



National Health Security Act 2007

No. 174, 2007

**An Act to provide for national health security, and
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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National Health Security Act 2007

No. 174, 2007

An Act to provide for national health security, and for related purposes

[Assented to 28 September 2007]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *National Health Security Act 2007*.

Section 2

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
Provision(s)	Commencement	Date/Details
1. Sections 1 to 5 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	28 September 2007
2. Part 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	28 March 2008
3. Part 3	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 18 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	31 January 2009 (<i>see</i> F2008L04297)
4. Part 4	The day on which this Act receives the Royal Assent.	28 September 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Definitions

(1) In this Act:

Australia, when used in a geographical sense, includes the external Territories.

Australian means an Australian citizen or a permanent resident.

Australian citizen means an individual who is an Australian citizen under the *Australian Citizenship Act 2007*.

biological agents includes:

- (a) bacteria and viruses that can spread rapidly; and
- (b) toxins derived from biological sources, including animals, plants and microbes.

business day means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

coronial inquiry means a coronial inquiry, coronial investigation or coronial inquest under a law of the Commonwealth, or of a State or Territory.

disease means an illness or medical condition (other than an injury), irrespective of origin or source, that presents or could present significant harm to humans.

dispose of a security-sensitive biological agent means the transfer or destruction of the security-sensitive biological agent.

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.

entity means any of the following:

- (a) an individual;
- (b) a body corporate;
- (c) an agency or instrumentality of the Commonwealth, a State or a Territory.

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event, for the purposes of Part 2, means:

- (a) an occurrence of disease, injury or death; or
- (b) an occurrence, including the release of a chemical, biological or radiological agent, that creates the potential for disease, injury or death.

evidential material means any of the following:

- (a) a thing with respect to which an offence against Part 3 of this Act, or the *Crimes (Biological Weapons) Act 1976*, has been committed or is suspected, on reasonable grounds, to have been committed;
- (b) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of any such offence;
- (c) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing any such offence.

exempt entity has the meaning given by section 40.

facility includes:

- (a) a building, or part of a building; and
- (b) a laboratory (including a mobile laboratory).

handling a security-sensitive biological agent includes:

- (a) receiving, holding, using and storing the security-sensitive biological agent; and
- (b) any operation incidental to, or arising out of, any of those operations.

Note 1: This meaning is affected by subsection 39(2).

Note 2: An entity that handles a security-sensitive biological agent only for the purpose of transporting it from one place to another place is exempt from the requirements of Division 5 of Part 3: see subsection 40(1).

inspector means a person appointed as an inspector under section 63.

intelligence agency means a Commonwealth government agency that has responsibility for intelligence gathering or security.

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: In 2007, the text of the International Health Regulations was accessible through the Australian Treaties Library on the AustLII Internet site (www.austlii.edu.au).

legitimate purpose, for an entity to handle a security-sensitive biological agent, has the meaning given by section 41.

List of Security-sensitive Biological Agents means the list established under section 31, as the list is in force from time to time.

monitoring warrant means a warrant issued under section 69.

National Focal Point has the meaning given by section 9.

National Health Security Agreement means the agreement entered into by the Minister under section 7, as the Agreement is in force from time to time.

National Notifiable Disease List means the list established under section 11, as the list is in force from time to time.

National Register means the National Register of Security-sensitive Biological Agents established under section 36, as the National Register is in force from time to time.

overseas mass casualty means an event occurring overseas, if:

- (a) more than one person (whether an Australian or otherwise):
 - (i) is affected by a disease, or is injured or dies; and
 - (ii) needs to be repatriated, identified or treated, or needs to be brought to Australia for treatment; and
- (b) a responsible Commonwealth, State or Territory body is involved in responding to the event.

permanent resident means a person who is, within the meaning of the *Migration Act 1958*, the holder of a permanent visa.

permissible purpose has the meaning given by section 8.

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

premises includes the following:

- (a) a facility;
- (b) a place (including an area of land);
- (c) any part of premises (including premises referred to in paragraphs (a) and (b)).

protected information:

- (a) for the purposes of Part 2—has the meaning given by section 18; and
- (b) for the purposes of Part 3—has the meaning given by section 84.

public health event of national significance means any of the following events:

- (a) one or more cases of a disease listed on the National Notifiable Disease List;
- (b) an urgent event;
- (c) an overseas mass casualty;
- (d) a public health risk (other than an event covered by paragraph (a), (b) or (c)).

public health observation means the monitoring of the health of a person for the purposes of determining the risk of transmission of a disease.

public health risk means an event:

- (a) that might adversely affect the health of human populations; and
- (b) that satisfies any one or more of the following conditions:
 - (i) the health effects of the event might spread within Australia;
 - (ii) the health effects of the event might spread between Australia and another country;
 - (iii) the health effects of the event might spread between 2 other countries;
 - (iv) the event might present a serious and direct danger.

register an entity means include the entity on the National Register in relation to one or more security-sensitive biological agents handled by the entity at one or more facilities.

registered entity means an entity that is registered under section 44 or 47.

reportable event means an event referred to in subsection 48(1).

reportable quantity, in relation to a toxin included in the List of Security-sensitive Biological Agents, means the quantity (if any) specified in the list as the reportable quantity of that toxin.

responsible Commonwealth, State or Territory body, when used in a provision of Part 2, means a body that is determined under subsection (2) to be a responsible Commonwealth, State or Territory body for the purposes of the provision of Part 2.

reviewable decision, for the purposes of Division 8 of Part 3, has the meaning given by section 80.

Secretary means the Secretary of the Department.

security-sensitive biological agent means a biological agent that is included in the List of Security-sensitive Biological Agents.

SSBA means security-sensitive biological agent.

SSBA Standards means the standards determined by the Minister under section 35.

State or Territory Health Minister means:

- (a) the Minister of a State; or
- (b) the Minister of the Australian Capital Territory; or
- (c) the Minister of the Northern Territory; or
- (d) in relation to Norfolk Island—the executive member (within the meaning of the *Norfolk Island Act 1979*);

who is responsible, or principally responsible, for the administration of matters relating to health in the State, the Australian Capital Territory, the Northern Territory or Norfolk Island, as the case may be.

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State Party means a State that is a signatory to the International Health Regulations.

traveller means a person undertaking a voyage in which the person enters, or will enter, a country other than the country from which the person began the voyage.

urgent event means an event:

- (a) that causes, or creates the potential for, levels of disease, injury or death above the levels that would otherwise be expected for the time and place where the event occurs; and
- (b) in respect of which any of the following applies:
 - (i) the event has or might have a serious impact on public health;
 - (ii) in the case of a disease—the event is unusual or unexpected, and has a high potential to spread (whether within Australia or between Australia and another country);
 - (iii) otherwise—the event is unusual or unexpected, and the health effects of the event have a high potential to spread (whether within Australia or between Australia and another country).

Note 1: For examples of events that might have a serious impact on public health, see the examples under question I of Annex 2 of the International Health Regulations (“Is the public health impact of the event serious?”).

Note 2: For examples of events that are unusual or unexpected, see the examples under question II of Annex 2 of the International Health Regulations (“Is the event unusual or unexpected?”).

- (2) The Minister may, by legislative instrument, determine any of the following bodies to be a responsible Commonwealth, State or Territory body for the purposes of a provision of Part 2:
 - (a) one or more bodies of the Commonwealth;
 - (b) one or more bodies, nominated by a State or Territory Health Minister, of each State, the Australian Capital Territory, the Northern Territory and Norfolk Island.

4 Binding the Crown

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

5 Application of laws to external Territories

This Act extends to every external Territory.

Part 2—Public health surveillance

Division 1—Objects of Part

6 Objects of Part

The objects of this Part are:

- (a) to provide a national system of public health surveillance to enhance the capacity of the Commonwealth and the States and Territories to identify, and respond to, public health events of national significance which include:
 - (i) the occurrence of certain communicable diseases; or
 - (ii) certain releases of chemical, biological or radiological agents; or
 - (iii) the occurrence of public health risks; or
 - (iv) the occurrence of overseas mass casualties; and
- (b) to provide for the sharing of information with:
 - (i) the World Health Organization; and
 - (ii) countries affected by an event relating to public health or an overseas mass casualty; and
- (c) to support the Commonwealth and the States and Territories in giving effect to the International Health Regulations (other than as mentioned in paragraphs (a) and (b)).

Division 2—National Health Security Agreement

7 National Health Security Agreement

- (1) The Minister, on behalf of the Commonwealth, may enter into an agreement with the States, the Australian Capital Territory, the Northern Territory and Norfolk Island for any one or more of the following purposes:
- (a) providing for the sharing of information between the Commonwealth, the States and the Territories in relation to communicable diseases, in order to enhance:
 - (i) the understanding of the epidemiology of those diseases; and
 - (ii) the understanding of the threats of those diseases; and
 - (iii) the ability within Australia to respond to those diseases;
 - (b) formalising and enhancing consultation between the Commonwealth, the States and the Territories in relation to public health events of national significance;
 - (c) enhancing the ability within Australia to identify and respond quickly to public health events of national significance;
 - (d) facilitating the monitoring of public health events of national significance within Australia.
- (2) Subsection (1) does not, by implication, limit the executive power of the Commonwealth to enter into agreements.

Note: This subsection allows the National Health Security Agreement to cover purposes other than those mentioned in subsection (1).

Division 3—Permissible purposes

8 Permissible purposes

For the purposes of this Part, each of the following is a *permissible purpose*:

- (a) preventing, protecting against, controlling or responding to a public health event of national significance (other than an overseas mass casualty);
- (b) giving effect to the International Health Regulations (other than as mentioned in paragraph (a));
- (c) if an Australian suffers from a disease, or is injured or dies, as a result of an overseas mass casualty—facilitating:
 - (i) the identification of the Australian (whether in Australia or overseas); and
 - (ii) the repatriation of the Australian to Australia; and
 - (iii) the treatment of the Australian (whether in Australia or overseas);
- (d) if a person who is not an Australian suffers from a disease, or is injured or dies, as a result of an overseas mass casualty—facilitating:
 - (i) the identification of the person (whether within Australia or overseas); and
 - (ii) bringing the person to Australia for treatment; and
 - (iii) the treatment in Australia of the person.

Division 4—National Focal Point

9 Meaning of *National Focal Point*

The *National Focal Point* means:

- (a) the Secretary; and
- (b) the persons, offices or positions (if any) nominated in writing by the Secretary for the purposes of this section.

10 Functions of the National Focal Point

The functions of the National Focal Point are the following:

- (a) to liaise with responsible Commonwealth, State or Territory bodies in relation to public health events of national significance;
- (b) to liaise with and be accessible to the World Health Organization and States Parties at all times for the purposes of giving effect to the International Health Regulations;
- (c) to liaise with responsible Commonwealth, State or Territory bodies for the purposes of giving effect to the International Health Regulations;
- (d) any other functions given to the National Focal Point under:
 - (i) this Act or the regulations; or
 - (ii) any other Act.

Division 5—National Notifiable Disease List

11 National Notifiable Disease List

- (1) The Minister must, by legislative instrument, establish a list of diseases, to be called the National Notifiable Disease List.
- (2) The Minister may include a disease in the list if the Minister considers that an outbreak of the disease would be a public health risk.
- (3) The Minister may vary the list by:
 - (a) adding a disease if the Minister considers that an outbreak of the disease would be a public health risk; or
 - (b) removing a disease if the Minister no longer considers that an outbreak of the disease would be a public health risk.
- (4) A variation under subsection (3) is a legislative instrument.
- (5) In making or varying the list, the Minister must consult:
 - (a) the Commonwealth Chief Medical Officer; and
 - (b) each State or Territory Health Minister.

12 Temporary additions to the National Notifiable Disease List

- (1) In addition to the Minister's power, under subsection 11(3), to vary the National Notifiable Disease List, the Minister or the Commonwealth Chief Medical Officer may vary the list by adding a disease if the Minister or the Commonwealth Chief Medical Officer (as the case requires) considers that an outbreak of the disease would be a public health risk.
- (2) A variation under subsection (1) is a legislative instrument.
- (3) If, under subsection (1), the Minister varies the list, the Minister is not required to consult:
 - (a) the Commonwealth Chief Medical Officer; or
 - (b) any State or Territory Health Minister.

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- (4) At the end of the period of 6 months after the list is varied under subsection (1), the variation ceases to have effect unless the Minister has made a determination under subsection (6).
- (5) A particular disease may not be added to the list under subsection (1) more than once.
- (6) After consulting:
 - (a) the Commonwealth Chief Medical Officer; and
 - (b) each State or Territory Health Minister;the Minister may determine that the variation continues to have effect if the Minister considers that an outbreak of the disease that is included in the variation would be a public health risk.
- (7) A determination under subsection (6) is a legislative instrument.

Part 2 Public health surveillance

Division 6 Notifying, sharing information and liaising with responsible Commonwealth, State or Territory bodies in relation to public health events of national significance etc.

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Division 6—Notifying, sharing information and liaising with responsible Commonwealth, State or Territory bodies in relation to public health events of national significance etc.

13 Notifying, sharing information and liaising with responsible Commonwealth, State or Territory bodies in relation to public health events of national significance

Public health events of national significance (other than overseas mass casualties)

- (1) The Minister may take action under subsection (2) if:
 - (a) a responsible Commonwealth, State or Territory body gives the National Focal Point information relating to a public health event of national significance (other than an overseas mass casualty); and
 - (b) the Minister considers that it is appropriate to take action under subsection (2) for a permissible purpose referred to in paragraph 8(a) or (b).
- (2) The Minister may:
 - (a) notify any responsible Commonwealth, State or Territory body that is affected, or might be affected, by the event; and
 - (b) give such bodies any relevant information that is available to the Minister in relation to the event; and
 - (c) liaise with such bodies in relation to the event.

Overseas mass casualties

- (3) The Minister may take action under subsection (4) if:
 - (a) a responsible Commonwealth, State or Territory body gives the National Focal Point information relating to an overseas mass casualty; and

-
- (b) the Minister considers that it is appropriate to take action under subsection (4) for a permissible purpose referred to in paragraph 8(c) or (d).
 - (4) The Minister may:
 - (a) notify any responsible Commonwealth, State or Territory body that is affected, or might be affected, by the overseas mass casualty; and
 - (b) give such bodies any relevant information that is available to the Minister in relation to the overseas mass casualty; and
 - (c) liaise with such bodies in relation to the overseas mass casualty.

14 Receipt of information or recommendation from the World Health Organization

- (1) This section applies if the Minister receives:
 - (a) a recommendation from the World Health Organization under Part III of the International Health Regulations; or
 - (b) information provided by the World Health Organization, or any other State Party, under the International Health Regulations.
- (2) After receiving the recommendation or information, the Minister may:
 - (a) inform one or more responsible Commonwealth, State or Territory bodies of the recommendation; or
 - (b) give one or more responsible Commonwealth, State or Territory bodies the information.
- (3) The Minister may give to the World Health Organization, or any other State Party, any additional information that is available to the Minister in relation to the recommendation or the information provided by the World Health Organization.

Note: If the Minister discloses personal information to a State Party, the Minister must also give a notice specifying the purposes for which the information may be used: see subsection 27(1).

Part 2 Public health surveillance

Division 6 Notifying, sharing information and liaising with responsible Commonwealth, State or Territory bodies in relation to public health events of national significance etc.

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15 Non-personal information

This Division does not prevent the Minister from dealing with information:

- (a) that is referred to in this Division; but
 - (b) that is not personal information;
- in a manner other than the manner set out in this Part.

Division 7—Public health observation

16 National Focal Point notified of incoming traveller who is under public health observation

If the National Focal Point is notified that a traveller who has entered, or will enter, Australia is under public health observation, then:

- (a) the National Focal Point must notify a responsible Commonwealth, State or Territory body to identify and make contact with the traveller; and
- (b) the body must identify and make contact with the traveller.

17 Incoming travellers who are placed under public health observation

- (1) This section applies if:
 - (a) a traveller enters Australia; and
 - (b) a responsible Commonwealth, State or Territory body places the traveller under public health observation; and
 - (c) the traveller is in transit while in Australia; and
 - (d) after leaving Australia, the traveller is travelling to a port or airport outside Australia.
- (2) The responsible Commonwealth, State or Territory body must notify the National Focal Point of the following information:
 - (a) the name, address and date of birth of the person;
 - (b) that the person is under public health observation;
 - (c) the reason for the person being under public health observation;
 - (d) the name of the ship or flight on which the traveller is travelling after leaving Australia, and the expected time that the ship or flight will arrive at the first port or airport outside Australia;
 - (e) the name of the ship or flight on which the person left the last port or airport outside Australia, and the time that the ship or flight left that port or airport;

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- (f) any other information prescribed by the regulations for the purposes of this section.
- (3) If the person's first port or airport of arrival outside Australia is in a State Party, the National Focal Point must notify one of the following entities of the information referred to in subsection (2):
- (a) the first port or airport outside Australia;
 - (b) if that is not reasonably practicable—the State Party's National IHR Focal Point (within the meaning of the International Health Regulations).
- Note: The National Focal Point must also give a notice specifying the purposes for which the information referred to in subsection (2) may be used: see subsection 27(1).
- (4) If the person's first port or airport of arrival outside Australia is not in a State Party, the National Focal Point may notify that port or airport of the information referred to in subsection (2).
- Note: The National Focal Point must also give a notice specifying the purposes for which the information referred to in subsection (2) may be used: see subsection 27(3).
- (5) The National Focal Point may notify the last port or airport outside Australia that the person left before arriving in Australia of the information referred to in subsection (2).

Division 8—Confidentiality of information

18 Definition of *protected information* for the purposes of Part 2

In this Part:

protected information is personal information that:

- (a) is obtained under, or in accordance with, this Part by the Minister or the National Focal Point; or
- (b) is obtained under, or in accordance with, this Part directly from the Minister or the National Focal Point; or
- (c) is derived from a record of the information made under, or in accordance with, this Part by the Minister or the National Focal Point; or
- (d) is derived from a disclosure or use of the information under, or in accordance with, this Part by the Minister or the National Focal Point.

19 Authorisation to use information for permissible purposes

Use by persons in performing functions or duties or exercising powers

- (1) A person may do one or both of the following, in the performance of the person's functions or duties, or the exercise of the person's powers, for a permissible purpose:
 - (a) disclose information (including personal information), on behalf of a responsible Commonwealth, State or Territory body, to the National Focal Point;
 - (b) make a record of, or disclose or otherwise use, protected information in accordance with Division 6 or 7 of this Part.

Note: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

- (2) A person may make a record of, or disclose or otherwise use, protected information if:
 - (a) the person is:

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- (i) an officer or employee of the Commonwealth, a State, the Australian Capital Territory, the Northern Territory or Norfolk Island; or
 - (ii) an officer or employee of an agency or instrumentality of the Commonwealth, a State, the Australian Capital Territory, the Northern Territory or Norfolk Island; or
 - (iii) a person engaged by the Commonwealth, a State, the Australian Capital Territory, the Northern Territory or Norfolk Island, to perform public health work; or
 - (iv) a person engaged by an agency or instrumentality of the Commonwealth, a State, the Australian Capital Territory, the Northern Territory or Norfolk Island, to perform public health work; and
- (b) the person makes the record of, or discloses or otherwise uses, the information:
- (i) in the performance of the person's functions or duties, or the exercise of the person's powers; and
 - (ii) for a permissible purpose.

Note: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

- (3) In determining the scope of a person's functions, duties or powers for the purposes of subsection (1) or (2), disregard any provision of an enactment that restricts or prohibits the making of records, or the disclosure or use, of information.

Use by Minister

- (4) The Minister may:
- (a) do any of following for the purpose of giving effect to the International Health Regulations:
 - (i) disclose protected information to the World Health Organization or a State Party;
 - (ii) make a record of or use protected information; and
 - (b) do any of the following for the purpose of assisting other countries to prevent, protect against, control or respond to an event relating to public health:

- (i) disclose protected information to a country that is affected or might be affected by the event;
- (ii) make a record of or use protected information for the purpose of determining whether a country is affected by the event.

Note 1: Examples of where Australia may disclose information to the World Health Organization include a disclosure for the purposes of Articles 6 to 10 of the International Health Regulations. For example, for the purposes of Articles 6, 7 and 10 of those Regulations, Australia may urgently need to notify the World Health Organization of, and give information about, events which might constitute a public health emergency of international concern.

Note 2: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

Note 3: If the Minister discloses personal information to another country, the Minister must also give a notice specifying the purposes for which the information may be used: see section 27.

Use by other persons

- (5) The Minister 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.
- (6) A person who is authorised to make a record of, or disclose or otherwise use, protected information under subsection (5) 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 other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

Use under this section not an offence under other laws

- (7) A person does not commit an offence, and is not liable to any penalty, under the provisions of any other enactment of the Commonwealth, or an enactment of a State or a Territory, as a

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result of the person making a record of, or disclosing or using, information in accordance with subsection (1), (2), (4) or (6).

Use under this section does not result in liability for civil proceedings

- (8) 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 subsection (1), (2), (4) or (6).

Use under this section does not contravene medical standards

- (9) 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 subsection (1), (2), (4) or (6).

20 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: The *National Security Information (Criminal and Civil Proceedings) Act 2004* may apply to proceedings under this Part.

Note 2: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

- (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 other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

21 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 19 or 20.

Penalty: Imprisonment for 2 years.

Note: For defences to this offence, see sections 22 to 26.

22 Defence for use of information in good faith

Section 21 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 Part on behalf of a responsible Commonwealth, State or Territory body; or
 - (ii) in exercising, or purportedly exercising, his or her powers under this Part on behalf of a responsible Commonwealth, State or Territory body.

Note: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the *Criminal Code*.

23 Defence for use of information also received from another source and use of information by prescribed agencies

Use if information is also received from another source

- (1) Section 21 does not apply if:
 - (a) a person (the **first person**) obtains protected information for a permissible purpose; and
 - (b) the first person is:

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- (i) an officer or employee of the Commonwealth, a State, the Australian Capital Territory, the Northern Territory or Norfolk Island; or
 - (ii) an officer or employee of an agency or instrumentality of the Commonwealth, a State, the Australian Capital Territory, the Northern Territory or Norfolk Island; or
 - (iii) a person engaged by the Commonwealth, a State, the Australian Capital Territory, the Northern Territory or Norfolk Island, to perform public health work; or
 - (iv) a person engaged by an agency or instrumentality of the Commonwealth, a State, the Australian Capital Territory, the Northern Territory or Norfolk Island, to perform public health work; and
- (c) the first person also obtains the information, or substantially similar information, from another person; and
 - (d) after obtaining the information as mentioned 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:
 - (i) another enactment of the Commonwealth; or
 - (ii) an enactment of the State or the Territory in relation to which the person is an officer or employee, or is engaged to perform public health work.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

Use by intelligence agencies

- (2) Section 21 does not apply if:
 - (a) a person obtains protected information; and
 - (b) 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: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (3) Section 21 does not apply if:

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- (a) a person obtains protected information in accordance with a disclosure under 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 mentioned in paragraph (2)(b).

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

- (4) Section 21 does not apply if:
 - (a) a person obtains protected information in accordance with a disclosure under 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 prescribed purpose.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

24 Defence for use of information required by another law

Section 21 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; and
- (c) the record, disclosure or use is required under another enactment of the Commonwealth, or of a State or Territory.

Note: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the *Criminal Code*.

25 Defence for disclosure to person to whom information relates or if person to whom information relates consents

Disclosure to person to whom information relates

- (1) Section 21 does not apply if:

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- (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 matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

- (2) If subsection (1) applies in respect of information, then section 21 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).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Consent to disclosure etc. of information

- (3) Section 21 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 matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

26 Defence for disclosure to person who provided the information

Section 21 does not apply if:

- (a) a person obtains protected information from another person; and
- (b) the person discloses that information to the other person.

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Note: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the *Criminal Code*.

Division 9—Miscellaneous

27 Notice to other countries about further use of information

- (1) If, under Division 6, 7 or 8, the Minister or the National Focal Point gives personal information to a State Party for the purposes of giving effect to the International Health Regulations, the Minister or the National Focal Point must give the State Party, at the same time as giving the information, a written notice specifying that a record may be made of the information, or the information may be used or disclosed, only for the purposes of, and subject to the requirements of Article 45 of, the International Health Regulations.
- (2) If, under Division 8, the Minister gives personal information to a State Party but not for the purposes of giving effect to the International Health Regulations, the Minister must give the State Party, at the same time as giving the information, a written notice specifying the purposes for which:
 - (a) a record may be made of the information; or
 - (b) the information may be used or disclosed.
- (3) If, under Division 7 or 8, the Minister or the National Focal Point gives personal information to a country that is not a State Party, the Minister or the National Focal Point must give the country, at the same time as giving the information, a written notice specifying the purposes for which:
 - (a) a record may be made of the information; or
 - (b) the information may be used or disclosed.
- (4) To avoid doubt, personal information is given to another country if the information is given to a port or airport in the other country or to the other country's National IHR Focal Point (within the meaning of the International Health Regulations).

28 Delegation

- (1) The Minister may delegate any of his or her functions or powers under this Part to an SES employee, or an acting SES employee, of the Department.
- (2) In performing a delegated function or exercising a delegated power, a delegate must comply with any written directions of the Minister.

29 Annual report

- (1) The Secretary must, as soon as practicable after 30 June in each year, prepare a report on the use, by the Commonwealth, of protected information (within the meaning of section 18) during the previous 12 months.
- (2) The report must be included in the annual report of the Department.

Part 3—Regulation of security-sensitive biological agents

Division 1—Preliminary

30 Object of Part

- (1) The object of this Part is to give effect to Australia's obligations to establish controls for the security of certain biological agents that could be used as weapons.
- (2) To achieve this object, this Part provides for:
 - (a) the collection, and recording on a national register, of information about the nature and location of security-sensitive biological agents legitimately handled by entities in Australia; and
 - (b) requirements to be complied with for the secure handling of security-sensitive biological agents; and
 - (c) monitoring of compliance with reporting and handling requirements through an inspection program; and
 - (d) restrictions in relation to the handling of security-sensitive biological agents.

Division 2—The List of Security-sensitive Biological Agents

31 Establishment of the List of Security-sensitive Biological Agents

- (1) The Minister must establish a list of biological agents that the Minister considers to be of security concern to Australia. The list is to be called the List of Security-sensitive Biological Agents.
- (2) Without limiting subsection (1), the Minister may consider a biological agent to be of security concern to Australia if the biological agent could be developed, produced, stockpiled, acquired or retained in types and quantities that could allow the biological agent to be used as a weapon.
- (3) If the Minister includes a toxin in the list, the Minister may also specify in the list a quantity (the *reportable quantity*) of that toxin.
- (4) The list is not a legislative instrument.

32 Variation of the List of Security-sensitive Biological Agents

- (1) The Minister may, in writing, vary the List of Security-sensitive Biological Agents by:
 - (a) including a biological agent and, if applicable, a reportable quantity of that agent in the list if the Minister considers the biological agent to be of security concern to Australia; or
 - (b) removing a biological agent and, if applicable, a reportable quantity of that agent from the list if the Minister no longer considers the biological agent to be of security concern to Australia; or
 - (c) changing the reportable quantity of a biological agent in the list; or
 - (d) correcting an inaccuracy.
- (2) An instrument varying the List of Security-sensitive Biological Agents is not a legislative instrument.

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33 Minister must obtain and have regard to expert advice

- (1) The Minister must not include a biological agent, or a reportable quantity of a biological agent, in the List of Security-sensitive Biological Agents, or otherwise vary the list, unless:
 - (a) the Minister has obtained advice from:
 - (i) an agency or instrumentality of the Commonwealth that has responsibility for obtaining and assessing information about the risks and threats posed by biological agents that may be of security concern to Australia; and
 - (ii) persons with scientific or technical knowledge of biological agents that may be of security concern to Australia; and
 - (b) the Minister has sought advice from the States, the Australian Capital Territory and the Northern Territory.
- (2) To avoid doubt, the persons referred to in subparagraph (1)(a)(ii) may be officers or employees of an agency or instrumentality of the Commonwealth referred to in subparagraph (1)(a)(i).
- (3) The Minister must have regard to advice received under subsection (1).

34 List to be available on the Department's website

The Secretary is to ensure that an up-to-date copy of the List of Security-sensitive Biological Agents is available on the Department's website.

Division 3—Standards relating to security-sensitive biological agents

35 Minister may determine standards relating to security-sensitive biological agents

- (1) The Minister may, by legislative instrument, determine standards (*SSBA Standards*) relating to security-sensitive biological agents.

Note: SSBA Standards must be complied with by entities that handle security-sensitive biological agents: see section 56.

- (2) Without limiting subsection (1), a standard may set out requirements relating to any of the following:
- (a) the storage of security-sensitive biological agents;
 - (b) the security status of individuals who are entitled to handle or dispose of security-sensitive biological agents;
 - (c) the transport of security-sensitive biological agents.
- (3) A standard may set out different requirements to be complied with in respect of different security-sensitive biological agents.
- (4) The Minister must not determine a standard unless the standard has been developed in consultation with:
- (a) persons with scientific or technical knowledge in relation to the security of biological agents; and
 - (b) the States, the Australian Capital Territory and the Northern Territory.
- (5) Subsection (4) does not prevent the Minister from consulting any other person who the Minister considers may assist the Minister in developing a standard.

Division 4—The National Register

36 National Register of Security-sensitive Biological Agents

- (1) There is to be a Register called the National Register of Security-sensitive Biological Agents.
- (2) The National Register is to be maintained in an up-to-date form by the Secretary.
- (3) The National Register may be kept in a computerised form.

Note: Information included on the National Register must not be disclosed except in accordance with Division 9.

37 Content of National Register

If the Secretary decides, under section 44 or 47, to register an entity in relation to one or more security-sensitive biological agents handled by the entity at one or more facilities, the Secretary must include the following particulars in the National Register:

- (a) the name of the entity;
- (b) the name and address of each facility where the entity handles security-sensitive biological agents;
- (c) the name of each security-sensitive biological agent handled by the entity at each facility;
- (d) the purpose for which each such security-sensitive biological agent is handled by the entity;
- (e) if the decision is made under subsection 47(2) (which provides for registration on a temporary basis)—a statement to this effect;
- (f) such other particulars as are prescribed by the regulations.

38 Variation of the National Register

- (1) The Secretary must vary the National Register to take account of:
 - (a) decisions made by the Secretary under section 47, 49 or 52 in relation to a registered entity; and

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- (b) any disposal of the entire holdings of a security-sensitive biological agent that is included on the National Register in relation to a registered entity and a facility; and
 - (c) any loss or theft of a security-sensitive biological agent that is included on the National Register in relation to a registered entity and a facility.
- (2) The Secretary may vary the particulars included in the National Register to correct an inaccuracy.

Division 5—Requirements for entities that handle security-sensitive biological agents

Subdivision A—Application and definitions

39 Application of Division

- (1) This Division applies to an entity if:
 - (a) the entity handles one or more security-sensitive biological agents at one or more facilities; and
 - (b) the entity is not an exempt entity.
- (2) If a security-sensitive biological agent is a toxin in relation to which a reportable quantity is specified in the List of Security-sensitive Biological Agents, then, for the purposes of this Division, an entity does not handle that toxin at a facility unless the entity handles at that facility at least the reportable quantity of that toxin.

40 Meaning of *exempt entity*

- (1) An entity that handles one or more security-sensitive biological agents at a facility is an *exempt entity* if:
 - (a) the entity handles the security-sensitive biological agents only for the purpose of transporting them from one place to another place; or
 - (b) the entity is an entity, or a kind of entity, prescribed by the regulations to be an exempt entity.

Note: Entities that handle security-sensitive biological agents only for the purpose of transporting them from one place to another place must comply with Commonwealth, State and Territory laws relating to the transport of dangerous goods.

- (2) Regulations under paragraph (1)(b) may be expressed to exempt:
 - (a) an entity, or a kind of entity, in relation to all security-sensitive biological agents handled by the entity or kind of entity; or

- (b) an entity, or a kind of entity, in relation to a specified security-sensitive biological agent, or a specified class of security-sensitive biological agents, handled by the entity or kind of entity.
- (3) Without limiting the way in which a class may be described for the purposes of paragraph (2)(b), the class may be described by reference to a particular facility.

41 Meaning of *legitimate purpose*

- (1) For the purposes of this Part, each of the following is a ***legitimate purpose*** for an entity to handle a security-sensitive biological agent:
 - (a) to carry out scientific or medical work with the security-sensitive biological agent:
 - (i) to develop or produce a vaccine or treatment for it; or
 - (ii) to better understand a disease it causes;
 - (b) in relation to a security-sensitive biological agent that is a toxin—to carry out scientific or medical work in relation to the applications of the toxin (for example, in treating cancer or, in the case of Botox (botulinum toxin), for medical or cosmetic use);
 - (c) to carry out diagnostic analysis of:
 - (i) samples infected with a security-sensitive biological agent; or
 - (ii) samples contaminated with a toxin;but only if the analysis is carried out at a veterinary, diagnostic or pathology laboratory;
 - (d) to carry out research that the Secretary considers is responsible and legitimate;
 - (e) to carry out forensic procedures in relation to the security-sensitive biological agent for law enforcement purposes;
 - (f) if the entity is an agency or instrumentality of the Commonwealth, a State or a Territory that is responsible for testing or carrying out other activities in relation to the security-sensitive biological agent—to carry out that testing

Part 3 Regulation of security-sensitive biological agents

Division 5 Requirements for entities that handle security-sensitive biological agents

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or those other activities in relation to the security-sensitive biological agent;

- (g) any other purpose determined by the Minister, by legislative instrument, to be a legitimate purpose.
- (2) The Secretary must consult with persons with scientific or technical knowledge in relation to security-sensitive biological agents before making a decision under paragraph (1)(d). The Secretary must have regard to any advice given by the persons consulted.
- (3) Subsection (2) does not prevent the Secretary from consulting any other person who the Secretary considers may assist the Secretary in making a decision under paragraph (1)(d).
- (4) The Minister must not make a determination under paragraph (1)(g) unless the Minister has consulted with:
- (a) persons with scientific or technical knowledge in relation to security-sensitive biological agents; and
 - (b) the States, the Australian Capital Territory and the Northern Territory.
- (5) Subsection (4) does not prevent the Minister from consulting any other person who the Minister considers may assist the Minister in relation to a determination under paragraph (1)(g).
- (6) The Minister must have regard to any advice received under subsection (4).

Subdivision B—Reporting requirements

42 Entity that handles security-sensitive biological agents must give a report to the Secretary

- (1) An entity to which this Division applies (other than a registered entity) must give a report that complies with subsection (3) to the Secretary:
- (a) within 2 business days after the entity starts to handle a security-sensitive biological agent; or

- (b) if a longer period is specified in a written notice given to the entity by the Secretary—within that longer period.

Note 1: Failure to give a report is an offence: see section 43.

Note 2: Section 55 deals with the application of the reporting requirements in relation to individuals.

- (2) For the purposes of this section, an entity that, at the commencement of this section, is handling one or more security-sensitive biological agents, is taken to start to handle those security-sensitive biological agents at the end of the period of one month after the commencement of this section.
- (3) A report given by an entity under subsection (1):
- (a) must be in a form approved by the Secretary; and
 - (b) must contain the following information:
 - (i) the name of the entity;
 - (ii) the name and address of each facility where the entity handles a security-sensitive biological agent;
 - (iii) the name of each security-sensitive biological agent handled at each facility;
 - (iv) the purpose for which each security-sensitive biological agent is handled;
- Note: Section 41 sets out the purposes that are legitimate purposes for an entity to handle a security-sensitive biological agent.
- (v) any other information required by the approved form; and
 - (c) must state that the entity is complying with the SSBA Standards.
- (4) Subsection (1) does not apply in the circumstances (if any) prescribed by the regulations.

43 Offence—failure to give a report to the Secretary

- (1) An entity commits an offence if:
- (a) the entity is required to give a report to the Secretary under subsection 42(1); and
 - (b) the entity does not give the report to the Secretary as required by that subsection.

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Penalty: 500 penalty units.

Note 1: If the entity is a body corporate, the maximum penalty that may be imposed is 2,500 penalty units: see subsection 4B(3) of the *Crimes Act 1914*.

Note 2: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

- (2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

44 Secretary must consider report and decide whether or not to include entity on the National Register

- (1) If the Secretary receives a report from an entity under section 42, the Secretary must decide whether or not to register the entity in relation to any or all of the security-sensitive biological agents and facilities specified in the report.
- (2) For the purpose of making a decision under subsection (1), the Secretary may, by written notice to the entity, do either or both of the following:
- (a) request the entity to provide such further information as the Secretary requires within the period specified in the notice, or within such longer period as the Secretary allows;
 - (b) request the entity to allow an inspector to inspect a specified facility of the entity at a reasonable time.
- (3) A notice requesting the entity to provide further information under paragraph (2)(a) must state that, if the entity does not provide the information within the period allowed under that paragraph, the Secretary may require the entity to dispose of its entire holdings of any or all of the security-sensitive biological agents specified in the report.
- (4) The Secretary must decide to register the entity in relation to a security-sensitive biological agent and a facility specified in the entity's report if:
- (a) the entity provided all the information required by paragraph 42(3)(b), and any further information requested under paragraph (2)(a) of this section, in relation to that security-sensitive biological agent and that facility; and

- (b) the entity stated in the report that it is complying with the SSBA Standards; and
- (c) the Secretary is satisfied that the purpose stated in the entity's report for which the entity is handling that security-sensitive biological agent at that facility is a legitimate purpose.

Note 1: Section 45 applies if the requirements referred to in paragraphs (4)(a) and (b) of this section are not met.

Note 2: Section 47 applies if the requirements referred to in paragraphs (4)(a) and (b) of this section are met but the requirement referred to in paragraph (4)(c) of this section is not met.

- (5) The Secretary must notify the entity in writing of the Secretary's decision under subsection (1). The notice must include the information (if any) prescribed by the regulations.

45 Secretary may direct entity to dispose of security-sensitive biological agents

- (1) This section applies in relation to a report given to the Secretary by an entity under section 42 if:
 - (a) the Secretary made a request under paragraph 44(2)(a) and the entity did not comply with the request within the period allowed under that paragraph; or
 - (b) the entity did not state in the report that the entity is complying with the SSBA Standards.
- (2) The Secretary may, if the Secretary considers it appropriate, give a written direction to the entity, requiring the entity, within the period specified in the direction or such longer period as the Secretary allows, to dispose of its entire holdings of any or all of the security-sensitive biological agents specified in the report.

Note 1: If the Secretary gives a notice to an entity under this subsection, the Secretary must not include the entity on the National Register in relation to the security-sensitive biological agent and the facility to which the notice relates: see subsection 44(4).

Note 2: The Secretary may also direct a particular individual not to handle security-sensitive biological agents: see section 59.

Note 3: Failure to comply with a direction to dispose of a security-sensitive biological agent is an offence: see section 46.

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- (3) A period specified in a direction given under subsection (2) must be reasonable having regard to the circumstances.

46 Offence—failure to comply with direction to dispose of security-sensitive biological agent

- (1) An entity commits an offence if:
- (a) the entity is given a direction under subsection 45(2); and
 - (b) the entity does not comply with the direction within the period allowed under that subsection.

Penalty: 500 penalty units.

Note 1: If the entity is a body corporate, the maximum penalty that may be imposed is 2,500 penalty units: see subsection 4B(3) of the *Crimes Act 1914*.

Note 2: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

- (2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

47 Secretary not satisfied entity handling security-sensitive biological agent for a legitimate purpose

- (1) This section applies in relation to a report given to the Secretary by an entity under section 42 if:
- (a) the requirements referred to in paragraphs 44(4)(a) and (b) are met in relation to a security-sensitive biological agent and a facility specified in the report; and
 - (b) the Secretary is not satisfied that the purpose stated in the report for which the entity is handling that security-sensitive biological agent at that facility is a legitimate purpose.
- (2) The Secretary must:
- (a) decide to register the entity, on a temporary basis, in relation to the security-sensitive biological agent and the facility; and
 - (b) notify the entity in writing of that fact.

Note: An entity that is registered under this subsection must report any changes under section 48.

- (3) The notice under paragraph (2)(b) must also state:
- (a) the reason that the entity has been registered on a temporary basis in relation to the security-sensitive biological agent and the facility; and
 - (b) that handling a security-sensitive biological agent for a purpose other than a legitimate purpose may be an offence against the *Crimes (Biological Weapons) Act 1976*.

Note: The Secretary may refer the matter to the relevant authorities for investigation.

- (4) If:
- (a) the entity is convicted of an offence against the *Crimes (Biological Weapons) Act 1976* in relation to its handling of the security-sensitive biological agent at the facility; or
 - (b) the entity is found to have committed such an offence but no conviction is recorded;
- the Secretary must cancel the registration of the entity in relation to the security-sensitive biological agent and the facility.

- (5) If a prosecution for an offence against the *Crimes (Biological Weapons) Act 1976*, in relation to the entity's handling of the security-sensitive biological agent at the facility, is not instituted against the entity within 12 months after the date on which the entity is registered under paragraph (2)(a), the Secretary must vary the National Register to indicate that the registration made under that paragraph is no longer on a temporary basis.

- (6) A variation of the National Register under subsection (5) must be made:
- (a) if, within 12 months after the date on which the entity is registered under paragraph (2)(a), a decision is made not to institute a prosecution for an offence referred to in subsection (5)—as soon as practicable after the Secretary becomes aware of that decision; or
 - (b) in any other case—as soon as practicable after the end of the period of 12 months referred to in subsection (5).

- (7) If:
- (a) a prosecution for an offence against the *Crimes (Biological Weapons) Act 1976*, in relation to the entity's handling of the

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security-sensitive biological agent at the facility, is instituted against the entity within 12 months after the date on which the entity is registered under paragraph (2)(a); and

(b) the entity is found not to have committed the offence; the Secretary must vary the National Register to indicate that the registration made under that paragraph is no longer on a temporary basis.

- (8) A variation of the National Register under subsection (7) must be made as soon as practicable after the end of the proceedings for the offence referred to in that subsection.
- (9) A person or authority that conducts investigations in relation to offences against the *Crimes (Biological Weapons) Act 1976*, or institutes or carries on prosecutions for offences against that Act, may disclose personal information to the Secretary for the purpose of assisting the Secretary to maintain the National Register in an up-to-date form.

Note: Subsection (9) constitutes an authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

48 Registered entity must report any changes to the Secretary

- (1) Each of the following is a **reportable event** in relation to a registered entity:
- (a) the entity starts to handle at a facility a security-sensitive biological agent that is not included on the National Register in relation to the entity and that facility;
 - (b) the entity disposes of its entire holdings of a security-sensitive biological agent that is included on the National Register in relation to the entity and a facility (including a disposal required by a direction given by the Secretary under this Part);
 - (c) if the entity is included on the National Register in relation to a facility and a security-sensitive biological agent that is a toxin:
 - (i) the entity disposes of a quantity of the toxin; and

- (ii) after the disposal, the quantity of the toxin handled by the entity at that facility is less than the reportable quantity of that toxin;
 - (d) the entity:
 - (i) starts to handle a security-sensitive biological agent that is included on the National Register in relation to the entity and a facility for a purpose other than the purpose specified in the National Register; or
 - (ii) stops handling a security-sensitive biological agent that is included on the National Register in relation to the entity and a facility for a purpose specified in the National Register;
 - (e) the entity transfers a security-sensitive biological agent that is included on the National Register in relation to the entity and a facility:
 - (i) to another entity; or
 - (ii) to another facility of the entity;
 - (f) a security-sensitive biological agent that is included on the National Register in relation to the entity and a facility is lost or stolen;
- Note: Accidental or deliberate releases of security-sensitive biological agents that could cause harm to human health or the environment may need to be reported under State or Territory legislation.
- (g) a person accesses a security-sensitive biological agent that is included on the National Register in relation to the entity and a facility, and the access is unauthorised under the regulations;
 - (h) any other event prescribed by the regulations for the purposes of this paragraph.
- (2) Regulations for the purposes of paragraph (1)(g) may prescribe the circumstances in which access to a specified security-sensitive biological agent, or a specified class of security-sensitive biological agents, is unauthorised.
- (3) A registered entity must give a report about a reportable event to the Secretary. The report must be given within the prescribed period.

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Note: Section 55 deals with the application of the reporting requirements in relation to individuals.

- (4) Regulations prescribing a period for the purposes of subsection (3) may:
 - (a) prescribe different periods in relation to different reportable events; and
 - (b) prescribe a period in relation to a reportable event that ends before or after the event occurs.
- (5) A report given by an entity under subsection (3):
 - (a) must be in a form approved by the Secretary; and
 - (b) must include the information required by the approved form.
- (6) Subsection (3) does not apply in the circumstances prescribed by the regulations.

49 Secretary must consider report of changes and decide whether or not to vary the National Register

- (1) If the Secretary receives a report about a reportable event from an entity under section 48, the Secretary must decide whether or not to vary the National Register to take account of the event.
- (2) For the purpose of making a decision under subsection (1), the Secretary may, by written notice to the entity, do either or both of the following:
 - (a) request the entity to provide such further information as the Secretary requires within the period specified in the notice, or within such longer period as the Secretary allows;
 - (b) request the entity to allow an inspector to inspect a specified facility of the entity at a reasonable time.
- (3) A notice requesting the entity to provide further information under paragraph (2)(a) must state that, if the entity does not provide the information within the period allowed under that paragraph, the Secretary may require the entity to dispose of its entire holdings of any or all of the security-sensitive biological agents to which the report relates.

- (4) The Secretary must decide to vary the National Register to take account of the reportable event if:
- (a) the entity provided all the information required by paragraph 48(5)(b), and any further information requested under paragraph (2)(a) of this section, in relation to the reportable event; and
 - (b) if the reportable event is the event referred to in paragraph 48(1)(a) or subparagraph 48(1)(d)(i)—the Secretary is satisfied that the purpose stated in the entity’s report for which the entity is handling the security-sensitive biological agent to which the reportable event relates is a legitimate purpose.
- (5) The Secretary must notify the entity in writing of the Secretary’s decision under subsection (1). The notice must include the information (if any) prescribed by the regulations.

Note 1: Section 50 applies if the requirements referred to in paragraph (4)(a) of this section are not met.

Note 2: Section 52 applies if the reportable event is the event referred to in paragraph 48(1)(a) or subparagraph 48(1)(d)(i) and the requirements referred to in paragraph (4)(a) of this section are met but the requirement referred to in paragraph (4)(b) of this section is not met.

50 Secretary may direct entity to dispose of security-sensitive biological agents

- (1) This section applies in relation to a report given to the Secretary by a registered entity under section 48 if:
- (a) the Secretary made a request under paragraph 49(2)(a); and
 - (b) the entity did not comply with the request within the period allowed under that paragraph.
- (2) The Secretary may, if the Secretary considers it appropriate, give a written direction to the entity, requiring the entity, within the period specified in the direction or such longer period as the Secretary allows, to dispose of its entire holdings of a security-sensitive biological agent to which the report relates.

Note 1: Disposal would not be appropriate if the entity’s entire holdings of that security-sensitive biological agent have already been disposed of, or were lost or stolen.

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Note 2: The Secretary may also direct a particular individual not to handle security-sensitive biological agents: see section 59.

Note 3: Failure to comply with a direction to dispose of a security-sensitive biological agent is an offence: see section 51.

- (3) A period specified in a direction given under subsection (2) must be reasonable having regard to the circumstances.

51 Offence—failure to comply with direction to dispose of security-sensitive biological agent

- (1) An entity commits an offence if:
- (a) the entity is given a direction under subsection 50(2); and
 - (b) the entity does not comply with the direction within the period allowed under that subsection.

Penalty: 500 penalty units.

Note 1: If the entity is a body corporate, the maximum penalty that may be imposed is 2,500 penalty units: see subsection 4B(3) of the *Crimes Act 1914*.

Note 2: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

- (2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

52 Secretary not satisfied entity handling security-sensitive biological agent for a legitimate purpose

- (1) This section applies in relation to a report given to the Secretary by a registered entity under section 48 if:
- (a) the reportable event to which the report relates is the event referred to in paragraph 48(1)(a) or subparagraph 48(1)(d)(i); and
 - (b) the requirements referred to in paragraph 49(4)(a) are met; and
 - (c) the Secretary is not satisfied that the purpose stated in the report for which the entity is handling the security-sensitive biological agent to which the reportable event relates is a legitimate purpose.

- (2) The Secretary must:
- (a) decide to vary the National Register, on a temporary basis, to take account of the reportable event; and
 - (b) notify the entity in writing of that fact.
- (3) The notice under paragraph (2)(b) must also state:
- (a) the reason for the temporary variation; and
 - (b) that handling a security-sensitive biological agent for a purpose other than a legitimate purpose may be an offence against the *Crimes (Biological Weapons) Act 1976*.
- Note: The Secretary may refer the matter to the relevant authorities for investigation.
- (4) If:
- (a) the entity is convicted of an offence against the *Crimes (Biological Weapons) Act 1976* in relation to its handling of the relevant security-sensitive biological agent to which the reportable event relates; or
 - (b) the entity is found to have committed such an offence but no conviction is recorded;
- the Secretary must cancel the variation of the National Register made under paragraph (2)(a).
- (5) If a prosecution for an offence against the *Crimes (Biological Weapons) Act 1976*, in relation to the entity's handling of the security-sensitive biological agent to which the reportable event relates, is not instituted against the entity within 12 months after the date on which the National Register is varied under paragraph (2)(a), the Secretary must vary the National Register to indicate that the variation made under that paragraph is no longer on a temporary basis.
- (6) A variation of the National Register under subsection (5) must be made:
- (a) if, within 12 months after the date on which the National Register is varied under paragraph (2)(a), a decision is made not to institute a prosecution for an offence referred to in subsection (5)—as soon as practicable after the Secretary becomes aware of that decision; or

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- (b) in any other case—as soon as practicable after the end of the period of 12 months referred to in subsection (5).
- (7) If:
 - (a) a prosecution for an offence against the *Crimes (Biological Weapons) Act 1976*, in relation to the entity's handling of the security-sensitive biological agent to which the reportable event relates, is instituted against the entity within 12 months after the date on which the National Register is varied under paragraph (2)(a); and
 - (b) the entity is found not to have committed the offence; the Secretary must vary the National Register to indicate that the variation made under that paragraph is no longer on a temporary basis.
- (8) A variation of the National Register under subsection (7) must be made as soon as practicable after the end of the proceedings for the offence referred to in that subsection.
- (9) A person or authority that conducts investigations in relation to offences against the *Crimes (Biological Weapons) Act 1976*, or institutes or carries on prosecutions for offences against that Act, may disclose personal information to the Secretary for the purpose of assisting the Secretary to maintain the National Register in an up-to-date form.

Note: Subsection (9) constitutes an authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

53 Failure to report changes to the Secretary

- (1) This section applies if the Secretary believes, on reasonable grounds, that:
 - (a) a reportable event has occurred in relation to a registered entity; and
 - (b) the entity was required to give a report about the event to the Secretary under subsection 48(3); and
 - (c) the entity has not given the report to the Secretary as required by that subsection.

- (2) The Secretary may give the registered entity a written notice stating that, if the entity does not, within the period specified in the notice or such longer period as the Secretary allows, give the Secretary a report that complies with paragraphs 48(5)(a) and (b) about the reportable event, the Secretary may require the entity to dispose of its entire holdings of the security-sensitive biological agent to which the reportable event relates.

Note 1: Disposal would not be appropriate if the entity's entire holdings of that security-sensitive biological agent have already been disposed of, or were lost or stolen.

Note 2: The Secretary may also direct a particular individual not to handle security-sensitive biological agents: see section 59.

- (3) If:
- (a) the Secretary gives an entity a written notice under subsection (2) in relation to a reportable event; and
 - (b) the entity does not, within the period allowed under that subsection, give the Secretary a report that complies with paragraphs 48(5)(a) and (b) about the reportable event;
- the Secretary may, if the Secretary considers it appropriate, give a written direction to the entity, requiring the entity, within the period specified in the direction or such longer period as the Secretary allows, to dispose of its entire holdings of the security-sensitive biological agent to which the reportable event relates.

Note: Failure to comply with a direction to dispose of a security-sensitive biological agent is an offence: see section 54.

- (4) A period specified in a direction given under subsection (3) must be reasonable having regard to the circumstances.

54 Offence—failure to comply with direction to dispose of security-sensitive biological agent

- (1) An entity commits an offence if:
- (a) the entity is given a direction under subsection 53(3); and
 - (b) the entity does not comply with the direction within the period allowed under that subsection.

Penalty: 500 penalty units.

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Note 1: If the entity is a body corporate, the maximum penalty that may be imposed is 2,500 penalty units: see subsection 4B(3) of the *Crimes Act 1914*.

Note 2: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

- (2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

55 Application of reporting requirements in relation to individuals

- (1) To avoid doubt, if:
- (a) an individual is an officer or an employee of an entity, or is engaged as a consultant or a contractor by an entity; and
 - (b) the entity is:
 - (i) a body corporate; or
 - (ii) an agency or instrumentality of the Commonwealth, a State or a Territory; and
 - (c) the individual's duties include handling a security-sensitive biological agent at a facility of the entity;
- the individual is not required to give a report to the Secretary under subsection 42(1) or 48(3) in relation to that security-sensitive biological agent and that facility.

Note: The entity is required to give the report to the Secretary.

- (2) If:
- (a) 2 or more individuals handle one or more security-sensitive biological agents at the same facility; and
 - (b) each individual is required to give the Secretary a report under subsection 42(1) or 48(3) in relation to those security-sensitive biological agents;
- each individual satisfies that requirement if:
- (c) each individual gives the Secretary a report under that subsection; or
 - (d) all the individuals, acting jointly, give the Secretary a joint report under that subsection.

Subdivision C—Compliance with SSBA Standards

56 Entity must comply with SSBA Standards

An entity that handles one or more security-sensitive biological agents at one or more facilities must comply with the SSBA Standards in relation to each security-sensitive biological agent it handles at each facility.

57 Failure to comply with SSBA Standards

- (1) This section applies if the Secretary believes, on reasonable grounds, that an entity is not complying with the SSBA Standards in relation to a security-sensitive biological agent the entity handles at a facility.
- (2) The Secretary may give the entity a written notice stating that, unless the entity satisfies the Secretary, within the period specified in the notice or such longer period as the Secretary allows, that the entity is complying with the SSBA Standards in relation to that security-sensitive biological agent and that facility, the Secretary may require the entity to dispose of its entire holdings of that security-sensitive biological agent at that facility.
- (3) A notice given to an entity under subsection (2) may relate to:
 - (a) any or all of the security-sensitive biological agents handled by the entity; or
 - (b) any or all of the facilities at which the entity handles those security-sensitive biological agents.
- (4) If:
 - (a) the Secretary gives an entity a written notice under subsection (2) in relation to a security-sensitive biological agent it handles at a facility; and
 - (b) the entity does not satisfy the Secretary, within the period allowed under that subsection, that the entity is complying with the SSBA Standards in relation to that security-sensitive biological agent;the Secretary may give a written direction to the entity, requiring the entity, within the period specified in the direction or such

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longer period as the Secretary allows, to dispose of its entire holdings of that security-sensitive biological agent at that facility.

Note 1: The Secretary may also direct a particular individual not to handle security-sensitive biological agents: see section 59.

Note 2: Failure to comply with a direction to dispose of a security-sensitive biological agent is an offence: see section 58.

- (5) A period specified in a direction given under subsection (4) must be reasonable having regard to the circumstances.

58 Offence—failure to comply with direction to dispose of security-sensitive biological agent

- (1) An entity commits an offence if:
- (a) the entity is given a direction under subsection 57(4); and
 - (b) the entity does not comply with the direction within the period allowed under that subsection.

Penalty: 500 penalty units.

Note 1: If the entity is a body corporate, the maximum penalty that may be imposed is 2,500 penalty units: see subsection 4B(3) of the *Crimes Act 1914*.

Note 2: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

- (2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

Subdivision D—Directions not to handle security-sensitive biological substances

59 Secretary may direct individual not to handle security-sensitive biological agents

- (1) This section applies if the Secretary considers, on reasonable grounds:
- (a) that:
 - (i) an individual who is handling a security-sensitive biological agent at a facility has not complied with this

- Part, regulations made for the purposes of this Part or the SSBA Standards; and
- (ii) it would not be appropriate to require the individual or another entity to dispose of the security-sensitive biological agent; or
 - (b) that the handling of a security-sensitive biological agent at a facility by a particular individual poses a security risk.
- (2) The Secretary may give a written notice to the individual directing the individual not to handle one or more specified security-sensitive biological agents:
- (a) at any time in the future; or
 - (b) until the individual satisfies the Secretary that the individual has satisfactorily completed specified training; or
 - (c) until the individual satisfies the Secretary that the individual has obtained a specified qualification or certification; or
 - (d) until the individual has complied with the requirements (if any) prescribed by the regulations.

Note 1: The Secretary may give a notice to an individual under this section instead of, or in addition to, giving a direction to the individual or another entity requiring the individual or other entity to dispose of particular security-sensitive biological agents.

Note 2: Failure to comply with a direction under this section is an offence: see section 60.

60 Offence—failure to comply with direction not to handle security-sensitive biological agents

- (1) An individual commits an offence if:
- (a) the individual is given a direction under subsection 59(2); and
 - (b) the individual does not comply with the direction.

Penalty: 500 penalty units.

Note: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

- (2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

Division 6—Enforcement

61 Secretary may arrange for disposal of security-sensitive biological agents

- (1) This section applies if:
 - (a) an entity is given a direction under subsection 45(2), 50(2), 53(3) or 57(4); and
 - (b) the entity does not comply with the direction within the period allowed under that subsection.
- (2) This section also applies if an entity is convicted of an offence against subsection 43(1).
- (3) The Secretary may arrange for the security-sensitive biological agents to which the direction, or the conviction, relates to be disposed of.
- (4) If the Secretary incurs costs because of arrangements made by the Secretary under subsection (3), the entity is liable to pay to the Commonwealth an amount equal to the cost, and the amount may be recovered by the Commonwealth as a debt due to the Commonwealth.

62 Injunctions

- (1) If a person has engaged, is engaging, or is about to engage in any conduct that is or would be an offence against this Part, the Federal Court of Australia or the Federal Magistrates Court (the *Court*) may, on the application of the Secretary, grant an injunction restraining the person from engaging in the conduct.
- (2) If:
 - (a) a person has refused or failed, is refusing or failing, or is about to refuse or fail, to do a thing; and
 - (b) the refusal or failure is, or would be, an offence against this Part;the Court may, on the application of the Secretary, grant an injunction requiring the person to do the thing.

- (3) The power of the Court to grant an injunction may be exercised:
 - (a) whether or not it appears to the Court that the person intends to engage, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind.
- (4) The Court may discharge or vary an injunction granted under this section.
- (5) The Court may grant an interim injunction pending a determination of an application under subsection (1).
- (6) The powers granted by this section are in addition to, and not in derogation of, any other powers of the Court.

Division 7—Powers of inspection

Subdivision A—Appointment of inspectors and identity cards

63 Appointment of inspectors

- (1) The Secretary may, by instrument in writing, appoint as an inspector a person who is appointed or employed by the Commonwealth.
- (2) In exercising powers or performing functions as an inspector, an inspector must comply with any directions of the Secretary.
- (3) The Secretary must not appoint a person as an inspector under subsection (1) unless he or she is satisfied that the person has appropriate skills and experience.

64 Identity card

- (1) The Secretary must issue an identity card to an inspector.
- (2) The identity card:
 - (a) must be in the form prescribed by the regulations; and
 - (b) must contain a recent photograph of the inspector.
- (3) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the identity card to the Secretary as soon as practicable.

Penalty: 1 penalty unit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (4) An inspector must carry his or her identity card at all times when exercising powers or performing functions as an inspector.

Subdivision B—Monitoring compliance

65 Powers available to inspectors for monitoring compliance

- (1) An inspector may:
 - (a) enter any premises; and
 - (b) exercise the monitoring powers set out in section 66;for any of the following purposes:
 - (c) to find out whether this Part or regulations made for the purposes of this Part, or the SSBA Standards, have been complied with;
 - (d) to verify that the information given to the Secretary by an entity under section 42, 44, 48 or 49 is accurate and up-to-date.
- (2) An inspector is not authorised to enter premises under subsection (1) unless:
 - (a) the occupier of the premises has consented to the entry; or
 - (b) the entry is made under a monitoring warrant.

66 Monitoring powers

- (1) The *monitoring powers* that an inspector may exercise under paragraph 65(1)(b) are as follows:
 - (a) to search the premises and any thing on the premises;
 - (b) to inspect, examine, take measurements of, conduct tests on, or take samples of, any security-sensitive biological agent on the premises;
 - (c) to take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises;
 - (d) if the inspector was authorised to enter the premises by a monitoring warrant—to require any person in or on the premises:
 - (i) to answer any questions put by the inspector; and
 - (ii) to produce any book, record or document requested by the inspector;
 - (e) to inspect any book, record or document on the premises;

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- (f) to take extracts from or make copies of any such book, record or document;
 - (g) to take onto premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
 - (h) to secure a thing, until a warrant is obtained to seize it, being a thing:
 - (i) that the inspector finds during the exercise of monitoring powers on the premises; and
 - (ii) that the inspector believes on reasonable grounds may afford evidence of the commission of an offence against this Part or the *Crimes (Biological Weapons) Act 1976*; and
 - (iii) that the inspector believes on reasonable grounds would be lost, destroyed or tampered with before the warrant can be obtained;
 - (i) to operate electronic equipment, and do other things, at the premises as mentioned in section 67.
- (2) A person must not refuse or fail to comply with a requirement under paragraph (1)(d).

Penalty: 30 penalty units.

67 Power to operate equipment

- (1) For the purposes of this Division, the *monitoring powers* include the power to operate equipment at premises to see whether:
- (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is at the premises; and
 - (ii) can be used with equipment or is associated with it;
- contains information that is relevant to determining whether there has been compliance with this Part or regulations made for the purposes of this Part, or the SSBA Standards.
- (2) If the inspector, after operating equipment at the premises, finds that the equipment, or that a tape, disk or other storage device at

the premises, contains information mentioned in subsection (1), the inspector may:

- (a) operate facilities at the premises to put the information in documentary form and copy the document so produced; or
- (b) if the information can be transferred to a tape, disk or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the information to the storage device, and remove the storage device from the premises.

68 Compensation for damage to electronic equipment

- (1) This section applies if:
 - (a) as a result of equipment being operated as mentioned in section 67:
 - (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.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the 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 the Federal Court of Australia or the Federal Magistrates Court for such reasonable amount of compensation as the Court determines.

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- (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.
- (5) Compensation is payable out of money appropriated by the Parliament.
- (6) For the purposes of subsection (1):
damage, in relation to data, includes damage by erasure of data or addition of other data.

69 Application for monitoring warrant

- (1) An inspector may apply to a magistrate for a monitoring warrant in relation to premises.
- (2) Subject to subsection (3), the magistrate may issue the monitoring warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more inspectors should have access to the premises for any of the following purposes:
 - (a) to find out whether this Part or regulations made for the purposes of this Part, or the SSBA Standards, have been complied with;
 - (b) to verify that the information given to the Secretary by an entity under section 42, 44, 48 or 49 is accurate and up-to-date.
- (3) The magistrate must not issue the monitoring warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The monitoring warrant must:
 - (a) authorise one or more inspectors (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:

- (i) to enter the premises; and
 - (ii) to exercise the powers set out in section 66 in relation to the premises; and
 - (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.
- (5) An inspector must not make, in an application for a monitoring warrant, a statement that the inspector knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years or 120 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Subdivision C—Offence-related powers

70 Searches related to offences

- (1) If an inspector has reasonable grounds for suspecting that there may be evidential material on any premises, the inspector may:
 - (a) enter the premises, with the consent of the occupier; and
 - (b) exercise the powers set out in subsection (2).
- (2) The powers an inspector may exercise under paragraph (1)(b) are as follows:
 - (a) to search the premises and any thing on the premises for the evidential material;
 - (b) to inspect, examine, take measurements of, conduct tests on, or take samples of the evidential material;
 - (c) to take photographs, make video or audio recordings or make sketches of the premises or the evidential material;
 - (d) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
 - (e) to require any person in or on the premises:

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- (i) to answer any questions put by the inspector; and
 - (ii) to produce any book, record or document requested by the inspector.
- (3) The inspector may operate equipment at the premises to see whether evidential material is accessible by doing so, if the inspector believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- (4) If the inspector, after operating the equipment, finds that:
 - (a) evidential material is accessible by doing so; and
 - (b) the material can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;the inspector may operate the equipment or other facilities to copy the material to the storage device, and remove the storage device from the premises.

Subdivision D—Expert assistance

71 Expert assistance to operate a thing

- (1) If an inspector believes on reasonable grounds that:
 - (a) any of the following may be accessible by operating a thing at particular premises:
 - (i) information relevant to determining whether there has been compliance with this Part or regulations made for the purposes of this Part, or the SSBA Standards;
 - (ii) evidential material; and
 - (b) expert assistance is required to operate the thing; and
 - (c) if he or she does not take action under this subsection, the information or material may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the thing, whether by locking it up, placing a guard or otherwise.

- (2) The inspector must give notice to the occupier of the premises of his or her intention to secure the thing and of the fact that the thing may be secured for up to 24 hours.
- (3) The thing may be secured:
 - (a) for a period not exceeding 24 hours; or
 - (b) until the thing has been operated by the expert; whichever happens first.
- (4) If the inspector believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to the magistrate for an extension of that period.
- (5) The inspector must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

72 Expert assistance from scientific or technical expert

- (1) This section applies if:
 - (a) an inspector has reasonable grounds for suspecting that there may be on any premises:
 - (i) a particular thing in respect of which this Part or regulations made for the purposes of this Part, or the SSBA Standards, have not been complied with; or
 - (ii) evidential material; and
 - (b) the inspector considers that assistance from a person with scientific or technical knowledge or expertise is necessary to ensure the safety of the inspector and any other person while the inspector is exercising powers under this Division.
- (2) The inspector may authorise a person of the kind referred to in paragraph (1)(b) to assist the inspector to ensure the safety of the inspector and any other person while the inspector is exercising powers under this Division.

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Subdivision E—Emergency powers

73 Powers available to inspectors for dealing with dangerous situations

- (1) This section applies if:
 - (a) an inspector has reasonable grounds for suspecting that there may be on any premises a particular thing in respect of which this Part or regulations made for the purposes of this Part, or the SSBA Standards, have not been complied with; and
 - (b) the inspector considers that it is necessary to exercise powers under this section in order to avoid an imminent risk of death, serious illness, serious injury, or to protect the environment.
- (2) The inspector may do any of the following:
 - (a) enter the premises;
 - (b) search the premises for the thing;
 - (c) secure the thing, if the inspector finds it on the premises, until a warrant is obtained to seize the thing;
 - (d) if the inspector has reasonable grounds for suspecting that a person has not complied with this Part or regulations made for the purposes of this Part, or the SSBA Standards, in respect of the thing—require the person to take such steps as the inspector considers necessary for the person to comply with this Part or those regulations, or the SSBA Standards;
 - (e) take such steps, or arrange for such steps to be taken, in relation to the thing as the inspector considers appropriate.
- (3) The inspector may exercise the powers in subsection (2) only to the extent that it is necessary for the purpose of avoiding an imminent risk of death, serious illness, serious injury or serious damage to the environment.
- (4) The inspector must not exercise any of the powers in subsection (2) in relation to premises in a State or Territory unless the inspector has notified a relevant emergency response agency of the State or Territory of the inspector's intention to exercise those powers.
- (5) If the Secretary incurs costs because of steps reasonably taken, or arranged to be taken, in relation to a thing under paragraph (2)(e),

the owner of the thing is liable to pay to the Commonwealth an amount equal to the costs, and the amount may be recovered by the Commonwealth as a debt due to the Commonwealth.

Subdivision F—Obligations and incidental powers of inspectors

74 Inspector must produce identity card on request

An inspector is not entitled to exercise any powers under this Division in relation to premises if:

- (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
- (b) the inspector fails to comply with the requirement.

75 Consent

- (1) Before obtaining the consent of a person for the purposes of paragraph 65(2)(a) or 70(1)(a), the inspector must inform the person that he or she may refuse consent.
- (2) An entry of an inspector by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

76 Details of warrant to be given to occupier etc.

- (1) If a monitoring warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the inspector must make available to that person a copy of the warrant.
- (2) The inspector must identify himself or herself to that person.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

77 Announcement before entry

- (1) An inspector must, before entering premises under a monitoring warrant:

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- (a) announce that he or she is authorised to enter the premises;
and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
- (a) to ensure the safety of a person; or
 - (b) to prevent serious damage to the environment; or
 - (c) to ensure that the effective execution of the warrant is not frustrated.

Subdivision G—Other matters

78 Occupier entitled to be present during search

- (1) If a monitoring warrant in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the person is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

79 Division not to abrogate privilege against self-incrimination

Nothing in this Division affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information, or the production of the document, might tend to incriminate him or her or make him or her liable to a penalty.

Division 8—Review of decisions

80 Meaning of *reviewable decision*

In this Division:

reviewable decision means:

- (a) a decision under subsection 45(2), 50(2), 53(3) or 57(4) to give a direction to an entity requiring the entity to dispose of a security-sensitive biological agent; or
- (b) a decision under subsection 59(2) to give a notice to an individual directing the individual not to handle security-sensitive biological agents as specified in the notice.

81 Notification of decision and review rights

- (1) The Secretary must, as soon as practicable after making a reviewable decision, cause a notice in writing to be given to the entity whose interests are affected by the decision containing:
 - (a) the terms of the decision; and
 - (b) the reasons for the decision; and
 - (c) a statement setting out particulars of the entity's review rights.
- (2) A failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

82 Internal review

- (1) An entity whose interests are affected by a reviewable decision (other than a decision made by the Secretary personally) may apply in writing to the Secretary for review (*internal review*) of the decision.
- (2) An application for internal review must be made within 30 days after the day on which the decision first came to the notice of the applicant, or within such period (if any) as the Secretary, either before or after the end of that period, allows.

Section 83

- (3) The Secretary must, on receiving an application, review the reviewable decision personally.
- (4) The Secretary may:
 - (a) make a decision affirming, varying or revoking the reviewable decision; and
 - (b) if the Secretary revokes the decision, make such other decision as the Secretary thinks appropriate.

83 Review of decisions by Administrative Appeals Tribunal

- (1) Subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of:
 - (a) a reviewable decision made by the Secretary personally; or
 - (b) a decision made by the Secretary under section 82 (which provides for internal review).
- (2) In this section:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Division 9—Confidentiality of information

84 Definition of *protected information* for the purposes of Part 3

In this Part:

protected information is information:

- (a) that was obtained under or for the purposes of, or in accordance with, this Part; and
- (b) that:
 - (i) is included on the National Register; or
 - (ii) was given to the Secretary by an entity under Division 5; or
 - (iii) was obtained by an inspector under Division 7; or
 - (iv) is personal information.

85 Secretary may give report to certain agencies

- (1) The Secretary may give a report to:
 - (a) such intelligence agencies as are prescribed by the regulations for the purposes of this paragraph; or
 - (b) such law enforcement agencies as are prescribed by the regulations for the purposes of this paragraph; or
 - (c) any Commonwealth, State or Territory agencies with responsibility for responding to emergencies;in order to enable those agencies to assess the security risks posed in relation to security-sensitive biological agents and take action in relation to those risks.

Note: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.
- (2) A report under subsection (1) may include protected information.
- (3) For the purposes of subsection (1), a security risk includes the possibility that a release of a security-sensitive biological agent may be a public health risk or may cause damage to the environment.

Section 86

86 Authorisation to use information in performing duties or exercising powers under Division 6, 7 or 8 of Part 2 or this Part

A person may make a record of, or disclose or otherwise use, protected information if the person makes the record of, or discloses or otherwise uses, the information:

- (a) in the performance of the person's functions or duties, or the exercise of the person's powers, under Division 6, 7 or 8 of Part 2; or
- (b) in the performance of the person's functions or duties, or the exercise of the person's powers, under this Part.

Note: This section constitutes an authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

87 Authorisation to use information for certain purposes

- (1) An agency that obtains protected information under subsection 85(1) may make a record of, or disclose or otherwise use, the information for the purposes referred to in that subsection.

Note: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

- (2) A person who obtains protected information from an agency under subsection (1), or from another person under this subsection, may make a record of, or disclose or otherwise use, the information for the purposes referred to in subsection 85(1).

Note: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

88 Secretary may authorise use of information

- (1) The Secretary may, in writing, authorise a person:
 - (a) to make a record of or otherwise use protected information for a specified purpose; or
 - (b) to disclose protected information to a specified person, or to a specified class of persons, for a specified purpose.
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- (2) A person who is authorised to make a record of, or disclose or otherwise use, protected information under subsection (1) may make a record of, or disclose or otherwise use, the information in accordance with the authorisation.

Note: This section constitutes an authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

89 Authorisation to use information for purposes of certain proceedings

- (1) A person may disclose protected information to a court or tribunal or a coronial inquiry, or in accordance with an order of a court or tribunal or a coroner, for the purposes of proceedings under:
- (a) this Part; or
 - (b) the *Crimes (Biological Weapons) Act 1976*; or
 - (c) Part 5.3 of the *Criminal Code*; or
 - (d) any other prescribed law of the Commonwealth or of a State or Territory.

Note 1: The *National Security Information (Criminal and Civil Proceedings) Act 2004* may apply to proceedings under this Part.

Note 2: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

- (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 other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

90 Offence relating to protected information

- (1) 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.

Part 3 Regulation of security-sensitive biological agents

Division 9 Confidentiality of information

Section 91

Penalty: Imprisonment for 2 years.

Note 1: Chapter 2 of the *Criminal Code* sets out the principles of criminal responsibility.

Note 2: For defences to this offence, see sections 91 and 92.

(2) Subsection (1) does not apply if the record, disclosure or other use is authorised by this Division.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2); see subsection 13.3(3) of the *Criminal Code*.

(3) A document that contains protected information is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.

91 Defence for disclosure to person who provided the information

Subsection 90(1) 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 matter in this section: see subsection 13.3(3) of the *Criminal Code*.

92 Defence for use of information under particular laws

Subsection 90(1) does not apply if the record, disclosure or other use of the information is required or authorised under:

- (a) this Part; or
- (b) the *Crimes (Biological Weapons) Act 1976*; or
- (c) Part 5.3 of the *Criminal Code*; or
- (d) Part VIA of the *Privacy Act 1988*; or
- (e) any other prescribed law of the Commonwealth or of a State or Territory.

Note 1: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the *Criminal Code*.

Note 2: The *National Security Information (Criminal and Civil Proceedings) Act 2004* may apply to proceedings under this Part.

93 No other exceptions under other laws

- (1) A provision of a law of the Commonwealth or of a State or Territory (other than a law referred to in section 92), has no effect to the extent that it would otherwise require or permit a person to make a record of, disclose, or otherwise use, protected information if the record, disclosure or other use:
 - (a) would contravene a provision of this Division; or
 - (b) would not be permitted by a provision of this Division.
- (2) Subsection (1) has effect whether the law concerned is enacted before or after the commencement of this section.

Division 10—Delegation

94 Secretary may delegate powers and functions under this Part

- (1) Subject to subsection (2), the Secretary may, by writing, delegate any of his or her powers and functions under this Part to an SES employee, or an acting SES employee, in the Department.
- (2) The Secretary must not delegate the Secretary's power under section 63 (appointment of inspectors).

Part 4—Miscellaneous

95 Regulations

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.
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*[Minister's second reading speech made in—
House of Representatives on 13 September 2007
Senate on 20 September 2007]*

(174/07)
