National Health Security Act 2007

No. 174, 2007

Compilation No. 16

Compilation date:	16 December 2020
Includes amendments up to:	Act No. 129, 2020
Registered:	29 January 2021

Prepared by the Office of Parliamentary Counsel, Canberra

Authorised Version C2021C00048 registered 29/01/2021

About this compilation

This compilation

This is a compilation of the *National Health Security Act 2007* that shows the text of the law as amended and in force on 16 December 2020 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary 1

1 Short title ... 1
2 Commencement ... 1
3 Definitions ... 2
4 Binding the Crown ... 9
5 Application of laws to external Territories ... 10

Part 2—Public health surveillance 11

Division 1—Objects of Part 11

6 Objects of Part ... 11

Division 2—National Health Security Agreement 12

7 National Health Security Agreement ... 12

Division 3—Permissible purposes 13

8 Permissible purposes ... 13

Division 4—National Focal Point 14

9 Meaning of *National Focal Point* ... 14
10 Functions of the National Focal Point ... 14

Division 5—National Notifiable Disease List 15

11 National Notifiable Disease List ... 15
12 Temporary additions to the National Notifiable Disease List ... 15

Division 6—Notification, sharing information and liaising in relation to public health events of national significance and listed human diseases 17

13 Notification, sharing information and liaising in relation to public health events of national significance and listed human diseases ... 17
14 Receipt of information or recommendation from the World Health Organization ... 18
15 Non-personal information ... 19

Division 7—Public health observation 20

16 National Focal Point notified of incoming traveller who is under public health observation ... 20
17 Incoming travellers who are placed under public health observation ... 20

Authorised Version C2021C00048 registered 29/01/2021

Division 8—Confidentiality of information 22
18 Definition of *protected information* for the purposes of Part 2 22
19 Authorisation to use information for permissible purposes 22
20 Authorisation to use information for purposes of proceedings 25
21 Offence relating to protected information 26
22 Defence for use of information in good faith 26
23 Defence for use of information also received from another source and use of information by prescribed agencies 27
24 Defence for use of information required by another law 28
25 Defence for disclosure to person to whom information relates or if person to whom information relates consents 29
26 Defence for disclosure to person who provided the information 30
Division 9—Miscellaneous 31
27 Notice to other countries about further use of information 31
28 Delegation 32
29 Annual report 32
Part 3—Regulation of security-sensitive biological agents 33
Division 1—Preliminary 33
30 Object of Part 33
Division 2—The List of Security-sensitive Biological Agents 34
31 Establishment of the List of Security-sensitive Biological Agents 34
32 Variation of the List of Security-sensitive Biological Agents 34
33 Minister must obtain and have regard to expert advice 35
34 List to be available on the Department's website 35
Division 3—Standards relating to security-sensitive biological agents 36
35 Minister may determine standards relating to security-sensitive biological agents 36
Division 4—The National Register 38
36 National Register of Security-sensitive Biological Agents 38
37 Content of National Register 38
38 Variation of the National Register 38

Authorised Version C2021C00048 registered 29/01/2021

Division 4A—Requirements relating to suspected security-sensitive biological agents 40

Subdivision A—Application 40

38A Application of Division 40

Subdivision B—Carrying out confirmatory testing or destruction 40

38B Initial tester must have confirmatory testing or destruction done 40

38C Offence—failure to have confirmatory testing or destruction done 41

Subdivision C—Compliance with SSBA standards 41

38D Compliance with SSBA Standards in handling biological agent 41

38E Offence—failure to comply with SSBA Standards in handling biological agent 42

Subdivision D—Further provisions relating to confirmatory testing 42

38F Initial tester must report transfer of biological agent or sample for confirmatory testing 42

38G Offence—failure by initial tester to report transfer 43

38H Initial tester must report results of confirmatory testing to Secretary 43

38J Offence—failure to report results of confirmatory testing to Secretary 44

38K Reporting if biological agent disposed of after confirmatory testing shows it is a security-sensitive biological agent 44

38L Offence—failure to report disposal 45

Subdivision E—Further provisions relating to destruction 46

38M Initial tester must report destruction of biological agent 46

38N Offence—failure to report destruction 46

38P Direction to dispose of biological agent for failure to comply with section 38B 47

38Q Offence—failure to dispose of biological agent as directed 47

Division 5—Requirements for entities that handle security-sensitive biological agents 48

Subdivision A—Application and definitions 48

39 Application of Division 48

40 Meaning of *exempt entity* 48

Authorised Version C2021C00048 registered 29/01/2021

41 Meaning of *legitimate purpose* 49

Subdivision B—Reporting requirements 51

42 Entity that handles security-sensitive biological agents must give a report to the Secretary 51

43 Offence—failure to give a report to the Secretary 52

44 Secretary must consider report and decide whether or not to include entity on the National Register 52

45 Secretary may direct entity to dispose of security-sensitive biological agents 54

46 Offence—failure to comply with direction to dispose of security-sensitive biological agent 54

47 Secretary not satisfied entity handling security-sensitive biological agent for a legitimate purpose 55

48 Registered entity must report any changes to the Secretary 57

48A Registered entity must report certain reportable events to police 59

48B Offence—failure to report reportable event to police 60

49 Secretary must consider report of changes and decide whether or not to vary the National Register 60

50 Secretary may direct entity to dispose of security-sensitive biological agents 61

51 Offence—failure to comply with direction to dispose of security-sensitive biological agent 62

52 Secretary not satisfied entity handling security-sensitive biological agent for a legitimate purpose 63

53 Failure to report changes to the Secretary 65

54 Offence—failure to comply with direction to dispose of security-sensitive biological agent 66

55 Application of reporting requirements in relation to individuals 66

55AA Entity that needs to undertake emergency maintenance may give a report to the Secretary 67

55AB Emergency maintenance period 69

55AC Secretary may declare exemption from this Division etc. during emergency maintenance period 69

55AD Offence—breaching condition of exemption 70

55A Cancellation of entity's registration on application 70

Subdivision C—Compliance with SSBA Standards 71

56 Entity must comply with SSBA Standards 71

57 Failure to comply with SSBA Standards 71

Authorised Version C2021C00048 registered 29/01/2021

58 Offence—failure to comply with direction to dispose of security-sensitive biological agent 73

Subdivision D—Directions not to handle security-sensitive biological substances 74

59 Secretary may direct individual not to handle security-sensitive biological agents 74

60 Offence—failure to comply with direction not to handle security-sensitive biological agents 75

Division 5AA—Entities that temporarily handle security-sensitive biological agents 76

Subdivision A—Reporting by entities that temporarily handle security-sensitive biological agents 76

60AA Entity that temporarily handles a security-sensitive biological agent may give a report to the Secretary 76

60AB Temporary handling period 77

60AC Application of Division 5 to an entity that gives a temporary handling report 77

60AD Entity that gives a temporary handling report must give a temporary handling disposal report 78

60AE Offence—failure to give a report to the Secretary 78

60AF Entity that gives a temporary handling report must report any changes to the Secretary 79

60AG Offence—failure to give a report to the Secretary 80

60AH Entity that gives a temporary handling report must report certain events to police 80

60AI Offence—failure to report event to police 81

Subdivision B—Compliance with temporary handling Standards 81

60AJ Temporary handling Standards 81

60AK Entity must comply with temporary handling Standards 82

60AL Offence—failure to comply with temporary handling Standards 82

Subdivision C—Conditions in relation to the temporary handling of security-sensitive biological agents 82

60AM Secretary may impose conditions 82

60AN Entity must comply with conditions 83

60AO Failure to comply with conditions 83

60AP Offence—failure to comply with direction to dispose of sample 84

Authorised Version C2021C00048 registered 29/01/2021

Division 5A—Suspension of Divisions 4A, 5 and 5AA to deal with threats 85
60A Minister may suspend Divisions 4A, 5 and 5AA to deal with threats ... 85
60B Variation or revocation of suspension ... 87
60C Offence—failure to comply with conditions on suspension ... 88
Division 6—Enforcement 89
61 Secretary may arrange for disposal of security-sensitive biological agents ... 89
62 Injunctions ... 89
Division 7—Powers of inspection 91
Subdivision A—Appointment of inspectors and identity cards 91
63 Appointment of inspectors ... 91
64 Identity card ... 91
Subdivision B—Monitoring compliance 92
65 Powers available to inspectors for monitoring compliance ... 92
66 Monitoring powers ... 92
67 Power to operate equipment ... 93
69 Application for monitoring warrant ... 94
Subdivision C—Offence-related powers 95
70 Inspector may enter premises by consent or under a warrant ... 95
70A Offence-related powers of inspectors ... 96
70B Persons assisting inspectors ... 98
70C Use of force in executing a warrant ... 99
70D Inspector may ask questions and seek production of documents ... 99
70E Inspector to be in possession of warrant ... 100
70F Occupier to provide inspector with facilities and assistance ... 100
70G Copies of seized things to be provided ... 101
70H Receipts for things seized ... 101
70J Return of seized things ... 101
70K Magistrate may permit a thing to be retained ... 102
70L Disposal of things ... 103
70M Issue of offence-related warrants ... 104
70N Offence-related warrants by telephone, fax etc. ... 105
70P Offence relating to warrants by telephone, fax etc. ... 107
Subdivision D—Expert assistance 107
71 Expert assistance to operate a thing ... 107

Authorised Version C2021C00048 registered 29/01/2021

72 Expert assistance from scientific or technical expert 108
Subdivision E—Emergency powers 109
73 Powers available to inspectors for dealing with dangerous situations 109
Subdivision F—Obligations and incidental powers of inspectors 110
74 Inspector must produce identity card on request 110
75 Consent 110
76 Details of warrant etc. to be given to occupier 111
77 Announcement before entry 111
Subdivision G—Other matters 112
78 Occupier entitled to be present during search 112
79 Division not to abrogate privilege against self-incrimination 113
79A Compensation for damage to electronic equipment 113
Division 8—Review of decisions 115
80 Meaning of *reviewable decision* 115
81 Notification of decision and review rights 115
82 Internal review 116
83 Review of decisions by Administrative Appeals Tribunal 116
Division 9—Confidentiality of information 117
84 Definition of *protected information* for the purposes of Part 3 117
85 Secretary may give report to certain agencies 117
86 Authorisation to use information in performing duties or exercising powers under Division 6, 7 or 8 of Part 2 or this Part 118
87 Authorisation to use information for certain purposes 118
88 Secretary may authorise use of information 118
89 Authorisation to use information for purposes of certain proceedings 119
90 Offence relating to protected information 120
91 Defence for disclosure to person who provided the information 120
92 Defence for use of information under particular laws 120
93 No other exceptions under other laws 121
Division 10—Delegation 122
94 Secretary may delegate powers and functions under this Part 122
Part 4—Miscellaneous 123
95 Regulations 123

Authorised Version C2021C00048 registered 29/01/2021

Endnotes 124

Endnote 1—About the endnotes 124

Endnote 2—Abbreviation key 126

Endnote 3—Legislation history 127

Endnote 4—Amendment history 130

Endnote 5—Editorial changes 135

Authorised Version C2021C00048 registered 29/01/2021

An Act to provide for national health security, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *National Health Security Act 2007*.

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
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 5 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	28 September 2007
2. Part 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	28 March 2008

Authorised Version C2021C00048 registered 29/01/2021

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
3. Part 3	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 18 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	31 January 2009 (*see* F2008L04297)
4. Part 4	The day on which this Act receives the Royal Assent.	28 September 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Definitions

(1) In this Act:

Australia, when used in a geographical sense, includes the external Territories.

Australian means an Australian citizen or a permanent resident.

Australian territory has the meaning given by section 12 of the *Biosecurity Act 2015*.

biological agents includes:

(a) bacteria and viruses; and

(b) toxins derived from biological sources, including animals, plants and microbes.

Authorised Version C2021C00048 registered 29/01/2021

coronial inquiry means a coronial inquiry, coronial investigation or coronial inquest under a law of the Commonwealth, or of a State or Territory.

disease means an illness or medical condition (other than an injury), irrespective of origin or source, that presents or could present significant harm to humans.

dispose of a biological agent means the transfer or destruction of the biological agent.

emergency maintenance of a facility has the meaning given by subsection 55AA(1).

emergency maintenance period for an emergency maintenance report has the meaning given by section 55AB.

emergency maintenance report for a facility has the meaning given by subsection 55AA(2).

enactment means:

(a) an Act of the Commonwealth, a State or a Territory; or

(b) an instrument (including rules, regulations and by-laws) made under an Act of the Commonwealth, a State or a Territory.

entity means any of the following:

(a) an individual;

(b) a body corporate;

(c) an agency or instrumentality of the Commonwealth, a State or a Territory.

event, for the purposes of Part 2, means:

(a) an occurrence of disease, injury or death; or

(b) an occurrence, including the release of a chemical, biological or radiological agent, that creates the potential for disease, injury or death.

evidential material means any of the following:

Authorised Version C2021C00048 registered 29/01/2021

(a) a thing with respect to which an offence against Part 3 of this Act, or the *Crimes (Biological Weapons) Act 1976*, has been committed or is suspected, on reasonable grounds, to have been committed;
(b) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of any such offence;
(c) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing any such offence.

exempt entity has the meaning given by section 40.

facility includes:
(a) a building, or part of a building; and
(b) a laboratory (including a mobile laboratory).

handling a biological agent includes:
(a) receiving, holding, using and storing the biological agent; and
(b) any operation incidental to, or arising out of, any of those operations.

Note 1: Subsection 39(2) affects when an entity is treated for the purposes of Division 5 of Part 3 as handling a security-sensitive biological agent that is a toxin.

Note 2: An entity that handles a biological agent only for the purpose of transporting it from one place to another place is exempt from the requirements of Division 5 of Part 3: see subsection 40(1).

inspector means a person appointed as an inspector under section 63.

intelligence agency means a Commonwealth government agency that has responsibility for intelligence gathering or security.

International Health Regulations means the International Health Regulations 2005, done at Geneva on 23 May 2005, as in force for Australia from time to time.

Authorised Version C2021C00048 registered 29/01/2021

Note: In 2007, the text of the International Health Regulations was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

legitimate purpose, for an entity to handle a security-sensitive biological agent, has the meaning given by section 41.

listed human disease has the meaning given by section 42 of the *Biosecurity Act 2015*.

List of Security-sensitive Biological Agents means the list established under section 31, as the list is in force from time to time.

monitoring warrant means a warrant issued under section 69.

National Focal Point has the meaning given by section 9.

National Health Security Agreement means the agreement entered into by the Minister under section 7, as the Agreement is in force from time to time.

National Notifiable Disease List means the list established under section 11, as the list is in force from time to time.

National Register means the National Register of Security-sensitive Biological Agents established under section 36, as the National Register is in force from time to time.

offence-related powers has the meaning given by section 70A.

offence-related warrant means:

(a) a warrant issued by a magistrate under section 70M; or

(b) a warrant signed by a magistrate under section 70N.

overseas mass casualty means an event occurring overseas, if:

(a) more than one person (whether an Australian or otherwise):

(i) is affected by a disease, or is injured or dies; and

(ii) needs to be repatriated, identified or treated, or needs to be brought to Australia for treatment; and

Authorised Version C2021C00048 registered 29/01/2021

(b) a responsible Commonwealth, State or Territory body is involved in responding to the event.

permanent resident means a person who is, within the meaning of the *Migration Act 1958*, the holder of a permanent visa.

permissible purpose has the meaning given by section 8.

personal information has the same meaning as in the *Privacy Act 1988*.

person assisting an inspector has the meaning given by section 70B.

premises includes the following:

(a) a facility;

(b) a place (including an area of land);

(c) any part of premises (including premises referred to in paragraphs (a) and (b)).

protected information:

(a) for the purposes of Part 2—has the meaning given by section 18; and

(b) for the purposes of Part 3—has the meaning given by section 84.

public health event of national significance means any of the following events:

(a) one or more cases or potential cases of a disease listed on the National Notifiable Disease List;

(b) an urgent event;

(c) an overseas mass casualty;

(ca) if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force—an emergency to which the declaration relates, if the emergency relates to public health;

(d) a public health risk (other than an event covered by paragraph (a), (b), (c) or (ca)).

Authorised Version C2021C00048 registered 29/01/2021

public health observation means the monitoring of the health of a person for the purposes of determining the risk of transmission of a disease.

public health risk means an event:

(a) that might adversely affect the health of human populations; and

(b) that satisfies any one or more of the following conditions:

(i) the health effects of the event might spread within Australia;

(ii) the health effects of the event might spread between Australia and another country;

(iii) the health effects of the event might spread between 2 other countries;

(iv) the event might present a serious and direct danger.

register an entity means include the entity on the National Register in relation to one or more security-sensitive biological agents handled by the entity at one or more facilities.

registered entity means an entity that is registered under section 44 or 47.

reportable event means an event referred to in subsection 48(1).

reportable quantity, in relation to a toxin included in the List of Security-sensitive Biological Agents, means the quantity (if any) specified in the list as the reportable quantity of that toxin.

responsible Commonwealth, State or Territory body, when used in a provision of Part 2, means a body that is determined under subsection (2) to be a responsible Commonwealth, State or Territory body for the purposes of the provision of Part 2.

reviewable decision, for the purposes of Division 8 of Part 3, has the meaning given by section 80.

sample of a biological agent includes:

(a) a subculture of the agent; and

Authorised Version C2021C00048 registered 29/01/2021

(b) a preparation made from the agent.

Secretary means the Secretary of the Department.

security-sensitive biological agent means a biological agent that is included in the List of Security-sensitive Biological Agents.

SSBA means security-sensitive biological agent.

SSBA Standards means the standards determined by the Minister under section 35.

State or Territory Health Minister means:

(a) the Minister of a State; or

(b) the Minister of the Australian Capital Territory; or

(c) the Minister of the Northern Territory;

who is responsible, or principally responsible, for the administration of matters relating to health in the State, the Australian Capital Territory or the Northern Territory, as the case may be.

State Party means a State that is a signatory to the International Health Regulations.

temporary handling disposal report for a sample of a security-sensitive biological agent has the meaning given by subsection 60AD(2).

temporary handling period for a sample of a security-sensitive biological agent has the meaning given by section 60AB.

temporary handling report for a sample of a security-sensitive biological agent has the meaning given by subsection 60AA(1).

temporary handling Standard has the meaning given by section 60AJ.

traveller means a person undertaking a voyage in which the person enters, or will enter, a country other than the country from which the person began the voyage.

Authorised Version C2021C00048 registered 29/01/2021

urgent event means an event:

(a) that causes, or creates the potential for, levels of disease, injury or death above the levels that would otherwise be expected for the time and place where the event occurs; and

(b) in respect of which any of the following applies:

(i) the event has or might have a serious impact on public health;

(ii) in the case of a disease—the event is unusual or unexpected, and has a high potential to spread (whether within Australia or between Australia and another country);

(iii) otherwise—the event is unusual or unexpected, and the health effects of the event have a high potential to spread (whether within Australia or between Australia and another country).

Note 1: For examples of events that might have a serious impact on public health, see the examples under question I of Annex 2 of the International Health Regulations ("Is the public health impact of the event serious?").

Note 2: For examples of events that are unusual or unexpected, see the examples under question II of Annex 2 of the International Health Regulations ("Is the event unusual or unexpected?").

(2) The Minister may, by legislative instrument, determine any of the following bodies to be a responsible Commonwealth, State or Territory body for the purposes of a provision of Part 2:

(a) one or more bodies of the Commonwealth;

(b) one or more bodies, nominated by a State or Territory Health Minister, of each State, the Australian Capital Territory and the Northern Territory.

4 Binding the Crown

(1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

Authorised Version C2021C00048 registered 29/01/2021

(2) This Act does not make the Crown liable to be prosecuted for an offence.

5 Application of laws to external Territories

This Act extends to every external Territory.

Authorised Version C2021C00048 registered 29/01/2021

Part 2—Public health surveillance

Division 1—Objects of Part

6 Objects of Part

The objects of this Part are:

(a) to provide a national system of public health surveillance to enhance the capacity of the Commonwealth and the States and Territories to identify, and respond to, public health events of national significance which include:
  (i) the occurrence of certain communicable diseases; or
  (ii) certain releases of chemical, biological or radiological agents; or
  (iii) the occurrence of public health risks; or
  (iv) the occurrence of overseas mass casualties; and

(b) to provide for the sharing of information with:
  (i) the World Health Organization; and
  (ii) countries affected by an event relating to public health or an overseas mass casualty; and

(c) to support the Commonwealth and the States and Territories in giving effect to the International Health Regulations (other than as mentioned in paragraphs (a) and (b)).

Authorised Version C2021C00048 registered 29/01/2021

Division 2—National Health Security Agreement

7 National Health Security Agreement

(1) The Minister, on behalf of the Commonwealth, may enter into an agreement with the States, the Australian Capital Territory and the Northern Territory for any one or more of the following purposes:

(a) providing for the sharing of information between the Commonwealth, the States and the Territories in relation to communicable diseases, in order to enhance:

(i) the understanding of the epidemiology of those diseases; and

(ii) the understanding of the threats of those diseases; and

(iii) the ability within Australia to respond to those diseases;

(b) formalising and enhancing consultation between the Commonwealth, the States and the Territories in relation to public health events of national significance;

(c) enhancing the ability within Australia to identify and respond quickly to public health events of national significance;

(d) facilitating the monitoring of public health events of national significance within Australia.

(2) Subsection (1) does not, by implication, limit the executive power of the Commonwealth to enter into agreements.

Note: This subsection allows the National Health Security Agreement to cover purposes other than those mentioned in subsection (1).

Authorised Version C2021C00048 registered 29/01/2021

Division 3—Permissible purposes

8 Permissible purposes

For the purposes of this Part, each of the following is a ***permissible purpose***:

(a) preventing, protecting against, controlling or responding to a public health event of national significance (other than an overseas mass casualty);

(b) giving effect to the International Health Regulations (other than as mentioned in paragraph (a));

(c) if an Australian suffers from a disease, or is injured or dies, as a result of an overseas mass casualty—facilitating:

(i) the identification of the Australian (whether in Australia or overseas); and

(ii) the repatriation of the Australian to Australia; and

(iii) the treatment of the Australian (whether in Australia or overseas);

(d) if a person who is not an Australian suffers from a disease, or is injured or dies, as a result of an overseas mass casualty—facilitating:

(i) the identification of the person (whether within Australia or overseas); and

(ii) bringing the person to Australia for treatment; and

(iii) the treatment in Australia of the person;

(e) preventing, or reducing the possibility of, a listed human disease entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory;

(f) preventing a listed human disease from spreading to another country.

Authorised Version C2021C00048 registered 29/01/2021

Division 4—National Focal Point

9 Meaning of *National Focal Point*

The ***National Focal Point*** means:

(a) the Secretary; and

(b) the persons, offices or positions (if any) nominated in writing by the Secretary for the purposes of this section.

10 Functions of the National Focal Point

The functions of the National Focal Point are the following:

(a) to liaise with responsible Commonwealth, State or Territory bodies in relation to public health events of national significance;

(b) to liaise with and be accessible to the World Health Organization and States Parties at all times for the purposes of giving effect to the International Health Regulations;

(c) to liaise with responsible Commonwealth, State or Territory bodies for the purposes of giving effect to the International Health Regulations;

(d) any other functions given to the National Focal Point under:

(i) this Act or the regulations; or

(ii) any other Act.

Authorised Version C2021C00048 registered 29/01/2021

Division 5—National Notifiable Disease List

11 National Notifiable Disease List

(1) The Minister must, by legislative instrument, establish a list of diseases, to be called the National Notifiable Disease List.

(2) The Minister may include a disease in the list if the Minister considers that an outbreak of the disease would be a public health risk.

(3) The Minister may vary the list by:
  (a) adding a disease if the Minister considers that an outbreak of the disease would be a public health risk; or
  (b) removing a disease if the Minister no longer considers that an outbreak of the disease would be a public health risk.

(4) A variation under subsection (3) is a legislative instrument.

(5) In making or varying the list, the Minister must consult:
  (a) the Commonwealth Chief Medical Officer; and
  (b) each State or Territory Health Minister.

12 Temporary additions to the National Notifiable Disease List

(1) In addition to the Minister's power, under subsection 11(3), to vary the National Notifiable Disease List, the Minister or the Commonwealth Chief Medical Officer may vary the list by adding a disease if the Minister or the Commonwealth Chief Medical Officer (as the case requires) considers that an outbreak of the disease would be a public health risk.

(2) A variation under subsection (1) is a legislative instrument.

(3) If, under subsection (1), the Minister varies the list, the Minister is not required to consult:
  (a) the Commonwealth Chief Medical Officer; or
  (b) any State or Territory Health Minister.

Authorised Version C2021C00048 registered 29/01/2021

(4) At the end of the period of 6 months after the list is varied under subsection (1), the variation ceases to have effect unless the Minister has made a determination under subsection (6).

(5) A particular disease may not be added to the list under subsection (1) more than once.

(6) After consulting:

(a) the Commonwealth Chief Medical Officer; and

(b) each State or Territory Health Minister;

the Minister may determine that the variation continues to have effect if the Minister considers that an outbreak of the disease that is included in the variation would be a public health risk.

(7) A determination under subsection (6) is a legislative instrument.

Authorised Version C2021C00048 registered 29/01/2021

Division 6—Notification, sharing information and liaising in relation to public health events of national significance and listed human diseases

13 Notification, sharing information and liaising in relation to public health events of national significance and listed human diseases

Public health events of national significance (other than overseas mass casualties)

(1) The Minister may take action under subsection (2) if:

(a) a responsible Commonwealth, State or Territory body gives the National Focal Point information relating to a public health event of national significance (other than an overseas mass casualty); and

(b) the Minister considers that it is appropriate to take action under subsection (2) for a permissible purpose referred to in paragraph 8(a) or (b).

(2) The Minister may:

(a) notify any responsible Commonwealth, State or Territory body that is affected, or might be affected, by the event; and

(b) give such bodies any relevant information that is available to the Minister in relation to the event; and

(c) liaise with such bodies in relation to the event.

Overseas mass casualties

(3) The Minister may take action under subsection (4) if:

(a) a responsible Commonwealth, State or Territory body gives the National Focal Point information relating to an overseas mass casualty; and

Authorised Version C2021C00048 registered 29/01/2021

(b) the Minister considers that it is appropriate to take action under subsection (4) for a permissible purpose referred to in paragraph 8(c) or (d).

(4) The Minister may:

(a) notify any responsible Commonwealth, State or Territory body that is affected, or might be affected, by the overseas mass casualty; and

(b) give such bodies any relevant information that is available to the Minister in relation to the overseas mass casualty; and

(c) liaise with such bodies in relation to the overseas mass casualty.

Cases of listed human diseases

(5) The Minister may take action under subsection (6) if:

(a) a responsible Commonwealth, State or Territory body gives the National Focal Point information relating to one or more cases or potential cases of a listed human disease; or

(b) the Minister considers that it is appropriate to take action under subsection (6) for a permissible purpose referred to in paragraph 8(e) or (f).

(6) The Minister may:

(a) notify any responsible Commonwealth, State or Territory body that is affected, or might be affected, by the case or potential case of the listed human disease; and

(b) give such bodies any relevant information that is available to the Minister in relation to the case or potential case of the listed human disease; and

(c) liaise with such bodies in relation to the case or the potential case of the listed human disease.

14 Receipt of information or recommendation from the World Health Organization

(1) This section applies if the Minister receives:

Authorised Version C2021C00048 registered 29/01/2021

(a) a recommendation from the World Health Organization under Part III of the International Health Regulations; or

(b) information provided by the World Health Organization, or any other State Party, under the International Health Regulations.

(2) After receiving the recommendation or information, the Minister may:

(a) inform one or more responsible Commonwealth, State or Territory bodies of the recommendation; or

(b) give one or more responsible Commonwealth, State or Territory bodies the information.

(3) The Minister may give to the World Health Organization, or any other State Party, any additional information that is available to the Minister in relation to the recommendation or the information provided by the World Health Organization.

Note: If the Minister discloses personal information to a State Party, the Minister must also give a notice specifying the purposes for which the information may be used: see subsection 27(1).

15 Non-personal information

This Division does not prevent the Minister from dealing with information:

(a) that is referred to in this Division; but

(b) that is not personal information;

in a manner other than the manner set out in this Part.

Authorised Version C2021C00048 registered 29/01/2021

Division 7—Public health observation

16 National Focal Point notified of incoming traveller who is under public health observation

If the National Focal Point is notified that a traveller who has entered, or will enter, Australia is under public health observation, then:

(a) the National Focal Point must notify a responsible Commonwealth, State or Territory body to identify and make contact with the traveller; and

(b) the body must identify and make contact with the traveller.

17 Incoming travellers who are placed under public health observation

(1) This section applies if:

(a) a traveller enters Australia; and

(b) a responsible Commonwealth, State or Territory body places the traveller under public health observation; and

(c) the traveller is in transit while in Australia; and

(d) after leaving Australia, the traveller is travelling to a port or airport outside Australia.

(2) The responsible Commonwealth, State or Territory body must notify the National Focal Point of the following information:

(a) the name, address and date of birth of the person;

(b) that the person is under public health observation;

(c) the reason for the person being under public health observation;

(d) the name of the ship or flight on which the traveller is travelling after leaving Australia, and the expected time that the ship or flight will arrive at the first port or airport outside Australia;

Authorised Version C2021C00048 registered 29/01/2021

(e) the name of the ship or flight on which the person left the last port or airport outside Australia, and the time that the ship or flight left that port or airport;

(f) any other information prescribed by the regulations for the purposes of this section.

(3) If the person's first port or airport of arrival outside Australia is in a State Party, the National Focal Point must notify one of the following entities of the information referred to in subsection (2):

(a) the first port or airport outside Australia;

(b) if that is not reasonably practicable—the State Party's National IHR Focal Point (within the meaning of the International Health Regulations).

Note: The National Focal Point must also give a notice specifying the purposes for which the information referred to in subsection (2) may be used: see subsection 27(1).

(4) If the person's first port or airport of arrival outside Australia is not in a State Party, the National Focal Point may notify that port or airport of the information referred to in subsection (2).

Note: The National Focal Point must also give a notice specifying the purposes for which the information referred to in subsection (2) may be used: see subsection 27(3).

(5) The National Focal Point may notify the last port or airport outside Australia that the person left before arriving in Australia of the information referred to in subsection (2).

Authorised Version C2021C00048 registered 29/01/2021

Division 8—Confidentiality of information

18 Definition of *protected information* for the purposes of Part 2

In this Part:

protected information is personal information that:

(a) is obtained under, or in accordance with, this Part by the Minister or the National Focal Point; or

(b) is obtained under, or in accordance with, this Part directly from the Minister or the National Focal Point; or

(c) is derived from a record of the information made under, or in accordance with, this Part by the Minister or the National Focal Point; or

(d) is derived from a disclosure or use of the information under, or in accordance with, this Part by the Minister or the National Focal Point.

19 Authorisation to use information for permissible purposes

Use by persons in performing functions or duties or exercising powers

(1) A person may do one or both of the following, in the performance of the person's functions or duties, or the exercise of the person's powers, for a permissible purpose:

(a) disclose information (including personal information), on behalf of a responsible Commonwealth, State or Territory body, to the National Focal Point;

(b) make a record of, or disclose or otherwise use, protected information in accordance with Division 6 or 7 of this Part.

Note: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

(2) A person may make a record of, or disclose or otherwise use, protected information if:

Authorised Version C2021C00048 registered 29/01/2021

(a) the person is:

(i) an officer or employee of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or

(ii) an officer or employee of an agency or instrumentality of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or

(iii) a person engaged by the Commonwealth, a State, the Australian Capital Territory or the Northern Territory, to perform public health work; or

(iv) a person engaged by an agency or instrumentality of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory, to perform public health work; and

(b) the person makes the record of, or discloses or otherwise uses, the information:

(i) in the performance of the person's functions or duties, or the exercise of the person's powers; and

(ii) for a permissible purpose.

Note: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

(3) In determining the scope of a person's functions, duties or powers for the purposes of subsection (1) or (2), disregard any provision of an enactment that restricts or prohibits the making of records, or the disclosure or use, of information.

Use by Minister

(4) The Minister may:

(a) do any of following for the purpose of giving effect to the International Health Regulations:

(i) disclose protected information to the World Health Organization or a State Party;

(ii) make a record of or use protected information; and

Authorised Version C2021C00048 registered 29/01/2021

(b) do any of the following for the purpose of assisting other countries to prevent, protect against, control or respond to an event relating to public health:

(i) disclose protected information to a country that is affected or might be affected by the event;

(ii) make a record of or use protected information for the purpose of determining whether a country is affected by the event.

Note 1: Examples of where Australia may disclose information to the World Health Organization include a disclosure for the purposes of Articles 6 to 10 of the International Health Regulations. For example, for the purposes of Articles 6, 7 and 10 of those Regulations, Australia may urgently need to notify the World Health Organization of, and give information about, events which might constitute a public health emergency of international concern.

Note 2: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

Note 3: If the Minister discloses personal information to another country, the Minister must also give a notice specifying the purposes for which the information may be used: see section 27.

Use by other persons

(5) The Minister may, in writing, authorise a person:

(a) to make a record of or use protected information for a permissible purpose that is specified in the authorisation; or

(b) to disclose protected information to a specified person, or to a specified class of persons, for a permissible purpose that is specified in the authorisation.

(6) A person who is authorised to make a record of, or disclose or otherwise use, protected information under subsection (5) may make a record of, or disclose or otherwise use, the information in accordance with the authorisation.

Note: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

Authorised Version C2021C00048 registered 29/01/2021

Use under this section not an offence under other laws

(7) A person does not commit an offence, and is not liable to any penalty, under the provisions of any other enactment of the Commonwealth, or an enactment of a State or a Territory, as a result of the person making a record of, or disclosing or using, information in accordance with subsection (1), (2), (4) or (6).

Use under this section does not result in liability for civil proceedings

(8) A person is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of the person making a record of, or disclosing or using, information in accordance with subsection (1), (2), (4) or (6).

Use under this section does not contravene medical standards

(9) A person does not contravene medical standards, or any other relevant professional standards, as a result of the person making a record of, or disclosing or using, information in accordance with subsection (1), (2), (4) or (6).

20 Authorisation to use information for purposes of proceedings

(1) A person who obtains protected information for a permissible purpose may disclose the information:

(a) to a court or tribunal, or in accordance with an order of a court or tribunal, for the purposes of proceedings; or

(b) to a coronial inquiry, or in accordance with an order of a coroner, for the purposes of a coronial inquiry.

Note 1: The *National Security Information (Criminal and Civil Proceedings) Act 2004* may apply to proceedings under this Part.

Note 2: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

(2) A person who obtains protected information under, or in accordance with, subsection (1) may make a record of, or disclose

Authorised Version C2021C00048 registered 29/01/2021

or otherwise use, the information for the purposes for which the information was disclosed under that subsection.

Note: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

21 Offence relating to protected information

A person commits an offence if:

(a) the person obtains information; and

(b) the information is protected information; and

(c) the person makes a record of, or discloses or otherwise uses, the information; and

(d) the record, disclosure or use is not authorised by section 19 or 20.

Penalty: Imprisonment for 2 years.

Note: For defences to this offence, see sections 22 to 26.

22 Defence for use of information in good faith

Section 21 does not apply if:

(a) a person obtains protected information for a permissible purpose; and

(b) the person makes a record of, or discloses or otherwise uses, the information in good faith:

(i) in performing, or purportedly performing, his or her functions or duties under this Part on behalf of a responsible Commonwealth, State or Territory body; or

(ii) in exercising, or purportedly exercising, his or her powers under this Part on behalf of a responsible Commonwealth, State or Territory body.

Note: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the *Criminal Code*.

Authorised Version C2021C00048 registered 29/01/2021

23 Defence for use of information also received from another source and use of information by prescribed agencies

Use if information is also received from another source

(1) Section 21 does not apply if:

(a) a person (the ***first person***) obtains protected information for a permissible purpose; and

(b) the first person is:

(i) an officer or employee of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or

(ii) an officer or employee of an agency or instrumentality of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or

(iii) a person engaged by the Commonwealth, a State, the Australian Capital Territory or the Northern Territory, to perform public health work; or

(iv) a person engaged by an agency or instrumentality of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory, to perform public health work; and

(c) the first person also obtains the information, or substantially similar information, from another person; and

(d) after obtaining the information as mentioned in paragraph (c), the first person makes a record of, or discloses or otherwise uses, the information; and

(e) the record, disclosure or use is authorised under, or is not prohibited by:

(i) another enactment of the Commonwealth; or

(ii) an enactment of the State or the Territory in relation to which the person is an officer or employee, or is engaged to perform public health work.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

Authorised Version C2021C00048 registered 29/01/2021

Use by intelligence agencies

(2) Section 21 does not apply if:

(a) a person obtains protected information; and

(b) the person discloses the information to an officer or employee of an intelligence agency prescribed by the regulations for the purposes of this section.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

(3) Section 21 does not apply if:

(a) a person obtains protected information in accordance with a disclosure under subsection (2); and

(b) the person makes a record of, or discloses or otherwise uses, the information in the performance of the person's functions or duties, or the exercise of the person's powers, as an officer or employee mentioned in paragraph (2)(b).

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

(4) Section 21 does not apply if:

(a) a person obtains protected information in accordance with a disclosure under subsection (3); and

(b) the person makes a record of, or discloses or otherwise uses, the information:

(i) for the purposes for which the information was disclosed under that subsection; or

(ii) for a prescribed purpose.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

24 Defence for use of information required by another law

Section 21 does not apply if:

(a) a person obtains protected information for a permissible purpose; and

Authorised Version C2021C00048 registered 29/01/2021

(b) the person makes a record of, or discloses or otherwise uses, the information; and

(c) the record, disclosure or use is required under another enactment of the Commonwealth, or of a State or Territory.

Note: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the *Criminal Code*.

25 Defence for disclosure to person to whom information relates or if person to whom information relates consents

Disclosure to person to whom information relates

(1) Section 21 does not apply if:

(a) a person (the ***first person***) obtains protected information for a permissible purpose; and

(b) the information relates to another person; and

(c) the first person discloses the information to the other person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

(2) If subsection (1) applies in respect of information, then section 21 does not apply to any of the following:

(a) any record of that information that is made by the person to whom the information relates;

(b) any disclosure or use of that information by the person to whom the information relates;

(c) any record of that information that is made by any other person, or any disclosure or use of that information by any other person, which is derived from a record, disclosure or use referred to in paragraph (a) or (b).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Consent to disclosure etc. of information

(3) Section 21 does not apply if:

(a) a person (the ***first person***) obtains protected information; and

Authorised Version C2021C00048 registered 29/01/2021

(b) the person to whom the information relates has expressly consented to the first person making a record of, or disclosing or using, the information for a certain purpose; and

(c) the first person makes the record, or discloses or uses the information, for that purpose.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

26 Defence for disclosure to person who provided the information

Section 21 does not apply if:

(a) a person obtains protected information from another person; and

(b) the person discloses that information to the other person.

Note: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the *Criminal Code*.

Authorised Version C2021C00048 registered 29/01/2021

Division 9—Miscellaneous

27 Notice to other countries about further use of information

(1) If, under Division 6, 7 or 8, the Minister or the National Focal Point gives personal information to a State Party for the purposes of giving effect to the International Health Regulations, the Minister or the National Focal Point must give the State Party, at the same time as giving the information, a written notice specifying that a record may be made of the information, or the information may be used or disclosed, only for the purposes of, and subject to the requirements of Article 45 of, the International Health Regulations.

(2) If, under Division 8, the Minister gives personal information to a State Party but not for the purposes of giving effect to the International Health Regulations, the Minister must give the State Party, at the same time as giving the information, a written notice specifying the purposes for which:

(a) a record may be made of the information; or

(b) the information may be used or disclosed.

(3) If, under Division 7 or 8, the Minister or the National Focal Point gives personal information to a country that is not a State Party, the Minister or the National Focal Point must give the country, at the same time as giving the information, a written notice specifying the purposes for which:

(a) a record may be made of the information; or

(b) the information may be used or disclosed.

(4) To avoid doubt, personal information is given to another country if the information is given to a port or airport in the other country or to the other country's National IHR Focal Point (within the meaning of the International Health Regulations).

Authorised Version C2021C00048 registered 29/01/2021

28 Delegation

(1) The Minister may delegate any of his or her functions or powers under this Part to an SES employee, or an acting SES employee, of the Department.

(2) In performing a delegated function or exercising a delegated power, a delegate must comply with any written directions of the Minister.

29 Annual report

(1) The Secretary must, as soon as practicable after 30 June in each year, prepare a report on the use, by the Commonwealth, of protected information (within the meaning of section 18) during the previous 12 months.

(2) The report must be included in the annual report of the Department.

Authorised Version C2021C00048 registered 29/01/2021

Part 3—Regulation of security-sensitive biological agents

Division 1—Preliminary

30 Object of Part

(1) The object of this Part is to give effect to Australia's obligations to establish controls for the security of certain biological agents that could be used as weapons.

(2) To achieve this object, this Part provides for:

(a) the collection of certain information about security-sensitive biological agents and about biological agents suspected on the basis of testing in a laboratory of being security-sensitive biological agents; and

(aa) the recording on a national register of information about the nature and location of security-sensitive biological agents legitimately handled by entities in Australia; and

(b) requirements to be complied with for the secure handling of security-sensitive biological agents and biological agents suspected on the basis of testing in a laboratory of being security-sensitive biological agents; and

(c) monitoring of compliance with reporting and handling requirements through an inspection program; and

(d) restrictions in relation to the handling of security-sensitive biological agents.

Authorised Version C2021C00048 registered 29/01/2021

Division 2—The List of Security-sensitive Biological Agents

31 Establishment of the List of Security-sensitive Biological Agents

(1) The Minister must establish a list of biological agents that the Minister considers to be of security concern to Australia. The list is to be called the List of Security-sensitive Biological Agents.

(2) Without limiting subsection (1), the Minister may consider a biological agent to be of security concern to Australia if the biological agent could be developed, produced, stockpiled, acquired or retained in types and quantities that could allow the biological agent to be used as a weapon.

(3) If the Minister includes a toxin in the list, the Minister may also specify in the list a quantity (the ***reportable quantity***) of that toxin.

(4) The list is not a legislative instrument.

32 Variation of the List of Security-sensitive Biological Agents

(1) The Minister may, in writing, vary the List of Security-sensitive Biological Agents by:

(a) including a biological agent and, if applicable, a reportable quantity of that agent in the list if the Minister considers the biological agent to be of security concern to Australia; or

(b) removing a biological agent and, if applicable, a reportable quantity of that agent from the list if the Minister no longer considers the biological agent to be of security concern to Australia; or

(c) changing the reportable quantity of a biological agent in the list; or

(d) correcting an inaccuracy.

(2) An instrument varying the List of Security-sensitive Biological Agents is not a legislative instrument.

Authorised Version C2021C00048 registered 29/01/2021

33 Minister must obtain and have regard to expert advice

(1) The Minister must not include a biological agent, or a reportable quantity of a biological agent, in the List of Security-sensitive Biological Agents, or otherwise vary the list, unless:

(a) the Minister has obtained advice from:

(i) an agency or instrumentality of the Commonwealth that has responsibility for obtaining and assessing information about the risks and threats posed by biological agents that may be of security concern to Australia; and

(ii) persons with scientific or technical knowledge of biological agents that may be of security concern to Australia; and

(b) the Minister has sought advice from the States, the Australian Capital Territory and the Northern Territory.

(2) To avoid doubt, the persons referred to in subparagraph (1)(a)(ii) may be officers or employees of an agency or instrumentality of the Commonwealth referred to in subparagraph (1)(a)(i).

(3) The Minister must have regard to advice received under subsection (1).

34 List to be available on the Department's website

The Secretary is to ensure that an up-to-date copy of the List of Security-sensitive Biological Agents is available on the Department's website.

Authorised Version C2021C00048 registered 29/01/2021

Division 3—Standards relating to security-sensitive biological agents

35 Minister may determine standards relating to security-sensitive biological agents

(1) The Minister may, by legislative instrument, determine standards (***SSBA Standards***) relating to security-sensitive biological agents and biological agents that are or have been suspected, on the basis of testing in a laboratory, of being security-sensitive biological agents.

Note 1: SSBA Standards must be complied with by certain entities that handle or dispose of biological agents suspected of being security-sensitive biological agents: see sections 38B and 38D.

Note 2: SSBA Standards must be complied with by entities that handle security-sensitive biological agents: see section 56.

(2) Without limiting subsection (1), a standard may set out requirements relating to any of the following:

(a) the storage of security-sensitive biological agents;

(b) the security status of individuals who are entitled to handle or dispose of security-sensitive biological agents;

(c) the transport of security-sensitive biological agents;

(d) the handling (including transport) of biological agents suspected, on the basis of testing in a laboratory, of being security-sensitive biological agents;

(e) the disposal of biological agents that are or have been suspected, on the basis of testing in a laboratory, of being security-sensitive biological agents.

(2A) An example of requirements relating to a matter described in paragraph (2)(b) is requirements for background checks of individuals to be conducted under the AusCheck scheme (within the meaning of the *AusCheck Act 2007*) for the purposes of determining whether they should be authorised to handle or dispose of security-sensitive biological agents.

Authorised Version C2021C00048 registered 29/01/2021

(3) A standard may set out different requirements to be complied with in respect of different security-sensitive biological agents.

(3A) A standard may set out different requirements relating to a biological agent depending on whether the agent:

(a) is merely suspected by a specified entity, on the basis of testing in a laboratory, of being a security-sensitive biological agent; or

(b) is a security-sensitive biological agent (regardless of any entity's knowledge or ignorance of that fact); or

(c) is known by a specified entity to be a security-sensitive biological agent; or

(d) is known by a specified entity to be a security-sensitive biological agent and was previously suspected by a specified entity, on the basis of testing in a laboratory, of being a security-sensitive biological agent.

(4) The Minister must not determine a standard unless the standard has been developed in consultation with:

(a) persons with scientific or technical knowledge in relation to the security of biological agents; and

(b) the States, the Australian Capital Territory and the Northern Territory.

(5) Subsection (4) does not prevent the Minister from consulting any other person who the Minister considers may assist the Minister in developing a standard.

Authorised Version C2021C00048 registered 29/01/2021

Division 4—The National Register

36 National Register of Security-sensitive Biological Agents

(1) There is to be a Register called the National Register of Security-sensitive Biological Agents.

(2) The National Register is to be maintained in an up-to-date form by the Secretary.

(3) The National Register may be kept in a computerised form.

Note: Information included on the National Register must not be disclosed except in accordance with Division 9.

37 Content of National Register

If the Secretary decides, under section 44 or 47, to register an entity in relation to one or more security-sensitive biological agents handled by the entity at one or more facilities, the Secretary must include the following particulars in the National Register:

(a) the name of the entity;

(b) the name and address of each facility where the entity handles security-sensitive biological agents;

(c) the name of each security-sensitive biological agent handled by the entity at each facility;

(d) the purpose for which each such security-sensitive biological agent is handled by the entity;

(e) if the decision is made under subsection 47(2) (which provides for registration on a temporary basis)—a statement to this effect;

(f) such other particulars as are prescribed by the regulations.

38 Variation of the National Register

(1) The Secretary must vary the National Register to take account of:

Authorised Version C2021C00048 registered 29/01/2021

(a) decisions made by the Secretary under section 47, 49, 52 or 55A relating to the registration of an entity; and

(b) any disposal of the entire holdings of a security-sensitive biological agent that is included on the National Register in relation to a registered entity and a facility; and

(c) any loss or theft of a security-sensitive biological agent that is included on the National Register in relation to a registered entity and a facility.

(2) The Secretary may vary the particulars included in the National Register to correct an inaccuracy.

Authorised Version C2021C00048 registered 29/01/2021

Division 4A—Requirements relating to suspected security-sensitive biological agents

Subdivision A—Application

38A Application of Division

This Division applies if:

(a) an entity (the ***initial tester***) that operates a laboratory (the ***initial testing laboratory***) has tested a biological agent in the initial testing laboratory to determine the identity of the biological agent; and

(b) on the basis of that testing, the initial tester forms a reasonable suspicion (but is not certain) that the biological agent is a security-sensitive biological agent; and

(c) the initial tester is not an exempt entity.

Subdivision B—Carrying out confirmatory testing or destruction

38B Initial tester must have confirmatory testing or destruction done

(1) The initial tester must, within 2 business days after forming the suspicion or such longer period as the Secretary allows:

(a) arrange for the carrying out (by the initial tester or another entity) of further testing (***confirmatory testing***) of the biological agent to determine whether the biological agent is a security-sensitive biological agent; or

(b) destroy the biological agent in accordance with the SSBA Standards.

Note: Sections 38C and 38P set out consequences for contravention of this section.

(2) The initial tester need not comply with subsection (1) if:

Authorised Version C2021C00048 registered 29/01/2021

(a) the initial tester's suspicion is that the biological agent is a particular security-sensitive biological agent or included in a particular class of security-sensitive biological agents; and
(b) the initial tester is a registered entity in relation to that particular security-sensitive biological agent or all security-sensitive biological agents in that particular class.

Note: In a prosecution of an offence against section 38C, the defendant bears an evidential burden in relation to the matter in subsection (2) of this section: see subsection 13.3(3) of the *Criminal Code*.

38C Offence—failure to have confirmatory testing or destruction done

(1) An entity commits an offence if:
(a) the entity is subject to a requirement under section 38B; and
(b) the entity contravenes the requirement.

Penalty: 500 penalty units.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

Subdivision C—Compliance with SSBA standards

38D Compliance with SSBA Standards in handling biological agent

(1) The initial tester must comply with the SSBA Standards in relation to the initial tester's handling and disposal of the biological agent in the period:
(a) starting when the initial tester forms the suspicion; and
(b) ending at the earlier of the following times:
(i) the time the initial tester obtains the results of confirmatory testing;
(ii) the time destruction of the biological agent is completed.

(2) An entity provided by the initial tester with a sample of the biological agent for confirmatory testing must comply with the

Authorised Version C2021C00048 registered 29/01/2021

SSBA Standards in relation to the entity's handling and disposal of the sample, and of any biological agent included in or derived from the sample, in the period:

(a) starting when the entity is provided with the sample; and

(b) ending when the entity obtains the results of the confirmatory testing.

38E Offence—failure to comply with SSBA Standards in handling biological agent

An entity commits an offence if:

(a) the entity is required by section 38D to comply with the SSBA Standards in relation to the entity's handling and disposal of the biological agent, a sample of the biological agent or a biological agent included in or derived from a sample of the biological agent; and

(b) the entity contravenes the requirement.

Penalty: 500 penalty units.

Subdivision D—Further provisions relating to confirmatory testing

38F Initial tester must report transfer of biological agent or sample for confirmatory testing

(1) If the initial tester transfers the biological agent, or a sample of it, for confirmatory testing to a laboratory other than the initial testing laboratory or to another entity, the initial tester must give the Secretary a report that:

(a) states that the initial tester has transferred the biological agent or sample; and

(b) identifies:

(i) if the transfer was to another laboratory operated by the initial tester—that laboratory; or

(ii) if the transfer was to another entity—the entity and laboratory to which the transfer was made; and

Authorised Version C2021C00048 registered 29/01/2021

(c) is in a form approved by the Secretary; and
(d) includes the information required by the approved form.

(2) The initial tester must give the Secretary the report within 2 business days after the transfer or such longer period as the Secretary allows.

38G Offence—failure by initial tester to report transfer

(1) An entity commits an offence if:
(a) the entity is required by section 38F to give the Secretary a report; and
(b) the entity does not give the Secretary the report as required by that section.

Penalty: 500 penalty units.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

38H Initial tester must report results of confirmatory testing to Secretary

(1) If confirmatory testing is completed (by the initial tester or another entity), the initial tester must give the Secretary a report that:
(a) states whether the biological agent is or is not a security-sensitive biological agent; and
(b) is in a form approved by the Secretary; and
(c) includes the information required by the approved form.

(2) The initial tester must give the Secretary the report within 2 business days after becoming aware of whether the biological agent is or is not a security-sensitive biological agent or such longer period as the Secretary allows.

(3) The initial tester need not comply with subsections (1) and (2) if the confirmatory testing:

Authorised Version C2021C00048 registered 29/01/2021

(a) was done by the initial tester in the initial testing laboratory; and

(b) indicates that the biological agent is not a security-sensitive biological agent.

Note 1: Section 48 will require the initial tester to report to the Secretary (subject to section 38K) if:

(a) the initial tester is a registered entity; and

(b) confirmatory testing indicates that the biological agent is a security-sensitive biological agent not included in the National Register in relation to the initial tester and the facility where the initial tester has handled the biological agent.

Note 2: In a prosecution of an offence against section 38J, the defendant bears an evidential burden in relation to the matter in subsection (3) of this section: see subsection 13.3(3) of the *Criminal Code*.

38J Offence—failure to report results of confirmatory testing to Secretary

(1) An entity commits an offence if:

(a) the entity is required by section 38H to give the Secretary a report; and

(b) the entity does not give the Secretary the report as required by that section.

Penalty: 500 penalty units.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

38K Reporting if biological agent disposed of after confirmatory testing shows it is a security-sensitive biological agent

(1) This section applies if:

(a) it is determined from confirmatory testing that the biological agent is a security-sensitive biological agent; and

(b) within 2 business days, or such longer period as the Secretary allows, after making or becoming aware of the determination, an entity that carried out the confirmatory testing or is the

Authorised Version C2021C00048 registered 29/01/2021

initial tester disposes of its entire holdings of the biological agent; and

(c) the disposal is carried out in accordance with the SSBA Standards relating to the disposal of a biological agent that was previously suspected, on the basis of testing in a laboratory, of being a security-sensitive biological agent; and

(d) before the entity carried out the disposal, the biological agent was not included on the National Register in relation to the entity.

Requirement to report disposal

(2) The entity must give the Secretary a report that:

(a) states that the entity has disposed of its entire holdings of the biological agent in accordance with the SSBA Standards relating to the disposal of a biological agent that was previously suspected, on the basis of testing in a laboratory, of being a security-sensitive biological agent; and

(b) is in a form approved by the Secretary; and

(c) includes the information required by the approved form.

(3) The entity must give the Secretary the report within 2 business days after completing the disposal or such longer period as the Secretary allows.

Exemption from reporting under section 42 or 48 if report given

(4) If the entity gives the Secretary the report in accordance with subsections (2) and (3) of this section, section 42 and paragraph 48(1)(a) do not apply, and are taken never to have applied, in relation to the handling of the biological agent by the entity.

38L Offence—failure to report disposal

(1) An entity commits an offence if:

(a) the entity is required by section 38K to give the Secretary a report; and

Authorised Version C2021C00048 registered 29/01/2021

(b) the entity does not give the Secretary the report as required by that section.

Penalty: 500 penalty units.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

Subdivision E—Further provisions relating to destruction

38M Initial tester must report destruction of biological agent

(1) If the biological agent is destroyed and confirmatory testing has not been completed when the destruction occurs, the initial tester must give the Secretary a report about the destruction that:
(a) is in a form approved by the Secretary; and
(b) includes the information required by the approved form.

(2) The initial tester must give the Secretary the report within 2 business days after the destruction, or such longer period as the Secretary allows.

(3) The initial tester need not comply with subsections (1) and (2) if:
(a) the initial tester's suspicion is that the biological agent was a particular security-sensitive biological agent or included in a particular class of security-sensitive biological agents; and
(b) the initial tester is a registered entity in relation to that particular security-sensitive biological agent or all security-sensitive biological agents in that particular class.

Note: In a prosecution of an offence against section 38N, the defendant bears an evidential burden in relation to the matter in subsection (3) of this section: see subsection 13.3(3) of the *Criminal Code*.

38N Offence—failure to report destruction

(1) An entity commits an offence if:
(a) the entity is required by section 38M to give the Secretary a report; and

Authorised Version C2021C00048 registered 29/01/2021

(b) the entity does not give the Secretary the report as required by that section.

Penalty: 500 penalty units.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

38P Direction to dispose of biological agent for failure to comply with section 38B

(1) This section applies if the initial tester contravenes section 38B.

Note: It does not matter whether the initial tester has been convicted of an offence against section 38C in relation to the non-compliance.

(2) The Secretary may give the initial tester a written direction, requiring the initial tester, within the period specified in the direction or such longer period as the Secretary allows, to dispose of its entire holdings of the biological agent in accordance with the SSBA Standards.

(3) A period specified in a direction given under subsection (2) must be reasonable having regard to the circumstances.

38Q Offence—failure to dispose of biological agent as directed

(1) An entity commits an offence if:

(a) the entity is given a direction under subsection 38P(2); and

(b) the entity does not comply with the direction within the period allowed under that subsection.

Penalty: 500 penalty units.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

Authorised Version C2021C00048 registered 29/01/2021

Division 5—Requirements for entities that handle security-sensitive biological agents

Subdivision A—Application and definitions

39 Application of Division

(1) This Division applies to an entity if:

(a) the entity handles one or more security-sensitive biological agents at one or more facilities; and

(b) the entity is not an exempt entity.

Note: This Division does not apply to the handling of a security-sensitive biological agent by an entity that gives the Secretary a temporary handling report: see Division 5AA.

(2) If a security-sensitive biological agent is a toxin in relation to which a reportable quantity is specified in the List of Security-sensitive Biological Agents, then, for the purposes of this Division, an entity does not handle that toxin at a facility unless the entity handles at that facility at least the reportable quantity of that toxin.

40 Meaning of *exempt entity*

(1) An entity that handles one or more security-sensitive biological agents at a facility is an ***exempt entity*** if:

(a) the entity handles the security-sensitive biological agents only for the purpose of transporting them from one place to another place; or

(b) the entity is an entity, or a kind of entity, prescribed by the regulations to be an exempt entity.

Note: Entities that handle security-sensitive biological agents only for the purpose of transporting them from one place to another place must comply with Commonwealth, State and Territory laws relating to the transport of dangerous goods.

(2) Regulations under paragraph (1)(b) may be expressed to exempt:

Authorised Version C2021C00048 registered 29/01/2021

(a) an entity, or a kind of entity, in relation to all security-sensitive biological agents handled by the entity or kind of entity; or

(b) an entity, or a kind of entity, in relation to a specified security-sensitive biological agent, or a specified class of security-sensitive biological agents, handled by the entity or kind of entity.

(3) Without limiting the way in which a class may be described for the purposes of paragraph (2)(b), the class may be described by reference to a particular facility.

41 Meaning of *legitimate purpose*

(1) For the purposes of this Part, each of the following is a ***legitimate purpose*** for an entity to handle a security-sensitive biological agent:

(a) to carry out scientific or medical work with the security-sensitive biological agent:

(i) to develop or produce a vaccine or treatment for it; or

(ii) to better understand a disease it causes;

(b) in relation to a security-sensitive biological agent that is a toxin—to carry out scientific or medical work in relation to the applications of the toxin (for example, in treating cancer or, in the case of Botox (botulinum toxin), for medical or cosmetic use);

(c) to carry out diagnostic analysis of:

(i) samples infected with a security-sensitive biological agent; or

(ii) samples contaminated with a toxin;

but only if the analysis is carried out at a veterinary, diagnostic or pathology laboratory;

(d) to carry out research that the Secretary considers is responsible and legitimate;

(e) to carry out forensic procedures in relation to the security-sensitive biological agent for law enforcement purposes;

Authorised Version C2021C00048 registered 29/01/2021

(f) if the entity is an agency or instrumentality of the Commonwealth, a State or a Territory that is responsible for testing or carrying out other activities in relation to the security-sensitive biological agent—to carry out that testing or those other activities in relation to the security-sensitive biological agent;

(g) any other purpose determined by the Minister, by legislative instrument, to be a legitimate purpose.

(2) The Secretary must consult with persons with scientific or technical knowledge in relation to security-sensitive biological agents before making a decision under paragraph (1)(d). The Secretary must have regard to any advice given by the persons consulted.

(3) Subsection (2) does not prevent the Secretary from consulting any other person who the Secretary considers may assist the Secretary in making a decision under paragraph (1)(d).

(4) The Minister must not make a determination under paragraph (1)(g) unless the Minister has consulted with:

(a) persons with scientific or technical knowledge in relation to security-sensitive biological agents; and

(b) the States, the Australian Capital Territory and the Northern Territory.

(5) Subsection (4) does not prevent the Minister from consulting any other person who the Minister considers may assist the Minister in relation to a determination under paragraph (1)(g).

(6) The Minister must have regard to any advice received under subsection (4).

Authorised Version C2021C00048 registered 29/01/2021

Subdivision B—Reporting requirements

42 Entity that handles security-sensitive biological agents must give a report to the Secretary

(1) An entity to which this Division applies (other than a registered entity) must give a report that complies with subsection (3) to the Secretary:

(a) within 2 business days after the entity starts to handle a security-sensitive biological agent; or

(b) if a longer period is specified in a written notice given to the entity by the Secretary—within that longer period.

Note 1: Failure to give a report is an offence: see section 43.

Note 2: Section 55 deals with the application of the reporting requirements in relation to individuals.

Note 3: Section 38K (Reporting if biological agent disposed of after confirmatory testing shows it is a security-sensitive biological agent) treats this section as never having applied in certain circumstances.

(2) For the purposes of this section, an entity that, at the commencement of this section, is handling one or more security-sensitive biological agents, is taken to start to handle those security-sensitive biological agents at the end of the period of one month after the commencement of this section.

(3) A report given by an entity under subsection (1):

(a) must be in a form approved by the Secretary; and

(b) must contain the following information:

(i) the name of the entity;

(ii) the name and address of each facility where the entity handles a security-sensitive biological agent;

(iii) the name of each security-sensitive biological agent handled at each facility;

(iv) the purpose for which each security-sensitive biological agent is handled;

Note: Section 41 sets out the purposes that are legitimate purposes for an entity to handle a security-sensitive biological agent.

Authorised Version C2021C00048 registered 29/01/2021

(v) any other information required by the approved form; and

(c) must state that the entity is complying with the SSBA Standards.

(4) Subsection (1) does not apply in the circumstances (if any) prescribed by the regulations.

43 Offence—failure to give a report to the Secretary

(1) An entity commits an offence if:

(a) the entity is required to give a report to the Secretary under subsection 42(1); and

(b) the entity does not give the report to the Secretary as required by that subsection.

Penalty: 500 penalty units.

Note 1: If the entity is a body corporate, the maximum penalty that may be imposed is 2,500 penalty units: see subsection 4B(3) of the *Crimes Act 1914*.

Note 2: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

44 Secretary must consider report and decide whether or not to include entity on the National Register

(1) If the Secretary receives a report from an entity under section 42, the Secretary must decide whether or not to register the entity in relation to any or all of the security-sensitive biological agents and facilities specified in the report.

(2) For the purpose of making a decision under subsection (1), the Secretary may, by written notice to the entity, do either or both of the following:

Authorised Version C2021C00048 registered 29/01/2021

(a) request the entity to provide such further information as the Secretary requires within the period specified in the notice, or within such longer period as the Secretary allows;

(b) request the entity to allow an inspector to inspect a specified facility of the entity at a reasonable time.

(3) A notice requesting the entity to provide further information under paragraph (2)(a) must state that, if the entity does not provide the information within the period allowed under that paragraph, the Secretary may require the entity to dispose of its entire holdings of any or all of the security-sensitive biological agents specified in the report.

(4) The Secretary must decide to register the entity in relation to a security-sensitive biological agent and a facility specified in the entity's report if:

(a) the entity provided all the information required by paragraph 42(3)(b), and any further information requested under paragraph (2)(a) of this section, in relation to that security-sensitive biological agent and that facility; and

(b) the entity stated in the report that it is complying with the SSBA Standards; and

(c) the Secretary is satisfied that the purpose stated in the entity's report for which the entity is handling that security-sensitive biological agent at that facility is a legitimate purpose.

Note 1: Section 45 applies if the requirements referred to in paragraphs (4)(a) and (b) of this section are not met.

Note 2: Section 47 applies if the requirements referred to in paragraphs (4)(a) and (b) of this section are met but the requirement referred to in paragraph (4)(c) of this section is not met.

(5) The Secretary must notify the entity in writing of the Secretary's decision under subsection (1). The notice must include the information (if any) prescribed by the regulations.

Authorised Version C2021C00048 registered 29/01/2021

45 Secretary may direct entity to dispose of security-sensitive biological agents

(1) This section applies in relation to a report given to the Secretary by an entity under section 42 if:

(a) the Secretary made a request under paragraph 44(2)(a) and the entity did not comply with the request within the period allowed under that paragraph; or

(b) the entity did not state in the report that the entity is complying with the SSBA Standards.

(2) The Secretary may, if the Secretary considers it appropriate, give a written direction to the entity, requiring the entity, within the period specified in the direction or such longer period as the Secretary allows, to dispose of its entire holdings of any or all of the security-sensitive biological agents specified in the report.

Note 1: If the Secretary gives a notice to an entity under this subsection, the Secretary must not include the entity on the National Register in relation to the security-sensitive biological agent and the facility to which the notice relates: see subsection 44(4).

Note 2: The Secretary may also direct a particular individual not to handle security-sensitive biological agents: see section 59.

Note 3: Failure to comply with a direction to dispose of a security-sensitive biological agent is an offence: see section 46.

(3) A period specified in a direction given under subsection (2) must be reasonable having regard to the circumstances.

46 Offence—failure to comply with direction to dispose of security-sensitive biological agent

(1) An entity commits an offence if:

(a) the entity is given a direction under subsection 45(2); and

(b) the entity does not comply with the direction within the period allowed under that subsection.

Penalty: 500 penalty units.

Authorised Version C2021C00048 registered 29/01/2021

Note 1: If the entity is a body corporate, the maximum penalty that may be imposed is 2,500 penalty units: see subsection 4B(3) of the *Crimes Act 1914*.

Note 2: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

47 Secretary not satisfied entity handling security-sensitive biological agent for a legitimate purpose

(1) This section applies in relation to a report given to the Secretary by an entity under section 42 if:

(a) the requirements referred to in paragraphs 44(4)(a) and (b) are met in relation to a security-sensitive biological agent and a facility specified in the report; and

(b) the Secretary is not satisfied that the purpose stated in the report for which the entity is handling that security-sensitive biological agent at that facility is a legitimate purpose.

(2) The Secretary must:

(a) decide to register the entity, on a temporary basis, in relation to the security-sensitive biological agent and the facility; and

(b) notify the entity in writing of that fact.

Note: An entity that is registered under this subsection must report any changes under section 48 and must also report some changes under section 48A.

(3) The notice under paragraph (2)(b) must also state:

(a) the reason that the entity has been registered on a temporary basis in relation to the security-sensitive biological agent and the facility; and

(b) that handling a security-sensitive biological agent for a purpose other than a legitimate purpose may be an offence against the *Crimes (Biological Weapons) Act 1976*.

Note: The Secretary may refer the matter to the relevant authorities for investigation.

Authorised Version C2021C00048 registered 29/01/2021

(4) If:

(a) the entity is convicted of an offence against the *Crimes (Biological Weapons) Act 1976* in relation to its handling of the security-sensitive biological agent at the facility; or

(b) the entity is found to have committed such an offence but no conviction is recorded;

the Secretary must cancel the registration of the entity in relation to the security-sensitive biological agent and the facility.

(5) If a prosecution for an offence against the *Crimes (Biological Weapons) Act 1976*, in relation to the entity's handling of the security-sensitive biological agent at the facility, is not instituted against the entity within 12 months after the date on which the entity is registered under paragraph (2)(a), the Secretary must vary the National Register to indicate that the registration made under that paragraph is no longer on a temporary basis.

(6) A variation of the National Register under subsection (5) must be made:

(a) if, within 12 months after the date on which the entity is registered under paragraph (2)(a), a decision is made not to institute a prosecution for an offence referred to in subsection (5)—as soon as practicable after the Secretary becomes aware of that decision; or

(b) in any other case—as soon as practicable after the end of the period of 12 months referred to in subsection (5).

(7) If:

(a) a prosecution for an offence against the *Crimes (Biological Weapons) Act 1976*, in relation to the entity's handling of the security-sensitive biological agent at the facility, is instituted against the entity within 12 months after the date on which the entity is registered under paragraph (2)(a); and

(b) the entity is found not to have committed the offence;

the Secretary must vary the National Register to indicate that the registration made under that paragraph is no longer on a temporary basis.

Authorised Version C2021C00048 registered 29/01/2021

(8) A variation of the National Register under subsection (7) must be made as soon as practicable after the end of the proceedings for the offence referred to in that subsection.

(9) A person or authority that conducts investigations in relation to offences against the *Crimes (Biological Weapons) Act 1976*, or institutes or carries on prosecutions for offences against that Act, may disclose personal information to the Secretary for the purpose of assisting the Secretary to maintain the National Register in an up-to-date form.

Note: Subsection (9) constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

48 Registered entity must report any changes to the Secretary

(1) Each of the following is a ***reportable event*** in relation to a registered entity:

(a) the entity starts to handle at a facility a security-sensitive biological agent that is not included on the National Register in relation to the entity and that facility;

(b) the entity disposes of its entire holdings of a security-sensitive biological agent that is included on the National Register in relation to the entity and a facility (including a disposal required by a direction given by the Secretary under this Part);

(c) if the entity is included on the National Register in relation to a facility and a security-sensitive biological agent that is a toxin:

(i) the entity disposes of a quantity of the toxin; and

(ii) after the disposal, the quantity of the toxin handled by the entity at that facility is less than the reportable quantity of that toxin;

(d) the entity:

(i) starts to handle a security-sensitive biological agent that is included on the National Register in relation to the entity and a facility for a purpose other than the purpose specified in the National Register; or

Authorised Version C2021C00048 registered 29/01/2021

(ii) stops handling a security-sensitive biological agent that is included on the National Register in relation to the entity and a facility for a purpose specified in the National Register;

(e) the entity transfers a security-sensitive biological agent that is included on the National Register in relation to the entity and a facility:

(i) to another entity; or

(ii) to another facility of the entity;

(f) a security-sensitive biological agent that is included on the National Register in relation to the entity and a facility is lost or stolen;

Note: Accidental or deliberate releases of security-sensitive biological agents that could cause harm to human health or the environment may need to be reported under State or Territory legislation.

(g) a person accesses a security-sensitive biological agent that is included on the National Register in relation to the entity and a facility, and the access is unauthorised under the regulations;

(h) any other event prescribed by the regulations for the purposes of this paragraph;

(i) a period for which both the following conditions are met ends:

(i) the duration of the period is prescribed by the regulations for the purposes of this subparagraph;

(ii) there is no occurrence in the period of a reportable event that is described in paragraph (h) and is prescribed by the regulations for the purposes of this subparagraph.

Note: Section 38K (Reporting if biological agent disposed of after confirmatory testing shows it is a security-sensitive biological agent) treats paragraph (1)(a) of this section as never having applied in certain circumstances.

(2) Regulations for the purposes of paragraph (1)(g) may prescribe the circumstances in which access to a specified security-sensitive biological agent, or a specified class of security-sensitive biological agents, is unauthorised.

Authorised Version C2021C00048 registered 29/01/2021

(3) A registered entity must give a report about a reportable event to the Secretary. The report must be given within the prescribed period.

Note 1: Section 55 deals with the application of the reporting requirements in relation to individuals.

Note 2: The registered entity must also give reports about certain reportable events to police within a period prescribed by the regulations: see section 48A.

(4) Regulations prescribing a period for the purposes of subsection (3) may:

(a) prescribe different periods in relation to different reportable events; and

(b) prescribe a period in relation to a reportable event that ends before or after the event occurs.

(5) A report given by an entity under subsection (3):

(a) must be in a form approved by the Secretary; and

(b) must include the information required by the approved form.

(6) Subsection (3) does not apply in the circumstances prescribed by the regulations.

48A Registered entity must report certain reportable events to police

(1) This section applies if:

(a) a reportable event occurs in relation to a registered entity and a facility in a State or Territory; and

(b) the event is one described in paragraph 48(1)(f) or prescribed by the regulations for the purposes of this section.

(2) The registered entity must give a member of the police force of the State or Territory a report of the event that:

(a) is in a form approved by the Secretary; and

(b) includes the information required by the approved form.

Note: Section 55 deals with the application of the reporting requirements in relation to individuals.

Authorised Version C2021C00048 registered 29/01/2021

(3) The registered entity must give the report within the period prescribed by the regulations.

(4) Regulations prescribing a period for the purposes of subsection (3) may:
  (a) prescribe different periods in relation to different reportable events; and
  (b) prescribe a period in relation to a reportable event that ends before or after the event occurs.

48B Offence—failure to report reportable event to police

(1) An entity commits an offence if:
  (a) the entity is required by section 48A to give a report; and
  (b) the entity does not give the report as required by that section.

Penalty: 500 penalty units.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

49 Secretary must consider report of changes and decide whether or not to vary the National Register

(1) If the Secretary receives a report about a reportable event from an entity under section 48, the Secretary must decide whether or not to vary the National Register to take account of the event.

(2) For the purpose of making a decision under subsection (1), the Secretary may, by written notice to the entity, do either or both of the following:
  (a) request the entity to provide such further information as the Secretary requires within the period specified in the notice, or within such longer period as the Secretary allows;
  (b) request the entity to allow an inspector to inspect a specified facility of the entity at a reasonable time.

(3) A notice requesting the entity to provide further information under paragraph (2)(a) must state that, if the entity does not provide the

Authorised Version C2021C00048 registered 29/01/2021

information within the period allowed under that paragraph, the Secretary may require the entity to dispose of its entire holdings of any or all of the security-sensitive biological agents to which the report relates.

(4) The Secretary must decide to vary the National Register to take account of the reportable event if:

(a) the entity provided all the information required by paragraph 48(5)(b), and any further information requested under paragraph (2)(a) of this section, in relation to the reportable event; and

(b) if the reportable event is the event referred to in paragraph 48(1)(a) or subparagraph 48(1)(d)(i)—the Secretary is satisfied that the purpose stated in the entity's report for which the entity is handling the security-sensitive biological agent to which the reportable event relates is a legitimate purpose.

(5) The Secretary must notify the entity in writing of the Secretary's decision under subsection (1). The notice must include the information (if any) prescribed by the regulations.

Note 1: Section 50 applies if the requirements referred to in paragraph (4)(a) of this section are not met.

Note 2: Section 52 applies if the reportable event is the event referred to in paragraph 48(1)(a) or subparagraph 48(1)(d)(i) and the requirements referred to in paragraph (4)(a) of this section are met but the requirement referred to in paragraph (4)(b) of this section is not met.

50 Secretary may direct entity to dispose of security-sensitive biological agents

(1) This section applies in relation to a report given to the Secretary by a registered entity under section 48 if:

(a) the Secretary made a request under paragraph 49(2)(a); and

(b) the entity did not comply with the request within the period allowed under that paragraph.

Authorised Version C2021C00048 registered 29/01/2021

(2) The Secretary may, if the Secretary considers it appropriate, give a written direction to the entity, requiring the entity, within the period specified in the direction or such longer period as the Secretary allows, to dispose of its entire holdings of a security-sensitive biological agent to which the report relates.

Note 1: Disposal would not be appropriate if the entity's entire holdings of that security-sensitive biological agent have already been disposed of, or were lost or stolen.

Note 2: The Secretary may also direct a particular individual not to handle security-sensitive biological agents: see section 59.

Note 3: Failure to comply with a direction to dispose of a security-sensitive biological agent is an offence: see section 51.

(3) A period specified in a direction given under subsection (2) must be reasonable having regard to the circumstances.

51 Offence—failure to comply with direction to dispose of security-sensitive biological agent

(1) An entity commits an offence if:

(a) the entity is given a direction under subsection 50(2); and

(b) the entity does not comply with the direction within the period allowed under that subsection.

Penalty: 500 penalty units.

Note 1: If the entity is a body corporate, the maximum penalty that may be imposed is 2,500 penalty units: see subsection 4B(3) of the *Crimes Act 1914*.

Note 2: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

Authorised Version C2021C00048 registered 29/01/2021

52 Secretary not satisfied entity handling security-sensitive biological agent for a legitimate purpose

(1) This section applies in relation to a report given to the Secretary by a registered entity under section 48 if:

(a) the reportable event to which the report relates is the event referred to in paragraph 48(1)(a) or subparagraph 48(1)(d)(i); and

(b) the requirements referred to in paragraph 49(4)(a) are met; and

(c) the Secretary is not satisfied that the purpose stated in the report for which the entity is handling the security-sensitive biological agent to which the reportable event relates is a legitimate purpose.

(2) The Secretary must:

(a) decide to vary the National Register, on a temporary basis, to take account of the reportable event; and

(b) notify the entity in writing of that fact.

(3) The notice under paragraph (2)(b) must also state:

(a) the reason for the temporary variation; and

(b) that handling a security-sensitive biological agent for a purpose other than a legitimate purpose may be an offence against the *Crimes (Biological Weapons) Act 1976*.

Note: The Secretary may refer the matter to the relevant authorities for investigation.

(4) If:

(a) the entity is convicted of an offence against the *Crimes (Biological Weapons) Act 1976* in relation to its handling of the relevant security-sensitive biological agent to which the reportable event relates; or

(b) the entity is found to have committed such an offence but no conviction is recorded;

the Secretary must cancel the variation of the National Register made under paragraph (2)(a).

Authorised Version C2021C00048 registered 29/01/2021

(5) If a prosecution for an offence against the *Crimes (Biological Weapons) Act 1976*, in relation to the entity's handling of the security-sensitive biological agent to which the reportable event relates, is not instituted against the entity within 12 months after the date on which the National Register is varied under paragraph (2)(a), the Secretary must vary the National Register to indicate that the variation made under that paragraph is no longer on a temporary basis.

(6) A variation of the National Register under subsection (5) must be made:

(a) if, within 12 months after the date on which the National Register is varied under paragraph (2)(a), a decision is made not to institute a prosecution for an offence referred to in subsection (5)—as soon as practicable after the Secretary becomes aware of that decision; or

(b) in any other case—as soon as practicable after the end of the period of 12 months referred to in subsection (5).

(7) If:

(a) a prosecution for an offence against the *Crimes (Biological Weapons) Act 1976*, in relation to the entity's handling of the security-sensitive biological agent to which the reportable event relates, is instituted against the entity within 12 months after the date on which the National Register is varied under paragraph (2)(a); and

(b) the entity is found not to have committed the offence;

the Secretary must vary the National Register to indicate that the variation made under that paragraph is no longer on a temporary basis.

(8) A variation of the National Register under subsection (7) must be made as soon as practicable after the end of the proceedings for the offence referred to in that subsection.

(9) A person or authority that conducts investigations in relation to offences against the *Crimes (Biological Weapons) Act 1976*, or institutes or carries on prosecutions for offences against that Act,

Authorised Version C2021C00048 registered 29/01/2021

may disclose personal information to the Secretary for the purpose of assisting the Secretary to maintain the National Register in an up-to-date form.

Note: Subsection (9) constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

53 Failure to report changes to the Secretary

(1) This section applies if the Secretary believes, on reasonable grounds, that:

(a) a reportable event has occurred in relation to a registered entity; and

(b) the entity was required to give a report about the event under subsection 48(3) or section 48A; and

(c) the entity has not given the report as required by that subsection or section.

(2) The Secretary may give the registered entity a written notice stating that, if the entity does not, within the period specified in the notice or such longer period as the Secretary allows, give the Secretary a report that complies with paragraphs 48(5)(a) and (b) about the reportable event, the Secretary may require the entity to dispose of its entire holdings of the security-sensitive biological agent to which the reportable event relates.

Note 1: Disposal would not be appropriate if the entity's entire holdings of that security-sensitive biological agent have already been disposed of, or were lost or stolen.

Note 2: The Secretary may also direct a particular individual not to handle security-sensitive biological agents: see section 59.

(3) If:

(a) the Secretary gives an entity a written notice under subsection (2) in relation to a reportable event; and

(b) the entity does not, within the period allowed under that subsection, give the Secretary a report that complies with paragraphs 48(5)(a) and (b) about the reportable event;

the Secretary may, if the Secretary considers it appropriate, give a written direction to the entity, requiring the entity, within the

Authorised Version C2021C00048 registered 29/01/2021

period specified in the direction or such longer period as the Secretary allows, to dispose of its entire holdings of the security-sensitive biological agent to which the reportable event relates.

Note: Failure to comply with a direction to dispose of a security-sensitive biological agent is an offence: see section 54.

(4) A period specified in a direction given under subsection (3) must be reasonable having regard to the circumstances.

54 Offence—failure to comply with direction to dispose of security-sensitive biological agent

(1) An entity commits an offence if:

(a) the entity is given a direction under subsection 53(3); and

(b) the entity does not comply with the direction within the period allowed under that subsection.

Penalty: 500 penalty units.

Note 1: If the entity is a body corporate, the maximum penalty that may be imposed is 2,500 penalty units: see subsection 4B(3) of the *Crimes Act 1914*.

Note 2: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

55 Application of reporting requirements in relation to individuals

(1) To avoid doubt, if:

(a) an individual is an officer or an employee of an entity, or is engaged as a consultant or a contractor by an entity; and

(b) the entity is:

(i) a body corporate; or

(ii) an agency or instrumentality of the Commonwealth, a State or a Territory; and

Authorised Version C2021C00048 registered 29/01/2021

(c) the individual's duties include handling a security-sensitive biological agent at a facility of the entity;

the individual is not required to give a report under subsection 42(1) or 48(3) or section 48A in relation to that security-sensitive biological agent and that facility.

Note: The entity is required to give the report.

(2) If:

(a) 2 or more individuals handle one or more security-sensitive biological agents at the same facility; and

(b) each individual is required to give a report under subsection 42(1) or 48(3) or section 48A in relation to those security-sensitive biological agents;

each individual satisfies that requirement if:

(c) each individual gives a report under that subsection or section; or

(d) all the individuals, acting jointly, give a joint report under that subsection or section.

55AA Entity that needs to undertake emergency maintenance may give a report to the Secretary

(1) For the purposes of this Act, an entity needs to undertake ***emergency maintenance*** of a facility if:

(a) the entity needs to undertake unscheduled or unplanned repairs or maintenance of the facility because of, or to prevent, any of the following events:

(i) damage to the facility;

(ii) damage, failure or breakdown of any equipment at the facility;

(iii) any other event prescribed by the regulations for the purposes of this subparagraph; and

(b) the event significantly impacts, or is likely to significantly impact, on one or more of the following:

Authorised Version C2021C00048 registered 29/01/2021

(i) the secure handling of a security-sensitive biological agent that is included on the National Register in relation to the entity and the facility;

(ii) any other matter prescribed by the regulations for the purposes of this subparagraph.

(2) If a registered entity needs to undertake emergency maintenance of a facility, the entity may give a report (an ***emergency maintenance report***), for the facility, that complies with subsection (3) to the Secretary.

(3) The emergency maintenance report:

(a) must be in a form approved by the Secretary; and

(b) must contain the following information:

(i) the name of the entity;

(ii) the name and address of the facility;

(iii) details of the emergency maintenance that the entity needs to undertake;

(iv) an estimate of the period during which the emergency maintenance will be undertaken;

(v) if, because of the emergency maintenance, a security-sensitive biological agent that is included on the National Register in relation to the entity and the facility has been, or is to be, taken outside the perimeter (within the meaning of the SSBA Standards) of the facility by the entity—details of the location the security-sensitive biological agent has been, or is to be, taken to;

(vi) any other information required by the approved form; and

(c) must be given to the Secretary:

(i) within 2 business days after the entity becomes aware that it needs to undertake the emergency maintenance; or

(ii) if a longer period is specified in a written notice given to the entity by the Secretary—within that longer period.

Authorised Version C2021C00048 registered 29/01/2021

55AB Emergency maintenance period

If an entity gives the Secretary an emergency maintenance report for a facility, the ***emergency maintenance period*** for the report is:

(a) the period contained in the report in accordance with subparagraph 55AA(3)(b)(iv); or

(b) if a longer period is specified in a written notice given to the entity by the Secretary—that longer period.

55AC Secretary may declare exemption from this Division etc. during emergency maintenance period

(1) If an entity gives the Secretary an emergency maintenance report for a facility, the Secretary may, by written instrument, declare either or both of the following:

(a) that specified provisions of this Division do not apply to the entity and the facility during the emergency maintenance period for the report;

(b) that this Division applies to the entity and the facility during the emergency maintenance period for the report as if specified provisions were omitted, modified or varied as specified in the instrument.

(2) An exemption under paragraph (1)(a) is subject to the conditions (if any) specified in the declaration.

Note: Breach of a condition is an offence: see section 55AD.

(3) The Secretary must not make a declaration under subsection (1) unless the Secretary is satisfied that it is reasonably necessary to do so, having regard to:

(a) the importance of ensuring the secure handling of security-sensitive biological agents; and

(b) any other matters the Secretary considers relevant.

(4) A declaration under subsection (1) is not a legislative instrument.

Authorised Version C2021C00048 registered 29/01/2021

55AD Offence—breaching condition of exemption

(1) If the exemption of an entity under paragraph 55AC(1)(a) is subject to a condition, the entity must comply with the condition.

(2) An entity commits an offence if the entity contravenes subsection (1).

Penalty: 500 penalty units.

55A Cancellation of entity's registration on application

(1) An entity that is a registered entity may apply, in a form approved by the Secretary, for:
  (a) cancellation (***total cancellation***) of the entity's registration relating to all security-sensitive biological agents for which the entity is registered; or
  (b) cancellation (***facility cancellation***) of the entity's registration so far as it relates to one or more specified facilities.

(2) The Secretary must decide:
  (a) to cancel the registration in accordance with the application; or
  (b) to refuse the application.

(3) However, the Secretary:
  (a) may decide on total cancellation only if he or she is satisfied that the entity does not handle any security-sensitive biological agent that is included on the National Register in relation to the entity and a facility; and
  (b) may decide on facility cancellation only if he or she is satisfied that the entity does not handle at any of the facilities specified in the application any security-sensitive biological agent that is included on the National Register in relation to the entity and any of those facilities.

(4) If the Secretary decides to cancel the registration, he or she must notify the entity in writing of the decision (whether the cancellation

Authorised Version C2021C00048 registered 29/01/2021

is total cancellation or facility cancellation). The notice must include the information (if any) prescribed by the regulations.

Note: If the Secretary decides to refuse the application for cancellation, section 81 requires him or her to notify the entity.

(5) Failure to comply with subsection (4) does not affect the validity of the decision.

Subdivision C—Compliance with SSBA Standards

56 Entity must comply with SSBA Standards

An entity that handles one or more security-sensitive biological agents at one or more facilities must comply with the SSBA Standards in relation to each security-sensitive biological agent it handles at each facility.

57 Failure to comply with SSBA Standards

Application of this section

(1) This section applies if the Secretary believes, on reasonable grounds, that an entity is not complying with the SSBA Standards in relation to a security-sensitive biological agent the entity handles at a facility.

Secretary may give a notice

(2) The Secretary may give the entity a written notice stating that, unless the entity satisfies the Secretary, within the period specified in the notice or such longer period as the Secretary allows, that the entity is complying with the SSBA Standards in relation to that security-sensitive biological agent and that facility, the Secretary may require the entity to dispose of its entire holdings of that security-sensitive biological agent at that facility.

(2A) A notice given to an entity under subsection (2) may impose conditions on the handling of a security-sensitive biological agent

Authorised Version C2021C00048 registered 29/01/2021

by the entity at specified times occurring before the end of the period allowed under subsection (2).

(2B) Without limiting the conditions that the Secretary may impose under subsection (2A), the conditions may relate to the following:

(a) the physical security of the security-sensitive biological agent;

(b) personnel security and information security in relation to the security-sensitive biological agent.

(3) A notice given to an entity under subsection (2) may relate to:

(a) any or all of the security-sensitive biological agents handled by the entity; or

(b) any or all of the facilities at which the entity handles those security-sensitive biological agents.

Secretary may direct entity to dispose of security-sensitive biological agent

(4) If:

(a) the Secretary gives an entity a written notice under subsection (2) in relation to a security-sensitive biological agent it handles at a facility; and

(b) the entity does not satisfy the Secretary, within the period allowed under that subsection, that the entity is complying with the SSBA Standards in relation to that security-sensitive biological agent;

the Secretary may give a written direction to the entity, requiring the entity, within the period specified in the direction or such longer period as the Secretary allows, to dispose of its entire holdings of that security-sensitive biological agent at that facility.

Note 1: The Secretary may also direct a particular individual not to handle security-sensitive biological agents: see section 59.

Note 2: Failure to comply with a direction to dispose of a security-sensitive biological agent is an offence: see section 58.

(4A) If:

Authorised Version C2021C00048 registered 29/01/2021

(a) the Secretary gives an entity a written notice under subsection (2) in relation to a security-sensitive biological agent it handles at a facility; and

(b) a condition is imposed under subsection (2A) on the handling of the security-sensitive biological agent; and

(c) the entity does not comply with the condition;

the Secretary may give a written direction to the entity, requiring the entity, within the period specified in the direction or such longer period as the Secretary allows, to dispose of its entire holdings of that security-sensitive biological agent at that facility.

Note: Failure to comply with a direction to dispose of a security-sensitive biological agent is an offence: see section 58.

(5) A period specified in a direction given under subsection (4) or (4A) must be reasonable having regard to the circumstances.

58 Offence—failure to comply with direction to dispose of security-sensitive biological agent

(1) An entity commits an offence if:

(a) the entity is given a direction under subsection 57(4) or (4A); and

(b) the entity does not comply with the direction within the period allowed under that subsection.

Penalty: 500 penalty units.

Note 1: If the entity is a body corporate, the maximum penalty that may be imposed is 2,500 penalty units: see subsection 4B(3) of the *Crimes Act 1914*.

Note 2: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

Authorised Version C2021C00048 registered 29/01/2021

Subdivision D—Directions not to handle security-sensitive biological substances

59 Secretary may direct individual not to handle security-sensitive biological agents

(1) This section applies if the Secretary considers, on reasonable grounds:

(a) that:

(i) an individual who is handling a security-sensitive biological agent at a facility has not complied with this Part, regulations made for the purposes of this Part or the SSBA Standards; and

(ii) it would not be appropriate to require the individual or another entity to dispose of the security-sensitive biological agent; or

(b) that the handling of a security-sensitive biological agent at a facility by a particular individual poses a security risk.

(2) The Secretary may give a written notice to the individual directing the individual not to handle one or more specified security-sensitive biological agents:

(a) at any time in the future; or

(b) until the individual satisfies the Secretary that the individual has satisfactorily completed specified training; or

(c) until the individual satisfies the Secretary that the individual has obtained a specified qualification or certification; or

(d) until the individual has complied with the requirements (if any) prescribed by the regulations.

Note 1: The Secretary may give a notice to an individual under this section instead of, or in addition to, giving a direction to the individual or another entity requiring the individual or other entity to dispose of particular security-sensitive biological agents.

Note 2: Failure to comply with a direction under this section is an offence: see section 60.

Authorised Version C2021C00048 registered 29/01/2021

60 Offence—failure to comply with direction not to handle security-sensitive biological agents

(1) An individual commits an offence if:

(a) the individual is given a direction under subsection 59(2); and

(b) the individual does not comply with the direction.

Penalty: 500 penalty units.

Note: For the value of a penalty unit, see subsection 4AA(1) of the *Crimes Act 1914*.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

Authorised Version C2021C00048 registered 29/01/2021

Division 5AA—Entities that temporarily handle security-sensitive biological agents

Subdivision A—Reporting by entities that temporarily handle security-sensitive biological agents

60AA Entity that temporarily handles a security-sensitive biological agent may give a report to the Secretary

(1) If:

(a) an entity starts to handle a particular sample of a security-sensitive biological agent; and

(b) the entity is not a registered entity; and

(c) the entity is not an exempt entity;

the entity may give the Secretary a report (a ***temporary handling report***), for the sample, that complies with subsection (2).

(2) The temporary handling report:

(a) must be in a form approved by the Secretary; and

(b) must contain the following information:

(i) the name of the entity;

(ii) the name and address of each facility where the entity handles the sample;

(iii) the name of the security-sensitive biological agent;

(iv) the day on which the entity intends to dispose of the sample;

(v) any other information required by the approved form; and

(c) must state that the entity is complying with the temporary handling Standards in relation to the sample; and

(d) must be given to the Secretary:

(i) within 2 business days after the entity starts to handle the sample; or

Authorised Version C2021C00048 registered 29/01/2021

(ii) if a longer period is specified in a written notice given to the entity by the Secretary—within that longer period.

(3) The day referred to in subparagraph (2)(b)(iv):

(a) must not be more 7 business days after the entity starts to handle the sample; or

(b) if a later day is specified in a written notice given to the entity by the Secretary—must not be later than that later day.

(4) Subsection (1) does not apply in the circumstances (if any) prescribed by the regulations.

60AB Temporary handling period

If an entity gives the Secretary a temporary handling report for a particular sample of a security-sensitive biological agent, the ***temporary handling period*** for the sample is:

(a) the period:

(i) beginning when the entity started to handle the sample; and

(ii) ending at the end of the day contained in the report in accordance with subparagraph 60AA(2)(b)(iv); or

(b) if a longer period is specified in a written notice given to the entity by the Secretary—that longer period.

60AC Application of Division 5 to an entity that gives a temporary handling report

(1) Subject to subsection (2), if an entity gives the Secretary a temporary handling report for a particular sample of a security-sensitive biological agent, Division 5 does not apply in relation to the handling of the sample by the entity.

(2) If the entity does not dispose of the sample by the end of the temporary handling period for the sample:

Authorised Version C2021C00048 registered 29/01/2021

(a) subsection (1) does not apply in relation to the handling of the sample by the entity after the end of the temporary handling period; and

(b) section 42 applies to the entity and the security-sensitive biological agent as if the reference to 2 business days after the entity starts to handle the security-sensitive biological agent were a reference to 2 business days after the end of the temporary handling period.

60AD Entity that gives a temporary handling report must give a temporary handling disposal report

(1) This section applies if an entity gives the Secretary a temporary handling report for a particular sample of a security-sensitive biological agent.

(2) The entity must give the Secretary a report (a ***temporary handling disposal report***), for the sample, that complies with subsection (3).

Note: Failure to give a report is an offence: see section 60AE.

(3) The temporary handling disposal report:

(a) must be in a form approved by the Secretary; and

(b) must state that the entity has disposed of the sample; and

(c) must include the information required by the approved form; and

(d) must be given to the Secretary:

(i) within 2 business days after the disposal, or after the end of the temporary handling period for the sample, whichever happens first; or

(ii) if a longer period is specified in a written notice given to the entity by the Secretary—within that longer period.

60AE Offence—failure to give a report to the Secretary

(1) An entity commits an offence if:

Authorised Version C2021C00048 registered 29/01/2021

(a) the entity is required to give the Secretary a temporary handling disposal report under subsection 60AD(2); and

(b) the entity does not give the report to the Secretary as required by that subsection.

Penalty: 500 penalty units.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

60AF Entity that gives a temporary handling report must report any changes to the Secretary

(1) This section applies to an entity if:

(a) the entity gives the Secretary a temporary handling report for a particular sample of a security-sensitive biological agent; and

(b) any of the following events occurs in relation to the sample before the end of the temporary handling period for the sample:

(i) the sample is lost or stolen;

Note: Accidental or deliberate releases of security-sensitive biological agents that could cause harm to human health or the environment may need to be reported under State or Territory legislation.

(ii) a person accesses the sample, and the access is unauthorised under the regulations;

(iii) any other event prescribed by the regulations for the purposes of this subparagraph.

(2) The entity must give a report about the event to the Secretary. The report must be given within the prescribed period.

Note: Failure to give a report is an offence: see section 60AG.

(3) Regulations for the purposes of subparagraph (1)(b)(ii) may prescribe the circumstances in which access to a sample of a specified security-sensitive biological agent, or to a sample of a specified class of security-sensitive biological agents, is unauthorised.

Authorised Version C2021C00048 registered 29/01/2021

(4) Regulations prescribing a period for the purposes of subsection (2) may:
  (a) prescribe different periods in relation to different events; and
  (b) prescribe a period in relation to an event that ends before or after the event occurs.

(5) A report given by an entity under subsection (2):
  (a) must be in a form approved by the Secretary; and
  (b) must include the information required by the approved form.

(6) Subsection (2) does not apply in the circumstances (if any) prescribed by the regulations.

60AG Offence—failure to give a report to the Secretary

(1) An entity commits an offence if:
  (a) the entity is required to give a report to the Secretary under subsection 60AF(2); and
  (b) the entity does not give the report to the Secretary as required by that subsection.

Penalty: 500 penalty units.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

60AH Entity that gives a temporary handling report must report certain events to police

(1) This section applies if:
  (a) an event occurs in relation to an entity and a particular sample of a security-sensitive biological agent; and
  (b) the event occurs in a State or Territory; and
  (c) the event is:
    (i) one described in subparagraph 60AF(1)(b)(i); or
    (ii) one described in subparagraph 60AF(1)(b)(ii) or (iii) and prescribed by the regulations for the purposes of this subparagraph.

Authorised Version C2021C00048 registered 29/01/2021

(2) The entity must give a member of the police force of the State or Territory a report of the event that:
  (a) is in a form approved by the Secretary; and
  (b) includes the information required by the approved form.

Note: Failure to give a report is an offence: see section 60AI.

(3) The entity must give the report within the period prescribed by the regulations.

(4) Regulations prescribing a period for the purposes of subsection (3) may:
  (a) prescribe different periods in relation to different events; and
  (b) prescribe a period in relation to an event that ends before or after the event occurs.

60AI Offence—failure to report event to police

(1) An entity commits an offence if:
  (a) the entity is required by section 60AH to give a report; and
  (b) the entity does not give the report as required by that section.

Penalty: 500 penalty units.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

Subdivision B—Compliance with temporary handling Standards

60AJ Temporary handling Standards

The Minister may, by legislative instrument, declare that a specified part of the SSBA Standards is a ***temporary handling Standard*** for the purposes of this Act.

Authorised Version C2021C00048 registered 29/01/2021

60AK Entity must comply with temporary handling Standards

If an entity gives the Secretary a temporary handling report for a particular sample of a security-sensitive biological agent, the entity must comply with the temporary handling Standards in relation to the sample.

60AL Offence—failure to comply with temporary handling Standards

An entity commits an offence if:

(a) the entity is required by section 60AK to comply with the temporary handling Standards in relation to a particular sample of a security-sensitive biological agent; and

(b) the entity contravenes the requirement.

Penalty: 500 penalty units.

Subdivision C—Conditions in relation to the temporary handling of security-sensitive biological agents

60AM Secretary may impose conditions

(1) This section applies to an entity if the entity gives the Secretary a temporary handling report for a particular sample of a security-sensitive biological agent.

(2) The Secretary may, by writing, impose conditions on the handling of the sample by the entity.

(3) The Secretary must not impose a condition under subsection (2) unless the Secretary is satisfied that it is reasonably necessary to do so, having regard to:

(a) the security risks posed by the handling of the security-sensitive biological agent by the entity; and

(b) any other matters the Secretary considers relevant.

(4) An instrument under subsection (2) is not a legislative instrument.

Authorised Version C2021C00048 registered 29/01/2021

60AN Entity must comply with conditions

If a condition is imposed under subsection 60AM(2) on the handling of a particular sample of a security-sensitive biological agent by an entity, the entity must comply with the condition in relation to the sample.

60AO Failure to comply with conditions

(1) This section applies if:

(a) a condition is imposed under subsection 60AM(2) on the handling of a particular sample of a security-sensitive biological agent by an entity; and

(b) the Secretary believes, on reasonable grounds, that the entity is not complying with the condition in relation to the sample.

(2) The Secretary may give the entity a written notice stating that, unless the entity satisfies the Secretary, within the period specified in the notice or such longer period as the Secretary allows, that the entity is complying with the condition, the Secretary may require the entity to dispose of the sample.

(3) If:

(a) the Secretary gives an entity a written notice under subsection (2) in relation to a condition; and

(b) the entity does not satisfy the Secretary, within the period allowed under that subsection, that the entity is complying with the condition;

the Secretary may give the entity a written direction requiring the entity, within the period specified in the direction or such longer period as the Secretary allows, to dispose of the sample.

Note: Failure to comply with the direction is an offence: see section 60AP.

(4) A period specified in a direction under subsection (3) must be reasonable having regard to the circumstances.

Authorised Version C2021C00048 registered 29/01/2021

60AP Offence—failure to comply with direction to dispose of sample

(1) An entity commits an offence if:

(a) the entity is given a direction under subsection 60AO(3); and

(b) the entity does not comply with the direction within the period allowed under that subsection.

Penalty: 500 penalty units.

(2) Section 4K of the *Crimes Act 1914* does not apply to an offence against subsection (1).

Authorised Version C2021C00048 registered 29/01/2021

Division 5A—Suspension of Divisions 4A, 5 and 5AA to deal with threats

60A Minister may suspend Divisions 4A, 5 and 5AA to deal with threats

(1A) The Minister may, by legislative instrument, specify that one or both of the following do not apply for a specified period in relation to one or more biological agents that are or have been suspected, on the basis of testing in a laboratory, of being specified security-sensitive biological agents, subject to the conditions (if any) specified:

(a) all or specified provisions of Division 4A;

(b) section 38D, so far as it relates to specified provisions of the SSBA Standards.

(1) The Minister may, by legislative instrument, specify that one or both of the following do not apply for a specified period in relation to one or more specified security-sensitive biological agents, subject to the conditions (if any) specified:

(a) all or specified provisions of Division 5;

(b) section 56, so far as it relates to specified provisions of the SSBA Standards.

(1B) The Minister may, by legislative instrument, specify that one or both of the following do not apply for a specified period in relation to one or more samples of security-sensitive biological agents, subject to the conditions (if any) specified:

(a) all or specified provisions of Division 5AA;

(b) section 60AK, so far as it relates to specified provisions of the temporary handling Standards.

(2) The Minister may make a legislative instrument under subsection (1A), (1) or (1B) relating to a security-sensitive biological agent only if:

Authorised Version C2021C00048 registered 29/01/2021

(a) the Minister is satisfied, after considering advice from a person covered by subsection (3), that there is a threat involving the agent to one or more of the following:
(i) the health or safety of people;
(ii) the economy;
(iii) the environment; and
(b) the Minister is satisfied, after considering advice from the Secretary, that the making of the legislative instrument would help to reduce the threat and maintain adequate controls for the security of all security-sensitive biological agents.

(2A) Without limiting paragraph (2)(a), the Minister may be satisfied that there is a threat involving the agent to one or more matters mentioned in that paragraph if a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force.

(3) This subsection covers:
(a) the Commonwealth Chief Medical Officer; and
(b) the Commonwealth Chief Veterinary Officer; and
(c) another person whom the Minister believes has scientific or technical knowledge in relation to security-sensitive biological agents.

When legislative instrument commences

(4) A legislative instrument made under subsection (1A), (1) or (1B) commences:
(a) on the day on which the instrument is made; or
(b) if the instrument specifies a later day as the day on which it commences, on that day.

(5) Subsection (4) has effect despite section 12 of the *Legislation Act 2003*.

(5A) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to a legislative instrument made under subsection (1A), (1) or (1B).

Authorised Version C2021C00048 registered 29/01/2021

Effect of legislative instrument

(6) A legislative instrument made under subsection (1A), (1) or (1B) has effect according to its terms.

60B Variation or revocation of suspension

(1) The Minister may, by legislative instrument, vary or revoke a legislative instrument (the ***principal instrument***) made under subsection 60A(1A), (1) or (1B) (whether or not the principal instrument has been varied under this section before).

Preconditions for variation

(2) The Minister may vary the principal instrument only if:
  (a) the Minister has considered advice about the variation from the persons whose advice was considered for the purposes of making the principal instrument; and
  (b) the Minister is satisfied that the principal instrument as varied would help to reduce the threat to which the principal instrument relates and maintain adequate controls for the security of all security-sensitive biological agents.

Preconditions for revocation

(3) The Minister may revoke the principal instrument only if, after considering further advice from the persons whose advice was considered for the purposes of making the principal instrument:
  (a) the Minister is satisfied that the threat, or one of the threats, to which the principal instrument relates:
    (i) no longer exists; or
    (ii) is no longer such as to require the principal instrument to be in force to address that threat; or
  (b) the Minister is no longer satisfied that the principal instrument adequately addresses the threat, or one of the threats, to which it relates.

Authorised Version C2021C00048 registered 29/01/2021

When variation or revocation commences

(4) The variation or revocation commences:
  (a) on the day on which the instrument is made; or
  (b) if the instrument specifies a later day as the day on which it commences, on that day.

(5) Subsection (4) has effect despite section 12 of the *Legislation Act 2003*.

(5A) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the variation or revocation.

Relationship between subsection (1) and subsections (2) and (3)

(6) Subsection (1) has effect subject to subsections (2) and (3).

60C Offence—failure to comply with conditions on suspension

A person commits an offence if:
  (a) the person is subject to a requirement under a condition specified in a legislative instrument made under this Division; and
  (b) the person does, or omits to do, an act; and
  (c) the person's act or omission breaches the requirement.

Penalty: 500 penalty units.

Authorised Version C2021C00048 registered 29/01/2021

Division 6—Enforcement

61 Secretary may arrange for disposal of security-sensitive biological agents

(1) This section applies if:

(a) an entity is given a direction under subsection 38P(2), 45(2), 50(2), 53(3), 57(4), 57(4A) or 60AO(3); and

(b) the entity does not comply with the direction within the period allowed under that subsection.

(2) This section also applies if an entity is convicted of an offence against subsection 38Q(1), 43(1), 55AD(2), 60AE(1) or section 60AL.

(3) The Secretary may arrange for the biological agents or the security-sensitive biological agents to which the direction, or the conviction, relates to be disposed of.

(4) If the Secretary incurs costs because of arrangements made by the Secretary under subsection (3), the entity is liable to pay to the Commonwealth an amount equal to the cost, and the amount may be recovered by the Commonwealth as a debt due to the Commonwealth.

62 Injunctions

(1) If a person has engaged, is engaging, or is about to engage in any conduct that is or would be an offence against this Part, the Federal Court of Australia or the Federal Circuit Court of Australia (the ***Court***) may, on the application of the Secretary, grant an injunction restraining the person from engaging in the conduct.

(2) If:

(a) a person has refused or failed, is refusing or failing, or is about to refuse or fail, to do a thing; and

Authorised Version C2021C00048 registered 29/01/2021

(b) the refusal or failure is, or would be, an offence against this Part;

the Court may, on the application of the Secretary, grant an injunction requiring the person to do the thing.

(3) The power of the Court to grant an injunction may be exercised:

(a) whether or not it appears to the Court that the person intends to engage, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind.

(4) The Court may discharge or vary an injunction granted under this section.

(5) The Court may grant an interim injunction pending a determination of an application under subsection (1).

(6) The powers granted by this section are in addition to, and not in derogation of, any other powers of the Court.

Authorised Version C2021C00048 registered 29/01/2021

Division 7—Powers of inspection

Subdivision A—Appointment of inspectors and identity cards

63 Appointment of inspectors

(1) The Secretary may, by instrument in writing, appoint as an inspector a person who is appointed or employed by the Commonwealth.

(2) In exercising powers or performing functions as an inspector, an inspector must comply with any directions of the Secretary.

(3) The Secretary must not appoint a person as an inspector under subsection (1) unless he or she is satisfied that the person has appropriate skills and experience.

64 Identity card

(1) The Secretary must issue an identity card to an inspector.

(2) The identity card:
  (a) must be in the form prescribed by the regulations; and
  (b) must contain a recent photograph of the inspector.

(3) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the identity card to the Secretary as soon as practicable.

Penalty: 1 penalty unit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(4) An inspector must carry his or her identity card at all times when exercising powers or performing functions as an inspector.

Authorised Version C2021C00048 registered 29/01/2021

Subdivision B—Monitoring compliance

65 Powers available to inspectors for monitoring compliance

(1) An inspector may:

(a) enter any premises; and

(b) exercise the monitoring powers set out in section 66;

for any of the following purposes:

(c) to find out whether this Part or regulations made for the purposes of this Part, or the SSBA Standards, have been complied with;

(d) to verify that the information given to the Secretary by an entity under section 38F, 38H, 38K, 38M, 42, 44, 48, 49, 55AA, 60AA, 60AD or 60AF is accurate and up-to-date.

(2) An inspector is not authorised to enter premises under subsection (1) unless:

(a) the occupier of the premises has consented to the entry; or

(b) the entry is made under a monitoring warrant.

66 Monitoring powers

(1) The ***monitoring powers*** that an inspector may exercise under paragraph 65(1)(b) are as follows:

(a) to search the premises and any thing on the premises;

(b) to inspect, examine, take measurements of, conduct tests on, or take samples of, any biological agent that is, or is suspected of being, a security-sensitive biological agent on the premises;

(c) to take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises;

(d) if the inspector was authorised to enter the premises by a monitoring warrant—to require any person in or on the premises:

(i) to answer any questions put by the inspector; and

Authorised Version C2021C00048 registered 29/01/2021

(ii) to produce any book, record or document requested by the inspector;

(e) to inspect any book, record or document on the premises;

(f) to take extracts from or make copies of any such book, record or document;

(g) to take onto premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;

(h) to secure a thing, until a warrant is obtained to seize it, being a thing:

(i) that the inspector finds during the exercise of monitoring powers on the premises; and

(ii) that the inspector believes on reasonable grounds may afford evidence of the commission of an offence against this Part or the *Crimes (Biological Weapons) Act 1976*; and

(iii) that the inspector believes on reasonable grounds would be lost, destroyed or tampered with before the warrant can be obtained;

(i) to operate electronic equipment, and do other things, at the premises as mentioned in section 67.

(2) A person must not refuse or fail to comply with a requirement under paragraph (1)(d).

Penalty: 30 penalty units.

67 Power to operate equipment

(1) For the purposes of this Division, the ***monitoring powers*** include the power to operate equipment at premises to see whether:

(a) the equipment; or

(b) a disk, tape or other storage device that:

(i) is at the premises; and

(ii) can be used with equipment or is associated with it;

Authorised Version C2021C00048 registered 29/01/2021

contains information that is relevant to determining whether there has been compliance with this Part or regulations made for the purposes of this Part, or the SSBA Standards.

(2) If the inspector, after operating equipment at the premises, finds that the equipment, or that a tape, disk or other storage device at the premises, contains information mentioned in subsection (1), the inspector may:

(a) operate facilities at the premises to put the information in documentary form and copy the document so produced; or

(b) if the information can be transferred to a tape, disk or other storage device that:

(i) is brought to the premises; or

(ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

operate the equipment or other facilities to copy the information to the storage device, and remove the storage device from the premises.

69 Application for monitoring warrant

(1) An inspector may apply to a magistrate for a monitoring warrant in relation to premises.

(2) Subject to subsection (3), the magistrate may issue the monitoring warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more inspectors should have access to the premises for any of the following purposes:

(a) to find out whether this Part or regulations made for the purposes of this Part, or the SSBA Standards, have been complied with;

(b) to verify that the information given to the Secretary by an entity under section 42, 44, 48, 49, 55AA, 60AA, 60AD or 60AF is accurate and up-to-date.

Authorised Version C2021C00048 registered 29/01/2021

(3) The magistrate must not issue the monitoring warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

(4) The monitoring warrant must:
  (a) authorise one or more inspectors (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
    (i) to enter the premises; and
    (ii) to exercise the powers set out in section 66 in relation to the premises; and
  (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
  (d) state the purpose for which the warrant is issued.

(5) An inspector must not make, in an application for a monitoring warrant, a statement that the inspector knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years or 120 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Subdivision C—Offence-related powers

70 Inspector may enter premises by consent or under a warrant

(1) If an inspector has reasonable grounds for suspecting that there may be evidential material on any premises, the inspector may:
  (a) enter the premises; and
  (b) exercise the offence-related powers set out in section 70A.

Authorised Version C2021C00048 registered 29/01/2021

(2) However, an inspector is not authorised to enter the premises unless:

(a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier; or

(b) the entry is made under an offence-related warrant.

Note: If entry to the premises is with the occupier's consent, the inspector must leave the premises if the consent ceases to have effect: see section 75.

70A Offence-related powers of inspectors

(1) The following are the ***offence-related powers*** that an inspector may exercise in relation to premises under section 70:

(a) if entry to the premises is with the occupier's consent—the power to search the premises and any thing on the premises for the evidential material the inspector has reasonable grounds for suspecting may be on the premises;

(b) if entry to the premises is under an offence-related warrant:

(i) the power to search the premises and any thing on the premises for the kind of evidential material specified in the warrant; and

(ii) the power to seize evidential material of that kind if the inspector finds it on the premises;

(c) the power to inspect, examine, take measurements of, conduct tests on or take samples of evidential material referred to in paragraph (a) or (b);

(d) the power to make any still or moving image or any recording of the premises or evidential material referred to in paragraph (a) or (b);

(e) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;

(f) the powers set out in subsections (2), (3) and (6).

Authorised Version C2021C00048 registered 29/01/2021

Powers relating to electronic equipment

(2) The offence-related powers include the power to operate electronic equipment on the premises to see whether:

(a) the equipment; or

(b) a disk, tape or other storage device that:

(i) is on the premises; and

(ii) can be used with the equipment or is associated with it;

contains evidential material referred to in paragraph (1)(a) or (b).

(3) The offence-related powers include the following powers in relation to evidential material described in subsection (2) found in the exercise of the power under that subsection:

(a) if entry to the premises is under an offence-related warrant—the power to seize the equipment and the disk, tape or other storage device referred to in that subsection;

(b) the power to operate electronic equipment on the premises to put the evidential material in documentary form and remove the documents so produced from the premises;

(c) the power to operate electronic equipment on the premises to transfer the evidential material to a disk, tape or other storage device that:

(i) is brought to the premises for the exercise of the power; or

(ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;

and remove the disk, tape or other storage device from the premises.

(4) An inspector may operate electronic equipment as mentioned in subsection (2) or (3) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

(5) An inspector may seize equipment or a disk, tape or other storage device as mentioned in paragraph (3)(a) only if:

Authorised Version C2021C00048 registered 29/01/2021

(a) it is not practicable to put the evidential material in documentary form as mentioned in paragraph (3)(b) or to transfer the evidential material as mentioned in paragraph (3)(c); or

(b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of the Commonwealth.

Seizing other evidential material

(6) If:

(a) entry to the premises is under an offence-related warrant; and

(b) the inspector, in the course of searching for the kind of evidential material specified in the warrant, finds a thing that the inspector believes on reasonable grounds to be other evidential material; and

(c) the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction;

then the offence-related powers include seizing the thing.

70B Persons assisting inspectors

Inspectors may be assisted by other persons

(1) An inspector may, in entering premises under section 70 and in exercising offence-related powers in relation to the premises, be assisted by other persons if that assistance is necessary and reasonable. A person giving such assistance is a ***person assisting*** the inspector.

Powers of a person assisting the inspector

(2) A person assisting the inspector may:

(a) enter the premises; and

(b) exercise offence-related powers in relation to the premises, but only in accordance with a direction given to the person by the inspector.

Authorised Version C2021C00048 registered 29/01/2021

(3) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.

(4) If a direction is given under paragraph (2)(b) in writing, the direction is not a legislative instrument.

70C Use of force in executing a warrant

In executing an offence-related warrant:

(a) an inspector executing the warrant may use such force against persons and things as is necessary and reasonable in the circumstances; and

(b) a person assisting the inspector may use such force against things as is necessary and reasonable in the circumstances.

70D Inspector may ask questions and seek production of documents

Entry with consent

(1) If an inspector is authorised by section 70 to enter premises because the occupier of the premises consented to the entry, the inspector may ask the occupier to:

(a) answer any questions relating to the reasons for the inspector entering the premises that are put by the inspector; and

(b) produce any document relating to the reasons for the inspector entering the premises that is requested by the inspector.

Entry under an offence-related warrant

(2) If an inspector is authorised to enter premises by an offence-related warrant, the inspector may require any person on the premises to:

(a) answer any questions relating to the reasons for the inspector entering the premises that are put by the inspector; and

(b) produce any document relating to the reasons for the inspector entering the premises that is requested by the inspector.

Authorised Version C2021C00048 registered 29/01/2021

Offence

(3) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (2); and
  (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

70E Inspector to be in possession of warrant

If an offence-related warrant is being executed in relation to premises, an inspector executing the warrant must be in possession of:
  (a) the warrant issued by the magistrate under section 70M, or a copy of the warrant as so issued; or
  (b) the form of warrant completed under subsection 70N(6), or a copy of the form as so completed.

70F Occupier to provide inspector with facilities and assistance

(1) The occupier of premises to which an offence-related warrant relates, or another person who apparently represents the occupier, must provide:
  (a) an inspector executing the warrant; and
  (b) any person assisting the inspector;
with all reasonable facilities and assistance for the effective exercise of their powers.

(2) A person commits an offence if:
  (a) the person is subject to subsection (1); and
  (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

Authorised Version C2021C00048 registered 29/01/2021

70G Copies of seized things to be provided

(1) If an offence-related warrant is being executed and an inspector seizes under this Subdivision:

(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device, the information in which can be readily copied;

the inspector must, if requested to do so by the occupier of the premises, or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to the occupier or other person as soon as practicable after the seizure.

(2) However, subsection (1) does not apply if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth.

70H Receipts for things seized

(1) If a thing is seized under this Subdivision, an inspector must provide a receipt for the thing.

(2) If 2 or more things are seized, they may be covered in the one receipt.

70J Return of seized things

(1) Subject to any contrary order of a court, if an inspector seizes a thing under this Subdivision, the Secretary must take reasonable steps to return it if:

(a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or

(b) the period of 60 days after its seizure ends;

whichever happens first, unless the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

Authorised Version C2021C00048 registered 29/01/2021

(2) If, apart from this subsection, the Secretary would be required to take reasonable steps to return a thing under subsection (1) because of paragraph (1)(b), the Secretary is not required to do so if:

(a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or

(b) the thing may continue to be retained because of an order under section 70K; or

(c) the Commonwealth, the Secretary or an inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing; or

(d) to return the thing could cause an imminent risk of death, serious illness, serious injury or serious damage to the environment.

(3) A thing that is required to be returned under this section must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

70K Magistrate may permit a thing to be retained

(1) An inspector may apply to a magistrate for an order permitting the retention of the thing for a further period if:

(a) before the end of 60 days after the seizure; or

(b) before the end of a period previously specified in an order of a magistrate under this section;

proceedings in respect of which the thing may afford evidence have not commenced.

(2) If the magistrate is satisfied that it is necessary for the thing to continue to be retained:

(a) for the purposes of an investigation as to whether an offence against this Act, or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act, has been committed; or

Authorised Version C2021C00048 registered 29/01/2021

(b) to enable evidence of such an offence to be secured for the purposes of a prosecution;

the magistrate may order that the thing may continue to be retained for a period specified in the order (which must not exceed 3 years).

(3) Before making the application, the inspector must:

(a) take reasonable steps to discover who has an interest in the retention of the thing; and

(b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.

70L Disposal of things

(1) If:

(a) a thing is seized under this Subdivision; and

(b) apart from this section, the Secretary would be required to take reasonable steps to return the thing to a person; and

(c) either:

(i) the Secretary cannot, despite making reasonable efforts, locate the person; or

(ii) the person has refused to take possession of the thing;

the Secretary may dispose of the thing in such manner as he or she thinks appropriate.

(2) If the operation of this section would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(4) In this section:

Authorised Version C2021C00048 registered 29/01/2021

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

70M Issue of offence-related warrants

Application for warrant

(1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.

Issue of warrant

(2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the premises.

(3) However, the magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

Content of warrant

(4) The warrant must:
  (a) describe the premises to which the warrant relates; and
  (b) state that the warrant is issued under this Subdivision; and
  (c) specify the kind of evidential material that is to be searched for under the warrant; and
  (d) name one or more inspectors; and
  (e) authorise the inspector or inspectors so named:
    (i) to enter the premises; and
    (ii) to exercise the powers set out in sections 70, 70A, 70B, 70C and 70D in relation to the premises; and

Authorised Version C2021C00048 registered 29/01/2021

(f) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and

(g) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to be in force.

70N Offence-related warrants by telephone, fax etc.

Application for warrant

(1) An inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 70M in relation to premises if the inspector believes on reasonable grounds that the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

Voice communication

(2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.

Information

(3) Before applying for the warrant, the inspector must prepare an information of the kind mentioned in subsection 70M(2) in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the inspector may apply for the warrant before the information is sworn or affirmed.

Signing of warrant

(4) If the magistrate is satisfied:

(a) after considering the terms of the information; and

(b) after receiving such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 70M if the application had been made under that section.

Authorised Version C2021C00048 registered 29/01/2021

Notification

(5) If the magistrate completes and signs the warrant, the magistrate must inform the inspector, by telephone, fax or other electronic means, of:
  (a) the terms of the warrant; and
  (b) the day on which and the time at which the warrant was signed.

Form of warrant

(6) The inspector must then complete a form of warrant in the same terms as the warrant completed and signed by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

Completed form of warrant to be given to magistrate

(7) The inspector must also, not later than the day after the day on which the warrant ceased to be in force or the day of execution of the warrant, whichever is the earlier, send to the magistrate:
  (a) the form of warrant completed by the inspector; and
  (b) the information referred to in subsection (3), which must have been duly sworn or affirmed.

Attachment

(8) The magistrate must attach to the documents provided under subsection (7) the warrant signed by the magistrate.

Authority of warrant

(9) A form of warrant duly completed under subsection (6) is authority for the same powers as are authorised by the warrant signed by the magistrate.

(10) If:

Authorised Version C2021C00048 registered 29/01/2021

(a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and

(b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

70P Offence relating to warrants by telephone, fax etc.

An inspector must not:

(a) state in a document that purports to be a form of warrant under section 70N the name of a magistrate unless that magistrate signed the warrant; or

(b) state on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the terms of the warrant signed by the magistrate under that section; or

(c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the inspector knows:

(i) has not been approved by a magistrate under that section; or

(ii) departs in a material particular from the terms of a warrant signed by a magistrate under that section; or

(d) give to a magistrate a form of warrant under that section that is not the form of warrant that the inspector purported to execute.

Penalty: Imprisonment for 2 years.

Subdivision D—Expert assistance

71 Expert assistance to operate a thing

(1) If an inspector believes on reasonable grounds that:

Authorised Version C2021C00048 registered 29/01/2021

(a) any of the following may be accessible by operating a thing at particular premises:
(i) information relevant to determining whether there has been compliance with this Part or regulations made for the purposes of this Part, or the SSBA Standards;
(ii) evidential material; and
(b) expert assistance is required to operate the thing; and
(c) if he or she does not take action under this subsection, the information or material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the thing, whether by locking it up, placing a guard or otherwise.

(2) The inspector must give notice to the occupier of the premises of his or her intention to secure the thing and of the fact that the thing may be secured for up to 24 hours.

(3) The thing may be secured:
(a) for a period not exceeding 24 hours; or
(b) until the thing has been operated by the expert;

whichever happens first.

(4) If the inspector believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to the magistrate for an extension of that period.

(5) The inspector must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

72 Expert assistance from scientific or technical expert

(1) This section applies if:
(a) an inspector has reasonable grounds for suspecting that there may be on any premises:
(i) a particular thing in respect of which this Part or regulations made for the purposes of this Part, or the SSBA Standards, have not been complied with; or

Authorised Version C2021C00048 registered 29/01/2021

(ii) evidential material; and

(b) the inspector considers that assistance from a person with scientific or technical knowledge or expertise is necessary to ensure the safety of the inspector and any other person while the inspector is exercising powers under this Division.

(2) The inspector may authorise a person of the kind referred to in paragraph (1)(b) to assist the inspector to ensure the safety of the inspector and any other person while the inspector is exercising powers under this Division.

(3) This section does not limit section 70B. That section does not limit this section.

Subdivision E—Emergency powers

73 Powers available to inspectors for dealing with dangerous situations

(1) This section applies if:

(a) an inspector has reasonable grounds for suspecting that there may be on any premises a particular thing in respect of which this Part or regulations made for the purposes of this Part, or the SSBA Standards, have not been complied with; and

(b) the inspector considers that it is necessary to exercise powers under this section in order to avoid an imminent risk of death, serious illness, serious injury, or to protect the environment.

(2) The inspector may do any of the following:

(a) enter the premises;

(b) search the premises for the thing;

(c) secure the thing, if the inspector finds it on the premises, until a warrant is obtained to seize the thing;

(d) if the inspector has reasonable grounds for suspecting that a person has not complied with this Part or regulations made for the purposes of this Part, or the SSBA Standards, in respect of the thing—require the person to take such steps as

Authorised Version C2021C00048 registered 29/01/2021

the inspector considers necessary for the person to comply with this Part or those regulations, or the SSBA Standards;

(e) take such steps, or arrange for such steps to be taken, in relation to the thing as the inspector considers appropriate.

(3) The inspector may exercise the powers in subsection (2) only to the extent that it is necessary for the purpose of avoiding an imminent risk of death, serious illness, serious injury or serious damage to the environment.

(4) The inspector must not exercise any of the powers in subsection (2) in relation to premises in a State or Territory unless the inspector has notified a relevant emergency response agency of the State or Territory of the inspector's intention to exercise those powers.

(5) If the Secretary incurs costs because of steps reasonably taken, or arranged to be taken, in relation to a thing under paragraph (2)(e), the owner of the thing is liable to pay to the Commonwealth an amount equal to the costs, and the amount may be recovered by the Commonwealth as a debt due to the Commonwealth.

Subdivision F—Obligations and incidental powers of inspectors

74 Inspector must produce identity card on request

An inspector is not entitled to exercise any powers under this Division in relation to premises if:

(a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and

(b) the inspector fails to comply with the requirement.

75 Consent

(1) An inspector must, before obtaining the consent of an occupier of premises for the purposes of paragraph 65(2)(a) or 70(2)(a), inform the occupier that the occupier may refuse consent.

(2) A consent has no effect unless the consent is voluntary.

Authorised Version C2021C00048 registered 29/01/2021

(3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.

(4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.

(5) If an inspector entered premises because of the consent of the occupier of the premises, the inspector, and any person assisting the inspector, must leave the premises if the consent ceases to have effect.

76 Details of warrant etc. to be given to occupier

If:

(a) a monitoring warrant or offence-related warrant is being executed in relation to premises; and

(b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;

an inspector executing the warrant must, as soon as practicable:

(c) do one of the following:

(i) if the warrant is a monitoring warrant or an offence-related warrant that was issued under section 70M—make a copy of the warrant available to the occupier or other person (which need not include the signature of the magistrate who issued it);

(ii) if the warrant is an offence-related warrant that was signed under section 70N—make a copy of the form of warrant completed under subsection 70N(6) available to the occupier or other person; and

(d) inform the occupier or other person of the rights and responsibilities of the occupier or other person under sections 70F and 78.

77 Announcement before entry

(1) An inspector must, before entering premises under a monitoring warrant or offence-related warrant:

Authorised Version C2021C00048 registered 29/01/2021

(a) announce that he or she is authorised to enter the premises; and

(aa) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and

(b) give any person at the premises an opportunity to allow entry to the premises.

(2) An inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:

(a) to ensure the safety of a person; or

(b) to prevent serious damage to the environment; or

(c) to ensure that the effective execution of the warrant is not frustrated.

(3) If:

(a) an inspector does not comply with subsection (1) because of subsection (2); and

(b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;

the inspector must, as soon as practicable after entering the premises, show his or her identity card to the occupier or other person.

Subdivision G—Other matters

78 Occupier entitled to be present during search

(1) If a monitoring warrant or offence-related warrant in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the person is entitled to observe the search being conducted.

(2) The right to observe the search being conducted ceases if the person impedes the search.

Authorised Version C2021C00048 registered 29/01/2021

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

79 Division not to abrogate privilege against self-incrimination

Nothing in this Division affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information, or the production of the document, might tend to incriminate him or her or make him or her liable to a penalty.

79A Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of electronic equipment being operated as mentioned in section 67 (about monitoring powers) or section 70A (about offence-related powers):

(i) damage is caused to the equipment; or

(ii) the data recorded on the equipment is damaged; or

(iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

(b) the damage or corruption occurs because:

(i) insufficient care was exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia or the Federal Circuit Court of Australia for such reasonable amount of compensation as the Court determines.

Authorised Version C2021C00048 registered 29/01/2021

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) In this section:

damage, in relation to data, includes damage by erasure of data or addition of other data.

Authorised Version C2021C00048 registered 29/01/2021

Division 8—Review of decisions

80 Meaning of *reviewable decision*

In this Division:

reviewable decision means:

(aa) a decision under subsection 38P(2) to give a direction to an entity requiring the entity to dispose of a biological agent suspected on the basis of testing in a laboratory of being a security-sensitive biological agent; or

(a) a decision under subsection 45(2), 50(2), 53(3), 57(4), 57(4A) or 60AO(3) to give a direction to an entity requiring the entity to dispose of a security-sensitive biological agent; or

(aaa) a decision under section 55A to refuse an entity's application for cancellation of its registration; or

(b) a decision under subsection 59(2) to give a notice to an individual directing the individual not to handle security-sensitive biological agents as specified in the notice.

81 Notification of decision and review rights

(1) The Secretary must, as soon as practicable after making a reviewable decision, cause a notice in writing to be given to the entity whose interests are affected by the decision containing:

(a) the terms of the decision; and

(b) the reasons for the decision; and

(c) a statement setting out particulars of the entity's review rights.

(2) A failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

Authorised Version C2021C00048 registered 29/01/2021

82 Internal review

(1) An entity whose interests are affected by a reviewable decision (other than a decision made by the Secretary personally) may apply in writing to the Secretary for review (***internal review***) of the decision.

(2) An application for internal review must be made within 30 days after the day on which the decision first came to the notice of the applicant, or within such period (if any) as the Secretary, either before or after the end of that period, allows.

(3) The Secretary must, on receiving an application, review the reviewable decision personally.

(4) The Secretary may:
  (a) make a decision affirming, varying or revoking the reviewable decision; and
  (b) if the Secretary revokes the decision, make such other decision as the Secretary thinks appropriate.

83 Review of decisions by Administrative Appeals Tribunal

(1) Subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of:
  (a) a reviewable decision made by the Secretary personally; or
  (b) a decision made by the Secretary under section 82 (which provides for internal review).

(2) In this section:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Authorised Version C2021C00048 registered 29/01/2021

Division 9—Confidentiality of information

84 Definition of *protected information* for the purposes of Part 3

In this Part:

protected information is information:

(a) that was obtained under or for the purposes of, or in accordance with, this Part; and

(b) that:

(i) is included on the National Register; or

(ii) was given to the Secretary by an entity under Division 4A, 5 or 5AA; or

(iii) was obtained by an inspector under Division 7; or

(iv) is personal information.

85 Secretary may give report to certain agencies

(1) The Secretary may give a report to:

(a) such intelligence agencies as are prescribed by the regulations for the purposes of this paragraph; or

(b) such law enforcement agencies as are prescribed by the regulations for the purposes of this paragraph; or

(c) any Commonwealth, State or Territory agencies with responsibility for responding to emergencies;

in order to enable those agencies to assess the security risks posed in relation to security-sensitive biological agents, and biological agents suspected of being security-sensitive biological agents, and take action in relation to those risks.

Note: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

(2) A report under subsection (1) may include protected information.

(3) For the purposes of subsection (1), a security risk includes the possibility that a release of a security-sensitive biological agent, or

Authorised Version C2021C00048 registered 29/01/2021

of a biological agent suspected of being a security-sensitive biological agent, may be a public health risk or may cause damage to the environment.

86 Authorisation to use information in performing duties or exercising powers under Division 6, 7 or 8 of Part 2 or this Part

A person may make a record of, or disclose or otherwise use, protected information if the person makes the record of, or discloses or otherwise uses, the information:

(a) in the performance of the person's functions or duties, or the exercise of the person's powers, under Division 6, 7 or 8 of Part 2; or

(b) in the performance of the person's functions or duties, or the exercise of the person's powers, under this Part.

Note: This section constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

87 Authorisation to use information for certain purposes

(1) An agency that obtains protected information under subsection 85(1) may make a record of, or disclose or otherwise use, the information for the purposes referred to in that subsection.

Note: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

(2) A person who obtains protected information from an agency under subsection (1), or from another person under this subsection, may make a record of, or disclose or otherwise use, the information for the purposes referred to in subsection 85(1).

Note: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

88 Secretary may authorise use of information

(1) The Secretary may, in writing, authorise a person:

Authorised Version C2021C00048 registered 29/01/2021

(a) to make a record of or otherwise use protected information for a specified purpose; or

(b) to disclose protected information to a specified person, or to a specified class of persons, for a specified purpose.

(2) A person who is authorised to make a record of, or disclose or otherwise use, protected information under subsection (1) may make a record of, or disclose or otherwise use, the information in accordance with the authorisation.

Note: This section constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

89 Authorisation to use information for purposes of certain proceedings

(1) A person may disclose protected information to a court or tribunal or a coronial inquiry, or in accordance with an order of a court or tribunal or a coroner, for the purposes of proceedings under:

(a) this Part; or

(b) the *Crimes (Biological Weapons) Act 1976*; or

(c) Part 5.3 or 5.5 of the *Criminal Code*; or

(d) any other prescribed law of the Commonwealth or of a State or Territory.

Note 1: The *National Security Information (Criminal and Civil Proceedings) Act 2004* may apply to proceedings under this Part.

Note 2: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

(2) A person who obtains protected information under, or in accordance with, subsection (1) may make a record of, or disclose or otherwise use, the information for the purposes for which the information was disclosed under that subsection.

Note: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

Authorised Version C2021C00048 registered 29/01/2021

90 Offence relating to protected information

(1) A person commits an offence if:

(a) the person obtains information; and

(b) the information is protected information; and

(c) the person makes a record of, or discloses or otherwise uses, the information.

Penalty: Imprisonment for 2 years.

Note 1: Chapter 2 of the *Criminal Code* sets out the principles of criminal responsibility.

Note 2: For defences to this offence, see sections 91 and 92.

(2) Subsection (1) does not apply if the record, disclosure or other use is authorised by this Division.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

(3) A document that contains protected information is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.

91 Defence for disclosure to person who provided the information

Subsection 90(1) does not apply if:

(a) a person obtains protected information from another person; and

(b) the person discloses that information to the other person.

Note: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the *Criminal Code*.

92 Defence for use of information under particular laws

Subsection 90(1) does not apply if the record, disclosure or other use of the information is required or authorised under:

(a) this Part; or

(b) the *Crimes (Biological Weapons) Act 1976*; or

Authorised Version C2021C00048 registered 29/01/2021

(c) Part 5.3 or 5.5 of the *Criminal Code*; or

(d) Part VIA of the *Privacy Act 1988*; or

(e) any other prescribed law of the Commonwealth or of a State or Territory.

Note 1: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3) of the *Criminal Code*.

Note 2: The *National Security Information (Criminal and Civil Proceedings) Act 2004* may apply to proceedings under this Part.

93 No other exceptions under other laws

(1) A provision of a law of the Commonwealth or of a State or Territory (other than a law referred to in section 92), has no effect to the extent that it would otherwise require or permit a person to make a record of, disclose, or otherwise use, protected information if the record, disclosure or other use:

(a) would contravene a provision of this Division; or

(b) would not be permitted by a provision of this Division.

(2) Subsection (1) has effect whether the law concerned is enacted before or after the commencement of this section.

Authorised Version C2021C00048 registered 29/01/2021

Division 10—Delegation

94 Secretary may delegate powers and functions under this Part

(1) Subject to subsection (2), the Secretary may, by writing, delegate any of his or her powers and functions under this Part to an SES employee, or an acting SES employee, in the Department.

(2) The Secretary must not delegate the Secretary's power under section 63 (appointment of inspectors).

Authorised Version C2021C00048 registered 29/01/2021

Part 4—Miscellaneous

95 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Authorised Version C2021C00048 registered 29/01/2021

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Authorised Version C2021C00048 registered 29/01/2021

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

Authorised Version C2021C00048 registered 29/01/2021

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Authorised Version C2021C00048 registered 29/01/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Health Security Act 2007	174, 2007	28 Sept 2007	s 6–29: 28 Mar 2008 (s 2(1) item 2) s 30–94: 31 Jan 2009 (s 2(1) item 3) Remainder: 28 Sept 2007 (s 2(1) items 1, 4)	
National Health Security Amendment Act 2009	100, 2009	7 Oct 2009	Sch 1 (items 1, 28–39): 8 Oct 2009 (s 2(1) items 2, 4) Sch 1 (items 2–27, 40–55): 31 Jan 2010 (s 2(1) items 3, 5–8) Remainder: 7 Oct 2009 (s 2(1) item 1)	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 5 (item 72): 1 Mar 2010 (s 2(1) item 35)	—
National Health Security Amendment (Background Checking) Act 2010	15, 2010	11 Mar 2010	11 Mar 2010 (s 2)	—
Territories Law Reform Act 2010	139, 2010	10 Dec 2010	Sch 1 (item 75): 11 Dec 2010 (s 2(1) item 2)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 811, 812) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 5, 12)	Sch 3 (items 10, 11)
National Health Security Amendment Act 2012	182, 2012	10 Dec 2012	Sch 1 and 2: 31 Mar 2013 (s 2(1) item 2 and F2013L00474) Remainder: 10 Dec 2012	Sch 1 (items 12, 17, 26)

Authorised Version C2021C00048 registered 29/01/2021

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (item 64) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 19) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 16)	Sch 6 (items 1, 15–19)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 2 (item 2): 12 Apr 2013 (s 2(1) items 2, 3)	—
Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014	116, 2014	3 Nov 2014	Sch 1 (items 134, 135): 1 Dec 2014 (s 2(1) item 2)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 1 (items 146–149) and Sch 2 (items 356–396): 18 June 2015 (s 2(1) items 2, 6) Sch 1 (items 184–203): 27 May 2015 (s 2(1) item 3) Sch 2 (items 272–275): 1 July 2016 (s 2(1) item 5)	Sch 1 (items 184–203) and Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015	62, 2015	16 June 2015	Sch 2 (items 37–42) and Sch 4: 16 June 2016 (s 2(1) items 2, 4) Sch 3: 16 June 2015 (s 2(1) item 3)	Sch 3 and Sch 4

Authorised Version C2021C00048 registered 29/01/2021

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Statute Update (Winter 2017) Act 2017	93, 2017	23 Aug 2017	Sch 2 (item 9): 20 Sept 2017 (s 2(1) item 4)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 402, 403): 5 Mar 2016 (s 2(1) item 2)	—
National Emergency Declaration (Consequential Amendments) Act 2020	129, 2020	15 Dec 2020	Sch 1 (items 31–33): 16 Dec 2020 (s 2(1) item 2)	—

Authorised Version C2021C00048 registered 29/01/2021

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 100, 2009; Nos 8 and 139, 2010; No 46, 2011; No 182, 2012; No 59, 2015; No 62, 2015; No 129, 2020
	ed C16
s 4	am No 59, 2015
Part 2	
Division 2	
s 7	am No 59, 2015
Division 3	
s 8	am No 62, 2015
Division 6	
Division 6 heading	rs No 62, 2015
s 13	am No 62, 2015
Division 8	
s 19	am No 197, 2012; No 59, 2015
s 20	am No 197, 2012
s 23	am No 59, 2015
Part 3	
Division 1	
s 30	am No 100, 2009
Division 3	
s 35	am No 100, 2009; No 15, 2010
Division 4	
s 38	am No 100, 2009
Division 4A	
Division 4A	ad No 100, 2009
Subdivision A	
s 38A	ad No 100, 2009

Authorised Version C2021C00048 registered 29/01/2021

Provision affected	How affected
	am No 182, 2012
Subdivision B	
s 38B	ad No 100, 2009
s 38C	ad No 100, 2009
Subdivision C	
s 38D	ad No 100, 2009
s 38E	ad No 100, 2009
Subdivision D	
s 38F	ad No 100, 2009
s 38G	ad No 100, 2009
s 38H	ad No 100, 2009
	am No 182, 2012
s 38J	ad No 100, 2009
s 38K	ad No 100, 2009
s 38L	ad No 100, 2009
Subdivision E	
s 38M	ad No 100, 2009
s 38N	ad No 100, 2009
s 38P	ad No 100, 2009
s 38Q	ad No 100, 2009
Division 5	
Subdivision A	
s 39	am No 182, 2012
Subdivision B	
s 42	am No 100, 2009
s 47	am No 100, 2009; No 197, 2012
s 48	am No 100, 2009
s 48A	ad No 100, 2009
s 48B	ad No 100, 2009
s 52	am No 197, 2012
s 53	am No 100, 2009

Authorised Version C2021C00048 registered 29/01/2021

Endnote 4—Amendment history

Provision affected	How affected
s 55	am No 100, 2009
s 55AA	ad No 182, 2012
s 55AB	ad No 182, 2012
s 55AC	ad No 182, 2012
s 55AD	ad No 182, 2012
s 55A	ad No 100, 2009
Subdivision C	
s 57	am No 182, 2012
s 58	am No 182, 2012
Division 5AA	
Division 5AA	ad No 182, 2012
Subdivision A	
s 60AA	ad No 182, 2012
s 60AB	ad No 182, 2012
s 60AC	ad No 182, 2012
s 60AD	ad No 182, 2012
s 60AE	ad No 182, 2012
s 60AF	ad No 182, 2012
s 60AG	ad No 182, 2012
s 60AH	ad No 182, 2012
S 60AI	ad No 182, 2012
Subdivision B	
s 60AJ	ad No 182, 2012
s 60AK	ad No 182, 2012
s 60AL	ad No 182, 2012
Subdivision C	
s 60AM	ad No 182, 2012
s 60AN	ad No 182, 2012
s 60AO	ad No 182, 2012
s 60AP	ad No 182, 2012

Authorised Version C2021C00048 registered 29/01/2021

Provision affected	How affected
Division 5A	
Division 5A heading	rs No 100, 2009; No 182, 2012
Division 5A	ad No 100, 2009
s 60A	ad No 100, 2009
	am No 100, 2009; No 182, 2012; No 126, 2015; No 129, 2020
s 60B	ad No 100, 2009
	am No 100, 2009; No 182, 2012; No 126, 2015
s 60C	ad No 100, 2009
Division 6	
s 61	am No 100, 2009; No 182, 2012
s 62	am No 13, 2013
Division 7	
Subdivision B	
s 65	am No 100, 2009; No 182, 2012
s 66	am No 100, 2009
s 68	rep No 100, 2009
s 69	am No 182, 2012
Subdivision C	
s 70	rs No 100, 2009
s 70A	ad No 100, 2009
s 70B	ad No 100, 2009
s 70C	ad No 100, 2009
s 70D	ad No 100, 2009
s 70E	ad No 100, 2009
s 70AF	ad No 100, 2009
s 70G	ad No 100, 2009
s 70H	ad No 100, 2009
s 70J	ad No 100, 2009
s 70K	ad No 100, 2009
s 70JL	ad No 100, 2009
s 70M	ad No 100, 2009

Authorised Version C2021C00048 registered 29/01/2021

Endnote 4—Amendment history

Provision affected	How affected
s 70N	ad No 100, 2009
s 70P	ad No 100, 2009
Subdivision D	
s 72	am No 100, 2009
Subdivision F	
s 75	rs No 100, 2009
s 76	rs No 100, 2009
s 77	am No 100, 2009
Subdivision G	
s 78	am No 100, 2009
s 79A	ad No 100, 2009
	am No 13, 2013
Division 8	
s 80	am No 100, 2009; No 182, 2012
Division 9	
s 84	am No 100, 2009; No 182, 2012
s 85	am No 100, 2009; No 197, 2012
s 86	am No 197, 2012
s 87	am No 197, 2012
s 88	am No 197, 2012
s 89	am No 197, 2012; No 116, 2014
s 92	am No 116, 2014

Authorised Version C2021C00048 registered 29/01/2021

Endnote 5—Editorial changes

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

Subsection 3(1)

Kind of editorial change

Reordering of definitions

Details of editorial change

This compilation was editorially changed to move the definition of ***listed human disease*** in subsection 3(1) to the correct alphabetical position.

Authorised Version C2021C00048 registered 29/01/2021