



National Health Security Amendment Act 2009

No. 100, 2009

**An Act to amend the *National Health Security Act
2007*, and for related purposes**

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No. 100, 2009

An Act to amend the *National Health Security Act 2007*, and for related purposes

[Assented to 7 October 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *National Health Security Amendment Act 2009*.

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 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	7 October 2009
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	8 October 2009
3. Schedule 1, 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.	31 January 2010 (see F2009L03993)
4. Schedule 1, Part 3	The day after this Act receives the Royal Assent.	8 October 2009
5. Schedule 1, Part 4, Division 1	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.	31 January 2010 (see F2009L03993)
6. Schedule 1, Part 4, Division 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.	31 January 2010 (see F2009L03993)

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
7. Schedule 1, Part 5	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.	31 January 2010 (<i>see</i> F2009L03993)
8. Schedule 1, Part 6	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.	31 January 2010 (<i>see</i> F2009L03993)

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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Emergency disease situations

National Health Security Act 2007

1 After Division 5 of Part 3

Insert:

Division 5A—Suspension of Division 5 to deal with threats

60A Minister may suspend Division 5 to deal with threats

- (1) The Minister may, by legislative instrument, specify that one or both of the following do not apply for a specified period in relation to one or more specified security-sensitive biological agents, subject to the conditions (if any) specified:
 - (a) all or specified provisions of Division 5;
 - (b) section 56, so far as it relates to specified provisions of the SSBA Standards.
- (2) The Minister may make a legislative instrument under subsection (1) relating to a security-sensitive biological agent only if:
 - (a) the Minister is satisfied, after considering advice from a person covered by subsection (3), that there is a threat involving the agent to one or more of the following:
 - (i) the health or safety of people;
 - (ii) the economy;
 - (iii) the environment; and
 - (b) the Minister is satisfied, after considering advice from the Secretary, that the making of the legislative instrument would help to reduce the threat and maintain adequate controls for the security of all security-sensitive biological agents.
- (3) This subsection covers:
 - (a) the Commonwealth Chief Medical Officer; and
 - (b) the Commonwealth Chief Veterinary Officer; and

- (c) another person whom the Minister believes has scientific or technical knowledge in relation to security-sensitive biological agents.

When legislative instrument takes effect

- (4) A legislative instrument made under subsection (1) takes effect:
 - (a) on the day on which the instrument is made; or
 - (b) if the instrument specifies a later day as the day on which it takes effect, on that day.
- (5) Subsection (4) has effect despite section 12 of the *Legislative Instruments Act 2003*.

Effect of legislative instrument

- (6) A legislative instrument made under subsection (1) has effect according to its terms.

60B Variation or revocation of suspension

- (1) The Minister may, by legislative instrument, vary or revoke a legislative instrument (the *principal instrument*) made under subsection 60A(1) (whether or not the principal instrument has been varied under this section before).

Preconditions for variation

- (2) The Minister may vary the principal instrument only if:
 - (a) the Minister has considered advice about the variation from the persons whose advice was considered for the purposes of making the principal instrument; and
 - (b) the Minister is satisfied that the principal instrument as varied would help to reduce the threat to which the principal instrument relates and maintain adequate controls for the security of all security-sensitive biological agents.

Preconditions for revocation

- (3) The Minister may revoke the principal instrument only if, after considering further advice from the persons whose advice was considered for the purposes of making the principal instrument:

- (a) the Minister is satisfied that the threat, or one of the threats, to which the principal instrument relates:
 - (i) no longer exists; or
 - (ii) is no longer such as to require the principal instrument to be in force to address that threat; or
- (b) the Minister is no longer satisfied that the principal instrument adequately addresses the threat, or one of the threats, to which it relates.

When variation or revocation takes effect

- (4) The variation or revocation takes effect:
 - (a) on the day on which the instrument is made; or
 - (b) if the instrument specifies a later day as the day on which it takes effect, on that day.
- (5) Subsection (4) has effect despite section 12 of the *Legislative Instruments Act 2003*.

Relationship between subsection (1) and subsections (2) and (3)

- (6) Subsection (1) has effect subject to subsections (2) and (3).

60C Offence—failure to comply with conditions on suspension

A person commits an offence if:

- (a) the person is subject to a requirement under a condition specified in a legislative instrument made under this Division; and
- (b) the person does, or omits to do, an act; and
- (c) the person's act or omission breaches the requirement.

Penalty: 500 penalty units.

Part 2—Suspected security-sensitive biological agents

National Health Security Act 2007

2 Subsection 3(1) (definition of *dispose of*)

Omit “security-sensitive” (wherever occurring).

3 Subsection 3(1) (definition of *handling*)

Omit “security-sensitive” (wherever occurring).

4 Subsection 3(1) (note 1 at the end of the definition of *handling*)

Repeal the note, substitute:

Note 1: Subsection 39(2) affects when an entity is treated for the purposes of Division 5 of Part 3 as handling a security-sensitive biological agent that is a toxin.

5 Subsection 3(1)

Insert:

sample of a biological agent includes:

- (a) a subculture of the agent; and
- (b) a preparation made from the agent.

6 Paragraph 30(2)(a)

Repeal the paragraph, substitute:

- (a) the collection of certain information about security-sensitive biological agents and about biological agents suspected on the basis of testing in a laboratory of being security-sensitive biological agents; and
- (aa) the recording on a national register of information about the nature and location of security-sensitive biological agents legitimately handled by entities in Australia; and

7 Paragraph 30(2)(b)

After “agents”, insert “and biological agents suspected on the basis of testing in a laboratory of being security-sensitive biological agents”.

8 At the end of subsection 35(1)

Add “and biological agents that are or have been suspected, on the basis of testing in a laboratory, of being security-sensitive biological agents”.

9 Subsection 35(1) (note)

Repeal the note, substitute:

- Note 1: SSBA Standards must be complied with by certain entities that handle or dispose of biological agents suspected of being security-sensitive biological agents: see sections 38B and 38D.
- Note 2: SSBA Standards must be complied with by entities that handle security-sensitive biological agents: see section 56.

10 At the end of subsection 35(2)

Add:

- ; (d) the handling (including transport) of biological agents suspected, on the basis of testing in a laboratory, of being security-sensitive biological agents;
- (e) the disposal of biological agents that are or have been suspected, on the basis of testing in a laboratory, of being security-sensitive biological agents.

11 After subsection 35(3)

Insert:

- (3A) A standard may set out different requirements relating to a biological agent depending on whether the agent:
- (a) is merely suspected by a specified entity, on the basis of testing in a laboratory, of being a security-sensitive biological agent; or
 - (b) is a security-sensitive biological agent (regardless of any entity’s knowledge or ignorance of that fact); or
 - (c) is known by a specified entity to be a security-sensitive biological agent; or
 - (d) is known by a specified entity to be a security-sensitive biological agent and was previously suspected by a specified entity, on the basis of testing in a laboratory, of being a security-sensitive biological agent.

12 After Division 4 of Part 3

Insert:

Division 4A—Requirements relating to suspected security-sensitive biological agents

Subdivision A—Application

38A Application of Division

This Division applies if:

- (a) an entity (the *initial tester*) that operates a laboratory (the *initial testing laboratory*) has tested a biological agent in the initial testing laboratory to determine the identity of the biological agent; and
- (b) on the basis of that testing, the initial tester forms a reasonable suspicion (but is not certain) that the biological agent is a security-sensitive biological agent.

Subdivision B—Carrying out confirmatory testing or destruction

38B Initial tester must have confirmatory testing or destruction done

- (1) The initial tester must, within 2 business days after forming the suspicion or such longer period as the Secretary allows:
 - (a) arrange for the carrying out (by the initial tester or another entity) of further testing (*confirmatory testing*) of the biological agent to determine whether the biological agent is a security-sensitive biological agent; or
 - (b) destroy the biological agent in accordance with the SSBA Standards.

Note: Sections 38C and 38P set out consequences for contravention of this section.

- (2) The initial tester need not comply with subsection (1) if:
 - (a) the initial tester's suspicion is that the biological agent is a particular security-sensitive biological agent or included in a particular class of security-sensitive biological agents; and

- (b) the initial tester is a registered entity in relation to that particular security-sensitive biological agent or all security-sensitive biological agents in that particular class.

Note: In a prosecution of an offence against section 38C, the defendant bears an evidential burden in relation to the matter in subsection (2) of this section: see subsection 13.3(3) of the *Criminal Code*.

38C Offence—failure to have confirmatory testing or destruction done

- (1) An entity commits an offence if:
 - (a) the entity is subject to a requirement under section 38B; and
 - (b) the entity contravenes the requirement.

Penalty: 500 penalty units.

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

Subdivision C—Compliance with SSBA standards

38D Compliance with SSBA Standards in handling biological agent

- (1) The initial tester must comply with the SSBA Standards in relation to the initial tester's handling and disposal of the biological agent in the period:
 - (a) starting when the initial tester forms the suspicion; and
 - (b) ending at the earlier of the following times:
 - (i) the time the initial tester obtains the results of confirmatory testing;
 - (ii) the time destruction of the biological agent is completed.
- (2) An entity provided by the initial tester with a sample of the biological agent for confirmatory testing must comply with the SSBA Standards in relation to the entity's handling and disposal of the sample, and of any biological agent included in or derived from the sample, in the period:
 - (a) starting when the entity is provided with the sample; and
 - (b) ending when the entity obtains the results of the confirmatory testing.

38E Offence—failure to comply with SSBA Standards in handling biological agent

An entity commits an offence if:

- (a) the entity is required by section 38D to comply with the SSBA Standards in relation to the entity's handling and disposal of the biological agent, a sample of the biological agent or a biological agent included in or derived from a sample of the biological agent; and
- (b) the entity contravenes the requirement.

Penalty: 500 penalty units.

Subdivision D—Further provisions relating to confirmatory testing

38F Initial tester must report transfer of biological agent or sample for confirmatory testing

- (1) If the initial tester transfers the biological agent, or a sample of it, for confirmatory testing to a laboratory other than the initial testing laboratory or to another entity, the initial tester must give the Secretary a report that:
 - (a) states that the initial tester has transferred the biological agent or sample; and
 - (b) identifies:
 - (i) if the transfer was to another laboratory operated by the initial tester—that laboratory; or
 - (ii) if the transfer was to another entity—the entity and laboratory to which the transfer was made; and
 - (c) is in a form approved by the Secretary; and
 - (d) includes the information required by the approved form.
- (2) The initial tester must give the Secretary the report within 2 business days after the transfer or such longer period as the Secretary allows.

38G Offence—failure by initial tester to report transfer

- (1) An entity commits an offence if:

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- (a) the entity is required by section 38F to give the Secretary a report; and
- (b) the entity does not give the Secretary the report as required by that section.

Penalty: 500 penalty units.

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

38H Initial tester must report results of confirmatory testing to Secretary

- (1) If confirmatory testing is completed (by the initial tester or another entity), the initial tester must give the Secretary a report that:
 - (a) states whether the biological agent is or is not a security-sensitive biological agent; and
 - (b) is in a form approved by the Secretary; and
 - (c) includes the information required by the approved form.
- (2) The initial tester must give the Secretary the report within 2 business days after becoming aware of whether the biological agent is or is not a security-sensitive biological agent or such longer period as the Secretary allows.
- (3) The initial tester need not comply with subsections (1) and (2) if:
 - (a) the initial tester is a registered entity; or
 - (b) the confirmatory testing:
 - (i) was done by the initial tester in the initial testing laboratory; and
 - (ii) indicates that the biological agent is not a security-sensitive biological agent.

Note 1: Section 48 will require the initial tester to report to the Secretary (subject to section 38K) if:

- (a) the initial tester is a registered entity; and
- (b) confirmatory testing indicates that the biological agent is a security-sensitive biological agent not included in the National Register in relation to the initial tester and the facility where the initial tester has handled the biological agent.

Note 2: In a prosecution of an offence against section 38J, the defendant bears an evidential burden in relation to the matter in subsection (3) of this section: see subsection 13.3(3) of the *Criminal Code*.

38J Offence—failure to report results of confirmatory testing to Secretary

- (1) An entity commits an offence if:
 - (a) the entity is required by section 38H to give the Secretary a report; and
 - (b) the entity does not give the Secretary the report as required by that section.

Penalty: 500 penalty units.

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

38K Reporting if biological agent disposed of after confirmatory testing shows it is a security-sensitive biological agent

- (1) This section applies if:
 - (a) it is determined from confirmatory testing that the biological agent is a security-sensitive biological agent; and
 - (b) within 2 business days, or such longer period as the Secretary allows, after making or becoming aware of the determination, an entity that carried out the confirmatory testing or is the initial tester disposes of its entire holdings of the biological agent; and
 - (c) the disposal is carried out in accordance with the SSBA Standards relating to the disposal of a biological agent that was previously suspected, on the basis of testing in a laboratory, of being a security-sensitive biological agent; and
 - (d) before the entity carried out the disposal, the biological agent was not included on the National Register in relation to the entity.

Requirement to report disposal

- (2) The entity must give the Secretary a report that:
 - (a) states that the entity has disposed of its entire holdings of the biological agent in accordance with the SSBA Standards relating to the disposal of a biological agent that was previously suspected, on the basis of testing in a laboratory, of being a security-sensitive biological agent; and
 - (b) is in a form approved by the Secretary; and

- (c) includes the information required by the approved form.
- (3) The entity must give the Secretary the report within 2 business days after completing the disposal or such longer period as the Secretary allows.

Exemption from reporting under section 42 or 48 if report given

- (4) If the entity gives the Secretary the report in accordance with subsections (2) and (3) of this section, section 42 and paragraph 48(1)(a) do not apply, and are taken never to have applied, in relation to the handling of the biological agent by the entity.

38L Offence—failure to report disposal

- (1) An entity commits an offence if:
- (a) the entity is required by section 38K to give the Secretary a report; and
 - (b) the entity does not give the Secretary the report as required by that section.

Penalty: 500 penalty units.

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

Subdivision E—Further provisions relating to destruction

38M Initial tester must report destruction of biological agent

- (1) If the biological agent is destroyed and confirmatory testing has not been completed when the destruction occurs, the initial tester must give the Secretary a report about the destruction that:
- (a) is in a form approved by the Secretary; and
 - (b) includes the information required by the approved form.
- (2) The initial tester must give the Secretary the report within 2 business days after the destruction, or such longer period as the Secretary allows.
- (3) The initial tester need not comply with subsections (1) and (2) if:

- (a) the initial tester's suspicion is that the biological agent was a particular security-sensitive biological agent or included in a particular class of security-sensitive biological agents; and
- (b) the initial tester is a registered entity in relation to that particular security-sensitive biological agent or all security-sensitive biological agents in that particular class.

Note: In a prosecution of an offence against section 38N, the defendant bears an evidential burden in relation to the matter in subsection (3) of this section: see subsection 13.3(3) of the *Criminal Code*.

38N Offence—failure to report destruction

- (1) An entity commits an offence if:
 - (a) the entity is required by section 38M to give the Secretary a report; and
 - (b) the entity does not give the Secretary the report as required by that section.

Penalty: 500 penalty units.

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

38P Direction to dispose of biological agent for failure to comply with section 38B

- (1) This section applies if the initial tester contravenes section 38B.

Note: It does not matter whether the initial tester has been convicted of an offence against section 38C in relation to the non-compliance.

- (2) The Secretary may give the initial tester a written direction, requiring the initial tester, within the period specified in the direction or such longer period as the Secretary allows, to dispose of its entire holdings of the biological agent in accordance with the SSBA Standards.
- (3) A period specified in a direction given under subsection (2) must be reasonable having regard to the circumstances.

38Q Offence—failure to dispose of biological agent as directed

- (1) An entity commits an offence if:
 - (a) the entity is given a direction under subsection 38P(2); and

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(b) the entity does not comply with the direction within the period allowed under that subsection.

Penalty: 500 penalty units.

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

13 At the end of subsection 42(1)

Add:

Note 3: Section 38K (Reporting if biological agent disposed of after confirmatory testing shows it is a security-sensitive biological agent) treats this section as never having applied in certain circumstances.

14 At the end of subsection 48(1)

Add:

Note: Section 38K (Reporting if biological agent disposed of after confirmatory testing shows it is a security-sensitive biological agent) treats paragraph (1)(a) of this section as never having applied in certain circumstances.

15 Division 5A of Part 3 (heading)

Repeal the heading, substitute:

Division 5A—Suspension of Divisions 4A and 5 to deal with threats

16 Before subsection 60A(1)

Insert:

(1A) The Minister may, by legislative instrument, specify that one or both of the following do not apply for a specified period in relation to one or more biological agents that are or have been suspected, on the basis of testing in a laboratory, of being specified security-sensitive biological agents, subject to the conditions (if any) specified:

- (a) all or specified provisions of Division 4A;
- (b) section 38D, so far as it relates to specified provisions of the SSBA Standards.

Note: The heading to section 60A is altered by omitting “**Division**” and substituting “**Divisions 4A and**”.

17 Subsections 60A(2), (4) and (6)

Before “(1)”, insert “(1A) or”.

18 Subsection 60B(1)

Omit “60A(1)”, substitute “60A(1A) or (1)”.

19 Paragraph 61(1)(a)

After “subsection”, insert “38P(2),”.

20 Subsection 61(2)

After “subsection”, insert “38Q(1) or”.

21 Subsection 61(3)

After “arrange for”, insert “the biological agents or”.

22 Paragraph 65(1)(d)

After “section”, insert “38F, 38H, 38K, 38M,”.

23 Paragraph 66(1)(b)

After “any”, insert “biological agent that is, or is suspected of being, a”.

24 Section 80 (before paragraph (a) of the definition of *reviewable decision*)

Insert:

- (aa) a decision under subsection 38P(2) to give a direction to an entity requiring the entity to dispose of a biological agent suspected on the basis of testing in a laboratory of being a security-sensitive biological agent; or

25 Section 84 (subparagraph (b)(ii) of the definition of *protected information*)

After “Division”, insert “4A or”.

26 Subsection 85(1)

After “security-sensitive biological agents”, insert “, and biological agents suspected of being security-sensitive biological agents,”.

27 Subsection 85(3)

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After “security-sensitive biological agent”, insert “, or of a biological agent suspected of being a security-sensitive biological agent,”.

Part 3—Inspectors' powers

National Health Security Act 2007

28 Subsection 3(1)

Insert:

offence-related powers has the meaning given by section 70A.

29 Subsection 3(1)

Insert:

offence-related warrant means:

- (a) a warrant issued by a magistrate under section 70M; or
- (b) a warrant signed by a magistrate under section 70N.

30 Subsection 3(1)

Insert:

person assisting an inspector has the meaning given by section 70B.

31 Section 68

Repeal the section.

32 Section 70

Repeal the section, substitute:

70 Inspector may enter premises by consent or under a warrant

- (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; and
 - (b) exercise the offence-related powers set out in section 70A.
- (2) However, an inspector is not authorised to enter the premises unless:

- (a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier; or
- (b) the entry is made under an offence-related warrant.

Note: If entry to the premises is with the occupier's consent, the inspector must leave the premises if the consent ceases to have effect: see section 75.

70A Offence-related powers of inspectors

- (1) The following are the *offence-related powers* that an inspector may exercise in relation to premises under section 70:
 - (a) if entry to the premises is with the occupier's consent—the power to search the premises and any thing on the premises for the evidential material the inspector has reasonable grounds for suspecting may be on the premises;
 - (b) if entry to the premises is under an offence-related warrant:
 - (i) the power to search the premises and any thing on the premises for the kind of evidential material specified in the warrant; and
 - (ii) the power to seize evidential material of that kind if the inspector finds it on the premises;
 - (c) the power to inspect, examine, take measurements of, conduct tests on or take samples of evidential material referred to in paragraph (a) or (b);
 - (d) the power to make any still or moving image or any recording of the premises or evidential material referred to in paragraph (a) or (b);
 - (e) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
 - (f) the powers set out in subsections (2), (3) and (6).

Powers relating to electronic equipment

- (2) The offence-related powers include the power to operate electronic equipment on the premises to see whether:
 - (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is on the premises; and

- (ii) can be used with the equipment or is associated with it; contains evidential material referred to in paragraph (1)(a) or (b).
- (3) The offence-related powers include the following powers in relation to evidential material described in subsection (2) found in the exercise of the power under that subsection:
 - (a) if entry to the premises is under an offence-related warrant—the power to seize the equipment and the disk, tape or other storage device referred to in that subsection;
 - (b) the power to operate electronic equipment on the premises to put the evidential material in documentary form and remove the documents so produced from the premises;
 - (c) the power to operate electronic equipment on the premises to transfer the evidential material to a disk, tape or other storage device that:
 - (i) is brought to the premises for the exercise of the power; or
 - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (4) An inspector may operate electronic equipment as mentioned in subsection (2) or (3) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- (5) An inspector may seize equipment or a disk, tape or other storage device as mentioned in paragraph (3)(a) only if:
 - (a) it is not practicable to put the evidential material in documentary form as mentioned in paragraph (3)(b) or to transfer the evidential material as mentioned in paragraph (3)(c); or
 - (b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of the Commonwealth.

Seizing other evidential material

- (6) If:
-

- (a) entry to the premises is under an offence-related warrant; and
 - (b) the inspector, in the course of searching for the kind of evidential material specified in the warrant, finds a thing that the inspector believes on reasonable grounds to be other evidential material; and
 - (c) the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction;
- then the offence-related powers include seizing the thing.

70B Persons assisting inspectors

Inspectors may be assisted by other persons

- (1) An inspector may, in entering premises under section 70 and in exercising offence-related powers in relation to the premises, be assisted by other persons if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the inspector.

Powers of a person assisting the inspector

- (2) A person assisting the inspector may:
 - (a) enter the premises; and
 - (b) exercise offence-related powers in relation to the premises, but only in accordance with a direction given to the person by the inspector.
- (3) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.
- (4) If a direction is given under paragraph (2)(b) in writing, the direction is not a legislative instrument.

70C Use of force in executing a warrant

In executing an offence-related warrant:

- (a) an inspector executing the warrant may use such force against persons and things as is necessary and reasonable in the circumstances; and

- (b) a person assisting the inspector may use such force against things as is necessary and reasonable in the circumstances.

70D Inspector may ask questions and seek production of documents

Entry with consent

- (1) If an inspector is authorised by section 70 to enter premises because the occupier of the premises consented to the entry, the inspector may ask the occupier to:
 - (a) answer any questions relating to the reasons for the inspector entering the premises that are put by the inspector; and
 - (b) produce any document relating to the reasons for the inspector entering the premises that is requested by the inspector.

Entry under an offence-related warrant

- (2) If an inspector is authorised to enter premises by an offence-related warrant, the inspector may require any person on the premises to:
 - (a) answer any questions relating to the reasons for the inspector entering the premises that are put by the inspector; and
 - (b) produce any document relating to the reasons for the inspector entering the premises that is requested by the inspector.

Offence

- (3) A person commits an offence if:
 - (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

70E Inspector to be in possession of warrant

If an offence-related warrant is being executed in relation to premises, an inspector executing the warrant must be in possession of:

- (a) the warrant issued by the magistrate under section 70M, or a copy of the warrant as so issued; or

- (b) the form of warrant completed under subsection 70N(6), or a copy of the form as so completed.

70F Occupier to provide inspector with facilities and assistance

- (1) The occupier of premises to which an offence-related warrant relates, or another person who apparently represents the occupier, must provide:
 - (a) an inspector executing the warrant; and
 - (b) any person assisting the inspector;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:
 - (a) the person is subject to subsection (1); and
 - (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

70G Copies of seized things to be provided

- (1) If an offence-related warrant is being executed and an inspector seizes under this Subdivision:
 - (a) a document, film, computer file or other thing that can be readily copied; or
 - (b) a storage device, the information in which can be readily copied;the inspector must, if requested to do so by the occupier of the premises, or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to the occupier or other person as soon as practicable after the seizure.
- (2) However, subsection (1) does not apply if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth.

70H Receipts for things seized

- (1) If a thing is seized under this Subdivision, an inspector must provide a receipt for the thing.

- (2) If 2 or more things are seized, they may be covered in the one receipt.

70J Return of seized things

- (1) Subject to any contrary order of a court, if an inspector seizes a thing under this Subdivision, the Secretary must take reasonable steps to return it if:
- (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
 - (b) the period of 60 days after its seizure ends;
- whichever happens first, unless the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.
- (2) If, apart from this subsection, the Secretary would be required to take reasonable steps to return a thing under subsection (1) because of paragraph (1)(b), the Secretary is not required to do so if:
- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
 - (b) the thing may continue to be retained because of an order under section 70K; or
 - (c) the Commonwealth, the Secretary or an inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing; or
 - (d) to return the thing could cause an imminent risk of death, serious illness, serious injury or serious damage to the environment.
- (3) A thing that is required to be returned under this section must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

70K Magistrate may permit a thing to be retained

- (1) An inspector may apply to a magistrate for an order permitting the retention of the thing for a further period if:
- (a) before the end of 60 days after the seizure; or

- (b) before the end of a period previously specified in an order of a magistrate under this section;
proceedings in respect of which the thing may afford evidence have not commenced.
- (2) If the magistrate is satisfied that it is necessary for the thing to continue to be retained:
- (a) for the purposes of an investigation as to whether an offence against this Act, or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act, has been committed; or
- (b) to enable evidence of such an offence to be secured for the purposes of a prosecution;
- the magistrate may order that the thing may continue to be retained for a period specified in the order (which must not exceed 3 years).
- (3) Before making the application, the inspector must:
- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
- (b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.

70L Disposal of things

- (1) If:
- (a) a thing is seized under this Subdivision; and
- (b) apart from this section, the Secretary would be required to take reasonable steps to return the thing to a person; and
- (c) either:
- (i) the Secretary cannot, despite making reasonable efforts, locate the person; or
- (ii) the person has refused to take possession of the thing;
- the Secretary may dispose of the thing in such manner as he or she thinks appropriate.
- (2) If the operation of this section would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(4) In this section:

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

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

70M Issue of offence-related warrants

Application for warrant

(1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.

Issue of warrant

(2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the premises.

(3) However, the magistrate must not issue the 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.

Content of warrant

(4) The warrant must:

- (a) describe the premises to which the warrant relates; and
- (b) state that the warrant is issued under this Subdivision; and
- (c) specify the kind of evidential material that is to be searched for under the warrant; and
- (d) name one or more inspectors; and
- (e) authorise the inspector or inspectors so named:

- (i) to enter the premises; and
- (ii) to exercise the powers set out in sections 70, 70A, 70B, 70C and 70D in relation to the premises; and
- (f) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
- (g) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to be in force.

70N Offence-related warrants by telephone, fax etc.

Application for warrant

- (1) An inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 70M in relation to premises if the inspector believes on reasonable grounds that the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

Voice communication

- (2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.

Information

- (3) Before applying for the warrant, the inspector must prepare an information of the kind mentioned in subsection 70M(2) in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the inspector may apply for the warrant before the information is sworn or affirmed.

Signing of warrant

- (4) If the magistrate is satisfied:
 - (a) after considering the terms of the information; and
 - (b) after receiving such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 70M if the application had been made under that section.

Notification

- (5) If the magistrate completes and signs the warrant, the magistrate must inform the inspector, by telephone, fax or other electronic means, of:
- (a) the terms of the warrant; and
 - (b) the day on which and the time at which the warrant was signed.

Form of warrant

- (6) The inspector must then complete a form of warrant in the same terms as the warrant completed and signed by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

Completed form of warrant to be given to magistrate

- (7) The inspector must also, not later than the day after the day on which the warrant ceased to be in force or the day of execution of the warrant, whichever is the earlier, send to the magistrate:
- (a) the form of warrant completed by the inspector; and
 - (b) the information referred to in subsection (3), which must have been duly sworn or affirmed.

Attachment

- (8) The magistrate must attach to the documents provided under subsection (7) the warrant signed by the magistrate.

Authority of warrant

- (9) A form of warrant duly completed under subsection (6) is authority for the same powers as are authorised by the warrant signed by the magistrate.
- (10) If:
- (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
 - (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

70P Offence relating to warrants by telephone, fax etc.

An inspector must not:

- (a) state in a document that purports to be a form of warrant under section 70N the name of a magistrate unless that magistrate signed the warrant; or
- (b) state on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the terms of the warrant signed by the magistrate under that section; or
- (c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the inspector knows:
 - (i) has not been approved by a magistrate under that section; or
 - (ii) departs in a material particular from the terms of a warrant signed by a magistrate under that section; or
- (d) give to a magistrate a form of warrant under that section that is not the form of warrant that the inspector purported to execute.

Penalty: Imprisonment for 2 years.

33 At the end of section 72

Add:

- (3) This section does not limit section 70B. That section does not limit this section.

34 Sections 75 and 76

Repeal the sections, substitute:

75 Consent

- (1) An inspector must, before obtaining the consent of an occupier of premises for the purposes of paragraph 65(2)(a) or 70(2)(a), inform the occupier that the occupier may refuse consent.

- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an inspector entered premises because of the consent of the occupier of the premises, the inspector, and any person assisting the inspector, must leave the premises if the consent ceases to have effect.

76 Details of warrant etc. to be given to occupier

If:

- (a) a monitoring warrant or offence-related warrant is being executed in relation to premises; and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;
- an inspector executing the warrant must, as soon as practicable:
- (c) do one of the following:
 - (i) if the warrant is a monitoring warrant or an offence-related warrant that was issued under section 70M—make a copy of the warrant available to the occupier or other person (which need not include the signature of the magistrate who issued it);
 - (ii) if the warrant is an offence-related warrant that was signed under section 70N—make a copy of the form of warrant completed under subsection 70N(6) available to the occupier or other person; and
 - (d) inform the occupier or other person of the rights and responsibilities of the occupier or other person under sections 70F and 78.

35 Subsection 77(1)

After “monitoring warrant”, insert “or offence-related warrant”.

36 After paragraph 77(1)(a)

Insert:

- (aa) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and

37 At the end of section 77

Add:

- (3) If:
 - (a) an inspector does not comply with subsection (1) because of subsection (2); and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises; the inspector must, as soon as practicable after entering the premises, show his or her identity card to the occupier or other person.

38 Subsection 78(1)

After "monitoring warrant", insert "or offence-related warrant".

39 At the end of Subdivision G of Division 7 of Part 3

Add:

79A Compensation for damage to electronic equipment

- (1) This section applies if:
 - (a) as a result of electronic equipment being operated as mentioned in section 67 (about monitoring powers) or section 70A (about offence-related powers):
 - (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.
- (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 and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) In this section:

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

Part 4—Reporting

Division 1—Reporting to police

National Health Security Act 2007

40 Subsection 47(2) (at the end of the note)

Add “and must also report some changes under section 48A”.

41 Subsection 48(3) (note)

After “Note”, insert “1”.

42 At the end of subsection 48(3)

Add:

Note 2: The registered entity must also give reports about certain reportable events to police within a period prescribed by the regulations: see section 48A.

43 After section 48

Insert:

48A Registered entity must report certain reportable events to police

- (1) This section applies if:
 - (a) a reportable event occurs in relation to a registered entity and a facility in a State or Territory; and
 - (b) the event is one described in paragraph 48(1)(f) or prescribed by the regulations for the purposes of this section.
- (2) The registered entity must give a member of the police force of the State or Territory a report of the event that:
 - (a) is in a form approved by the Secretary; and
 - (b) includes the information required by the approved form.

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

- (3) The registered entity must give the report within the period prescribed by the regulations.
- (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.

48B Offence—failure to report reportable event to police

- (1) An entity commits an offence if:
 - (a) the entity is required by section 48A to give a report; and
 - (b) the entity does not give the report as required by that section.

Penalty: 500 penalty units.

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

44 Paragraph 53(1)(b)

Omit “to the Secretary under subsection 48(3)”, substitute “under subsection 48(3) or section 48A”.

45 Paragraph 53(1)(c)

Omit “to the Secretary as required by that subsection”, substitute “as required by that subsection or section”.

46 Subsection 55(1)

Omit “to the Secretary under subsection 42(1) or 48(3)”, substitute “under subsection 42(1) or 48(3) or section 48A”.

47 Subsection 55(1) (note)

Omit “to the Secretary”.

48 Paragraph 55(2)(b)

Omit “the Secretary a report under subsection 42(1) or 48(3)”, substitute “a report under subsection 42(1) or 48(3) or section 48A”.

49 Paragraph 55(2)(c)

Omit “the Secretary a report under that subsection”, substitute “a report under that subsection or section”.

50 Paragraph 55(2)(d)

Omit “the Secretary a joint report under that subsection”, substitute “a joint report under that subsection or section”.

Division 2—Periodic nil reporting

National Health Security Act 2007

51 At the end of subsection 48(1)

Add:

- ; (i) a period for which both the following conditions are met ends:
 - (i) the duration of the period is prescribed by the regulations for the purposes of this subparagraph;
 - (ii) there is no occurrence in the period of a reportable event that is described in paragraph (h) and is prescribed by the regulations for the purposes of this subparagraph.

Part 5—Cancellation of registration on application

National Health Security Act 2007

52 Paragraph 38(1)(a)

Omit “or 52 in relation to a registered entity”, substitute “, 52 or 55A relating to the registration of an entity”.

53 At the end of Subdivision B of Division 5 of Part 3

Add:

55A Cancellation of entity’s registration on application

- (1) An entity that is a registered entity may apply, in a form approved by the Secretary, for:
 - (a) cancellation (*total cancellation*) of the entity’s registration relating to all security-sensitive biological agents for which the entity is registered; or
 - (b) cancellation (*facility cancellation*) of the entity’s registration so far as it relates to one or more specified facilities.
- (2) The Secretary must decide:
 - (a) to cancel the registration in accordance with the application; or
 - (b) to refuse the application.
- (3) However, the Secretary:
 - (a) may decide on total cancellation only if he or she is satisfied that the entity does not handle any security-sensitive biological agent that is included on the National Register in relation to the entity and a facility; and
 - (b) may decide on facility cancellation only if he or she is satisfied that the entity does not handle at any of the facilities specified in the application any security-sensitive biological agent that is included on the National Register in relation to the entity and any of those facilities.
- (4) If the Secretary decides to cancel the registration, he or she must notify the entity in writing of the decision (whether the cancellation

Schedule 1 Amendments

Part 5 Cancellation of registration on application

is total cancellation or facility cancellation). The notice must include the information (if any) prescribed by the regulations.

Note: If the Secretary decides to refuse the application for cancellation, section 81 requires him or her to notify the entity.

- (5) Failure to comply with subsection (4) does not affect the validity of the decision.

54 Section 80 (after paragraph (a) of the definition of *reviewable decision*)

Insert:

- (aaa) a decision under section 55A to refuse an entity's application for cancellation of its registration; or

Part 6—Definition of biological agents

National Health Security Act 2007

55 Subsection 3(1) (paragraph (a) of the definition of *biological agents*)

Omit “that can spread rapidly”.

*[Minister’s second reading speech made in—
House of Representatives on 24 June 2009
Senate on 10 September 2009]*