

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

GOODS DETERMINATIONS FOR PARTS OF AUSTRALIAN TERRITORY

Determinations covered by this statement

Biosecurity (Prohibited and Conditionally Non-prohibited Goods – Norfolk Island) Determination 2016

Biosecurity (Prohibited and Conditionally Non-prohibited Goods – Christmas Island) Determination 2016

Biosecurity (Prohibited and Conditionally Non-prohibited Goods – Cocos (Keeling) Islands) 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) Determinations for parts of Australian territory (these Determinations) is to provide that specified classes of goods must not be brought or imported into the destination part of Australian territory specified in column 2 of items 1 – 8 of the table in section 5 of the *Biosecurity (Movements between Parts of Australian Territory) Declaration 2016* from the origin part of Australian territory specified in column 1 of that item 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).

These Determinations place regulatory controls by specifying conditions that must be met to bring or import the classes of goods from certain origin parts to certain destination parts in Australian territory, in order to manage biosecurity risks associated with those goods to the Appropriate Level of Protection for Australia.

Background

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 these Determinations.

Impact and Effect

These Determinations largely replicate the conditions on goods being brought or imported into Australian territory from an international origin, as prescribed in the *Biosecurity (Prohibited and Conditionally Non-Prohibited Goods) Determination 2016*. However, given the unique pest and disease status of these external Territories in comparison to the mainland, where necessary substitute provisions have been provided to ensure the specific needs of each external territory are met.

The Determinations for Christmas Island and Cocos (Keeling) Islands also largely replicate the conditions on the importation of goods into these places under the Quarantine Act. For some commodities, changes have been made to import conditions to reduce regulation without increasing the biosecurity risk to an unacceptable level.

From 1 July 2016, the *Norfolk Island Legislation Amendment Act 2015* will extend the Biosecurity Act to Norfolk Island. This extension will mean that persons bringing or importing certain goods into Norfolk Island will need to ensure that the goods meet prescribed requirements to effectively manage the biosecurity risks associated with those goods.

These Determinations will only require high risk goods or goods that require assessment on a case-by-case basis to obtain an import permit. As much as possible, these Determinations provide alternative conditions that may be met to bring in or import goods into those parts of Australian territory without obtaining an import permit. Including, that for certain goods one of the alternative conditions that can be met instead of obtaining an import permit is the goods are being moved from another part of 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 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.

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.

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 these Determinations.

Details/ Operation

Details of these Determinations are set out in [Attachment A](#).

These Determinations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*. However, the Determinations are not subject to disallowance under subsection 174(5) of the Biosecurity Act. 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 Appropriate Level of Protection for Australia in relation to the bringing in or importation of specified classes of goods.

A Statement of Compatibility with Human Rights was prepared for the Biosecurity Act. An additional statement is not required for these Determinations as they are not subject to disallowance.

Details of the Goods Determinations for Parts of Australian Territory

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of each of these Determinations is the Biosecurity (Prohibited and Conditionally Non-prohibited Goods – [*relevant external territory*]) Determination 2016.

Section 2 – Commencement

This section provides for the Determinations for Christmas Island and Cocos (Keeling) Islands to commence on 16 June 2016, and the Determination for Norfolk Island to commence from 1 July 2016.

Section 3 – Authority

This section provides that these Determinations are made under subsection 174(1) of the Biosecurity Act.

Section 4 – Purpose and application of this instrument

Subsection (1) specifies that the purpose of these Determinations is to provide that specified classes of goods must not be brought or imported into Christmas Island, Cocos (Keeling) Islands or Norfolk Island 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 these Determinations apply in relation to goods that are, or are intended to be brought or imported into Christmas Island, Cocos (Keeling) Islands or Norfolk Island, whether or not the goods are outside Australian territory or in another part of Australian territory.

A note is included to clarify that section 174 of the Biosecurity Act applies in relation to the movement of goods to these external Territories from another part of Australian territory by virtue of items 1, 6 and 7 of the table in section 5 of the *Biosecurity (Movements between Parts of Australian Territory) Declaration 2016* (made under subsection 618(2) of the Act) and sections 619 and 620 of the Biosecurity Act.

The *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016* will apply in relation to goods that are, or are intended to be brought or imported into Australian territory (other than Christmas Island, Cocos (Keeling) Islands, or on or after 1 July 2016, into Norfolk Island).

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 brought or imported from the protected zone area or the Torres Strait permanent biosecurity zone into another part of Australian territory.

Section 5 – Definitions

This section provides definitions for terms used in these Determination.

Subsection (2) provides that a word or phrase used in these Determinations and in the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016* has the same meaning in these Determination as it has in that Determination.

Part 2 – Conditionally non-prohibited goods

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

Section 6 – 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 the relevant external 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 the relevant external 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 the relevant external 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 relevant external 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 the relevant external 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).

Alternative condition sections

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 the relevant external territory. Alternative conditions vary for each relevant external territory, but cover the following classes of goods:

- live animals
- dead animals, animal parts and related goods
- dead fish, crustaceans and related goods
- meat and meat products
- dairy products
- eggs and egg products

- miscellaneous goods for human consumption
- honey and bee products
- foods and supplements for animals
- cosmetics and related goods
- live plants for use as nursery stock
- miscellaneous plant materials and plant products
- nuts for human consumption
- cereals, grains, legumes, pulses and oil seeds for human consumption
- fresh cut flowers and foliage for decorative purposes
- packaging
- fertilisers, soil conditioners and potting mixes of plant origin
- produce for human consumption
- seeds
- timber and timber products
- stater cultures
- highly refined organic chemicals and substances for certain purposes
- biological material intended for personal use
- fertilisers, soil conditioners and soil growth supplements made of animal material, plant material or biological material
- other biological material for certain purposes
- 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
- are brought or imported from another part of Australian territory.

Division 2— Other goods

This Division provides for conditionally non-prohibited goods that are intended to be brought or imported into the relevant external territory and that are not covered by Division 1. Each section specifies a class of goods and any conditions required to be met if the goods are

brought or imported into the relevant external territory. This division covers the following classes of goods:

- soil
- water
- fertilisers, soil conditioners and soil growth supplements
- used beehives and used beekeeping equipment
- tyres
- used machinery and equipment (other than used beekeeping equipment or used veterinary equipment)
- used veterinary equipment that is not from New Zealand
- used clothes and cloth rags in commercial consignments
- mineral and metal ores, rocks and sand
- human blood, human tissue and similar goods
- hair, teeth or bones from a human's body (other than human remains)

The conditions may include that the goods:

- require an import permit
- 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 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 brought in a particular quantity or amount only
- are brought or imported from another part of Australian territory.