EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 25

Issued by the Authority of the Minister for Broadband, Communications and the Digital Economy

Australian Postal Corporation Act 1989

Australian Postal Corporation Amendment Regulations 2008 (No. 1)

Section 102 of the Australian Postal Corporation Act 1989 (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act provides for the creation and functioning of the Australian Postal Corporation. The Act also provides for a number of border control procedures, and from 24 March 2008 includes the establishment of an interstate quarantine inspection scheme.

The purpose of the Regulations is to prescribe the manner in which information regarding articles collected under the Act for border control purposes is to be stored, collected and used.

The Regulations have three elements.

The first element of the Regulations removes an outdated reference to the Qantas Mail Handling Unit at Sydney Kingsford Smith Airport. The International Mail Centre for Sydney is now located at Clyde.

The second element of the Regulations amends paragraph 3F(b) to ensure that it is consistent with section 91 of the Act, which was inserted by the Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Act 2007 with effect from 24 March 2008. The purpose of section 91 of the Act is to enable Australia Post to meet its obligations as a member of the Universal Postal Union, and to assist Australia Post to respond to requests from members of the public about missing postal articles. The amended paragraph 3F(b) explicitly allows information to be passed to Australia Post by the Australian Customs Service following a request made by Australia Post under section 91 of the Act.

The third element of the Regulations prescribes the manner and type of information collected by prescribed State or Territory quarantine inspection agencies in Western Australia, Tasmania and the Northern Territory in their conduct of a quarantine inspection program of interstate mail, under subsections 90U(9) and 90U(10) of the Act, which were inserted by the Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Act 2007 with effect from 24 March 2008. This third element adds a number of safeguards to the interstate quarantine scheme established by the Act, by prescribing:
• the type of information that must collected by prescribed State or Territory quarantine inspection agencies;
• the requirements for the proper storage of records; and
• the way that collected information can be used by prescribed State or Territory quarantine inspection agencies.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA) (see paragraph 6(a) of the LIA). In developing the Regulations, the Department of Broadband, Communications and the Digital Economy has consulted with all parties directly affected by the Regulations as follows:

• Australia Post;
• the Department of Agriculture and Fisheries of Western Australia;
• the Department of Primary Industries and Water of Tasmania;
• the Department of Primary Industry, Fisheries and Mines of the Northern Territory; and
• the Australian Customs Service.

Comments from these agencies have been taken into account in finalising the Regulations.

Details of the accompanying Regulations are set out in the Attachment.

The Regulations commence on 24 March 2008, which is the commencement date of Schedule 1 to the *Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Act 2007*. 
Details of the *Australian Postal Corporation Amendment Regulations 2008* (No. 1)

**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Australian Postal Corporation Amendment Regulations 2008* (No. 1).

**Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on the commencement of Schedule 1 to the *Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Act 2007*.

Table item 2 in subsection 2(1) of this Act provides that Schedule 1 commences on a single day to be fixed by Proclamation or, if no Proclamation has been made, 6 months after the Act received Royal Assent. This Act received Royal Assent on 24 September 2007. No Proclamation has been made. Schedule 1 to this Act therefore commences on 24 March 2008.

**Regulation 3 – Amendment of *Australian Postal Corporation Regulations 1996***

This regulation provides that Schedule 1 to the Regulations amends the *Australian Postal Corporation Regulations 1996*.

**Schedule 1 – Amendments**

**Item 1 – Regulation 3D**

Existing regulation 3D specifies the places at which a record is to be established and maintained of articles that the Australian Customs Service has removed from the normal course of carriage and opened for the purposes of their examination by a Customs officer. Existing paragraph 3D(b) specifies the Qantas Mail Handling Unit at Sydney Kingsford Smith Airport as one of these places. This Unit has ceased to operate and has been replaced by the Sydney Gateway Facility at Clyde. The replacement facility falls within the definition of ‘International Mail Centre’ in existing paragraph 3D(a).

Item 1 therefore removes the outdated reference by substituting the existing regulation 3D with a new regulation which prescribes that the records established and maintained by the Australian Customs Service under subsection 90T(8) and paragraph 90T(9)(a) of the Act are to be established and maintained at each International Mail Centre within the meaning of subsection 77F(1) of the *Customs Act 1901*.

**Item 2 – Paragraph 3F(b)**

Item 2 inserts a new paragraph 3F(b) to allow information collected by the Australian Customs Service under subsection 90T(8) and paragraph 90T(9)(c) of the Act to be...
provided to Australia Post in accordance with section 91 of the Act. The purpose of section 91 of the Act is to enable Australia Post to meet its obligations as a member of the Universal Postal Union, and to assist Australia Post to respond to requests from members of the public about missing postal articles.

This will allow the Australian Customs Service to pass information to Australia Post following a request made by Australia Post under section 91 of the Act.

**Item 3 – Insertion of new Division 1A of Part 2 of the Regulations**

Item 3 inserts a new Division 1A into Part 2 of the Regulations.

New regulation 3G provides that when participating quarantine inspection agencies make a finding that an article contains quarantine material, the agency must record:

- the name and address of the address as stated on the article;
- the name and address of the sender if this information appears on the article;
- the product type (for example Ordinary, Express, eParcel etc);
- any unique identification number on the article (such as a registered post tracking number); and
- a description of the quarantine material.

This requirement will ensure that comprehensive records are kept on each article found to contain quarantine material, and ensure that the records kept across participating quarantine inspections agencies are consistent.

New regulation 3H provides that when participating quarantine inspection agencies make a finding that an article contains quarantine material, the agency must record:

- the name and classification of the authorised examiner and quarantine inspection officer mentioned in subsections 90U(4) and 90U(5);
- the details of any technology or tools used to examine the article and its contents;
- if the article is referred to any agency (other than an entity for which the quarantine inspection officer exercises quarantine powers or performs quarantine functions), the details of the referral, such as:
  - the name and classification of the quarantine officer who refers the article;
  - the name of the agency to which the article is referred;
  - the name and classification of the officer in that agency to whom the article is referred.
- details of any pilferage or damage discovered on examination.

These requirements will ensure that a proper chain of evidence is maintained for each article found to contain or consist of quarantine material by participating quarantine inspection agencies.

The requirements of regulations 3G and 3H will also ensure that agencies have useful and accessible records on the status of individual articles if Australia Post makes a request under section 91 of the Act.
New regulation 3I provides that if an article is examined in accordance with paragraph 90U(9)(c) of the Act, the records kept must indicate whether the article was dealt with according to the relevant law of the prescribed State/Territory or Commonwealth, or whether the article was returned to the normal course of carriage.

New regulation 3J specifies the Department of Agriculture and Food of Western Australia, the Department of Primary Industries and Water of Tasmania and the Department of Primary Industry, Fisheries and Mines of Northern Territory as prescribed bodies for the purposes of subsection 90U(9). These prescribed bodies will be responsible for the establishment and maintenance of records relating to articles that have been found to contain or consist of quarantine material under section 90U of the Act.

New regulation 3K specifies the physical place where records relating to articles found to contain or consist of quarantine material are established and maintained. It is intended that where more than one location is listed for an agency, records may be kept at any location.

New regulation 3L prescribes that information collected under subsection 90U(9) and paragraph 90U(10)(b) of the Act may be kept electronically on a computer system or may be kept manually on a physical medium.

New subregulation 3M(1) prescribes that the information collected under subsection 90U(9) and paragraph 90U(10)(b) of the Act may be:

- used for the administration or enforcement of a law of the Commonwealth, State or Territory relating to quarantine;
- provided to Australia Post under section 91 of the Act; or
- collected as statistical data.

It is intended that subregulation 3M(1) provide an inclusive list of uses, providing guidance to participating quarantine inspection agencies.

New subregulation 3M(2) provides that a quarantine inspection agency may provide to Australia Post information under subsection 90U(9) and paragraph 90U(10)(b) of the Act, to allow Australia Post to track articles either removed from, or in, the normal course of carriage.

New regulation 3N specifies that Western Australia, Tasmania and the Northern Territory are prescribed States/Territories for the purposes of the definition of ‘prescribed State/Territory’ in section 90E of the Act. The term ‘prescribed State/Territory’ is used in the definitions of ‘compliance agency’, ‘quarantine inspection officer’ and ‘quarantine material’ in section 90E and in sections 90U and 102(dc) of the Act.