

## **EXPLANATORY STATEMENT**

### *Biosecurity Act 2015*

#### *Biosecurity Legislation (Prohibited and Conditionally Non-prohibited Goods) Amendment (Alternative Conditions–Cut Flowers) Determination 2018*

### **Legislative Authority**

Subsection 174(1) of the *Biosecurity Act 2015* (the Act) empowers the Director of Biosecurity and the Director of Human Biosecurity to 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.

The Director of Biosecurity and the Director of Human Biosecurity have made a number of determinations under subsection 174(1), which relevantly include (collectively, the **Goods Determinations**):

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

Under the Goods Determinations, the specified conditions for certain goods for the purposes of subsection 174(1) are that, subject to certain exceptions, the goods must not be brought or imported into the relevant place unless:

- (a) the goods are covered by an import permit; or
- (b) if alternative conditions for bringing or importing the goods into the relevant place are specified in a provision in a certain Division of a Goods Determination—the alternative conditions are complied with.

In addition to the power to make this instrument under subsection 174(1) of the Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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**

On 1 March 2018, Schedule 2 of the *Biosecurity Legislation (Prohibited and Conditionally Non-prohibited Goods) Amendment (Alternative Conditions) Determination 2017* (the ‘Amendment Determination’) is due to commence. Schedule 2 of the Amendment Determination amends the alternative conditions for fresh cut flowers and foliage for the Goods Determinations.

Alternative conditions for cut flowers and foliage that were applied to Christmas Island and Cocos (Keeling) Islands as a result of the Amendment Determination would not have been appropriate for those territories. Accordingly, amendments are required to the Christmas Island and Cocos (Keeling) Islands determinations which will have the effect of repealing the amendments made by the Amendment Determination that relate to fresh cut flowers and foliage for decorative purposes for Christmas Island and Cocos (Keeling) Islands, and substituting them with the previously existing alternative conditions, as well as one additional alternative condition, being that the goods are brought or imported from a part of Australian territory.

Amendments will also be made to definitions of and references to lists of species of fresh cut flowers and foliage with alternative conditions for import, so that a separate list and definition will be used in each Goods Determination.

The amendments described in the paragraphs above, ensure that the import conditions for fresh cut flowers and foliage for Christmas Island and Cocos (Keeling) Islands manage biosecurity risks to the Appropriate Level of Protection (ALOP) for Australia. Australia's ALOP is a very high level of sanitary and phytosanitary protection aimed at reducing biosecurity risks to a very low level, but not to zero.

## **Background**

The Act is principles-based and lays the foundation for biosecurity risk management. The detail and specific information requirements for certain activities under the Act are provided for in the *Biosecurity Regulation 2016* and other delegated legislation, including the Goods Determinations.

## **Impact and Effect**

This Determination ensures that biosecurity risks associated with fresh cut flowers and foliage continue to be effectively managed, while reducing unnecessary regulatory burden for importers into Christmas Island and Cocos (Keeling) Islands.

## **Consultation**

The Department has prepared this Determination taking into account feedback and communication with clients and stakeholders in Christmas Island and Cocos (Keeling) Islands.

The Office of Best Practice Regulation has approved a standing exemption from the Regulatory Impact Statement Preliminary Assessment process for minor amendments to the Goods Determinations (ID 23368). Accordingly, a Preliminary Assessment has not been conducted for the Determination.

## **Details/Operation**

Details of the Determination are set out in Attachment A.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*. Subsection 174(5) of the Act provides that the Determination is not subject to disallowance. Consequently, a Statement of Compatibility with Human Rights is not required.

The decision to make a determination under subsection 174(1) of the Act is a technical and scientific based decision that specified conditions are required. The decision is made applying the ALOP for Australia in relation to the bringing in or importation of specified classes of goods (conditionally non-prohibited goods).

**Details of the *Biosecurity Legislation (Prohibited and Conditionally Non-prohibited Goods) Amendment (Alternative Conditions–Cut Flowers) Determination 2018***

**Section 1 — Name**

This section provides that the name of the determination is the *Biosecurity Legislation (Prohibited and Conditionally Non-prohibited Goods) Amendment (Alternative Conditions–Cut Flowers) Determination 2018*.

**Section 2 — Commencement**

This section provides for the whole of the instrument to commence immediately after the commencement of Schedule 2 of the *Biosecurity Legislation (Prohibited and Conditionally Non-prohibited Goods) Amendment (Alternative Conditions) Determination 2017*, on 1 March 2018.

**Section 3 — Authority**

This section provides that the Amendment Determination is made under subsection 174(1) of the *Biosecurity Act 2015*.

**Section 4 — Schedules**

This section provides that the instruments specified in the Schedules to the Amendment Determination are amended as set out in the applicable items in the Schedule concerned.

## Schedule 1 — Amendments

### *Biosecurity (Prohibited and Conditionally Non-prohibited Goods—Christmas Island) Determination 2016*

#### **Item 1 Subsection 5(1)**

Item 1 inserts a definition of “listed fresh cut flowers or foliage (Christmas Island and Cocos (Keeling) Islands)”. A listed fresh cut flower or foliage is a species of flower or foliage (or part of a flower or foliage) that is included in the List of Species of Fresh Cut Flowers and Foliage with Alternative Conditions for Import (Christmas Island and Cocos (Keeling) Islands) prepared by the Director of Biosecurity and published on the department’s website, as existing on 1 March 2018. It sets out the species of fresh cut flowers and foliage that may be imported under the alternative conditions for fresh cut flowers or foliage, inserted by item 3 into section 20.

#### **Item 2 Subsection 5(1)**

Item 2 repeals the definition of listed fresh cut flowers or foliage (External Territories). This is a consequential amendment to the amendment in item 1.

#### **Item 3 Section 20 (table)**

Item 3 repeals and replaces the table at section 20, to provide new conditions for fresh cut flowers and foliage, and *Lilium* spp. cut flowers.

New table item 1 provides alternative conditions for fresh cut flowers and foliage. The conditions require that the goods are either brought or imported from a part of Australian territory, or are listed fresh cut flowers or foliage and certain requirements are met. If the goods are listed fresh cut flowers or foliage, the goods must either be accompanied by evidence stating the botanical name (including genus and species) of the goods, or be brought in for personal use as baggage, in a quantity of no more than 6 small boxes, bouquets or equivalent.

Fresh cut flowers and foliage brought or imported from a part of Australian territory pose minimal biosecurity risk, as the goods have either been grown in Australia, or were required to be released from biosecurity control when they were imported into Australia. For fresh cut flowers and foliage brought or imported from outside of Australia which are not for personal use, evidence that the goods are listed fresh cut flowers or foliage is required to adequately manage the biosecurity risks.

New table item 2 provides alternative conditions for *Lilium* spp. cut flowers. The conditions require that the goods were grown and produced in Taiwan, are commercial hybrid varieties free from stem bulbils, and are accompanied by a phytosanitary certificate attesting that those conditions have been met, as well as the botanical name (including genus and species) of the goods.

Cut flowers of the *Lilium* species from Taiwan pose minimal biosecurity risk when the goods are free from stem bulbils, and when accompanied by certification attesting the consignment being free from bulbils, as well as the botanical name of the goods.

***Biosecurity (Prohibited and Conditionally Non-prohibited Goods—Cocos (Keeling) Islands) Determination 2016***

**Item 4 Subsection 5(1)**

Item 4 inserts a definition of “listed fresh cut flowers or foliage (Christmas Island and Cocos (Keeling) Islands)”. A listed fresh cut flower or foliage is a species of flower or foliage (or part of a flower or foliage) that is included in the List of Species of Fresh Cut Flowers and Foliage with Alternative Conditions for Import (Christmas Island and Cocos (Keeling) Islands) prepared by the Director of Biosecurity and published on the department’s website, as existing on 1 March 2018. It sets out the species of fresh cut flowers and foliage that may be imported under the alternative conditions for fresh cut flowers or foliage, inserted by item 6 into section 21.

**Item 5 Subsection 5(1)**

Item 5 repeals the definition of listed fresh cut flowers or foliage (External Territories). This is a consequential amendment to the amendment in item 4.

**Item 6 Subsection 21 (table)**

Item 6 repeals and replaces the table at section 21, to provide new conditions for fresh cut flowers and foliage, and *Lilium* spp. cut flowers.

New table item 1 provides alternative conditions for fresh cut flowers and foliage. The conditions require that the goods are either brought or imported from a part of Australian territory, or are listed fresh cut flowers or foliage and certain requirements are met. If the goods are listed fresh cut flowers or foliage, the goods must either be accompanied by evidence stating the botanical name (including genus and species) of the goods, or be brought in for personal use as baggage, in a quantity of no more than 6 small boxes, bouquets or equivalent.

Fresh cut flowers and foliage brought or imported from a part of Australian territory pose minimal biosecurity risk, as the goods have either been grown in Australia, or were required to be released from biosecurity control when they were imported into Australia. For fresh cut flowers and foliage brought or imported from outside of Australia which are not for personal use, evidence that the goods are listed fresh cut flowers or foliage is required to adequately manage the biosecurity risks.

New table item 2 provides alternative conditions for *Lilium* spp. cut flowers. The conditions require that the goods were grown and produced in Taiwan, are commercial hybrid varieties free from stem bulbils, and are accompanied by a phytosanitary certificate attesting that those conditions have been met, as well as the botanical name (including genus and species) of the goods.

Cut flowers of the *Lilium* species from Taiwan pose minimal biosecurity risk when the goods are free from stem bulbils, and when accompanied by certification attesting the consignment being free from bulbils, as well as the botanical name of the goods.

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

**Item 7      Subsection 5(1)**

Item 7 repeals the definition of listed fresh cut flowers or foliage (External Territories). This is a consequential amendment to the amendment in item 8.

**Item 8      Subsection 5(1)**

Item 8 inserts a definition of “listed fresh cut flowers or foliage (Norfolk Island)”. A listed fresh cut flower or foliage is a species of flower or foliage (or part of a flower or foliage) that is included in the List of Species of Fresh Cut Flowers and Foliage with Alternative Conditions for Import (Norfolk Island) prepared by the Director of Biosecurity and published on the department’s website, as existing on 1 March 2018. It sets out the species of fresh cut flowers and foliage that may be imported under the alternative conditions for fresh cut flowers or foliage, in section 20A.

**Item 9      Section 20A (table item 1)**

Item 9 omits “(external Territories)” from table item 1 in section 20A, and substitutes “(Norfolk Island)”. This is a consequential amendment to the amendment in item 8.