

## **EXPLANATORY STATEMENT**

Issued by Authority of the Director of Biosecurity and the Director of Human Biosecurity

*Biosecurity Act 2015*

*Biosecurity (Prohibited and Conditionally Non-prohibited Goods) 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.

Subsection 174(1) of the Biosecurity Act specifies that the Director of Biosecurity and Director of Human Biosecurity may jointly determine that specified classes of goods must not be brought or imported into Australian territory unless specified conditions (including conditions for administrative purposes) are complied with.

Subsection 174(3) of the Biosecurity Act provides that the Director of Biosecurity and Director of Human Biosecurity must apply the ALOP (appropriate level of protection) for Australia in conducting a risk assessment for the purpose of deciding whether to make a determination under subsection (1) specifying a particular class of goods.

### **Purpose**

The purpose of the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016* (the Determination) is to provide that specified classes of goods must not be brought or imported into Australian territory unless certain conditions are met. The conditions may relate to how the goods are manufactured, prepared or used, and where the goods originate from or that the goods not be brought or imported into Australian territory unless a permit has been granted under Division 3 of the Biosecurity Act (import permit). The Determination may in the future provide that specified goods, or classes of goods, are prohibited from being brought or imported into Australia, though as of commencement no goods are prohibited.

This Determination places regulatory controls by specifying conditions that must be met to bring or import the classes of goods into Australian territory, in order to manage biosecurity risks associated with those goods to meet ALOP for Australia.

### **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.

### **Impact and Effect**

The Determination largely replicates conditions on goods under the Quarantine Act, with some red tape reductions where possible, for example, by providing alternative conditions that may be met instead of requiring an import permit.

### **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 Biosecurity legislation commences on 16 June 2016.

The department provided extensive opportunities for clients and stakeholders to become informed about the changes to the legislative framework to ensure 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 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 a 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 41 submissions in relation to this Determination during its release for public consultation. Submissions were received from apiarists, horticulturalists, industry peak bodies, freight companies, ports, universities and state governments.

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.

### **Details/ Operation**

Details of the Determination are set out in **Attachment A**.

This Determination is a legislative instrument for the purposes of the Legislative Instruments Act 2003. Subsection 174(5) of the Biosecurity Act provides that the Determination is not subject to disallowance. The decision to make a determination under subsection 174(1) of the Biosecurity Act is a technical and scientific based decision that specified conditions are required to be comply with in applying the ALOP for Australia in relation to the bringing in or importation of specified classes of goods (conditionally non-prohibited goods).

A Statement of Compatibility with Human Rights was prepared for the Biosecurity Act. An additional statement is not required for this Determination as it is not subject to disallowance.

**Details of the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016***

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of the Determination is the *Biosecurity (Prohibited and Conditionally Non prohibited Goods) Determination 2016*.

Section 2 – Commencement

This section provides that the Determination commences at the same time as section 3 of the *Biosecurity Act 2015* (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 subsection 174(1) of the Biosecurity Act.

Section 4 – Purpose and application of this instrument

Subsection (1) specifies that the purpose of this Determination is to provide that specified classes of goods must not be brought or imported into Australian territory unless specified conditions are complied with (see subsection 174(1) of the Biosecurity Act). These goods are conditionally non-prohibited goods for the purposes of the Biosecurity Act and are specified in Part 2 of this Determination (see the note).

Subsection (2) provides that this Determination does not apply in relation to goods that are, or are intended to be brought or imported into Christmas Island or Cocos (Keeling) Islands, or on or after 1 July 2016, into Norfolk Island. A reference to Australian territory in this Determination does not include a reference to Christmas Island, Cocos (Keeling) Islands, or Norfolk Island (see subsection (3)).

The following legislative instruments will apply in relation to goods that are, or are to be brought or imported into Christmas Island, Cocos (Keeling) Islands, or on or after 1 July 2016, into Norfolk Island (see Note 1):

- *Biosecurity (Prohibited and Conditionally Non-prohibited Goods–Christmas Island) Determination 2016*
- *Biosecurity (Prohibited and Conditionally Non-prohibited Goods–Cocos (Keeling) Island) Determination 2016*
- *Biosecurity (Prohibited and Conditionally Non-prohibited Goods–Norfolk Island) Determination 2016*.

The *Biosecurity (Prohibited and Conditionally Non-prohibited Goods–Torres Strait) Determination 2016* will apply in relation to goods that are, or are intended to be moved from the protected zone area or the Torres Strait permanent biosecurity zone to another part of Australian territory (see Note 2).

Section 5 – Definitions

This section provides definitions for terms used in the Determination. Some of these definitions refer to defined terms used in the Biosecurity Act, *Gene Technology Act 2000*, *Therapeutic Goods Act 1989* and *Biosecurity Regulation 2016*, as in force from time to time. These Acts and regulation are available on the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).

The following terms are references to specified lists prepared by the Director of Biosecurity and published on the Agriculture Department's website as existing on 16 June 2016 (all lists are available at [www.agriculture.gov.au](http://www.agriculture.gov.au)):

- FMD-free country
- Listed coir peat testing laboratory
- Listed dried or preserved cut flowers or foliage
- Listed fresh cut flowers or foliage
- Listed fresh produce for human consumption
- Listed mushrooms or truffles (dried)
- Listed mushrooms or truffles (frozen)
- Listed permitted *Allium* spp. seeds
- Listed permitted *Arecaceae* (palm) seeds
- Listed permitted bark
- Listed permitted seeds
- Listed plant fibres
- List of Overseas Authorities–Aquatic Animals for Import.

The following terms also refer to external materials:

- *Index Herbariorum* – the publication ‘Index Herbariorum’ as maintained by the New York Botanical Garden, as it exists on 16 June 2016 (available at [sweetgum.nybg.org/science/ih](http://sweetgum.nybg.org/science/ih))
- *International Plant Protection Convention and phytosanitary certificate* – refers to the International Plant Protection Convention done at Rome on 6 December 1951, as in force for Australia on 16 June 2016. The Convention is in Australian Treaty Series 1952 No. 5 (1952] ATS 5) (available in the Australian Treaties Library at [www.austlii.edu.au](http://www.austlii.edu.au))
- *official veterinarian* – refers to the same term as in the *Terrestrial Animal Health Code*, 24<sup>th</sup> edition, 2015, promulgated by the World Organisation for Animal Health, (available at [www.oie.int/en](http://www.oie.int/en)). Under that Code, official veterinarian means “a veterinarian authorised by the Veterinary Authority of the country to perform certain designated official tasks associated with animal health and/or public health and inspections of commodities and, when appropriate, to certify in conformity with the provisions of Chapters 5.1 and 5.2” of that Code
- *United Nations Convention on the Law of the Sea* – refers to the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, as in force for Australia on 16 June 2016. The Convention is in Australian Treaty Series 1994 No. 31 (1994] ATS 31) (available in the Australian Treaties Library at [www.austlii.edu.au](http://www.austlii.edu.au)).

#### Section 6 – Meaning of covered by

This section provides the meaning of covered by. Goods are ‘covered by’ an import permit if the permit authorises a person to bring or import the goods into Australian territory.

### Section 7 – Meaning of *instant use*

This section provides the meaning of *instant use*. Goods for human consumption are for ‘*instant use*’ if:

- a) the goods have been commercially manufactured and packaged, and
- b) the amount in the package is intended to be a single serving; and
- c) no additional ingredients, or very few additional ingredients, are needed for goods to be used as intended by the manufacturer, and
- d) the goods require very little treatment or preparation to be used as intended by the manufacturer.

### Section 8 – Meaning of *retorted*

This section provides the meaning of *retorted*. It provides that animal products have been retorted if they have been heated in a hermetically-sealed container to a minimum core temperature of 100°C, obtaining an F<sub>0</sub> value of at least 2.8.

In relation to goods, other than animal products, they have been retorted if they have been heated in a hermetically-sealed container for a time, and to a temperature, sufficient to make the contents commercially sterile.

### Section 9 – Meaning of *shelf-stable*

This section provides the meaning of *shelf-stable*. Goods are ‘*shelf-stable*’ if:

- a) the goods have been commercially manufactured, and
- b) the goods have been packaged by the manufacturer, and
- c) the goods are in that package, and
- d) the package has not been opened or broken, and
- e) the goods are able to be stored in the package at room or ambient temperature, and
- f) the goods do not require refrigeration or freezing before the package is opened.

### Part 2 – Conditionally non-prohibited goods

This Part provides for the classes of goods that may be brought or imported into Australian territory if specified conditions are complied with.

These goods are classified into:

- Division 1 – animals, plants, biological material and infection agents that are intended to be brought or imported into Australian territory
- Division 2 – other goods that are intended to be brought or imported into Australian territory
- Division 3 – goods intended to be brought or imported from Papua New Guinea into the protected zone area under the Torres Strait Treaty.

Each division provides for the specified conditions that must be complied with in relation to the goods. These conditions may include that an import permit covering those goods be obtained or if applicable, the relevant alternative conditions be complied with.

The requirement for some goods to be covered by an import permit reflects that the bringing or importation of the goods poses an unacceptable level of biosecurity risk unless the conditions that are stipulated in an import permit are complied with. Where relevant,

alternative conditions are provided to reflect that the biosecurity risks associated with the goods can be managed to an acceptable level by complying with those specified conditions. This will provide the person intending to bring in or import those goods with the flexibility to choose whether to obtain an import permit or meet the alternative conditions.

### Division 1—Animals, plants, biological material and infectious agents

#### Section 10 – Classes of goods to which this Division applies

Subsection (1) provides that Division 1 applies to the following classes of goods:

- a) animals,
- b) plants,
- c) biological material,
- d) infectious agents,
- e) fungi,
- f) goods that contain animals, plants, biological material, infectious agents or fungi,
- g) goods that contain an ingredient that is an animal, a plant, biological material, an infectious agent or a fungus
- h) goods that are made of, or are made from an animal, a plant, biological material, an infectious agent or a fungus.

Subsection (2) provides that this Division does not apply to certain goods if they contain any of the materials as listed in subsection (2). Subsection (3) specifies those excluded plant goods for the purpose of paragraph (2)(h).

Subsections (2) and (3) reflect that certain goods that would be included within the classes of goods specified at subsection (1) do not pose an unacceptable level of biosecurity risk and are allowed to be brought or imported into Australian territory without having to meet any conditions.

#### Section 11 – Conditions—general

Subsection (1) provides that, subject to subsections (3) to (5) and Division 3, the goods to which Division 1 applies must not be brought or imported into Australian territory unless the goods are covered by an import permit or, if there are alternative conditions for those goods in a provision of Division 1, comply with those specified alternative conditions. The note to this subsection clarifies that Division 3 deals with goods that are intended to be brought or imported from Papua New Guinea into the protected zone area under the Torres Strait Treaty.

Subsection (2) clarifies that if alternative conditions are specified in the Division, a person may still bring in the goods under an import permit instead of meeting the alternative conditions.

Subsections (3), (4) and (5) provide the conditions that apply to bringing or importing goods that are covered under Division 1 (*the relevant goods*) that are made of, or are made from, or contain, two or more different kinds of goods (*the component goods*), into Australian territory.

Subsection (3) provides that if no alternative conditions are specified for one of those component goods, the relevant goods must not be brought in or imported unless they are covered by an import permit. This means that for goods that have more than one component,

an import permit is required to bring in or import those goods if there are no alternative conditions specified for a component of the goods.

For example, a person who wishes to bring or import into Australian territory a commercial quantity of goods made from meat and honey (relevant goods), must obtain an import permit covering those goods. This is because meat in commercial quantities must not be brought or imported into Australian territory unless it is covered by an import permit. In this instance, the alternative conditions set out in section 19 for honey will not apply because an import permit is required for the meat component of the relevant goods.

Subsection (4) provides that if there are alternative conditions for the relevant goods specified in another provision of Division 1 and alternative conditions for each of the component goods specified in another provisions of Division 1, the relevant goods must not be brought in or imported unless one of the following applies:

- a) the relevant goods are covered by an import permit
- b) the alternative conditions specified for the relevant goods are complied with,
- c) the alternative conditions specified for each of the component goods are complied with.

For example, a person who wishes to bring or import into Australian territory noodles that contain meat-based flavouring and eggs, must have an import permit covering those goods or comply with the alternative conditions for noodles (see section 18) or both of the alternative conditions for meat-based flavouring and eggs (see sections 15 and 17 respectively).

Subsection (5) provides that if there are alternative conditions for each of the component goods specified in one or more provisions of Division 1 and subsection (4) does not apply, the relevant goods must not be brought or imported into Australian territory unless:

- a) they are covered by an import permit, or
- b) the alternative conditions specified for each of the component goods are complied with.

For example, a person who wishes to bring in relevant goods that are made of fish and dairy products, must have an import permit covering those goods or comply with both the alternative conditions for fish products (see section 14) and for dairy products (see section 16).

#### Sections 12 to 37 – Alternative conditions

These sections specify in a table in each section the alternative conditions for bringing or importing the following classes of goods that are covered under Division 1 into Australian territory:

- section 12 – live animals
- section 13 – dead animals, animal parts and related goods
- section 14 – dead fish, crustaceans and related goods
- section 15 – meat and meat products
- section 16 – dairy products
- section 17 – eggs and egg products
- section 18 – miscellaneous goods for human consumption
- section 19 – honey and bee products



- section 20 – foods and supplements for animals
- section 21 – cosmetics and related goods
- section 22 – live plants for use as nursery stock
- section 23 – miscellaneous plant materials and plant products
- section 24 – nuts for human consumption
- section 25 – cereals, grains, legumes, pulses and oil seeds for human consumption
- section 26 – fresh cut flowers and foliage for decorative purposes
- section 27 – packaging
- section 28 – fertilisers, soil conditioners and potting mixes of plant origin
- section 29 – produce for human consumption
- section 30 – seeds
- section 31 – timber and timber products
- section 32 – stater cultures
- section 33 – highly refined organic chemicals and substances for certain purposes
- section 34 – biological material intended for personal use
- section 35 – fertilisers, soil conditioners and soil growth supplements made of animal material, plant material or biological material
- section 36 – other biological material for certain purposes
- section 37 – bioremedial products.

The alternative conditions may include that the goods:

- are for a particular use, for example, personal use or display only
- contain or do not contain specified ingredients or materials, for example, no material of animal origin,
- are clean and free from, for example, animal and plant material, adhering material, soil or extraneous matter
- have been grown, manufactured, prepared, processed or packaged in a specified manner or at a specified location, for example, the goods have been commercially manufactured, prepared or packaged
- are accompanied by required evidence, for example, a veterinary certificate, health certificate, phytosanitary certificate, commercial documentation or declaration by the manufacturer of the goods
- are labelled in a specified manner, for example, with date of processing and country of production
- are brought in a particular quantity or amount only
- are in a particular form, state or manner, for example, shelf-stable, dried, retorted or not viable
- are specified in a particular list prepared by the Director of Biosecurity and published on the Agriculture Department’s website.

#### Division 2— Other goods

This Division provides for conditionally non-prohibited goods that are intended to be brought or imported into Australian territory and that are not covered by Division 1.

#### Section 38 – Soil

Subsection (1) provides that this section applies to bringing in or importing soil (other than soil adhering to goods) and goods containing soil.

Subsection (2) provides that these goods must not be brought or imported unless they are covered by an import permit or they will be gamma irradiated to manage the biosecurity risks before they are released from biosecurity control.

### Section 39 – Water

Subsection (1) provides that this section applies to bringing in or importing water, including sea or ocean water.

Subsection (2) provides that this section does not apply to commercially bottled water, rose water, orange flower water, or holy water for personal use. These goods are excepted as they do not pose an unacceptable level of biosecurity risk and are allowed to be brought or imported into Australian territory without having to meet any conditions.

Subsection (3) provides the conditions that apply to bringing or importing goods that is covered under this section. These goods must be covered by an import permit or comply with the conditions specified in paragraph (3)(b).

### Section 40 – Fertilisers, soil conditioners and soil growth supplements

Subsection (1) provides for this section to apply to bringing in or importing fertilisers, soil conditioners and supplements used to promote growth in soil that are made of chemical, mined or synthetic materials. The note clarifies that Division 1 applies to fertilised, soil conditioners and soil growth supplements that are made of animal material, plant material or biological material (see section 35).

Subsection (2) provides that goods other than chemical fertilisers must not be brought in or imported unless the goods are covered by an import permit.

Subsection (3) provides that liquid chemical fertilisers must not be brought in or imported unless they are accompanied by a declaration by the manufacturer of the goods stating that the goods do not contain any ingredients of animal, plant or microbial origin.

Subsection (4) provides that chemical fertilisers (other than liquid chemical fertilisers) must not be brought in or imported unless they are covered by an import permit or comply with the conditions specified in paragraph (4)(b).

### Section 41 – Used beehives and used beekeeping equipment

Subsection (1) provides that this section applies to bringing in or importing used beehives and used beekeeping equipment, including protective clothing.

Subsection (2) provides that these goods must not be brought in or imported unless the goods are covered by an import permit.

### Section 42 – Tyres

Subsection (1) provides that this section applies to used tyres on rims, used tyres off rims, and commercially retreaded tyres.

Subsections (2) and (3) provide that used tyres on rims and used tyres off rims must not be brought in or imported unless specified conditions are met.

Subsection (4) provides that commercial retreaded tyres must not be brought in or imported unless the goods are covered by an import permit.

#### Section 43 – Used machinery and equipment (other than used beekeeping equipment or used veterinary equipment)

Subsection (1) provides that this section applies to bringing or importing the following into Australian territory:

- a) used earth moving, agricultural, construction or timber felling machinery or equipment (including assembled parts),
- b) used mining machinery, including oil-field drilling machinery that has come into contact with soil or other material of animal or plant origin,
- c) used grain-milling machinery,
- d) field-tested agricultural machinery that has come into contact with soil or material of animal or plant origin, and
- e) food processing equipment.

Subsection (2) provides that this section does not apply to used beekeeping equipment or used veterinary equipment. These goods are excepted as the conditions for bringing or importing them into Australian territory are outlined in sections 41 and 44.

Subsection (3) specifies the conditions that apply to goods that are covered under this section.

#### Sections 44 to 48

For each of sections 44 to 48, subsection (1) provides that the relevant section applies to the classes of goods as follows:

- section 44 - used veterinary equipment that is not from New Zealand
- section 45 - used clothes and cloth rags in commercial consignments
- section 46 - mineral and metal ores, rocks and sand
- section 47 - human blood, human tissue and similar goods
- section 48 – hair, teeth or bones from a human’s body (other than human remains)

For each of sections 44 to 48, subsection (2) specifies the conditions that apply to the goods.

#### Division 3 – Goods intended to be brought or imported from Papua New Guinea into the protected zone area under the Torres Strait Treaty

##### Section 49 – Goods to be brought or imported from Papua New Guinea into the protected zone area under the Torres Strait Treaty

Subsection (1) provides that this section applies to bringing or importing the following from Papua New Guinea into the protected zone area under the Torres Strait Treaty:

- a) fish meat
- b) coconut (processed or without husk)
- c) sago
- d) cooked taros, cooked yams and cooked cassava
- e) kundu drums made from any of the following: lizard skin, snake skin, hard treated beeswax, soft wood
- f) empty sea shells

- g) goods made from one of both of the following: dried pandanus, dried palm leaves
- h) bows of black palm or bamboo
- i) spears of bamboo, mangrove or wongai wood with a steel prong
- j) beads and jewellery made of seeds
- k) wood carvings
- l) goods made from woven fibres.

Subsection (2) provides that these goods must not be brought or imported unless the goods are covered by an import permit or comply with one of the following:

- alternative conditions specified in subsection (3)
- alternative conditions for bringing or importing these goods into Australian territory as specified in the relevant provisions in Division 1.

For example, a person who wishes to bring or import a wood carving from Papua New Guinea into the protected zone area under the Torres Strait Treaty must have an import permit covering the goods, or comply with the alternative conditions in subsection (3) or comply with the alternative conditions specified for manufactured wooden goods in item 3 of the table in section 31 of Division 1.

Note 1 clarifies that this section gives effect to Australia's obligations under the Torres Strait Treaty. Note 2 clarifies that the following terms are as defined in subsection 617(4) of the Biosecurity Act: protected zone area, protected zone vessel, Torres Strait Treaty, traditional activities and traditional inhabitants.