



# **Biosecurity Amendment (Strengthening Biosecurity) Act 2022**

**No. 76, 2022**

**An Act to amend the *Biosecurity Act 2015*, and for related purposes**

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



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# Biosecurity Amendment (Strengthening Biosecurity) Act 2022

No. 76, 2022

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**An Act to amend the *Biosecurity Act 2015*, and for related purposes**

[Assented to 5 December 2022]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Biosecurity Amendment (Strengthening Biosecurity) Act 2022*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	5 December 2022
2. Schedule 1	The day after this Act receives the Royal Assent.	6 December 2022
3. Schedule 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	5 June 2023
4. Schedule 3	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	5 June 2023
5. Schedules 4 to 8	The day after this Act receives the Royal Assent.	6 December 2022

Note: This table relates only to the provisions of this Act as originally enacted.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.

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### **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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Increasing protection from diseases and pests

### Part 1—Entry requirements

#### *Biosecurity Act 2015*

##### **1 Section 3 (paragraph dealing with Chapter 4)**

After “Powers may be exercised to assess the level of biosecurity risk associated with them, and biosecurity measures may be required to reduce that risk if it is considered to be unacceptable.”, insert “Requirements may also be determined for persons entering Australian territory on an incoming conveyance, in connection with diseases and pests that are considered to pose an unacceptable level of biosecurity risk.”.

##### **2 Subsection 25(1)**

Omit “(other than Part 1 of Chapter 8 (biosecurity emergencies)) applies in relation to a pest”, substitute “applies in relation to a pest (subject to subsection (2))”.

##### **3 Subsection 25(2)**

Repeal the subsection, substitute:

- (2) The following provisions of this Act apply only in relation to a pest that is referred to in paragraph (1)(a):
- (a) Division 3A of Part 2 of Chapter 4 (entry requirements: persons entering Australian territory on board conveyances);
  - (b) Part 1 of Chapter 8 (biosecurity emergencies).

##### **4 Section 190 (after the paragraph dealing with Division 3)**

Insert:

Division 3A allows the Agriculture Minister to determine requirements, for persons entering Australian territory on an incoming aircraft or vessel, in connection with diseases and pests
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that are considered to pose an unacceptable level of biosecurity risk.

## **5 After Division 3 of Part 2 of Chapter 4**

Insert:

### **Division 3A—Entry requirements: persons entering Australian territory on board conveyances**

#### **196A Persons on incoming aircraft or vessel may be subject to requirements relating to diseases or pests**

- (1) This section applies for the purposes of preventing, or reducing the risk of, a disease or pest that is considered to pose an unacceptable level of biosecurity risk entering, or establishing itself or spreading in, Australian territory or a part of Australian territory.

Note: This Division does not apply in relation to invasive pests (see subsection 25(2)).

- (2) The Agriculture Minister may determine one or more requirements for individuals who are entering Australian territory at a landing place or port in accordance with Division 2 or 3 of Part 4 of this Chapter.

Note: An individual who fails to comply with a requirement may contravene a civil penalty provision (see section 196C).

- (3) The determination must specify the disease or pest referred to in subsection (1).
- (4) A determination made under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.
- (5) A requirement must not be specified in a determination unless the Agriculture Minister is satisfied that:
- (a) the disease or pest poses an unacceptable level of biosecurity risk; and
  - (b) the requirement is appropriate and adapted to prevent, or reduce the risk of, the disease or pest entering, or establishing

itself or spreading in, Australian territory or a part of Australian territory.

*Where requirements apply*

- (6) The determination must specify where the requirements apply.

*Kinds of requirements that may be specified*

- (7) Without limiting subsection (2), the determination may specify:
- (a) requirements for all individuals, or classes of individuals; and
  - (b) requirements in relation to particular diseases or pests or classes of diseases or pests; and
  - (c) general requirements in relation to all specified diseases or pests; and
  - (d) requirements relating to the manner in which an individual must comply with a requirement.
- (8) Without limiting subsection (2), the determination may specify one or more of the following requirements:
- (a) a requirement for an individual to provide a declaration or evidence as to whether the individual has been exposed to goods, conveyances, premises or other things specified in the determination;
  - (b) a requirement for an individual to provide a declaration or evidence as to where the individual has been before entering Australian territory;
  - (c) a requirement for an individual to provide a declaration or evidence as to whether the individual has undertaken specified activities during a specified period before entering Australian territory, and, if so, specified details about those activities;
  - (d) a requirement for an individual to provide a declaration as to the individual's intended destination or destinations in Australian territory during a specified period after entering Australian territory;
  - (e) a requirement for an individual to provide a declaration as to the individual's intended work (whether paid or unpaid) or occupation during a specified period after entering Australian territory;
-

- (f) a requirement for an individual to be screened (whether by requiring the individual to be screened by equipment, by providing a declaration, or in any other way);
- (g) a requirement for an individual to move to a place, at the landing place or port, directed by a biosecurity officer (whether the direction is in relation to the individual or a class that includes the individual) for the purpose of a biosecurity officer assessing the level of biosecurity risk associated with either or both of the following:
  - (i) the individual;
  - (ii) any goods the individual is bringing with them into Australian territory at the landing place or port.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of this Act).

Note 2: This section is not subject to the privilege against self-incrimination (see section 635).

*Consultations before making determination*

- (9) Before making a determination, the Agriculture Minister must consult with:
  - (a) the Director of Biosecurity; and
  - (b) the Director of Human Biosecurity; and
  - (c) the head (however described) of the State or Territory body that is responsible for the administration of matters relating to biosecurity in each State and Territory.
- (10) A failure by the Agriculture Minister to comply with subsection (9) does not affect the validity of the determination.

**196B Varying and revoking requirements**

- (1) The Agriculture Minister must vary or revoke a determination in force under section 196A in relation to a disease or pest if the Agriculture Minister is satisfied that:
  - (a) the disease or pest no longer poses an unacceptable biosecurity risk; or

**Schedule 1** Increasing protection from diseases and pests

**Part 1** Entry requirements

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- (b) a requirement determined in relation to the disease or pest is no longer appropriate and adapted to prevent, or reduce the risk of, the disease or pest entering, or establishing itself or spreading in, Australian territory or a part of Australian territory.
- (2) An instrument that varies or revokes a determination made under section 196A is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.
- (3) This section does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to a determination in force under section 196A.

**196C Civil penalty for failing to comply with requirement**

An individual to whom a requirement determined under section 196A applies must comply with the requirement.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

Civil penalty: 120 penalty units.

**6 Division 4 of Part 2 of Chapter 4 (at the end of the heading)**

Add “associated with conveyances”.

**7 Division 5 of Part 2 of Chapter 4 (at the end of the heading)**

Add “associated with conveyances”.

**8 Subsection 523(1) (after table item 10)**

Insert:

10A Section 196C

**9 Paragraph 635(1)(c)**

After “196,”, insert “196C,”.

## **Part 2—Preventative biosecurity measures**

### ***Biosecurity Act 2015***

#### **10 After paragraph 311(d)**

Insert:

; and (e) to provide for biosecurity measures to be taken for the purposes of preventing behaviours or practices that may cause, or contribute to, the entry into, or the emergence, establishment or spread in, Australian territory or a part of Australian territory of diseases (other than listed human diseases), or pests, that are considered to pose an unacceptable level of biosecurity risk.

#### **11 After Part 6 of Chapter 6**

Insert:

## **Part 6A—Preventative biosecurity measures**

### **Division 1—Introduction**

#### **393A Simplified outline of this Part**

The Agriculture Minister may determine certain biosecurity measures for the purposes of preventing a specified behaviour or practice that causes, or contributes to, the entry into, or the emergence, establishment or spread in, Australian territory or a part of Australian territory of a specified disease (other than a listed human disease), or pest, that is considered to pose an unacceptable level of biosecurity risk.

## Division 2—Preventative biosecurity measures

### 393B Determining preventative biosecurity measures

- (1) This section applies for the purposes of preventing a behaviour or practice that:
- (a) may cause a disease (other than a listed human disease), or pest, that is considered to pose an unacceptable level of biosecurity risk to enter, or emerge, establish itself or spread in, Australian territory or a part of Australian territory; or
  - (b) may contribute to a disease or pest in relation to which paragraph (a) applies entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory.

Note: For preventative biosecurity measures relating to listed human diseases, see section 51.

- (2) The Agriculture Minister may make a determination that specifies any one or more of the following biosecurity measures to be taken by specified classes of persons:
- (a) banning or restricting a behaviour or practice;
  - (b) requiring a behaviour or practice;
  - (c) requiring a specified person to provide a specified report or keep specified records;
  - (d) conducting specified tests on specified goods or specified conveyances.

Note: A person who fails to comply with a biosecurity measure may contravene a civil penalty provision (see section 393C).

- (3) The determination must specify the behaviour or practice, and the disease or pest, referred to in subsection (1).
- (4) A determination made under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.
- (5) A biosecurity measure must not be specified in a determination unless the Agriculture Minister is satisfied that:

- (a) the disease or pest poses an unacceptable level of biosecurity risk; and
- (b) the biosecurity measure is appropriate and adapted to prevent, or reduce the risk of, the disease or pest entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory.

*Period of determination*

- (6) A determination must specify the period during which it is in force, which must not be more than 1 year.

*Consultations before making determination*

- (7) Before making a determination, the Agriculture Minister must consult with:
  - (a) the Director of Biosecurity; and
  - (b) the Director of Human Biosecurity; and
  - (c) the head (however described) of the State or Territory body that is responsible for the administration of matters relating to biosecurity in each State and Territory.
- (8) A failure by the Agriculture Minister to comply with subsection (7) does not affect the validity of the determination.

**393C Civil penalty for failing to comply with a preventative biosecurity measure**

A person to whom a biosecurity measure specified in accordance with subsection 393B(2) applies must comply with the biosecurity measure.

Civil penalty: 120 penalty units.

**12 Subsection 523(1) (after table item 37)**

Insert:

37A Section 393C

## Schedule 2—Pratique and pre-arrival reporting

### Part 1—Pratique

#### *Biosecurity Act 2015*

##### **1 Subsection 48(1)**

After “An operator of an incoming aircraft or vessel”, insert “, or the person in charge of an incoming aircraft or vessel,”.

##### **2 Subsection 48(1) (penalty)**

Repeal the penalty, substitute:

Civil penalty:

- (a) for an operator of the aircraft or vessel—1,000 penalty units;  
or
- (b) for the person in charge of the aircraft or vessel—300 penalty units.

##### **3 Application provision**

The amendments of section 48 of the *Biosecurity Act 2015* made by this Part apply in relation to an incoming aircraft or vessel that arrives at a landing place or port in Australian territory on or after the commencement of this item.



## **Part 2—Pre-arrival reporting**

### ***Biosecurity Act 2015***

#### **4 Before subsection 193(1)**

Insert:

*Initial report*

#### **5 After subsection 193(1)**

Insert:

*Other reports*

- (1A) The operator of the aircraft or vessel must give one or more other reports, as required by the regulations, in relation to the aircraft or vessel:
- (a) if the aircraft or vessel is included in a class of aircraft or vessels that is prescribed by the regulations for the purposes of this paragraph; or
  - (b) in the circumstances prescribed by the regulations for the purposes of this paragraph.

#### **6 Before subsection 193(2)**

Insert:

*Requirements for reports*

#### **7 Subsection 193(2)**

Omit “The report”, substitute “A report under this section”.

#### **8 Paragraph 193(4)(a)**

After “subsection (1)”, insert “or (1A)”.

#### **9 Subsection 193(5) (penalty)**

Omit “120”, substitute “1,000”.

**10 Subsection 193(6) (penalty)**

Omit “120”, substitute “1,000”.

**11 Section 194 (heading)**

Repeal the heading, substitute:

**194 Pre-arrival reporting—requirement to give more information**

**12 Paragraph 194(1)(a)**

Omit “section 193”, substitute “subsection 193(1) or (1A)”.

**13 After subsection 194(1)**

Insert:

(1A) The regulations may:

- (a) prescribe the circumstances in which the operator of an aircraft or vessel, that has given a report in relation to the aircraft or vessel under subsection 193(1) or (1A), must give a biosecurity officer further information in relation to that report; and
- (b) prescribe the kind of further information that the operator is required to give a biosecurity officer; and
- (c) prescribe when the operator must give that further information to a biosecurity officer.

Note 1: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of this Act).

Note 2: The obligation in this subsection applies whether or not the operator of the aircraft or vessel is in Australian territory when the operator of the aircraft or vessel is required to give the further information (see subsection (5)).

**14 After subsection 194(2)**

Insert:

(2A) A person contravenes this subsection if:

- (a) the person is required to give information under regulations made for the purposes of subsection (1A); and

(b) the person does not give the information to a biosecurity officer as required by those regulations.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 534).

**15 Subsection 194(3)**

Omit “subsection (2)”, substitute “subsection (2) or (2A)”.

**16 Subsection 194(3) (penalty)**

Omit “120”, substitute “1,000”.

**17 Subsection 194(4)**

Omit “subsection (2)”, substitute “subsection (2) or (2A)”.

**18 Subsection 194(4) (penalty)**

Omit “120”, substitute “1,000”.

**19 Subsection 194(5)**

After “Subsections (2),”, insert “(2A),”.

**20 Subsection 195(1)**

After “193(1)(a)”, insert “, or a report under subsection 193(1A) where paragraph 193(1)(a) applies.”.

**21 Application provisions**

- (1) Subsection 193(1A) of the *Biosecurity Act 2015*, as inserted by this Part, applies to an aircraft or vessel in relation to which a report is required to be given under subsection 193(1) of that Act on or after the commencement of this item.
- (2) The amendments of subsections 193(5) and (6) of the *Biosecurity Act 2015* made by this Part apply in relation to a person required to give a report under subsection 193(1) or (1A) of that Act on or after the commencement of this item.
- (3) The amendments of section 194 of the *Biosecurity Act 2015* made by this Part apply in relation to a report given under subsection 193(1) or (1A) of that Act on or after the commencement of this item.

**Schedule 2** Pratique and pre-arrival reporting

**Part 2** Pre-arrival reporting

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- (4) The amendment of section 195 of the *Biosecurity Act 2015* made by this Part applies in relation to a report given under subsection 193(1A) of that Act on or after the commencement of this item.

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## Schedule 3—Information management

### *Biosecurity Act 2015*

#### **1 Section 3 (paragraph beginning “Chapter 11”)**

Omit “the confidentiality of information obtained”, substitute “managing information obtained or generated”.

#### **2 Section 9**

Before “In this Act”, insert “(1)”.

#### **3 Section 9 (definition of *commercial-in-confidence*)**

Repeal the definition.

#### **4 Section 9 (definition of *Commonwealth body*)**

After “an authority”, insert “or agency”.

#### **5 Section 9**

Insert:

***Commonwealth entity*** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

***de-identified***, in relation to personal information, has the same meaning as in the *Privacy Act 1988*.

***entrusted person*** means any of the following:

- (a) the Agriculture Minister or the Health Minister;
- (b) the Agriculture Secretary or the Health Secretary;
- (c) the Director of Biosecurity or the Director of Human Biosecurity;
- (d) an APS employee in the Agriculture Department or the Health Department;
- (e) any other person employed or engaged by the Commonwealth to provide services to the Commonwealth in connection with the Agriculture Department or the Health Department;
- (f) any other person who is:

- (i) employed or engaged by the Commonwealth or a body corporate that is established by a law of the Commonwealth; and
- (ii) in a class of persons prescribed by regulations made for the purposes of this subparagraph.

**6 Section 9 (definition of *permissible purpose*)**

Repeal the definition.

**7 Section 9 (definition of *protected information*)**

Repeal the definition, substitute:

***protected information*** means information of any of the following kinds obtained or generated by a person:

- (a) sensitive information (within the meaning of the *Privacy Act 1988*);
- (b) information (including commercially sensitive information) the disclosure of which could reasonably be expected to found an action by a person (other than the Commonwealth) for breach of a duty of confidence;
- (c) information the disclosure of which could reasonably be expected to prejudice the prevention, detection, investigation, prosecution or punishment of one or more offences;
- (d) information the disclosure of which could reasonably be expected to prejudice the protection of public safety, human health or the environment;
- (e) information the disclosure of which could reasonably be expected to prejudice the security, defence or international relations of Australia;
- (f) information of a kind prescribed by regulations made for the purposes of this paragraph.

**8 Section 9**

Insert:

***relevant information*** means information obtained or generated by a person in the course of or for the purposes of:

- (a) performing functions or duties, or exercising powers, under this Act; or

- 
- (b) assisting another person to perform functions or duties, or exercise powers, under this Act.

### **9 Section 9 (definition of *State or Territory body*)**

After “an authority”, insert “or agency”.

### **10 At the end of section 9**

Add:

- (2) Before the Governor-General makes regulations for the purposes of paragraph (f) of the definition of *protected information* in subsection (1) to prescribe a kind of information, the Agriculture Minister or the Health Minister must be satisfied that disclosure of that kind of information would or could reasonably be expected to:
- (a) prejudice the effective working of the Agriculture Department or the Health Department; or
  - (b) otherwise harm the public interest.

### **11 Section 15**

Repeal the section.

### **12 Paragraph 255(1)(i)**

Omit “section 580”, substitute “Division 3 of Part 2 of Chapter 11”.

### **13 Subsection 523(1) (after table item 45)**

Insert:

45A          Subsection 580(6)

### **14 Subsection 542(3) (after table item 26AA)**

Insert:

26AB    To use or disclose relevant information    Sections 582 to 590 and section 590G

### **15 Part 2 of Chapter 11 (heading)**

Repeal the heading, substitute:

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## Part 2—Information management

### 16 Section 579

Repeal the section, substitute:

### 579 Simplified outline of this Part

Entrusted persons and certain other persons may commit an offence or be liable to a civil penalty if they use or disclose protected information other than in accordance with this Part.

Entrusted persons and certain other persons can use or disclose information (referred to as relevant information) obtained or generated under this Act in accordance with this Part.

Note 1: Each provision in Division 3 provides an authorisation for the purposes of the *Privacy Act 1988* and other laws.

Note 2: Nothing in this Part prevents the Commonwealth from making agreements or other arrangements to impose conditions on the use or disclosure of relevant information by a person or body who obtains the information as result of a disclosure authorised under Division 3.

### 17 Division 2 of Part 2 of Chapter 11 (heading)

Repeal the heading, substitute:

## Division 2—Offences and civil penalties

### 18 Section 580

Repeal the section, substitute:

#### Subdivision A—Unauthorised use or disclosure of protected information

### 580 Use or disclosure of protected information

*Unauthorised use or disclosure*

(1) A person contravenes this subsection if:



- 
- (a) the person is, or has been, an entrusted person or a person covered by subsection (2); and
  - (b) the person has obtained or generated information in the course of or for the purposes of:
    - (i) performing functions or duties, or exercising powers, under this Act; or
    - (ii) assisting another person to perform functions or duties, or exercise powers, under this Act; and
  - (c) the information is protected information; and
  - (d) the person uses or discloses the information.

Note: The physical elements of offences against subsections (5) and (6) are set out in this subsection (see section 534).

- (2) The following persons are covered by this subsection:
  - (a) a person employed or engaged by the Commonwealth or a body corporate that is established by a law of the Commonwealth;
  - (b) a biosecurity official;
  - (c) a chief human biosecurity officer;
  - (d) a human biosecurity officer;
  - (e) a biosecurity industry participant or an officer or employee of a biosecurity industry participant;
  - (f) a survey authority or an officer or employee of a survey authority;
  - (g) a person who has carried out, or is carrying out, an audit under section 436.

*Exception—required or authorised by law*

- (3) Subsection (1) does not apply if the use or disclosure of the information is required or authorised by:
  - (a) this Act or another law of the Commonwealth; or
  - (b) a law of a State or Territory prescribed by regulations made for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*).

*Exception—good faith*

- (4) Subsection (1) does not apply if the person uses or discloses the information in good faith:
- (a) in the purported performance of functions or duties, or the purported exercise of powers, under this Act; or
  - (b) in assisting another person in the purported performance of the other person’s functions or duties, or the purported exercise of the other person’s powers, under this Act.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*).

*Fault-based offence*

- (5) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Strict liability offence*

- (6) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (7) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

**19 Before section 581**

Insert:

**Subdivision B—Other matters**

**20 Section 581 (heading)**

Omit “Use in accordance with section 580 does not contravene laws”, substitute “Protection from liability”.

**21 Subsection 581(1) (heading)**

After “*use*”, insert “*or disclosure*”.

**22 Subsection 581(1)**

Omit “making a record of, or disclosing or using, information in accordance with section 580”, substitute “using or disclosing relevant information in accordance with section 582 or 590G”.

**23 Subsection 581(3) (heading)**

After “*use*”, insert “*or disclosure*”.

**24 Subsection 581(3)**

Omit “making a record of, or disclosing or using, information in accordance with section 580”, substitute “using or disclosing relevant information in accordance with Division 3”.

**25 Subsection 581(4) (heading)**

After “*use*”, insert “*or disclosure*”.

**26 Subsection 581(4)**

Omit “making a record of, or disclosing or using, information in accordance with section 580”, substitute “using or disclosing relevant information in accordance with Division 3”.

**27 Sections 582 to 590**

Repeal the sections, substitute:

**Division 3—Authorised uses and disclosures of relevant information**

**Subdivision A—Authorised uses and disclosures by entrusted person or other persons**

**582 Use or disclosure for the purposes of this Act**

- (1) An entrusted person or a person covered by subsection (2) may use or disclose relevant information in the course of or for the purposes of:

- (a) performing functions or duties, or exercising powers, under this Act; or
  - (b) assisting another person to perform functions or duties, or exercise powers, under this Act.
- (2) The following persons are covered by this subsection:
- (a) a person employed or engaged by the Commonwealth or a body corporate that is established by a law of the Commonwealth;
  - (b) a biosecurity official;
  - (c) a chief human biosecurity officer;
  - (d) a human biosecurity officer;
  - (e) a biosecurity industry participant or an officer or employee of a biosecurity industry participant;
  - (f) a survey authority or an officer or employee of a survey authority;
  - (g) a person who has carried out, or is carrying out, an audit under section 436;
  - (h) an issuing officer.

**583 Use or disclosure for the purposes of managing human health risks**

- (1) An entrusted person or a person covered by subsection (2) may use or disclose relevant information for the purpose of managing one or more of the following:
- (a) a risk covered by subsection (3);
  - (b) the risk of contagion of a listed human disease;
  - (c) the risk of listed human diseases entering Australian territory or a part of Australian territory, or emerging, establishing themselves or spreading in Australian territory or a part of Australian territory;
  - (d) human biosecurity emergencies.
- (2) The following persons are covered by this subsection:
- (a) a person employed or engaged by the Commonwealth or a body corporate that is established by a law of the Commonwealth;
  - (b) a biosecurity official;

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- (c) a chief human biosecurity officer;
  - (d) a human biosecurity officer;
  - (e) a biosecurity industry participant or an officer or employee of a biosecurity industry participant.
- (3) The risk covered by this subsection is:
- (a) the likelihood of a disease:
    - (i) entering Australian territory or a part of Australian territory; or
    - (ii) emerging, establishing itself or spreading in Australian territory or a part of Australian territory; and
  - (b) the potential for the disease to cause serious harm to human health.

#### **584 Disclosure for the purposes of a State or Territory managing risks**

- (1) An entrusted person may disclose relevant information to a State or Territory body if the disclosure is for the purpose of assisting the State or Territory body to perform its functions or duties, or exercise its powers, in relation to managing a risk covered by subsection (2) for the State or Territory.
- (2) The risk covered by this subsection for a State or Territory is:
  - (a) the likelihood of a disease or pest:
    - (i) entering the State or Territory or a part of the State or Territory; or
    - (ii) emerging, establishing itself or spreading in the State or Territory or a part of the State or Territory; and
  - (b) the potential for any of the following:
    - (i) the disease or pest to cause serious harm to human, animal or plant health in that State or Territory;
    - (ii) the disease or pest to cause serious harm to the environment in that State or Territory;
    - (iii) serious economic consequences in that State or Territory associated with the entry, emergence, establishment or spread of the disease or pest as mentioned in paragraph (a).

**585 Disclosure for the purposes of foreign governments etc. managing risks**

- (1) An entrusted person may disclose relevant information to a foreign government, an authority or agency of a foreign government or an international body of an intergovernmental character, for the purposes of:
  - (a) the government, authority, agency or body managing a risk covered by subsection (2); or
  - (b) giving effect to Australia's international obligations.
- (2) The risk covered by this subsection is:
  - (a) the likelihood of a disease or pest:
    - (i) entering a foreign country or a part of a foreign country; or
    - (ii) emerging, establishing itself or spreading in a foreign country or a part of a foreign country; and
  - (b) the potential for any of the following:
    - (i) the disease or pest to cause harm to human, animal or plant health in that foreign country;
    - (ii) the disease or pest to cause harm to the environment in that foreign country;
    - (iii) economic consequences in that foreign country associated with the entry, emergence, establishment or spread of the disease or pest as mentioned in paragraph (a).

**586 Use or disclosure for the purposes of certain Acts**

An entrusted person may use or disclose relevant information if the use or disclosure is for the purposes of the administration of this Act or another Act that is administered by the Agriculture Minister or the Health Minister.

**587 Disclosure to a Commonwealth entity**

An entrusted person may disclose relevant information to a Commonwealth entity if the disclosure is for the purposes of assisting the entity to perform its functions or duties or exercise its powers.

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**588 Disclosure to a court, tribunal etc.**

- (1) An entrusted person may disclose relevant information to a court exercising federal jurisdiction.
- (2) An entrusted person may disclose relevant information to:
  - (a) a court; or
  - (b) a tribunal, authority or person that has the power to require the answering of questions or the production of documents; for the purposes of the enforcement of a law of the Commonwealth or to assist the court, tribunal, authority or person to make or review an administrative decision that is required or authorised to be made under a law of the Commonwealth.

**589 Disclosure for the purposes of law enforcement**

- (1) An entrusted person may disclose relevant information to a body mentioned in subsection (2) if:
  - (a) the entrusted person reasonably believes that disclosing the information is necessary for:
    - (i) the enforcement of the criminal law; or
    - (ii) the enforcement of a law imposing a pecuniary penalty; or
    - (iii) the protection of public revenue; and
  - (b) the functions of the body include that enforcement or protection; and
  - (c) for a body mentioned in paragraph (2)(b) or (d)—the body has undertaken not to use or further disclose the information except in accordance with an agreement that:
    - (i) is in force between the Commonwealth and the State or Territory; and
    - (ii) applies in relation to the information; and
  - (d) for a body mentioned in paragraph (2)(b) or (d)—the entrusted person is satisfied that the information will be used or further disclosed only in accordance with the agreement.
- (2) The bodies are the following:
  - (a) a Commonwealth entity;
  - (b) a State or Territory body;

- (c) the Australian Federal Police;
- (d) the police force or police service of a State or Territory.

**590 Use or disclosure for research, policy development or data analysis**

- (1) An entrusted person may:
  - (a) use relevant information; or
  - (b) disclose relevant information to an entrusted person; or
  - (c) disclose relevant information to another person or body;for the purposes of the person or body undertaking research, policy development or data analysis to assist the Agriculture Department or the Health Department with the administration of this Act.
- (2) An entrusted person is not authorised under paragraph (1)(c) to disclose relevant information to:
  - (a) another person who is not employed or engaged by the Commonwealth or a body corporate that is established by a law of the Commonwealth; or
  - (b) a body that is not a Commonwealth entity;unless:
  - (c) the other person or body has undertaken not to use or further disclose the information except in accordance with an agreement that:
    - (i) is in force between the Commonwealth and that person or body; and
    - (ii) applies in relation to the information; and
  - (d) the entrusted person is satisfied that the information will be used or further disclosed only in accordance with the agreement.
- (3) An entrusted person is not authorised under paragraph (1)(c) to disclose relevant information unless the entrusted person is satisfied that:
  - (a) in the case of research, policy development or data analysis that could not proceed if personal information were de-identified before the relevant information is disclosed—only the minimum amount of personal information necessary to proceed is disclosed; or



- (b) otherwise—all reasonable steps have been taken to de-identify any personal information before the relevant information is disclosed.

**590A Use or disclosure of statistics**

An entrusted person may use or disclose relevant information if the information is statistics that are not likely to enable the identification of a person.

**590B Use or disclosure of publicly available information**

An entrusted person may use or disclose relevant information if the information has already been lawfully made available to the public.

**590C Disclosure to person to whom information relates**

An entrusted person may disclose relevant information to the person to whom the information relates.

**590D Use or disclosure with consent**

An entrusted person may use or disclose relevant information that relates to a person if:

- (a) the person has consented to the use or disclosure; and
- (b) the use or disclosure is in accordance with that consent.

**590E Disclosure to person who provided information**

An entrusted person may disclose relevant information to the person who provided the information.

**Subdivision B—Authorised uses and disclosures by Director of Biosecurity or Director of Human Biosecurity**

**590F Disclosure to State or Territory body**

The Director of Biosecurity or the Director of Human Biosecurity may disclose relevant information to a State or Territory body if:

- (a) that Director reasonably believes that disclosing the information is necessary for the purposes of the administration of a law of a State or Territory; and
- (b) the State or Territory body has undertaken not to use or further disclose the information except in accordance with an agreement that:
  - (i) is in force between the Commonwealth and the State or Territory; and
  - (ii) applies in relation to the information; and
- (c) that Director is satisfied that the information will be used or further disclosed only in accordance with the agreement.

#### **590G Use or disclosure to manage severe and immediate threats**

The Director of Biosecurity or the Director of Human Biosecurity may use or disclose relevant information if that Director reasonably believes that:

- (a) using or disclosing the information is necessary to manage a severe and immediate threat to human health, animal health, plant health or the environment; and
- (b) the threat has the potential to cause harm on a nationally significant scale.

#### **Subdivision C—Authorised uses and disclosures under regulations**

#### **590H Use or disclosure authorised by regulations**

- (1) A person may use relevant information if:
  - (a) the person is included in a class of persons prescribed by regulations made for the purposes of this paragraph; and
  - (b) the use is for a purpose prescribed by regulations made for the purposes of this paragraph; and
  - (c) the information is of a kind prescribed by regulations made for the purposes of this paragraph; and
  - (d) the use complies with any conditions prescribed by regulations made for the purposes of this paragraph.
- (2) A person may disclose relevant information if:

- (a) the person is included in a class of persons prescribed by regulations made for the purposes of this paragraph; and
  - (b) the disclosure is for a purpose prescribed by regulations made for the purposes of this paragraph; and
  - (c) the information is of a kind prescribed by regulations made for the purposes of this paragraph; and
  - (d) the disclosure complies with any conditions prescribed by regulations made for the purposes of this paragraph.
- (3) Regulations made for the purposes of this section must specify the legislative power or powers of the Parliament in respect of which the regulations are made.
- (4) Subdivisions A and B do not limit regulations that may be made for the purposes of this section.

## **28 Application and saving provisions**

- (1) The amendments of the *Biosecurity Act 2015* made by this Schedule apply in relation to the use or disclosure of relevant information on or after the commencement of this item, whether the relevant information is obtained or generated before, on or after that commencement.
- (2) Despite the amendments of the *Biosecurity Act 2015* made by this Schedule, sections 580 to 589 of that Act, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to the making of a record, disclosure or use of protected information before that commencement.
- (3) Despite the repeal of section 590 of the *Biosecurity Act 2015* by this Schedule, that section, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a year ending before that commencement.

## Schedule 4—Strengthening penalties

### Part 1—Managing biosecurity risks: goods

#### *Biosecurity Act 2015*

#### 1 Amendments of listed provisions—offences and civil penalty provisions

The provisions of the *Biosecurity Act 2015* listed in the following table are amended as set out in the table.

Amendments relating to offences and civil penalty provisions			
Item	Provision	Omit	Substitute
1	Subsection 120(6) (penalty)	120	300
2	Subsection 120(7) (penalty)	120	300
3	Subsection 121(3) (penalty)	120	300
4	Subsection 121(4) (penalty)	120	300
5	Subsection 122(6) (penalty)	120	300
6	Subsection 122(7) (penalty)	120	300
7	Subsection 143(5) (penalty)	300	1,000
8	Subsection 143(6) (penalty)	120	300
9	Subsection 144(6) (penalty)	300	1,000
10	Subsection 144(7) (penalty)	120	300
11	Subsection 145(2) (penalty)	300	1,000
12	Subsection 145(3) (penalty)	120	300
13	Subsection 146(4) (penalty)	300	1,000
14	Subsection 146(5) (penalty)	300	1,000
15	Subsection 146(6) (penalty)	300	1,000
16	Subsection 146(7) (penalty)	120	300
17	Subsection 147(2) (penalty)	120	300
18	Subsection 147(4) (penalty)	300	1,000
19	Subsection 147(5) (penalty)	300	1,000
20	Subsection 147(6) (penalty)	300	1,000
21	Subsection 147(7) (penalty)	120	300

<b>Amendments relating to offences and civil penalty provisions</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit</b>	<b>Substitute</b>
22	Subsection 148(4) (penalty)	300	1,000
23	Subsection 148(5) (penalty)	300	1,000
24	Subsection 148(6) (penalty)	300	1,000
25	Subsection 148(7) (penalty)	120	300
26	Subsection 149(1) (penalty)	120	300
27	Subsection 155(2) (penalty)	120	1,000
28	Subsection 155(3) (penalty)	120	300
29	Subsection 156(2) (penalty)	120	1,000
30	Subsection 156(3) (penalty)	120	300

## **2 Application provisions**

- (1) The amendments of section 120 of the *Biosecurity Act 2015* made by this Schedule apply in relation to goods that are unloaded on or after the commencement of this item.
- (2) The amendments of section 121 of the *Biosecurity Act 2015* made by this Schedule apply in relation to a notice given under section 120 of that Act on or after the commencement of this item.
- (3) The amendments of section 122 of the *Biosecurity Act 2015* made by this Schedule apply in relation to a requirement made under subsection 122(2) or (3) of that Act on or after the commencement of this item.
- (4) The amendments of section 143 of the *Biosecurity Act 2015* made by this Schedule apply in relation to a direction given under subsection 143(3) of that Act on or after the commencement of this item.
- (5) The amendments of section 144 of the *Biosecurity Act 2015* made by this Schedule apply in relation to a direction given under subsection 144(3) or (4) of that Act on or after the commencement of this item.
- (6) The amendments of section 145 of the *Biosecurity Act 2015* made by this Schedule apply in relation to goods that are unloaded on or after the commencement of this item.

**Schedule 4** Strengthening penalties

**Part 1** Managing biosecurity risks: goods

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- (7) The amendments of section 146 of the *Biosecurity Act 2015* made by this Schedule apply in relation to a permission given under subsection 146(2) of that Act on or after the commencement of this item.
- (8) The amendments of section 147 of the *Biosecurity Act 2015* made by this Schedule apply in relation to an aircraft or vessel that arrives at a first point of entry for the aircraft or vessel on or after the commencement of this item.
- (9) The amendments of section 148 of the *Biosecurity Act 2015* made by this Schedule apply in relation to a permission given under subsection 148(2) of that Act on or after the commencement of this item.
- (10) The amendment of section 149 of the *Biosecurity Act 2015* made by this Schedule applies in relation to goods that are unloaded on or after the commencement of this item.
- (11) The amendments of section 155 of the *Biosecurity Act 2015* made by this Schedule apply in relation to goods that become subject to biosecurity control on or after the commencement of this item.
- (12) The amendments of section 156 of the *Biosecurity Act 2015* made by this Schedule apply in relation to goods that become subject to biosecurity control on or after the commencement of this item.

## Part 2—Managing biosecurity risks: conveyances

### *Biosecurity Act 2015*

#### **3 Amendments of listed provisions—offences and civil penalty provisions**

The provisions of the *Biosecurity Act 2015* listed in the following table are amended as set out in the table.

<b>Amendments relating to offences and civil penalty provisions</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit</b>	<b>Substitute</b>
1	Subsection 198(2) (penalty)	120	300
2	Subsection 200(2) (penalty)	120	300
3	Subsection 201(3) (penalty)	120	300
4	Subsection 202(2) (penalty)	120	300
5	Subsection 203(2) (penalty)	120	300
6	Subsection 204(2) (penalty)	120	300
7	Subsection 214(3) (penalty)	120	300
8	Subsection 215(2) (penalty)	300	1,000
9	Subsection 215(3) (penalty)	300	1,000
10	Subsection 215(4) (penalty)	300	1,000
11	Subsection 215(5) (penalty)	300	1,000
12	Subsection 215(6) (penalty)	300	1,000
13	Subsection 215(7) (penalty)	120	300
14	Subsection 215(8) (penalty)	120	300
15	Subsection 216(3) (penalty)	300	1,000
16	Subsection 216(4) (penalty)	120	300
17	Subsection 217(4) (penalty)	300	1,000
18	Subsection 217(5) (penalty)	120	300
19	Subsection 220(1) (penalty)	120	300
20	Subsection 221(3) (penalty)	50	60
21	Subsection 237(2) (penalty)	300	1,000
22	Subsection 237(3) (penalty)	300	1,000

**Schedule 4** Strengthening penalties  
**Part 2** Managing biosecurity risks: conveyances

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<b>Amendments relating to offences and civil penalty provisions</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit</b>	<b>Substitute</b>
23	Subsection 237(4) (penalty)	300	1,000
24	Subsection 237(5) (penalty)	120	300
25	Subsection 238(2) (penalty)	300	1,000
26	Subsection 238(3) (penalty)	300	1,000
27	Subsection 238(4) (penalty)	300	1,000
28	Subsection 238(5) (penalty)	120	300
29	Subsection 239(4) (penalty)	300	1,000
30	Subsection 239(5) (penalty)	300	1,000
31	Subsection 239(6) (penalty)	300	1,000
32	Subsection 239(7) (penalty)	120	300
33	Subsection 243(2) (penalty)	300	1,000
34	Subsection 243(3) (penalty)	120	300
35	Subsection 245(2) (penalty)	300	1,000
36	Subsection 245(3) (penalty)	300	1,000
37	Subsection 245(4) (penalty)	300	1,000
38	Subsection 245(5) (penalty)	120	300
39	Subsection 246(2) (penalty)	300	1,000
40	Subsection 246(3) (penalty)	300	1,000
41	Subsection 246(4) (penalty)	300	1,000
42	Subsection 246(5) (penalty)	120	300
43	Subsection 247(4) (penalty)	300	1,000
44	Subsection 247(5) (penalty)	300	1,000
45	Subsection 247(6) (penalty)	300	1,000
46	Subsection 247(7) (penalty)	120	300
47	Subsection 251(2) (penalty)	300	1,000
48	Subsection 251(3) (penalty)	120	300
49	Subsection 252A(3) (penalty)	300	1,000
50	Subsection 252A(4) (penalty)	120	300

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#### **4 Application provisions—conveyances entering Australian territory etc.**

- (1) The amendment of subsection 198(2) of the *Biosecurity Act 2015* made by this Schedule applies in relation to a direction that is given on or after the commencement of this item.
- (2) The amendments of subsections 200(2) and 201(3) of the *Biosecurity Act 2015* made by this Schedule apply in relation to a requirement that is made on or after the commencement of this item.
- (3) The amendment of subsection 202(2) of the *Biosecurity Act 2015* made by this Schedule applies in relation to a direction that is given on or after the commencement of this item.
- (4) The amendment of subsection 203(2) of the *Biosecurity Act 2015* made by this Schedule applies in relation to a biosecurity control notice that is affixed on or after the commencement of this item.
- (5) The amendment of subsection 204(2) of the *Biosecurity Act 2015* made by this Schedule applies in relation to a conveyance:
  - (a) that has been secured in accordance with a direction given under subsection 198(1) of that Act on or after the commencement of this item; or
  - (b) in relation to which a direction relating to movement has been given under paragraph 202(1)(a) of that Act on or after the commencement of this item; or
  - (c) that has been moved under paragraph 202(1)(b) of that Act on or after the commencement of this item; or
  - (d) in relation to which a biosecurity control notice has been affixed under paragraph 203(1)(a) of that Act on or after the commencement of this item.
- (6) The amendment of subsection 214(3) of the *Biosecurity Act 2015* made by this Schedule applies in relation to a notice that is affixed on or after the commencement of this item.
- (7) The amendments of section 215 of the *Biosecurity Act 2015* made by this Schedule apply in relation to a direction that is given on or after the commencement of this item.

## Schedule 4 Strengthening penalties

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- (8) The amendments of subsections 216(3) and (4) of the *Biosecurity Act 2015* made by this Schedule apply in relation to a notice that is affixed on or after the commencement of this item.
- (9) The amendments of subsections 217(4) and (5) of the *Biosecurity Act 2015* made by this Schedule apply in relation to a direction that is given on or after the commencement of this item.
- (10) The amendment of subsection 220(1) of the *Biosecurity Act 2015* made by this Schedule applies in relation to an incoming aircraft or vessel that becomes subject to biosecurity control on or after the commencement of this item.
- (11) The amendment of subsection 221(3) of the *Biosecurity Act 2015* made by this Schedule applies in relation to a vessel that enters Australian territory on or after the commencement of this item.

### **5 Application provisions—entry points for incoming aircraft and vessels**

- (1) The amendments of sections 237 and 238 of the *Biosecurity Act 2015* made by this Schedule apply in relation to an aircraft that becomes subject to biosecurity control on or after the commencement of this item.
- (2) The amendments of section 239 of the *Biosecurity Act 2015* made by this Schedule apply in relation to a permission that is given on or after the commencement of this item.
- (3) The amendments of subsections 243(2) and (3) of the *Biosecurity Act 2015* made by this Schedule apply in relation to a direction that is given on or after the commencement of this item.
- (4) The amendments of sections 245 and 246 of the *Biosecurity Act 2015* made by this Schedule apply in relation to a vessel that becomes subject to biosecurity control on or after the commencement of this item.
- (5) The amendments of section 247 of the *Biosecurity Act 2015* made by this Schedule apply in relation to a permission that is given on or after the commencement of this item.

- (6) The amendments of subsections 251(2) and (3) and 252A(3) and (4) of the *Biosecurity Act 2015* made by this Schedule apply in relation to a direction that is given on or after the commencement of this item.

## Schedule 5—Risk assessment

### *Biosecurity Act 2015*

#### **1 Section 5 (note 2)**

Omit “179(3)”, substitute “179(1A)”.

#### **2 Section 9**

Insert:

*biosecurity worker* has the meaning given by section 14A.

#### **3 After section 14**

Insert:

#### **14A Meaning of *biosecurity worker***

(1) A *biosecurity worker* is:

- (a) an APS employee in the Agriculture Department or Health Department; or
- (b) a person who is an employee of an Agency (within the meaning of the *Public Service Act 1999*) and whose services are made available to the Agriculture Department or Health Department; or
- (c) a person who is:
  - (i) engaged as a consultant or contractor to perform services for the Agriculture Department or Health Department; and
  - (ii) specified in a determination under subsection (2); or
- (d) a person who is:
  - (i) engaged or employed by a person to whom paragraph (c) or this paragraph applies; and
  - (ii) performing services for the Agriculture Department or Health Department in connection with that engagement or employment; and
  - (iii) specified in a determination under subsection (3).

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- (2) The Director of Biosecurity or the Director of Human Biosecurity may, by written determination, specify a person for the purposes of subparagraph (1)(c)(ii).
  - (3) The Director of Biosecurity or the Director of Human Biosecurity may, by written determination, specify a person for the purposes of subparagraph (1)(d)(iii).
  - (4) A determination under subsection (2) or (3) is not a legislative instrument.

#### **4 Subsection 173(4)**

Repeal the subsection, substitute:

- (4) Before a determination under subsection (1) is made:
  - (a) a risk assessment must be conducted by a biosecurity worker in relation to the making of that determination; and
  - (b) the Director of Biosecurity:
    - (i) must be satisfied that the ALOP for Australia was applied in the conduct of the risk assessment; and
    - (ii) must consider the risk assessment; and
    - (iii) may also consider any other matters that the Director considers relevant; and
  - (c) the Director of Human Biosecurity:
    - (i) must be satisfied that the ALOP for Australia was applied in the conduct of the risk assessment; and
    - (ii) must consider the risk assessment; and
    - (iii) may also consider any other matters that the Director considers relevant.

#### **5 Subsection 174(3)**

Repeal the subsection, substitute:

- (3) Before a determination under subsection (1) is made:
  - (a) a risk assessment must be conducted by a biosecurity worker in relation to the making of that determination; and
  - (b) the Director of Biosecurity:
    - (i) must be satisfied that the ALOP for Australia was applied in the conduct of the risk assessment; and

- (ii) must consider the risk assessment; and
- (iii) may also consider any other matters that the Director considers relevant; and
- (c) the Director of Human Biosecurity:
  - (i) must be satisfied that the ALOP for Australia was applied in the conduct of the risk assessment; and
  - (ii) must consider the risk assessment; and
  - (iii) may also consider any other matters that the Director considers relevant.

## **6 After subsection 179(1)**

Insert:

- (1A) Before granting the permit in relation to the goods:
  - (a) a risk assessment must be conducted in relation to the goods by a biosecurity worker; and
  - (b) the Director of Biosecurity must be satisfied that the ALOP for Australia was applied in the conduct of the risk assessment.

## **7 Before paragraph 179(2)(a)**

Insert:

- (aa) the risk assessment that was conducted in relation to the goods; and

## **8 Subsection 179(3)**

Repeal the subsection.

## **9 Subsection 182(4)**

Repeal the subsection, substitute:

- (4) Before a determination under subsection (1) is made:
  - (a) a risk assessment must be conducted by a biosecurity worker in relation to the making of that determination; and
  - (b) the Director of Biosecurity must be satisfied that the ALOP for Australia was applied in the conduct of the risk assessment; and

- (c) the Director of Biosecurity must consider the risk assessment; and
- (d) the Director of Biosecurity may also consider any other matters that the Director considers relevant.

**10 Subsection 541(4) (note)**

Omit “The Director of Biosecurity must apply the ALOP for Australia”, substitute “The ALOP for Australia must be applied”.

**11 Subsection 541(4) (note)**

Omit “179(3)”, substitute “179(1A)”.

**12 Application provisions**

- (1) The amendment of section 173 of the *Biosecurity Act 2015* made by this Schedule applies in relation to a determination made under subsection 173(1) of that Act on or after the commencement of this item.
- (2) The amendment of section 174 of the *Biosecurity Act 2015* made by this Schedule applies in relation to a determination made under subsection 174(1) of that Act on or after the commencement of this item.
- (3) The amendments of section 179 of the *Biosecurity Act 2015* made by this Schedule apply in relation to an application for a permit made on or after the commencement of this item.
- (4) The amendment of section 182 of the *Biosecurity Act 2015* made by this Schedule applies in relation to a determination made under subsection 182(1) of that Act on or after the commencement of this item.

## Schedule 6—Arrangements and grants for dealing with risks posed by diseases or pests

### *Biosecurity Act 2015*

#### 1 Section 3

After:

(c) recovering costs under this Act; and

insert:

(ca) arrangements and grants for dealing with risks posed by diseases or pests; and

#### 2 Section 4 (note)

After “response)”, insert “, Part 3A of Chapter 11 (arrangements and grants for dealing with risks posed by diseases or pests)”.

#### 3 Section 4 (note)

Omit “and 310”, substitute “, 310 and 614B”.

#### 4 Section 9 (definition of *biosecurity risk*)

After “section 310”, insert “or 614B”.

#### 5 Section 9 (at the end of the note to the definition of *biosecurity risk*)

Add “and section 614B applies this modified meaning in relation to Part 3A of Chapter 11 (arrangements and grants for dealing with risks posed by diseases or pests)”.

#### 6 After Part 3 of Chapter 11

Insert:



## **Part 3A—Arrangements and grants for dealing with risks posed by diseases or pests**

### **614A Simplified outline of this Part**

The Agriculture Minister or the Health Minister may, on behalf of the Commonwealth, make, vary or administer an arrangement for the making of payments by the Commonwealth, or make, vary or administer a grant of financial assistance, for dealing with risks posed by diseases or pests.

### **614B Arrangements and grants for dealing with risks posed by diseases or pests**

- (1) The Agriculture Minister or the Health Minister may, on behalf of the Commonwealth, make, vary or administer an arrangement for the making of payments by the Commonwealth, or make, vary or administer a grant of financial assistance, in relation to one or more of the following:
  - (a) activities or research relating to identifying, preventing, preparing for or managing biosecurity risks;
  - (b) activities in or outside Australian territory relating to dealing with the risk covered by subsection (2), including, but not limited to, improving the capacity of foreign countries to respond to or manage that risk;
  - (c) activities relating to communicating information in or outside Australian territory about the identification of, prevention of, preparation for or management of:
    - (i) biosecurity risks; or
    - (ii) the risk covered by subsection (2);
  - (d) activities relating to supporting or enhancing State or Territory or industry-led biosecurity incident response programs, or biosecurity incident recovery programs, dealing with biosecurity risks;
  - (e) activities relating to identifying or managing established pests or established diseases to stop the spread of such pests or diseases;

- (f) activities relating to furthering the objects of this Act;
  - (g) a matter that is incidental or ancillary to an activity covered by paragraph (a), (b), (c), (d), (e) or (f).
- (2) The risk covered by this subsection is:
- (a) the likelihood of a disease or pest:
    - (i) entering a foreign country or a part of a foreign country; or
    - (ii) emerging, establishing itself or spreading in a foreign country or a part of a foreign country; and
  - (b) the potential for any of the following:
    - (i) the disease or pest to cause harm to human, animal or plant health in that foreign country;
    - (ii) the disease or pest to cause harm to the environment in that foreign country;
    - (iii) economic consequences in that foreign country associated with the entry, emergence, establishment or spread of the disease or pest as mentioned in paragraph (a).

*Reimbursement of costs or expenses*

- (3) An arrangement under subsection (1) may provide for the Commonwealth to reimburse, or partly reimburse, costs or expenses.
- (4) A grant under subsection (1) may be made by way of the reimbursement, or partial reimbursement, of costs or expenses.
- (5) Subsections (3) and (4) do not limit subsection (1).

*Definitions*

- (6) In this section:

**arrangement** includes a contract, agreement, deed or understanding.

**biosecurity risk** has the same meaning as it has in Chapter 6.

**make**, in relation to an arrangement, includes enter into.

#### **614C Terms and conditions for grants**

##### *Grant of financial assistance to a State or Territory*

- (1) For a grant of financial assistance under section 614B to a State or Territory, the terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State or Territory.
- (2) The Agriculture Minister or the Health Minister may, on behalf of the Commonwealth, enter into an agreement under subsection (1).
- (3) Any variation of the grant must be in accordance with the terms or conditions of the grant.

##### *Grant of financial assistance to other persons*

- (4) For a grant of financial assistance under section 614B to a person other than a State or Territory, this section does not, by implication, prevent the grant from being made subject to terms and conditions.

#### **614D Additional operation of this Part**

- (1) In addition to Part 3 of Chapter 1, this Part also has effect as provided by this section.
- (2) This Part also applies in relation to an arrangement or grant referred to in section 614B that is with respect to:
  - (a) the granting of financial assistance to a State or Territory; or
  - (b) a Territory.

#### **614E Relationship of this Part with other Acts**

This Part does not, by implication, limit the operation of the *Financial Framework (Supplementary Powers) Act 1997*.

#### **614F Executive power of the Commonwealth**

This Part does not, by implication, limit the executive power of the Commonwealth.

### **614G Inclusion of information in annual reports**

- (1) The Agriculture Secretary, when preparing the Agriculture Department's annual report under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period, must include the following information in that report:
  - (a) the total of the amounts paid in that period under arrangements or grants referred to in section 614B of this Act that were made by the Agriculture Minister;
  - (b) the total number of such arrangements or grants that were made by the Agriculture Minister in that period.
- (2) The Health Secretary, when preparing the Health Department's annual report under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period, must include the following information in that report:
  - (a) the total of the amounts paid in that period under arrangements or grants referred to in section 614B of this Act that were made by the Health Minister;
  - (b) the total number of such arrangements or grants that were made by the Health Minister in that period.

### **614H Delegation**

- (1) The Health Minister may, by writing, delegate any or all of the Health Minister's powers under section 614B to:
  - (a) the Health Secretary; or
  - (b) an SES employee, or acting SES employee, in the Health Department; or
  - (c) an SES employee, or acting SES employee, in a Department of State of the Commonwealth other than the Health Department.

Note: For delegation of powers by the Agriculture Minister, see section 643.

- (2) The Health Minister may, by writing, delegate the Health Minister's power under section 614C to:
  - (a) the Health Secretary; or
  - (b) an SES employee, or acting SES employee, in the Health Department.

Note: For delegation of powers by the Agriculture Minister, see section 643.

- (3) In exercising any powers under a delegation under this section, the delegate must comply with any directions of the Health Minister.

**7 After subsection 643(1)**

Insert:

- (1A) Without limiting subsection (1), the Agriculture Minister may, by writing, delegate any or all of the Agriculture Minister's powers under section 614B to an SES employee, or acting SES employee, in a Department of State of the Commonwealth other than the Agriculture Department.

## **Schedule 7—Approved arrangements and compensation**

### **Part 1—Release of goods from biosecurity control**

#### *Biosecurity Act 2015*

##### **1 Subsection 19(3) (paragraph (a) of the note)**

After “notice”, insert “or declaration”.

##### **2 Paragraph 162(1)(b)**

Repeal the paragraph, substitute:

- (b) a biosecurity industry participant, who is authorised to release the goods in accordance with an approved arrangement covering the biosecurity industry participant:
  - (i) unless subparagraph (ii) applies, gives a written notice, or gave a written notice before the goods became subject to biosecurity control, to a person in charge of the goods releasing the goods from biosecurity control; or
  - (ii) if the biosecurity industry participant is, or will be, a person in charge of the goods—makes a written declaration, or made a written declaration before the goods became subject to biosecurity control, releasing the goods from biosecurity control; or

##### **3 Subsection 162(2)**

Omit “or written notice given,”, substitute “written notice given or written declaration made”.

##### **4 Paragraph 162(3)(b)**

Omit “paragraph (1)(b)”, substitute “subparagraph (1)(b)(i) or a declaration referred to in subparagraph (1)(b)(ii)”.

##### **5 Section 164 (heading)**

After “notice”, insert “or declaration”.

## **6 Subsection 164(2)**

Omit “paragraph 162(1)(b)”, substitute “subparagraph 162(1)(b)(i)”.

## **7 After subsection 164(2)**

Insert:

*Revoking declaration made by biosecurity industry participant*

- (2A) If a biosecurity industry participant made a written declaration for the purposes of subparagraph 162(1)(b)(ii) releasing goods from biosecurity control, the biosecurity industry participant may, in writing, revoke the declaration.

## **8 Subsection 164(3)**

Omit “subsections (1) and (2), the biosecurity officer or biosecurity industry participant may revoke the notice”, substitute “subsections (1), (2) and (2A), the biosecurity officer or biosecurity industry participant may revoke the notice, or the biosecurity industry participant may revoke the declaration.”.

## **9 Subsection 164(4)**

After “given”, insert “or the revoked declaration is taken never to have been made”.

## **10 Subsection 164(5)**

Repeal the subsection, substitute:

*Revocation not a legislative instrument*

- (5) Neither of the following is a legislative instrument:
- (a) a revocation that is given in writing under subsection (1) or (2);
  - (b) a revocation under subsection (2A).

## **11 Application provision**

The amendments of sections 162 and 164 of the *Biosecurity Act 2015* made by this Part apply in relation to a notice that is given, or a declaration that is made, on or after the commencement of this item releasing goods from biosecurity control, whether the goods became subject to biosecurity control, or whether the arrangement concerned was approved, before, on or after that commencement.



## **Part 2—Duration of approved arrangements**

### ***Biosecurity Act 2015***

#### **12 Paragraph 408(2)(b)**

Repeal the paragraph, substitute:

- (b) the duration of the arrangement (see section 409).

#### **13 Section 409**

Repeal the section, substitute:

#### **409 Duration of approved arrangement**

An approved arrangement:

- (a) comes into force:
  - (i) on the day the notice is given under subsection 408(1), unless subparagraph (ii) applies; or
  - (ii) if a later day is specified in that notice—on that later day; and
- (b) unless revoked earlier, remains in force:
  - (i) indefinitely, unless subparagraph (ii) applies; or
  - (ii) if that notice specifies the period for which the arrangement is to be in force—for that period.

#### **14 Application provision**

The amendments made by this Part apply in relation to an approved arrangement, where the notice of approval under subsection 408(1) of the *Biosecurity Act 2015* in relation to the arrangement is given on or after the commencement of this item.

### **Part 3—Directions to biosecurity industry participants after expiry of approved arrangements**

#### ***Biosecurity Act 2015***

##### **15 Section 404**

Omit “Part 5 deals with revoking”, substitute “Part 5 deals with the revocation or expiry of”.

##### **16 Part 5 of Chapter 7 (heading)**

Repeal the heading, substitute:

### **Part 5—Revocation or expiry of approved arrangement**

##### **17 Division 3 of Part 5 of Chapter 7 (heading)**

Repeal the heading, substitute:

### **Division 3—Management of biosecurity risks after revocation or expiry of approved arrangement**

##### **18 Section 426 (heading)**

Repeal the heading, substitute:

##### **426 Management of biosecurity risks after revocation or expiry of approved arrangement**

##### **19 At the end of subsection 426(1)**

Add “or has expired”.

##### **20 At the end of subsection 426(2)**

Add “or expired”.

**21 Subsection 427(2)**

After “Part 5”, insert “or has expired”.

**22 At the end of subsection 427(2)**

Add “or after the expiry of the arrangement”.

**23 Application provision**

The amendments made by this Part apply in relation to the expiry of an approved arrangement on or after the commencement of this item, whether the arrangement was approved before, on or after that commencement.

## **Part 4—Audit powers for auditing of approved arrangements**

### ***Biosecurity Act 2015***

#### **24 After subsection 437(4)**

Insert:

##### *Other powers*

- (4A) The auditor may do the following:
- (a) inspect or examine a document, record or thing produced under subsection (1);
  - (b) make copies of the document or record;
  - (c) make a sketch, still or moving image or recording of the document, record or thing.

#### **25 Application provision**

The amendment made by this Part applies in relation to a document, record or thing produced under subsection 437(1) of the *Biosecurity Act 2015* on or after the commencement of this item.

## **Part 5—Compensation for damaged goods or destroyed goods, conveyances or other premises**

### ***Biosecurity Act 2015***

#### **26 Subsection 632(1)**

Repeal the subsection, substitute:

*Director of Biosecurity may approve compensation*

- (1) The Director of Biosecurity may approve the payment of a reasonable amount of compensation under this section in respect of goods if:
  - (a) in accordance with subsections 634(1A) and (1B), a claim for compensation is made to the Director alleging that the goods have been damaged by a person in the course of performing functions or duties, or exercising powers, under this Act or by a biosecurity industry participant; and
  - (b) the Director is satisfied that the circumstances of the alleged damage are circumstances in relation to which it may be appropriate to give such an approval; and
  - (c) the Director is satisfied that the goods have been damaged by a person in the course of performing functions or duties, or exercising powers, under this Act or by a biosecurity industry participant; and
  - (d) in a case where the Director is satisfied that the goods have been damaged by a biosecurity industry participant—the Director is satisfied that the damage occurred solely:
    - (i) as a result of the biosecurity industry participant complying with a direction given to the biosecurity industry participant under this Act by a biosecurity officer, the Director, the Director of Human Biosecurity, the Agriculture Minister or the Health Minister; or
    - (ii) as a result of the biosecurity industry participant complying with a condition to which the approved arrangement concerned is subject.

**Schedule 7** Approved arrangements and compensation

**Part 5** Compensation for damaged goods or destroyed goods, conveyances or other premises

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Note 1: The amount of any compensation is the amount prescribed by, or determined in accordance with, the regulations (see subsection 634(5)).

Note 2: Even if the Director of Biosecurity does not approve the payment of a reasonable amount of compensation under this section, the owner of the goods may be entitled to compensation under section 27 (compensation for acquisition of property).

- (1A) In deciding whether to give the approval, the Director of Biosecurity may have regard to the following matters:
- (a) the nature and extent of the damage;
  - (b) the circumstances in which the damage occurred;
  - (c) the condition of the goods before the damage occurred;
  - (d) whether the goods were subject to biosecurity control at the time the damage occurred;
  - (e) whether a biosecurity industry participant was in possession or control of the goods at the time the damage occurred;
  - (f) whether the actions or omissions of any person, including the claimant, caused, or contributed to, the damage;
  - (g) any evidence provided by the claimant in relation to a matter covered by paragraph (a), (b), (c), (d), (e) or (f);
  - (h) any other matter the Director considers relevant.

**27 Subsection 633(1)**

Repeal the subsection, substitute:

*Director of Biosecurity may approve compensation*

- (1) The Director of Biosecurity may approve the payment of a reasonable amount of compensation under this section in respect of goods, conveyances or premises comprising buildings or other structures if:
- (a) in accordance with subsections 634(1A) and (1B), a claim for compensation is made to the Director alleging that the goods, conveyances or premises comprising buildings or other structures have been destroyed by a person in the course of performing functions or duties, or exercising powers, under this Act or by a biosecurity industry participant; and

- (b) the Director is satisfied that the circumstances of the alleged destruction are circumstances in relation to which it may be appropriate to give such an approval; and
- (c) the Director is satisfied that the goods, conveyances or premises comprising buildings or other structures have been destroyed by a person in the course of performing functions or duties, or exercising powers, under this Act or by a biosecurity industry participant; and
- (d) in a case where the Director is satisfied that the goods, conveyances or premises comprising buildings or other structures have been destroyed by a biosecurity industry participant—the Director is satisfied that the destruction occurred solely:
  - (i) as a result of the biosecurity industry participant complying with a direction given to the biosecurity industry participant under this Act by a biosecurity officer, the Director, the Director of Human Biosecurity, the Agriculture Minister or the Health Minister; or
  - (ii) as a result of the biosecurity industry participant complying with a condition to which the approved arrangement concerned is subject.

Note 1: The amount of any compensation is the amount prescribed by, or determined in accordance with, the regulations (see subsection 634(5)).

Note 2: Even if the Director of Biosecurity does not approve the payment of a reasonable amount of compensation under this section, the owner of the goods, conveyance or other premises may be entitled to compensation under section 27 (compensation for acquisition of property).

- (1A) In deciding whether to give the approval, the Director of Biosecurity may have regard to the following matters:
  - (a) the nature of the destruction;
  - (b) the circumstances in which the destruction occurred;
  - (c) the condition of the goods, conveyances or premises comprising buildings or other structures before the destruction occurred;
  - (d) in the case of the destruction of goods or conveyances—whether the goods or conveyances were subject to biosecurity control at the time the destruction occurred;

**Schedule 7** Approved arrangements and compensation

**Part 5** Compensation for damaged goods or destroyed goods, conveyances or other premises

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- (e) in the case of the destruction of goods or conveyances—whether a biosecurity industry participant was in possession or control of the goods or conveyances at the time the destruction occurred;
- (f) whether the actions or omissions of any person, including the claimant, caused, or contributed to, the destruction;
- (g) any evidence provided by the claimant in relation to a matter covered by paragraph (a), (b), (c), (d), (e) or (f);
- (h) any other matter the Director considers relevant.

**28 After subsection 634(1)**

Insert:

*Claims for compensation*

- (1A) Any claim for compensation must be made by or on behalf of an owner of the compensable item before the end of:
  - (a) the period of 12 months beginning on the day on which the damage or destruction occurred, unless paragraph (b) applies; or
  - (b) if, when the damage or destruction occurred, the owner did not know that the damage or destruction had occurred—the period of 12 months beginning on:
    - (i) the day on which the owner became aware of the damage or destruction, unless subparagraph (ii) applies; or
    - (ii) if the day on which the owner would have become aware of the damage or destruction if the owner had exercised due diligence is earlier than the day referred to in subparagraph (i)—that earlier day.
- (1B) A claim for compensation under subsection (1A) must:
  - (a) if a form is approved in an instrument under subsection (1C)—be in that form; and
  - (b) be accompanied by the documents (if any) prescribed by the regulations; and
  - (c) specify the compensable item; and
  - (d) specify the day on which the owner became aware of the damage or destruction; and



(e) specify the circumstances of the damage or destruction.

(1C) The Director of Biosecurity may, by notifiable instrument, approve a form for the purposes of paragraph (1B)(a).

## **29 Subsections 634(3) and (4)**

Repeal the subsections.

## **30 Application provisions**

- (1) The amendments made by this Part apply in relation to a claim made under section 634 of the *Biosecurity Act 2015* on or after the commencement of this item, whether the damage or destruction occurred before, on or after that commencement.
- (2) For the purposes of subitem (1), paragraphs 632(1)(d) and 633(1)(d) of that Act, as substituted by this Part, apply in relation to a biosecurity industry participant, whether the direction concerned was given, or the arrangement concerned was approved, before, on or after the commencement of this item.

## Schedule 8—Concealment of goods

### *Biosecurity Act 2015*

#### 1 Section 9

Insert:

*conceal* goods has a meaning affected by subsection 186A(2).

#### 2 After section 186

Insert:

#### **186A Contravening conditions applying to conditionally non-prohibited goods brought or imported into Australian territory—concealment of goods**

- (1) A person is liable to a civil penalty if:
- (a) the person brings or imports goods into Australian territory; and
  - (b) the goods are conditionally non-prohibited goods; and
  - (c) a condition in relation to the goods specified in a determination in force under subsection 174(1) has not been complied with; and
  - (d) the goods are concealed for the purpose of preventing the goods from being found, or preventing the true nature of the goods from being determined, by a biosecurity official.

Civil penalty: 1,200 penalty units.

- (2) *Conceal* goods includes any of the following:
- (a) concealing or disguising the goods on a person, within any clothing worn by the person, within any other object located on the person or within any other object not located on the person (including by sewing, gluing, fastening, binding, wrapping, covering, enveloping or packaging the goods);
  - (b) incorrectly marking or labelling the goods or any packaging or container in which the goods are located;

- 
- (c) altering the goods (including by changing or suppressing the appearance, texture, smell or sound of the goods).

*Exception*

- (3) Subsection (1) does not apply if the person:
- (a) did not do the act, or omit to do the act, that constituted the failure to comply with the condition referred to in paragraph (1)(c); and
  - (b) did not aid, abet, counsel or procure that act or omission; and
  - (c) was not in any way knowingly concerned in, or party to, that act or omission (whether directly or indirectly and whether by any act or omission of the person).

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see section 96 of the Regulatory Powers Act).

### **3 Subsection 523(1) (after table item 8)**

Insert:

8A Subsection 186A(1)

### **4 After subsection 524(4)**

Insert:

- (4A) Despite subsection (4), the amount to be stated in an infringement notice for the purposes of paragraph 104(1)(f) of the Regulatory Powers Act for the alleged contravention of subsection 186A(1) of this Act by a person must be:
- (a) 20 penalty units where the person is an individual; or
  - (b) 100 penalty units where the person is a body corporate.

### **5 Subsection 633(2)**

Omit “or 186(1)”, substitute “, 186(1) or 186A(1)”.

### **6 At the end of subsection 633(2)**

Add:

Note 3: Subsection 186A(1) is contravened if a person brings or imports conditionally non-prohibited goods into Australian territory, a condition applying to the goods has not been complied with and the goods are concealed for the purpose of preventing the goods from

## Schedule 8 Concealment of goods

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being found, or preventing the true nature of the goods from being determined, by a biosecurity official.

### 7 Application provision

The amendments made by this Schedule apply in relation to goods brought or imported into Australian territory on or after the commencement of this Schedule.

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*[Minister's second reading speech made in—  
Senate on 28 September 2022  
House of Representatives on 29 November 2022]*

(96/22)

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