



Guidelines for overseas disclosure of information – *Imported Food Control Act 1992*

July 2019



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PREFACE

Guidelines for the disclosure of information under subsection 42A(5) of the *Imported Food Control Act 1992* (Cth)

Subsection 42A(5) of the *Imported Food Control Act 1992* (the **Act**) provides that the Secretary of the Department of Agriculture (the **Department**) must, in writing, make guidelines that the Secretary must have regard to before disclosing information under subsection 42A(3) of the Act.

Subsection 42A(3) of the Act provides:

(3) The Secretary may disclose information (including personal information) obtained under this Act to:

- (a) a department of the government of a foreign country; or*
- (b) an agency, authority or instrumentality of the government of a foreign country;*

if the Secretary is satisfied that the disclosure of the information to that department, agency, authority or instrumentality is necessary for that department, agency, authority or instrumentality to perform or exercise any of its functions, duties or powers.

The Guidelines are not a legislative instrument (subsection 42A(7)). The Secretary must have regard to the guidelines before disclosing information under subsection 42A(3) of the Act. The Guidelines do not constitute legal advice about how the Secretary, or their delegate, should comply with the Act or the Australian Privacy Principles in particular circumstances. The Secretary may wish to seek independent legal advice where appropriate.

The Guidelines may be updated from time to time, including to take into account changes in the Act or other legislation and court decisions.

These Guidelines were made on 11 June 2019 by the Secretary for the Department of Agriculture.

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PART 1 - INTRODUCTION

Guidelines for the disclosure of information under subsection 42A(5) of the *Imported Food Control Act 1992*

Structure and purpose of the Guidelines

These Guidelines have been made under subsection 42A(5) of the Act, after consultation with the Australian Information Commissioner.

The Guidelines for overseas disclosure of information describe the considerations that the Secretary must have regard to before disclosing information (including personal information), that has been obtained under the Act to a department, agency, authority or instrumentality of a foreign government. These Guidelines describe a structured approach for disclosing information to an entity of a foreign government relating to food imported into Australia that the Secretary is satisfied may pose a risk to human health. This approach is consistent with the Department's internal Privacy Policy, and meets the Department's obligations established under the *Privacy Act 1988* (Privacy Act) including the Australian Privacy Principles (**APPs**).

The publication and maintenance of these Guidelines on the Department's website is required under subsection 42A(8) of the Act.

Overview of the *Imported Food Control Act 1992*

Food entering Australia is subject to the Act which provides for the inspection and control of imported food using a risk-based border inspection program, the Imported Food Inspection Scheme (**IFIS**). The Department's role in monitoring imported food at the border is part of a broader food regulatory system, with responsibilities shared across many government agencies, including those at local, state, territory and federal levels.

More information about the Department's role in monitoring imported food at the border, and specifically, on the operation of the IFIS, can be found on the [Department's website](#).

The disclosure of information to foreign governments

Under the Act, the Secretary can disclose information, including personal information obtained under the Act to international parties where the Secretary is satisfied that imported food may pose a risk to human health and the information is considered to be necessary for the other party to perform or exercise any of its functions, duties or powers.

The inclusion of these provisions in the Act allows Australia to meet its international obligations relating to achieving better food safety and public health outcomes within Australia and internationally.

PART 2 – CONSIDERATIONS FOR A DISCLOSURE UNDER SUBSECTION 42A(3)

In deciding whether to make a disclosure under subsection 42A(3), the Secretary must take into account the following matters:

- (a) whether the disclosure of the information to the department, agency, authority or instrumentality of the government of a foreign country is necessary for the department, agency, authority or instrumentality to perform or exercise any of its functions, duties or powers as specified in subsection 42A(3) of the *Imported Food Control Act 1992*;
- (b) whether the disclosure is in connection with food imported into Australia that the Secretary is satisfied may pose a risk to human health, as specified in subsection 42A(4) of the *Imported Food Control Act 1992*;
- (c) any applicable international obligations or norms;
- (d) whether the disclosure of personal information is necessary, reasonable and proportionate to achieve the objectives of the *Imported Food Control Act 1992*, including whether the disclosure of de-identified information could achieve those objectives in the circumstances;
- (e) the distribution route of the products, including:
 - (i) the place of origin;
 - (ii) transport routes of the products; and
 - (iii) any potential intended destinations for the products;
- (f) the consequences (positive or negative) of any disclosure for Australia's international relationships with other foreign governments;
- (g) whether the information is commercially sensitive in nature;
- (h) whether there would be adverse consequences for overseas persons as a result of any disclosure; and
- (i) any public interest issues relating to any disclosure.