

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No.3) 2017

Legislative Authority

Subsection 182(1) of the *Biosecurity Act 2015* (the Act) provides that the Director of Biosecurity may determine that specified goods, or a specified class of goods, (including conditionally non-prohibited goods) must not be brought into Australian territory for a specified period that is no longer than 6 months.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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 (Suspended Goods—Uncooked Prawns) Determination 2017* (Principal Determination) prohibits uncooked prawns and uncooked prawn meat from being brought into or imported to Australian territory. The purpose of the *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 3) 2017* (Amendment Determination) is to exempt from the prohibition imposed by the Principal Determination Australian wild-caught prawns processed overseas and re-exported to Australia.

Background

On 6 January 2017, the Director of Biosecurity made the Principal Determination to prohibit uncooked prawns and uncooked prawn meat from being brought into or imported to Australian territory for a period of 6 months. The purpose of the Principal Determination is to manage the biosecurity risk posed by imported uncooked prawns to an acceptably low level.

Assessments of the biosecurity risks associated with WSSV in relation to the following goods were undertaken on Australian wild-caught prawns processed overseas and re-exported to Australia.

The assessments show that those goods represent an acceptable level of biosecurity that meets Australia's Appropriate Level of Protection (ALOP).

Impact and Effect

Under the Amendment Determination, uncooked prawns and uncooked prawn meat will not be allowed to be brought into or imported to Australian territory for the duration of the Principal Determination unless they fall within one or more of the exceptions above.

Consultation

The department continues to work with relevant stakeholders in relation to the Principal Determination. The department has ensured appropriate internal consultation has taken place so that stakeholders can be supported once the Amendment Determination commences in four weeks.

Details/ Operation

Details of the Amendment Determination are set out in the [Attachment](#).

The Amendment Determination is a legislative instrument but, under section 182(6) of the Act, section 42 (disallowance) of the *Legislation Act 2003* does not apply to the Amendment Determination. Consequently, a Statement of Compatibility with Human Rights is not required.

Details of the *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 3) 2017*

Section 1 – Name

This section provides that the name of the Amendment Determination is the *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 3) 2017*.

Section 2 – Commencement

This section provides that sections 1 to 6, Schedule 1, 3 and 4 commences the day after registration. Schedule 2 commences after the end of the period of four weeks beginning on the day of registration.

Section 3 – Authority

This section provides that the Amendment Determination is made under section 182(1) of the *Biosecurity Act 2015* (Act).

Section 4 – Definitions

This section sets out defined terms used in the Amendment Determination. It notes that a number of terms used in the Amendment Determination are defined in the Act.

Section 5 – Reasons for making this determination

This section provides the reasons for making the determination as required by section 182(5) of the *Biosecurity Act 2015*.

The reason explains why, having undertaken further assessment of the biosecurity risks associated with the proscribed class of goods, that it is possible to except further goods from the suspension under the Principal Determination. Detailed reasons are set out in Schedules 3 and 4.

Section 6 – Schedules

This section provides that the Amendment Determination is amended as set out in Schedules concerned, and any other item in a Schedule has effect according to its terms.

Schedule 1 – Amendments commencing on the day after registration

This Schedule amends the *Biosecurity (Suspended Goods—Uncooked Prawns) Determination 2017*.

Item 1 inserts at the end of the bulleted list in the note under section 5 ‘the *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 3) 2017*’.

Item 2 omits the definition of ‘area to which the WSSV Movement Control Order relates’ and ‘WSSV Movement Control Order’.

Item 3 inserts ‘subject to subsection (4),’ before ‘either’.

Item 4 omits ‘area to which the WSSV Movement Control Order relates’ from subparagraph 7(3)(f)(i).

Item 5 inserts ‘subject to subsection (4),’ before the first occurrence of ‘uncooked’ in paragraph 7(3)(i).

Item 6 omits ‘other than the area to which the WSSV Movement Control Order relates’.

Item 7 inserts after subsection 7(3):

(4) Paragraphs 7(3)(f) and (i) apply only in relation to goods in the class uncooked prawns and uncooked prawn meat that have been moved from the area in which they were caught or harvested in accordance with any applicable requirement under Australian law that relates to biosecurity risk in relation to the movement of goods in that class.

Note: An example of such a law is Movement Control Orders made from time to time under the *Biosecurity Act 2014* (Qld) that restrict the movement of WSSV carriers (namely, decapod crustaceans and polychelate worms) from various areas in Queensland.

Schedule 2—Amendments commencing 4 week after registration

This Schedule amends the *Biosecurity (Suspended Goods—Uncooked Prawns) Determination 2017*.

Item 1 inserts a definition of ‘foreign country health certificate’, ‘foreign country processing declaration’, ‘overseas authority’, and ‘YHV’.

Item 2 inserts at the end of subsection 7(3):

- (j) subject to subsection (4), uncooked prawns and uncooked prawn meat in a processed form (the **product**), if the product:
 - (i) derives from prawns that were:
 - (A) wild-caught in Australian territory; and
 - (B) exported to another country, either in the form of uncooked prawns or uncooked prawn meat, for processing; and
 - (ii) is brought or imported into Australian territory without first having been brought or imported into any other country; and
 - (iii) is accompanied by:
 - (A) a foreign country processing declaration; and
 - (B) a foreign country health certificate;that relates to the product; and
 - (iv) is not covered by paragraph (i);

Item 3 omits ‘and (i)’ and substitutes ‘, (i) and (j)’.

Schedule 3—Reasons—reasons for the amendments set out in Schedule 1

This Schedule sets out the statement of reasons for the amendments set out in Schedule 1. The reasons are as follows:

The determination currently refers to a movement control order as notified in the ‘Movement Control Order Notice (Logan and Albert Rivers) – White Spot Syndrome Virus’, which was made under the *Biosecurity Act 2014* (Qld), on 20 January 2017.

This movement control order has since been re-made.

The amendments set out in Schedule 1 are to ensure that the determination operates with respect to relevant movement control orders of this type as they are currently in force, and as they are updated into the future.

Schedule 4—Reasons—Australian wild-caught prawns processed overseas and re-exported to Australia

This Schedule sets out the statement of reasons for exempting Australian wild-caught prawns processed overseas and re-exported to Australia. The reasons are as follows:

In light of the amendments to be made to the principal determination, uncooked Australian wild-caught prawns exported overseas for processing, and re-exported to Australia, represent an acceptable level of biosecurity risk that meets Australia’s ALOP on the basis that:

- With the exception of the area of the current outbreak (paragraph 5(d) of the principal determination), Australia’s territorial waters are considered free of WSSV.
- Prior to the principal determination, Australian wild-caught prawns were exported to Vietnam, Indonesia, China and other overseas countries for processing and re-export to Australia. Prawns imported into Australia through these arrangements were subject to on-arrival testing for WSSV and YHV in line with the import policy for uncooked prawns and uncooked prawn meat from all countries, other than New Caledonia.
- With the exception of the Thai Department of Fisheries, the Department has not assessed the relevant exporting country overseas authorities for their ability to oversee a secure supply chain for processing Australian-origin prawns.
- Although Australian wild caught prawns are considered free of WSSV (except those sourced from the area defined in Queensland’s Movement Control Order for WSSV) and YHV, when processed overseas there may be opportunities for these prawns to be contaminated with WSSV or YHV or substituted with potentially diseased prawns. A secure supply chain was considered necessary to reduce the likelihood of contamination or substitution throughout processing.

Residual biosecurity risk can be further addressed by measures available under the Act. These include but are not limited to the following processes:

- The imposition of conditions on import permits, such as requirements for:

- a declaration by the overseas authority on an official health certificate that the imported prawns are wild-caught prawns of Australian origin, processed at an overseas authority-approved establishment with procedures in place to ensure segregation from non-Australian origin prawn products and other sources of contamination throughout transport, processing and storage; and
- exporting country certification that all batches of processed uncooked prawns are found to be free of WSSV and YHV based on an OIE-recognised testing method to confirm freedom from disease. Overseas authority certification supports risk management across the biosecurity continuum.
- The Department is to be alerted by the overseas authority if positive test results for WSSV or YHV are generated from consignments of Australian-origin prawns processed in the approved establishments.
- Intervention on arrival. Measures may include:
 - increased on-arrival inspections of batches to ensure they meet the conditions specified on the import permit; and
 - an appropriate level of on-arrival testing for WSSV and YHV; and
 - holding the product in a premises covered by an approved arrangement pending the outcome from inspection and/or testing.
- Should a positive test result be found onshore:
 - ordering the product to be exported from Australian territory, destroyed or treated; and
 - if the importer requests it, and at the importer's expense, conducting a (positive result) retest at the Australian Animal Health Laboratory (AAHL).