EXPLANATORY STATEMENT

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

Biosecurity Act 2015

Biosecurity Amendment (Pre-arrival Reporting) Regulations 2023

Legislative Authority

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

Section 193 of the Act requires the operator of an aircraft or vessel to give a report in certain circumstances, including if the aircraft or vessel enters, or is intended to enter, an Australian territory. Under this section, the regulations may prescribe requirements for the information that must be included in the report, as well as the circumstances in which one or more other reports must be given in relation to an aircraft or vessel.

Section 194 of the Act allows the regulations to prescribe the circumstances in which the operator of the aircraft or vessel must give further information in relation to a report given under section 193.

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.

Purpose

The *Biosecurity Amendment (Pre-arrival Reporting) Regulations 2023* (the Amendment Regulations) amends the *Biosecurity Regulation 2016* (the Principal Regulation) to prescribe additional reporting requirements for the purposes of sections 193 and 194 of the Act.

Background

Part 2 of Schedule 2 to the *Biosecurity Amendment (Strengthening Biosecurity) Act 2022* amended the Act to enable the regulations to provide for additional reporting requirements, including requirements to give one or more additional reports in prescribed circumstances and requirements to give additional information in prescribed circumstances, in relation to a pre-arrival report that has been given under section 193 of the Act.

Subsection 194(1A) of the Act allows the regulations to prescribe:

- the circumstances in which the operator of an aircraft or vessel, that has given a report under section 193, must give a biosecurity officer further information in relation to that report; and
- the kind of further information that the operator is required to give a biosecurity officer; and
- when the operator must give that further information to a biosecurity officer.

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Impact and Effect

The Amendment Regulations allows biosecurity risks to be assessed and managed in an accurate and timely manner by requiring vessel operators to provide additional reporting information, in the prescribed circumstances.

In particular, the Amendment Regulations require a vessel operator to provide additional information relating to medications and treatment in their report given under subsection 193(1) of the Act.

Further, the Amendment Regulations require an operator of a vessel to provide updated details of any information that is no longer current, in the report given under subsection 193(1) of the Act.

This will improve the likelihood that biosecurity officers and human biosecurity officers are provided with the timeliest and most up to date information in relation to the human health status of a vessel before it arrives at a port in an Australian territory. For example, in circumstances where the operator of a vessel becomes aware of passengers having signs or symptoms of a disease after a pre-arrival report is submitted, and before the vessel moors at a port, they will be required to provide updated details of any information in the report in relation to these passengers. This will better enable biosecurity officers and human biosecurity officers to respond appropriately to the particular risks to human health associated with a conveyance.

The Office of Impact Analysis (OIA) (formerly the Office of Best Practice Regulation) was consulted in the making of the Amendment Regulations. The OIA has advised that an Impact Analysis is not required (OBPR22-02576).

Consultation

The Department of Health and Aged Care was consulted on the Amendment Regulations.

Details/ Operation

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

The Amendment Regulations commence on the day after registration on the Federal Register of Legislation.

Details of the Amendment Regulations are set out in Attachment A.

Other

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2022*. A full Statement of Compatibility with Human Rights is set out in Attachment B.

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ATTACHMENT A

Details of the *Biosecurity Amendment (Pre-arrival Reporting) Regulations 2023*

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity Amendment (Pre-arrival Reporting) Regulations 2023* (the Amendment Regulations).

Section 2 – Commencement

Subsection 2(1) provides that each provision of the Amendment 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 of the table has effect according to its terms.

Item 1 in the table under subsection 2(1) provides that the whole of the Amendment Regulations commence on the day after the Amendment Regulations are registered on the Federal Register of Legislation.

The note to subsection 2(1) provides that the table relates only to the provisions of the Amendment Regulations as originally made. It would not be amended to deal with later amendments of the Amendment Regulations. The purpose of this note is to clarify that the commencement of any subsequent amendments would not be reflected in this table.

Section 3 – Authority

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

Section 4 – Schedules

This section provides for the amendment or repeal of instruments as set out in a Schedule to the Amendment Regulations. This section is a technical provision that enables the amendment of the *Biosecurity Regulation 2016* (the Principal Regulation) (see Schedule 1 below).

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Schedule 1 – Amendments

Biosecurity Regulation 2016

Item [1] – Section 46

This item repeals existing section 46 of the Principal Regulations and substitutes new section 46.

New section 46 provides the purpose of Part 1 of Chapter 3 of the Principal Regulation, which deals with pre-arrival reporting. New section 46 provides that the purpose of Part 1 of Chapter 3 of the Principal Regulation is to make provision for and in relation to reports and information that must be given by an operator of an aircraft or vessel under sections 193 and 194 of the Act.

Item [2] – Subsection 47(1)

Section 47 of the Principal Regulation provides for pre-arrival reporting requirements in relation to aircraft. Subsection 47(1) currently provides that section 47 makes provision in relation to a report in relation to an aircraft.

This item inserts "under subsection 193(1) of the Act" after the words "to a report" in subsection 47(1).

Amended subsection 47(1) has the effect that section 47 makes provision in relation to a report (an initial report) given under subsection 193(1) of the Act (as amended by item 4 of Schedule 2 to the Strengthening Biosecurity Act) in relation to an aircraft. This amendment is intended to clarify the provision under which the report referred to by subsection 47(1) of the Principal Regulation is given.

Item [3] – Subsection 48(1)

Section 48 of the Principal Regulation provides for pre-arrival reporting requirements in relation to vessels other than certain vessels travelling from certain areas in the Torres Strait. Subsection 48(1) currently provides that section 48 makes provision in relation to a report in relation to a vessel (other than a vessel referred to in subsection 49(1) of the Principal Regulation).

This item inserts "under subsection 193(1) of the Act" after the words "to a report" in subsection 48(1).

Amended subsection 48(1) has the effect that section 48 makes provision in relation to a report (an initial report) given under subsection 193(1) of the Act (as amended by item 4 of Schedule 2 to the Strengthening Biosecurity Act) in relation to a vessel (other than a vessel referred to in subsection 49(1) of the Principal Regulation (as amended by item 5 of this Schedule)). This amendment is intended to clarify the provision under which the report referred to by subsection 48(1) of the Principal Regulation is given.

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Item [4] – After paragraph 48(2)(l)

Subsection 48(2) of the Principal Regulation sets out the information that must be included in a report under subsection 193(1) of the Act.

This item inserts new paragraph 48(2)(la). New paragraph 48(2)(la) requires an initial report under subsection 193(1) of the Act to include details of any medication or treatment provided to any person on board the vessel in respect of a disease. Requiring details of medication or treatment provided to persons on board the vessel is necessary to ensure that human biosecurity officers are able to appropriately assess and manage any human biosecurity risk associated with persons on board.

Item [5] – Subsection 49(1)

Section 49 of the Principal Regulation provides for pre-arrival reporting requirements in relation to certain vessels travelling from certain areas in the Torres Strait. Subsection 49(1) currently provides that section 49 makes provision in relation to a report in relation to a vessel that:

- is 7 metres long; and
- is on, or intends to make, a voyage that commences in the protected zone or the Torres Strait permanent biosecurity monitoring zone and ends at a place in Australian territory other than a place in the protected zone or the Torres Strait permanent biosecurity monitoring zone.

This item inserts "under subsection 193(1) of the Act" after the words "to a report".

Amended subsection 49(1) has the effect that section 49 makes provision in relation to a report (an initial report) given under subsection 193(1) of the Act (as amended by item 4 of Schedule 2 to the Strengthening Biosecurity Act) in relation to a vessel referred to in subsection 49(1) (as amended by this item). This amendment is intended to clarify the provision under which the report referred to by subsection 49(1) of the Principal Regulation is given.

Item [6] – After section 51

Subsection 194(1A) of the Act applies where a report has been given in relation to an aircraft or vessel under subsection 193(1) or (1A). Under this subsection, the regulations may prescribe the circumstances in which the operator of an aircraft or vessel must give a biosecurity officer further information in relation to the report. The regulations may also prescribe the kind of further information that the operator is required to give a biosecurity officer, as well as when the operator must give that further information to a biosecurity officer.

This item inserts new section 51A in Part 1 of Chapter 3 of the Principal Regulation.

New subsection 51A(1) provides that new section 51A is made for the purposes of subsection 194(1A) of the Act. This subsection makes clear the legislative authority for section 51A.

New subsection 51A(2) provides for circumstances in which the operator of a vessel must give further information in relation to an initial report under subsection 193(1) of the Act.

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The relevant circumstances are where the operator becomes aware, before the vessel moors at a port, that the information included in the report is no longer current.

Under new subsection 51A(3), where the circumstances prescribed by new subsection 51A(2) arise, the operator is required to provide the updated information as soon as practicable.

The effect of this amendment is to impose a statutory obligation on vessel operators to provide updated information in relation to a report given under subsection 193(1) of the Act, where they become aware the information is no longer current.

It is necessary for updated information to be provided by vessel operators to a biosecurity officer because this allows biosecurity officers to more effectively assess and manage the biosecurity risk in relation to incoming vessels. The provision of further information assists biosecurity officers to assess whether the biosecurity status of an incoming vessel has changed since the pre-arrival report was given.

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ATTACHMENT B

Statement of Compatibility with Human Rights

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

Biosecurity Amendment (Pre-arrival Reporting) Regulations 2023

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 purpose of the *Biosecurity Amendment (Pre-arrival Reporting) Regulations* (the Amendment Regulations) is to amend the *Biosecurity Regulation 2016* (the Principal Regulation) to prescribe additional reporting requirements for certain vessel operators for the purposes of section 194 of the *Biosecurity Act 2015* (the Act). The Amendment Regulations are made under the Act.

The Amendment Regulations allow biosecurity risks to be assessed and managed in an accurate and timely manner by requiring vessel operators to provide additional reporting information, in the prescribed circumstances.

Human rights implications

The Amendment Regulations may engage the following rights:

- the right to privacy in Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

Right to protection from arbitrary interference with privacy

Article 17 of the ICCPR protects the right to be free from arbitrary or unlawful interference with an individual's privacy, family, home or correspondence. This right may be subject to permissible limitations where those limitations are provided by law and are non-arbitrary. In order for limitations not to be arbitrary, they must seek to achieve a legitimate objective and be reasonable, necessary and proportionate to this purpose.

A number of measures contained in the Amendment Regulations require information to be given to a biosecurity officer. Specifically, items 4 and 6 of Schedule 1 to the Amendment Regulations amend the Principal Regulation to require certain information to be provided in relation to certain vessels for which a pre-arrival report has been given under subsection 193(1) of the Act.

Section 48 of the Principal Regulation prescribes requirements for a report in relation to a vessel other than certain vessels travelling from certain areas in the Torres Strait. Subsection 48(2) of the Principal Regulation prescribes the information that must be included in a report given under subsection 193(1) of the Act. Item 4 of Schedule 1 to the Amendment Regulations will insert new paragraph 48(2)(la) into the Principal Regulation to require the

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report to include details of any medication or treatment provided by officers and crew of the vessel to any person on board the vessel in respect of a disease.

Subsection 194(1A) of the Act allows the regulations to prescribe:

- the circumstances in which the operator of an aircraft or vessel, that has given a report in relation to the aircraft or vessel under subsection 193(1) or (1A) of the Act, must give a biosecurity officer further information in relation to that report; and
- the kind of further information that the operator is required to give a biosecurity officer; and
- when the operator must give that further information to a biosecurity officer.

Item 6 of Schedule 1 to the Amendment Regulations inserts new section 51A into the Principal Regulation. New section 51A is made for the purposes of subsection 194(1A) of the Act and prescribes the circumstances in which further information is required in relation to a report, the information required, and the time the further information is required to be given.

New subsection 51A(2) requires the operator of a vessel to give further information in relation to a report under subsection 193(1) if the operator becomes aware, before the vessel moors at a port, that the information included in the report is no longer current.

New subsection 51A(3) requires, in the circumstances prescribed by subsection 51A(2), the operator to provide the updated information as soon as practicable.

The requirement to provide information under new paragraph 48(2)(la) and further information under new section 51A of the Principal Regulation, may incidentally require the provision of personal information. These new provisions are necessary for the legitimate objective of assessing the level of biosecurity risk posed by certain vessels that intend to enter, or enters Australian territory. It is important for biosecurity officers to have access to this information in order to properly assess the level of biosecurity risk posed by vessels and can manage these biosecurity risks appropriately. To the extent that the collection, use, storage and sharing of information with respect to management of biosecurity risks may include personal information, this may engage the right to privacy.

Pre-arrival report requirements, including the provision of information required by new paragraph 48(2)(la) and new section 51A of the Principal Regulation, apply only in particular circumstances and the persons required to provide the required information would be the operator of the vessel, who can be reasonably expected to be aware of these obligations.

In relation to the amendments made by the Amendment Regulations, Part 2 of Chapter 11 of the Act includes a range of protections relating to the collection, storage and disclosure of protected information. Section 580 provides that only certain persons may collect, disclose, or use information and that they may only do so for a permissible purpose (a purpose which promotes the objects of the Act). Section 585 also provides an offence for the improper collection or use of protected information. The protections provide a safeguard against any potential misuse or disclosure of information gathered under new paragraph 48(2)(la) or new section 51A of the Principal Regulation.

To the extent that the Amendment Regulations may engage the prohibition on arbitrary interference with privacy under Article 17 of the ICCPR, any limitations on this right are permissible as they are limited to only those measures that are necessary, reasonable and

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proportionate to achieving the legitimate objective of protecting Australia from biosecurity risks associated with or relating to certain vessels that intend to enter or enters Australian territory.

Conclusion

This Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

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

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