



Biosecurity Amendment (Advanced Compliance Measures) Act 2023

No. 62, 2023

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/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
Schedule 1—Assessing biosecurity risk for persons on incoming aircraft or vessel		3
	<i>Biosecurity Act 2015</i>	3
Schedule 2—Approved arrangements		7
	<i>Biosecurity Act 2015</i>	7
Schedule 3—Civil penalty provisions		11
	Part 1—Increased civil penalties	11
	<i>Biosecurity Act 2015</i>	11
	Part 2—Other amendments	13
	<i>Biosecurity Act 2015</i>	13
Schedule 4—Strict liability offences and infringement notices		14
	<i>Biosecurity Act 2015</i>	14



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No. 62, 2023

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

[Assented to 13 September 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Biosecurity Amendment (Advanced Compliance Measures) Act 2023*.

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.	14 September 2023

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Assessing biosecurity risk for persons on incoming aircraft or vessel

Biosecurity Act 2015

1 Section 190

Omit:

Division 3 provides for pre-arrival reports to be given in relation to aircraft or vessels that enter or intend to enter Australian territory from outside Australian territory and aircraft or vessels that intend to be, or are, exposed to conveyances or goods that are subject to biosecurity control. Division 3 also provides for persons on board incoming aircraft or vessels to provide information for the purpose of assessing the level of biosecurity risk associated with them.

substitute:

Division 3 provides for pre-arrival reports to be given in relation to aircraft or vessels that enter or intend to enter Australian territory from outside Australian territory and aircraft or vessels that intend to be, or are, exposed to conveyances or goods that are subject to biosecurity control. Division 3 also provides for persons on board incoming aircraft or vessels to:

- (a) provide information for the purpose of assessing the level of biosecurity risk associated with the persons and any goods the persons have with them; and
- (b) produce travel documents for the purpose of assessing the level of biosecurity risk associated with the persons and any goods the persons have with them or of the future profiling, or future assessment, of biosecurity risks.

2 Section 196 (heading)

Repeal the heading, substitute:

196 Persons on incoming aircraft or vessel may be required to provide information or travel documents to assess biosecurity risk

3 Subsection 196(1)

Omit “a person”, substitute “persons”.

4 Paragraph 196(1)(a)

Omit “intends to enter, or enters”, substitute “intend to enter, or enter”.

5 Paragraph 196(1)(b)

Omit “is”, substitute “are”.

6 Subsection 196(2)

Omit “require the person”, substitute “require any person covered by subsection (1), or each person included in a class of persons covered by subsection (1),”.

7 After subsection 196(3)

Insert:

Production and scanning of travel documents

(3A) The Director of Biosecurity may do the following:

- (a) require any person covered by subsection (1), or each person included in a class of persons covered by subsection (1), to produce a document covered by subsection (3B) to the Director for either or both of the following purposes:
 - (i) assessing the level of biosecurity risk associated with the person and any goods that the person has with the person;
 - (ii) the future profiling, or future assessment, of biosecurity risks;
- (b) scan any document so produced for either or both of those purposes;
- (c) collect and retain personal information obtained as part of that production or scanning for either or both of those purposes.

Note 1: This section is not subject to the privilege against self-incrimination (see section 635).

Note 2: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading documents (see section 137.2 of the *Criminal Code* and section 533 of this Act).

(3B) For the purposes of paragraph (3A)(a), the documents covered by this subsection are the following:

- (a) the person's Australian travel document (within the meaning of the *Australian Passports Act 2005*);
- (b) a passport, or other travel document, issued to the person by or on behalf of the government of a foreign country.

8 Subsection 196(4) (heading)

Repeal the heading, substitute:

Civil penalty provisions

9 At the end of section 196

Add:

- (5) A person who is required to produce a document under paragraph (3A)(a) must comply with the requirement.

Civil penalty: 120 penalty units.

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

Insert:

10AA Subsection 196(5)

11 Application and saving provisions

- (1) The amendments of section 196 of the *Biosecurity Act 2015* made by this Schedule apply in relation to a person who intends to enter, or enters, Australian territory on an incoming aircraft or vessel on or after the commencement of this item.
- (2) The amendments of section 196 of the *Biosecurity Act 2015* made by this Schedule do not affect the continuity of regulations that were made

for the purposes of paragraph 196(1)(b) of that Act and were in force immediately before the commencement of this item.

Schedule 2—Approved arrangements

Biosecurity Act 2015

1 Section 404

After “Division 1 deals with matters relating to applications for approval of proposed arrangements;”, insert “Division 1A deals with notice of proposed variation, suspension or revocation decisions;”.

2 At the end of section 413

Add:

Notice of proposed decision

- (3) The relevant Director must not give a notice to a biosecurity industry participant under subsection (1) on a ground referred to in paragraph (2)(a), (b), (c), (d) or (f) unless the Director has given a notice to the biosecurity industry participant under subsection 435A(1).

3 Section 415

Omit “A”, substitute “(1) Subject to subsection (2), a”.

4 At the end of section 415

Add:

- (2) If the biosecurity industry participant covered by the approved arrangement was given a notice under subsection 435A(1) that included the invitation referred to in paragraph 435A(2)(d) in relation to the variation, the variation must not take effect before the end of 14 days after the notice is given.

5 Subsection 418(2)

Omit “in accordance with subsection (3)”, substitute “under subsection 435A(1)”.

6 Subsections 418(3) and (4)

Repeal the subsections.

7 Paragraph 420(2)(a)

Repeal the paragraph, substitute:

- (a) a notice under subsection 435A(1) that included the invitation referred to in paragraph 435A(2)(d) in relation to the suspension; or

8 Subsection 423(2)

Omit “in accordance with subsection (3)”, substitute “under subsection 435A(1)”.

9 Subsections 423(3) and (4)

Repeal the subsections.

10 Paragraph 425(2)(a)

Repeal the paragraph, substitute:

- (a) a notice under subsection 435A(1) that included the invitation referred to in paragraph 435A(2)(d) in relation to the revocation; or

11 After Division 1 of Part 7 of Chapter 7

Insert:

Division 1A—Notice of proposed variation, suspension or revocation

435A Notice of proposed variation, suspension or revocation

- (1) For the purposes of subsection 413(3), 418(2) or 423(2), the relevant Director must give the biosecurity industry participant covered by an approved arrangement a notice before doing the following things:
 - (a) varying under paragraph 413(1)(a) the conditions of the approved arrangement (including by imposing new conditions);
 - (b) requiring under paragraph 413(1)(b) the biosecurity industry participant to vary the approved arrangement;
 - (c) suspending under subsection 418(1) the approved arrangement or a part of the approved arrangement;

- (d) revoking under subsection 423(1) the approved arrangement.

Contents of notice

- (2) A notice under subsection (1) must:
- (a) be in writing; and
 - (b) state the thing or things covered by subsection (1) that the relevant Director is considering doing; and
 - (c) state the reasons for the relevant Director giving the notice; and
 - (d) subject to subsection (3), invite the biosecurity industry participant to give the relevant Director, within 14 days after the day the notice is given to the biosecurity industry participant, a written submission in relation to the notice; and
 - (e) include a statement setting out the biosecurity industry participant's right to seek review of a decision of the relevant Director to do a thing covered by subsection (1).
- (3) A notice under subsection (1) is not required to include the invitation referred to in paragraph (2)(d) in relation to a thing covered by subsection (1) if the relevant Director is satisfied that the grounds for doing that thing are serious and urgent.

Relevant Director may do more than one thing

- (4) If the relevant Director gives a biosecurity industry participant a notice under subsection (1), the relevant Director may do more than one thing covered by subsection (1) in connection with the giving of that notice.

Example: Assume the relevant Director gives a biosecurity industry participant a notice under subsection (1) stating the relevant Director is considering suspending the approved arrangement and is considering revoking the approved arrangement.

Assume the relevant Director is satisfied the grounds for the suspension are serious and urgent. The relevant Director may decide to immediately suspend the approved arrangement (without inviting the biosecurity industry participant to give a written submission).

Assume the relevant Director invites the biosecurity industry participant to give a written submission in relation to the revocation. The relevant Director is also able to decide to revoke the approved arrangement.

Reprimand

- (5) The relevant Director may give a biosecurity industry participant a notice in writing that reprimands the biosecurity industry participant for a matter specified in the notice if:
 - (a) the relevant Director has given the biosecurity industry participant a notice under subsection (1); and
 - (b) the relevant Director does none of the things covered by subsection (1) in connection with the giving of the notice under subsection (1).

12 Application provisions

- (1) The amendment of section 413 of the *Biosecurity Act 2015* made by this Schedule applies in relation to a proposal to give a notice under paragraph 413(1)(a) or (b) of that Act on or after the commencement of this item.
- (2) The amendments of section 415 of the *Biosecurity Act 2015* made by this Schedule apply in relation to a notice under paragraph 413(1)(a) of that Act that is given on or after the commencement of this item.
- (3) The amendments of sections 418 and 420 of the *Biosecurity Act 2015* made by this Schedule apply in relation to a proposed suspension of an approved arrangement, or a part of an approved arrangement, on or after the commencement of this item, where no notice had been given under subsection 418(2) of that Act before that commencement in relation to that proposed suspension.
- (4) The amendments of sections 423 and 425 of the *Biosecurity Act 2015* made by this Schedule apply in relation to a proposed revocation of an approved arrangement on or after the commencement of this item, where no notice had been given under subsection 423(2) of that Act before that commencement in relation to that proposed revocation.

Schedule 3—Civil penalty provisions

Part 1—Increased civil penalties

Biosecurity Act 2015

1 Subsection 46(1) (penalty)

Omit “30 penalty units”, substitute “150 penalty units”.

2 Subsection 46(2) (penalty)

Omit “30 penalty units”, substitute “1,000 penalty units”.

3 Subsection 46(3) (penalty)

Omit “30 penalty units”, substitute “150 penalty units”.

4 Section 52 (penalty)

Omit “120 penalty units”, substitute “150 penalty units”.

5 Subsections 110(6), 111(3) and 112(4) (penalty)

Omit “30 penalty units”, substitute “120 penalty units”.

6 Section 116 (penalty)

Omit “30 penalty units”, substitute “120 penalty units”.

7 Subsections 438(1) and 439(1) (penalty)

Omit “120 penalty units”, substitute “600 penalty units”.

8 Subsections 532(1) and 533(1) (penalty)

Omit “60 penalty units”, substitute “600 penalty units”.

9 Application of amendments

- (1) The amendments of sections 46, 52, 110, 112 and 116 of the *Biosecurity Act 2015* made by this Part apply in relation to conduct engaged in on or after the commencement of this item.

Schedule 3 Civil penalty provisions

Part 1 Increased civil penalties

- (2) The amendment of section 111 of the *Biosecurity Act 2015* made by this Part applies in relation to directions given on or after the commencement of this item.
- (3) The amendments of sections 438 and 532 of the *Biosecurity Act 2015* made by this Part apply in relation to information given on or after the commencement of this item.
- (4) The amendments of sections 439 and 533 of the *Biosecurity Act 2015* made by this Part apply in relation to documents produced on or after the commencement of this item.

Part 2—Other amendments

Biosecurity Act 2015

10 Paragraph 439(1)(c)

Omit “the information is given”, substitute “the document is produced”.

Schedule 4—Strict liability offences and infringement notices

Biosecurity Act 2015

1 After subsection 140(2)

Insert:

Strict liability offence

- (2A) A person commits an offence of strict liability if:
- (a) the person is given a direction under paragraph 135(2)(b) or 138(1)(a); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the direction.

Penalty: 60 penalty units.

2 Subsection 185(1) (note)

Omit “subsection (2)”, substitute “subsections (2) and (2A)”.

3 Subsection 185(2) (penalty)

Omit “or 1,000”, substitute “or 1,000”.

4 After subsection 185(2)

Insert:

Strict liability offence

- (2A) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

5 After subsection 187(1)

Insert:

Strict liability offence—permits in force

- (1A) A person commits an offence of strict liability if:
- (a) the person is the holder of a permit granted under section 179; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes a condition of the permit.

Penalty: 60 penalty units.

6 After subsection 187(3)

Insert:

Strict liability offence—suspended or revoked permits

- (3A) A person commits an offence of strict liability if:
- (a) the person was the holder of a permit granted under section 179; and
 - (b) the permit has been suspended or revoked under section 181; and
 - (c) a condition of the permit continues to apply because of subsection 181(3); and
 - (d) the person engages in conduct; and
 - (e) the conduct contravenes the condition.

Penalty: 60 penalty units.

7 After subsection 243(2)

Insert:

Strict liability offence

- (2A) A person commits an offence of strict liability if:
- (a) the person is given a direction under a provision of this Division; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the direction.

Penalty: 60 penalty units.

8 After subsection 251(2)

Insert:

Strict liability offence

- (2A) A person commits an offence of strict liability if:
- (a) the person is given a direction under a provision of this Division; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the direction.

Penalty: 60 penalty units.

9 After subsection 350(2)

Insert:

Strict liability offence

- (2A) A person commits an offence of strict liability if:
- (a) the person is given a direction under paragraph 347(1)(a), (b) or (c); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the direction.

Penalty: 60 penalty units.

10 Subsection 428(1) (note 2)

Omit “subsection (2)”, substitute “subsections (2) and (2A)”.

11 After subsection 428(2)

Insert:

Strict liability offence

- (2A) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

12 After subsection 429(5)

Insert:

Strict liability offence

- (5A) A person commits an offence of strict liability if:
- (a) the person is given a direction under subsection (1); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the direction.

Penalty: 60 penalty units.

13 Subsection 523(1) (after table item 8)

Insert:

8AA	Subsection 140(2A)
8AB	Subsection 185(2A)

14 Subsection 523(1) (after table item 8A)

Insert:

8B	Subsection 187(1A)
8C	Subsection 187(3A)

15 Subsection 523(1) (after table item 19)

Insert:

19AA	Subsection 243(2A)
19AB	Subsection 251(2A)

16 Subsection 523(1) (after table item 28)

Insert:

28A	Subsection 350(2A)
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17 Subsection 523(1) (after table item 39)

Insert:

39A Subsection 428(2A)

39B Subsection 429(5A)

18 Application of amendments

- (1) Subsection 140(2A) of the *Biosecurity Act 2015*, as inserted by this Schedule, applies in relation to conduct engaged in on or after the commencement of this Schedule that contravenes a direction, whether the direction was given before, on or after that commencement.
- (2) Subsection 185(2A) of the *Biosecurity Act 2015*, as inserted by this Schedule, applies in relation to goods brought or imported into Australian territory on or after the commencement of this Schedule.
- (3) Subsection 187(1A) of the *Biosecurity Act 2015*, as inserted by this Schedule, applies in relation to conduct engaged in on or after the commencement of this Schedule that contravenes a condition of a permit, whether the permit was granted before, on or after that commencement.
- (4) Subsection 187(3A) of the *Biosecurity Act 2015*, as inserted by this Schedule, applies in relation to conduct engaged in on or after the commencement of this Schedule that contravenes a condition of a permit, whether the permit was suspended or revoked before, on or after that commencement.
- (5) Subsections 243(2A), 251(2A) and 350(2A) of the *Biosecurity Act 2015*, as inserted by this Schedule, apply in relation to conduct engaged in on or after the commencement of this Schedule that contravenes a direction, whether the direction was given before, on or after that commencement.
- (6) Subsection 428(2A) of the *Biosecurity Act 2015*, as inserted by this Schedule, applies in relation to conduct engaged in on or after the commencement of this Schedule, whether the arrangement was approved before, on or after that commencement.
- (7) Subsection 429(5A) of the *Biosecurity Act 2015*, as inserted by this Schedule, applies in relation to conduct engaged in on or after the commencement of this Schedule that contravenes a direction, whether the direction was given before, on or after that commencement.

*[Minister's second reading speech made in—
House of Representatives on 21 June 2023
Senate on 2 August 2023]*

(83/23)