

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Suspended Goods—Cats and Dogs Malaysia) Determination 2020

Legislative Authority

Subsection 182(1) of the *Biosecurity Act 2015* (the Act) empowers the Director of Biosecurity to determine that specified goods, or a specified class of goods (including conditionally non-prohibited goods) must not be brought into Australian territory for a specified period that is no longer than 6 months.

The *Biosecurity (Suspended Goods—Cats and Dogs Malaysia) Determination 2020* (the Suspended Goods Determination) is made by the Director of Biosecurity under subsection 182(1) and provides that cats and dogs considered as companion or assistance animals imported from Malaysia to Australia must not be brought or imported into Australian territory directly from Malaysia for a period of 6 months. There is an exemption for military working dogs in the active service of the Australian Defence Force, Australian Federal Police and Australian Border Force that are returning from deployment for active service purposes. There is also an exemption for cats and dogs that originate in Malaysia but are imported from third countries pursuant to an import permit in respect of the relevant country, since in such a case the relevant biosecurity risk will be addressed by conditions applying to the permit to import the cat or dog from that third country. There is also an exception for cats and dogs brought or imported into Australia from New Zealand if they are accompanied by a health certificate in accordance with the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016*.

Purpose

The purpose of the Suspended Goods Determination is to suspend the importation and bringing in of cats and dogs from Malaysia to Australia for 6 months, because the Director of Biosecurity is satisfied that the biosecurity risk associated with such animals is unacceptable by reference to the appropriate level of protection (ALOP) for Australia as set out in section 5 of the Act. The suspension period of 6 months will enable the Department to put in place measures to manage the biosecurity risk posed by cats and dogs imported from Malaysia to an acceptably low level. This will be achieved by reviewing and improving risk management.

Background

Live cats and dogs are ‘conditionally non-prohibited goods’ under the *Biosecurity (Prohibited and Conditionally Non-Prohibited Goods) Determination 2016*, and relevantly must be covered by an import permit when being brought to Australia from countries other than New Zealand.

A standard condition applied to permits to import cats and dogs to Australia requires veterinary health certification attesting to preparations performed to manage the biosecurity risk associated with the importation of these animals.

The Department of Agriculture, Water and the Environment (Department) has concerns that veterinary health certification provided in support of some cats and dogs imported from

Malaysia to Australia may have been false and misleading. As a result, evidence attesting to the origin, sampling, testing and screening of imported cats and dogs from Malaysia, and their health status, has come into question.

In addition, the Department has identified anomalies with export preparation and documentation. In particular, evidence indicates that at least one dog was not present in Malaysia (or any other approved country) at the time of the examinations, vaccinations, treatments and testing required to meet the conditions of the dog's Australian import permit.

The animals in question could have been exposed to diseases of biosecurity concern to Australia. These include Rabies, *Brucella canis*, *Ehrlichia canis*, *Leptospira interrogans* serovar Canicola, and *Leishmania infantum*.

The Department continues to work with the competent authority in Malaysia to ascertain the veracity of their certification processes. Information received to date does not provide the necessary assurance that the Department requires on Malaysia's certification. Additionally, the Department currently lacks assurance that the blood samples presented for testing were collected from the animals to be imported, or that other preparations were performed on the animals to be imported.

Impact and Effect

Cats and dogs that are considered companion animals or assistance animals, must not be brought or imported into Australian territory from Malaysia for the duration of the Suspended Goods Determination (6 months beginning on the day the Determination commences) unless specifically covered by an exception in the Determination. This will impact those importing cats and dogs from Malaysia to Australia for that period.

Consultation

Consultation took place with Malaysia's Department of Veterinary Services by letter during January and February 2020.

Details/Operation

The details of the Suspended Goods Determination are set out in [Attachment A](#).

Other

The Suspended Goods Determination is a legislative instrument but, under subsection 182(6) of the *Biosecurity Act 2015*, section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination. Consequently, a Statement of Compatibility with Human Rights is not required.

Details Biosecurity (Suspended Goods – Cats and Dogs Malaysia) Determination 2020

Section 1 — Name

This section provides that the name of the determination is the *Biosecurity (Suspended Goods – Cats and Dogs Malaysia) Determination 2020*.

Section 2 — Commencement

This section provides for the determination to commence on the day after the determination is registered on the Federal Register of Legislation.

Section 3 — Authority

This section provides that the determination is made under section 182(1) of the *Biosecurity Act 2015*.

Section 4 — Purpose of this instrument

This section provides that the purpose of the *Biosecurity (Suspended Goods – Cats and Dogs Malaysia) Determination 2020* is to provide that a specified class of goods must not be brought or imported into Australian territory for a specified period.

Section 5 — Reasons for making this determination

This section provides the Director of Biosecurity's reasons for making the determination as required by section 182(5) of the *Biosecurity Act 2015*.

The reasons explain why the Director of Biosecurity is satisfied that the level of biosecurity risk associated with bringing or importing cats and dogs considered as companion animals or assistance dogs from Malaysia to Australia represents an unacceptable level of biosecurity risk, applying the ALOP for Australia.

Specifically, certain defects in Malaysia's processes in providing veterinary health certifications for cats and dogs (including the possibility that some of the certifications may have been false or misleading) means there is a risk that cats and dogs being imported into Australia from Malaysia have been exposed to certain diseases exotic to Australia, but endemic to Malaysia. The Director of Biosecurity is satisfied that if such animals are brought or imported into Australia from Malaysia, there is a moderate likelihood that the diseases could enter Australian territory and establish themselves. The diseases could potentially cause harm to human and animal health and there could be associated economic consequences with the entry, establishment or spread of such diseases.

Section 5 of the Determination also addresses the scope of the suspension. It clarifies that the suspension applies to all cats and dogs imported from Malaysia to Australia that are considered companion or assistance animals but does not apply to cats and dogs that originated in Malaysia but are imported to Australia from a third country (as the biosecurity

risk management of such animals does not depend on Malaysia's veterinary certification processes).

The suspension also does not apply to working dogs in the active service of the Australian Defence Force, the Australian Federal Police and the Australian Border Force that are returning from deployment for active service purposes. This is because the measures put in place by those organisations to manage the biosecurity risk associated with such dogs before they enter Malaysia and after they re-enter Australia means that the level of biosecurity risk associated with those dogs remains very low.

Section 5 of the Determination also clarifies that the period of suspension is 6 months. This period of suspension is necessary to manage the biosecurity risk associated with the importation of cats and dogs from Malaysia in accordance with the ALOP for Australia. Malaysia's certification systems for the export of cats and dogs will need to be thoroughly assessed before the import of cats and dogs into Australia can be resumed.

Section 6 — Definitions

This section defines 'Act' to mean the *Biosecurity Act 2015* and Diseases to have the meaning set out in subparagraph 5(a)(iii) of the *Biosecurity (Suspended Goods – Cats and Dogs Malaysia) Determination 2020*.

The note to this provision clarifies that a number of expressions used in the Determination are defined in the Act, including ALOP for Australia.

Part 2 – Suspended Goods

Section 7 — Class of goods to which this Part applies

Subsection 7(1) provides that the *Biosecurity (Suspended Goods – Cats and Dogs Malaysia) Determination 2020* applies to the following class of goods – cats and dogs considered as companion or assistance animals imported from Malaysia to Australia.

Subsection 7(2) provides for the following exceptions to the class of goods referred to in subsection 7(1):

- cats and dogs originating in Malaysia but are imported to Australia through a third country and:
 - for a cat and dog that is brought or imported to Australia from New Zealand – is accompanied by a health certificate in accordance with item 1 of the table in section 12 of the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016*; or
 - For a cat or dog that is brought or imported to Australia from any other country – satisfies import requirements specified in an import permit in respect of that country;
- military working dogs in the active service of the Australian Defence Force, Australian Federal Police and Australian Border Force that are returning from deployment for active service purposes.

The exception for cats and dogs originating in Malaysia and brought or imported into Australia from a third country is appropriate because the health of such animals is managed by the certification process from veterinarians in the relevant third country. Cats and dogs imported from New Zealand likewise pose a very low level of biosecurity risk because they must be accompanied by a health certificate under the *Biosecurity (Prohibited and Conditionally non-Prohibited Goods) Determination 2016*.

The exception for military working dogs is appropriate because the measures put in place by the Australian Defence Force, the Australian Federal Police and the Australian Border Force to manage the biosecurity risk associated with such dogs before they enter Malaysia and after they re-enter Australia means that the level of biosecurity risk associated with those dogs remains very low.

Section 8 —Suspension of goods to which this Part applies

This section provides that goods included in a class of goods to which this Part applies must not be brought or imported into Australian territory for a period of 6 months commencing on the day this instrument commences.

This period of suspension is necessary to manage the biosecurity risk associated with the importation of cats and dogs from Malaysia in accordance with the ALOP for Australia. Malaysia's certification systems for the export of cats and dogs will need to be thoroughly assessed before the import of cats and dogs into Australia can be resumed.