

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Human Health) Amendment (Information Management) Regulations 2023

Purpose and operation

The *Biosecurity (Human Health) Amendment (Information Management) Regulations 2023* (the Regulations) amends the *Biosecurity (Human Health) Regulation 2016* (Principal Regulation) to ensure that the disclosure of information obtained under the ship sanitation certification scheme aligns with the new information management framework introduced by Schedule 3 of the *Biosecurity Amendment (Strengthening Biosecurity) Act 2022* (Strengthening Biosecurity Act).

The *Biosecurity Amendment (Strengthening Biosecurity) Act 2022* amended the *Biosecurity Act 2015* to enhance Australia's ability to manage the risk of pests and diseases entering, emerging, establishing or spreading in Australian territory. In the context of information sharing, to support the management of biosecurity risks and the effective administration of the Biosecurity Act, it is also necessary to improve the operation of the information management provisions. These amendments provide for specific authorisations for the use and disclosure of relevant information, while ensuring that protected information is afforded appropriate safeguards. The Regulations update the framework for the disclosure of information obtained under the ship sanitation certification scheme to align with amendments made by Schedule 3 to the *Biosecurity Amendment (Strengthening Biosecurity) Act 2022* in relation to information management.

The Regulations are not intended to substantively change the effect of the provisions relating to the disclosure of information under the ship sanitation certification.

Authority

These Regulations are made under section 645 of the *Biosecurity Act 2015* (the Act). 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.

Reliance on subsection 33(3) of the Acts Interpretation Act 1901

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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.

Commencement

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

The Strengthening Biosecurity Act commences on a single day to be fixed by Proclamation. However, if the provisions of Schedule 3 do not commence within the period of 6 months beginning on the day the Strengthening Biosecurity Act received Royal Assent (being 5 December 2022), the provisions commence on the day after the end of that period. As the amendments in Schedule 3 to the Strengthening Biosecurity Act have not yet commenced, section 4 of the *Acts Interpretation Act 1901* is relied upon for the making of this Proposed Regulation. Section 4 provides that, where an Act would confer a power to make a legislative instrument, that power may be exercised before the commencement of the Act as if the relevant commencement had occurred.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

Consultation

The Department of Health and Aged Care consulted with the Department of Agriculture, Fisheries and Forestry on the Regulations. Both parties agreed that the Regulations should be made to give effect to the amendments relating to information management in Schedule 3 to the Strengthening Biosecurity Act.

External consultation on the Regulations was not undertaken as the Regulations do not make any substantive changes to the effect of the provisions relating to the disclosure of information obtained under the ship sanitation certification scheme.

General

Details of the Regulations appear in **Attachment A**.

The Regulations are compatible with the rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility with human rights is set out in **Attachment B**.

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

Section 1 – Name

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

Section 2 – Commencement

This section provides that the instrument commences 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* (the Strengthening Biosecurity Act) commences.

Section 3 – Authority

This section provides that the instrument is made under the *Biosecurity Act 2015* (the Act).

Section 4 – Schedules

This section provides that 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 – Amendments

Biosecurity (Human Health) Regulation 2016

Item 1 – Section 4 (paragraph (h) of the note)

Item 1 repeals paragraph (h) of the note to section 4 of the *Biosecurity (Human Health) Regulation 2016* (Principal Regulation). The effect of this amendment is to remove the expression “permissible purpose” from the note, as item 2 below amends section 20 such that the term “permissible purpose” is removed. As the term “permissible purpose” is only used in section 20 of the Principal Regulation, consequentially, the term is no longer required in the note. This item is also a consequential amendment to item 6 of Schedule 3 of the Strengthening Biosecurity Act, which repeals the definition of “permissible purpose” in the Act.

Section 4 of the Principal Regulation provides for definitions of terms used throughout the Principal Regulation. The note to section 4 explains that a number of

expressions used in the Principal Regulation are defined in the Act including paragraph (h) “permissible purpose”.

Item 2 – Section 20

This item repeals section 20 in Part 5 of the Principal Regulation and substitutes it with a new section 20.

Part 5 of the Principal Regulation prescribes a scheme for ship sanitation for the purposes of subsection 255(1) of the Act (the ship sanitation certification scheme).

Section 20 is made for the purposes of paragraph 255(1)(i) of the Act, which allows the regulations to provide for the disclosure of information obtained under the ship sanitation certification scheme to a Commonwealth body, a State or Territory body, a biosecurity industry participant or a competent authority.

Current section 20 of the Principal Regulation allows a person to make a record of, disclose or otherwise use protected information if the person does so for a permissible purpose in performing or exercising their functions, duties or powers under Part 5 of the Principal Regulation relating to the ship sanitation certification scheme.

The purpose of the amendments proposed in this item is to retain the substantive effect of section 20, while making amendments to align with the new information management framework introduced by Schedule 3 to the Strengthening Biosecurity Act.

In particular, item 8 of Schedule 3 introduces a new category of “relevant information” which covers all information obtained or generated by a person in the course of, or for the purposes of, performing functions or duties, or exercising powers under the Act or regulations, or assisting another person to perform such functions or duties, or exercise such powers. The new definition of “protected information” inserted by item 7 of Schedule 3 covers information of which the unauthorised disclosure could cause harm and is only used in the new civil penalty and offence provision for unauthorised use or disclosure of protected information inserted by item 18 of Schedule 3. Item 27 of Schedule 3 would provide for specific authorisations for the use and disclosure of relevant information, including an authorisation under new section 582 for certain persons to use or disclose relevant information in the course of or for the purposes of performing or exercising functions, duties or powers under the Act, or assisting another person in performing or exercising such functions, duties or powers. The new civil penalty, offence provision and specific authorisations (including new section 582) do not refer to “making a record” of information as the intention is that a person who makes a record of information is also using the information. Therefore, new section 20 would no longer refer to “record” of information.

New section 20 refers to “information” rather than “protected information”, given that the latter term has a more limited meaning as a result of the amendments made by Schedule 3 to the Strengthening Biosecurity Act.

New section 20 no longer refers to disclosing information for a “permissible purpose”. The term “permissible purpose” is currently defined in section 9 of the Act to mean a purpose of promoting the objects of the Act but will be repealed by item 6 of Schedule 3 to the Strengthening Biosecurity Act as it is no longer used in the new information management framework.

New subsection 20(1) would provide that a person may disclose information referred to in new subsection 20(2) if:

- the disclosure is in the course of or for the purposes of:
 - performing functions or duties, or exercising powers, under Part 5 of the Principal Regulation; or
 - assisting another person to perform functions or duties, or exercise powers, under Part 5 of the Principal Regulation; and
- the disclosure is to a Commonwealth body, State or Territory body, biosecurity industry participant, or an overseas competent authority.

New subsection 20(2) would set out the information that may be disclosed under new subsection 20(1). This information would be evidence of a sanitation health risk associated with a vessel found during a ship sanitation certification inspection of the vessel; details of a ship sanitation certificate in force for a vessel; details of a vessel for which a ship sanitation certificate is not in force; and any other information relating to the information referred to in new paragraphs 20(2)(a), (b) or (c).

The purpose of new subsections 20(1) and (2) is to provide for disclosure of the same kinds of information, to the same entities, as provided for in current section 20 of the Principal Regulation.

A “biosecurity industry participant” is defined in sections 9 and 14 of the Act to mean a person who is the holder of the approval of an approved arrangement (which in turn is defined in the Act as an arrangement for which approval is in force under paragraph 406(1)(a) of the Act). An “overseas competent authority” is defined in section 4 of the Principal Regulation to mean an authority of a foreign country responsible for the implementation and application of health measures under the International Health Regulations, which are in turn defined in section 9 of the Act to mean the International Health Regulations (2005), as in force for Australia through various legislative means. An overseas competent authority is a type of “competent authority”, which is defined in section 9 of the Act to have the meaning given by the International Health Regulations.

The information that would be able to be disclosed under new subsection 20(1) are kinds of “relevant information”, as defined in section 9 of the Act (amended by item 8 of Schedule 3 to the Strengthening Biosecurity Act) as they are all types of information that would be obtained or generated in the course of, or for the purposes of, performing or exercising a function, duty or power under Part 5 of the Principal Regulation.

New subsection 20(3) provides that section 20 does not limit Division 3 of Part 2 of Chapter 11 of the Act. This is consistent with paragraph 255(1)(i) of the Act, as amended by item 12 of Schedule 3 to the Strengthening Biosecurity Act, which provides that regulations made for the purposes of that paragraph in relation to the disclosure of information under the ship sanitation certification scheme do not limit new Division 3 of Part 2 of Chapter 11 of the Act.

New subsection 20(3) would have the same substantive effect as current subsection 20(3), which provides that section 20 does not limit section 580 of the Act. The proposed amendment would be consequential to item 12 of Schedule 3 to the Strengthening Biosecurity Act, which substitutes the reference of “section 580” with “Division 3 of Part 2 of Chapter 11” in paragraph 255(1)(i) of the Act.

Item 3 – At the end of the instrument

This item inserts new Part 6 at the end of the Principal Regulation, which would provide for application, saving and transitional provisions.

New section 21 in new Part 6 of the Principal Regulation provides that new section 20 of the Principal Regulation (as amended by the Regulations) applies in relation to the disclosure of information on or after the commencement of new section 21, whether the information was obtained before, on or after commencement. This would clarify that new section 20 has a prospective effect in relation to the disclosure of information, regardless of whether the information was obtained before, on or after that commencement.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Biosecurity (Human Health) Amendment (Information Management) Regulations 2023

This 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 *Biosecurity (Human Health) Amendment (Information Management) Regulations 2023* updates the framework for the disclosure of information obtained under the ship sanitation certification scheme to align with amendments made by Schedule 3 to the *Biosecurity Amendment (Strengthening Biosecurity) Act 2022* in relation to information management.

Human Rights implications

The regulations do not engage any of the applicable rights or freedoms.

Conclusion

The Regulations are compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Mark Butler

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