

## **EXPLANATORY STATEMENT**

Issued by Authority of the Director of Biosecurity

*Biosecurity Act 2015*

*Biosecurity (Reportable Biosecurity Incidents) Determination 2016*

### **Legislative Authority**

The *Biosecurity Act 2015* (the Biosecurity Act) provides the Commonwealth with powers to assess and manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, the environment and the economy.

Section 154 of the Biosecurity Act provides that the Director of Biosecurity may, by legislative instrument, determine that an act, omission or event is a reportable biosecurity incident in relation to goods that are subject to biosecurity control.

Section 157 of the Biosecurity Act provides that the Director of Biosecurity may, by legislative instrument, determine the information that must be included in a report required by subsection 155(1) or 156(1) of the Act, and the way in which the report must be made.

Subsections 155(1) and 156(1) of the Biosecurity Act provide that the person in charge of the aircraft or vessel carrying goods, and the person in charge of the goods, must report a reportable biosecurity incident to a biosecurity officer or the Director of Biosecurity, as soon as practicable after becoming aware of the incident.

### **Purpose**

The purpose of the *Biosecurity (Reportable Biosecurity Incidents) Determination 2016* (the Determination) is to specify the events that are reportable biosecurity incidents in relation to goods that are subject to biosecurity control. It also specifies the information that must be included in a biosecurity incident report and how the report must be made.

### **Background**

The Biosecurity Act commenced on 16 June 2016 –12 months after royal assent. The Biosecurity Act replaces the *Quarantine Act 1908* (the Quarantine Act) and provides a strong regulatory framework that enables the management of biosecurity risks in a modern and responsive manner. The Biosecurity Act enhances Australia's capacity to manage biosecurity risks into the future by providing a high-level legislative framework that clearly sets out the powers that can be exercised by officials as well as the requirements for those being regulated.

The Biosecurity Act is principles-based and lays the foundation for biosecurity risk management. The detail and specific information requirements for certain activities under the Biosecurity Act are provided for in the *Biosecurity Regulation 2016* and other delegated legislation, including this Determination. This Determination sets out the information and reporting requirements for reportable biosecurity incidents under the Biosecurity Act.

## **Impact and Effect**

The Determination provides clarity to people who may be required to report a reportable biosecurity incident under the Biosecurity Act. This includes a person in charge of goods subject to biosecurity control and person in charge of the aircraft or vessel carrying those goods. It provides the details of what events are reportable biosecurity incidents, the type of information and how the information is to be provided in relation to an incident.

While reporting such incidents has previously been on a voluntary basis, the Biosecurity Act provides a legislative requirement for reporting. This is necessary to provide for the relevant information to be collected in a timely manner to enable the assessment of biosecurity risks associated with the incidents and, if required, to manage those risks to prevent diseases or pests from entering, establishing and spreading in Australian territory.

## **Consultation**

During the 2015–16 implementation of the Biosecurity Act, the Department of Agriculture and Water Resources actively raised awareness among clients, stakeholders and the general public that new legislation commenced on 16 June 2016.

The department provided extensive opportunities for clients and stakeholders to become informed about the changes to the legislative framework so that they understood their obligations and the implications of the changes on their business. Stakeholders and clients were consulted and engaged throughout the development of the draft delegated legislation, and were encouraged to provide feedback. Fact sheets supporting the release of draft delegated legislation for public consultation were available on the department's website, and were distributed to stakeholders to provide additional clarity.

This Determination was released for 60-day consultation period. The 60-day period is in recognition of, and in compliance with the Sanitary and Phytosanitary Measures (SPS) Agreement. The SPS agreement procedures recommends that when a measure that may affect trade is proposed by a country, at least 60 days should be allowed for comments from trading partners before a measure comes into force.

The department used a multi-faceted engagement approach, including:

- targeted and voluntary engagement
- forums
- workshops
- information sessions
- industry notifications
- media releases
- industry eLearning
- fact sheets.

On 23 February 2016, the department hosted a Biosecurity Legislation Forum in Canberra targeting peak industry bodies. The forum facilitated two-way communication and feedback and provided industry groups with the opportunity for roundtable discussions about the new legislation. In addition, participants were also invited to provide feedback on content they believed would be most useful for their members at regional Biosecurity Legislation Industry roadshow forums to be held around Australia prior to commencement. The forum was

attended by approximately 30 representatives from a range of peak industry bodies including shipping, ports, petroleum, airlines, airports, freight, cargo, science, food and beverage, and animal health.

The Biosecurity Legislation Industry roadshow travelled to eight major city regions in Australia between 14 March and 6 April 2016. Each session provided participants with an overview of the new legislation and explained how the Biosecurity Act and the delegated legislation may affect industry in different regions. The sessions were attended by approximately 700 representatives overall from shipping, ports, petroleum, airlines, airports, freight, cargo, research, education, science, plant and animal health and state, territory and federal governments. Invitations were sent via the department's subscription lists and also to members of consultative committees encouraging them to share with their members.

During 2015–16, the department also held meetings and workshops with state and territory governments, other government agencies (including the Department of Health, Department of Defence and the Department of Immigration and Border Protection), as well as with consultative committees, and environmental groups. Letters were sent to government agencies that the department had not already directly engaged with to advise that draft delegated legislation had been released for public comment and to encourage them to make a submission. Regular biosecurity legislation update notifications were distributed to subscribers across five of the department's subscription lists. International trading partners were also notified via the World Trade Organization Sanitary and Phytosanitary notification.

The department received four submissions in relation to this Determination during its release for public consultation. Submissions were received from freight, shipping, government and research sectors.

The consultation undertaken built upon extensive consultation on the Biosecurity Act which began in 2009. During the development process, the department consulted with industry representatives from the cargo, shipping, ports, supply chain and logistics, airline, airport, customs, environment, animal, plant, invasive species, primary production and petroleum/exploration sectors through working groups.

The Office of Best Practice Regulation (OBPR) was consulted in the preparation of the Regulation Impact Statement (RIS) for the Biosecurity Bill 2014 (ID: 16609). The OBPR advised on 31 March 2016 that a further RIS is not required for the purposes of Biosecurity delegated legislation. The department consulted the Office of Parliamentary Counsel in the drafting of this Determination.

The Determination is a legislative instrument for the purpose of the *Legislation Act 2003*.

The Determination is compatible with 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 in the [Attachment](#).

## **Details of the *Biosecurity (Reportable Biosecurity Incidents) Determination 2016***

### **Section 1 – Name**

This section provides that the name of the Determination is the *Biosecurity (Reportable Biosecurity Incidents) Determination 2016*.

### **Section 2 – Commencement**

This section provides for the Determination to commence at the same time as when section 3 of the Biosecurity Act commences. Section 3 of the Biosecurity Act commences on 16 June 2016.

### **Section 3 – Authority**

This section provides that the Determination is made under sections 154 and 157 of the Biosecurity Act.

### **Section 4 – Definitions**

This section provides the definitions used in the Determination. Some of these definitions refer to defined terms used in the Biosecurity Act and the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016*, as in force at the commencement of the Determination. This Act and the legislative instrument are available on the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).

#### ***Act***

This definition provides that references to ‘Act’ means the Biosecurity Act.

#### ***import permit***

This definition provides that ‘import permit’ has the same meaning as in the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016*.

#### ***manifest***

This definition provides that ‘manifest’ means a list of goods that are intended to be brought or imported into Australian territory.

#### ***relevant goods***

This definition provides that ‘relevant goods’ means goods in relation to which this Determination applies under section 5.

The note clarifies that there are a number of other expressions used in this Determination that are defined in the Biosecurity Act, including conditionally non-prohibited goods, conveyance, goods, premises, prohibited goods, subject to biosecurity control and suspended goods.

### **Section 5 – Application of this instrument**

This section provides that this Determination applies in relation to:

- goods that are subject to biosecurity control, and
- exposed goods in relation to which an exposed goods order is in force.

The note refers to subsection 161(1) of the Biosecurity Act, which provides that Divisions 4 to 8 and 10 of Chapter 3 of the Biosecurity Act apply in relation to exposed goods in relation to which an exposed goods order is in force, as if those goods were subject to biosecurity control.

## **Section 6 – Events that are reportable biosecurity incidents in relation to relevant goods**

This section provides for the events, in relation to goods subject to biosecurity control and exposed goods in which an exposed goods order is in force (relevant goods), which are reportable biosecurity incidents under section 154 of the Biosecurity Act.

Subsection (1) lists the following as events that are reportable biosecurity incidents if they occur in relation to relevant goods that are prohibited goods, conditionally non-prohibited goods or suspended goods:

- the goods are in a container, a conveyance or other premises and are not as described on a manifest or an import permit relating to the goods
- the goods are in a container, a conveyance or other premises that is damaged and the goods are no longer secure
- the goods have been lost or stolen
- the goods have been destroyed in circumstances other than in compliance with a direction given by a biosecurity officer.

Subsection (2) provides that a change to the intended use of relevant goods that are conditionally non-prohibited goods is a reportable biosecurity incident. For example, a meat product that was initially imported for human consumption but is to be used instead in animal feed.

Subsection (3) lists the following as events that are reportable biosecurity incidents if they occur in relation to any relevant goods:

- the goods or any container holding the goods, or the conveyance or other premises in which the goods are being held, have been, or are likely to have been, exposed to contamination, infestation or infection from prohibited goods, conditionally non-prohibited goods or suspended goods
- the goods are infested with a live pest (for example, an insect, invertebrate or other animal) except if the goods, as infested with the live pest were authorised to be brought or imported into Australian territory by an import permit
- biosecurity measures that have been required to be taken in relation to the goods under Chapter 3 of the Biosecurity Act have been taken (including because it was not possible for the biosecurity measures to be taken in relation to the goods) – for example, the fumigation of fresh produce that cannot be undertaken because the fumigator at the treatment facility is temporary out of operation.

The purpose of the section is to specify the events that must be reported to the department if they occur in relation to the relevant goods. These events relate to where there has been a change in circumstances of the relevant goods that will require an assessment to inform if the biosecurity risk associated with those goods will need to be managed.

## **Section 7 – Requirements for reporting reportable biosecurity incidents**

This section provides for the reporting requirements in relation to an incident listed in section 6 of the Determination. Subsection 155(1) and 156(1) of the Biosecurity Act provides that the person(s) liable to report the incident is either the person in charge of the aircraft or vessel carrying the relevant goods and/or the person in charge of the relevant goods, where that person has become aware of the incident.

Subsection (1) provides that the following information must be included in a report of a reportable biosecurity incident:

- details of the goods
- the location of the goods
- a description of the incident
- if known, when and where the incident occurred
- when the person making the report became aware of the incident
- whether the goods have been moved since the incident occurred
- the name and contact details of the person making the report and any other person who may have information about the incident
- details of any steps taken to manage the incident.

Subsection (2) provides that the report must be made orally or in writing.

Subsection (3) provides that if a report is made orally, and the Director of Biosecurity or a biosecurity officer asks that person who made the report to also provide the report in writing within a specified period, then the report must also be made in writing within the period specified in the request.

The purpose of the section is to facilitate the relevant information in relation to a reportable biosecurity incident being made available to enable the department to assess the biosecurity risk associated with the relevant goods and if necessary, to manage the biosecurity risk. The powers in Divisions 4 and 5 of Chapter 3 of the Biosecurity Act are available to assess and manage biosecurity risk.

## **Statement of Compatibility with Human Rights**

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

### **Biosecurity (Reportable Biosecurity Incidents) Determination 2016**

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**

This Legislative Instrument sets out the details for what are reportable biosecurity incidents and the reporting requirements under the *Biosecurity Act 2015*. It specifies the events relating to goods that are subject to biosecurity control that are reportable biosecurity incidents. It also specifies the information that must be included for reporting these reportable biosecurity incidents and how the report must be made.

#### **Human rights implications**

This Legislative Instrument engages the following rights:

- Article 17 of the International Covenant on Civil and Political Rights (ICCPR) – Right to protection from arbitrary interference with privacy.

#### **Right to protection from arbitrary interference with privacy**

This Legislative Instrument engages the 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.

This Legislative Instrument contains provisions which may operate to limit this right. It provides the information that must be included in a report for reportable biosecurity incidents, including information relating to the identity and contact details of the person making the report. The collection of information is necessary for the legitimate objective of assessing the level of biosecurity risk associated with reportable biosecurity incidents relating to goods that are subject to biosecurity control. To protect an individual's privacy, the Legislative Instrument only requests information that is necessary to assess the level of biosecurity risk associated with the relevant goods and if necessary, manage any biosecurity risks appropriately (for example, the contact details of the person providing the report).

#### **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.

**Daryl Quinlivan**  
**Director of Biosecurity**