

## **EXPLANATORY STATEMENT**

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

*Biosecurity Act 2015*

*Biosecurity Amendment (2025 Measures No. 1) Regulations 2025*

### **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 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.

Section 193 of the Act sets out the framework for pre-arrival reporting. Subsection 193(1) of the Act requires the operator of an aircraft or vessel to give a report (pre-arrival report) in certain circumstances, including if the aircraft or vessel enters, or is intended to enter, Australian territory. Subsection 193(1A) of the Act sets out that the operator of the aircraft or vessel may be required to give one or more other reports as required by the regulations. Under subsection 193(2) of the Act, the regulations may prescribe requirements relating to pre-arrival reporting. Subsection 193(3) of the Act allows the regulations to prescribe exceptions to the requirement to give a pre-arrival report.

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 requirements relating to pre-arrival reports. Sections 47 and 48 of the Principal Regulation set out the requirements for pre-arrival reports for aircraft and vessels. Section 50 of the Principal Regulation sets out the exceptions to the requirement for aircraft operators to provide a pre-arrival report.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

### **Purpose**

The *Biosecurity Amendment (2025 Measures No. 1) Regulations 2025* (the Amendment Regulations) amend a number of provisions in the Principal Regulation relating to pre-arrival reporting requirements for aircraft and vessels. The purpose of the amendments to the Principal Regulation is to align exceptions to pre-arrival reporting to improve operational efficiency for officials exercising powers under the Act and reduce unnecessary administrative burden on aircraft operators and the Department of Agriculture, Fisheries and Forestry (the department). The amendments will also streamline pre-arrival reporting requirements for non-commercial vessels to achieve consistency in reporting processes and requirements.

## **Background**

Pre-arrival reporting allows the department to gather information about an aircraft or vessel to assist with the accurate and timely assessment of biosecurity risk. Biosecurity officers can use the information provided in a pre-arrival report to determine what biosecurity risk management activities might be necessary when the aircraft or vessel arrives in Australia. The Principal Regulation currently prescribes requirements relating to pre-arrival reporting such as information that must be included in the report, the manner in which the report must be given and the timeframe within which the report must be given. The Principal Regulation also prescribes exceptions to the requirement to give a pre-arrival report.

Currently, operators of aircraft on both scheduled and non-scheduled flights are required to provide a pre-arrival report under subsection 193(1) of the Act that contains the information set out in subsection 47(2) of the Principal Regulation. Operators of aircraft on non-scheduled flights must also provide the information set out in subsection 47(3). There is an exception under section 50 of the Principal Regulation for providing a pre-arrival report for aircraft operators of scheduled flights if there is no information to report under subsection 47(2). However, the same exception does not apply to aircraft operators of non-scheduled flights meaning they must give a report of the information in subsection 47(2) even where there is no information to give.

The Amendment Regulations also change the manner in which a pre-arrival report relating to a non-commercial vessel must be given. Subsection 48(3) of the Principal Regulation previously prescribed that operators of non-commercial vessels can report both verbally and electronically. Verbal reporting made it difficult to plan and prepare for biosecurity inspections because of inconsistent information and reporting. This inconsistency can limit non-compliance actions and potentially allows for compromised biosecurity risk management practices.

## **Impact and Effect**

The amendments to the Principal Regulation have the effect that the subsection 193(1) report is separated into two reports. Operators of aircraft on both scheduled and non-scheduled flights continue to be required to provide a pre-arrival report under section 193(1) of the Act containing the information set out in subsection 47(2) of the Principal Regulation. Operators of aircraft on non-scheduled flights are required to provide an additional pre-arrival report under subsection 193(1A) of the Act with the information set out in subsection 47(3) of the Principal Regulation, which is repealed and replaced by new section 47A. By separating the current pre-arrival report into two separate reports, non-scheduled flights are subject to the same exception as scheduled flights from having to provide a subsection 193(1) report where there is no information to give. The exception does not apply to the new subsection 193(1A) pre-arrival report. The subsection 193(1A) report also has a different timeframe in which the report must be given to allow proper planning and assessment of biosecurity risk. The timeframe for providing a report under subsection 193(1A) is any time prior to the aircraft commencing the flight from outside Australian territory.

The Amendment Regulations also changes the manner in which a pre-arrival report relating to a non-commercial vessel must be given. These pre-arrival reports are no longer be able to be given orally and must be given in writing (including electronically).

## **Consultation**

The department has consulted with the Australian Business Aviation Association and the Australian Border Force on the amendments to the Principal Regulation relating to the timeframe within which a pre-arrival report relating to a non-scheduled flight must be given. First Point of Entry operators, yachting event organisers and yacht owners have been consulted on the amendments to the Principal Regulation relating to the manner in which a pre-arrival report relating to a non-commercial vessel must be given.

## **Details/ Operation**

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

Sections 1 to 4 of the Amendment Regulations commence on the day after the Amendment Regulations are registered. Schedule 1 to the Amendment Regulations commences 6 months after the day the Amendment Regulations are registered.

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 2011*. A full Statement of Compatibility with Human Rights is set out in Attachment B.

**Details of the *Biosecurity Amendment (2025 Measures No. 1) Regulations 2025***

**Section 1 – Name**

This section provides that the name of the instrument is the *Biosecurity Amendment (2025 Measures No. 1) Regulations 2025* (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 has effect according to its terms.

Item 1 in the table provides that sections 1 to 4 and anything in the Amendment Regulations not elsewhere covered by the table commences on the day after the Amendment Regulations are registered. Item 2 in the table provides that Schedule 1 to the Amendment Regulations commences on the day after the end of the period of 6 months beginning on the day the Amendment Regulations are registered.

The note below the table provides that the table relates only to the provisions of the Amendment Regulations as originally made. It will 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 amendments of the Amendment Regulations is not reflected in this table.

Subsection 2(2) provides that any information in column 3 of the table is not part of the instrument. Information may be inserted in that column, or information in it may be edited, in any published version of the instrument.

**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 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms. This enables the amendment of the *Biosecurity Regulation 2016* (the Principal Regulation).

## **Schedule 1 – Amendments**

### ***Biosecurity Regulation 2016***

#### **Item [1] – Section 47 (heading)**

Section 47 of the *Biosecurity Regulation 2016* (the Principal Regulation) provides for pre-arrival reporting requirements under subsection 193(1) of the Act relating to aircraft. The heading of section 47 currently reads “Pre-arrival report—aircraft”.

Item 1 repeals the heading of section 47 and substitutes the new heading “Pre-arrival report under subsection 193(1) of the Act—aircraft”.

The purpose of this amendment is to further clarify that section 47 of the Principal Regulation deals with pre-arrival reports under subsection 193(1) of the Act in relation to aircraft.

#### **Item [2] – Subsection 47(1) (note 2)**

The second note following subsection 47(1) of the Principal Regulation currently explains that a report is not required to be given in relation to certain aircraft and refers the reader to section 50 of the Principal Regulation.

This item repeals the second note following subsection 47(1) and substitutes a new note which explains that a report is not required to be given in certain circumstances and refers the reader to subsection 50(1) of the Principal Regulation.

This amendment is consequential to the amendments to section 50 of the Principal Regulation made by this Schedule.

#### **Item [3] – Subsection 47(2) (heading)**

The heading of subsection 47(2) of the Principal Regulation currently reads “Information that must be included in report—general”.

This item omits “—general” from the heading of subsection 47(2) of the Principal Regulation.

This amendment has the effect that subsection 47(2) of the Principal Regulation sets out the information that must be included in a report under subsection 193(1) of the Act in relation to aircraft. This amendment is consequential to the amendments to subsection 47(3) made by this Schedule.

#### **Item [4] – Subsection 47(3)**

Subsection 47(3) of the Principal Regulation currently sets out additional information that must be included in a report under subsection 193(1) of the Act in relation to aircraft on a non-scheduled flight. These information requirements are in addition to the requirements set out in subsection 47(2) of the Principal Regulation.

This item repeals subsection 47(3) of the Principal Regulation.

This amendment has the effect that aircraft on a non-scheduled flight are no longer subject to additional information requirements for a report under subsection 193(1). Aircraft on a non-scheduled flight will still be required to provide the information set out in repealed subsection 47(3) however this information will now be included in a new report under subsection 193(1A) of the Act (see item 5 of this Schedule).

“Non-scheduled flight”, in relation to an aircraft, is defined in section 5 of the Principal Regulation to mean a flight by the aircraft into or from Australian territory where the flight is not made under the authority of an international airline licence granted under regulations made under the *Air Navigation Act 1920* (the Air Navigation Act).

“Scheduled flight”, in relation to an aircraft, is defined in section 5 of the Principal Regulation to mean a flight by the aircraft into or from Australian territory where the flight is made under the authority of an international airline licence granted under regulations made under the Air Navigation Act.

#### **Item [5] – After section 47**

Subsection 193(1A) of the Act provides that the operator of the aircraft or vessel must give one or more other reports, as required by the regulations, in relation to the aircraft or vessel:

- (a) if the aircraft or vessel is included in a class of aircraft or vessels that is prescribed by the regulations for the purposes of paragraph 193(1A)(a) of the Act; or
- (b) in the circumstances prescribed by the regulations for the purposes of paragraph 193(1A)(b) of the Act.

This item inserts new section 47A after section 47 of the Principal Regulation which provides requirements for additional pre-arrival reports under subsection 193(1A) of the Act for aircraft on a non-scheduled flight.

New subsection 47A(1) provides that for the purposes of subsection 193(1A) of the Act, the operator of the aircraft must give another report under subsection 193(1A) in relation to the aircraft in the circumstances covered by subsection 47A(2).

The note following new subsection 47A(1) explains that a report is not required in certain circumstances and directs the reader to subsection 50(2) of the Principal Regulation.

New subsection 47A(2) provides that for the purposes of paragraph 193(1A)(b) of the Act, the prescribed circumstances are that it is intended that the aircraft enter Australian territory on a non-scheduled flight.

New subsection 47A(3) sets out the information that must be included in the report under subsection 193(1A) of the Act. New subsection 47A(3) provides that the information in relation to the aircraft that must be included in the other report is as follows:

- (a) information identifying the aircraft;
- (b) the intended first landing place of the aircraft in Australian territory;
- (c) the estimated day and time of arrival of the aircraft at the place referred to in paragraph (b);
- (d) the name and contact details of:
  - (i) the operator of the aircraft; and

- (ii) if the operator is not the owner of the aircraft—the owner of the aircraft;
- (e) details about any animals or plants in the cabin of the aircraft at the time the report is given.

New paragraph 47A(3)(e) differs from the previous requirement in paragraph 47(3)(e) by adding the words ‘at the time the report is given’. This reflects the different timeframe for providing a report under section 47A set out in new subsection 47A(7). As the report in section 47A must be provided prior to departure, the requirement to provide details about any plants or animals in the cabin is tied to a point in time. This was not necessary under repealed subsection 47(3) because the flight would have already commenced at the time the report was required to be provided, so the details of any animals or plants in the cabin of the aircraft would not be subject to change.

New subsection 47A(4) provides that the report must be given orally or in writing (including electronically).

The note following new subsection 47A(4) explains that the report must be in a form or forms approved by the Director of Biosecurity and refers the reader to paragraph 193(2)(d) of the Act.

New subsection 47A(5) provides that the report must be given to a biosecurity official.

New subsection 47A(6) provides that if the report is given using an electronic system, the report is taken to have been given to a biosecurity official.

New subsection 47A(7) provides that the report must be given prior to the aircraft commencing the flight from outside Australian territory. This timeframe is different to the timeframe for reports under section 47 which reflects the additional preparation and planning that is required to assess the biosecurity risks posed by an unscheduled flight and for appropriate resources to be deployed.

The purpose of new section 47A is to impose requirements to provide a report under subsection 193(1A) of the Act in relation to aircraft on a non-scheduled flight. The information relating to aircraft on a non-scheduled flight previously required under subsection 47(3) of the Principal Regulation (which is repealed by this Schedule) for a report under subsection 193(1) of the Act, is instead required under new subsection 47A(3) of the Principal Regulation for a report under subsection 193(1A) of the Act.

This amendment clarifies the additional reporting requirements which apply to aircraft on non-scheduled flights. Repealing subsection 47(3) and creating a new report under subsection 193(1A) allows the requirements for, and exceptions to, the report under subsection 193(1) to be streamlined to apply to aircraft on scheduled and non-scheduled flights in the same way.

## **Item [6] – Section 48 (heading)**

Section 48 of the Principal Regulation provides for pre-arrival reports under subsection 193(1) of the Act in relation to vessels other than certain vessels travelling from certain areas in the Torres Strait. The heading of section 48 currently reads “Pre-arrival report—vessels other than certain vessels travelling from certain areas in the Torres Strait”.

This item amends the heading of section 48 to add the words “under subsection 193(1) of the Act” after “Pre-arrival report”.

The purpose of this amendment is to clarify that section 48 of the Principal Regulation deals with pre-arrival reports under subsection 193(1) of the Act in relation to vessels other than certain vessels travelling from certain areas in the Torres Strait.

#### **Item [7] – Subsection 48(3) (not including the heading or the note)**

Subsection 48(3) provides that the report must be given:

- (a) if the report relates to a vessel other than a non-commercial vessel—in writing (including electronically); or
- (b) if the report relates to a non-commercial vessel—orally or in writing (including electronically).

This item repeals subsection 48(3) (not including the heading or the note) and substitutes new subsection 48(3) of the Principal Regulation.

New subsection 48(3) provides that the report must be given in writing (including electronically).

This amendment has the effect that a pre-arrival report under subsection 193(1) of the Act relating to a non-commercial vessel cannot be given orally. This aligns the requirement for both non-commercial vessels and vessels other than non-commercial vessels that the report must be given in writing (including electronically).

Electronic pre-arrival reporting for non-commercial vessel operators was implemented into the Maritime and Aircraft Reporting Systems in December 2023. Non-commercial vessels now provide pre-arrival reports through the electronic pre-arrival report.

The removal of the ability for an operator of a non-commercial vessel to make the report orally will improve the overall consistency of information that biosecurity officers receive and bring requirements for non-commercial vessels in line with the reporting requirements of all other vessels entering Australian territory. The amendment will also assist the department with extracting accurate and consistent reporting data. The department will be able to use this reporting data to assist with making fully informed policy decisions on biosecurity risks and trends and improve the department’s regulatory posture and approach to non-commercial vessels.

#### **Item [8] – Section 49 (heading)**

Section 49 of the Principal Regulation provides for pre-arrival reports under subsection 193(1) of the Act in relation to certain vessels travelling from certain areas in the Torres Strait. The heading of section 49 currently reads “Pre-arrival report—certain vessels travelling from certain areas in the Torres Strait”.

This item amends the heading of section 49 to add the words “under subsection 193(1) of the Act” after “Pre-arrival report”.

The purpose of this amendment is to clarify that section 49 of the Principal



Regulation deals with pre-arrival reports under subsection 193(1) of the Act in relation to certain vessels travelling from certain areas in the Torres Strait.

**Item [9] – Section 50 (heading)**

Section 50 of the Principal Regulation sets out exemptions to the requirement to give a pre-arrival report relating to aircraft. The heading of section 50 currently reads “Exceptions to requirement to give pre-arrival report—aircraft”.

This item omits “report” and substitutes “reports” from the heading of section 50 of the Principal Regulation.

This amendment is consequential to the amendments to section 47A made by this Schedule.

**Item [10] – Subsection 50(1) (heading)**

Subsection 50(1) of the Principal Regulation currently sets out exemptions to the requirement to give a pre-arrival report relating to aircraft on a scheduled flight. The heading of subsection 50(1) currently reads “Aircraft on scheduled flight”.

This item repeals the heading of subsection 50(1) of the Principal Regulation and substitutes the new heading “Report under subsection 193(1) of the Act”.

This amendment, together with the other amendments made to section 50 of the Principal Regulation by this Schedule, has the effect that section 50 sets out exemptions which are different based on whether the report is required to be given under subsection 193(1) or 193(1A) of the Act, rather than being different based on whether the aircraft is on a scheduled or non-scheduled flight.

**Item [11] – Subsection 50(1)**

Subsection 50(1) of the Principal Regulation currently sets out the circumstances in which the operator of an aircraft that is intended to enter, or that enters, Australian territory on a scheduled flight is not required to give a report under section 193 of the Act.

This item omits “on a scheduled flight is not required to give a report under section 193 of the Act” and substitutes “is not required to give a report under subsection 193(1) of the Act”.

The effect of this amendment is that subsection 50(1) sets out the circumstances in which the operator of an aircraft that is intended to enter, or enters, Australian territory is not required to give a report under subsection 193(1) of the Act.

This amendment, together with the other amendments made to section 50 of the Principal Regulation by this Schedule, has the effect that section 50 sets out exemptions which are different based on whether the report is required to be given under subsection 193(1) or 193(1A) of the Act, rather than being different based on whether the aircraft is on a scheduled or non-scheduled flight. This will allow the exception under subsection 50(1) from providing a pre-arrival report under subsection 193(1) of the Act to apply to operators of aircraft on both scheduled and non-scheduled flights.

### **Item [12] – Subsection 50(1) (note)**

The note following subsection 50(1) of the Principal Regulation currently explains that if none of the circumstances prescribed by subsection 47(2) of the Principal Regulation apply in relation to an aircraft on a scheduled flight, the operator of the aircraft is not required to give a report.

This item repeals the note.

This amendment is consequential to the amendments made to section 50 of the Principal Regulation by this Schedule, which have the effect that section 50, rather than subsection 47(2), sets out exemptions to the requirement to give a pre-arrival report under subsection 193(1) or 193(1A) of the Act.

### **Item [13] – Subsection 50(2) (heading)**

Subsection 50(2) of the Principal Regulation currently sets out exemptions to the requirement to give a pre-arrival report relating to aircraft on a non-scheduled flight. The heading of subsection 50(2) currently reads “Aircraft on non-scheduled flight”.

This item repeals the heading of subsection 50(2) of the Principal Regulation and substitutes the new heading “Report under subsection 193(1A) of the Act”.

This amendment, together with the other amendments made to section 50 of the Principal Regulation by this Schedule, has the effect that section 50 sets out exemptions which are different based on whether the report is required to be given under subsection 193(1) or 193(1A) of the Act, rather than being different based on whether the aircraft is on a scheduled or non-scheduled flight.

### **Item [14] – Subsection 50(2)**

Subsection 50(2) of the Principal Regulation currently sets out the circumstances in which the operator of an aircraft that is intended to enter, or that enters, Australian territory on a non-scheduled flight is not required to give a report under section 193 of the Act.

This item omits “a report under section 193 of the Act” and substitutes “another report under subsection 193(1A) of the Act”.

The effect of this amendment is that subsection 50(2) sets out the circumstances in which the operator of an aircraft that is intended to enter, or enters, Australian territory on a non-scheduled flight is not required to give a report under subsection 193(1A) of the Act.

This amendment, together with the other amendments made to section 50 of the Principal Regulation by this Schedule, has the effect that section 50 sets out exemptions which are different based on whether the report is required to be given under subsection 193(1) or 193(1A) of the Act, rather than being different based on whether the aircraft is on a scheduled or non-scheduled flight. This amendment is consequential to the creation of a new report under subsection 193(1A) and the repeal of subsection 47(3) by this Schedule.

### **Item [15] – Subsection 50(2) (note)**

The note following subsection 50(2) of the Principal Regulation currently explains that unless subsection 50(2) applies in relation to the operator of an aircraft on a non-scheduled flight, the operator must give a report as required by section 47 of the Principal Regulation.

This item repeals the note following subsection 50(2) of the Principal Regulation.

Subsection 47(3) of the Principal Regulation (repealed by item 4 of this Schedule) provides requirements for pre-arrival reports relating to aircraft on a non-scheduled flight under section 193(1). This amendment is consequential to the other amendments to section 50 that have the effect that this exemption is based on whether the report is made under subsection 193(1) or 193(1A) and not whether the aircraft is on a scheduled or non-scheduled flight and the repeal of subsection 47(3) by this Schedule.

### **Item [16] – In the appropriate position in Chapter 10**

Chapter 10 of the Principal Regulation provides for transitional matters.

This item inserts new section 125 in the appropriate position in Chapter 10 of the Principal Regulation which provides a transitional provision for amendments made by the Amendment Regulations.

New subsection 125(1) provides that the amendments of section 47 and 48 made by Schedule 1 to the *Biosecurity Amendment (2025 Measures No. 1) Regulations 2025* apply in relation to a report required to be given on or after the commencement of section 125 of the Principal Regulation.

New subsection 125(2) provides that subsection 47A, as inserted by Schedule 1 to the *Biosecurity Amendment (2025 Measures No. 1) Regulations 2025*, applies in relation to a non-scheduled flight that is intended to begin on or after the commencement of that Schedule.

New section 125 makes clear that the amendments of the Principal Regulation made by Schedule 1 to the Amendment Regulations have prospective effect.

## Statement of Compatibility with Human Rights

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

*Biosecurity Amendment (2025 Measures No. 1) Regulations 2025*

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 (2025 Measures No. 1) Regulations 2025* (the Amendment Regulations) amend a number of provisions of the *Biosecurity Regulation 2016* (the Principal Regulation) relating to pre-arrival reporting requirements in relation to non-scheduled flights and certain vessels.

Subsection 193(1) of the *Biosecurity Act 2015* (the Act) provides for the requirement to give a report (pre-arrival report) in certain circumstances including if an aircraft or vessel is intended to enter, or the aircraft or vessel enters Australian territory on a flight or voyage that commenced outside Australian territory. Subsection 193(1A) of the Act sets out that the operator of the aircraft or vessel may be required to give one or more other reports as required by the regulations. Subsection 193(2) of the Act allows the regulations to prescribe requirements relating to pre-arrival reports. Subsection 193(3) of the Act allows the regulations to prescribe exceptions to the requirement to give a pre-arrival report.

The Amendment Regulations amend the Principal Regulation to prescribe the following:

- the circumstances in relation to an aircraft that must provide a report under subsection 193(1A) of the Act for aircraft on a non-scheduled flight;
- the timeframe in which a pre-arrival report in relation to a non-scheduled flight must be given;
- the exceptions to the requirement to give a pre-arrival report in relation to a non-scheduled flight;
- the manner in which a pre-arrival report for vessels other than certain vessels travelling from certain areas in the Torres Strait must be given.

### Pre-arrival reporting – non-scheduled flights

Section 47 of the Principal Regulation prescribes requirements of pre-arrival reports in relation to aircraft on scheduled and non-scheduled flights. Scheduled flights are required to provide the information in subsection 47(2) and non-scheduled flights are required to provide the information in subsections 47(2) and (3).

The Amendment Regulations repeal subsection 47(3) and insert new section 47A. New section 47A prescribes a report under subsection 193(1A) of the Act in circumstances where the aircraft is on a non-scheduled flight. Section 47A prescribes that the report must provide the same information that was in subsection 47(3) that is being repealed. The effect of these amendments is that both scheduled and non-scheduled flights provide a report under subsection 193(1) of the Act with the requirements prescribed in subsection 47(2). Non-

scheduled flights must also provide an additional report under subsection 193(1A) of the Act with the requirements set out in section 47A.

These amendments allow for different requirements to be prescribed for the two reports. The Principal Regulation currently provides the same timeframe within which a pre-arrival report must be given for both scheduled flights and non-scheduled flights in subsection 47(7). The Amendment Regulations insert section 47A which requires operators of an aircraft on a non-scheduled flight to provide the information that was previously prescribed in subsection 47(3). The other prescribed requirements such as the manner in which the report must be given and the person to whom the report must be given mirror section 47 except for the timeframe in which to report must be given. New subsection 47A(7) requires pre-arrival reports in relation to non-scheduled flights to be given by the operator of that flight prior to the aircraft commencing the flight from outside Australian territory. This timeframe is different from the timeframe in which the report under subsection 193(1) of the Act must be given which is at the earlier of either 30 minutes before the aircraft is estimated to arrive, or as close to top of descent as is operationally practicable before the aircraft is estimated to arrive, at its first landing place in Australian territory. The earlier timeframe for reports given under subsection 193(1A) of the Act reflects the nature of the prescribed information and the additional preparation and planning that is required for non-scheduled aircraft to properly manage biosecurity risk. Receiving this information before departure, rather than prior to landing in Australia, will allow sufficient time to deploy resources to assess and respond to biosecurity risk.

Subsection 47A(3) prescribes the same information that was in subsection 47(3) with the exception of subsection 47A(3)(e). New subsection 47A(3)(e) modifies the previous requirement in subsection 47(3)(e) to provide details of any animals or plants in the cabin of the aircraft by adding the words 'at the time the report is given'. This reflects the new timeframe for providing the report under s193(1A) of the Act as prescribed in new section 47A(7). As the report in s47A must be provided prior to departure, the requirement to provide details about any plants or animals in the cabin of the aircraft could change prior to departure so the declaration is tied to a point in time. Previously as the flight had already commenced at the time the report under section 47 is provided the details of any animals or plants in the cabin of the aircraft would not be subject to change.

Section 50 of the Principal Regulation prescribes exceptions for the requirement to give a pre-arrival report. There are different exceptions for scheduled flights and non-scheduled flights. The Amendment Regulations amend subsection 50(1) of the Principal Regulation so that both scheduled flights and non-scheduled flights are subject to an exemption from giving a pre-arrival report under subsection 193(1) of the Act in circumstances where at the time the report is required to be given, there is no information to give, the aircraft is not intended to land at a landing place in Australian territory, or the aircraft is an exempt exposed conveyance. This exception previously only applied in relation to scheduled flights. This amendment will align the exception for scheduled and non-scheduled flights so now there is no requirement for non-scheduled flights to provide a report where there is no information to report under subsection 47(2). This will provide consistency in reporting obligations and reduce unnecessary administrative burdens on aircraft operators and the department.

The Amendment Regulations also amend the heading of the existing exception in subsection 50(2) to clarify that the exception is applicable to reports made under subsection 193(1A) of the Act. This amendment is consequential to the amendment to subsection 50(1). Non-

scheduled flights will continue to be required to provide a report containing the information prescribed at subsection 47A(3), which was previously prescribed in subsection 47(3), unless the aircraft is not intended to land at a landing place in Australian territory or the aircraft is an exempt exposed conveyance.

#### Pre-arrival reporting – non-commercial vessels

Section 48 of the Principal Regulation prescribes the requirements of pre-arrival reports relating to vessels other than certain vessels travelling from certain areas in the Torres Strait. Subsection 48(3) prescribes the manner in which a report must be given. The Amendment Regulations amend subsection 48(3) of the Principal Regulation to require that a pre-arrival report in relation to all kinds of vessels (except certain vessels travelling from certain areas in the Torres Strait) must be given in writing (including electronically) and removes the option of providing the report orally. This amendment reflects the current practice that all non-commercial vessels report in writing and aligns the reporting requirement for all vessels covered by this section.

#### **Human rights implications**

This Legislative Instrument may engage the right to protection from arbitrary interference with privacy in Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

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.

The Amendment Regulations create new provisions which may operate to limit the right to protection from arbitrary interference with privacy. Chapter 11 of the *Biosecurity Act 2015* (the Act) includes a range of protections relating to the collection, storage and disclosure of protected information.

The Amendment Regulations amend section 47 of the Principal Regulation and create new section 47A to create a new pre-arrival report under section 193(1A) of the Act for non-scheduled flights. This new report captures the same information that was previously captured in the pre-arrival report under subsection 193(1) of the Act and was created to allow the application of different timeframes and exceptions to the information previously captured under subsection 47(3) of the Principal Regulation.

The new report in the amended Regulations does not prescribe the collection of any new information in relation to non-scheduled flights including personal information.

The existing requirement to provide a pre-arrival report including personal information including name and contact details of the owner and operator of the aircraft may engage the rights contained in Article 17 of the ICCPR and these were considered at the time those obligations were introduced and found to be compatible. The requirement to provide those details was compatible with Article 17 because it is necessary for the legitimate objective of assessing the level of biosecurity risk associated with goods, conveyances and people that

have entered, or intend to enter, Australian territory. To protect individual privacy, the amended provision in the Principal Regulation continues to only request information that is necessary to assess the level of biosecurity risk associated with goods, conveyances or people, and, if necessary, manage any biosecurity risks appropriately. The Amendment Regulations do not impose a new requirement for additional information to be given in relation to a pre-arrival report, rather they amend the timeframes for the giving of a pre-arrival report by an operator of a non-scheduled flight, and the extension of the exemption under section 50 of the Principal Regulation to non-scheduled flights where there is no information to give.

In addition, where personal information is collected by the department, Part 2 of Chapter 11 of the Act includes a range of protections relating to the collection, storage and disclosure of protected information. Part 2 of Chapter 11 of the Act provides that only certain persons may use or disclose information obtained or generated for the purposes of the Act and that they may only do so in certain circumstances or for certain purposes set out in that Chapter. Section 580 of the Act also provides an offence for the unauthorised use or disclosure of protected information. These protections provide a safeguard against potential misuse or disclosure of information gathered under the amended provisions of the Principal Regulation.

The department maintains robust policies and procedures to protect any personal information which it holds, as documented in the department's Privacy Policy at [agriculture.gov.au/about/commitment/privacy](http://agriculture.gov.au/about/commitment/privacy). As part of these processes, personal information is held in accordance with the collection and security requirements of the Australian Privacy Principles, the department's policies and procedures and the Australian Government Protective Security Policy Framework. Should personal information held by the department be subject to unauthorised access or disclosure, the department has procedures in place to assess the incident and mitigate any harm that may have been caused and considers the incident in accordance with its responsibilities under the *Privacy Act 1988* and requirements under the Notifiable Data Breach Scheme to notify the Office of the Australian Information Commissioner of any potential eligible data breaches.

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

**The Hon. Julie Collins MP**  
**Minister for Agriculture, Fisheries and Forestry**