



## **Biosecurity (Consequential Amendments and Transitional Provisions) Regulation 2016**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 05 May 2016

Peter Cosgrove  
Governor-General

By His Excellency's Command

Barnaby Joyce  
Deputy Prime Minister and Minister for Agriculture and Water Resources

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## 1 Name

This is the *Biosecurity (Consequential Amendments and Transitional Provisions) Regulation 2016*.

## 2 Commencement

- (1) Each provision of this instrument 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 instrument	At the same time as section 3 of the <i>Biosecurity Act 2015</i> commences.	16 June 2016

Note: This table relates only to the provisions of this instrument as originally made.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

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

## 3 Authority

This instrument is made under the following:

- (a) the *Administrative Decisions (Judicial Review) Act 1977*;
- (b) the *Aviation Transport Security Act 2004*;
- (c) the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*;
- (d) the *Civil Aviation Act 1988*;
- (e) the *Customs Act 1901*;
- (f) the *Electronic Transactions Act 1999*;
- (g) the *Fisheries Management Act 1991*;
- (h) the *Gene Technology Act 2000*;
- (i) the *Imported Food Charges (Imposition—Customs) Act 2015*;
- (j) the *Imported Food Charges (Imposition—General) Act 2015*;
- (k) the *Legislation Act 2003*;
- (l) the *Maritime Powers Act 2013*;
- (m) the *Maritime Transport and Offshore Facilities Security Act 2003*;
- (n) the *National Health Act 1953*;
- (o) the *National Health Security Act 2007*;
- (p) the *Quarantine Act 1908*;
- (q) the *Quarantine Charges (Collection) Act 2014*;
- (r) the *Quarantine Charges (Imposition—Customs) Act 2014*;
- (s) the *Quarantine Charges (Imposition—General) Act 2014*;
- (t) the *Torres Strait Fisheries Act 1984*.

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## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## **Schedule 1—Repeals**

### ***Quarantine Charges (Collection) Regulation 2014***

#### **1 The whole of the regulation**

Repeal the regulation.

### ***Quarantine Charges (Imposition—Customs) Regulation 2014***

#### **2 The whole of the regulation**

Repeal the regulation.

### ***Quarantine Charges (Imposition—General) Regulation 2015***

#### **3 The whole of the regulation**

Repeal the regulation.

### ***Quarantine Regulations 2000***

#### **4 The whole of the Regulations**

Repeal the Regulations.

## Schedule 2—Consequential amendments

### *Administrative Decisions (Judicial Review) Regulations 1985*

#### 1 Paragraphs 3(h) and (i)

Repeal the paragraphs, substitute:

- (h) decisions under Part 1 of Chapter 8 of the *Biosecurity Act 2015* in relation to a biosecurity emergency declaration made under subsection 443(1) of that Act;
- (i) decisions under Part 1 of Chapter 8 of the *Biosecurity Act 2015* to determine a requirement, give a direction, take any action or exercise any other power during a biosecurity emergency period (within the meaning of the *Biosecurity Act 2015*);
- (j) decisions under Part 2 of Chapter 8 of the *Biosecurity Act 2015* in relation to a human biosecurity emergency declaration made under subsection 475(1) of that Act;
- (k) decisions under Part 2 of Chapter 8 of the *Biosecurity Act 2015* to determine a requirement or give a direction during a human biosecurity emergency period (within the meaning of the *Biosecurity Act 2015*).

### *Aviation Transport Security Regulations 2005*

#### 2 Regulation 1.03

Insert:

*biosecurity official* has the same meaning as in the *Biosecurity Act 2015*.

#### 3 Subregulation 4.62(1) (table item 6, column 2)

Omit “or an officer of the Australian Quarantine and Inspection Service or”, substitute “a biosecurity official or an officer of”.

### *Civil Aviation Safety Regulations 1998*

#### 4 Paragraph 92.160(2)(c)

Repeal the paragraph, substitute:

- (c) the Department administered by the Minister administering Part 1 of Chapter 8 of the *Biosecurity Act 2015*;

### *Customs Regulation 2015*

#### 5 Subsection 109(2) (table item 3, column headed “Period for making application”)

Omit “released from quarantine”, substitute “released from biosecurity control under the *Biosecurity Act 2015* or released from quarantine under the *Quarantine Act 1908*, as in force before 16 June 2016”.

#### 6 Section 118 (after table item 3)

Insert:

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3A *Biosecurity Act 2015*

**7 Section 118 (table item 17, column headed “Act”)**

After “*Quarantine Act 1908*”, insert “, as in force before 16 June 2016”.

**8 Clause 1 of Schedule 2 (after table item 5)**

Insert:

5A *Biosecurity Act 2015*

**9 Clause 1 of Schedule 2 (table item 30)**

Repeal the item.

**10 Clause 1 of Schedule 6 (table item 4)**

Repeal the item, substitute:

4 Duty has been paid or is payable on goods in relation to which:

(a) all of the following apply:

- (i) the goods have deteriorated or been damaged or destroyed while undergoing treatment under the *Biosecurity Act 2015* or the *Quarantine Act 1908*, as in force before 16 June 2016;
- (ii) the deterioration, damage or destruction is directly or indirectly attributable to the treatment;
- (iii) the goods were subject to customs control under the Act at the time of the treatment; or

(b) both of the following apply:

- (i) the goods were destroyed under the *Biosecurity Act 2015* or the *Quarantine Act 1908*, as in force before 16 June 2016;
- (ii) the goods were subject to customs control under the Act at the time they were destroyed.

***Electronic Transactions Regulations 2000***

**11 Schedule 1 (table item 119)**

Repeal the item.

***Fisheries Management Regulations 1992***

**12 Regulation 19K (table item 5)**

Repeal the item.

***Gene Technology Regulations 2001***

**13 Paragraph 9(b)**

Repeal the paragraph, substitute:

- (b) the Department administered by the Minister administering Part 1 of Chapter 8 of the *Biosecurity Act 2015*;

### ***Imported Food Charges (Imposition—Customs) Regulation 2015***

#### **14 Paragraphs 8(1)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) is covered by an approved arrangement under the *Biosecurity Act 2015*.

#### **15 Paragraphs 8(2)(c) and (d)**

Repeal the paragraphs, substitute:

- (c) the charge prescribed by item 13 of the table in section 9 of the *Biosecurity Charges Imposition (Customs) Regulation 2016* for that financial year or that part of the financial year;
- (d) the charge prescribed by item 13 of the table in section 9 of the *Biosecurity Charges Imposition (General) Regulation 2016* for that financial year or that part of the financial year.

### ***Imported Food Charges (Imposition—General) Regulation 2015***

#### **16 Paragraphs 8(1)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) is covered by an approved arrangement under the *Biosecurity Act 2015*.

#### **17 Paragraphs 8(2)(c) and (d)**

Repeal the paragraphs, substitute:

- (c) the charge prescribed by item 13 of the table in section 9 of the *Biosecurity Charges Imposition (Customs) Regulation 2016* for that financial year or that part of the financial year;
- (d) the charge prescribed by item 13 of the table in section 9 of the *Biosecurity Charges Imposition (General) Regulation 2016* for that financial year or that part of the financial year.

### ***Legislation (Exemptions and Other Matters) Regulation 2015***

#### **18 Section 10 (table item 28)**

Repeal the item.

### ***Maritime Powers Regulation 2014***

#### **19 Before paragraph 6(a)**

Insert:

- (aa) the *Biosecurity Act 2015*;
- (ab) regulations and other legislative instruments made under the *Biosecurity Act 2015*;

#### **20 Before paragraph 8(a)**

Insert:

- (aa) the *Biosecurity Act 2015*;
- (ab) regulations and other legislative instruments made under the *Biosecurity Act 2015*;

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***Maritime Transport and Offshore Facilities Security Regulations 2003*****21 Paragraph 7.25(3)(i)**

Omit “quarantine officer”, substitute “biosecurity officer”.

**22 Paragraphs 7.40(2)(d) and (e)**

Omit “quarantine officer”, substitute “biosecurity officer”.

**23 Paragraphs 7.45(2)(e) and (f)**

Omit “quarantine officer”, substitute “biosecurity officer”.

**24 Paragraphs 7.50(2)(d) and (e)**

Omit “quarantine officer”, substitute “biosecurity officer”.

***National Health (Pharmaceuticals and Vaccines—Cost Recovery) Regulations 2009*****25 Subparagraph 5.1(1)(c)(ii)**

Repeal the subparagraph, substitute:

- (ii) a biosecurity emergency that is declared to exist under subsection 443(1) of the *Biosecurity Act 2015*; or
- (iii) a human biosecurity emergency that is declared to exist under subsection 475(1) of the *Biosecurity Act 2015*;

***National Health Security Regulations 2008*****26 Subregulation 1.03(1) (definition of *Australian Quarantine and Inspection Service*)**

Repeal the definition.

**27 Subregulation 3.03(3) (paragraph (d) of the definition of *law enforcement agency*)**

Repeal the paragraph, substitute:

- (d) the Department administered by the Minister administering Part 1 of Chapter 8 of the *Biosecurity Act 2015*.

***Torres Strait Fisheries Regulations 1985*****28 Regulation 25 (table item 5)**

Repeal the item.

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## Schedule 3—Transitional provisions

### 1 Definitions

In this Schedule:

**Biosecurity Act** means the *Biosecurity Act 2015*.

**commencement day** means the day on which section 3 of the Biosecurity Act commences.

**Quarantine Act** means the *Quarantine Act 1908*, as in force before the commencement day.

**quarantine charge** means a charge imposed under:

- (a) section 7 of the *Quarantine Charges (Imposition—Customs) Act 2014*, as in force before the commencement day; or
- (b) section 7 of the *Quarantine Charges (Imposition—General) Act 2014*, as in force before the commencement day.

**quarantine matter** means a matter connected with the administration of the Quarantine Act prescribed by:

- (a) section 6 of the *Quarantine Charges (Imposition—Customs) Regulation 2014*, as in force before the commencement day; or
- (b) section 6 of the *Quarantine Charges (Imposition—General) Regulation 2015*, as in force before the commencement day.

**Quarantine Regulations** means the *Quarantine Regulations 2000*, as in force before the commencement day.

**Quarantine Service Fees Determination 2005** means the *Quarantine Service Fees Determination 2005*, as in force under section 86E of the Quarantine Act before the commencement day.

### 2 Import risk analysis in progress under the Quarantine Regulations

- (1) This item applies if an import risk analysis (the **existing IRA**) in relation to particular goods, or a particular class of goods, had been started under Part 6A of the Quarantine Regulations, but had not been completed before the commencement day.
- (2) The Director of Biosecurity may continue to conduct the existing IRA as if it were a BIRA and, for that purpose, a requirement in the process prescribed by regulations made for the purposes of paragraph 169(1)(a) of the Biosecurity Act is taken to have been complied with in relation to the BIRA if the Director is satisfied that an equivalent requirement had been complied with in the course of conducting the existing IRA under the Quarantine Regulations.

Note: Division 1 of Part 4 of Chapter 2 of the *Biosecurity Regulation 2016* prescribes the process for conducting a BIRA.

- (3) The Director of Biosecurity must publish on the Agriculture Department's website a notice:
  - (a) identifying the existing IRA; and
  - (b) stating that the existing IRA will continue to be conducted as a BIRA in accordance with the process prescribed by regulations made for the purposes of paragraph 169(1)(a) of the Biosecurity Act; and

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- (c) specifying the requirements (if any) in the prescribed process that are taken to have been complied with in relation to the BIRA.
  - (4) For the purpose of continuing to conduct the existing IRA as a BIRA, section 31 of the *Biosecurity Regulation 2016* has effect as if:
    - (a) the words “within the period of 30 months commencing on the day the notice in relation to the BIRA was given under section 24” in subsection 31(1) were omitted, and the words “as soon as practicable after the report is prepared” were substituted; and
    - (b) subsections 31(2) to (8) were omitted.

### **3 Fees for quarantine services for which no demand for payment had been made before commencement day**

- (1) This item applies in relation to a service referred to in the table in subsection 6(1) of the *Quarantine Service Fees Determination 2005* that was provided before the commencement day if:
  - (a) a fee for, or in relation to, the service was payable under that Determination; and
  - (b) a demand for payment of the fee had not been made before the commencement day.
- (2) The fee is due and payable when a demand for payment of the fee is made.
- (3) The fee is payable by the person to whom the service was provided.
- (4) If a demand for payment of the fee is made under subitem (2), the Biosecurity Act applies in relation to the fee as if it were a cost-recovery charge.

Note 1: An agent of a person who is liable to pay a cost-recovery charge under the *Biosecurity Regulation 2016* is jointly and severally liable with that person to pay the charge (see section 112 of the *Biosecurity Regulation 2016*).

Note 2: Divisions 3 and 4 of Part 3 of Chapter 11 of the Biosecurity Act set out rules for recovery of cost-recovery charges, and allow regulations to provide for a late payment fee for a cost-recovery charge that is not paid by the time prescribed by the regulations as the time the charge is due and payable.

### **4 Charges for quarantine matters for which no demand for payment had been made before commencement day**

- (1) This item applies in relation to a quarantine matter in relation to which a quarantine charge was payable if a demand for payment of the charge had not been made before the commencement day.
- (2) The quarantine charge is due and payable when a demand for payment of the charge is made.
- (3) The person who is liable to pay the quarantine charge is the person prescribed by (as the case requires):
  - (a) section 7 of the *Quarantine Charges (Imposition—Customs) Regulation 2014*, as in force immediately before the commencement day; or
  - (b) section 7 of the *Quarantine Charges (Imposition—General) Regulation 2015*, as in force immediately before the commencement day.
- (4) If a demand for payment of the quarantine charge is made under subitem (2), the Biosecurity Act applies in relation to the charge as if it were a cost-recovery charge.

- Note 1: An agent of a person who is liable to pay a cost-recovery charge under the *Biosecurity Regulation 2016* is jointly and severally liable with that person to pay the charge (see section 112 of the *Biosecurity Regulation 2016*).
- Note 2: Divisions 3 and 4 of Part 3 of Chapter 11 of the Biosecurity Act set out rules for recovery of cost-recovery charges, and allow regulations to provide for a late payment fee for a cost-recovery charge that is not paid by the time prescribed by the regulations as the time the charge is due and payable.

## 5 Late payment fees

- (1) This item applies in relation to:
- (a) a fee referred to in subparagraph 75(1)(a)(i) of Schedule 4 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*; or
  - (b) a late payment fee referred to in subparagraph 75(1)(a)(ii) of that Schedule; or
  - (c) a late payment fee referred to in subparagraph 75(1)(a)(iii) of that Schedule; or
  - (d) a fee for which a demand for payment is made under subitem 3(2) of this Schedule; or
  - (e) a quarantine charge for which a demand for payment is made under subitem 4(2) of this Schedule;

to which the Biosecurity Act applies as if the fee or charge were a cost-recovery charge.

- (2) Section 110 of the *Biosecurity Regulation 2016* applies in relation to the cost-recovery charge as if it were a cost-recovery charge referred to in section 108 of that instrument.
- (3) The person who is liable to pay any late payment fee under the *Biosecurity Regulation 2016* in relation to the cost-recovery charge is:
- (a) if the cost-recovery charge was a fee referred to in paragraph (1)(a) or (b) of this item—the person referred to in paragraph 75(1)(d) of Schedule 4 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*; or
  - (b) if the cost-recovery charge was a fee referred to in paragraph (1)(c) of this item—the person referred to in paragraph 75(1)(e) of that Schedule; or
  - (c) if the cost-recovery charge was a fee referred to in paragraph (1)(d) of this item—the person who is liable to pay the fee under subitem 3(3) of this Schedule; or
  - (d) if the cost-recovery charge was a quarantine charge referred to in paragraph (1)(e) of this item—the person who is liable to pay the quarantine charge under subitem 4(3) of this Schedule.

Note: An agent of a person who is liable to pay a late payment fee under this item is jointly and severally liable with that person to pay the late payment fee (see section 112 of the *Biosecurity Regulation 2016*).

## 6 Fee for assessment of application for import permit not decided before commencement day

- (1) This item applies in relation to an application that, under item 30 of Schedule 4 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*, is taken, on and after the commencement day, to be an application, made under section 177 of the Biosecurity Act at the beginning of the commencement day, for a

permit authorising, for the purposes of that Act, the applicant or a person acting on behalf of the applicant, to import goods into Australian territory.

- (2) The initial assessment fee in relation to the application may not be charged under Part 2 of Chapter 9 of the *Biosecurity Regulation 2016* if:
- (a) the initial assessment fee in relation to the application had been paid under the *Quarantine Service Fees Determination 2005* before the commencement day; or
  - (b) a demand for payment of the initial assessment fee in relation to the application had been made under that Determination before the commencement day.

## **7 Charge for application for co-regulatory approval not decided before commencement day**

- (1) This item applies in relation to an application that, under subitem 51(2) of Schedule 4 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*, is taken, on and after the commencement day, to be an application to the relevant Director under section 405 of the Biosecurity Act for approval of a proposed arrangement that provides for the applicant to carry out the activities specified in the application, at the place specified in the application, to manage biosecurity risks associated with the class of goods or other things specified in the application.
- (2) Neither of the following charges applies in relation to the application:
- (a) the charge referred to in item 12 of the table in section 9 of the *Biosecurity Charges Imposition (Customs) Regulation 2016*;
  - (b) the charge referred to in item 12 of the table in section 9 of the *Biosecurity Charges Imposition (General) Regulation 2016*.

Note: No fee may be charged in relation to the application under Part 2 of Chapter 9 of the *Biosecurity Regulation 2016* (see subitem 51(5) of Schedule 4 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*).

## **8 Charge for application to enter compliance agreement not decided before commencement day**

- (1) This item applies in relation to an application that, under subitem 56(2) of Schedule 4 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*, is taken, on and after the commencement day, to be an application to the relevant Director, under section 405 of the Biosecurity Act, for approval of a proposed arrangement that provides for the applicant to carry out the procedures specified in the application to manage biosecurity risks associated with the goods or other things specified in the application.
- (2) Neither of the following charges applies in relation to the application:
- (a) the charge referred to in item 12 of the table in section 9 of the *Biosecurity Charges Imposition (Customs) Regulation 2016*;
  - (b) the charge referred to in item 12 of the table in section 9 of the *Biosecurity Charges Imposition (General) Regulation 2016*.

Note: No fee may be charged in relation to the application under Part 2 of Chapter 9 of the *Biosecurity Regulation 2016* (see subitem 56(5) of Schedule 4 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*).

**9 Charge for compliance agreement under the *Imported Food Charges (Imposition—Customs) Regulation 2015***

A person is not liable to pay the charge prescribed by item 2 of the table in section 6 of the *Imported Food Charges (Imposition—Customs) Regulation 2015* for the 2015-16 financial year, or a part of that financial year, in relation to a compliance agreement if the person has paid:

- (a) the charge prescribed by item 13 or 15 of the table in section 6 of the *Quarantine Charges (Imposition—Customs) Regulation 2014*, as in force immediately before the commencement day, for that financial year or that part of the financial year; or
- (b) the charge prescribed by item 13 or 15 of the table in section 6 of the *Quarantine Charges (Imposition—General) Regulation 2015*, as in force immediately before the commencement day, for that financial year or that part of the financial year.

**10 Charge for compliance agreement under the *Imported Food Charges (Imposition—General) Regulation 2015***

A person is not liable to pay the charge prescribed by item 2 of the table in section 6 of the *Imported Food Charges (Imposition—General) Regulation 2015* for the 2015-16 financial year, or a part of that financial year, in relation to a compliance agreement if the person has paid:

- (a) the charge prescribed by item 13 or 15 of the table in section 6 of the *Quarantine Charges (Imposition—Customs) Regulation 2014*, as in force immediately before the commencement day, for that financial year or that part of the financial year; or
- (b) the charge prescribed by item 13 or 15 of the table in section 6 of the *Quarantine Charges (Imposition—General) Regulation 2015*, as in force immediately before the commencement day, for that financial year or that part of the financial year.