

## **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 (Khapra Beetle)  
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 World Trade Organization 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, which relevantly include providing for managing biosecurity risks and giving effect to Australia's international rights and obligations.

### **Purpose**

The purpose of the *Biosecurity (Conditionally Non-prohibited Goods) Amendment (Khapra Beetle) 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 biosecurity risks associated with khapra beetle.

The purpose of the Amendment Determination is to ensure that the specified conditions for goods posing biosecurity risks associated with khapra beetle 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 biosecurity risks associated with khapra beetle 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 alerts and change notices on the Australian Biosecurity Import Conditions system (**BICON**), and Import Industry Advice Notices. 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, specifically goods posing biosecurity risks relating to khapra beetle. The specified conditions assist with reducing the level of biosecurity risks of specific pests and diseases of biosecurity concern associated with the importation of goods posing biosecurity risks relating to khapra beetle. The conditions are based on the latest scientific and technical information available, including whether the goods come from a target-risk khapra beetle country and the intended end use (such as research purposes or seeds for sowing). This exemption from disallowance is in accordance with paragraph 44(2)(a) of the Legislation Act. As the Amendment Determination is exempt from disallowance, this also means that 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*.

The Amendment Determination commences on the day after the end of the period of 7 days beginning on the day it is registered.

**Details of the *Biosecurity (Conditionally Non-prohibited Goods) Amendment (Khapra Beetle) Determination 2021***

**Section 1—Name**

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

**Section 2—Commencement**

This section provides that the Amendment Determination commences on the day after the end of the period of 7 days beginning on the day it is registered.

**Section 3—Authority**

This section provides that the Amendment Determination is made under subsection 174(1) of the *Biosecurity Act 2015* (the Act).

**Section 4—Schedules**

This section provides that each instrument specified in the Schedule to the Amendment Determination is 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            Section 6**

Item 1 inserts new definitions into section 6 of the *Biosecurity (Conditionally Non-prohibited Goods) Determination 2021* (Goods Determination) in relation to khapra beetles. One of the key definitions inserted by this item is ***excluded khapra beetle goods*** which means goods that are brought or imported into Australian territory:

- as the accompanied or unaccompanied personal effects of a passenger, or a member of the crew, of a ship or aircraft; or
- as mail; or
- for personal use and with a value not exceeding the amount prescribed for the purposes of subparagraph 68(1)(f)(iii) of the *Customs Act 1901*, which is currently \$1000 (see section 26 of the *Custom Regulation 2015*).

The term ***Australian territory*** is defined in the Act to mean Australia, Christmas Island, Cocos (Keeling) Islands and any external Territory to which a provision of the Act extends, the airspace over that area and the coastal sea of those areas.

Item 1 also inserts the following new definitions into section 6 of the Goods Determination:

- **high-risk khapra beetle goods** - means goods that are listed in the List of High-risk Goods for Host of Khapra Beetle.
- **List of High-risk Goods for Host of Khapra Beetle** - means the List with that name that is prepared by the Director of Biosecurity for the purposes of prescribing goods with a high risk of hosting khapra beetle populations, and published on the Agriculture Department's website, as existing from time to time.
- **List of Other-risk Countries for Host of Khapra Beetle** means the List with that name that is prepared by the Director of Biosecurity for the purpose of prescribing countries where there is insufficient evidence of khapra beetle being established and treatments to khapra beetle, and published on the Agriculture Department's website, as existing from time to time.
- **List of Other-risk Goods (including Mode of Arrival and End Use) for Host of Khapra Beetle** means the List with that name that is prepared by the Director of Biosecurity for the purposes of prescribing goods with a low risk of hosting khapra beetle populations and modes of arrival and end use in relation to those goods, and published on the Agriculture Department's website, as existing from time to time.
- **List of Target-risk Countries for Host of Khapra Beetle** - means the List with that name that is prepared by the Director of Biosecurity for the purposes of prescribing countries where there is evidence of khapra beetle being established and treatments to kill khapra beetle, and published on the Agriculture Department's website, as existing from time to time.
- **List of Trogoderma Species of Biosecurity Concern** means the List with that name that is prepared by the Director of Biosecurity for the purposes of prescribing Trogoderma species that are pests for the purposes of the Act, and published on the Agriculture Department's website, as existing from time to time.
- **other-risk khapra beetle country** means a country that is listed in the List of Other-risk Countries for Host of Khapra Beetle.
- **other-risk khapra beetle goods** - means goods that are listed in the List of Other risk Goods (including Mode of Arrival and End Use) for Host of Khapra Beetle and for which a mode of arrival and an end use are specified in the List.
- **target-risk khapra beetle country** - means a country that is listed in the List of Other-risk Countries for Host of Khapra Beetle

The lists outlined in this item will be publicly available on the Agriculture Department's website (<https://www.awe.gov.au/biosecurity-trade/policy/legislation#biosecurity-legislation>).

## **Item 2            Subsection 12(1) (after note 1)**

Item 2 inserts a new note 1A in subsection 12(1) of the Goods Determination.

Subsection 12(1) requires that goods included in a class of goods to which Division 1 of the Goods Determination applies must not be brought or imported into Australian territory unless the goods are covered by an import permit or, if alternative conditions for bringing or

importing the goods into Australian territory are specified in Division 1, the alternative conditions are complied with.

New note 1A clarifies that if Division 3A (which deals with goods that may be host of khapra beetle), as inserted by item 6 of this Schedule, applies to goods included in a class of goods to which Division 1 applies, the additional conditions in Division 3A must also be complied with. This means that if both Division 1 and new Division 3A apply to a particular class of goods, the conditions outlined in both divisions must be complied with in order to bring or import those goods into Australian territory.

**Item 3            Division 2 of Part 2 (note to Division heading)**

Item 3 inserts ‘1’ after ‘Note’ in the note to Division heading in Division 2 of Part 2 of the Goods Determination. This amendment is consequential to item 4, which inserts a second note to the Division heading in Division 2 of Part 2 of the Goods Determination.

**Item 4            Division 2 of Part 2 (after the note to Division heading)**

Item 4 inserts a new note 2 after the note to Division heading in Part 2 of Division 2 of the Goods Determination.

Division 2 of Part 2 outlines conditions that must be met to bring or import specified classes of goods into Australian territory.

New note 2 clarifies that if Division 3A (which deals with goods that may be host of khapra beetle), as inserted by item 6 of this Schedule, applies to goods included in a class of goods to which Division 2 applies, the additional conditions in Division 3A must also be complied with. This means that if both Division 2 and new Division 3A apply to a particular class of goods, the conditions outlined in both divisions must be complied with in order to bring or import those goods into Australian territory.

**Item 5            Subsection 55(2)**

Item 5 omits ‘or 2’ and substitutes ‘, 2 or 3A’ in subsection 55(2) of the Goods Determination.

Section 55 ensures that a biosecurity preparedness plan must be in place for certain goods to which Division 3 of the Goods Determination applies, before those goods can be brought or imported into Australian territory (subsection 55(1)). Section 56 of the Goods Determination imposes certain conditions relating to goods posing hitchhiker pest biosecurity risks. Currently, the condition in section 55, along with the conditions in section 56, applies in addition to the conditions under Division 1 or 2 of the Goods Determination (subsection 55(2)).

The effect of this amendment is to provide that the condition in subsection 55(1) requiring a biosecurity preparedness plan, and the conditions in section 56 relating to goods posing hitchhiker pest biosecurity risks, are in addition to any conditions that must be complied with under Division 1, 2 or new Division 3A, as inserted by item 6 of this Schedule.

This amendment is consequential to item 6 of this Schedule, which inserts new Division 3A, and clarifies that the condition in section 55 relating to biosecurity preparedness plans applies in addition to that new Division.

## Item 6 After Division 3 of Part 2

Item 6 inserts new Division 3A after Division 3 of Part 2 of the Goods Determination. This new division deals with additional conditions relating to goods that may be host of khapra beetle.

### Section 57A - Biosecurity preparedness plans - condition

New section 57A provides that goods that are included in a class of goods to which this Division 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 ordinarily accessible through the Agriculture Department's website (<https://www.awe.gov.au/biosecurity-trade/policy/legislation/list-biosecurity-preparedness-plans>).

This amendment requires classes of goods that may be host of khapra beetle, as outlined in new sections 57A to 57F inserted by this item, to have a biosecurity preparedness plan to manage biosecurity risk that is publicly accessible.

An **import declaration** is defined in section 6 of the Goods Determination to have the same meaning as in the *Customs Act 1901* (Customs Act). An import declaration under the Customs Act is, broadly, a communication by document or electronically, in accordance with the Customs Act, of information about certain imported goods or warehoused goods that are intended to be entered for home consumption.

### Section 57B - Conditions generally

New section 57B provides that the conditions in new Division 3A are in addition to any relevant conditions that must be complied with under Division 1, 2 or 3. This amendment provides further clarification that the conditions in new Division 3A are in addition to the conditions that must be met under Division 1, 2 or 3 of the Goods Determination.

### Section 57C - High-risk khapra beetle goods from target-risk khapra beetle countries

New section 57C provides that high-risk khapra beetle goods that are stored or loaded onto an aircraft or vessel in a target-risk khapra beetle country, as described by new subsection 57C(1), must not be brought or imported into Australian territory unless the goods are covered by an import permit, or the alternative conditions specified in the table at paragraph 57C(2)(b) for high-risk khapra beetle goods from target-risk khapra beetle countries are complied with.

The term **high risk khapra beetle goods** is defined in section 6, as amended by item 1 of this Schedule, to mean goods that are listed in the List of High-risk Goods for Host of Khapra Beetle. The **List of High-risk Goods for Host of Khapra Beetle** is also defined in section 6, as amended by item 1 of this Schedule, to mean, broadly, the list with that name that is published on the Department of Agriculture's website, as existing from time to time.

The term **target-risk khapra beetle country** is defined in section 6, as amended by item 1 of this Schedule, to mean a country that is listed in the List of Target-risk Countries for Host of Khapra Beetle. The **List of Target-risk Countries for Host of Khapra Beetle** is also defined

in section 6, as amended by item 1 of this Schedule, to mean, broadly, the List with that name that is published on the Department of Agriculture's website, as existing from time to time.

Table item 1 provides that the alternative conditions for high-risk khapra beetle goods that are not seeds for sowing and are not intended for research purposes are as follows:

- the goods have been treated using a treatment listed for the goods in the List of Target-risk Countries for Host of Khapra Beetle (paragraph (a)); and
- the goods are free from all live species of *Trogoderma* (paragraph (b)); and
- the goods are accompanied by a phytosanitary certificate stating the matters mentioned in paragraphs (a) and (b) (paragraph (c)); and
- the goods are not excluded khapra beetle goods (paragraph (d)).

The term ***phytosanitary certificate*** is defined in section 6 of the Goods Determination to mean an official paper document, or its official electronic equivalent, issued in accordance with Article V of the International Plant Protection Convention.

The term ***excluded khapra beetle goods*** is defined in section 6, as amended by item 1 of this Schedule, to mean, broadly, goods that are brought or imported into Australian territory as the personal effects of a passenger, or a member of the crew, of a ship or aircraft, or as mail, or for personal use and with a value not exceeding the amount prescribed for the purposes of the Customs Act (currently \$1000).

Table item 2 provides that the alternative conditions for high-risk khapra beetle goods that are seeds for sowing and are not intended for research purposes are as follows:

- the goods are free from evidence of all species of *Trogoderma* (whether live, dead or exuviae) that are listed in the List of Trogoderma Species of Biosecurity Concern (paragraph (a)); and
- the goods are accompanied by a phytosanitary certificate stating the matter mentioned in paragraph (a) (paragraph (b)); and
- the goods are not excluded khapra beetle goods (paragraph (c)).

The ***List of Trogoderma Species of Biosecurity Concern*** is defined in section 6, as amended by item 1 of this Schedule, to mean, broadly, the List with that name that is published on the Department of Agriculture's website, as existing from time to time.

Table item 3 provides that the alternative conditions for high-risk khapra beetle goods that are intended for research purposes are as follows:

- the goods are accompanied by written evidence that the goods are intended for research purposes (paragraph (a)); and
- the goods have a value not exceeding the amount prescribed for the purposes of subparagraph 68(1)(f)(iii) of the Customs Act, which is currently \$1000 (paragraph (b)); and
- the goods are not brought or imported into Australian territory as the accompanied or unaccompanied personal effects of a passenger, or a member of the crew, of a ship or aircraft, or as mail (subparagraphs (c)(i) and (c)(ii)).



## Section 57D - High-risk khapra beetle goods from other-risk khapra beetle countries

New section 57D provides that high-risk khapra beetle goods that are stored or loaded onto an aircraft or vessel in an other-risk khapra beetle country and are not goods to which section 57C applies, as described by subsection 57D(1), must not be brought or imported into Australian territory unless the goods are covered by an import permit, or the alternative conditions specified in the table at paragraph 57D(2)(b) for high-risk khapra beetle goods from other-risk khapra beetle countries are complied with.

The term ***other-risk khapra beetle country*** is defined in section 6, as amended by item 1 of this Schedule, to mean a country that is listed in the List of Other-risk Countries for Host of Khapra Beetle. The “List of Other-risk Countries for Host of Khapra Beetle” is also defined in section 6, as amended by item 1 of this Schedule, to mean, broadly, the List with that name that is published on the Department of Agriculture’s website, as existing from time to time. Table item 1 provides that the alternative conditions for high risk khapra beetle goods that are not seeds for sowing and are not intended for research purposes are either:

- the goods:
  - are free from evidence of all species of *Trogoderma* (whether live, dead or exuviae) that are listed in the List of Trogoderma Species of Biosecurity Concern (subparagraph (a)(i)); and
  - are accompanied by a phytosanitary certificate stating the matter mentioned in subparagraph (a)(i) (subparagraph (a)(ii)); and
  - are not excluded khapra beetle goods (subparagraph (a)(iii)); or
- the goods:
  - have been treated using a treatment listed for the goods in the List of Other-risk Countries for Host of Khapra Beetle (subparagraph (b)(i)); and
  - are free from all live species of *Trogoderma* (subparagraph (b)(ii)); and
  - are accompanied by a phytosanitary certificate stating the matters mentioned in subparagraphs (b)(i) and (b)(ii) (subparagraph (b)(iii)); and
  - are not excluded khapra beetle goods (subparagraph (b)(iv)).

Table item 2 provides that the alternative conditions for high-risk khapra beetle goods that are seeds for sowing and are not intended for research purposes are as follows:

- the goods are free from evidence of all species of *Trogoderma* (whether live, dead or exuviae) that are listed in the List of Trogoderma Species of Biosecurity Concern (paragraph (a)); and
- the goods are accompanied by a phytosanitary certificate stating the matter mentioned in paragraph (a) (paragraph (b)); and
- the goods are not excluded khapra beetle goods (paragraph (c)).

Table item 3 provides that the alternative conditions for high-risk khapra beetle goods that are intended for research purposes are as follows:

- the goods are accompanied by written evidence that the goods are intended for research purposes (paragraph (a)); and
- the goods have a value not exceeding the amount prescribed for the purposes of subparagraph 68(1)(f)(iii) of the Customs Act, which is currently \$1000 (paragraph (b)); and
- the goods are not brought or imported into Australian territory as the accompanied or unaccompanied personal effects of a passenger, or a member or the crew, of a ship or aircraft; or as mail (subparagraphs (c)(i) or (c)(ii)).

## Section 57E - Other-risk khapra beetle goods from target-risk khapra beetle countries

New section 57E provides that other-risk khapra beetle goods that are other-risk khapra beetle goods and stored or loaded onto an aircraft or vessel in a target-risk khapra beetle country, as described in subsection 57E(1), must not be brought or imported into Australian territory unless the goods are covered by an import permit, or the alternative conditions specified in the table at paragraph 57E(2)(b) for other-risk khapra beetle goods from target-risk khapra beetle countries are complied with.

The term ***other-risk khapra beetle goods*** is defined in section 6, as amended by item 1 of this Schedule, to mean goods that are listed in the List of Other-risk Goods (including Mode of Arrival and End Use) for Host of Khapra Beetle, and for which a mode of arrival and end use are specified in the List. The “List of Other-risk Goods (including Mode of Arrival and End Use) for Host of Khapra Beetle” is also defined in section 6, as amended by item 1 of this Schedule, to mean, broadly, the list with that name that is published on the Department of Agriculture’s website, as existing from time to time.

Table item 1 provides that the alternative conditions for other-risk khapra beetle goods that are not seeds for sowing and are not intended for research purposes are either:

- the goods:
  - are free from evidence of all species of *Trogoderma* (whether live, dead or exuviae) that are listed in the List of Trogoderma Species of Biosecurity Concern (subparagraph (a)(i)); and
  - are accompanied by a phytosanitary certificate stating the matter mentioned above (subparagraph (a)(ii)); or
- the goods:
  - have been treated using a treatment listed for the goods in the List of Target-risk Countries for Host of Khapra Beetle (subparagraph (b)(i)); and
  - are free from all live species of *Trogoderma* (subparagraph (b)(ii)); and
  - are accompanied by a phytosanitary certificate stating the matters mentioned in subparagraphs (b)(i) and (b)(ii) (subparagraph (b)(iii)).

Table item 2 provides that the alternative conditions for other-risk khapra beetle goods that are seeds for sowing and are not intended for research purposes are as following:

- the goods are free from evidence of all species of *Trogoderma* (whether live, dead or exuviae) that are listed in the List of Trogoderma Species of Biosecurity Concern (paragraph (a)); and
- the goods are accompanied by a phytosanitary certificate stating the matter mentioned above (paragraph (b)).

Table item 3 provides that the alternative conditions for other-risk khapra beetle goods that are intended for research purposes are as follows:

- the goods are accompanied by written evidence that the goods are intended for research purposes (paragraph (a)); and
- the goods have a value not exceeding the amount prescribed for the purposes of subparagraph 68(1)(f)(iii) of the Customs Act, which is currently \$1000 (paragraph (b)).

## Section 57F - Other-risk khapra beetle goods from other-risk khapra beetle countries

New section 57F provides that other-risk khapra beetle goods that are stored or loaded onto an aircraft or vessel in an other-risk khapra beetle country and are not goods to which section 57E applies, as described in subsection 57F(1), must not be brought or imported into Australian territory unless the goods are covered by an import permit, or the alternative conditions specified in the table at paragraph 57F(2)(b) for other-risk khapra beetle goods from other-risk khapra beetle countries are complied with.

Table item 1 provides that the alternative conditions for other-risk khapra beetle goods that are not seeds for sowing and are not intended for research purposes are either:

- the goods:
  - are free from evidence of all species of *Trogoderma* (whether live, dead or exuviae) that are listed in the List of Trogoderma Species of Biosecurity Concern (subparagraph (a)(i)); and
  - are accompanied by a phytosanitary certificate stating the matter mentioned above (subparagraph (a)(ii)); or
- the goods:
  - have been treated using a treatment listed for the goods in the List of Other-risk Countries for Host of Khapra Beetle (subparagraph (b)(i)); and
  - are free from all live species of *Trogoderma* (subparagraph (b)(ii)); and
  - are accompanied by a phytosanitary certificate stating the matters mentioned in both of the above paragraphs (subparagraph (b)(iii)).

Table item 2 provides that the alternative conditions for other-risk khapra beetle goods that are seeds for sowing and are not intended for research purposes are as follows:

- the goods are free from evidence of all species of *Trogoderma* (whether live, dead or exuviae) that are listed in the List of Trogoderma Species of Biosecurity Concern (paragraph (a)); and
- the goods are accompanied by a phytosanitary certificate stating the matter mentioned in the above paragraph (paragraph (b)).

Table item 3 provides that the alternative conditions for other-risk khapra beetle goods that are intended for research purposes are as follows:

- the goods are accompanied by written evidence that the goods are intended for research purposes (paragraph (a)); and
- have a value not exceeding the amount prescribed for the purposes of subparagraph 68(1)(f)(iii) of the Customs Act, which is currently \$1000 (paragraph (b)).

These alternative conditions for khapra beetle goods in new Division 3A of the Goods Determination are appropriate to manage the biosecurity risks associated with the goods to an acceptable level in a manner to achieve Australia's ALOP, which requires that biosecurity risks are reduced to a very low level, but not zero.

If the alternative conditions for khapra beetle goods are not met, new Division 3A of the Goods Determination provides that the goods must be covered by an import permit.