

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity Legislation (Prohibited and Conditionally Non-prohibited Goods) Amendment (Alternative Conditions—Rawhide Chews) 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, the level of biosecurity risk associated with rawhide chews derived from porcine animals (which are highly processed dog treats derived from animal hides or skins) has increased, with an

increased likelihood that these goods may contain ASFV when imported into Australia and Norfolk Island from overseas.

The Biosecurity Legislation (Prohibited and Conditionally Non-prohibited Goods) Amendment (Alternative Conditions—Rawhide Chews) Determination 2018 (**Amendment Determination**) has the effect of amending the existing alternative conditions for rawhide chews in the Determination to apply to rawhide chews that are derived from bovine animals and are for consumption by domestic dogs. The Amendment Determination also creates separate alternative conditions for rawhide chews derived from porcine animals for consumption by domestic dogs in the Determination. Rawhide chews derived from porcine animals are subject to stricter import conditions than those derived from bovine animals. The conditions for porcine rawhide chews require evidence that the animals from which the goods were derived were not slaughtered as a part of disease control measures. These conditions also require that these goods undergo gamma irradiation if accompanied by a manufacturer's declaration as evidence that the conditions have been complied with, rather than an official government veterinary certificate from the country in which the goods were manufactured.

The Amendment Determination also has the effect of creating separate alternative conditions for rawhide chews in the Norfolk Island Determination to apply to rawhide chews that are derived from porcine animals for consumption by domestic dogs. Rawhide chews derived from both bovine and porcine animals can be brought or imported into Norfolk Island if the goods are brought or imported from a part of Australian territory (other than Christmas Island or Cocos (Keeling) Island). The Amendment Determination creates new alternative conditions for rawhide chews derived from bovine animals and porcine animals which are brought or imported from a place other than Australian territory (excluding Christmas Island or Cocos (Keeling) Islands). These conditions are the same as those in the Determination except that a manufacturer's declaration to attest that the alternative conditions have been met will not be allowed for rawhide chews derived from porcine animals as gamma irradiation facilities are not available on the island.

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

The Amendment Determination ensures that significant biosecurity risks associated with the importation of rawhide chews derived from porcine animals for consumption by domestic dogs continues to be effectively managed. Therefore, rawhide chews derived from porcine animals may only be brought into Australian territory (other than Christmas Island or Cocos (Keeling) Islands) or Norfolk Island from overseas if the specified conditions are met.

Consultation

The Agriculture Department has not undertaken consultation on the changes made by the Amendment Determination. ASFV is a highly contagious viral disease of domestic and wild pigs which is not present in Australia. If an outbreak of ASFV were to occur in Australia, it would have significant negative impacts on pig health and production and would be very difficult and costly to eradicate. Due to the significant biosecurity risk posed by ASFV to Australia, the Amendment Determination needed to be made as soon as practicable, which has limited the time in which consultation could be conducted.

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—Rawhide Chews) 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—Rawhide Chews) 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 Section 20 (table item 2)

Item 1 repeals table item 2 and substitutes new table items 2 and 2A.

New table item 2 provides new specified alternative conditions for rawhide chews derived from bovine animals and for consumption by domestic dogs, to which the same set of alternative conditions as the previous table item 2 apply. Previously, the alternative conditions applied to rawhide chews for consumption by domestic cats or domestic dogs. The reason for the limitation of goods to those for consumption by dogs only is because, in practice, rawhide chews are not imported for consumption by domestic cats.

New table item 2A provides new specified alternative conditions for rawhide chews derived from porcine animals and for consumption by domestic dogs. New table item 2A provides that rawhide chews derived from porcine animals meet the following conditions:

- (a) the goods are made using only hide or skin from porcine animals with no other biological materials (for example, cartilage);
- (b) the hide or skin was soaked in a liming solution of pH14 for not less than 8 hours;
- (c) the animals from which the goods were derived were not slaughtered as a part of disease control measures in the country of origin of the animals;
- (d) the goods are accompanied by either an official government veterinary certificate from the country in which the goods were manufactured or a declaration by the manufacturer of the goods stating the matters referred to in paragraphs (a) to (c); and
- (e) if the goods are accompanied by a manufacturer's declaration, the goods are treated with gamma irradiation to a level that achieves a minimum of 50 kGray, while subject to biosecurity control.

There is a significant risk posed by ASFV following its recent spread overseas. This amendment was made because rawhide chews derived from porcine animals pose a biosecurity risk, as these goods may contain ASFV when imported into Australian territory.

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

Item 2 Section 15 (table item 2)

Item 2 repeals table item 2 and substitutes new table items 2 and 2A.

New table item 2 provides new specified alternative conditions for rawhide chews derived from bovine animals and for consumption by domestic dogs. Previously, the alternative conditions applied to rawhide chews for consumption by domestic cats or domestic dogs. The reason for the limitation of goods to those for consumption by dogs only is because in practice, rawhide chews are not imported for consumption by domestic cats.

New table item 2 provides new specified alternative conditions for rawhide chews derived from bovine animals that are either imported from a part of Australian territory (other than Christmas Island or Cocos (Keeling) Islands), or that:

- (a) are made using only hide or skin of bovine animals with no other biological materials (for example, cartilage);
- (b) the hide or skin was soaked in a liming solution of pH 14 for not less than 8 hours; and
- (c) are accompanied either by an official government veterinary certificate from the country in which the goods were manufactured, or a declaration from the manufacturer of the goods which has been endorsed by an official government veterinarian, stating the matters in paragraphs (a) and (b).

Previously, the Norfolk Island Determination provided that the conditions in paragraphs (a) and (b) applied regardless of whether the goods were imported from Australian territory (other than Christmas Island or Cocos (Keeling) Islands) or from overseas. However, these conditions are not required to manage biosecurity risks associated with rawhide chews which are imported from Australian territory (other than Christmas Island or Cocos (Keeling) Islands).

New table item 2A provides alternative conditions for rawhide chews derived from porcine animals and for consumption by domestic dogs. New table item 2A provides that rawhide chews derived from porcine animals are either imported from a part of Australian territory (other than Christmas Island or Cocos (Keeling) Islands) or meet the following conditions:

- (a) the goods are made using only hide or skin from porcine animals with no other biological materials (for example, cartilage);
- (b) the hide or skin was soaked in a liming solution of pH14 for not less than 8 hours;
- (c) the animals from which the goods were derived were not slaughtered as a part of disease control measures in the country of origin of the animals; and
- (d) the goods are accompanied by an official government veterinary certificate from the country in which the goods were manufactured stating the matters referred to in paragraphs (a) to (c).

There is a significant risk posed by ASFV following its recent spread overseas. This amendment was made because rawhide chews derived from porcine animals pose a biosecurity risk, as these goods may contain ASFV when imported from overseas into Norfolk Island.

The importation of rawhide chews derived from both bovine and porcine animals into Norfolk Island from another part of Australian territory (other than Christmas Island or Cocos (Keeling) Islands) may continue, as ASFV or significant bovine diseases of concern are not present in Australian territory (other than Christmas Island or Cocos (Keeling) Islands). These goods may not 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 Australian territory (excluding Christmas Island or Cocos (Keeling) Islands). Therefore, importing the goods directly into Norfolk Island from Christmas Island or Cocos (Keeling) Islands requires an assessment of the risk, which is conducted as part of the permit assessment process.