealed goods that threaten Australia’s biosecurity, would be refused immigration clearance and returned to their country of origin or citizenship on the next available flight. In instances where it is not feasible to return the individual to their country of origin or citizenship straight away, the visa cancellation may result in immigration detention until it is reasonably practicable to remove the individual.

The cancellation of an individual’s visa in these circumstances is aimed at achieving a legitimate purpose – the protection of the Australian community from those persons who risk Australia’s unique biosecurity status by concealing goods and, in doing so, threaten Australia’s agricultural industry, economy and international trading reputation as well as the integrity of the migration program.

Decision-makers exercising the discretion to cancel a person's visa will be guided by comprehensive policy guidelines and will take into account the individual's circumstances, relevant international obligations, seriousness of the breach and the consequences for the individual. Procedural fairness is afforded in the visa cancellation process, the individual will be given the opportunity to provide reasons why their visa should not be cancelled. Judicial review of a decision to cancel will be available. As such, the visa cancellation decision, and any consequent detention are not arbitrary. Rather, they constitute a proportionate response to the individual circumstances of each case.

In light of the above considerations, to the extent the amendments may engage the right under Article 9 of the ICCPR, the proposed amendments are consistent with Article 9(1) of the ICCPR as any detention would be lawful and would not be arbitrary.

Non-refoulement obligations

Article 6 of the ICCPR states:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7 of the ICCPR states:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 3(1) of the CAT states:

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

A person whose visa is cancelled is liable for removal from Australia under the Migration Act. If the visa is cancelled on the basis of subsection 186A(1) of the Biosecurity Act, this may potentially engage Articles 6 and 7 of the ICCPR and Article 3(1) of the CAT.

Australia remains committed to its international obligations concerning *non-refoulement*. There is scope for these obligations to be considered as part of the decision to cancel a visa or through the protection visa process if the person makes a claim for Australia's protection from these kinds of harm. Individuals would not be subject to removal unless and until any claims for protection they may have, are assessed according to law. If *non-refoulement* obligations are found to be engaged in a protection visa process, subsection 197C(3) of the Migration Act ensures that the person would not be subject to removal in breach of those obligations. As such, this amendment does not affect Australia's commitment to complying with its *non-refoulement* obligations in relation to either Articles 6 and 7 of the ICCPR or Article 3 of the CAT.

Rights relating to family and children

Article 17(1) of the ICCPR states:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.'

Article 23(1) of the ICCPR states:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 3(1) of the CRC states:

In all actions concerning children, whether undertaken by a public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Articles 17 and 23 of the ICCPR prohibit arbitrary and unlawful interference with the family and set obligations regarding the protection of the family. Article 3 of the CRC provides that the best interests of the child are *a*, not *the*, primary consideration to be taken into account in decisions affecting a child and may be outweighed by countervailing primary considerations, including the safety of the Australian community.

This amendment engages these obligations in relation to a decision to cancel a visa, on the basis of a contravention of subsection 186A(1) of the Biosecurity Act, held by a child or where the decision would affect a child or other family members in Australia.

Temporary visa holders who are members of the family unit (including spouses, partners and children) of a person whose temporary visa is cancelled will in most cases have their visas consequentially cancelled by operation of law. This means that a family travelling together will usually be removed together if the primary holder has their visa cancelled and no separation of the family will occur.

Extending the visa cancellation grounds under paragraph 2.43(1)(s) to include visa holders who are reasonably believed to have contravened subsection 186A(1) of the Biosecurity Act may also engage these obligations if the detention or removal of a person from Australia whose visa has been cancelled on this basis separates them from family members who continue to have an entitlement to remain in Australia.

This extension of the grounds for cancellation under paragraph 2.43(1)(s) is necessary to protect the Australian community from biosecurity risks and to maintain Australia's unique biosecurity status. The impact of a cancellation decision on the visa holder's family members in Australia, including any children, will be appropriately weighed when making a discretionary cancellation decision. In particular, decision-makers treat the best interests of affected children in Australia as a primary consideration. While the best interests of the child and rights relating to family generally weigh against cancellation, they do not grant an absolute right to remain in Australia and must be considered in conjunction with the risk that contraventions of the Biosecurity Act

will have on Australia's community, its people, animal and plants, its agricultural industries and unique environment.

Therefore, any separation from family members in Australia caused by an unlawful non-citizen being detained or removed as a result of having their visa cancelled on the basis of being reasonably believed to have contravened subsection 186A(1) of the Biosecurity Act will not be inconsistent with Articles 17 and 23 of the ICCPR and Article 3 of the CRC as the decision to cancel the visa will appropriately weigh the impact of potential separation from family and the best interests of any children against the non-citizen's risk to the Australian community and the objectives of protecting Australia from biosecurity risks.

The amendment will also mean that persons who are reasonably believed to have contravened subsection 186A(1) of the Biosecurity Act and whose visa is cancelled on this basis will be subject to PIC 4013. This means that such persons will not be able to be granted most visas to travel to Australia for a period of 3 years unless there are certain compelling reasons to justify the grant of the visa. This exception allows for consideration of compassionate or compelling circumstances that affect the interests of an Australian citizen or permanent resident. Therefore this may include consideration of the interests of family members of the person who may be residing in Australia, and consideration of the best interests of an affected child as a primary consideration, in determining whether to grant the visa under the exception. As such, the amendment does not limit the consideration of the rights under Articles 17 and 23 of the ICCPR and Article 3 of the CRC.

Right to privacy

Article 17(1) of the ICCPR states:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.'

This amendment extends the circumstances in which personal information can be collected and disclosed by immigration, customs and biosecurity officers for the purpose of identifying non-citizens who may have contravened the Biosecurity Act. Information sharing and disclosure between Commonwealth officers is subject to the requirements of the *Privacy Act 1988* and will be guided operationally through the development of procedural instructions, including referral guidelines to protect the privacy rights of non-citizens.

Information collection, use and disclosure to allow consideration of the cancellation ground in this amendment is not arbitrary or unreasonable because it is in the public interest that information held by the Department of Home Affairs, including information provided to the Department by other agencies, be effectively utilised to arrive at lawful and merit-based decisions. Further, it supports the legitimate objective of upholding the migration and biosecurity frameworks as such information could be used to protect the safety of the community where a person has concealed goods that may pose a biosecurity risk.

The collection, use and disclosure of personal information, in accordance with the requirements of the *Privacy Act 1988*, for the purpose of identifying non-citizens who contravene the

Biosecurity Act, is reasonable and proportionate to achieve the intended operation of cancellation grounds for the purpose of protecting the Australian community. Any interference with the privacy of the person who has contravened the Biosecurity Act, in order to help identify them, would therefore not be unlawful or arbitrary under Article 17 of the ICCPR.

Conclusion

The amendment made by the Amendment Regulations is for the legitimate purpose of protecting the Australian community from the risk of harm posed by biosecurity threats. Therefore, the amendment is compatible with human rights as, to the extent it may limit some human rights, those limitations are reasonable, necessary and proportionate to its objective.

The Hon Andrew Giles MP
Minister for Immigration, Citizenship and Multicultural Affairs

Details of the *Migration Amendment (Biosecurity Contravention) Regulations 2023*

Section 1 - Name

This section provides that the name of the Regulations is the *Migration Amendment (Biosecurity Contravention) Regulations 2023*.

Section 2 - Commencement

This section provides that the Regulations commence on the day after the Regulations are registered on the Federal Register of Legislation.

Section 3 - Authority

This section provides that the Regulations are made under the *Migration Act 1958* (the Migration Act).

Section 4 - Schedules

This section provides for how the amendments made by the Regulations operate.

Schedule 1 – Amendments

Migration Regulations 1994

Item [1] - Paragraph 2.43(1)(s)

This item amends paragraph 2.43(1)(s) of Part 1 of the *Migration Regulations 1994* (the Migration Regulations) to insert a reference to subsection 186A(1) of the *Biosecurity Act 2015* (the Biosecurity Act). Subsection 186A(1) of the Biosecurity Act provides for a civil penalty for concealing conditionally non-prohibited goods when bringing or importing those goods into Australian territory.

Currently, paragraph 2.43(1)(s) of the Migration Regulations prescribes a ground for cancellation of a visa under paragraph 116(1)(g) of the Migration Act in circumstances where the Minister reasonably believes that a visa holder of a specified visa has contravened subsection 126(2), 128(2), 532(1) or 533(1) of the Biosecurity Act. These subsections provide for civil penalties for the failure of a person to provide required answers or information about goods; a failure to comply with a direction in relation to the movement of goods; the provision of false or misleading information; and the provision of a false or misleading document for the purpose of the Biosecurity Act.

The type of offending contemplated under subsection 186A(1) is considered to be more serious and egregious than conduct by a person who contravenes subsection 126(2), 128(2), 532(1) or 533(1) of the Biosecurity Act, which may currently lead to visa cancellation under the Migration Regulations.

The effect of the amendment is to enable the Minister or delegate to cancel a visa specified in paragraph 2.43(1)(s) of the Migration Regulations, if he or she reasonably believes that the visa holder has contravened subsection 186A(1) of the Biosecurity Act, and the visa holder is in Australia and has not been immigration cleared.

In making a decision whether to cancel a specified visa, the Minister or delegate will provide procedural fairness to the visa holder and will weigh up a number of factors, including the seriousness of the breach, the potential threat posed by the goods the person has sought to bring into Australian territory, the personal circumstances of the visa holder, and the consequences of visa cancellation for that person and others who may be affected. In accordance with the merits review entitlements under the Migration Act, there is no provision for merits review by the Administrative Appeals Tribunal (AAT) if the visa is cancelled in immigration clearance. This is because the purpose of visa cancellation in immigration clearance is to provide for the immediate removal of the person from Australia.

The reason for this amendment is to ensure that holders of specified visas who are reasonably believed to have contravened subsection 186A(1) of the Biosecurity Act are subject to the same potential consequences in relation to their visa status, as a person who demonstrates less serious conduct where it is reasonably believed they have contravened any of the other listed subsections of the Biosecurity Act in the Migration Regulations.

Item [2] - In the appropriate position in Schedule 13

This item inserts new Part 120 in Schedule 13 to the Migration Regulations. The purpose of Part 120 is to provide for the application of the amendments made by the Regulations.

Clause [12001] Operation of amendment

Clause 12001 provides that the amendments made by Schedule 1 to the amending Regulations apply in relation to the cancellation of a specified visa if the visa was granted, before, on or after the commencement of that Schedule, and the contravention of subsection 186A(1) of the Biosecurity Act occurs on or after that commencement.