

Explanatory Statement

Issued by the Authority of the Minister for Communications

Australian Postal Corporation Act 1989

Australian Postal Corporation Amendment (Dealing with Articles and their Contents) Regulations 2024

Authority

Section 102 of the *Australian Postal Corporation Act 1989* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 90U of the Act provides for the making of regulations to determine procedures for the examination of articles by a quarantine inspection officer, suspected of consisting of or containing quarantine material, and associated record keeping requirements for such articles. Subsection 33(3) of the *Acts Interpretation Act 1901* provides, in part, that the power to amend regulations is conferred by the same power to make those regulations.

The *Australian Postal Corporation Amendment (Dealing with Articles and their Contents) Regulations 2024* (the proposed Regulations) are made under the above described authority.

Purpose

The purpose of the instrument is to make consequential amendments minor and technical in nature to the *Australian Postal Corporation Regulations 2021* (the Principal Regulations) which are largely consequential and necessary to support implementation of the *Australian Postal Corporation and Other Legislation Amendment Act 2024* (the Amendment Act). The proposed Regulations also make several amendments to update outdated information.

Background

Changes to the Act have been introduced to address a number of deficiencies, including areas of ambiguity, with the operation of Part 7B of the Act.

Schedule 1 to the Amendment Act, which comes into effect on 10 January 2025, makes amendments to the Act to:

- strengthen and streamline the procedures in Part 7B of the Act for the handling, examination and inspection of postal articles containing or consisting of explosive, dangerous and injurious goods;
- remove burdensome provisions that do not support the operational effectiveness of the Act, and concepts that have become irrelevant over time, to enable more efficient processing of postal articles and greater certainty for responsible officials at Australia Post's international mail gateways;
- make improvements to the operation of information sharing arrangements between Australia Post and border agencies and a broader range of Commonwealth, State and Territory government agencies;

- extend the operation of secondary disclosure provisions to include new prescribed persons; and
- clarify the existing offence provisions to make clear officers of border agencies and members of a police force or service are permitted to open and examine articles where it is authorised under the Act and any other laws.

Summary of the proposed Regulations

The amendments set out in Schedule 1 to the proposed Regulations consist of:

- repeal of paragraph (f) of the note in the definitions in section 5 of the Principal Regulations, referring to the definition of ‘carry by post’ in the Act, and repeal of the definition of ‘authorised examiner’ in section 5, which replicates the definition in the Act, both of which will be removed by the Amendment Act;
- insertion of a new definition ‘employee of Australia Post’ at section 5 of the Principal Regulations, which reflects the updated definition to be inserted by the Amendment Act;
- repeal of Division 1 of Part 2 of the Principal Regulations, which will become obsolete with the Amendment Act’s removal of the enabling provision in section 90T of the Act;
- repeal of section 18 of the Principal Regulations, reflecting updates to permitted use or disclosure in the Act to be made by the Amendment Act;
- insertion of application and saving provisions at new Division 2 at Part 4 of the Principal Regulations; and
- several minor amendments that are machinery in nature, and made for currency (including updates to physical addresses for records).

The proposed Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and are subject to the default sunseting requirements and disallowance. The proposed Regulations commence the same day as the commencement date.

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

Consultation

The Amendment Act and proposed Regulations were developed in consultation with relevant stakeholders over an extended period, to ensure the measures are operationally fit-for-purpose regardless of further advancements in technology – in particular, Australia Post, Australian Border Force, the Department of Agriculture, Fisheries and Forestry, and States and Territories prescribed by the Principal Regulations. No public consultation was undertaken, as the proposed Regulations are minor and technical in nature, and are specific to the processes and procedures applied by Australia Post and border agencies.

The Office of Impact Analysis (OIA) advised that an Impact Analysis is not required for the proposed Regulations as they are minor in nature.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at [Attachment B](#).

Details of the *Australian Postal Corporation Amendment (Dealing with Articles and their Contents) Regulations 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Australian Postal Corporation Amendment (Dealing with Articles and their Contents) Regulations 2024* (the proposed Regulations).

Section 2 – Commencement

This section would provide for the instrument to commence at the same time as Schedule 1 to the *Australian Postal Corporation and Other Legislation Amendment Act 2024* (the Amendment Act) commences, which will be 10 January 2025.

Section 3 – Authority

This section would provide that the instrument is made under the *Australian Postal Corporation Act 1989* (the Act).

Section 4 – Schedules

This section would provide 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 the Regulations has effect according to its terms.

Schedule 1 – Amendments

Item [1] – Section 5 (paragraph (f) of the note)

This item would repeal the existing paragraph of ‘carry by post’ in the note in section 5 of the *Australian Postal Corporation Regulations 2021* (Principal Regulations). This is necessary as this phrase will be removed from the Act when Schedule 1 to the Amendment Act commences.

Item [2] – Section 5 (definition of *authorised examiner*)

This item would repeal the definition of ‘authorised examiner’ in section 5 of the Principal Regulations. This is necessary as this defined term will also be removed from the Act when Schedule 1 to the Amendment Act commences.

Item [3] – Section 5

This item would insert a new definition of ‘employee of Australia Post’ to the Principal Regulations. This is necessary as this defined term will be introduced in amendments to the Act when Schedule 1 to the Amendment Act commences.

Item [4] - Section 5 (definition of Northern Territory Department)

This item would omit “*Biological Control Act 1986 (NT)*” and substitute with “*Plant Health Act 2008 (NT)*” in section 5 of the Principal Regulations. This is necessary as the Northern Territory Government has advised that more modern biosecurity inspection powers are now provided by the *Plant Health Act 2008 (NT)* (Plant Health Act) and *Livestock Act 2008 (NT)* (Livestock Act), and consequently, the *Biological Control Act 1986 (NT)* is to be repealed. As set out by the *Administrative Arrangements Order (No. 3) 2024 (NT)*, the Department of Agriculture and Fisheries is responsible for administering both the Plant Health Act and Livestock Act. Only one of these Acts is therefore necessary to include in reference to the Northern Territory Department.

Item [5] – Division 1 of Part 2

This item would repeal Division 1 of Part 2 from the Principal Regulations as it will become obsolete when Schedule 1 to the Amendment Act commences.

Division 1 of Part 2 of the Principal Regulations currently determines the procedures in relation to articles that may contain drugs or other chemical compounds for the purposes of section 90T of the Act. These procedures address removing an article from and returning an article to the normal course of carriage for the purposes of its examination by a customs officer, and record keeping requirements for such articles.

Under the relevant changes made by the Amendment Act to the Act, an employee of Australia Post will be permitted to open an article and/or examine its contents to check whether the article contains a prohibited thing, if they reasonably suspect the article contains an explosive, dangerous or injurious thing (which includes drugs or other chemical compounds). This change reflects modern mail processing now being supported by screening technologies, and customs officers no longer needing to be available on the processing line.

Further, revised section 90Z of the Act will be expanded to set out the procedures to be followed to deal with an article if it is opened and/or examined and found either to contain or not contain a prohibited thing, and there will be new record keeping requirements. It is therefore not necessary to retain Division 1 of Part 2 of the Principal Regulations.

Item [6] – Paragraphs 13(f) and (g)

This item would omit “authorised examiner” and substitute “employee of Australia Post” at paragraphs 13(f) and (g) as a consequential amendment to Items 2 and 3.

Item [7] – Section 14 (cell at table item 1, column headed “Place or places”)

This item would repeal the location address information for the Head of the Western Australian Department from item 1 of the table in section 14 of the Principal Regulations, and substitute with “1 Nash Street, East Perth, Western Australia”. This change is necessary to update the current location of the place at which records are to be established and maintained.

Item [8] – Section 14 (cell at table item 3, column headed “Place or places”)

This item would repeal the location address information for the Head of the Northern Territory Department from item 3 of the table in section 14 of the Principal Regulations, and substitute with “Level 1, John England Building, Berrimah Farm Science Precinct, 29 Makagon Road, Berrimah, Northern Territory”. This change is necessary to update the current location of the place at which records are to be established and maintained.

Item [9] – Section 18

This item would repeal section 18 of the Principal Regulations.

The list of laws of a State or Territory that establish a Commission or other body to conduct investigations or inquiries prescribed in the Act will be updated on commencement of Schedule 1 to the Amendment Act. As a consequence, the *Corruption, Crime and Misconduct Act 2003* (WA) will be prescribed in the Act at new sections 90JC(2) and 90LC(5). This change is therefore necessary to give effect to the changes in the Amendment Act (new section 90JC of the Act).

Item [10] – At the end of Part 4

This item would insert a new Division 2 at Part 4 of the Principal Regulations to set out two application and saving provisions connected to the changes made by Items 5 and 6 of the proposed Regulations.

The title of the new Division would be “Provisions for the Australian Postal Corporation Amendment (Dealing with Articles and their Contents) Regulations 2024”.

Proposed subsection 51(1) would ensure that Division 1 of Part 2 of the Principal Regulations (as in force immediately before the proposed Regulations commenced) would continue to apply in relation to an article that commenced to be in the course of post before the proposed Regulations would commence. This reflects the intention for the existing arrangements under Division 1 for mail inspection and screening to continue to apply in relation to any article that commenced to be in the course of post before the commencement of the proposed Regulations.

Proposed subsection 51(2) would ensure that the modified new section 13 (as to be changed by Item 6 of the proposed Regulations) will apply in relation to the removal of an article, or the opening of an article, on or after the day on which section 51 commences. This is necessary to recognise that Australia Post employees, rather than ‘authorised examiners’, would be removing articles from the normal course of carriage after the proposed Regulations are in force.

Statement of Compatibility with Human Rights

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

Australian Postal Corporation Amendment (Dealing with Articles and their Contents) Regulations 2024

Overview

The purpose of the *Australian Postal Corporation Amendment (Dealing with Articles and their Contents) Regulations 2024* (the proposed Regulations) is to make consequential amendments minor and technical in nature to the *Australian Postal Corporation Regulations 2021* (the Principal Regulations) which are largely consequential and necessary to support implementation of the *Australian Postal Corporation and Other Legislation Amendment Act 2024* (the Amendment Act). The proposed Regulations also make several amendments to update outdated information.

The proposed Regulations are made under the authority of sections 90U and 102 of the *Australian Postal Corporation Act 1989* (the Act).

- Section 102 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.
- Section 90U of the Act provides for the making of regulations to determine procedures for the examination of articles by a quarantine inspection officer, suspected of consisting of or containing quarantine material, and associated record keeping requirements for such articles.

Additionally, subsection 33(3) of the *Acts Interpretation Act 1901* provides, in part, that the power to amend regulations is conferred by the same power to make those regulations. The proposed Regulations are made under the above described authority.

Changes to the Act have been introduced to address a number of deficiencies, including areas of ambiguity, with the operation of Part 7B of the Act.

Schedule 1 to the Amendment Act, which comes into effect on 10 January 2025, makes amendments to the Act to:

- strengthen and streamline the procedures in Part 7B of the Act for the handling, examination and inspection of postal articles containing or consisting of explosive, dangerous and injurious goods;
- remove burdensome provisions that do not support the operational effectiveness of the Act, and concepts that have become irrelevant over time, to enable more efficient processing of postal articles and greater certainty for responsible officials at Australia Post's international mail gateways;
- make improvements to the operation of information sharing arrangements between Australia Post and border agencies and a broader range of Commonwealth, State and Territory government agencies;

- extend the operation of secondary disclosure provisions to include new prescribed persons; and
- clarify the existing offence provisions to make clear officers of border agencies and members of a police force or service are permitted to open and examine articles where it is authorised under the Act and any other laws.

The purpose of the proposed Regulations is to make consequential and minor amendments to the *Australian Postal Corporation Regulations 2021* (the Principal Regulations), which are largely consequential and necessary to support implementation of the Amendment Act.

The amendments set out in Schedule 1 to the proposed Regulations consist of:

- repeal of paragraph (f) of the note in the definitions in section 5 of the Principal Regulations, referring to the definition of ‘carry by post’ in the Act, and repeal of the definition of ‘authorised examiner’ in section 5, which replicates the definition in the Act, both of which will be removed by the Amendment Act;
- insertion of a new definition ‘employee of Australia Post’ at section 5 of the Principal Regulations, which reflects the updated definition to be inserted by the Amendment Act;
- repeal of Division 1 of Part 2 of the Principal Regulations, which will become obsolete with the Amendment Act’s removal of the enabling provision in section 90T of the Act;
- repeal of section 18 of the Principal Regulations, reflecting updates to permitted use or disclosure in the Act to be made by the Amendment Act;
- insertion of application and saving provisions at new Division 2 at Part 4 of the Principal Regulations; and
- several minor amendments that are machinery in nature, and made for currency (including updates to physical addresses for records).

Additionally, several of the amendments made by the proposed Regulations relate to the conduct of inspection officers of border agencies and Australia Post employees, all of which are subject to the *Privacy Act 1988*.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms. The proposed Regulations do not create any additional regulatory burden, and largely serve to implement the Amendment Act.

Conclusion

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

**The Hon Michelle Rowland MP
Minister for Communications**