

EXPLANATORY STATEMENT

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

Biosecurity Act 2015

Biosecurity Amendment (Extension of Non-prescribed Goods) Regulations 2022

Legislative Authority

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

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

The *Biosecurity Regulation 2016* (the Principal Regulation) is made under the Act and sets out certain matters prescribed by the Act and administrative matters, including the governance of goods that are released from biosecurity control.

Purpose

The *Biosecurity Amendment (Extension of Non-prescribed Goods) Regulations 2022* (the Regulations) amends section 22 of the Principal Regulation to provide that baggage that leaves ‘first points of entry’ (FPOEs, as defined in section 18 of the Act) and goods that leave international mail centres, for the purposes of carrying out a biosecurity measure mentioned in subsection 138(1) of the Act, are not prescribed for the purposes of paragraph 162(1)(c) of the Act, and thus are not released from biosecurity control on leaving the ‘designated biosecurity control release area’ (DBCRA) at the FPOE or international mail centre. This ensures that baggage and international mail remains under biosecurity control until biosecurity measures carried out by a third party have taken place.

The Regulations further provide that baggage that leaves a FPOE for the purposes of export from Australian territory in accordance with paragraph 135(2)(a) of the Act is similarly not prescribed. This ensures that, when a biosecurity officer may require baggage to be exported from Australian territory, the baggage remains under biosecurity control until it actually leaves Australian territory (when it would be released from biosecurity control under paragraph 162(1)(e) of the Act). This is particularly important in respect of cases where baggage may be lost or damaged in transit.

Background

Goods (as defined by section 19 of the Act) brought into Australian territory during a flight or voyage that commenced outside Australian territory become subject to biosecurity control when the aircraft or vessel carrying the goods enters Australian territory (see section 119 of the Act). The goods remain subject to biosecurity control until released under section 162 of the Act. When goods are under biosecurity control, biosecurity officers may exercise certain powers to assess the level of biosecurity risk associated with the goods and carry out, or arrange or direct for the carrying out of, biosecurity measures in certain circumstances.

Paragraph 162(1)(c) of the Act provides that goods subject to biosecurity control are released from biosecurity control if the goods are prescribed goods, and the goods leave a DBCRA at a FPOE or at an ‘international mail centre’, as defined by section 9 of the Act.

For the purposes of paragraph 162(1)(c) of the Act, subsection 22(2) of the Principal Regulation provides that baggage is prescribed if it is brought into an FPOE and that the boundary of the FPOE is a DBCRA, unless it falls within one of the exceptions in subsection 22(3) of the Principal Regulation. ‘Baggage’ is defined by section 9 of the Act as meaning goods that are carried on a conveyance by or for a person who is on board the conveyance (including the person in charge and members of the crew of the conveyance), or that a person intended to be so carried.

Subsection 22(3) of the Principal Regulation provides that baggage is not prescribed if:

- a direction given under the Act is in force in relation to the baggage at the time the baggage leaves the FPOE; or
- the baggage is conditionally non-prohibited goods that are authorised to be brought or imported into Australian territory subject to a condition:
 - relating to the use of the goods for laboratory, research or propagation purposes; or
 - requiring the goods to be kept at a post-entry quarantine facility while they are in Australian territory.

Subsection 22(4) of the Principal Regulation similarly provides that goods brought to an international mail centre are prescribed, unless they fall within one of the exceptions in subsection 22(5) of the Principal Regulation. These exceptions are the same in substance as the exceptions provided by subsection 22(3) of the Principal Regulation.

When biosecurity officers require biosecurity measures to be carried out on goods, they generally make arrangements under paragraph 138(1)(c) of the Act for a third party to carry out the measures at their premises outside of the FPOE or international mail centre. Relevantly, these current operations do not involve a biosecurity officer giving a *direction* to carry out biosecurity measures.

Goods subject to biosecurity control are released from such control if the goods are prescribed and they leave an FPOE or international mail centre. They are not released if they are not prescribed (that is, they fall within an exception in subsections 22(3) or (5) of the Principal Regulation). As noted above, goods are not prescribed if they leave an FPOE or international mail centre subject to a *direction* given under the Act, meaning that before these Regulations commenced, goods were released from biosecurity control when they left an FPOE or international mail centre under an *arrangement* for the purposes of a biosecurity measure being carried out by a third party. This created an unacceptable biosecurity risk that the Regulations have now addressed.

Consultation

The development of the Regulations was undertaken in conjunction with policy areas in the department responsible for administering baggage and international mail that are subject to biosecurity control. The relevant policy areas were provided the opportunity to comment on a draft version of the instrument and matters raised during consultation were taken into account in improving the policy to control baggage and international mail.

The Office of Best Practice Regulation (OBPR) has assessed the preliminary assessment on the regulatory impact of the proposed legislative changes. OBPR has determined that a Regulatory Impact Statement is not required.

Impact and Effect

The Regulations ensure that baggage and international mail will remain under biosecurity control when they leave a FPOE for the purposes of biosecurity measures being carried out by a third party. Further, they ensure that baggage that leaves a FPOE for the purposes of export from Australian territory in accordance with paragraph 135(2)(a) of the Act will also remain under biosecurity control until it actually leaves Australian territory.

As such, the Regulations help to protect Australia's favourable biosecurity status by ensuring that the goods remain under biosecurity control so that biosecurity risk is managed to an acceptable level while appropriate biosecurity measures are carried out on them, or before they are exported from Australia.

Details/Operation

Details of the instrument are set out at [Attachment A](#).

Other

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

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

The Regulations commence the day after this instrument is registered.

Details of the *Biosecurity Amendment (Extension of Non-prescribed Goods) Regulations 2022*

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity Amendment (Extension of Non-prescribed Goods) Regulations 2022* (the Regulations).

Section 2 – Commencement

Subsection 2(1) provides that each provision of the Regulations specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Item 1 in the table provides that the whole of the Regulations commence the day after this instrument is registered. The note to subsection 2(1) highlights that the table only relates to the provisions of this instrument as originally made. The table will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 allows for the insertion of relevant dates and details.

Section 3 – Authority

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

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Proposed Regulations has effect according to its terms.

Schedule 1 – Amendments

Biosecurity Regulation 2016

Item [1] After paragraph 22(3)(a)

This item inserts paragraphs 22(3)(aa) and (ab) into the *Biosecurity Regulation 2016* (the Principal Regulation).

Paragraph 22(3)(aa) provides that baggage is not prescribed if the baggage leaves the first point of entry (FPOE) for the purposes of carrying out a biosecurity measure mentioned in subsection 138(1) (*Powers of biosecurity officer if biosecurity measures are required*) of the Act, in accordance with paragraph 138(1)(b) or (c).

Subsection 138(1) provides that, if a biosecurity officer requires a biosecurity measure to be taken in relation to goods, these measures may include movement (section 132), treatment (section 133), destruction (section 136) or measures taken in relation to a regulation made for the purposes of section 137 (*Regulations may provide for other biosecurity measures*) of the Act. For the purposes of section 137 of the Act, section 17 of the Principal Regulation provides that a biosecurity officer may require goods to be isolated in or on premises specified by the biosecurity officer for a specified isolation period. Paragraphs 138(1)(b) and (c) of the Act allow a biosecurity officer to carry out the biosecurity measure, or arrange for another person with appropriate qualifications or expertise to carry out the biosecurity measure.

The effect of paragraph 22(3)(aa) of the Principal Regulation is that baggage remains subject to biosecurity control if it leaves a FPOE for the purposes of carrying out any of these measures, either by a biosecurity officer or an appropriate third party. The intention of Australia's biosecurity framework is that goods brought or imported into Australian territory will only be released from biosecurity control when they no longer pose a biosecurity risk or once they leave Australian territory. Paragraph 22(3)(aa) ensures that the powers required to assess and manage any biosecurity risks associated with baggage are available if they are required and reflects that baggage may still pose a biosecurity risk while biosecurity measures are being carried out, outside of a FPOE.

Paragraph 22(3)(ab) of the Principal Regulation provides that baggage is not prescribed if the baggage leaves the FPOE for the purposes of export from Australian territory in accordance with paragraph 135(2)(a) of the Act, which provides that a biosecurity officer may arrange for goods to be exported from Australian territory.

The effect of paragraph 22(3)(ab) of the Principal Regulation is that baggage remains subject to biosecurity control if it leaves a FPOE for the purposes of a biosecurity officer arranging for the export of that baggage from Australian territory. The baggage remains under biosecurity control until it actually leaves Australian territory (at which point the goods are released from biosecurity control under paragraph 162(1)(e) of the Act). As noted above, the intention of Australia's biosecurity framework is that goods will only be released when they no longer pose a biosecurity risk or once they leave Australian territory. Paragraph 22(3)(ab) ensures that the powers required to assess and manage any biosecurity risks associated with baggage are available if they are required and reflects that baggage may still pose a biosecurity risk while in transit, prior to leaving Australian territory. This is particularly important in respect of cases where baggage may be lost or damaged in transit.

Item [2] At the end of subsection 22(3) (before the notes)

This item inserts new note 1A at the end of subsection 22(3) of the Principal Regulation, for the purposes of explaining that subsection 138(1) of the Act, referred to in paragraph 22(3)(aa) of the Principal Regulation, applies in relation to a biosecurity measure under section 132 (movement), 133 (treatment) or 136 (destruction) of the Act or under a regulation made for the purposes of section 137 of the Act.

Item [3] After paragraph 22(5)(a)

This item inserts paragraph 22(5)(aa) into the Principal Regulation.

Paragraph 22(5)(aa) of the Principal Regulation provides that goods that leave an international mail centre are not prescribed if the goods leave the international mail centre for the purposes of carrying out a biosecurity measure mentioned in subsection 138(1) of the Act, in accordance with paragraph 138(1)(b) or (c) of the Act.

The effect of paragraph 22(5)(aa) of the Principal Regulation is that goods remain subject to biosecurity control if they leave an international mail centre for the purposes of carrying out any of the measures detailed in item 4 below, either by a biosecurity officer or an appropriate third party. The intention of Australia's biosecurity framework is that goods brought or imported into Australian territory will only be released when they no longer pose a biosecurity risk or once they leave Australian territory. Paragraph 22(5)(aa) ensures that the powers required to assess and manage any biosecurity risks associated with goods that leave international mail centres are available if they are required and reflects that goods that leave international mail centres may still pose a biosecurity risk while biosecurity measures are being carried out, outside of a FPOE.

Item [4] At the end of subsection 22(5) (before the notes)

This item inserts note 1A at the end of subsection 22(5) of the Principal Regulation, for the purposes of explaining that subsection 138(1) of the Act, referred to in new paragraph 22(5)(aa) of the Principal Regulation, applies in relation to a biosecurity measure under section 132 (movement), 133 (treatment) or 136 (destruction) of the Act or under a regulation made for the purposes of section 137 of the Act.

Item [5] In the appropriate position in Chapter 10

This item inserts an application provision as section 123 of the Principal Regulation. This section provides that the amendments made to section 22 of the Principal Regulation by the Regulations apply in relation to goods that become subject to biosecurity control on or after the commencement of the Regulations, and goods that became subject to biosecurity control before the commencement of the Regulations but have not been released from biosecurity control as at that commencement.

A note to section 123 of the Principal Regulation explains that 'goods' include baggage, based on the respective definitions of 'baggage' and 'goods' found at sections 9 and 19 of the Act.

Statement of Compatibility with Human Rights

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

Biosecurity Amendment (Extension of Non-prescribed Goods) Regulations 2022

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

Overview of the Legislative Instrument

The *Biosecurity Amendment (Extension of Non-prescribed Goods) Regulations 2022* (the Regulations) amends the *Biosecurity Regulation 2016* (the Principal Regulation).

The Regulations amend section 22 of the Principal Regulation to provide that baggage and goods that leave ‘first points of entry’ (FPOEs, as defined in section 18 of the Act) and international mail centres (as defined by section 9 of the Act), for the purposes of carrying out a biosecurity measure mentioned in subsection 138(1) of the Act, are not prescribed for the purposes of paragraph 162(1)(c) of the Act, and thus are not released from biosecurity control when leaving the ‘designated biosecurity control release area’ (DBCRA) at the FPOE or international mail centre. This ensures that baggage and international mail remains under biosecurity control until biosecurity measures carried out by a third party have taken place.

The Regulations further provide that baggage that leaves a FPOE for the purposes of export from Australian territory in accordance with paragraph 135(2)(a) of the Act is similarly not prescribed. This ensures that, when a biosecurity officer may require baggage to be exported from Australian territory, the baggage remains under biosecurity control until it actually leaves Australian territory (when it would be released from biosecurity control under paragraph 162(1)(e) of the Act). This is particularly important in respect of cases where baggage may be lost or damaged in transit.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

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