

EXPLANATORY STATEMENT

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

Biosecurity Act 2015

*Biosecurity (Prohibited and Conditionally Non-prohibited Goods – Torres Strait)
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.

Subsection 174(1) of the Biosecurity Act specifies 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.

Subsection 174(3) of the Biosecurity Act provides that the Director of Biosecurity and Director of Human Biosecurity must apply the ALOP (appropriate level of protection) for Australia in conducting a risk assessment for the purpose of deciding whether to make a determination under subsection (1) specifying a particular class of goods.

Purpose

The purpose of the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods – Torres Strait) Determination 2016* (this Determination) is to provide that specified classes of goods must not be brought or imported into the destination part of Australian territory specified in column 2 of item 9, 10 or 11 of the table in section 5 of the *Biosecurity (Movements between Parts of Australian Territory) Declaration 2016* from the origin part of Australian territory specified in column 1 of that item unless certain conditions are complied with. The conditions may relate to how the goods are manufactured, prepared or used, and where the goods originate from or that the goods not be brought or imported into Australian territory unless a permit has been granted under Division 3 of the Biosecurity Act (import permit). This Determination may in the future provide that specified goods, or classes of goods, are prohibited from being brought in or imported, though as of commencement no goods are prohibited.

This Determination places regulatory controls by specifying conditions that must be met to bring or import the classes of goods into destination parts in Australian territory from certain origin parts in Australian territory, in order to manage biosecurity risks associated with those goods to meet the ALOP for Australia.

Background

The Biosecurity Act commenced on 16 June 2016 –12 months after royal assent. The Biosecurity Act replaces the *Quarantine Act 1908* (the Quarantine Act) and provides a strong regulatory framework that enables the management of biosecurity risks in a modern and responsive manner. The Biosecurity Act enhances Australia's capacity to manage biosecurity risks into the future by providing a high-level legislative framework that clearly sets out the

powers that can be exercised by officials as well as the requirements for those being regulated.

The Biosecurity Act is principles-based and lays the foundation for biosecurity risk management. The detail and specific information requirements for certain activities under the Biosecurity Act are provided for in the *Biosecurity Regulation 2016* and other delegated legislation, including this Determination.

Impact and Effect

The Determination largely replicates conditions on goods under the Quarantine Act with some red tape reductions where possible, for example by providing alternative conditions that may be met instead of requiring an import permit.

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 Biosecurity legislation commences on 16 June 2016.

The department provided extensive opportunities for clients and stakeholders to become informed about the changes to the legislative framework to ensure 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 delegated legislation for public consultation were available on the department's website, and were distributed to stakeholders to provide additional clarity.

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, including Cairns. 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. The department also undertook targeted consultation with operators and brokers in the Torres Strait Region and the Torres Strait Island Regional Council.

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.

Details/ Operation

Details of the Determination are set out in **Attachment A**.

This Determination is a legislative instrument for the purposes of the Legislative Instruments Act 2003. Subsection 174(5) of the Biosecurity Act provides that the Determination is not subject to disallowance. The decision to make a determination under subsection 174(1) of the Biosecurity Act is a technical and scientific based decision that specified conditions are required to be comply with in applying the ALOP for Australia in relation to the bringing in or importation of specified classes of goods (conditionally non-prohibited goods).

A Statement of Compatibility with Human Rights was prepared for the Biosecurity Act. An additional statement is not required for this Determination as it is not subject to disallowance.

Details of the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods – Torres Strait) Determination 2016*

Part 1 – Preliminary

Section 1 - Name

This section provides that the name of this Determination is the *Biosecurity (Prohibited and Conditionally Non prohibited Goods – Torres Strait) Determination 2016*.

Section 2 - Commencement

This section provides that the whole of this Determination commences at the same time as section 3 of the *Biosecurity Act 2015* (Biosecurity Act) commences. Section 3 of the Biosecurity Act commences on 16 June 2016.

Section 3 - Authority

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

Section 4 – Purpose of this instrument

This section provides that the purpose of this Determination is for subsection 174(1) of the Biosecurity Act.

It makes clear that Part 2 provides for specified classes of goods that must not be brought or imported into the destination part of Australian territory specified in column 2 of item 9, 10 or 11 of the table in section 5 of the *Biosecurity (Movements between Parts of Australian Territory) Declaration 2016* from the origin part of Australian territory specified in column 1 of that item unless specified conditions are complied with.

These items relate to the movement of goods between:

- Protected zone area and the airspace above it and the Torres Strait permanent biosecurity monitoring zone and the airspace above it (item 9),
- Protected zone area and the airspace above it and Australian territory except: a) the protected zone area and the airspace above it, and b) the Torres Strait permanent biosecurity monitoring zone and the airspace above it (item 10), and
- The Torres Strait permanent biosecurity monitoring zone and Australian territory except: a) the Torres Strait permanent biosecurity monitoring zone and the airspace above it, and b) the protected zone area and the airspace above it (item 11).

Note 1 explains that items 9, 10 and 11 of the table in section 5 of the *Biosecurity (Movements between Parts of Australian Territory) Declaration 2016* relate to movements of goods between the protected zone area and the Torres Strait permanent biosecurity monitoring zone, and from either zone to another part of Australian territory.

Note 2 explains that a reference to Australian territory includes Norfolk Island on and after 1 July 2016. This is because the *Norfolk Island Legislation Amendment Act 2015* will extend the Biosecurity Act to Norfolk Island from 1 July 2016.

Note 3 explains that goods included in a specified class of goods are *conditionally non-prohibited goods* for the purposes of the Biosecurity Act (see subsection 174(1)).

Section 5 - Definitions

This section provides definitions for terms used in this Determination and notes that the following expressions used in this Determination are defined in the Biosecurity Act: animal, Australian territory, goods, and plant.

Subsection (2) provides that a word or phrase used in this Determination and in the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016* has the same meaning in this Determination as it has in that Determination.

Part 2 – Conditionally non-prohibited goods

This Part provides for the classes of goods that may only be brought or imported into a destination part from the related origin part if specified conditions are complied with.

These goods are classified into:

- Division 1 – animals, plants, and related goods
- Division 2 – other goods

Each division provides for the specified conditions that must be complied with in relation to the goods. These conditions may include that an import permit covering those goods be obtained, or if applicable, for alternative conditions to be complied with.

The requirement for some goods to be covered by an import permit reflects that the bringing in or importation of the goods poses an unacceptable level of biosecurity risk unless the conditions that are stipulated in an import permit are complied with. Where appropriate, alternative conditions are provided which reflect that the biosecurity risks associated with the goods can be managed to an acceptable level if the specified conditions are complied with. This will provide the person intending to bring in or import those goods with the flexibility to choose whether to obtain an import permit or meet the alternative conditions.

Division 1—Animals, plants and related goods

Section 6 – Classes of goods to which this Division applies

The purpose of this section is to set out the classes of goods which this Division applies to.

Subsection (1) provides that Division 1 applies to the following classes of goods:

- a) animals,
- b) goods wholly or partly of animal origin (including dairy products, eggs and egg products),
- c) live plants,
- d) goods wholly or partly of plant origin that are specified in a provision of this Division,
- e) the following plants:
 - i. banana (*Musa*)
 - ii. sugarcane (*Saccharum officinarum*)
 - iii. maize (*Zea mays*)
 - iv. cassava (*Manihot esculenta*)
 - v. citrus (*Citrus*)

- vi. cotton (*Gossypium*),
- f) goods wholly or partly originating from a plant referred to in paragraph (e),
- g) plants that are capable of being used for propagation (including seeds),
- h) fresh fruit and vegetables,
- i) fungi,
- j) goods that contain fungus.

Subsection (2) provides that certain goods are not covered by the Division. This subsection reflects that certain goods that would be included within the classes of goods specified at subsection (1) do not pose an unacceptable level of biosecurity risk and are allowed to be brought or imported into a destination part from the related origin part without having to meet any conditions.

Section 7 – Conditions-general

Subsection (1) provides that, subject to subsections (3) to (5), the goods included a class of goods to which this Division applies must not be brought or imported into a destination part from the related origin part unless the goods are covered by an import permit, or if alternative conditions for bringing or importing the goods are specified in this Division, those conditions are complied with.

Subsection (2) clarifies that if alternative conditions are specified in the Division, a person may still bring in the goods under an import permit instead of meeting the alternative conditions.

Subsections (3), (4) and (5) provide the conditions that apply to bringing or importing goods that are covered under Division 1 (*the relevant goods*) that are made of, or are made from, or contain, two or more different kinds of goods (*the component goods*), into a destination part from the related origin part.

Subsection (3) provides that if no alternative conditions are specified for one of those component goods, the relevant goods must not be brought in or imported unless they are covered by an import permit. This means that for goods that have more than one component, an import permit is required to bring in or import those goods if there are no alternative conditions specified for a component of the goods.

Subsection (4) provides that if there are alternative conditions for goods specified in another provision of Division 1 and alternative conditions for each of the component goods are specified in another provision of Division 1, the relevant goods must not be brought or imported unless one of the following applies:

- a) the relevant goods are covered by an import permit,
- b) the alternative conditions specified for the relevant goods are complied with, or
- c) the alternative conditions specified for each of the component goods are complied with.

Subsection (5) provides that if relevant goods are made of, or are made from, or contain, component goods and alternative conditions for bringing in or importing each of the component goods are specified in one or more provisions of this Division, the relevant goods must not be brought or imported unless:

- a) they are covered by an import permit, or

- b) the alternative conditions specified for each of the component goods are complied with.

Sections 8—12 – Alternative conditions

These sections specify in a table in each section the alternative conditions for bringing or importing the following classes of goods that are covered under Division 1 into a destination part from the related origin part:

- section 8 - dead animals, animal parts and related goods,
- section 9 - meat products for human consumption,
- section 10 - dairy products for human consumption,
- section 11 - produce for human consumption
- section 12 - egg and egg products for human consumption,
- section 13 - miscellaneous plant materials and plant products.

The alternative conditions may include that the goods:

- are clean and free from animal or other plant material and soil,
- do not contain any flesh, animal tissues or plant material,
- have been manufactured, prepared, processed or packaged in a specified manner, for example, the goods have been commercially prepared through blanching or roasting or are commercially manufactured and packaged,
- are, or are not, in a particular form, state or manner, for example, shelf-stable, tanned or not viable.

Division 2— Other goods

This Division provides for bringing or importing bottles of water, soil, and used machinery and equipment into a destination part from the related origin part.

Section 13 – Bottles of water

Subsection (1) provides that this section applies to bringing in or importing bottles of water.

Subsection (2) provides that goods included in a class of goods to which this section applies must not be brought in or imported unless the goods are covered by an import permit or the goods are commercially packaged.

Section 14 – Soil

Subsection (1) provides that this section applies to bringing or importing soil (other than soil adhering to goods) and goods containing soil.

Subsection (2) provides that goods included in a class of goods to which this section applies must not be brought in or imported unless the goods are covered by an import permit.

Section 15 – Used machinery and equipment

Subsection (1) provides that this section applies to bringing or importing used machinery and equipment.

Subsection (2) provides that goods covered by this section must not be brought in or imported unless the goods are covered by an import permit or are clean and free from animal and plant material and soil.