**EXPLANATORY STATEMENT**

Issued by Authority of the Director of Biosecurity

*Biosecurity Act 2015*

*Biosecurity (Exposed Conveyances–Exceptions from Biosecurity Control) Determination 2016*

**Legislative Authority**

The *Biosecurity Act 2015* (the Biosecurity Act) provides the Commonwealth with powers to assess and manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, the environment and the economy.

Section 192 of the Biosecurity Act provides that when a conveyance that is not already subject to biosecurity control is exposed to another conveyance (including an installation) that is subject to biosecurity control or that is outside Australian territory, it becomes subject to biosecurity control when it is in, or when it enters Australian territory. Subsection 192(6) provides that the Director of Biosecurity may, by legislative instrument, determine that section 192 does not apply to specified conveyances or specified conveyances in specified circumstances.

**Purpose**

The purpose of the *Biosecurity (Exposed Conveyances–Exceptions from Biosecurity Control) Determination 2016* (Determination) is to provide exceptions from biosecurity control for conveyances that are exposed to acceptable levels of biosecurity risk. This includes aircraft and vessels that are interacting with installations or petroleum industry vessels outside Australian territory, if they are able to meet specified circumstances that provides that biosecurity risk is acceptable or is being managed to an acceptable level.

**Background**

The Biosecurity Act regulates conveyances and goods from outside Australian territory (outside 12 nautical miles) that enter into Australian territory. The change in jurisdiction from 200 nautical miles (under the *Quarantine Act 1908*) to 12 nautical miles under the Biosecurity Act means that a conveyance that leaves Australian territory and is exposed to another conveyance, including an installation, will become subject to biosecurity control when it re-enters Australian territory. Goods that are carried on board these conveyances are considered exposed goods under paragraph 158(1)(b) of the Biosecurity Act because they have been exposed to a conveyance that is subject to biosecurity control.

These exposed conveyances will also be subject to providing a pre-arrival report under section 193 of the Biosecurity Act, and, if there are goods on board that did not originate in Australian territory and are to be unloaded in Australian territory, a notice of goods under section 120 of the Biosecurity Act.

Some industry members, in particular those in the shipping and offshore installation industries, have raised concerns about the increase in regulatory burden associated with the reduction in jurisdiction to 12 nautical miles. As certain interactions between a conveyance that is not subject to biosecurity control and another conveyance that is subject to biosecurity control or that is outside Australian territory, do not present an unacceptable level of biosecurity risk, exposed conveyance should not always become subject to biosecurity control.

This Determination works in conjunction with the *Biosecurity Regulation 2016*, which includes exceptions for notice of goods to be unloaded and pre-arrival reporting under sections 120 and 193 of the Biosecurity Act, respectively, in order to reduce unnecessary regulatory burden on industry.

**Impact and Effect**

This Determination will minimise the unnecessary regulatory burden on the operator or person in charge of conveyances which have not been exposed to unacceptable levels of biosecurity risk.

**Consultation**

During the 2015–16 implementation of the Biosecurity Act*,* the Department of Agriculture and Water Resources actively raised awareness among clients, stakeholders and the general public that new legislation commence on 16 June 2016.

The department provided extensive opportunities for clients and stakeholders to become informed about the changes to the legislative framework so that they understood their obligations and the implications of the changes on their business. Stakeholders and clients were consulted and engaged throughout the development of the draft delegated legislation, and were encouraged to provide feedback. Fact sheets supporting the release of draft delegated legislation for public consultation were available on the department’s website, and were distributed to stakeholders to provide additional clarity.

Where possible a minimum 60-day consultation period was provided to stakeholders. The 60-day period is in recognition of, and in compliance with the Sanitary and Phytosanitary Measures (SPS) Agreement. The SPS agreement procedures recommends that when a measure that may affect trade is proposed by a country, at least 60 days should be allowed for comments from trading partners before a measure comes into force.

The department also engaged with the Australian Petroleum Production & Exploration Association, the peak national body representing Australia’s oil and gas exploration and production industry, and a number of industry members in the development of this Determination.

The department used a multi-faceted engagement approach, including:

* targeted and voluntary engagement
* forums
* workshops
* information sessions
* industry notifications
* media releases
* industry eLearning
* fact sheets.

On 23 February 2016, the department hosted a Biosecurity Legislation Forum in Canberra targeting peak industry bodies. The forum facilitated two-way communication and feedback and provided industry groups with the opportunity for roundtable discussions about the new legislation. In addition, participants were also invited to provide feedback on content they believed would be most useful for their members at regional Biosecurity Legislation Industry roadshow forums to be held around Australia prior to commencement. The forum was attended by approximately 30 representatives from a range of peak industry bodies including shipping, ports, petroleum, airlines, airports, freight, cargo, science, food and beverage, and animal health.

The Biosecurity Legislation Industry roadshow travelled to eight major city regions in Australia between 14 March and 6 April 2016. Each session provided participants with an overview of the new legislation and explained how the Biosecurity Act and the delegated legislation may affect industry in different regions. The sessions were attended by approximately 700 representatives overall from shipping, ports, petroleum, airlines, airports, freight, cargo, research, education, science, plant and animal health and state, territory and federal governments. Invitations were sent via the department’s subscription lists and also to members of consultative committees encouraging them to share with their members.

During 2015–16, the department also held meetings and workshops with state and territory governments, other government agencies (including the Department of Health, Department of Defence and the Department of Immigration and Border Protection), as well as with consultative committees, and environmental groups. Letters were sent to government agencies that the department had not already directly engaged with to advise that draft delegated legislation had been released for public comment and to encourage them to make a submission. Regular biosecurity legislation update notifications were distributed to subscribers across five of the department’s subscription lists. International trading partners were also notified via the World Trade Organization Sanitary and Phytosanitary notification.

The department received 52 individual submissions in relation to the delegated legislation released for public consultation until 24 March 2016. Submissions were received from state governments, international governments, industry peak bodies, environmental bodies, agricultural producers, importers, freight companies, airlines and universities.

The consultation undertaken built upon extensive consultation on the Biosecurity Act which began in 2009. During the development process, the department consulted with industry representatives from the cargo, shipping, ports, supply chain and logistics, airline, airport, customs, environment, animal, plant, invasive species, primary production and petroleum/exploration sectors through working groups.

The Office of Best Practice Regulation (OBPR) was consulted in the preparation of the Regulation Impact Statement (RIS) for the Biosecurity Bill 2014 (ID: 16609). The OBPR advised on 31 March 2016 that a further RIS is not required for the purposes of Biosecurity delegated legislation. The department consulted the Office of Parliamentary Counsel in the drafting of this Determination.

The Determination is a legislative instrument for the purpose of the *Legislation Act 2003*.

The Determination is compatible with human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in the Attachment.

**Details of the *Biosecurity (Exposed Conveyances–Exceptions from Biosecurity Control) Determination 2016***

Section 1 – Name

This section provides that the name of the Determination is the *Biosecurity (Exposed Conveyances–Exceptions from Biosecurity Control) Determination 2016*.

Section 2 – Commencement

This section provides that the Determination commences at the same time as section 3 of the Biosecurity Actcommences. Section 3 of the Biosecurity Act commences on 16 June 2016.

Section 3 – Authority

This section provides that the Determination is made under subsection 192(6) of the Biosecurity Act.

Section 4 – Definitions

This section sets out the relevant definitions for the Determination. Some of these definitions refer to defined terms used in the Biosecurity Act*,* as in force from time to time. The Biosecurity Act is available on the Federal Register of Legislation at [www.legislation.gov.au](https://www.legislation.gov.au/Home).

A note clarifies that definitions for ‘conveyance’, ‘exposed to’ and ‘installation’ are as defined under the Biosecurity Act.

***Act***

This definition provides that the ‘Act’ means the Biosecurity Act.

***domestic goods***

This definition provides that the term ‘domestic goods’ refers to either:

* goods that were released from biosecurity control under either paragraph 162(1)(a), (b) or (c) of the Biosecurity Act, or
* goods that were brought from a place in Australian territory and were neither subject to biosecurity control nor had an exposed goods order in force when the goods left Australian territory.

This definition is used to describe goods that are effectively not of biosecurity concern within Australian territory because they either originated from Australian territory or have already been managed for the purposes of biosecurity risk on entry into Australian territory. For example, this would include any goods that were brought from outside Australian territory into Australian territory and have been released from biosecurity control by a biosecurity officer, a biosecurity industry participant or are prescribed goods which have left a designated biosecurity control release area at a first point of entry or an international mail centre.

***domestic person***

This definition provides that ‘domestic person’ means a person who was brought from a place in Australian territory and includes a ‘domestic person’ who leaves a conveyance temporarily and returns to it. For example, this would include a ship’s pilot who was being brought from a place in Australian territory on a conveyance to:

* a vessel outside Australian territory to pilot that vessel and subsequently returned to Australian territory on the first conveyance, or
* an installation outside Australian territory, who then transferred temporarily to a second vessel to pilot that vessel and subsequently returned to the installation.

This definition is used to describe persons who either originated from Australia or have already been managed in relation to biosecurity risk on entry into Australian territory.

***low-risk goods***

This definition provides that ‘low risk goods’ mean fuel, petroleum and canisters of petroleum (such as those to be used for testing and/or analysis). This term identifies those goods that are deemed sufficiently low risk that the transfer of those goods from one conveyance to an exposed conveyance should not require regulation.

***petroleum***

This definition provides that petroleum means:

1. any naturally occurring hydrocarbons, whether in a gaseous, liquid or solid state; or
2. any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
3. any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the elements or compounds such as hydrogen sulphide, nitrogen, helium and carbon dioxide;

and includes

1. any petroleum as defined in (a), (b) or (c) that has been returned to a natural reservoir; and
2. any petroleum as defined in (a), (b), (c) or (d), where one or more things have been added and/or wholly or partly removed.

This is intended to cover the broad range of petroleum and its products, including, but not limited to, crude oil, liquefied natural gas, liquefied petroleum gas and condensate.

***petroleum industry vessel***

This definition provides that ‘petroleum industry vessel’ means a vessel, other than an installation, that is, or is to be, used wholly or principally for, or in connection with exploring for, or exploiting petroleum with equipment on or forming part of the vessel, or operations or activities associated with, or incidental to, exploiting or exploring petroleum. This definition is intended to include vessels that are performing functions similar to that of an installation (in relation to petroleum industry), but do not meet the definition of an ‘installation’ under the Biosecurity Act. For example, this would include, but is not limited to, vessels that are involved in exploring for or exploiting petroleum, laying pipes, installation construction or maintenance.

Section 5 – Purpose of this instrument

Section 192 of the Biosecurity Act applies to a conveyance that is not already subject to biosecurity control and is exposed to another conveyance (including an installation and a petroleum industry vessel) that is subject to biosecurity control or that is outside Australian territory. An exposed conveyance will become subject to biosecurity control when it is in (if exposure occurs in Australian territory), or when it re-enters Australian territory.

This section provides that the purpose of this Determination is to specify the circumstances in which section 192 of the Biosecurity Act does not apply in relation to a conveyance that is exposed to another conveyance, as referred to in subparagraph 192(1)(a)(i) or (ii) or paragraph 192(1)(b) of the Biosecurity Act.

The exceptions from biosecurity control provided for in this Determination only apply to conveyances that commenced their journeys in Australian territory and are not already subject to biosecurity control. This would include conveyances that only travel between places in Australian territory and those that originally arrived in Australian territory from a place outside Australian territory, and had been released from biosecurity control by a biosecurity officer or biosecurity industry participant under paragraph 218(1)(a) or (b) of the Biosecurity Act.

Section 6 – Circumstances in which exposed conveyance does not become subject to biosecurity control – general

This section provides that section 192 of the Biosecurity Act does not apply to a conveyance (the ***exposed conveyance***) which is exposed to another conveyance (the ***second conveyance***) if all the applicable circumstances under this section are met. The purpose of this section is to provide the circumstances whereby an exposed conveyance that is undertaking activities that pose an acceptable level of biosecurity risk, or where biosecurity risk is being managed to an acceptable level, would not become subject to biosecurity control.

If any of the applicable circumstances are not met, then section 192 of the Biosecurity Act will apply and the exposed conveyance will become subject to biosecurity control, either immediately on exposure in Australian territory or when returning to Australian territory. This means that the exposed conveyance will be subject to all the requirements relevant to the assessment and management of a conveyance that is subject to biosecurity control under the Biosecurity Act.

For clarity, the applicable circumstances that apply to a conveyance that is exposed to a second conveyance that is:

* not an installation or a petroleum industry vessel – paragraphs (1)(a), (b), (c), (d) and (e), or
* an installation or a petroleum industry vessel – paragraphs (1)(a), (b), (c), (d) and (f) (including subsections (2) to (7) as relevant).

Paragraphs (1)(a) and (b) provide that no contamination, infestation, infection, or pest (alive or dead) is, or was, transferred from the second conveyance to the exposed conveyance. If either of these circumstances is not met, then section 192 of the Biosecurity Act will apply to the exposed conveyance. For example, if insects have transferred from the second conveyance to the exposed conveyance via flight or transfer of goods, or if soil, plant materials (such as leaves, bark or seeds) or animal materials (such as feathers, fur or excrement) on a contaminated container have transferred from the second conveyance to the exposed conveyance via transfer of the container, then the exposed conveyance would become subject to biosecurity control.

Paragraph (1)(c) provides that no person on board the exposed conveyance is, or was, exposed to an animal or a plant on the second conveyance that is infected with, or has died from a disease. If this is not met, for example, a person on board the exposed conveyance has been exposed to a livestock on a second conveyance that died from a disease, then the exposed conveyance would become subject to biosecurity control.

Paragraph (1)(d) provides that if the exposed conveyance is an aircraft or a vessel, neither human remains nor persons showing signs or symptoms of a listed human disease are on board the aircraft or vessel at any time the conveyance is in Australian territory. If this is not met, for example, a deceased person is on board the exposed conveyance in Australian territory, then the exposed conveyance would become subject to biosecurity control.

Paragraph (1)(e) provides that if a conveyance is exposed to a second conveyance that is not an installation or a petroleum industry vessel, then both conditions in subparagraphs (1)(e)(i) and (ii) must be met. Subparagraph (1)(e)(i) provides that only domestic persons (including any domestic persons who transferred from the second conveyance to the exposed conveyance) on the exposed conveyance intend to disembark, or disembark in Australian territory. For example, if this is not met, such as when a person (who is not a domestic person) on a vessel that began its journey from a place outside Australian territory, is transferred by a helicopter (exposed conveyance) from the vessel to a place in Australian territory for disembarkation, then the exposed conveyance would become subject to biosecurity control. However, if an exposed conveyance is only transporting a person (who is not a domestic person) between a second conveyance and a third conveyance, and not transporting that person for disembarkation in Australian territory, then the exposed conveyance would not become subject to biosecurity control, as long as it meets all other applicable circumstances.

It also provides that if a domestic person temporarily leaves a conveyance to undertake activities on a second conveyance and then returns to the first (exposed) conveyance, then the exposed conveyance would not become subject to biosecurity control, if all other applicable circumstances are met. For example, this would include if a ship’s pilot who was brought from a place in Australian territory on a vessel and transferred temporarily to a second vessel outside Australian territory to perform their role, and subsequently returned to the first (exposed) vessel for disembarkation in Australian territory.

Subparagraph (1)(e)(ii) provides that only low-risk goods or domestic goods (including low-risk goods or domestic goods that were transferred from the second conveyance to the exposed conveyance) are on board the exposed conveyance at any time it is in Australian territory. For example, if this is not met, such as when goods (that are not domestic goods or low-risk goods) that were on a vessel that began its journey from a place outside Australian territory are transferred to another vessel (exposed conveyance) for bringing back into Australian territory, the exposed conveyance becomes subject to biosecurity control. However, if the exposed conveyance transferred goods that are neither low-risk goods nor domestic goods between a second conveyance and a third conveyance outside Australian territory, and not transporting them into Australian territory, then the exposed conveyance would not become subject to biosecurity control, as long as it meets all other applicable circumstances.

The effect of subparagraph (1)(e)(ii) is to provide that only conveyances that are exposed to goods that are of biosecurity concern are subject to regulation under the Biosecurity Act. Low risk goods and domestic goods are goods that are not of biosecurity concern or were of acceptable level of biosecurity risk and therefore, should not subject an exposed conveyance to increased regulation.

Other examples whereby the circumstance under subparagraph (1)(e) may apply include when a vessel has towed a second vessel that began its journey from outside Australian territory, a vessel is exposed while outside Australian territory to a second vessel that commenced its journey in Australian territory (such as, interaction between two domestic fishing vessels outside Australian territory), or a conveyance has delivered one or more the of the following to a second conveyance outside Australian territory:

* domestic goods
* low-risk goods
* domestic persons.

Subparagraph (1)(f) provides that if a conveyance is exposed to a second conveyance that is an installation or a petroleum industry vessel, then one of the circumstances listed in subparagraphs (1)(f)(i), (ii) or (iii) must be met or the conveyance will be subject to biosecurity control when in Australian territory.

Subparagraph (1)(f)(i) provides that no person who transferred from the second conveyance (installation or petroleum industry vessel) to the exposed conveyance intends to disembark, or disembarks, in Australian territory, and no goods (other than low-risk goods) that were transferred from the second conveyance to the exposed conveyance are on board the exposed conveyance at any time it is in Australian territory. For example, if the exposed conveyance only received petroleum (low-risk goods) from an installation outside Australian territory for bringing back into Australian territory, and met all other applicable circumstances, it would not become subject to biosecurity control.

Other examples whereby the circumstance under subparagraph (1)(f)(i) may apply include when a vessel has towed an installation or a petroleum industry vessel that began its journey from outside Australian territory, or a conveyance has delivered one or more of the following to an installation or a petroleum industry vessel outside Australian territory:

* domestic goods,
* low-risk goods
* domestic persons.

Subparagraph (1)(f)(ii) provides that if the level of biosecurity risk associated with the installation or petroleum industry vessel is low within the meaning of subsection (2) or (3), then the exposed conveyance would not become subject to biosecurity control, as long as all other applicable circumstances are met. An exposed conveyance may bring back into Australian territory any person and/or goods (including waste) from an installation or a petroleum industry vessel that meets either the circumstance in subsection (2) or (3).

Subsection (2) provides that the biosecurity risk of the second conveyance (installation or petroleum industry vessel) is low if both the conditions in paragraphs (2)(a) and (b) are met. Paragraph (2)(a) provides that only domestic persons have ever been on board the second conveyance. Domestic persons would include, for example, a ship’s pilot who was brought from a place in Australian territory to an installation outside Australian territory, who then transferred temporarily to a second vessel outside Australian territory to perform their role, and subsequently returned to the installation.

Paragraph (2)(b) provides that only the following goods have ever been on board the second conveyance:

* domestic goods
* low-risk goods
* goods that are to be deployed to the sea or seabed (including goods that have been brought on board the second conveyance for the purpose of being deployed to the sea or seabed). For example, these may include pipes that that are brought on board the installation to be unpacked first prior to deployment to the sea or seabed.
* goods that are in the possession of a domestic person who left the second conveyance temporarily and later returned to it, being goods that were in the possession of the person at the time the person left the second conveyance. For example, a domestic person such as a ship’s pilot or mechanic, may bring tools with him or her when temporarily leaving the installation to conduct activities on another vessel and then return with those same tools to that installation.

Subsection (3) provides that the biosecurity risk of the second conveyance (installation or petroleum industry vessel) is low if both the conditions in paragraphs (3)(a) and (b) are met. Paragraph (3)(a) provides that the Director of Biosecurity is satisfied, on the basis of the information provided by the person in charge or operator of the conveyance, that the level of biosecurity risk associated with the second conveyance was acceptable before the exposure to the exposed conveyance occurred. Paragraph (3)(b) provides that, during the period between the Director of Biosecurity becoming satisfied as referred to in paragraph (3)(a) and the exposure occurring, both the following conditions must be met:

* no persons boarded the second conveyance or only domestic persons boarded the second conveyance
* no goods were brought on board the second conveyance or only goods of a kind referred to in paragraph (2)(b) were brought on board the second conveyance.

It is expected that the person in charge or operator of the installation or petroleum industry vessel will seek to satisfy the Director of Biosecurity under paragraph (3)(a) by providing the necessary information to enable the Director consider the level of biosecurity risk associated with the installation or petroleum industry vessel. For example, this could include a report of the inspection or audit of the installation or petroleum industry vessel conducted by the department or another party with suitable qualifications and expertise.

If the installation or petroleum industry vessel subsequently takes on persons or goods other than those listed in subsection (3)(b), for example, food that is brought directly from a place outside Australian territory, then the circumstance in subsection (3) will no longer be met, and the exposed conveyance would become subject to biosecurity control. However, the person in charge or operator of the installation or petroleum industry vessel may seek again to satisfy the Director of Biosecurity for the purpose of paragraph (3)(a). Following the Director becoming satisfied as referred to in paragraph (3)(a), the installation or petroleum industry vessel will be able to meet the circumstance in subsection (3) again as long as it continues to meet the conditions in paragraph (3)(b).

Subparagraph (1)(f)(iii) provides that biosecurity risks associated with the second conveyance (installation or petroleum industry vessel) are being managed in accordance with an approved arrangement covering the operator of the second conveyance in relation to the operations of the second conveyance. The exposed conveyance would not become subject to biosecurity control, as long as all other applicable circumstances are met, including the end of journey requirements provided in subsection (4), (5), (6) or (7). An exposed conveyance may bring back into Australian territory any person and/or goods (including waste) from an installation or petroleum industry vessel that meets the circumstance in subparagraph (1)(f)(iii).

An approved arrangement would provide for specified activities to be carried out to manage biosecurity risks associated with operations of the installation or petroleum industry vessel, including its exposure to other conveyances and the goods and persons that are brought on board the installation or petroleum industry vessel. This will provide an option for installations or petroleum industry vessels to meet the circumstance under paragraph (1)(f), if neither the circumstance in subparagraph (1)(f)(i) nor (ii) applies to them, for example, if they have taken on board goods other than domestic goods and/or personnel who are not domestic persons. Biosecurity risks that are managed in accordance with an approved arrangement are managed to an acceptable level. The department will monitor compliance with the approved arrangement in accordance with relevant provisions of the Biosecurity Act.

If the second conveyance is managed under an approved arrangement, the exposed conveyance would not become subject to biosecurity control if it meets all other applicable circumstances, including the following end of journey requirements:

* subsection (4) applies to an exposed conveyance that is an aircraft, if its journey ends, or is intended to end, at a first point of entry for the aircraft, and there is a biosecurity entry point for the aircraft at the first point of entry – the aircraft is brought to that biosecurity entry point as soon as practicable after arriving at the first point of entry
* subsection (5) applies to an exposed conveyance that is an aircraft, if its journey ends, or is intended to end, at a landing place in Australian territory that is not a first point of entry for the aircraft – permission has been given under subsection 239(2) of the Biosecurity Act for the aircraft to land at that landing place and any conditions of the permission have been or are intended to be complied with, or a direction has been given under paragraph 240(1)(a) or 242(1)(a) of the Biosecurity Act requiring the aircraft to land at that landing place
* subsection (6) applies to an exposed conveyance that is a vessel, if its journey ends, or is intended to end, at a first point of entry for the vessel, and there is a biosecurity entry point for the vessel at the first point of entry – the vessel is brought to that biosecurity entry point as soon as practicable after arriving at the first point of entry
* subsection (7) applies to an exposed conveyance that is a vessel, if its journey ends, or is intended to end, at a port in Australian territory that is not a first point of entry for the vessel – permission has been given under subsection 247(2) of the Biosecurity Act for the vessel to be moored at that port and any conditions of the permission have been or are intended to be complied with, or a direction has been given under paragraph 248(1)(a) or 250(1)(a) of the Biosecurity Act requiring the vessel to be moored at that port.

The end of journey requirements provided in subsection (4), (5), (6) or (7) are necessary to provide that an exposed conveyance arrives at a landing place or port that has the appropriate facilities and services that could manage any associated biosecurity risk, if required. This provides recognition that the level of biosecurity risk associated with a conveyance that is exposed to an installation or petroleum industry vessel that is covered by an approved arrangement is managed to an acceptable level, however, in the event that any of the other applicable circumstances could not be met, then the biosecurity risk associated with the exposed conveyance can be assessed and if necessary, managed upon arrival at those landing place or port.

Subsection (8) provides that section 6 does not apply in relation to a conveyance that is exposed to a protected zone vessel in the protected zone area. The circumstance that applies to an exposure to a protected zone vessel in a protected zone area is provided for under section 7 of this Determination. The note to this subsection refers to subsection 617(4) of the Biosecurity Act for the definitions of ‘protected zone area’ and ‘protected zone vessel’.

Section 7 – Circumstances in which exposed conveyance does not become subject to biosecurity control–exposure to protected zone vessel in protected zone area

This section provides that section 192 of the Biosecurity Act does not apply in relation to a conveyance that is exposed to a protected zone vessel in the protected zone area, as referred to in section 5. This means that a conveyance that is exposed to a protected zone vessel in the protected zone area would not become subject to biosecurity control when it is in, or when it re-enters Australian territory. Protected zone area and protected zone vessels are defined in subsection 617(4) of the Biosecurity Act.

Protected zone vessels are exempt by regulation from certain requirements under the Biosecurity Act in order to enable free movement of traditional inhabitants within the protected zone in connection with traditional activities. Because protected zone vessels and goods on board those vessels are in Australian territory for the purpose of traditional activities rather than for commercial purposes, the level of biosecurity risk associated with the vessel and goods on board the vessel is acceptable. For this reason, it is the department’s intent that section 192 does not apply to a conveyance that is exposed to a protected zone vessel in the protected zone area.

**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

***Biosecurity (Exposed Conveyances–Exceptions from Biosecurity Control) Determination 2016***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

This Legislative Instrument provides that conveyances that are exposed to other conveyances, including installations and petroleum industry vessels, where the exposures pose acceptable level of biosecurity risk, are not subject to biosecurity control under the *Biosecurity Act 2015*, when is in, or when it re-enters Australian territory. This will minimise the unnecessary regulatory burden on the operator or person in charge of an exposed conveyance that is not required to be managed in relation to biosecurity risk.

**Human rights implications**

This Legislative Instrument engages the following rights:

* Article 17 of the ICCPR – Right to protection from arbitrary interference with privacy.

**Right to protection from arbitrary interference with privacy**

This Legislative Instrument engages the right to protection from arbitrary interference with privacy. Article 17 of the International Covenant on Civil and Political Rights protects the right to be free from arbitrary or unlawful interference with an individual’s privacy, family, home or correspondence. This right may be subject to permissible limitations where those limitations are provided by law and are non-arbitrary. In order for limitations not to be arbitrary, they must seek to achieve a legitimate objective and be reasonable, necessary and proportionate to this purpose.

This Legislative Instrument contains provisions which may operate to limit this right. It provides that information may be provided by the person in charge or operator of an installation or a petroleum industry vessel to satisfy the Director of Biosecurity that the level of biosecurity risk associated with the installation or vessel is acceptable to meet the circumstance under subsection 6(3) of the instrument.

The provision of information may incidentally require the provision of personal information, for example, the identification of the person in charge or operator. The collection of information is necessary for the legitimate objective of assessing the level of biosecurity risk associated with the installation or petroleum industry vessel. However, this information is to be provided on a voluntary basis as the person in charge or operator of an installation or petroleum industry vessel is not obligated to meet the circumstance under subsection 6(3) in order to conduct their business. However, meeting this circumstance will provide a benefit to businesses by minimising regulatory burden on conveyances that are servicing the installation or petroleum industry vessel.

**Conclusion**

This Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Daryl Quinlivan**

**Director of Biosecurity**