

## **EXPLANATORY STATEMENT**

Issued by Authority of the Minister for Agriculture, Fisheries and Forestry

*Biosecurity Act 2015*

*Biosecurity Amendment (Information Management) Regulations 2023*

### **Legislative Authority**

The *Biosecurity Act 2015* provides the regulatory framework for the management of diseases and pests that may cause harm to human, animal or plant health or the environment.

Section 645 of the Act provides that the Governor-General may make regulations prescribing matters that are required or permitted by the Act to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

### **Purpose**

The purpose of the *Biosecurity Amendment (Information Management) Regulations 2023* (the Amendment Regulations) is to amend the *Biosecurity Regulation 2016* (the Principal Regulation) to repeal a redundant provision relating to the use of information under the Act. The amendments are consequential to the amendments to the Act relating to information management in Schedule 3 to the *Biosecurity Amendment (Strengthening Biosecurity) Act 2022* (Strengthening Biosecurity Act).

### **Background**

Item 27 of Schedule 3 to the Strengthening Biosecurity Act repeals subsection 583(2) of the Act, which currently provides for the regulations to prescribe intelligence agencies for the purposes of a person disclosing protected information to an officer or employee of the intelligence agency. Section 104 of the Principal Regulation currently prescribes intelligence agencies for the purposes of subsection 583(2) and is the only section in Part 1 of Chapter 9 of the Principal Regulation. The Amendment Regulations repeal Part 1 of Chapter 9 of the Principal Regulation as it will be redundant following the repeal of subsection 583(2) of the Act.

Section 2 of the Strengthening Biosecurity Act provides that Schedule 3 commences on 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 the Strengthening Biosecurity Act receives the Royal Assent, they commence on the day after the end of that period. The Strengthening Biosecurity Act received the Royal Assent on 5 December 2022.

## **Impact and Effect**

The Amendment Regulations implement minor changes to repeal a redundant provision following the repeal of the empowering provision in the Act. The Act does not specify any conditions that need to be satisfied before the power to make the Amendment Regulations may be exercised.

## **Consultation**

The Department of Health and Aged Care has been consulted on the Amendment Regulations. Public consultation was not considered to be necessary as the Amendment Regulations only relates to the repeal of redundant provisions.

The Office of Impact Analysis (OIA) was consulted in the making of the Amendment Regulations. The OIA has advised that an Impact Analysis is not required (OIA23-04844).

## **Details and Operation**

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commence on the later of the day after this instrument is registered, and the day on which Schedule 3 to the Strengthening Biosecurity Act commences.

Details of the Amendment Regulations are set out in [Attachment A](#).

## **Other**

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2022*. A full Statement of Compatibility with Human Rights is set out in [Attachment B](#).

**Details of the *Biosecurity Amendment (Information Management) Regulations 2023***

**Section 1 – Name**

This section provides that the name of the instrument is the *Biosecurity Amendment (Information Management) Regulations 2023* (the Amendment Regulations).

**Section 2 – Commencement**

Subsection 2(1) provides that each provision of the Amendment Regulations 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.

Item 1 in the table provides that the whole of the Amendment Regulations commence on the later of the day after this instrument is registered, and the day on which Schedule 3 to the *Biosecurity Amendment (Strengthening Biosecurity) Act 2022* (Strengthening Biosecurity Act) commences.

The note to subsection 2(1) provides that the table relates only to the provision of the Amendment Regulations as originally made. It would not be amended to deal with later amendments of the Amendment Regulations.

**Section 3 – Authority**

This section provides that the Amendment Regulations are made under the *Biosecurity Act 2015* (the Act).

**Section 4 – Schedules**

This section provides that each instrument that is specified in a Schedule to the Amendment Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amendment Regulations has effect according to its terms. This enables the amendment of the *Biosecurity Regulation 2016* (the Principal Regulation) (see Schedule 1 below).

## **Schedule 1 – Amendments**

### *Biosecurity Regulation 2016*

#### **Item [1] – Part 1 of Chapter 9**

Item 1 repeals Part 1 of Chapter 9 of the Principal Regulation.

Part 1 of Chapter 9 of the Principal Regulation deals with the confidentiality of information. Section 104 of the Principal Regulation is currently the only provision in Part 1 of Chapter 9. Section 104 prescribes intelligence agencies for the purposes of subsection 583(2) of the Act.

Under existing subsection 583(2) of the Act, a person may make a record of, disclose or otherwise use protected information if the person discloses the information to an officer or employee of an intelligence agency prescribed by the regulations. Section 104 currently prescribes the Australian Secret Intelligence Service, the Australian Security Intelligence Organisation and that part of the Defence Department known as the Australian Signals Directorate as intelligence agencies for the purposes of subsection 583(2) of the Act.

Item 27 of Schedule 3 to the Strengthening Biosecurity Act will repeal existing section 583 of the Act and there is no new provision which permits or requires intelligence agencies to be prescribed for the purposes of the new provisions inserted by Schedule 3 of the Strengthening Biosecurity Act.

The Amendment Regulations repeal Part 1 of Chapter 9 of the Principal Regulation because, consequential to the repeal of section 583 by item 27 of Schedule 3 to the Strengthening Biosecurity Act, there will no longer be a provision that permits or requires the making of section 104 in that Part.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

*Biosecurity Amendment (Information Management) Regulations 2023*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The purpose of the *Biosecurity Amendment (Information Management) Regulations 2023* (the Amendment Regulations) is to amend the *Biosecurity Regulation 2016* (the Principal Regulation) to repeal a redundant provision relating to the use of information under the *Biosecurity Act 2015* (the Act). The Amendment Regulations are made under the Act.

The Amendment Regulations are consequential to amendments to the Act relating to information management in Schedule 3 to the *Biosecurity Amendment (Strengthening Biosecurity) Act 2022* (Strengthening Biosecurity Act). Relevantly, item 27 of Schedule 3 to the Strengthening Biosecurity Act repeals subsection 583(2) of the Act, which permits section 104 of the Principal Regulation to prescribe intelligence agencies for the purposes of that subsection. Section 104 is the only provision in Part 1 of Chapter 9 of the Principal Regulation. As there is no longer a provision that permits or requires the making of section 104 in Part 1 of Chapter 9, that Part is redundant and is repealed by the Amendment Regulations. The amendments are minor and technical in nature.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon. Murray Watt  
Minister for Agriculture, Fisheries and Forestry**