

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity Legislation (Prohibited and Conditionally Non-prohibited Goods) Amendment (Hitchhiker Pests and Other Measures) Determination 2018

Legislative Authority

The *Biosecurity Act 2015* (**Act**) provides for the management of diseases and pests that may cause harm to human, animal or plant health or the environment.

Subsection 174(1) of 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) Determination 2016 (Determination)*;
- (b) *Biosecurity (Prohibited and Conditionally Non-prohibited Goods—Christmas Island) Determination 2016 (Christmas Island Determination)*;
- (c) *Biosecurity (Prohibited and Conditionally Non-prohibited Goods—Cocos (Keeling) Islands) Determination 2016 (Cocos (Keeling) Islands Determination)*; and
- (d) *Biosecurity (Prohibited and Conditionally Non-prohibited Goods—Norfolk Island) Determination 2016 (Norfolk Island Determination)*.

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 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

The *Biosecurity Legislation (Prohibited and Conditionally Non-prohibited Goods) Amendment (Hitchhiker Pests and Other Measures) Determination 2018* (**Amendment**

Determination) amends the Goods Determinations to provide additional specified conditions which specified classes of goods must comply with in order to be brought or imported into Australian territory, which are intended to manage the biosecurity risks posed by hitchhiker pests. A hitchhiker pest is a pest which travels opportunistically on or inside goods (regardless of the goods being imported), or sea and air containers. The additional specified conditions are primarily in response to increased detections of the Brown Marmorated Stink Bug (**BMSB**), but will also provide the Department of Agriculture and Water Resources (**Agriculture Department**) with a framework that will allow for timely responses to future biosecurity risks posed by other hitchhiker pests.

The purpose of the Amendment Determination is to ensure that the import conditions for specified goods continue to ensure Australia manages 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.

The Amendment Determination also makes amendments to a number of definitions which incorporate documents by reference into the Goods Determinations, to enable those documents to be incorporated as they exist from time to time, instead of from a particular date. These amendments are enabled by—and will commence after—the commencement of the Biosecurity Legislation Amendment (Miscellaneous Measures) Bill 2018.

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

Schedule 1 of the Amendment Determination ensures that biosecurity risks continue to be effectively managed, by providing a single set of specified conditions which apply to a wide range of goods imported into Australian territory that are known to host hitchhiker pests which present biosecurity risks. This is contrasted with other existing import conditions, which manage the biosecurity risks specific to each type of good separately.

If item 4 of Schedule 1 to the Biosecurity Legislation Amendment (Miscellaneous Measures) Bill 2018 commences, Schedule 2 of the Amendment Determination also allows the Department of Agriculture and Water Resources (Agriculture Department) to manage biosecurity risks more efficiently, by allowing the updating of lists of goods and countries to which alternative import conditions apply in a more responsive manner, as new risks emerge.

Consultation

The Agriculture Department prepared the Amendment Determination taking into account feedback received from industry stakeholders during information sessions hosted by the Agriculture Department on the management of BMSB. Feedback was received from a number of stakeholders on the new measures to manage hitchhiker pests, including the Agriculture Department's Cargo Consultative Committee. The Agriculture Department also

regularly consults with industry stakeholders on seasonal measures to manage BMSB and other hitchhiker pests. The proposed additional specified conditions were also published on the Agriculture Department's website for review by the public, and notifications of the amendments were issued to subscribers of Industry Advice Notices and change notices on Biosecurity Import Conditions System.

The Office of Best Practice Regulation was consulted in the preparation of the amendments made by Schedule 1, and advised that a regulatory impact statement is not required (ID 24091).

Details/Operation

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

This Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003 (Legislation Act)*. 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 in accordance with paragraph 15J(2)(f) of the Legislation Act.

The decision to make this Amendment Determination under subsection 174(1) of the Act requiring compliance with specified conditions is a technical and scientifically based decision. The Appropriate Level of Protection for Australia was applied in conducting a risk assessment for the purpose of decided whether to make this Amendment Determination.

ATTACHMENT A

Details of the Biosecurity Legislation (Prohibited and Conditionally Non-prohibited Goods) Amendment (Hitchhiker Pests and Other Measures) Determination 2018

Section 1—Name

This section provides that the name of the Amendment Determination is the *Biosecurity Legislation (Prohibited and Conditionally Non-prohibited Goods) Amendment (Hitchhiker Pests and Other Measures) Determination 2018*.

Section 2—Commencement

This section provides for the commencement of each provision of the Amendment Determination, as set out in the table. Subsection 2(1) provides that each provision of the Amendment Determination specified in column 1 of the table under the subsection commences, or is taken to have commenced, in accordance with column 2 of the table.

Item 1 of the table provides that sections 1 to 4, and anything not covered elsewhere in the table commences the day after the Amendment Determination is registered.

Item 2 of the table provides that Schedule 1 commences on the later of the day after the Amendment Determination is registered, and 31 August 2018.

Item 3 of the table provides that Item 1 of Schedule 2 commences at the same time as Schedule 1 of the Amendment Determination.

Item 4 of the table provides that Item 2 of Schedule 2 commences on the later of immediately after the commencement of the provisions covered by table item 2, and the day item 4 of Schedule 1 to the *Biosecurity Legislation Amendment (Miscellaneous Measures) Bill 2018* (**Miscellaneous Measures Bill**) commences. Item 4 of the table also provides that Item 2 of Schedule 2 does not commence at all if item 4 of Schedule 1 to the Miscellaneous Measures Bill does not commence at all.

Item 5 of the table provides that Items 3 to 7 of Schedule 2 commence on the later of the day after the Amendment Determination is registered, and the day that item 4 of Schedule 1 to the Miscellaneous Measures Bill commences. Item 5 of the table also provides that Schedule 2, Items 3 to 7 do not commence at all if item 4 of Schedule 1 to the Miscellaneous Measures Bill does not commence.

Subsection 2(2) provides that any information in column 3 of the table in subsection (1) is not part of the Amendment Determination. Information may be inserted into that column, or information in it may be edited, in any published version of the Amendment Determination.

Section 3—Authority

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

Section 4—Schedules

This section provides that the instruments specified in the Schedules to the Amendment Determination are amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule has effect according to its terms.

Schedule 1—Hitchhiker pest amendments

Part 1—Additional conditions for the mainland

Part 1 of Schedule 1 amends the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016* to include additional conditions for the mainland.

Item 1 Section 5

Item 1 inserts definitions into section 5 for *listed hitchhiker pest*, *List of Hitchhiker Pest Host Countries or Regions* and *List of Treatment Providers*.

Listed hitchhiker pest is defined as an insect or other pest that is listed in the List of Hitchhiker Pests prepared by the Director of Biosecurity and published on the Agriculture Department’s website, as existing on the day that Schedule 1 to the Amendment Determination commences.

Item 1 also inserts a note underneath the definition of listed hitchhiker pest, which provides that an insect or other pest is listed in the List of Hitchhiker Pests if the Director of Biosecurity is satisfied that the insect or other pest may be present in or on goods and the insect or other pest may pose an unacceptable level of biosecurity risk.

List of Hitchhiker Pest Host Countries or Regions is defined as the List with that name prepared by the Director of Biosecurity and published on the Agriculture Department’s website, as existing on the day Schedule 1 to the Amendment Determination commences.

Item 1 also inserts a note underneath the definition of List of Hitchhiker Pest Host Countries or Regions, which provides that goods from a specified country or region are listed in the List of Hitchhiker Pest Host Countries or Regions if the Director of Biosecurity is satisfied that, during a specified risk period, the goods pose an unacceptable level of biosecurity risk because a specified pest may be present in or on the goods.

List of Treatment Providers is defined as the List with that name prepared by the Director of Biosecurity and published on the Agriculture Department’s website, as existing on the day Schedule 1 of the Amendment Determination commences.

Item 1 also inserts a note underneath the definition of List of Treatment providers which provides that a treatment provider is listed in the List of Treatment Providers for one or more chemical, irradiation or other treatments if the Director of Biosecurity is satisfied the provider is able to apply those treatments to goods to manage biosecurity risks associated with the goods to an acceptable level.

The lists inserted by Item 1 are publicly available on the Agriculture Department’s website, free of charge.

Item 2 After subsection 11(1) (before the note)

Item 2 inserts Note 1 after subsection 11(1) before the existing note. Note 1 provides that if Division 2A (which deals with hitchhiker pests) applies to goods included in a class of goods

to which a provision of Division 1 applies, the additional conditions in Division 2A must also be complied with.

Item 3 Subsection 11(1) (note)

Item 3 omits the word “Note” and substitutes the words “Note 2”. This is a consequential amendment to the amendment made by Item 2.

Item 4 Division 2 of Part 2 (after the heading)

Item 4 inserts a note after the heading in Division 2 of Part 2. The note provides that if Division 2A (which deals with hitchhiker pests) applies to goods included in a class of goods to which a provision of Division 2 applies, the additional conditions in Division 2A must also be complied with.

Item 5 After Division 2 of Part 2

Item 5 inserts Division 2A—Additional conditions relating to hitchhiker pests—into Part 2 of the Determination, which deals with conditionally non-prohibited goods.

Section 48A – Goods posing hitchhiker pest biosecurity risks

Section 48A specifies goods that are likely to contain hitchhiker pests either in or on the goods and provides additional specified conditions for such goods.

Subsection 48A(1) of section 48A specifies the class of goods to which section 48A applies. The class of goods must meet two criteria. First, the goods must be listed in relation to one or more specified hitchhiker pests in the List of Hitchhiker Pest Host Countries or Regions. Secondly, the goods must be, or have been produced, stored or loaded onto an aircraft or vessel in a country or region specified in that List for those goods, during the risk period specified in that List for that country or region and those goods and that pest.

Subsection 48A(2) provides that goods included in a class of goods to which section 48A applies must not be brought or imported into Australian territory unless the goods meet either the conditions provided in paragraph 48A(2)(a) or the conditions in paragraph 48A(2)(b).

Paragraph 48A(2)(a) provides that goods to which the section applies must not be brought or imported into Australian territory unless:

- the goods have been treated using a treatment listed for the goods in the List of Hitchhiker Pest Host Countries or Regions, by a treatment provider listed for that treatment in the List of Treatment Providers; and
- are accompanied by a certificate from the treatment provider stating that the goods have been treated in accordance with subparagraph 48A(2)(a)(i); and
- are free from live listed hitchhiker pests.

Paragraph 48A(2)(b) provides that goods must not be brought or imported into Australian territory unless all of the following apply:

- the goods are contained in one or more sealed shipping containers;

- each shipping container remains sealed after its arrival in Australian territory until it is opened for the goods to be treated in accordance with subparagraph 48A(2)(b)(iii);
- the goods are treated in accordance with an approved arrangement and while subject to biosecurity control, using a treatment that the Director of Biosecurity is satisfied is appropriate to manage the biosecurity risks associated with the goods to an acceptable level.

The conditions in section 48A are intended to manage the biosecurity risks associated with hitchhiker pests by having risk mitigation measures applied offshore, unless the goods are contained inside sealed shipping containers, in which case onshore treatment is also available. Goods which must not be brought or imported into Australian territory unless treated offshore under paragraph 48A(2)(a), are classes of goods where any hitchhiker pests that may be present are not able to be contained or managed upon arrival in Australian territory (e.g. vehicles and other break bulk goods which are exposed to the environment when unloaded from conveyances). This is because if hitchhiker pests arrive in Australian territory on goods where the risk is not able to be contained until treatment, there is a risk that those hitchhiker pests may escape and become established in Australia. Where the risk of hitchhiker pests is able to be contained within a sealed shipping container until treatment, goods have the option of being treated onshore under paragraph 48A(2)(b).

Subsection 48A(3) provides that the conditions in subsection 48A(2) are in addition to any conditions that must be complied with under Division 1 or 2. This is because some classes of goods to which section 48A applies may also have alternative import conditions in Division 1 or 2 which exist to manage other biosecurity risks associated with those goods.

Part 2—Additional conditions for Christmas Island

Part 2 of Schedule 1 amends the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods – Christmas Island) Determination 2016* to include additional conditions for Christmas Island.

Item 6 After subsection 7(1)

Item 6 inserts a note after subsection 7(1). The note provides that if Division 3 (which deals with hitchhiker pests) applies to goods included in a class of goods to which a provision of Division 1 applies, the additional conditions in Division 3 must also be complied with.

Item 7 Division 2 of Part 2 (after the heading)

Item 7 inserts a note after the heading in Division 2 of Part 2. The note provides that if Division 3 (which deals with hitchhiker pests) applies to goods included in a class of goods to which a provision of Division 2 applies, the additional conditions in Division 3 must also be complied with.

Item 8 At the end of Part 2

Item 8 adds Division 3—Additional conditions relating to hitchhiker pests—at the end of Part 2 of the Christmas Island Determination, which deals with conditionally non-prohibited goods.

Section 43 – Goods posing hitchhiker pest biosecurity risks

Section 43 specifies goods that are likely to contain hitchhiker pests either in or on the goods and provides additional specified conditions for such goods.

Subsection 43(1) of section 43 specifies the class of goods to which section 43 applies. The class of goods must meet two criteria. First, the goods must be listed in relation to one or more specified hitchhiker pests in the List of Hitchhiker Pest Host Countries or Regions. Secondly, the goods must be, or have been produced, stored or loaded onto an aircraft or vessel in a country or region specified in that List for those goods, during the risk period specified in that List for that country or region and those goods and that pest.

Subsection 43(2) provides that goods included in a class of goods to which section 43 applies must not be brought or imported into Christmas Island unless the goods meet either the conditions provided in paragraph 43(2)(a) or the conditions in paragraph 43(2)(b).

Paragraph 43(2)(a) provides that goods to which the section applies must not be brought or imported into Christmas Island unless:

- the goods have been treated using a treatment listed for the goods in the List of Hitchhiker Pest Host Countries or Regions, by a treatment provider listed for that treatment in the List of Treatment Providers; and
- are accompanied by a certificate from the treatment provider stating that the goods have been treated in accordance with subparagraph 43(2)(a)(i); and
- are free from live listed hitchhiker pests.

Paragraph 43(2)(b) provides that goods must not be brought or imported into Christmas Island unless all of the following apply:

- the goods are contained in one or more sealed shipping containers;
- each shipping container remains sealed after its arrival in Christmas Island until it is opened for the goods to be treated in accordance with subparagraph 43(2)(b)(iii);
- the goods are treated in accordance with an approved arrangement and while subject to biosecurity control, using a treatment that the Director of Biosecurity is satisfied is appropriate to manage the biosecurity risks associated with the goods to an acceptable level.

The conditions in section 43 are intended to manage the biosecurity risks associated with hitchhiker pests by having risk mitigation measures applied offshore, unless the goods are contained inside sealed shipping containers, in which case onshore treatment is also available. Goods which must not be brought or imported into Christmas Island unless treated offshore under paragraph 43(2)(a), are classes of goods where any hitchhiker pests that may be present are not able to be contained or managed upon arrival in Christmas Island (e.g. vehicles and other break bulk goods which are exposed to the environment when unloaded from conveyances). This is because if hitchhiker pests arrive in Christmas Island on goods where the risk is not able to be contained until treatment, there is a risk that those hitchhiker pests may escape and become established in Christmas Island. Where the risk of hitchhiker pests is able to be contained within a sealed shipping container until treatment, goods have the option of being treated onshore under paragraph 43(2)(b).

Subsection 43(3) provides that the conditions in subsection 43(2) are in addition to any conditions that must be complied with under Division 1 or 2. This is because some classes of goods to which section 43 applies may also have alternative import conditions in Division 1 or 2 which exist to manage other biosecurity risks associated with those goods.

Item 8 also inserts a note after subsection (3). The note directs the reader to section 5 of the Determination for the definitions of *listed hitchhiker pest*, *List of Hitchhiker Pest Host Countries or Regions*, and *List of Treatment Providers*.

Part 3—Additional conditions for Cocos (Keeling) Islands

Part 3 of Schedule 1 amends the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods – Cocos (Keeling) Islands) Determination 2016* to include additional conditions for Cocos (Keeling) Islands.

Item 9 After subsection 7(1)

Item 9 inserts a note after subsection 7(1). The note provides that if Division 3 (which deals with hitchhiker pests) applies to goods included in a class of goods to which a provision of Division 1 applies, the additional conditions in Division 3 must also be complied with.

Item 10 Division 2 of Part 2 (after the heading)

Item 10 inserts a note after the heading in Division 2 of Part 2. The note specifies that if Division 3 (which deals with hitchhiker pests) applies to goods included in a class of goods to which a provision of Division 2 applies, the additional conditions in Division 3 must also be complied with.

Item 11 At the end of Part 2

Item 11 adds Division 3—Additional conditions relating to hitchhiker pests—at the end of Part 2 of the Cocos (Keeling) Islands Determination, which deals with conditionally non-prohibited goods.

Section 44 – Goods posing hitchhiker pest biosecurity risks

Section 44 specifies goods that are likely to contain hitchhiker pests either in or on the goods and provides additional specified conditions for such goods.

Subsection 44(1) of section 44 specifies the class of goods to which section 44 applies. The class of goods must meet two criteria. First, the goods must be listed in relation to one or more specified hitchhiker pests in the List of Hitchhiker Pest Host Countries or Regions. Secondly, the goods must be, or have been produced, stored or loaded onto an aircraft or vessel in a country or region specified in that List for those goods, during the risk period specified in that List for that country or region and those goods and that pest.

Subsection 44(2) provides that goods included in a class of goods to which section 44 applies must not be brought or imported into Cocos (Keeling) Islands unless the goods meet either the conditions provided in paragraph 44(2)(a) or the conditions in paragraph 44(2)(b).

Paragraph 44(2)(a) provides that goods to which the section applies must not be brought or imported into Cocos (Keeling) Islands unless:

- the goods have been treated using a treatment listed for the goods in the List of Hitchhiker Pest Host Countries or Regions, by a treatment provider listed for that treatment in the List of Treatment Providers; and
- are accompanied by a certificate from the treatment provider stating that the goods have been treated in accordance with subparagraph 44(2)(a)(i); and
- are free from live listed hitchhiker pests.

Paragraph 44(2)(b) provides that goods must not be brought or imported into Cocos (Keeling) Islands unless all of the following apply:

- the goods are contained in one or more sealed shipping containers;
- each shipping container remains sealed after its arrival in Cocos (Keeling) Islands until it is opened for the goods to be treated in accordance with subparagraph 44(2)(b)(iii);
- the goods are treated in accordance with an approved arrangement and while subject to biosecurity control, using a treatment that the Director of Biosecurity is satisfied is appropriate to manage the biosecurity risks associated with the goods to an acceptable level.

The conditions in section 44 are intended to manage the biosecurity risks associated with hitchhiker pests by having risk mitigation measures applied offshore, unless the goods are contained inside sealed shipping containers, in which case onshore treatment is also available. Goods which must not be brought or imported into Cocos (Keeling) Islands unless treated offshore under paragraph 44(2)(a), are classes of goods where any hitchhiker pests that may be present are not able to be contained or managed upon arrival in Cocos (Keeling) Islands (e.g. vehicles and other break bulk goods which are exposed to the environment when unloaded from conveyances). This is because if hitchhiker pests arrive in Cocos (Keeling) Islands on goods where the risk is not able to be contained until treatment, there is a risk that those hitchhiker pests may escape and become established in Cocos (Keeling) Islands. Where the risk of hitchhiker pests is able to be contained within a sealed shipping container until treatment, goods have the option of being treated onshore under paragraph 44(2)(b).

Subsection 44(3) provides that the conditions in subsection 44(2) are in addition to any conditions that must be complied with under Division 1 or 2. This is because some classes of goods to which section 44 applies may also have alternative import conditions in Division 1 or 2 which exist to manage other biosecurity risks associated with those goods.

Item 11 also inserts a note after subsection (3). The note directs the reader to section 5 of the Determination for the definitions of *listed hitchhiker pest*, *List of Hitchhiker Pest Host Countries or Regions*, and *List of Treatment Providers*.

Part 4—Additional conditions for Norfolk Island

Part 4 of Schedule 1 amends the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods – Norfolk Island) Determination 2016* to include additional conditions for Norfolk Island.

Item 12 After subsection 7(1)

Item 12 inserts a note after subsection 7(1). The note provides that if Division 3 (which deals with hitchhiker pests) applies to goods included in a class of goods to which a provision of Division 1 applies, the additional conditions in Division 3 must also be complied with.

Item 13 Division 2 of Part 2 (after the heading)

Item 13 inserts a note after the heading in Division 2 of Part 2. The note provides that if Division 3 (which deals with hitchhiker pests) applies to goods included in a class of goods to which a provision of Division 2 applies, the additional conditions in Division 3 must also be complied with.

Item 14 Goods posing hitchhiker pest biosecurity risks

Item 14 adds Division 3—Additional conditions relating to hitchhiker pests—at the end of Part 2 of the Norfolk Island Determination, which deals with conditionally non-prohibited goods.

Section 43 – Goods posing hitchhiker pest biosecurity risks

Section 43 specifies goods that are likely to contain hitchhiker pests either in or on the goods and provides additional specified conditions for such goods.

Subsection 43(1) of section 43 specifies the class of goods to which section 43 applies. The class of goods must meet two criteria. First, the goods must be listed in relation to one or more specified hitchhiker pests in the List of Hitchhiker Pest Host Countries or Regions. Secondly, the goods must be, or have been produced, stored or loaded onto an aircraft or vessel in a country or region specified in that List for those goods, during the risk period specified in that List for that country or region and those goods and that pest.

Subsection 43(2) provides that goods included in a class of goods to which section 43 applies must not be brought or imported into Norfolk Island unless the goods meet either the conditions provided in paragraph 43(2)(a) or the conditions in paragraph 43(2)(b).

Paragraph 43(2)(a) provides that goods to which the section applies must not be brought or imported into Norfolk Island unless:

- the goods have been treated using a treatment listed for the goods in the List of Hitchhiker Pest Host Countries or Regions, by a treatment provider listed for that treatment in the List of Treatment Providers; and
- are accompanied by a certificate from the treatment provider stating that the goods have been treated in accordance with subparagraph 43(2)(a)(i); and
- are free from live listed hitchhiker pests.

Paragraph 43(2)(b) provides that goods must not be brought or imported into Norfolk Island unless all of the following apply:

- the goods are contained in one or more sealed shipping containers;

- each shipping container remains sealed after its arrival in Norfolk Island until it is opened for the goods to be treated in accordance with subparagraph 43(2)(b)(iii);
- the goods are treated in accordance with an approved arrangement and while subject to biosecurity control, using a treatment that the Director of Biosecurity is satisfied is appropriate to manage the biosecurity risks associated with the goods to an acceptable level.

The conditions in section 43 are intended to manage the biosecurity risks associated with hitchhiker pests by having risk mitigation measures applied offshore, unless the goods are contained inside sealed shipping containers, in which case onshore treatment is also available. Goods which must not be brought or imported into Norfolk Island unless treated offshore under paragraph 43(2)(a), are classes of goods where any hitchhiker pests that may be present are not able to be contained or managed upon arrival in Norfolk Island (e.g. vehicles and other break bulk goods which are exposed to the environment when unloaded from conveyances). This is because if hitchhiker pests arrive in Norfolk Island on goods where the risk is not able to be contained until treatment, there is a risk that those hitchhiker pests may escape and become established in Norfolk Island. Where the risk of hitchhiker pests is able to be contained within a sealed shipping container until treatment, goods have the option of being treated onshore under paragraph 43(2)(b).

Subsection 43(3) provides that the conditions in subsection 43(2) are in addition to any conditions that must be complied with under Division 1 or 2. This is because some classes of goods to which section 43 applies may also have alternative import conditions in Division 1 or 2 which exist to manage other biosecurity risks associated with those goods.

Item 14 also inserts a note after subsection (3). The note directs the reader to section 5 of the Determination for the definitions of *listed hitchhiker pest*, *List of Hitchhiker Pest Host Countries or Regions*, and *List of Treatment Providers*.

Schedule 2—Other amendments

Subsection 14(2) of the Legislation Act provides that unless the contrary intention appears, a legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. This means that unless the contrary intention appears, instruments incorporated by reference into the Goods Determinations (such as the List of Hitchhiker Pest Host Countries or Regions), will be in force as they exist on the date specified in the definition for those instruments. However, Item 4 of Schedule 1 to the Biosecurity Legislation Amendment (Miscellaneous Measures) Bill 2018 will insert subsection 174(6) into the Act, to provide that despite subsection 14(2) of the Legislation Act, a determination under subsection 174(1) (including the Goods Determinations) may make provision in relation to a matter by applying, adopting, or incorporating any matter contained in an instrument or other writing, as in force or existing from time to time, if the instrument or other writing is publically available.

Subsection 174(6) will override subsection 14(2) of the Legislation Act such that determinations made under subsection 174(1) relating to conditionally non-prohibited goods may incorporate documents by reference as they are amended from time to time. Accordingly, Item 2 to 7 of Schedule 2 will not commence at all if Item 4 of Schedule 1 of the Bill does not commence.

Part 1—Conditions for the mainland

Item 1 Section 5 (definition of *FMD-free country*)

Item 1 omits the words “a list” and substitutes the words “the FMD-free Country List prepared by the Director of Biosecurity and”. This is an amendment to specify the name of the list that is published on the Agriculture Department’s website which lists the countries that Director of Biosecurity is satisfied are free from foot-and-mouth disease.

Item 2 Section 5 (definitions of *listed hitchhiker pest*, *List of Hitchhiker Pest Host Countries or Regions* and *List of Treatment Providers*)

Item 2 omits “on the day Schedule 1 to the *Biosecurity Legislation (Prohibited and Conditionally Non prohibited Goods) Amendment (Hitchhiker Pests and Other Measures) Determination 2018* commences”, and substitutes “from time to time” in the following definitions:

- *listed hitchhiker pest*
- *List of Hitchhiker Pest Host Countries or Regions*
- *List of Treatment Providers*

This amendment has the effect of incorporating the lists referred to by those definitions into the Goods Determinations as they exist from time to time, instead of from a particular date. This facilitates more timely and effective management of biosecurity risks by allowing the Agriculture Department to update the contents of those lists (i.e. the list of known hitchhiker pests, the list of treatment providers approved by the Agriculture Department, and goods which require treatment in order to manage the risk of hitchhiker pests) without making amendments to the Goods Determinations. It also reduces the regulatory burden by

facilitating amendments to relevant lists where it is determined that importers should no longer be required to treat certain goods, or where certain countries are no longer deemed to be at risk of a particular hitchhiker pest.

Item 3 Amendments of listed provisions

Item 3 amends the definitions in section 5 listed in the following table, as set out in the table.

Amendments relating to incorporated documents			
Item	Definition	Omit	Substitute
1	Definition of <i>FMD-free country</i>	on 25 July 2018	from time to time
2	Definition of <i>Index Herbariorum</i>	as it exists on 30 June 2017	as existing from time to time
3	Definition of <i>International Plant Protection Convention</i>	on 16 June 2016	from time to time
4	Definition of <i>listed country for canine semen</i>	on 21 December 2017	from time to time
5	Definition of <i>listed country for natural casings derived from bovine, caprine, ovine or porcine animals</i>	on 21 December 2017	from time to time
6	Definition of <i>listed dried or preserved cut flowers or foliage</i>	on 30 June 2017	from time to time
7	Definition of <i>listed fresh produce for human consumption</i>	on 25 July 2018	from time to time
8	Definition of <i>listed medicinal mushrooms</i>	on 21 December 2017	from time to time
9	Definition of <i>listed mushrooms or truffles (dried)</i>	on 30 June 2017	from time to time
10	Definition of <i>listed mushrooms or truffles (frozen)</i>	on 30 June 2017	from time to time
11	Definition of <i>listed permitted Allium spp. seeds</i>	on 30 June 2017	from time to time
12	Definition of <i>listed permitted Arecaceae (palm) seeds</i>	on 30 June 2017	from time to time
13	Definition of <i>listed permitted seeds</i>	on 25 July 2018	from time to time
14	Definition of <i>listed plant fibres</i>	on 25 July 2018	from time to time
15	Definition of <i>List of Overseas Authorities—Aquatic Animals for Import</i>	on 30 June 2017	from time to time
16	Definition of <i>List of Species of Fresh Cut Flowers and</i>	on 1 March 2018	from time to time

Amendments relating to incorporated documents

Item	Definition	Omit	Substitute
	<i>Foliage with Alternative Conditions for Import</i>		

This amendment has the effect of incorporating the documents referred to by those definitions (e.g. the Permitted Seeds List published on the Agriculture Department’s website, which specifies the species of seeds which may be imported into Australian territory without an import permit by complying with alternative conditions) into the Goods Determinations as they exist from time to time, instead of from a particular date. This facilitates more timely and effective management of biosecurity risks and reduces the regulatory burden where importers are no longer required to apply for import permits, as goods which appear on the relevant lists, and countries where certain goods are able to be imported from without import permits may be updated without amendments to the Goods Determinations.

Part 2—Conditions for Christmas Island**Item 4 Subsection 5(1) (definition of *listed fresh cut flowers or foliage (Christmas Island and Cocos (Keeling) Islands)*)**

Item 4 omits “on 1 March 2018”, and substitutes “from time to time” in the definition of *listed fresh cut flowers or foliage (Christmas Island and Cocos (Keeling) Islands)*.

This amendment has the effect of incorporating the document referred to by the definition into the Christmas Island Determination as it exists from time to time, instead of from a particular date. This facilitates more timely and effective management of biosecurity risks associated with fresh cut flowers and foliage, and reduces the regulatory burden for importers where importers are no longer required to apply for import permits, as goods which appear on the relevant List may be updated without amendments to the Christmas Island Determination.

Part 3—Conditions for Cocos (Keeling) Islands**Item 5 Subsection 5(1) (definition of *listed fresh cut flowers or foliage (Christmas Island and Cocos (Keeling) Islands)*)**

Item 5 omits “on 1 March 2018”, and substitutes “from time to time” in the definition of *listed fresh cut flowers or foliage (Christmas Island and Cocos (Keeling) Islands)*.

This amendment has the effect of incorporating the document referred to by the definition into the Cocos (Keeling) Islands Determination as it exists from time to time, instead of from a particular date. This facilitates more timely and effective management of biosecurity risks associated with fresh cut flowers and foliage, and reduces the regulatory burden for importers where importers are no longer required to apply for import permits, as goods which appear on the relevant List may be updated without amendments to the Cocos (Keeling) Islands Determination.

Part 4—Conditions for Norfolk Island

Item 6 Subsection 5(1) (definition of *listed fresh cut flowers or foliage (Norfolk Island)*)

Item 6 omits “on 1 March 2018”, and substitutes “from time to time” in the definition of *listed fresh cut flowers or foliage (Norfolk Island)*.

This amendment has the effect of incorporating the document referred to by the definition into the Norfolk Island Determination as it exists from time to time, instead of from a particular date. This facilitates more timely and effective management of biosecurity risks associated with fresh cut flowers and foliage, and reduces the regulatory burden for importers where importers are no longer required to apply for import permits, as goods which appear on the relevant List may be updated without amendments to the Norfolk Island Determination.

Item 7 Subsection 5(1) (definition of *listed fresh produce for human consumption (Norfolk Island)*)

Item 7 omits “on 21 December 2017”, and substitutes “from time to time” in the definition of *listed fresh produce for human consumption (Norfolk Island)*.

This amendment has the effect of incorporating the document referred to by the definition into the Norfolk Island Determination as it exists from time to time, instead of from a particular date. This facilitates more timely and effective management of biosecurity risks associated with fresh produce for human consumption, and reduce the regulatory burden for importers where importers are no longer required to apply for import permits, as goods which appear on the relevant List will be able to be updated without amendments to the Norfolk Island Determination.