

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity and the Director of Human Biosecurity

Biosecurity Act 2015

*Biosecurity (Conditionally Non-prohibited Goods) Amendment (Hitchhiker Pests)
Determination 2021*

Legislative Authority

The *Biosecurity Act 2015* (the Act) provides the regulatory framework for the management of diseases and pests that may cause harm to human, animal or plant health or the environment.

The Act also gives effect to Australia's relevant international rights and obligations, including Australia's obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). The SPS Agreement provides for Australia's obligations with respect to the Appropriate Level of Protection (ALOP), which, for Australia, is a high level of sanitary and phytosanitary protection aimed at reducing biosecurity risks to a very low level, but not zero.

Subsection 174(1) of the Act provides that the Director of Biosecurity and Director of Human Biosecurity may 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.

Under subsection 174(3) of the Act, the Director of Biosecurity and the Director of Human Biosecurity must apply the ALOP for Australia in conducting a risk assessment for the purpose of deciding whether to make a determination under subsection 174(1).

Under paragraph 541(4)(a) of the Act, in performing functions or exercising powers under the Act, including making a determination under section 174, the Director of Biosecurity must have regard to the objects of the Act.

Purpose

The purpose of the *Biosecurity (Conditionally Non-prohibited Goods) Amendment (Hitchhiker Pests) Determination 2021* (Amendment Determination) is to amend the *Biosecurity (Conditionally Non-prohibited) Goods Determination 2021* (Goods Determination) to provide additional alternative conditions for goods posing hitchhiker pest biosecurity risks.

The purpose of the Amendment Determination is to ensure that the specified conditions for goods posing hitchhiker pest biosecurity risks continue to manage biosecurity risks to the ALOP for Australia.

Background

The Department of Agriculture, Water and the Environment (the department) and the Department of Health co-administer the Act, which establishes the framework 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 Determination.

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. To regulate the bringing or importing of goods into Australian territory, the department identifies priority pests and diseases of concern and identifies the measures to be put in place to manage the biosecurity risks associated with specified classes of goods. In determining the appropriateness of the measures, the department evaluates the likelihood of entry, establishment or spread of a pest or disease within Australian territory, as well as the associated potential harm and economic consequences, in accordance with the ALOP for Australia.

Impact and Effect

The Amendment Determination ensures that the alternative conditions for goods posing hitchhiker pest biosecurity risks continue to manage the biosecurity risks to the ALOP for Australia. To achieve this, the Amendment Determination introduces new alternative conditions for these types of goods.

Any increase in regulatory burden associated with the Amendment Determination is necessary to appropriately manage the biosecurity risk associated with the goods.

Consultation

The department has prepared the Amendment Determination, taking into account feedback and communication with industry stakeholders, through a number of channels, including face-to-face seminars, a webinar and presentations at industry webinar events. The Amendment Determination reflects the feedback and communication with regulated entities, stakeholders, industry and with various areas of the department.

The Office of Best Practice Regulation has approved a standing exemption from the Regulatory Impact Statement Preliminary Assessment (RIS) process for minor or technical amendments, or amendments that are in line with the current biosecurity policy setting and do not have more than a minor regulatory impact on industry, to the Goods Determination (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* (the Legislation Act). Subsection 174(5) of the Act provides that the Amendment Determination is not subject to disallowance. This is because the decision to make a determination under subsection 174(1) of the Act relies on technical and scientifically-based evidence to specify conditions required to be complied with to meet the

ALOP for Australia in relation to the bringing in or importation of conditionally non-prohibited goods. Consequently, a Statement of Compatibility with Human Rights is not required in accordance with paragraph 15J(2)(f) of the Legislation Act and subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Details of the *Biosecurity (Conditionally Non-prohibited Goods) Amendment (Hitchhiker Pests) Determination 2021*

Section 1—Name

This section provides that the name of the legislative instrument is the *Biosecurity (Conditionally Non-prohibited Goods) Amendment (Hitchhiker Pests) Determination 2021* (the Amendment Determination).

Section 2—Commencement

This section provides that the Amendment Determination commences the day after the instrument is registered.

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 each instrument 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

Item 1 After subparagraph 56(2)(a)(ii)

Item 1 inserts new subparagraphs 56(2)(a)(iia) and 56(2)(a)(iib) after subparagraph 56(2)(a)(ii) to provide new additional conditions in paragraph 56(2)(a) for goods that pose hitchhiker pest biosecurity risks.

Section 56 of the *Biosecurity (Conditionally Non-prohibited Goods) Determination 2021* (Goods Determination) provides that goods, as described by subsection 56(1), must not be brought or imported into Australian territory unless the conditions listed in subsection 56(2) are met.

This amendment provides that goods included in a class of goods to which section 56 applies must not be brought or imported into Australian territory under subsection 56(2) unless the goods:

- comply with any post-treatment requirements for the goods specified in the List of Hitchhiker Pest Host Countries or Regions (new subparagraph 56(2)(a)(iia)), and
- are accompanied by written evidence stating that the goods comply with any post-treatment requirements specified in the List of Hitchhiker Pest Host Countries or Regions (new subparagraphs 56(2)(a)(iib)).

The List of Hitchhiker Pest Host Countries or Regions is defined in section 6 of the Goods Determination as the list with that name prepared by the Director of Biosecurity and published on the Agriculture Department's website (www.agriculture.gov.au/biosecurity), as existing from time to time.

Post-treatment requirements manage the risk of hitchhiker pest reinfestation after the goods are treated offshore. This amendment requires goods to meet any listed post-treatment requirements in order to be brought or imported into Australia, in addition to existing conditions in paragraphs 56(2)(a) and (b). This amendment is appropriate to manage the biosecurity risks associated with hitchhiker pests by ensuring that the risk management measures applied offshore under paragraph 56(2)(a) are effective in meeting the ALOP for Australia.