

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Amendment (Biosecurity Preparedness Plans) 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) Determination 2016* (**Goods Determination**).

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

- (a) the goods are covered by an import permit; or
- (b) if alternative conditions for bringing or importing the goods into Australian territory are specified in the 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 purpose of the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Amendment (Biosecurity Preparedness Plans) Determination 2019* (**Amendment Determination**) is to insert a condition to provide that certain classes of goods which are the subject of an import declaration must not be brought or imported into Australian territory unless an appropriate biosecurity preparedness plan(s) to manage the biosecurity risks associated with bringing or importing goods of those classes (or goods including goods of those classes) into Australian territory has been listed for this purpose on the Department of Agriculture's website, and is ordinarily accessible through that website. This condition will be in addition to any other conditions that must be complied with.

Biosecurity preparedness plans will be in place for every class of good to which the condition applies, from the time that the Amendment Determination is made.

Biosecurity preparedness plans are taken into account in assessing the risk that applies to bringing or importing the goods in question into Australian territory. The plans inform what risk management measures are applied to goods at the border as part of managing that risk. In this way, the condition is intended to achieve Australia's ALOP, which requires that biosecurity risks are reduced to a very low level but not zero.

The Amendment Determination will ensure that the conditions for specified classes of 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 details 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 Determination.

In order to regulate the bringing or importing of goods into Australian territory, the Department of Agriculture identifies priority pests and diseases of concern and identifies the measures to be put in place to respond if they are found in Australia. In determining the appropriateness of the measures to put in place to manage biosecurity risks, the Department evaluates the likelihood of entry, establishment or spread of a pest or disease within Australian territory in accordance with the ALOP for Australia. The Department also evaluates the associated potential harm and economic consequences, again in accordance with Australia's ALOP.

Goods entering Australia carry a risk that they may introduce pests and diseases that could have a negative impact on the environment or human, plant or animal health, despite conditions imposed before the goods are brought or imported into Australia.

Early detection and rapid control of pests and diseases is critical to reducing the consequences of pests and diseases on producers, allied industries, the environment and regional communities. The purpose of biosecurity preparedness plan(s) is to manage the likelihood of establishment and spread within Australian territory of a biosecurity pest or disease, and the associated consequences. Without biosecurity preparedness plans, delays in detection and control would be expected to magnify the socio-economic consequences of an incursion.

Australia's biosecurity preparedness plans have minimised the establishment or spread of emergency animal diseases including equine influenza, avian influenza and Newcastle disease; emergency plant pests, including banana freckle, khapra beetle, varroa mite; and

significant environmental pests, including browsing ant and red imported fire ant at certain sites.

The amendments seek to improve risk management surrounding the bringing or importation of goods into Australian territory, by ensuring that biosecurity preparedness plans exist to address any known potential biosecurity risks attached to classes of goods as a condition for the bringing or import of those goods into Australian territory.

Impact and Effect

The Amendment Determination ensures that biosecurity risks continue to be effectively managed, by imposing an additional requirement on the bringing or import into Australian territory of certain classes of goods specified in the Goods Determination that are the subject of an import declaration. The Amendment will prohibit the bringing or import of relevant goods into Australian territory, unless there is a biosecurity preparedness plan to manage the biosecurity risks associated with the bringing or importation of those goods into Australian territory. The plans inform what risk management measures are applied to goods at the border as part of managing that risk. In this way, the condition is intended to achieve Australia's ALOP, which requires that biosecurity risks are reduced to a very low level, but not zero. These biosecurity preparedness plans will be listed on and ordinarily accessible through the Agriculture Department's website. The biosecurity preparedness plans will broadly cover all classes of goods that are the subject of an import declaration.

The existence of relevant biosecurity preparedness plans currently underpin assessments of the biosecurity risks posed by the bringing or importation of classes of goods into Australian territory. The new condition will make overt this implicit assumption. The additional condition for classes of goods specified in the Goods Determination will have minimal regulatory impact on industry because it will not require industry to take any additional steps. Rather, the condition will be met through the listing of biosecurity preparedness plans on the department's website.

Consultation

The Department of Agriculture has prepared the amendments in consultation with the Department of Health.

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 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.

Details of the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Amendment (Biosecurity Preparedness Plans) Determination 2019*

Section 1 — Name

This section provides that the name of the legislative instrument is the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Amendment (Biosecurity Preparedness Plans) 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 in 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 on 1 January 2020.

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 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 a Schedule to the Amendment Determination has effect according to its terms.

Schedule 1—Amendments

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

Item 1 Section 5

Item 1 inserts a new definition for *import declaration* into section 5 of the Goods Determination. The term *import declaration* has the same meaning as in the *Customs Act 1901*.

Item 1 also inserts a new definition for *List of Biosecurity Preparedness Plans* into section 5 of the Goods Determination. This list, which will exist from time to time, will be prepared by the Director of Biosecurity and published on the Department of Agriculture's website.

Item 2 After section 11

This item inserts a new section 11A, after section 11 in Division 1 of Part 2 of the Goods Determination.

Section 11A provides that goods that are included in a class of goods to which Division 1 of Part 2 applies, and that are the subject of an import declaration, must not be brought or imported into Australian territory unless, at the time the declaration is made, a plan to manage the biosecurity risks associated with bringing or importing goods of that class (or goods including goods of that class) into Australian territory is listed in the *List of Biosecurity Preparedness Plans*, and is ordinarily accessible through the Department of Agriculture's website at www.agriculture.gov.au.

The purpose of this item is to require that goods that are included in a relevant class of goods, and that are the subject of an import declaration, must not be brought or imported into Australian territory unless, at the time the declaration is made, there is a biosecurity preparedness plan for the relevant class of goods (or goods including goods of that class). These plans are taken into account in assessing the biosecurity risks that apply to bringing or importing the goods in question into Australian territory. The plans inform what risk management measures are applied to goods at the border as part of managing the relevant biosecurity risks. In this way, the condition is intended to achieve Australia's ALOP, which requires that biosecurity risks are reduced to a very low level, but not zero.

Item 3 Before section 38

This item inserts a new section 37A, before section 38 in Part 2 of Division 2 of the Goods Determination.

Section 37A provides that goods that are included in a class of goods to which a section of Division 2 of Part 2 of the Goods Determination applies, and that are the subject of an import declaration, must not be brought or imported into Australian territory unless, at the time the declaration is made, a plan to manage the biosecurity risks associated with bringing or importing goods of that class (or goods including goods of that class) into Australian territory is listed in the *List of Biosecurity Preparedness Plans*, and is ordinarily accessible through the Department of Agriculture's website.

The purpose of this item is to require that goods that are included in a relevant class of goods, and that are the subject of an import declaration, must not be brought or imported into Australian territory unless, at the time the declaration is made, there is a biosecurity preparedness plan for the relevant class of goods (or goods including goods of that class). These plans are taken into account in assessing the biosecurity risks that apply to bringing or importing the goods in question into Australian territory. The plans inform what risk management measures are applied to goods at the border as part of managing the relevant biosecurity risks. In this way, the condition is intended to achieve Australia's ALOP, which requires that biosecurity risks are reduced to a very low level, but not zero.

Item 4 Before section 48A

This item inserts a new section 48AA before section 48A in Division 2A of Part 2 of the Goods Determination.

Subsection 48AA(1) provides that goods that are included in a class of goods to which a section of Division 2A of Part 2 of the Goods Determination applies, and that are the subject of an import declaration, must not be brought or imported into Australian territory unless, at the time the declaration is made, a plan to manage the biosecurity risks associated with bringing or importing goods of that class (or goods including goods of that class) into Australian territory is listed in the *List of Biosecurity Preparedness Plans*, and is ordinarily accessible through the Department of Agriculture's website.

The purpose of this item is to require that goods that are included a relevant class of goods, and that are the subject of an import declaration, must not be brought or imported into Australian territory unless, at the time the declaration is made, there is a biosecurity preparedness plan for the relevant class of goods (or goods including goods of that class). These plans are taken into account in assessing the biosecurity risks that apply to bringing or importing the goods in question into Australian territory. The plans inform what risk management measures are applied to goods at the border as part of managing the relevant biosecurity risks. In this way, the condition is intended to achieve Australia's ALOP, which requires that biosecurity risks are reduced to a very low level, but not zero.

Subsection 48AA(2) provides that the condition in subsection 48AA(1), and the conditions in section 48A, are in addition to any conditions that must be complied with under Division 1 or Division 2 of Part 2 of the Goods Determination.

Item 5 Subsection 48A(3)

This item repeals subsection 48A(3) in Division 2A of Part 2 of the Goods Determination.

Subsection 48A(3) provided that the conditions in subsection 48A(2) were in addition to any conditions that must be complied with under Division 1 or Division 2.

This amendment is consequential as the new subsection 48AA(2) (inserted by item 4) replicates in effect the requirement in subsection 48A(3), as such subsection 48A(3) is redundant.

Item 6 At the end of Division 2A of Part 2

This item inserts a new section 48B at the end of Division 2A of Part 2 of the Goods Determination.

Subsection 48B(1) provides that, for the purposes of section 48AA, section 48B applies to the class of goods that are listed in the list prepared by the Director of Biosecurity and published on the Department of Agriculture's website under the name "List of Goods That May Carry Hitchhiker Pests", as existing from time to time.

This subsection provides for goods listed in the "List of Goods That May Carry Hitchhiker Pests" to be subject to the additional condition in section 48AA concerning biosecurity preparedness plans.

Subsection 48B(2) provides that the class of goods to which section 48B applies does not include goods that consist of corrosive and/or toxic chemicals (or chemicals that are both corrosive and toxic), natural gas or petroleum products if the goods are brought or imported into Australian territory in liquid form, in a bulk vessel and not contained in packaging or other material.

This subsection provides an exemption for certain goods from the condition imposed by section 48AA. This exemption is for liquid petroleum products, liquid natural gas and liquid corrosive and/or toxic chemicals (or chemicals that are both corrosive and toxic) imported in bulk vessels (such as bulk freighters, commercial fuel tankers and liquid natural gas carriers), which are not contained in packaging or other material. This is because the nature of these goods do not support the life of biosecurity pests and diseases and the method of importation does not provide a mechanism by which a hitchhiker pest can be carried by the goods.

Item 7 At the end of the instrument

This item inserts a new Part 3 into the Goods Determination titled 'Part 3 – Application, saving and transitional provisions'.

This item also inserts a new section 50 in Part 3. This section provides that amendments made by this Schedule to the Goods Determination apply in relation to goods that are the subject of an import declaration made on or after 1 January 2020.