

## EXPLANATORY STATEMENT

### *Biosecurity Act 2015*

#### *Biosecurity Legislation (Prohibited and Conditionally Non-prohibited Goods) Amendment (Alternative Conditions—Meat Jerky and Biltong) Determination 2018*

#### **Legislative Authority**

The Department of Agriculture and Water Resources (**Agriculture Department**) and the Department of Health (**Health Department**) co-administer the *Biosecurity Act 2015 (Act)*, which 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 (Secretary of the Agriculture Department) and the Director of Human Biosecurity (Commonwealth Chief Medical Officer of the Health Department) 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)*; and
- (b) *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**

Following the recent spread of African swine fever virus (**ASFV**) overseas, meat jerky and biltong from porcine animals poses a significant biosecurity risk, as this good may contain ASFV when imported into Australia and Norfolk Island from overseas through personal consignments.

The Biosecurity Legislation (Prohibited and Conditionally Non-prohibited Goods) Amendment (Alternative Conditions—Meat Jerky and Biltong) Determination 2018 (**Amendment Determination**) has the practical effect of excluding personal consignments of porcine meat jerky and biltong from being imported into Australia and Norfolk Island from overseas without a further assessment of risk. This means there are no alternative conditions that can be applied to the importation of porcine jerky or biltong and that the application of alternative import conditions and all imports of porcine jerky or biltong must be accompanied by import permits.

The Amendment Determination also amends the Norfolk Island Determination to provide that porcine meat jerky or biltong imported into Norfolk Island must meet the alternative condition that the goods are brought or imported from a part of Australian territory (other than Christ Island or Cocos (Keeling Islands)).

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.

## **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**

The Amendment Determination ensures that significant biosecurity risks associated with the importation of personal consignments of meat jerky or biltong derived from porcine animals continues to be effectively managed. Therefore, personal consignments of meat jerky or biltong derived from porcine animals may only be brought into Australia or Norfolk Island from overseas if an import permit is granted after the ALOP has been applied.

## **Consultation**

Due to the significant biosecurity risk posed by ASFV to Australia, the Amendment Determination needed to be made rapidly. This has therefore limited the time in which consultation could be conducted. The changes only affect personal, and not commercial consignments of meat jerky and biltong from porcine animals that may be imported through the international mail and passenger pathways. Therefore, the Agriculture Department is not able to undertake consultation with individual importers who may be affected by the change.

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

## **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 is a technical and scientifically-based decision. The ALOP for Australia was applied in conducting a risk assessment for the purpose of deciding whether to make this Amendment Determination.

**Details of the *Biosecurity Legislation (Prohibited and Conditionally Non-prohibited Goods) Amendment (Alternative Conditions—Meat Jerky and Biltong) 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 (Alternative Conditions—Meat Jerky and Biltong) 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 the whole 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.

Column 2 provides that the whole of the Amendment Determination commences the day after the Amendment Determination is registered.

Subsection 2(2) provides that any information in column 3 of the table in subsection 2(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 Schedule to the Amendment Determination are amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in the Schedule has effect according to its terms.

## **Schedule 1—Amendments**

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

#### **Item 1 Subsection 15(2) (cell at table item 6, column 1)**

Item 1 repeals the cell at column 1, table item 6, which provides that the goods to which the alternative conditions provided for in column 2 applies are “meat jerky and biltong”. The item substitutes it with a new description of the goods, being “meat jerky or biltong, other than meat jerky or biltong derived from porcine animals”. This amendment has the effect of excluding meat jerky or biltong derived from porcine animals from the alternative conditions provided for in column 2 of table item 6.

There is a significant risk posed by ASFV following its recent spread overseas. This amendment has been made because meat jerky and biltong derived from porcine animals pose a biosecurity risk as these goods may contain ASFV when imported into Australian territory (other than Christmas Island or Cocos (Keeling) Islands) through personal consignments.

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

#### **Item 2 Subsection 10(2) (table item 6)**

Item 2 repeals table item 6, and substitutes it with a new table item. The new table item provides that the goods to which the alternative conditions provided for in column 2 applies are “meat jerky or biltong, other than meat jerky or biltong derived from porcine animals”. This has the effect of excluding meat jerky or biltong derived from porcine animals from the existing alternative conditions provided for in column 2 of table item 6, which remain unchanged.

Item 2 also inserts new table item 6A to provide alternative conditions for meat jerky or biltong from porcine animals. The new alternative conditions provide that the meat jerky or biltong from porcine animals must be brought or imported into Norfolk Island from a part of Australian territory (other than Christmas Island or Cocos (Keeling) Islands).

There is a significant risk posed by ASFV following its recent spread overseas. This amendment has been made because meat jerky and biltong from porcine animals poses a biosecurity risk, as this good may contain ASFV when imported from overseas into Norfolk Island through personal consignments.

The importation of meat jerky or biltong derived from porcine animals into Norfolk Island from Australian territory (other than Christmas Island or Cocos (Keeling) Islands) may continue as ASFV is not present in Australia. The goods cannot be imported into Norfolk Island directly from Christmas Island or Cocos (Keeling) Islands without an import permit as the risk profile of these islands is different to Australia’s. Therefore, importing the goods directly into Norfolk Island requires an assessment of the risk, which is conducted as part of the permit assessment process.