

## EXPLANATORY STATEMENT

### *Biosecurity Act 2015*

#### ***Biosecurity (Prohibited and Conditionally Non-prohibited Goods—Norfolk Island) Amendment (Alternative Conditions—Honey and Metal Ores) Determination 2019***

#### **Legislative Authority**

The *Biosecurity Act 2015* (**the 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 (Secretary of the Department of Agriculture) and the Director of Human Biosecurity (Commonwealth Chief Medical Officer) 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 previously made the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods—Norfolk Island) Determination 2016* (**Goods Determination**).

Under section 7(1) of the Goods Determination, 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 Norfolk Island unless:

- (a) the goods are covered by an import permit; or
- (b) if alternative conditions for bringing or importing the goods into Norfolk Island are specified in Division 1 of Part 2 of the Determination—the alternative conditions are complied with.

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 purpose of the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods—Norfolk Island) Amendment (Alternative Conditions—Honey and Metal Ores) Determination 2019* (**Amendment Determination**) is to amend the alternative import conditions in the Goods Determination for honey and bee products, and for mineral and metal ores, rocks and sand to be brought or imported into Norfolk Island. Import conditions for honey and bee products are being strengthened to protect the Norfolk Island honey bee population.

An amendment is also being made to the import conditions for mineral and metal ores, rocks, and sand brought or imported into Norfolk Island. This amendment will mean that import permits will be required to bring or import the goods, which will ensure that the biosecurity risks associated with these goods are appropriately managed.

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 high level of sanitary and phytosanitary protection aimed at reducing biosecurity risks to a low level, but not to zero.

## **Background**

The Department of Agriculture and the Department of Health 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.

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.

The alternative conditions of honey and bee products, mineral, metal ores and rocks imported into Norfolk Island were reviewed by the Department of Agriculture because of concerns about the potential biosecurity risks associated with the importation of these goods (e.g. contamination with biosecurity risk material). The amendments follow the review conducted by the Department, to ensure that alternative conditions continue to appropriately manage biosecurity risks associated with those goods.

In particular, honey and bee products, which are for particular non-personal end uses (e.g. goods that are imported for retail sale) are required to be sourced from countries that are free of certain pests and diseases, undergo treatment to manage the risk of certain pests and diseases, or be found to be free of certain pests and diseases. Products for non-personal use will also need to be processed, meet packaging requirements, and be accompanied by manufacturer documentation.

## **Impact and Effect**

The Amendment Determination ensures that biosecurity risks continue to be effectively managed, by imposing stricter alternative conditions for honey and bee products imported into Norfolk Island. The amendment to the import conditions for mineral and metal ores, rocks, and sand brought or imported into Norfolk Island will require an import permit from the Department of Agriculture to bring or import the goods. This requirement will ensure that the biosecurity risks associated with these goods are appropriately managed.

## **Consultation**

The Department of Agriculture has prepared the amendments relating to honey and honey bee products taking into account feedback and communication with clients, stakeholders, and industry. This consultation was undertaken through the Department's Have Your Say platform which is an internet based forum. The Department informed relevant stakeholders of the consultation period through a number of channels, including advertising in the Norfolk Islander Newspaper, flyers mailed to all Norfolk Island residents, notification to relevant government agencies and the Administrator of Norfolk Island, and through the Department's external territories webpage. The Department also directly consulted with individual stakeholders who had previously engaged with the Department regarding issues relating to

Norfolk Island bees. The feedback received was positive and the changes were welcomed by clients, stakeholders and industry.

The amendments relating to the mineral and metal ores, rocks and sand address concerns about the potential biosecurity risks associated with the imports of these goods which were raised directly by the Norfolk Island community.

The Office of Best Practice Regulation (**OBPR**) has approved a standing exemption from the Regulatory Impact Statement Preliminary Assessment (**RIS**) process for minor amendments to the Goods Determinations (ID 23368). Accordingly, a RIS 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 Biosecurity Act provides that the Amendment 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, in accordance with subsection 174(3) of the Act.

**Details of the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods—Norfolk Island) Amendment (Alternative Conditions—Honey and Metal Ores) Determination 2019***

**Section 1 — Name**

This section provides that the name of the legislative instrument is the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods—Norfolk Island) Amendment (Alternative Conditions—Honey and Metal Ores) Determination 2019* (Amendment Determination).

**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 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 *Biosecurity Act 2015*.

**Section 4 — Schedules**

This section relevantly 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—Norfolk Island) Determination 2016*

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

Item 1 inserts a new definition for the *Terrestrial Animal Health Code* in subsection 5(1) of the Determination. *Terrestrial Animal Health Code* means the *Terrestrial Animal Health Code* (the Code) promulgated by the World Organisation for Animal Health, as in force from time to time.

The Code provides standards for the improvement of animal health and welfare and veterinary public health worldwide, including through standards for safe international trade in terrestrial animals (mammals, reptiles, birds and bees) and their products. The health measures in the Code are used by the Veterinary Authorities of importing and exporting countries to provide for early detection, reporting and control agents that are pathogenic to animals or humans, and to prevent their transfer via international trade in animals and animal products, while avoiding unjustified sanitary barriers to trade.

Item 1 also inserts a note which provides that the Code could in 2019 be viewed on the World Organisation for Animal Health's website (<http://www.oie.int>).

The Code is publicly available and as such subsection 174(6) of the *Biosecurity Act 2015* permits the incorporation of the Code as in force from time to time into the Determination.

This is a consequential amendment to the amendment made by item 3, which imposes a condition on the importation of honey and other bee products that they have been found to be free from European foulbrood and American foulbrood by a test method prescribed in the Code.

#### **Item 2 After paragraph 6(2)(b)**

Item 2 inserts new paragraph 6(2)(c) into section 6 of the Determination, which specifies new goods to which Division 1 of the Determination does not apply (that is, goods that are not conditionally non-prohibited goods). These goods are honey that is an ingredient in food for human consumption or cosmetics for use on humans, where honey is not the largest single ingredient by volume in the food or cosmetics.

The amendment means that these goods do not require a permit to be imported or brought into Norfolk Island. Neither is the importation of these goods subject to alternative conditions.

#### **Item 3 Section 14 (table item 1)**

Item 3 repeals table item 1 of section 14 and substitutes new table items 1 – 3.

New table item 1 covers honey (whether or not containing honeycomb). The alternative conditions for the importation of these goods are that the goods are for personal use, commercially prepared and packaged, do not weigh more than 750 grams and are produced in

Australia or New Zealand. Also, the goods are not intended to be used as food for bees and the goods are labelled with the weight of the goods and the country where the goods were produced.

New table item 2 provides alternative conditions for the importation of honey in liquid form contained in an individually packaged unit with a capacity of 150 millilitres or less and powdered honey contained in an individually packaged unit with a capacity of 35 grams or less.

The alternative conditions are that the goods are processed so that they are clean and free from other animal or plant material, soil and other contaminants, and are either commercially prepared and packaged for retail sale or are a sample for use in laboratory analysis. Further, the goods are to be accompanied by a declaration from the manufacturer stating the aforementioned conditions are complied with.

New table item 3 provides alternative conditions for the importation of honey (whether or not containing honeycomb), bee venom, bee wax, honeycomb, propolis and royal jelly, other than the items covered by table item 2.

The alternative conditions are that the goods:

- have been processed so that they are clean and free from other animal or plant material, soil and other contaminants;
- are commercially prepared and packaged for retail sale, or are bulk goods that are intended for repackaging for retail sale, or are a sample for use in laboratory analysis;
- are accompanied by a declaration from the manufacturer of the goods stating the relevant matters above have been complied with; and
- meet one of the following conditions, and are accompanied by an official government veterinary certificate attesting that the relevant condition has been complied with:
  - the goods were produced in a country or zone that is free from European foulbrood (*M. plutonis*) and American foulbrood (*Paenibacillus larvae*);
  - the goods have been found to be free from European foulbrood and American foulbrood by a test method described in the Terrestrial Animal Health Code;
  - the goods were treated with ionising radiation to a level that achieves a minimum absorbed dose of 15 kGray; or
  - the goods were pasteurised at a minimum core temperature of 60°C for at least 8 hours.

The amendments in item 3 are being made following a review of the import conditions for honey and bee products imported into Norfolk Island, which identified that stricter alternative conditions are needed to meet the ALOP.

In particular, honey (whether or not containing honeycomb) specified in table item 3 and bee products specified in table item 3 are now required to be sourced from countries that are free of certain pests and diseases, or be found to be free of certain pests and diseases, or undergo treatment to manage the risk of certain pests and diseases.

Small consignments of honey (whether or not containing honeycomb) for personal use (goods specified in table item 1), and honey in small, individually packaged containers (goods specified in table item 2) are subject to less stringent importing conditions. These goods have been assessed as posing a lower risk of being used for a purpose other than the purpose for which they were intended, and accordingly, less of a biosecurity risk.

**Item 4      Subsection 40(2)**

Item 4 repeals subsection 40(2) of the Determination and substitutes a new subsection 40(2). Under that section, mineral and metal ores, rocks and sand cannot be brought or imported into Norfolk Island unless the goods are covered by an import permit.

Consignments of mineral and metal ores, rocks and sand imported into Norfolk Island need to be more closely monitored to ensure that the biosecurity risks associated with these goods are appropriately managed.