



Agriculture Legislation Amendment (Streamlining Administration) Act 2021

No. 16, 2021

An Act to amend laws relating to biosecurity and imported food to provide for streamlined administration through automated decision-making, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
Schedule 1—Amendments		3
	<i>Biosecurity Act 2015</i>	3
	<i>Imported Food Control Act 1992</i>	6



Agriculture Legislation Amendment (Streamlining Administration) Act 2021

No. 16, 2021

An Act to amend laws relating to biosecurity and imported food to provide for streamlined administration through automated decision-making, and for related purposes

[Assented to 1 March 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Agriculture Legislation Amendment (Streamlining Administration) Act 2021*.

No. 16, 2021 Agriculture Legislation Amendment (Streamlining Administration) Act 1
2021

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	2 March 2021

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Biosecurity Act 2015

1 After section 541

Insert:

541A Power to arrange for certain decisions to be made by computer programs

- (1) The Director of Biosecurity may arrange for the use, under the Director of Biosecurity's control, of computer programs for any purposes for which a biosecurity officer may or must:
 - (a) make a decision under a relevant provision of this Act specified in a determination made under subsection (2); or
 - (b) exercise any power or comply with any obligation related to making a decision referred to in paragraph (a); or
 - (c) do anything else related to making a decision referred to in paragraph (a), or related to exercising a power or complying with an obligation referred to in paragraph (b).

Note: For *relevant provision*, see subsection (9).

- (2) The Director of Biosecurity may, by legislative instrument, determine:
 - (a) each relevant provision of this Act under which a decision may be made by the operation of a computer program under an arrangement made under subsection (1); and
 - (b) the classes of persons that may use a computer program under such an arrangement for any purposes referred to in subsection (1); and
 - (c) the conditions of that use.

Note: For variation and revocation of a determination made under this section, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (3) The Director of Biosecurity must take reasonable steps to ensure that decisions (*electronic decisions*) made by the operation of a computer program under an arrangement made under subsection (1) are consistent with the objects of this Act.

- (4) The Director of Biosecurity must take reasonable steps to ensure that an electronic decision is based on grounds on the basis of which a biosecurity officer could have made that decision. However, an electronic decision may be made without any state of mind being formed in relation to a matter to which the decision relates.
- (5) The Director of Biosecurity is taken to have:
- (a) made a decision; or
 - (b) exercised a power or complied with an obligation; or
 - (c) done something else related to the making of a decision or exercise of a power or compliance with an obligation; that was made, exercised, complied with or done by the operation of a computer program under an arrangement made under subsection (1), as if the Director of Biosecurity were a biosecurity officer.
- (6) A decision that the Director of Biosecurity is taken to have made because of subsection (5) is not a decision made by the Director of Biosecurity personally for the purposes of section 576 or 578.
- Note: Sections 576 and 578 deal with review of decisions.
- (7) A biosecurity officer may make a decision in substitution for an electronic decision if a biosecurity officer is satisfied that:
- (a) the electronic decision is not consistent with the objects of this Act; or
 - (b) another decision is more appropriate in the circumstances.
- (8) An electronic decision made in relation to a thing is of no effect to the extent that it is inconsistent with an earlier decision (other than an electronic decision) made in relation to the thing by a biosecurity officer or the Director of Biosecurity under this Act.
- (9) For the purposes of this section, each of the following is a **relevant provision** of this Act:
- (a) subsections 49(4) and (5) (negative pratique);
 - (b) a provision of Chapter 3 (managing biosecurity risks: goods) (other than section 154, subsection 157(1) or paragraph 162(1)(a));

-
- (c) a provision of Chapter 4 (managing biosecurity risks: conveyances) (other than subsection 192(6), paragraph 218(1)(a) or section 223 or 229);
 - (d) a provision of Chapter 5 (ballast water and sediment) (other than section 280 or 303);
 - (e) section 557 (permission to engage in certain conduct);
 - (f) sections 600 and 602 (withholding goods that are subject to charge);
 - (g) a provision of an instrument made for the purposes of a provision covered by any of paragraphs (a) to (f) of this subsection.

2 Subsection 542(3) (heading)

After “Powers”, insert “and functions”.

3 Subsection 542(3)

After “However, a power”, insert “or a function”.

4 Subsection 542(3) (table heading)

After “Powers”, insert “and functions”.

5 Subsection 542(3) (table, heading to column headed “Power”)

Repeal the heading, substitute:

Powers and functions

6 Subsection 542(3) (after table item 26)

Insert:

26A	To arrange for the use of computer programs for purposes related to making certain decisions under this Act and any other power or function conferred by section 541A	Section 541A
-----	---	--------------

7 Subsection 576(1) (at the end of the note)

Add “A decision that the Director of Biosecurity is taken to have made because of subsection 541A(5) is not a decision made by the Director of Biosecurity personally (see subsection 541A(6)).”.

8 Subsection 578(1) (note)

Omit “Note”, substitute “Note 1”.

9 At the end of subsection 578(1) (after the note)

Add:

Note 2: A decision that the Director of Biosecurity is taken to have made because of subsection 541A(5) is not a decision made by the Director of Biosecurity personally (see subsection 541A(6)).

Imported Food Control Act 1992

10 At the end of section 7A

Add:

- | |
|--|
| <ul style="list-style-type: none">• Decisions in relation to the issue of food control certificates and imported food inspection advices and the manner for dealing with food that has been identified as failing food may be made by computer programs. |
|--|

11 At the end of Part 2

Add:

Division 4—Other matters

20A Computerised decision-making

(1) The Secretary may arrange for the use, under the Secretary’s control, of computer programs for any purposes for which an authorised officer may or must:

- (a) make a decision under section 12, subsection 14(1) or subsection 20(2), (3) or (4); or

-
- (b) exercise any power or comply with any obligation related to making a decision referred to in paragraph (a); or
 - (c) do anything else related to making a decision referred to in paragraph (a), or related to exercising a power or complying with an obligation referred to in paragraph (b).
- (2) The Secretary is taken to have:
- (a) made a decision; or
 - (b) exercised a power or complied with an obligation; or
 - (c) done something else related to the making of a decision or exercise of a power or compliance with an obligation; that was made, exercised, complied with or done by the operation of a computer program under an arrangement made under subsection (1).
- (3) The Secretary must take reasonable steps to ensure that decisions (*electronic decisions*) made by the operation of a computer program under an arrangement made under subsection (1) are consistent with the object of this Act.
- (4) The Secretary must take reasonable steps to ensure that an electronic decision is based on grounds on the basis of which an authorised officer could have made that decision. However, an electronic decision may be made without any state of mind being formed in relation to a matter to which the decision relates.
- (5) An authorised officer may make a decision in substitution for an electronic decision if an authorised officer is satisfied that:
- (a) the electronic decision is not consistent with the object of this Act; or
 - (b) another decision is more appropriate in the circumstances.
- (6) An electronic decision made in relation to food is of no effect to the extent that it is inconsistent with an earlier decision (other than an electronic decision) made in relation to the food by an authorised officer under this Act.

12 Section 41

Before “The Secretary”, insert “(1)”.

13 Section 41

Omit “The Secretary”, substitute “Subject to subsection (2), the Secretary”.

14 At the end of section 41

Add:

- (2) The Secretary may delegate the Secretary’s powers and functions under section 20A only to an SES employee, or an acting SES employee, in the Department.
-

*[Minister’s second reading speech made in—
Senate on 2 December 2019
House of Representatives on 17 February 2021]*

(220/19)
